

No. _____

IN THE
SUPREME COURT of the UNITED STATES

TRACY A. BARNETT,

Petitioner, pro se,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Tracy A. Barnett, No. 08201-030, *Petitioner, pro se,*
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QUESTIONS PRESENTED

1. Are United States District Courts required to address and resolve all Constitutional claims or issues raised in a 28 USC § 2255 Motion to satisfy the Habeas provisions of the United States Constitution, or may they ignore certain constitutional claims?
2. Pursuant to Federal Rules of Civil Procedure, Rule 54(b), where a U.S. District Court rules on some of the constitutional claims raised in a §2255 Motion, but fails to acknowledge or adjudicate other remaining constitutional claims in the original habeas petition, can the District Court enter a "final order" despite that there are unresolved claims?

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OPINION BELOW

The Eighth Circuit Court of Appeals summarily affirmed the District Court's order without opinion. [8th Cir. No. 19-3695]. The District Court denied Petitioner's Motion for Judicial Ruling on Claims Not Addressed in Original Habeas Petition, also without opinion [S.D. IA, No. 4:10-cv-0593].
- Pertinent rulings are provided in Appendix.

JURISDICTION

The Eighth Circuit filed its decision on March 19, 2020, and entered a Mandate on May 12, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

Article I, § 9, Clause 2

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

STATEMENT OF FACTS

On October 18, 2007, the petitioner, Tracy A. Barnett, was convicted in the United States District Court for the Southern District of Iowa on two counts of violating 18 U.S.C. § 2252 for receiving/possessing illegal images involving the sexual exploitation of minors.

On October 01, 2008, Petitioner was sentenced to 240 months (20 years) imprisonment, despite that he did not produce nor traffic the images, where the sentence was based on a significantly over-calculated USSG sentencing range as stated in the Pre-Sentence Investigation Report (PSR).

NOTE

Between June 07, and August 17, 2012, the Supervisor of the U.S. Probation Office (Des Moines, IA.) reviewed Petitioner's PSR and determined that 4 additional criminal history points had been "mistakenly assessed" to his criminal history score, thereby moving his Criminal History from level 4 to level 6 (Career Criminal), and raising his USSG sentencing range from 183-235 months to 235-293 months. * [See related documents in Appendix].

In December 2010, Petitioner filed a pro se Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. In the Motion, Petitioner raised multiple claims of ineffective assistance of trial, sentencing, and appellate counsel. * [S.D. IA, No. 4:10-CV-00593, 2255 Motion claims 1(a)-(j), and 5(a)].

Petitioner's 2255 Motion claims regarding sentencing and appellate counsel specifically centered around, and raised that sentencing and appellate counsel had failed to object to, and/or appeal that the U.S. District Court began the sentencing proceedings by using a significantly over-calculated U.S.S.G. sentencing range in determining Petitioner's sentence. * [S.D. IA., No. 4:10-CV-00593, 2255 Motion Claims 1(h), (j), and 5(a) - enclosed].

However, on January 06, 2011, the District Court summarily denied Petitioner's original 2255 Motion without addressing, or acknowledging, Petitioner's IAC claims regarding sentencing or appellate counsel. Rather, the Court only addressed IAC claims as to trial counsel where it stated the following=

- o "The petitioner was aware of every situation that he now claims constitutes ineffective assistance, prior to the time he pled guilty." [S.D. IA., No. 4:10-CV-00593, Document 7, pg. 4/112];
- o "Each of petitioner's ineffective assistance of counsel claims can be summarily rejected by the fact that the petitioner testified under oath that he was fully satisfied with the counsel, representation and advice of his attorney at the time that he pled guilty." [S.D. IA., No. 4:10-CV-00593, Document 7, pg. 5/113, - pg. 6/111];
- o "The petitioner could have appealed his Sentencing Guideline calculation but did not." [S.D. IA., No. 4:10-CV-00593, Document 7, pg. 6/112].
*[See: relevant documents in Appendix].

The above statements in the District Court's 01-06-11 Order show that the Court failed to address, or acknowledge, Petitioner's 2255 claims of IAC as related to representation of counsel at sentencing, and on direct appeal (2255 Motion claims 1(h),(j), and 5(a)), because both sentencing and appeal occurred after "the time that [petitioner] pled guilty," as stated by the Court.

Further, the statement that "petitioner could have appealed his Sentencing Guideline calculation but did not" directly contradicts that Petitioner did raise IAC claims of both sentencing and appellate counsel.

- Actually, that particular statement appears rather disingenuous where Petitioner was UNABLE to bring his valid sentencing calculation claims on direct appeal as appellate counsel, Murray W. Bell, refused to raise that very claim despite Petitioner's request that he do so.

*[see: 2255 Motion claims 1(j), and 5(a)] [In Appendix].

>> It should be noted that, where appellate counsel failed to raise the Sentencing Guideline calculation issues on direct appeal, and therefore denied Petitioner of appealing his over-calculated sentence, provided the very basis for 2255 Motion claims 1(j), and 5(a).

>> Based on the U.S. Probation Office's August 17, 2012, verification of the correct 188-235 month range, where Petitioner was sentenced to 240 months, Petitioner was sentenced to 5 months over the maximum of the correct U.S.S.G. sentencing range.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD RESOLVE THE SPLIT AMONG THE CIRCUITS AS TO WHETHER DISTRICT COURTS ARE REQUIRED TO ADDRESS AND RESOLVE ALL CONSTITUTIONAL CLAIMS RAISED IN A HABEAS PETITION UNDER 28 U.S.C. § 2255.

