20-5510

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT PERNELL
(Petitioner-Appellant)

v.

UNITED STATES OF AMERICA,
(Plaintiff-Appellee)

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

PETITION FOR WRIT OF CERTIORARI

Robert Pernell
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Appearing Pro-se

QUESTIONS PRESENTED

I. WHETHER THE GOVERNING PROVISIONS IN THE FOURTH CIRCUIT COURT OF APPEALS PRECEDENT CASE LAW, IN RE GODDARD, 170 F.3d 435(1999), HAS UNLAWFULLY CREATED AN ARBITRARY OR AMBIGUOUS APPLICATION OF 28 U.S.C. §2255(h), THAT IS VOID AND UNENFORCEABLE:

(a) To automatically dismiss a defaulted petition for a direct appeal, pursuant to §2244(B)(3)(a) based solely on the governing provisions in Goddard arbitrarily defining that petition as a second or successive §2255 motion which erroneously triggered the jurisdictional requirements of 28 U.S.C. §2255(h);

(b) In light of a conflict with the Supreme Court decision in Roe v. Flores, 120 S.Ct. 1029, that mandates the automatic vacatur and remand of a petition to reinstate a direct appeal, When a court fails to conduct a circumstance-specific inquiry before making any ruling on the petition; and

(c) In light of a conflict with the Supreme Court decision in Holland v. Florida, 130 S.Ct. 2549, that mandates a circumstance-specific inquiry as to whether extra-ordinary circumstances existed, in the petition, In order to warrant the waiver, forfeiture, or equitable tolling of any procedural or provisional violations.

II. WHETHER A DEFENDANT HAS A RIGHT TO FILE A PROCEDURALLY DEFAULTED MOTION TO REINSTATE A DIRECT APPEAL, PURSUANT TO ROE v. FLORES, 120, S.Ct. 1029(2000), USING A §2255 PETITION, WITHOUT TRIGGERING THE JURISDICTIONAL REQUIREMENTS OF §2255(h)?

PARTIES TO THE PROCEEDINGS:

Petitioner-Appellant, ROBERT PERNELL,("Pernell"), was a Criminal Defendant in the United States District Court for the Eastern District of Virginia, Richmond Division, in USDC Criminal No. 3:09-cr-00452-REP-DJN-1; as a Movant in the United States District Court for the Eastern District of Virginia, Richmond Division in USDC Civil No. 3:15-cv-00723-REP-DJN-1; as Appellant in the United States Court of Appeals for the Fourth Circuit, ("Fourth Circuit"), in USCA No.17-6104; as a Movant in the United States District Court for the Eastern District of Virginia, Richmond Division, in USDC Criminal No. 3:09-cr-000452-REP-DJN-1; and as Appellant in the United States Court of Appeals for the Fourth Circuit in USCA No.19-7625. Respondent, the United States of America, was the Plaintiff in the District Court and the Appellee in the Fourth Circuit.

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PETITION FOR WRIT OF CERTIORARI:

Petitioner respectfully submitts this petition for a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW:

The Opinion of the United States Court of Appeals for the Fourth Circuit is Non-Published, United States v. Robert Pernell, (No.19-7625)(4th Cir. 2020), is attached in the Appendix at 1a - 3a

STATEMENT OF JURISDICTION:

Petition-Appelant, timely appealed from the district court's Judgement in a Civil Case to the United States Court of Appeals, for the Fourth Circuit. On June 5, 2020, the Court of Appeals for the Fourth Circuit issued a Order denying Pernell's Motion for Certificate of Appealability. This Court has jurisdiction pursuant to Title 28 U.S.C. §1254(1). See Appendixes 1a-3a

CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment of the United States Constitution:

CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, **AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GREIVANCE.**

Fifth Amendment of the United States Constitution:

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENCE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, **NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW;** NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

Fourteenth Amendment of the United States Constitution:

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. **NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.**

STATEMENT OF THE CASE

A. The Proceedings Below(In Relevant Part):

On December 15, 2009, a Grand Jury sitting in the United States District Court for the Eastern District of Virginia, Richmond Division returned a three (3) count indictment charging Pernell(ECF.No.1): Count 1 charged Pernell, with Conspiracy to Interfere with Commerce by Threats and Violence, in violation of 18 U.S.C. §1951, on or about May 15, 2009(id.); Count 2 charged Pernell with Attempted Interference With Commerce by Threats and Violence, in violation of 18 U.S.C. §1951 and §2, on or about May 15, 2009(id.); Count 3 charged Pernell With Use/Carry of a Firearm During/In Relation to a Crime of Violence, in violation of 18 U.S.C. §924(c), on or about May 15, 2009(id.); The indictment also contained a Notice of Intent to Seek Criminal Forfeiture, pursuant to 18 U.S.C. §924(d).

1. Charged Offence Conduct

On May 15, 2009, in Chesterfield Virginia, ROBERT PERNELL, the petitioner-appellant, and another unknown individual, forced their way into the residence of Anwan Jones. While Jones and his girlfriend Keona Peoples, were entering the residence, at 1453 Lockett Ridge Road, Chesterfield County Virginia(ECF.No. 196-6[pg.ID#1688]). Pernell and his alleged accomplice brandished weapons, and a struggle ensued. Jones attempted to close the entrance door, but could not, because it was being blocked by a barrel of a shotgun held by Pernell or the other male suspect.(id.) Jones was eventually able to flee. Pernell pursued Peoples to a back bedroom of the residence. Peoples fired a .45 caliber handgun at Pernell striking him one time in the left arm.(id.). Pernell discharged the shotgun he had, and then fled the scene.(id.). A search of the residence, by law enforcement located 116 grams of cocaine, an undisclosed amount of illegal prescription pills and marijuana, along with $125,000.00 dollars in cash(ECF.No.158[pg.ID# 1214]). Pernell was originally arrested for attempted robbery in State Court on June 16, 2009(ECF. No.196-6[pg.ID#1688]), the other unknown individual was never charged or indicted(id.). On August 22, 2014, Pernell plead guilty to one count of violating 18 U.S.C. 924(c) Use/Carry of Firearm During/Relation to a Drug Trafficking Offence, and was sentenced to 300 months for a Statutory violation of 924(c) in a second offence(ECF.No.197[pg.ID#1573-1575]).

REASONS FOR GRANTING THE PETITION:

As a preliminary matter, Pernell respectfully requests that this Honorable Court be mindful, that pro-se litigants' are entitled to the liberal construction of their pleadings. Estelle v. Gamble, 429 U.S. 97, 106(1976); and Haines v. Kerner, 404 U.S. 519, 520-521(1972):

I. THE GOVERNING PROVISIONS IN THE FOURTH CIRCUIT COURT OF APPEALS PRECEDENT CASE LAW, IN RE GODDARD, 170 F.3d U.S. 435, HAS UNLAWFULLY CREATED AN ARBITRARY OR AMBIGUOUS APPLICATION OF 28 U.S.C. §2255(h), THAT IS VOID AND UNENFORCEABLE:

(a) To Automatically Dismiss a Defaulted Petition for a Direct Appeal, Pursuant to §2244(B)(3)(a) Based Solely on the Governing Provisions in Goddard arbitrarily defining that Petition as a Second or Successive §2255 Motion, Which Erroneously Triggered the Jurisdictional Requirements of 28 U.S.C. §2255(h);

(b) In Light of a Conflict with the Supreme Court Decision in Roe v. Flores, 120 S.Ct. 1029, that Mandates the Automatic Vacatur and Remand of a Petition to Reinstate a Direct Appeal, When a Court Fails to Conduct a Circumstance-Specific Inquiry Before Making any Ruling on the Petition; And

(c) In Light of a Conflict with the Supreme Court Decision in Holland v. Florida, 130 S.Ct. 2549, that Mandates a Circumstance-Specific Inquiry as to Whether Extraordinary Circumstances Existed, in the Petition, in Order to Warrant the Waiver, Forfeiture, or Equitable Tolling of any Procedural or Provisional Violations.

