20-7333

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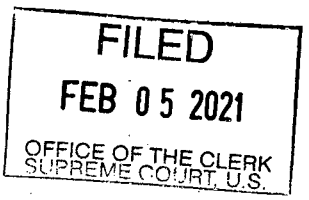
IN THE SUPREME COURT
OF THE UNITED STATES



CASE NO. _____

NOLBERTO MARTINEZ,
Petitioner,

v.

WARDEN, FCC COLEMAN - LOW,
Respondent.

PETITION FOR
WRIT OF CERTIORARI
FROM THE
U.S. COURT OF APPEALS
FOR
THE ELEVENTH CIRCUIT

(L.T. No. 20-12625-E)

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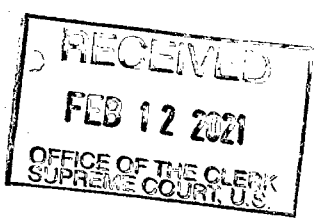

QUESTION PRESENTED

1. Whether the Eleventh Circuit Court of Appeals holding in McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017)(en banc), unconstitutionally foreclosed Petitioner's right of redress in a habeas corpus petitioner under 28 U.S.C. § 2241 via application of the "saving clause" of 28 U.S.C. § 2255(e) given the split in authority among the U.S. Circuit Courts of Appeals on such application.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

LIST OF PARTIES

All parties with an interest in this matter are included in the caption of the case as cited on the cover page hereto.

OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below. The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to this petition and is unpublished. The opinion of the United States District Court for the Middle District of Florida appears at Appendix B to this petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit decided the case below was November 6, 2020. No petition for rehearing was filed in this case. The jurisdiction for this Court is invoked under 28 U.S.C. § 1254(1).

SUMMARY OF THE CASE

I. Direct Procedural History

Petitioner is currently a prisoner incarcerated by the Federal Bureau of Prisons at FCI Coleman Low in Coleman, Florida. He applied for habeas corpus relief in the U.S. District Court for Middle District of Florida under 28 U.S.C. § 2241 by application of 28 U.S.C. § 2255(e), known as the "saving clause." Petitioner asserted therein his sentence had been imposed in violation of the laws of the United States as it was enhanced unconstitutionally.

Upon receipt of the petition for habeas relief, the district court dismissed the petition on June 30, 2020. The court asserted it did not have jurisdiction because of binding precedent established by the U.S. Court of Appeals for the Eleventh Circuit in McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017)(en banc).

Petitioner then sought an appeal in the Eleventh Circuit to challenge the improperly decided holding in McCarthan such that the district court could consider his petition. Relying upon stare decisis, the Eleventh Circuit refused to allow Petitioner to proceed in forma pauperis to even consider the issue on the merits.

Petitioner now seeks review by this Court for the question presented herein.

II. Factual Case Background

On September 12, 2012, Petitioner was indicated by a grand jury in the Middle District of Georgia. Following a jury trial, Petitioner was found guilty of two counts of violating 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846. Petitioner was subsequently sentenced on January 22, 2015, to 360-month and 240-month sentences to run concurrently.

Before the sentencing hearing, the district court held an "evidentiary hearing" to determine the quantity of cocaine for which Petitioner would be held responsible at sentencing. Following the hearing, the district court issued an order finding Petitioner responsible for 135 kilograms of cocaine as related to the jury verdict. Obviously unsatisfied with that ruling, the Government filed a motion to reconsider. The Court proceeded without response from Petitioner and/or his attorney, without ordering a response, and without a subsequent hearing, and increased its finding from 135 to 155 kilograms. The effect of this unilateral decision premised upon a ex parte filing by the Government under seal increased Petitioner's sentence to its current enhanced level.

REASONS TO GRANT THE PETITION

I. Introduction

Petitioner, as an unskilled layman of the law, requests his petition be construed liberally. Haines v. Kerner, 404 U.S. 519 (1972). As will be explained, the Eleventh Circuit Court of Appeals decision in MacCarthan has created an arbitrary geographic region of the United States in which Congressional law has different meaning than throughout the remainder of the country. This decision runs contrary to nine other circuit court decisions and mandates review by this Court.

