

20-5509

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 12 2020

OFFICE OF THE CLERK

Christopher Lenard Pugh — PETITIONER
(Your Name)

vs.

Linton Deloach, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Lenard Pugh
(Your Name)

Rogers State Prison, 1978 Ga-Hwy. 147
(Address)

Reidsville, Georgia 30453
(City, State, Zip Code)

(Phone Number)

RECEIVED

AUG 26 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether Court of Appeals erred, when it disposed of the Constitutional question presented by habeas petitioner by denying his application for Certificate of Appealability in a non-published order?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at Case 1:18-cv-05306-LMM, Document 20; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 03-31-2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 05-27-2020, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

	Appendices
28 U.S.C. § 2254.	A-B-C-D
28 U.S.C. § 2253	A-B-C
28 U.S.C. § 636	B
4th amendment to the United States Constitution	B-C
11th Cir. R. 27-2.	D

Statement of The Case

On 11-12-2018, petitioner mailed his Federal Habeas Corpus petition to the United States District Court, for the Northern District of Georgia, Atlanta Division. That of which was filed in the district court on 11-19-2018, Case No. 1:18-CV-05306-LMM-JKL, and petitioner asserted one ground for relief that: "A Fourth Amendment violation resulted in his conviction for crimes of which he is actually innocent." see (doc.1).

On 11-27-2018, the magistrate Judge issued an order granting a petitioner's permission to proceed in Forma Pauperis, (doc.2), and has ordered petitioner to (show cause), within twenty-one (21) days, why his habeas petition, (doc.1), should not be dismissed for failure to exhaust state remedies. See (doc.3).

On 12-04-2018, petitioner filed a response to the magistrate Judge's order, (doc.3), explaining to the Court through Murray v. Carrier 91 LED ad 397, 477 U.S. 478 (1986), that "In an extraordinary case, such as his case, where a Federal Constitutional Violation has resulted in the conviction of him who is actually innocent, a Federal court may grant a writ of habeas corpus to a state prisoner, even in the absence of a showing of cause for the prisoner's procedural default in failing to properly raise the Constitutional error in the state courts." See (doc.4).

On 01-08-2019, the magistrate Judge issued an order to the respondent to (show cause) within thirty (30) days why the writ should not be granted, without deciding or ruling on (doc.4), petitioner's response to the district court's (show cause) order (doc.3). see (doc.5)

On 02-06-2019, respondent filed an answer and a motion to dismiss, and argued that petitioner's petition, (doc.1), should be dismissed for failure to exhaust state remedies. see (doc.14).

On 03-13-2019, the magistrate Judge filed a Final report and recommendation, that respondent's motion to dismiss petitioner's petition, (doc.1) for lack of exhaustion be granted, and that petitioner be denied a certificate of appealability. see (doc.11).

On 03-21-2019, petitioner filed an objection to (doc.17), the Final report and recommendation, that the magistrate judge's failure to rule on petitioner's, (Doc.4), response to the (show cause) order, (doc.3), deprives petitioner of a reply to the respondent's (doc.14), motion to dismiss for lack of exhaustion. see (doc.19).

On 04-19-2019, the district court has adopted, (doc.17), the magistrate Judge's Final R&R, and has stated that petitioner's objections, (doc.19), "raises several irrelevant procedural arguments. He does not, however, assert that he has properly exhausted his state court remedies, and he has failed to provide a compelling argument that the exhaustion requirement should be excused in his case. see (doc.20).

ON 04-27-2019, petitioner Filed a timely motion For reconsideration, (doc. 22), pursuant to Federal Rules of Civil Procedure, Rule 59(e), OF the district Court's Final order, (doc. 20). Specifically, petitioner argued, The district court's Failure to rule on petitioner's, (doc. 4), response to the court's (show cause) order, (doc. 3), causes serious prejudice upon the petitioner's substantial due process rights to have his sole argument, concerning his Fourth Amendment claim, under actual innocence, heard and adjudicated on it's merit. see (doc. 22).

ON 05-28-2019, the district court denied petitioner's Rule 59(e) motion, but Failed to determine whether a Certificate OF Appealability should be issued or denied in its order. see (doc.23).

ON 06-06-2019, petitioner Filed a notice of appeal OF (doc.23), the district court's order denying petitioner's Rule 59(e) motion.

ON 10-18-2019, the United States Court OF Appeals For the Eleventh Circuit issued a limited remand to the district court to issue or deny a Certificate OF Appealability in respect of its denial OF petitioner's Rule 59(e) motion. see (doc. 30).

ON 11-25-2019, the district Court has responded to Eleventh Circuit's limited remand, and still refuses to consider the merits OF petitioner's Constitutional Claim raised in his 28 U.S.C. § 2254 habeas petition, with respect OF granting or denying a Certificate OF Appealability, by relying on its prior Final order, (doc.20), granting respondent's motion to dismiss For Failure to exhaust state remedies. Therefore, the district court concluded that petitioner has Failed to make a substantial showing OF the denial OF a Constitutional right, and denied petitioner a Certificate OF Appealability, with respect to his Rule 59(e) motion, see (doc.31). e.g. Under 28 U.S.C. § 2253(e)(2) and Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). see (doc.31).