II. BECAUSE A DEFENDANT HAS A RIGHT TO FILE A PROCEDURALLY DEFAULTED MOTION TO REINSTATE A DIRECT APPEAL, PURSUANT TO ROE v. FLORES, 120 S.Ct. 1029(2000), USING A §2255 PETITION, WITHOUT TRIGGERING THE JURISDICTIONAL REQUIREMENTS OF §2255(h).

(A) Relevant Appellate Proceedings at Issue:

On November 17, 2016, the district court denied Pernell's §2255 motion, challenging his conviction and sentence(ECF.No.172).

On April 17, 2019, Pernell filed a Motion to Reinstate a Procedurally Defaulted Direct Appeal, using a numerically second §2255 petition, pursuant to Roe v. Flores, 528 U.S. 470(ECF.Nos.196-198).

On October 11, 2019, the district court dismissed Pernell's petition, for Reinstatement of a Direct Appeal, on jurisdictional grounds, pursuant to §2255(h), without conducting a circumstantial-specific reasonableness inquiry, pursuant to Roe v. Flores, 528 U.S. at 477-478(ECF.No.199). See Appendix 4a:

> The district court found: "Pernell contends that 'his new proposed §2255 motion, at issue here, to reinstate direct appeal should not be misconstrued or considered a second or successive §2255 under Section §2255(h), as 'it seeks to only reinstate his direct appeal rights, and therefore does not challenge the legality of the sentence imposed.'"(ECF.No.199[pg.ID#1713]).
>
> The district court determined based on its findings that: "Pernell fails to identify a procedural vehicle that would allow this Court to provide him the relief he seeks, that is, to reopen his appeal. Thus, the MOTION FOR REINSTATEMENT OF DIRECT APPEAL(ECF. No.196), and MOTION TO EXERCISE INHERENT EQUITABLE POWERS TO GRANT SUBJECT MATTER JURISDICTION(ECF.No.197) are denied." Id. at 1713-14.

On December 5, 2019, Pernell filed a Motion for Certificate of Appealability(Appeal No.19-7625), to the Fourth Circuit Court of Appeals.

On March 10, 2020, the Fourth Circuit Court of Appeals. affirmed the district court's Opinion and denied Pernell's Motion for a C.O.A. as unnecessary. See Appendix 3a.

On May 4, 2020, Pernell filed a Motion for Rehearing and Rehearing En Banc(19-7625). On May 26, 2020, the Fourth Circuit Court of Appeals again affirmed the district court's Opinion. Due to "No judge requested a poll under Fed. R. App. P.35 on the petition". See Appendix 2a:

The Fourth Circuit Court Appeals, on March 10, 2020, in a Per Curiam decision on Pernell's Motion for C.O.A. held: " We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See United States v. Pernell, No.3:09-cr-00452-REP-DJN(E.D. Va. Oct. 11, 2019)....and deny a certificate of appealability as unnecessary. See 28 U.S.C. §2253(c)(1)(B)(2018); Harbison v. Bell, 556 U.S. 180, 183, (2009).

(B) Identification of a Proper Procedural Vehicle.

In Roe v. Flores, the Supreme Court, clearly reviewed Flores-Ortega's filings pursuant to a 28 U.S.C. §2254 petition. See 528 U.S. 470 at 474. Accordingly, a §2254 is a federal petition, seeking relief for prisoners in State Custody. See 28 U.S.C. §2254.

The equivalent of a §2254 petition, for prisoners seeking relief, in federal Custody, is a 28 U.S.C. §2255 petition. United States v. Surratt, 797 F.3d 240, 265(4th cir.2015)(§2254 applies with equal force to identical language in a §2255).

Accordingly, a §2255 petition is clearly a proper vehicle to address a procedurally defaulted Motion to Reinstate a Direct Appeal, pursuant to Roe v. Flores, 528 U.S. 470. In the Fourth Circuit, In Re Goddard, 170 F.3d 435, governs such motions.

However, what is not clear, is whether a procedurally defaulted Motion to Reinstate a Direct Appeal, actually constitutes a second or successive §2255 petition as intended by Congress in the 1996 A.E.D.P.A. Statute of Limitations, pursuant to §2255(h). In those unusual occassions, when a Motion to Reinstate Appeal is numerically filed second to a previously unsuccessful §2255 petition challenging a conviction or sentence, pursuant to §2255(a). Which, currently, would be in violation of the Fourth Circuit's precedent case law on the issue: In Re Goddard, at 438.

(C) §2255(h)

§2255(h) states: "A second or successive motion must be certified as provided in section §2244 by a panel of the appropriate court of appeals to contain- (1) newly discovered evidence.... or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable".

(D) Judicial Interpretation of a Second or Successive §2255 Petition.

In Congress's 1996 A.E.D.P.A Statute of limitation Policy. Congress mandated, under Article 1 of its Policy-Making Authority, that a movant must obtain authorization from the Court of Appeals before filing a second or successive §2255 petition, in the district court, See §2255(h) and §2244(B)(3)(a).

However, several of the Court's of Appeals, uniformally agreed that Congress never actually defined what the requirements were for a §2255 petition to be considered a second or successive petition, pursuant to Section §2255(h). But, those same Court's of Appeals, also "rejected the notion of the literal reading of the phrase". Vasquez v. Parrott, 318 F.3d 387, 389-390(2d Cir.2003); United States v. Barrett, 178 F.3d 34, 43(1st Cir. 1999); In Re Cain, 137 F.3d 234, 235-236(5th Cir. 1998); In Re Williams, 444 F.3d 223, 235(4th Cir. 2006).

The Supreme Court interpretated Congress's intent for implementing Section §2255(h), where Congress was silent or ambiguous as to what constituted an actual second or successive §2255 petition. In Felker v. Turpin, 518 U.S. 615, 664, 116 S.Ct. 2333(1996), the Supreme Court noted: "[t]he new restrictions on successive petitions constitute a modified res judicata rule, a restraint on what is called a habeas practice 'abuse of writ'. However, the Supreme Court a year later also found: "despite the Acts clear goals, in a world of silk purses and pigs' ears, the Act is not a silk purse in the art of statutory drafting". Lindh v. Murphy, 521 U.S. 320, 336 117 S.Ct.2059, 138 L.Ed 2d 481(1997). But, the Court came short of actually defining what an actual second or successive §2255 was, in order to trigger the jurisdictional requirements of §2255(h).