II. McCarthan Unconstitutionally Forecloses Habeas Corpus Access

Petitioner sought relief in the district court via a petition under 28 U.S.C. § 2241. That petition was, in turn, brought pursuant to 28 U.S.C. § 2255(e), known as the "saving clause." The district court denied the petition based upon the prior decision of the Eleventh Circuit Court of Appeals in McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017)(en banc), holding that § 2241 is not available to prisoners for habeas relief when challenging the validity of a sentence. Prior to that decision in 2017, the Eleventh Circuit permitted § 2241 challenges when no other avenue of relief was available to a prisoner. By so holding, the Eleventh Circuit has carved out a geographic region of the United States in which a prisoner's rights under a federal law are different than a prisoner elsewhere.

Since the Judiciary Act of 1789, Congress has authorized federal courts to issue writs of habeas corpus to federal prisoners. Act of Sept. 24, 1789, ch. 20, § 14, 1 Stat. 82. That guarantee is currently codified t 28 U.S.C. § 2241 of the Judicial Code, which provides that federal judges may grant the writ on application of a prisoner held "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Due to an

increase in the number of federal habeas petitions which overburdened the few district courts in whose jurisdictions major federal prisons existed, Congress responded by enacting 28 U.S.C. § 2255 in 1948. Pub. L. 80-773, ch. 646, 62 Stat. 967-68. This new section's purpose was to direct a prisoner's habeas petitioner (at least in the first instance) to the sentencing district court rather than the district court in which the prisoner was housed. Boumediene v. Bush, 553 U.S. 723 (2008). The sole purpose was to minimize the difficulties encountered in habeas proceedings by affording the same right in another more convenient forum. U.S. v. Hayman, 342 U.S. 205 (1952) (emphasis added). In so enacting § 2255, however, Congress recognized the need for an alternative remedy, and included the "saving clause." 28 U.S.C. § 2255(e). Thereunder, the prisoner may resort to § 2241 if he can establish that "the remedy by motion [under § 2255] is inadequate or ineffective to test the legality of his detention." Id.; see also, Boumediene, 553 U.S. at 776.

With the passage of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat. 1214, Congress added significant gatekeeping provisions to § 2255, but left the "saving clause" untouched. Under these enacted provisions, a prisoner may only file a second or successive motion under § 2255 on the basis of "newly discovered evidence" or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." § 2255(h).

In 1997, the Third Circuit Court of Appeals addressed application of whether a prisoner may seek relief under § 2241 when a motion under § 2255 was unavailable to him. In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997). Because the defendant had not been able to seek redress under § 2255 at the time of his motion, the appeals court held that not permitting the § 2255 petition under § 2255's "saving clause" would cause the court to "be faced with a thorny

constitutional issue." Id., at 248. Thus, the Court held it would be a "complete miscarriage of justice" if it held that § 2255 was not "inadequate or ineffective to test the legality of [Dorsainvil's] detention." Id., at 251.

The issue confronted in Dorsainvil has since been addressed by every regional circuit. Nine circuit courts have agreed with the reasoning of the Third Circuit. See U.S. v. Barrett, 178 F.3d 34 (1st Cir. 1999), cert. denied, 528 U.S. 1176 (2000); Trenkler v. U.S., 536 F.3d 85 (1st Cir. 2008); Triestman v. U.S., 124 F.3d 361 (2d Cir. 1997); Poindexter v. Nash, 333 F.3d 372 (2d. Cir. 2003); In re Jones, 226 F.3d 328 (4th Cir. 2000); Reyes-Requene v. U.S., 243 F.3d 893 (5th Cir. 2001); Martin v. Perez, 319 F.3d 799 (6th Cir. 2003); Wooten v. Cauley, 677 F.3d 303 (6th Cir. 2012); In re Davenport, 147 F.3d 605 (7th Cir. 1998); Brown v. Caraway, 719 F.3d 583 (7th Cir. 2013); Abdullah v. Hendrick, 392 F.3d 957 (8th Cir. 2004); Alaimalo v. U.S., 645 F.3d 1042 (9th Cir. 2011); Marrero v. Ives, 682 F.3d 1190 (9th Cir. 2012); In re Smith, 285 F.3d 6 (D.C. Cir. 2002).

