

In The Supreme Court of The United States

Christopher Lenard Pugh,  
Petitioner,  
vs.

Linton Deloach, Warden,  
Respondent.

Case No. 20-5509

Petition for Rehearing of order  
executed on 11-02-2020, denying  
petitioner's Petition for Certiorari.

Petition For Rehearing

comes now, the petitioner in the above styled case, and moves  
this honorable Court pursuant to Supreme Court rule 44, to rehear the above  
case and submit the following ground in support thereof:

Ground

Court of Appeals has sanctioned the lower district court's departure from  
its accepted and usual course of judicial proceedings, as to call for an  
exercise of this court's supervisory power.

- 1) Initially, on 10-18-2019, court of appeals issued an order remanding the referenced appeal back to the lower district court to rule upon issuing a C.O.A. (Certificate of Appealability). First, with respect to its denial of petitioner's rule 59(e) motion, before a request for a C.O.A. would be received or acted on by the court of appeals or a judge of the court.
- 2) On 11-25-2019, in response to the court of appeals' limited remand the lower district court never made a ruling upon the merits of issuing a C.O.A. with respect to its denial of petitioner's rule 59(e) motion. In fact the district court denied petitioner a certificate of appealability, without resolving petitioner's underlying constitutional claim presented in his habeas corpus petition, nor was there a ruling resolving the issues presented by petitioner in response to the court's order, determining whether a C.O.A. should issue where the petition was dismissed on procedural grounds.
- 3) Petitioner points out that in fact on 04-18-2019 his habeas corpus petition was dismissed by the lower district court, for failure to exhaust state remedies, and a C.O.A. was denied, and this court has ruled that: "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right."

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and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 483-485.

4) Petitioner also points out that the two components mandated by 28 U.S.C. § 2253, were not met or satisfied by the lower district court, as demonstrated above, in its response to the Court of Appeals remand order, therefore it lacked jurisdiction to entertain the merits of petitioner's certificate of appealability, as instructed by this court in Slack v. McDaniel, 484-485.. held that: "Determining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying Constitutional claims and one directed at the district court's procedural holding. section 2253 mandates that both showings be made before the court of appeals may entertain the appeal."

5) Petitioner states, it is clear to see that the lower district court has prohibited petitioner from meriting a C. O. A. from showing that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise on appeal, by failing to rule on these issues, which are clearly briefed and argued upon record, specifically, documents one and four, by the petitioner, and this court has ruled that: ~~Congress~~ <sup>CP</sup> "In setting forth the preconditions for issuance of a COA under § 2253(c), Congress expressed no intention to allow trial court procedural error to bar vindication of substantial constitutional rights on appeal." Slack v. McDaniel, 473, 483-85.

Wherefore, petitioner prays that he has set forth the sufficient facts herein, supporting the general ground of this petition for Re-hearing, as to call for an exercise of this court's supervisory power, to grant him relief.

Respectfully submitted  
Christopher L. Pugh  
Christopher Lenard Pugh  
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11-08-2020  
Date executed

No. 20-5509

IN THE  
SUPREME COURT OF THE UNITED STATES

Christopher Lenard Pugh - PETITIONER

VS.

Linton Deloach, Warden - RESPONDENT(S)

PROOF OF SERVICE

I, Christopher Lenard Pugh, do swear or declare that on this date, November 8th 2020, as required by Supreme Court Rule 29 I have served the enclosed Petition For Rehearing on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with First-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names addresses of those served are as follows:

- 1) Office of the Clerk, Supreme Court of the United States, Washington, D.C. 20543-0001
- 2) U.S. Court of Appeals, Eleventh Circuit, Office of the Clerk, 56 Forsyth St., N.W. Atlanta,  
    ) Georgia 30303-3361
- 3) Office of the Clerk, U.S. District Court, 2211 U.S. Courthouse, 75 Ted Turner Dr., S.W. Atlanta, Ga. 30303-3361
- 4) Meghan H. Hill, Assistant Attorney General, Ga. Dept. of Law, 40 Capital Square, S.W. Atlanta, Ga. 30334-1300

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on November 8th, 2020.

Christopher J. Pugh  
(Signature)