Since those Supreme Court decisions, several Court's of Appeals agree the purpose of Congress's "habeas restrictions [was] primarily to preclude prisoners from repeatedly attacking the validity of their convictions and sentences" on collateral review. Crouch v. Norris, 251 F.3d 720, 724(8th Cir. 2001); In Re Cain, 137 F.3d 234, 235(5th Cir. 1998); Zayas v. I.N.S., 311 F.3d 247, 256(3rd Cir.2003); United States v. Winestock, 340 F.3d 200, 207(4th Cir. 2003). Even still, recently, the Supreme Court held: "[W]hen Congress codified new rules[A.E.D.P.A] governing this previously judicially managed area of law it did so without losing sight of the fact that the writ of habeas, plays a vital role in protecting constitutional rights". Mcquiggins v.Perkins, 569 U.S. 383 at 397-398(2013).

1. Application of §2255(h) in The Instant Case.

In the instant case, Pernell argues a procedurally defaulted Motion for Reinstatement of a Direct Appeal, pursuant to Roe v. Flores, 120 S.Ct. 1029(2000), does not collaterally attack the validity of Pernell's conviction or sentence, and therefore does not trigger the jurisdictional requirements of §2255(h).

Pernell, contends any other provisional violations, that may be alleged by the Fourth Circuit, are subject to waiver, forfeiture, or equtiable tolling. Therefore, are insufficient to warrant the automatic dismissal of Pernell's petition, without first conducting a circumstance-specific inquiry of that petition as mandated by the Supreme Court in Roe, at 478(the "Court of Appeals failed to engage in the circumstance-specific reasonableness inquiry required by Strickland, and that alone mandates vacatur and remand").

In particular in Pernell's case, he did not per-say rely on a "ineffective assistance of counsel" claim. Instead, Pernell's Motion to Reinstate a Direct Appeal relied squarely on the "denial of the entire judicial proceedings itself" 145 .Ed 2d 985, 991-992, 120 S.Ct. 1029, Roe v. Flores.(ECF.No.196[pg.Id#1516]). Accordingly, in Roe, the denial of the appellate proceedings altogether to file a direct appeal, is a structural error, Roe, 528 U.S. at 483, subject to a "presumption of prejudice". See also Weaver v. Massachusetts, 137 S.Ct. at 1907-1908(a structural error is an error that affects the framework within which the trial proceeds, rather than being simply an error in the trial process itself).

Pernell, contends when the Fourth Circuit vacates its underlying judgement in a conviction and "reenters that same judgement, unchanged, to permit the [direct] appeal period to run anew", pursuant to Fed. R. App.4(b). United States v. Peak, 992 F.2d 39, 42(4th Cir.1993). It does not require the Fourth Circuit to make any collateral judgement, on the actual validity of a defendant's conviction or sentence, in order to grant relief:

> " a second [§2255] motion to reinstate direct appeal does not amount to a true collateral attack on a conviction or sentence pursuant to §2255(h)...[as] it seeks only to reinstate..direct-appeal rights, and therefore does not challenge the legality of the sentence imposed." Carranza v. United States, 794 F.3d 237, 244(2d Cir.2015);

Therefore, enforcement of §2255(h), by the Fourth Circuit, based solely on the sequential numeric filing order of Pernell's petition to reinstate a direct appeal, must be considered arbitrary or ambiguous to the intended jurisdictional restraints by Congress. Vasquez, 318 F.3d at 389-90(rejected literal reading of phrase second or successive).

CONTEXTUAL BACKGROUND IN GODDARD DECISION:

1. Goddard's Lawyer Failure to File a Direct Appeal

Mr. Goddard's first lawyer, failed to file a motion for a direct appeal. Mr. Goddard, later became aware of his lawyer's failure and filed his first §2255 motion, to have his judgement vacated and reentered pursuant to Fed. R. App. P. 4(b). The court granted Mr. Goddard's motion, and gave him an opportunity to file a direct appeal, with new counsel. 170 F.3d U.S. 435 at 437.

However, Mr Goddard's direct appeal was unsuccessful. Mr. Goddard then sought to mount a substantive collateral attack on his actual conviction and sentence, through a second §2255 motion on the proceedings that led to Mr. Goddard's sentence. Id.

2. Goddard's Circumstances Created a Substantial Question of Law

Mr. Goddard's second §2255 motion was denied, on jurisdictional grounds, as a second or successive §2255 petition pursuant to 28 U.S.C. §2255(h) and §2244(B)(3)(a). Mr. Goddard filed an appeal to the Fourth Circuit Court of Appeals.

Mr. Goddard's circumstances presented a substantive question of law. As to whether Mr. Goddard's second §2255 petition filed to collaterally attack his sentence. Actually, constituted a second or successive §2255 petition in violation of 28 U.S.C. §2255(h); Title 28 U.S.C. §2255(h), mandated Mr. Goddard must be granted authorization to file a second or successive §2255 petition, from the Fourth Circuit Court of Appeals. If Mr. Goddard failed to seek such authorization, his second §2255 would automatically be dismissed on jurisdictional grounds, pursuant to Title 28 U.S.C. §2244(B)(3)(a). 170 F.3d U.S. 435 at 437.

In addressing Mr. Goddard's substantial question of law. The Fourth Circuit Court of Appeals, found Mr. Goddard's second §2255 motion, did not trigger the jurisdictional requirements of 28 U.S.C. §2255(h) or §2244(B)(3)(a). Id.

3. Provisional Requirements Defining a Second or Successive §2255

The Fourth Circuit Court of Appeals created specific provisional requirements, in order to define a second or successive §2255 petition, and relying on those provisions determined Mr. Goddard's second §2255 petition was not a second or successive petition, pursuant to §2255(h), as intended by Congress.

The Fourth Circuit held:

(i) " [W]hen a §2255 motion successfully reinstates the defendant's right to [a] direct appeal of his conviction and sentence.....the counter of collateral attacks pursued [is] reset to zero, such that a later §2255 motion itself is not necessarily second or successive." 170 F.3d 435 at 438.

(ii) " [T]he only effective remedy for a prisoner deprived of the right to [a] direct appeal is two fold; allow him to use a §2255 motion to reinstate the appeal process through reentry of judgement and allow him to raise collateral claims, in a subsequent §2255 motion filed after the direct appeal is concluded. That can only be accomplished if the §2255 motion starts anew when judgement is reentered to allow an appeal." 170 F.3d 435 at 438.

(iii) "[I]ntitial habeas action [§2255] seeking reinstatement of [direct] appeal rights may, but is not required to raise other claims concerning the conviction or sentence." 170 F.3d 435 at 437.

4. Fundamental Basis of Goddard's Ruling and Provisions

The fundamental basis of the Fourth Circuit's ruling that Mr. Goddard's numerical second §2255 petition was not actually a second or successive §2255 motion, triggering the jurisdictional requirements of 28 U.S.C. §2255(h) and 28 U.S.C. §2244(B)(3)(a). Primarily was because "Goddard used his first §2255 motion solely to reinstate his right to [a] direct appeal, [and] that motion does not count against him." 170 F.3d 435 at 437.

The fundamental basis of the Fourth Circuit's provisional requirements authorizing a defendant, was not required to raise other claims concerning his conviction or sentence. While seeking to reinstate the defendant's right to a direct appeal in a §2255. Primarily was based on the Fourth Circuit's legal interpretation that "the prisoner in [his] first §2255 motion could join his [direct] appeal reinstatement claim with other attacks on his conviction and sentence, including those that could have been raised on direct appeal."