ON 03-31-2020, the United States Court OF Appeals For the Eleventh Circuit issued a Non-Published order, under 11th Cir. R. 41-4, dismissing petitioner's appeal OF the denial OF his Rule 59(e) motion, by denying petitioner's motion For a Certificate OF Appealability, because petitioner has Failed to satisfy the SLACK test For his claims, under 28 U.S.C. § 2253(e)(2) and Slack v. McDaniel, 529 U.S. 473, 478 (2000). see record No.19-12395-H.

ON 04-10-2020, petitioner Filed a motion For reconsideration pursuant to 11th Cir. R. 27-2 basically arguing his entire case, to show that he has demonstrated a substantial denial OF a Constitutional right, sufficient to satisfy the SLACK test For his claims under 28 U.S.C. § 2253(e)(2) and Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed.2d 542 (2000). See record No.19-12395-H.

ON 05-27-2020, the United States Court OF Appeals For the Eleventh Circuit issued it's denial OF petitioner's motion For reconsideration, because petitioner has not alleged any points OF law or fact that the Court overlooked or misapprehended in denying his motion. See record No.19-12395-H.

REASONS FOR GRANTING THE PETITION

Petitioner submits, Court of Appeals has so far departed from the accepted and usual course of judicial proceedings such as to call for this court's supervisory power to decide the question involved, as stated below:

On 10-18-2019, the United States Court of Appeals has remanded petitioner's case back to the lower district court, (doc.30), and has stated to the district court that: "Generally, this court will not make the initial determination of whether to issue a Certificate of Appealability, (C.O.A.), but rather the district court must rule first." and has cited Edwards v. United States, 114 F.3d 1083, 1084 (11th Cir. 1997) (providing that "district courts must consider and rule upon the propriety of issuing the COA first, that is before a request for a COA will be received or acted on by this court or a judge of this court.")

Petitioner submits, Court of Appeals stated further that: "Because the district court made no ruling with respect to a COA upon its denial of petitioner's Rule 59(e) motion, which is the subject of this appeal, this case is hereby remanded so that the district court may consider whether a COA is appropriate for any issues petitioner seeks to raise on appeal. Should the court determine that a COA should issue, it should so rule, setting forth the issues certified for appeal, per 28 U.S.C. § 2253. Should the court determine that a COA should not issue, it is directed to "state the reasons therefor, per Fed. R. App. P. 22(b).

On 11-25-2019, in response to the Court of Appeal's limited remand, the district court considered whether a Certificate of Appealability should issue with respect to its denial of petitioner's Rule 59(e) motion, by affirming its prior ruling in (doc.20), and denying petitioner a Certificate of Appealability. (doc.31).

On 03-31-2020, the Clerk of Court of Appeals issued a non-published order, denying petitioner's application for a Certificate of Appealability, as a mandate of the court, pursuant to 11th Cir. R. 41-4.

On 04-10-2020, petitioner filed a motion for reconsideration of the order denying his application for a certificate of appealability, which was denied by the Court of Appeals upon a published order filed on 05-27-2020.

Petitioner submits, Court of Appeals has allowed the Clerk of Court to erroneously issue a non-published order disposing of the Constitutional question presented by petitioner, by denying petitioner's application for a Certificate of Appealability of his 28 U.S.C. § 2254 Habeas Corpus application.

Petitioner submits, this is outside of the court appeal usual judicial proceedings, because the only time the Court of Appeals allows the Clerk of Court to issue

a non-published order, is when it lacks jurisdiction to decide the case on appeal. Accordingly, 11th Cir. R. 41-4 provides that: "When an order dismissing an appeal is not published, including an order dismissing an appeal for want of prosecution, the clerk shall issue a copy to the district court clerk or agency as the mandate."

Petitioner submits, clearly after the lower district court responded to the Court of Appeals limited remand, usually, the Court of Appeals have jurisdiction to decide whether to grant or deny petitioner's application for a certificate of appealability, regarding the dismissal of his 28 U.S.C. § 2254, Habeas Corpus application, per Rules Governing Section 2254 cases, Rule 11(a), provide in part that: "IF the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the Court of Appeals under Federal Rules of Appellate Procedure 22."

Petitioner submits, it is not only important to the petitioner, but a national importance of having this court decide the question presented, concerning any individual who has applied for a certificate of appealability in the Court of Appeals, after being denied a COA by the lower district court, and the record reveals that the petitioner has made a substantial showing that a constitutional right has been denied, concerning the constitutional claims presented in his application for a 28 U.S.C. § 2254 Federal Habeas Corpus.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher L. Pugh

Date: 07-28-2020