In contrast, the Eleventh Circuit followed the Tenth Circuit's analysis and unique holding while reaching its interpretation of § 2255(e) in McCarthan. In so doing, it reversed years of circuit precedent and shifted the three states in its jurisdiction into an outlying realm of jurisprudence. See McCarthan; Prost v. Anderson, 636 F.3d 578 (10th Cir. 2011). The Eleventh Circuit has even recognized its disparate position. See Samack v. Warden, 766 F.3d 1271, 1294 (11th Cir. 2014)(W. Pryor, J., concurring)(noting that "[t]he majority of our sister circuits have adopted variations of the Seventh Circuit rule from In Re: Davenport").

Davenport provides a concise analysis of the majority's position. In interpreting the phrase "inadequate or ineffective" in Sec. 2255(e), the Seventh Circuit looked to the "essential function of Habeas Corpus." Davenport, at 609.

It described that function as "giv[ing] a prisoner a reasonable opportunity to obtain a reliable judicial determination of the fundamental legality of his conviction and sentence." Id. (emphasis added). Further, the Davenport court noted that a person who challenged erroneous circuit precedent in a direct appeal or initial § 2255 motion never had a reasonable opportunity that habeas corpus demands because

> [t]he trial judge, bound by our *** cases, would not listen to him; stare decisis would make us unwilling (in all likelihood) to listen to him; and the Supreme Court does not view itself as being in the business of correcting errors.

Id., at 611. The Seventh Circuit reasoned (and the vast majority of other circuits have concurred) that, where a person in federal custody "had no reasonable opportunity to obtain earlier judicial correction of a fundamental defect in his conviction or sentence because the law changed after his first 2255 motion," the Sec. 2255(e) saving clause is triggered and an application for habeas corpus relief under § 2241 is available. Id.

Petitioner is currently living the situation predicted by the Dorsainvil and Davenport Courts. Having previously pursued a direct criminal appeal and Sec. 2255 motion, Petitioner filed his § 2241 petition in the district court and the district court chose not to hear his argument. In so doing, it wholly relied upon the binding precedent set by McCarthan. In turn on appeal, the Eleventh Circuit chose not to even let Petitioner proceed in forma pauperis preliminarily determining Petitioner's appeal would be "frivolous" because of the McCarthan precedent foreclosed the avenue of relief.

It is, thus, obvious that, had Petitioner been imprisoned outside of the Eleventh Circuit (e.g., in Ohio or California), his § 2241 petition would have reviewed on the merits. Instead, the Eleventh Circuit precedent in McCarthan, blindly adhered to by its courts, creates a zone in which federal law means

something different than elsewhere in the country solely due to geographic region. The McCarthan decision has created an Eleventh-Circuit feifdom where the circuit court's "law" trumps Congressional intent in creating the saving clause and leaving it unaltered since its inception. The Eleventh Circuit's outlier interpretation directly conflicts with that of the recognized majority position. As Dorsainvil predicted, at the time of Petitioner's § 2241 petition, he was unable to bring a motion pursuant to § 2255 (or a second or successive as the requirements of § 2255(h) were not met). McCarthan's holding, thus, created the anticipated "thorny" constitutional issue by prohibiting Petitioner access to even habeas review (regardless of whether relief was possible on the merits). This resulting injustice necessitates certiorari review by this Court.

III. Conclusion

For the reasons set forth herein, Petitioner respectfully requests this Court issue a writ of certiorari to the U.S. Court of Appeals for the Eleventh Circuit to review the orders and opinions below.