170 F.3d 435 at 437[Lexis 8]. However, to so would create "real disadvantages... ..forc[ing] [the] prisoner, without the assistance of counsel to make substantive objections to his conviction and sentence that his lawyer would have made for him on direct appeal." Id. Morever, those same "objections would be subjected to more stringent standards of review that apply to collateral proceedings. [And], [i]f the prisoner's substantive challenges were [actually] denied on the merits, they could not be reasserted even if he was permitted a direct appeal.". Id.

THRESHOLD ISSUE:

Pernell, contends the Fourth Circuit wrongfully established an erroneous factual or legal premise in its conclusion in Goddard, at 438. Requiring a Motion to Reinstate a Direct Appeal, using a §2255 petition, must be filed in an initial §2255, and concluded before the filing of a subsequent §2255 collaterally attacking the conviction or sentence. In order to not trigger the judicial requirements in 28 U.S.C. §2255(h).

Pernell, argues the Fourth Circuit's governing provisional requirements, in Goddard, at 437-438, are not jurisdictional in nature. But, instead are better understood as a "judicial preference" or a "mandatory-claim processing rule", that are subject to waiver, forfeiture, or equitable tolling. Likewise, even [the] AEDPA Statute of Limitations are subject to equitable tolling...because equitable tolling "can be seen as a reasonable assumption of genuine legislative intent". Mcquiggins, 569 U.S at 398[n.].

Therefore, the Fourth Circuit's governing provisions, in Goddard, alone are insufficient to automatically trigger the jurisdictional requirements of 28 U.S.C. §2255(h). Making such provisions void and unenforceable, to warrant the automatic dismissal of a motion to reinstate a direct appeal, on jurisdictional grounds, pursuant to 28 U.S.C. §2244(B)(3)(a). Consequently, due to the arbitrary or ambiguous nature of the Goddard provisions; to implicitly or explicitly define the requirements for filing a §2255 motion, as a second or successive §2255 petition, based solely on the numeric or sequential filing of the §2255; Instead of being based on the actual content in the §2255. In doing so, the Fourth Circuit's governing provisions, are arbitrarily triggering the jurisdictional requirements of §2255(h), in conflict with the Supreme Court's precedent case law to reinstate a direct appeal, Roe v. Flores, 528 U.S. 470 at 477-478(courts must conduct a circumstance-specific inquiry of a motion to reinstate a direct appeal, before making any ruling to grant, deny, or dismiss the petition). See also Vasquez, 318 F.3d at 389-90(appeal Court's reject literal reading of phrase second or successive by Congress);cf Person, 436 Fed Appx. 278, 279(4th Cir.2011).

In the instant case, the Fourth Circuit's failure to conduct a circumstance-specific inquiry of Pernell's Motion to Reinstate a Direct Appeal, as mandated by the law, in Roe v. Flores, at 477-478, warranted "the automatic vacatur and remand" of his petition. Id. The Fourth Circuit failed to [illegible]

The Fourth Circuit's failure to vacate and remand Pernell's petition, as mandated by law in Roe v. Flores, at 478, violated Pernell's constitutional rights to Equal Protection of the Law, and the right not to be deprived of the Due Process of the Law when facing a crime. See §§V and XIV Amendments of the Constitution of the United States of America.

Pernell, contends according to the First Amendment of the Constitution. He had a lawful right to petition the government to redress his grievance of being "deprived of the appellate proceedings to file a direct appeal altogether". (ECF.No.196[pg.ID#1516]). Pernell further contends, that the argument he wanted to present to reinstate his direct appeal, did not satisfy the statutory criteria for a repetitious collateral attack. Although, Pernell did do one collateral attack, in November 2015(ECF.No.152), making his current §2255 "second" in a dictionary sense. Pernell's deprivation of the appellate proceedings, caused by the constructive deprivation of counsel, during that time, by Pernell's lawyer,(unbeknownst to Pernell); need not demonstrate that there was any legal flaw in his conviction or sentence; as "all he must show is that his lawyer left him in the lurch. Whether the conviction or sentence is valid will be determined later, with the assistance of counsel". See Castellanos v. United States, 26 F.3d 717(7th Cir.1994). However, that would only be important if appellate approval was essential to authorize the review of Pernell's Motion to Reinstate his Direct Appeal. Pernell argues, it is not, while the Fourth Circuit argues that it is. Requiring the Supreme Court to provide guidance and correction, on the matter. In order to maintain the appearance of justice, integrity, and the fairness of the courts.

To support Pernell's claims, he poses three questions for this Honorable Court to consider: **(1)** May a violation that was presumptively prejudicial against a defendant, create extraordinary circumstances, beyond his control, to prevent or delay him from meeting the provisional requirements in Goddard, at 437-438. In order to reinstate a procedurally defaulted direct appeal?; If so, **(2)** Does sufficient evidence supporting a defendant was actually presumptively prejudiced by the violation. Warrant the provisional requirements in Goddard, at 437-38, to be waived, forfeited or equitably tolled?; If so, **(3)** Does the Goddard, provisions conflict with the Supreme Court, in Roe v. Flores, at 477-478, when the Fourth Circuit fails to conduct a circumstance-specific inquiry before dismissing the petition?

II. A DEFENDANT HAS A RIGHT TO FILE A PROCEDURALLY DEFAULTED MOTION TO REINSTATE A DIRECT APPEAL, PURSUANT TO ROE v.FLORES, 120 S.Ct. 1029(2000), USING A §2255 PETITION, WITHOUT TRIGGERING THE JURISDICTIONAL REQUIREMENTS OF §2255(h).

Pernell argues, the Fourth Circuit's failure to conduct a circumstance-specific inquiry, before it dismisses a petition to reinstate a direct appeal, as mandated by the Supreme Court precedent law in Roe v. Flores, 528 U.S. 470 at 477-478(Court of Appeals failed to engage in the circumstance specific reasonableness inquiry required by Strickland, and that alone mandates vacatur and remand). Constitutes, a Constitutional violation of a defendant's Fifth and Fourteenth Amendment Rights, to not be deprived of the Due Process of the Law when facing a crime, and to the Equal Protection of the Law. See §§V and XIV Amendments.

Pernell contends, like all citizens, he clearly has a First Amendment Right to "petition the government for redress of a grievance". See §I Amendment.

On April 17, 2019, Pernell grieved to the Fourth Circuit District Court, he had unlawfully been "deprive[d] of the appellate proceedings to file a direct appeal altogether'(ECF.No.196[pg.ID#1516-1519]). Which, had been erroneously caused by the "unquantifiable consequences from an actual or constructive denial of counsel, during the critical stage of filing a direct appeal"(ECF. No.196[pg.ID#1539; 1550-1551; 1552-1559]), that was previously unknown to Pernell.

The erroneous deprivation of the appellate proceedings and the deprivation of counsel are both presumptively prejudicial structural errors. Roe, 528 U.S. at 483(denial of counsel or the denial of judicial proceedings itself demand a presumption of prejudice);cf Powell v. Alabama, 77 L.Ed 158, 170, 68 S.Ct(1932)(the conception of Due Process of Law makes it clear that the right to the aid of counsel is fundamental); United States v. Curbelo, 343 F.3d 273, 281(4th Cir.2013)(deprivation of the right to counsel like other structural errors has reprecussions that are necessarily unquantifiable and indeterminate).

(1) Exception from Jurisdictional Requirements of §2255(h).

Pernell argues, a Motion to Reinstate a Direct Appeal, is simply a request for a waiver, forfeiture, or equitable tolling, to allow a defendant an opportunity to a "judicial proceedings" he had failed to timely file notice to receive. Pernell contends, such a request does not and should not trigger any jurisdictional

requirements pursuant to §2255(h). Because, the reinstatement of deprived judicial proceedings, a defendant had a statutory right to have, is not by definition a traditional "collateral attack on a conviction or sentence" repeatedly. Such a distinction makes the numerical filing of a motion to reinstate an actual judicial proceedings, arbitrary. In order to trigger the jurisdictional requirements of 28 U.S.C. §2255(h)(authorization for filing a second or successive §2255 petition, from a Court of Appeals).

Therefore, evidence of the Presumption of Prejudice in a defendant's particular circumstances, creates an "unusual [case]"...because 'the adversary process itself' has been rendered 'presumptively unreliable'". Roe, 528 U.S. 470 at 483. Where "structural errors has repercussions that are necessarily unquantifiable and indeterminate". Curbelo, 343 F.3d 273 at 281(4th Cir.2013). Pernell contends, such a case clearly would constitute "extraordinary circumstances, beyond a defendant's control and ability to exercise diligence" under certain conditions. Which, in light of those conditions, would warrant the waiver, forfeiture, or equitable tolling of any provisional or procedural requirements. Preventing, a defendant from having a deprived judicial proceedings reinstated for good cause. Holland v. Florida, 569 U.S. 631, 649-653, 177 L.Ed 2d 130 S.Ct. 2549, 2559-60(2010).

In the instant case, before this Honorable Supreme Court, the Fourth Circuit's failure to conduct any type of circumstance-specific reasonable inquiry, absolves this Court from determining whether Pernell's evidence was sufficient to warrant a waiver, forfeiture, or equitable tolling. Instead, the Fourth Circuit's failure, requires this Court to determine whether that failure, unjustifiably violated Pernell's Constitutional rights to Equal Protection of the Law, and to the Due Process of the Law, pursuant to Roe v. Flores, 528 U.S. 470 at 478("The Court of Appeals failed to engage in the circumstance-specific reasonableness inquiry required by Strickland, and that alone mandates vacatur and remand."). In doing so, this Honorable Court, would also be correcting an erroneous factual or legal premise in the Fourth Circuit, that is arbitrarily or ambiguously denying other defendant's, like Pernell, a lawful opportunity to present a grievance to the government to reinstate a judicial proceedings. Due to the Fourth Circuit's arbitrary enforcement of its governing provisional requirements in its precedent case law In Re Goddard, 170 F.3d 435, to erroneously trigger the jurisdictional requirements of 28 U.S.C. §2255(h), in a manner that is void and unenforceable. Which requires the Supreme Court's guidance and correction.

(2) Insufficient Jurisdictional Authorization

Pernell contends, the Fourth Circuit's provisions in Goddard, 170 F.3d at 437-438, as aforementioned. Do not "clearly state" any "jurisdictional Legislation", Gonzalez v. Thaler, 565 U.S. 134, 141-142, 132 S.Ct. 641(2012):

> " A rule is jurisdictional '[i]f the Legislature clearly states that a threshold limitation on a statutes scope shall count as jurisdictional.'" Id.

Therefore, the mandated provisions in the Fourth Circuit's In Re: Goddard, can not be considered sufficient to trigger a "jurisdictional requirement." Particularly, given the focus of the provisions being on what is "better understood as..[a]... mandatory-claim processing rule," Hamer v. Neighborhood Hous. Servs. of Chi., 138 S.Ct. 13, 17, 199 L.Ed 2d 249(2017), Or understood, as a "judicial preference....derive[d] from concerns over judicial economy." Carranza v. United States, 794 F.3d 237, 243(2d Cir.2015):

> " [w]hile we generally prefer that direct appeals conclude before §2255 proceedings begin, this preference is not jurisdictional and derives from concern over judicial economy." Id.

Pernell, argues in the instant case, whether it is concluded that the Fourth Circuit's provisions in Goddard, are a mandatory-claim processing rule, or a judicial preference. Those provisions still "are not jurisdictional". Thaler, 565 U.S.at 141-143. Nomatter, how emphatically, the Fourth Circuit may assert "its mandatory prescriptions are jurisdictional". Henderson v. Shinseki, 565 U.S. 428, 439 131 S.Ct. 1197(2001).

Pernell, concedes "if properly invoked" a judicial preference or a mandatory-claim processing rule "must be enforced". Hamer, 138 S.Ct. at 17. But, Pernell contends, such provisions are "subject to waiver or forfeiture". Id.

Therefore, the implicit or explicit existence of emphatic assertions, in the provisions of Goddard, mandating its prescriptions are jurisdictional. Does "not change the non-jurisdictional character of [the] provisions". Thaler, 565 U.S. at 141-143; 146. When those provisions are actually subject to waiver or forfeiture, and are not clearly stated as a Legislative threshold limitation to be counted as jurisdictional. Hamer, 138 S.Ct. at 17.

(3) Judicial Provisions May not Substitute the Views of Congress as a Remedy for Enforcement of §2255(h)

Pernell argues, the Fourth Circuit's reliance of judicial preference, and/or mandatory-claim processing rules, pursuant to In re Goddard, 170 F.3d at 437-438, can not substitute the desires of Congress. As a remedy to the enforcement error in the 1996 A.E.D.P.A Statute of Limitations Policy by Congress. When Congress either was silent or ambiguous, as to what the requirements are to define a §2255 petition, as a "second or successive motion", pursuant to §2255(h). Vasquez v. Parrott, 318 F.3d 387, 389-390(2d Cir.2003); cf United States v. Person, 436 Fed Appx. 278, 279(Lexis 2](4th Cir.2011):

> "It is well settled law that not every numerically second[§2255 motion] is a second or successive [motion] within the meaning of the [Anti-Terrorism and Effective Death Penalty Act of 1996]." Id.

Pernell contends, any violation in his motion to Reinstate a Direct Appeal, to the provisional requirements mandated in Goddard, at 437-438, can only be considered to be a "defect in authorization" of the Fourth Circuit's ability to grant relief. However, "a defective [authorization] is not [jurisdictionally] equilivalent to the lack of any [authorization]". Thaler, 565 U.S. at 143.

Likewise, a defective authorization issue, can not be superimposed into, or substitute the jurisdictional requirements established by Congress, pursuant to §2255(h), To do so, would be "dispacthing Congress's 'Article 1 Policy-Making Authority to the Third Branch of Government". Cannon v. Univ. of Chicago, 441 U.S. 677, 730-731, 99 S.Ct. 1964(1979). Creating an arbitrary remedy to the enforcement error, by Congress, to clearly define a "second or successive" §2255 petition. While also simultaneously running afoul with the Supreme Court case law, in Roe v. Flores, at 477-478, mandating all "Court of Appeals to engage in circumstance-specific reasonableness inquir[ies]" before dismissing a motion to reinstate a direct appeal. Id. Which, the Fourth Circuit has no jurisdictional authorization to ignore:

> " a second [§2255] motion to reinstate direct appeal does not amount to a true collateral attack on a conviction or sentence pursuant to §2255(h)...[as] it seeks only to reinstate ....direct-appeal rights, and therefore does not challenge the legality of the sentence imposed." Carranza v. United States, 794 F.3d 237, 244(2d Cir.2015);

Based on the erroneous application of an "inflexible rule" in Goddard. Which, implicitly or explicitly triggers the automatic dismissal of a defaulted direct appeal right, that is "not set forth" in the "AEDPA Statute of Limitations." Holland v. Florida, 560 U.S. 631, 649-650(2010)(emphasizing the need for flexibility to avoid mechancial rules and standards that are too rigid).

(4) Defective Authorization Subject to Equitable Tolling

Pernell, argues the governing provisional requirements in the Fourth Circuit's In Re Goddard, 170 F.3d at 437-438, may support his filing for a belated direct appeal, has a "defective authorization issue". But, because a "defective [authorization] is not [jurisdictionally] equilvalent to the lack of any [authorization]". Thaler, 565, U.S. at 143. Pernell contends the Fourth Circuit's provisional requirements:

> "[T]he only effective remedy for a prisoner deprived of the right to [a] direct appeal is two fold" allow him to use a §2255 motion to reinstate the [direct] appeal process through reentry of judgement and allow him to raise collateral claims, in a subsequent §2255 motion filed after the direct appeal is concluded." 170 F.3d 435 at 438;

like "a statute of limitations, is subject to waiver, estoppel and equitable tolling. The structure of Title VII, the congressional policy underlying it, and the reasons of our cases all lead to this conclusion." Zipes v. Transworld Airlines Inc, 455 U.S. 385, 71 L.Ed 234 102 S.Ct. 1127(1982);cf Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 618(3rd Cir.1998); Harris v. Hutchinson, 209 F.3d 325, 329(4th Cir.2000).

A presumption that a statute of limitations may be equitably tolled "applies with equal force to both statutes [§2255 and §2244]" Irwin v. Dept of Veteran Affairs, 498 U.S. 89, 95-96, 111 S.Ct. 453, 457 112 L.Ed 2d 435(1990).

§2244 and §2255 time limits are "called a period of limitations" and thus "does not imply a jurisdictional boundary" Davis v. Johnson, 158 F.3d 806, 811(5th Cir. 1998);cf Calderon v. United States, 128 F.3d 1283, 1288-1289(9th Cir.1997)(the time "bar...can be tolled if extraordinary circumstances beyond a prisoners control make it impossible to file a petition on time"); see also Irwin at 96(Equitable tolling is appropriate when a movant "untimely files, because of extraordinary circumstances that are beyond his control and unavoidable even with diligence"). Therefore, limitation provisions do "not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts". Zipes, at 1288-89; Sandvik v. United States, 177 F.3d 1269, 1271-1272(11th Cir.1999); Rouse v. Lee, 314 F.3d 698, 712(4th Cir.2002); Harris v. Hutchinson, 209 F.3d 325, 330(4th Cir.2000)(quoting Zipes v. Transworld, 71 L.Ed 234 102 S.Ct 1127, 1228-1289).

(5) Structural Errors Warrant Equitable Tolling

In Roe v. Flores, the Supreme Court mandated courts engage in a "circumstance specific reasonableness inquiry, as mandated in Strickland" 528 U.S. 470 at477-478. Accordingly, in Strickland, the Supreme Court found in certain limited contexts, "prejudiced is presumed". 466 U.S. at 692. The same Strickland Court also found "contructive denial of counsel is legally presumed to result in prejudice and thus to constitute a structural error". Id. In such cases the Strickland Court mandated the circumstance-specific reasonableness inquiry would be pursuant to United States v. Cronic, 466 U.S. 648, 649-650, 80 L.Ed 2d 657, 104 S.Ct. 2039(1984). See Roe v. Flores, 528 U.S. 470 at 483("the presumption that counsel's assistance is essential requires us to conclude...a trial is unfair if the accused is denied counsel at a critical stage."(quoting Cronic, supra at 659, 80 LEd 2d 657, 104 S.Ct.2039).

In the instant case, without a valid jurisdictional bar or required jurisdictional authorization, the Fourth Circuit was required to conduct a circumstance-specific inquiry into Pernell's allegations. Where the facts in Pernell's allegations relied on a presumptively prejudicial denial of the appellate proceedings to file a direct appeal altogether(ECF.No.196[pg. ID#1516- 1519]). Which, Pernell alleged was caused by the constructive denial of counsel during the critical stage of filing a direct appeal(ECF. No.196[pg.ID#1539]; 1589-1594]). Due to Pernell's counsel, unbeknownst to him, being was unable to make reasonable objections to undisclosed structural errors during Pernell's trial proceedings, or to preserve the issue of the structural errors for review on direct appeal. Because, it would have required counsel to expose and denigrate his own undisclosed egregious misconduct, that had caused the undisclosed structural error to occur.(ECF.No.196[pg.ID#1517-1521]). Which, would have also been damaging to counsel livelihood and reputation to pursue or provide legal advisement on behalf of Pernell(ECF.No.196[pg.ID#1539]).

In recent years, the Supreme Court has found counsel's inability to make reasonable objections, that would be damaging to his or her's livelihood or reputation, constituted an actual or constructive denial of counsel to their client. See Christeson v. Roper, 135 S.Ct. 891, 894, 190 L.Ed 2d L.EdHR2-4 (2015)("counsel cannot be expected to make reasonably strong arguments on behalf of his clients that would also be damaging to his own livelihood and reputation); Weaver v. Massachusetts, 137 S.Ct, 1899, 1907 198 L.Ed

420, 437(2017)("any structural error warrants 'automatic reversal' on direct appeal without regard to [its] effect on the outcome of a trial"); Mccoy v. Louisiana, 584 U.S. ___, 138 S.Ct. ___, 200 L.ed 2d 821, 2018 U.S. LEXIS 2802(2018)("an error may be ranked structural...if the right at issue is not designed to protect the defendant from erroneous conviction, but instead protects some other interests"(quoting Weaver v. Massachusetts, 137 S.Ct. 1899, 198 L.Ed 2d 420).

The Mccoy and the Weaver, Court both found the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty. Constituted a "protect[ion] [of] some other interests". Id.

In Roe v. Flores, 528 U.S. at 483, the Supreme Court clearly held: " an actual or constructive denial of counsel...makes the adversary process itself presumptively unreliable". Likewise, the Cronic Court found the core purpose of the counsel guarantee, was to assure "assistance" at trial when the "accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor" 466 U.S. 648 at 654. Therefore, a violation of that "guarantee" is "presumptively prejudicial" Id. at 659. Because, "lawyers...are deemed essential to protect the public interest in an orderly society". Gideon v. Wainwright, 372 U.S. 335, 344, 83 S.Ct. 792(1963).

In the instant case, Pernell alleged he had been unknowingly deprived of the appellate proceedings altogether to file a direct appeal. Due to his counsel of record "secretly severing their principle-agent relationship" in unlawful or inappropriate manner(ECF.No.196[pg.ID#1516-1518; 1526-1527; 1539]).

Accordingly, counsel's undisclosed and intentionally concealed secret severance of his principle-agent relationship with Pernell, terminated counsel's "authority to act as an agent on behalf of his client". Maples v. Thomas, 181 L.Ed 2d 8-7, 823-824[n.14]; 829-830, 566 U.S 266 132 S.Ct. 912(2012)(ECF. No.197[pg.ID#1590-1594]). In doing so, counsel's lack of authority secretly left Pernell constructively denied counsel to "confront...the intricacies of the law and the advocacy of the public prosecutor". Cronic, 466 U.S. at 654, on direct appeal(ECF.No.196[pg.ID#1516]).

(a) Holland v. Florida Authorizes Equitable Tolling in the Instant Case.

The Supreme Court in Holland v. Florida, 569 U.S. 631, 649-653, 177 LEd 2d 130 S.Ct. 2549, 2559-2560(2010), found egregious attorney misconduct, beyond the "garden variety" constituted "extraordinary circumstances beyond a petitioner's control" in a sufficient manner to warrant equitable tolling. The Holland, Court also found the A.E.D.P.A Statute of Limitations "does not set forth an inflexible rule requiring dismissal whenever its clock has run." Id. at 2560.

Therefore, Pernell's allegations that his counsel secretly severed their principle-agent relationship, warranted a circumstance-specific inquiry to determine if Pernell could produce sufficient evidence to warrant equitable tolling. If Pernell's evidence was found to be sufficient, then any alleged "defective authorization" provisional issue, claimed by the Fourth Circuit, would also be subject to waiver or forfeiture. In light of the tolling relief. Holland v. Florida, 560 U.S. at 649-650(lower courts are authorized to consider on a case by case basis specific circumstances that would have been hard for a claimant to have predicted in advance that deemed equitable intervention).

In Pernell's case, he clearly argued it would have been impossible to "predict in advance" that his counsel had secretly severed their principle-agent relationship, without counsel's apparent unintended error, in providing Pernell evidence(ECF.No.197[pg.ID#1590-1594]). However, regarding Pernell's failure to automatically seek to reinstate his right to file a direct appeal, upon the discovery of the evidence provided by counsel. Pernell argues Equitable Tolling and points to the Honorable Justice Souter's dissent Opinion in Roe v.Flores, 528 U.S. 470 at 489-493, for support:

Justice Souter, in his dissent held: " Most criminal defendants... will be utterly incapable of making rational judgements about [direct] appeal without guidance. They cannot possibly know what a rational decisionmaker must know unless they are given the benefit of a professional assessment of chances of success and risks of trying. And, they will often(indeed, usually) be just as bad off if they seek relief on habeas after failing to take a direct appeal, having no right to counsel in...postconviction proceedings". 528 U.S. 470 at 492-93.

Justice Souter also held: "Since it[a direct appeal] cannot be made intelligently without appreciating the merits of possible grounds for seeking review.....and the potential risks to the appealing defendant, a lay defendant needs help before deciding...if the charge is serious, the potential claim subtle, and a defendant uneducated, hours of counseling may be in order. But, only in extraordinary case[s] will a defendant need no advice or counsel whatever." 528 U.S. 470 at 489.

Justice Souter based his reasonable Opinions on the Strickland two-prong test inquiry's reliance on the ABA Standards for Criminal Justice. 466 U.S. at 688. Accordingly, Justice Souter cited particular relevant parts of the ABA Standards for Criminal Justice to support his Opinion. Which States:

> "Defense counsel should advise a defendant on the meaning of the court's judgement, of defendant's right to appeal, on the possible grounds for appeal, and of the probable outcome of appealing. Counsel should also advise of any posttrial proceedings that might be pursued before or concurrent with an appeal. 528 U.S. 470 at 490(quoting ABA Standard 21-2.2(b)(2d ed.1980);
>
> "See also ABA Standards for Criminal Justice, Defense Function 4-8.2(a)(3d ed. 1993)(stating that trial counsel 'should explain to the defendant the meaning and consequences of the court's judgement and defendant's right to appeal' and 'should give defendant his or her professional judgement as to whether there are meritorious grounds for appeal and as to the probable results of an appeal"); id., 4-8.2, Commentary("[C]ounsel [has the duty] to discuss frankly and objectively with the defendant the matters to be considered in deciding whether to appeal...to make the defendant's ultimate choice a meaningful one, counsel's evaluation of the case must be communicated in a comprehensible manner.... [T]rial counsel should always consult promptly with the defendant after making a careful appraisal of the prospects of an appeal'); ABA Standards for Criminal Justice 21-3.2(b)(i)"". 528 U.S. 470 at 490.

Pernell contends, in light of the Honorable Justice Souter's dissent Opinion, the presumptively prejudicial nature of Pernell's constructive denial of counsel claim(ECF.No.196[pg.ID#1561-1562];1589-94]). Clearly deprived Pernell of any reasonable means to understand the potential subtle claims that existed in his trial proceedings, without the aid of loyal counsel, as an unquantifiable consequence from the erroneous deprivation of counsel to Pernell. During the critical stage of filing a direct appeal. Where the "meritorious grounds for appeal" required Pernell's counsel of record to make reasonable objections to structural errors and to preserve the merit of those structural errors for review on direct appeal, which counsel had secretly caused(ECF.No.196[pg.ID#1552-1558; 1539]), by secretly severing his principle-agent relationship

with Pernell in a unlawful or inappropriate manner. Id. See also ECF.No.197[pg. ID#1590-92]). Which, actually terminated counsel's authority to act as an advocate on behalf of Pernell, during the critical stage of Pernell's direct appeal, unbeknownst to Pernell at the time(ECF.No.197[pg.ID#1591-5194]). In doing so, Pernell was secretly and erroneously left constructively without any "professional assessment" of the "judicial or administrative proceedings" handled by counsel, Roe, 528 U.S. at 490-493, Which, actually had "produced a result adverse to" Pernell's case, (Id.), that warranted the exercise of ""the availability and [the] prudence of an [direct] appeal".(Id.)

Counsel's continued unauthorized terminated advocacy on Pernell's behalf, was presumptively prejudicial, despite the fact it was secretly being concealed by counsel(ECF.No.196[pg.ID#1550-1551; 1525-1526]). Counsel's misconduct also secretly severed his principle-agent relationship with Pernell, and "blocked the defendant's right to make a fundamental choice about his own defense". Mccoy v. Louisiana, 138 S.Ct. 1500, 1504(2018). Which, Pernell had no way of understanding existed, at the time, due to counsel's prior advisements to Pernell, in order to conceal counsel's egregious misconduct(19-7625 Doc.No.5-2[Total Page Nos.73-79]);(ECF.No.197[pg. ID#1591-1592]). Reasonably confusing Pernell's understanding to seek a direct appeal first.

The secret severance of counsel's principle-agent relationship with Pernell, not only secretly deprived Pernell of the appellate proceedings altogether to file a direct appeal. The Servance, also secretly deprived Pernell of any intelligent and comphrensive reason to want to file a direct appeal at all. id. Pernell contends, it was only after becoming aware of several Supreme Court decisions(Christeson v. Roper, 135 S.Ct.(2015); Weaver v. Massachusetts, 137 S.Ct.(2017); and Mccoy v. Louisiana, 138 S.Ct.(2018)), that he began to understand the reasonable implications of counsel's initial misconduct. To unlawfully conceal evidence(ECF.No.196-4), during Pernell's trial proceedings, in violation of a March 20, 2014, district court order (ECF.No.196[pg.ID#1519-21; 1517-18]); 196-3[pg.ID#1616-1620(pts.(3)-(9)])).

Pernell argues, it was only after those aforementioned Supreme Court decisions, that the culumative effect of them, exposed the magnitude of counsel's egregious misconduct, was actually an undisclosed presumptively prejudicial constructive denial of counsel, that had erroneously deprived Pernell of the appellate proceedings altogether, id.(ECF.No.196[pg.ID#1552-1557]), to file a direct appeal. Which, constituted inextricably intertwined structural errors, that should have been objected to during Pernell's trial proceedings or during a direct appeal. Accordingly, the Supreme Court has previously held: an "error warranting a reversal on direct appeal will not necessarily support a collateral attack". United States v. Addonizio, 442 U.S.

178, 184, 99 S.Ct.(1979). See also Weaver v. Massachusetts, 198 L.Ed 2d 420, 434(2017):

> " Accordingly 'any structural error warrants automatic reversal' on direct appeal without regard to [its] effect on the outcome of a trial...if the error was properly objected to during the trial proceedings.. .. and if the error complained of contributed to the verdict obtained. Weaver v. Massachusetts, 198 L.Ed 2d 420, 434(2017);

Pernell contends, it would defy any reasonable jurist's logic, that the Christeson Court, the Weaver Court, and the Mccoy Court's rulings, do not squarely support presumptively prejudicial extraordinary circumstances beyond Pernell's control to warrant equitable tolling(ECF.No.196[pg.ID#1539; 1555-1557]; ECF.No.196-3[pg. ID#1620-1622(pts.(6)-(10)]])), to file to reinstate Pernell's right to a direct appeal.

Pernell argues, it would also defy any reasonable jurist's logic, under Pernell's extraordinary circumstances, that Pernell was "sophisicated" and "educated" in the science of the law. In any sufficient capacity to understand the adverse legal complexities caused by his counsel's previously unknown violations of the "Restatement of Agency Laws" governing an attorney-client relationship. To know it had created a "subtle claim" to pursue a reinstatement of a direct appeal; without Pernell having a "meaningful ... evaluation...communicated in a comprehenible manner...[by]..counsel". Roe, at 490. In order to allow a "professional assessment" to make a "careful appraisal of the prospects of an [defaulted direct] appeal" being filed. Instead, of Pernell's uneducated and uniformed decision to file an equally defaulted motion to collaterally attack his conviction and sentence, first. Id. While Pernell was also suffering from neurological and pyschological mental health diseases, as well as suffering from the adverse side-effects from the medications previously prescribed to Pernell, as treatment for his mental health disorders(ECF.No.196-3[pg.ID#1616-1617(pts.(3)-(4)]). Which, had unexpectedly and unknowingly been causing Pernell to suffer from a lost of concentration, memory fog, memory loss, sudden confusion, aggressive agitation, and an inability to properly cope with stress or sudden change. Id.

Pernell further argues, his extraordinary circumstances, are the result of the unquantifiable and indeterminate consequences from presumptively prejudicial structural errors, that did not cease simply because his trial proceedings did. Pernell contends, it's those unquantifiable presumptively prejudicial consequences, that delayed his ability to file to reinstate his direct appeal first. Which, had simply caused his diligent pursuit(ECF.No.197[pg.ID#1589-1594]), for relief to be further prejudiced, by the previously unknown unquantifiable consequences of the undisclosed structural errors. Pernell contends, by law, he should not be held accountable for such consequences, or denied relief from them. Because, to do so would only promote the intended result of his counsel's machinations to conceal the structural errors in the first place. (Id.)

No. 20- _____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT PERNELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PROOF OF SERVICE

I, ROBERT PERNELL, do swear or declare that on this date, July 13, 2020, as required by U.S. Supreme Court Rule 29, I haved served the enclosed PETITION FOR A WRIT OF CERTIORARI 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, via the Institutional Mailing System, properly addressed to each of them and with first-class, postage prepaid, to the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Anvenue, N.W., Washington, D.C. 20530-0001.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on July 13, 2020

ROBERT PERNELL

However, "[under] the agency principles a client cannot be 'faulted for failing to take action on his own behalf when he lacks reason to believe his attorney of record, in fact, [has] not been representing him". Maples, 181 L.Ed 2d 807, 823, 824[n.3](2012)(19-7625 Doc.No.5-2[T.pgs.#73-79]);(ECF.No.197[pg.ID#1589-1594]). Where as a laymen, Pernell's belief that "critically incorrect advice" by counsel was "true", reasonsably continued "through the time of filing an appeal.. ..but is not mitigated by the passage of time". United States v. Bousley, 523 614, 626, 629, 118 S.Ct. 1604(1998);(ECF.No.197[pg.ID#1593-5194]).

But, again Pernell reasserts it is not for this Honorable Court to determine whether Pernell's petition, reasonably warranted tolling. Thou, Pernell has presented reasonable evidence that it did. Instead, Pernell contends, it is for this Honorable Court, to determine whether the Fourth Circuit's governing provisional requirements, in In Re Goddard, 170 F.3d 435 at 437-38, are void and unenforceable. Due to the provisions, arbitrariness or ambiguity to erroneously trigger the jurisdictional requirements of 28 U.S.C. §2255(h). In violation of a defendant's constitutional rights, to "redress a grievance to the government", pursuant to the Supreme Court precedent case law in Roe v. Flores, at 477-478, to reinstate his right to file a direct appeal. Which, also violates a defendant's constitutional rights to Due Process of law while facing a crime, and the Equal Protection of the Law in Roe, at 478. When a "Court of Appeals" fails to conduct a "circumstance-specific inquiry" of a belated motion for direct appeal. Id. Its failure "mandates the vacatur and remand" of the defendant's case. Id.

Hence, Pernell believes the Fourth Circuit has violated his 1st, 5th, and 14th Amendment Rights of the Constitution of the United States. In a manner that also unfairly affects the substantial rights of other defendant's in the Fourth Circuit. Requiring the Supreme Court to provide guidance and correction to the issues. In order to maintain the uniformity, integrity, and the appearance of justice, through out the judicial circuits. As a result Pernell's case should be automatically vacated and remanded, consistent with the law of Roe v. Flores, at 478.

CONCLUSION

For the above and foregoing reasons, this Writ of Cert. should be granted.

Respectfully submitted,

July, 5, 2020

ROBERT PERNELL Reg. No.33228-083
FCI Talladega
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P.M.B. 1000 Talladega Al. 35160
Appearing Pro-se

APPENDIX 1a

For Writ of Certiorari

Fourth Circuit Order in USCA No. 19-7625 dated June 5, 2020, denying Pernell's Motion to Stay Mandate.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
1100 East Main Street, Suite 501, Richmond, Virginia 23219

June 5, 2020

LOCAL RULE 40(d) NOTICE

No. 19-7625, US v. Robert Pernell, Jr.
3:09-cr-00452-REP-DJN, 3:15-cv-00723-REP-DJN

TO: Robert L. Pernell

We are in receipt of your papers in this case..

This court's Local Rule 40(d) states that, except for timely petitions for rehearing en banc, cost and attorney fee matters, and other matters ancillary to the filing of an application for writ of certiorari with the Supreme Court, the office of the clerk shall not receive motions or other papers requesting further relief in a case after the court has denied a petition for rehearing or the time for filing a petition for rehearing has expired.

Pursuant to the provisions of Local Rule 40(d), no further action will be taken in this matter by this court. A petition for writ of certiorari may be filed in the Office of the Clerk, Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543-0001, within 90 days of this court's entry of judgment or, if a timely petition for panel or en banc rehearing was filed, denial of rehearing. Additional information on filing a petition for writ of certiorari is available on the Supreme Court's website, www.supremecourt.gov, or from the Supreme Court Clerk's Office at (202) 479-3000.

Joy Hargett Moore, Deputy Clerk
804-916-2702