The United States Constitution provides that all persons held, or sentenced in violation of the Constitution shall have the privilege of the Writ of Habeas Corpus, and that the privilege shall not be suspended, unless "when in Cases of Rebellion or Invasion the public Safety may require it." * [U.S. Const., Art. I, § 9, Cl. 2].

Here, in the instant case, there has been a de facto suspension of the writ of habeas where the U.S. District Court has failed to acknowledge, or address, claims 1(h), (j), and 5(a) in Petitioners Original 2255 Motion as related to Counsel's performance at sentencing and on direct appeal. - Petitioner has, thereby, been effectively denied of any meaningful opportunity to be heard as to the above specific Constitutional claims, or of any opportunity to bring those habeas claims before the Appellate Court. * [See: Diligence in Seeking Relief documents - Appendix].

Additionally, In the years following the District Court's summary dismissal of the original 2255 Motion, Petitioner has repeatedly, and diligently sought that the District Court address/adjudicate the claims not resolved, under provisions of Fed. R. Civ. P., 60(b), 52(b), 54(b), and 28 U.S.C. §§ 2241, 2244 [U.S. Dist. KS., 10th Cir. - Barnett v. Maye].

While Petitioner has repeatedly and diligently requested that the Court(s) resolve the unaddressed claims of the original 2255 Motion (claims 1(h), (j), and 5(a)), the District Court and the Eighth Circuit Court of Appeals have summarily dismissed/denied all pro se pleadings without opinion, or any justification, as to why the District Court was not obligated to address the unresolved habeas claims.

In other circuits, the courts of appeals have split on the question of whether District Courts are required to address, and resolve, all of the claims/issues raised in a 2255 motion [habeas petition]. See:

- Rasco v. U.S., 2019 U.S. App. LEXIS 21140 (7th Cir.) - Courts are required to "resolve all claims for relief." - Remanded;
- Spresty v. Buchler, 79 F.3d 635, fn. 2 (7th Cir. 1995) - Courts are required to resolve each ground for relief before appeal - Remanded;
- Wolfe v. Johnson, 565 F.3d 140, 164 (4th Cir. 2009) - Courts are required to "resolve all claims presented" in 2255 Motion - Remanded.

However, See:

- Johnson v. Finn, 2006 U.S. Dist. LEXIS 2001 (E.D. CA.) - District Courts "may decline to address all claims raised in a habeas corpus petition. See Phillips v. Vasquez, 56 F.3d 1030, 1036 (9th Cir. 1995)."

Further, despite that prior prose pleadings have been incorrectly labeled or construed as second/successive habeas claims, Petitioner has located federal case law in which it was held that re-raising original claims which have not been adjudicated are not to be construed as second nor successive habeas issues. See:

- ° Greenhill v. U.S., 2008 U.S. Dist. LEXIS 120694 (E.D. CA.) - "When a court does not address all claims included in a habeas petition, re-raising those claims is not raising a second or successive petition under the meaning of Section 2244(b)." [Citing: Stewart v. Martinez-Villareal, 523 U.S. 637, 643-44 (1998)].

Based on the above cases, Petitioner does not understand why the Courts have fought so strenuously to deny him the sentencing relief that he is Constitutionally entitled to. -- Where Petitioner was sentenced to 5 months over the bottom of the incorrect USSG sentencing range [235-293 months], had he been sentenced to 5 months over the bottom of the correct U.S.S.G. sentencing range [188-235 months], his ultimate sentence would have been 193 months... a difference of 47 months (almost 4 full years !!!).

--- As of June 2020, Petitioner has 46 months until his release date. Again, had he been sentenced within the correct USSG sentencing range, and where the District Court had not stated that it would have imposed the same 20 year sentence regardless of the correct sentencing range, at the (correct) 193 month sentence, It is very likely that Petitioner would have already been released from B.O.P. custody.

II. THE DISTRICT COURT ABUSED ITS DISCRETION WHERE IT FAILED TO ADDRESS AND RESOLVE CLAIMS 1(h),(j), AND 5(a) IN PETITIONER'S ORIGINAL 2255 MOTION, CONTRARY TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 54(b), WHICH REQUIRES ADJUDICATION OF ALL CLAIMS BEFORE AN APPEALABLE "FINAL ORDER" CAN BE ENTERED.

** Federal Rules of Civil Procedure

Rule 54(b): "[A]ny order or other decision, however designated, that adjudicates fewer than all the claims... does not end the action as to any of the claims or parties and may be revised at any time before the entry of judgment adjudicating all the claims."

Rule 54(b) is applicable to habeas corpus proceedings, and thus, requires that all claims presented in a habeas petition be fully, and finally, determined before appeal may lie.

- "Each ground or basis which a habeas petitioner assigns as a ground or reason for the grant of the writ is a separate 'claim' within the meaning of Fed. R. Civ. P. 54(b), and if the habeas court either grants the petition or denies it by deciding some, but not all, of the issues presented, the judgment of the court is not a final judgment, and therefore the [appellate] court lacks jurisdiction to entertain an appeal under 28 U.S.C. 1291."

- Blake v. Kemp, 758 F.2d 523, at 524-25 (11th Cir. 1985).

* See also : Bermudez v. Smith, 797 F.2d 108 (2nd Cir. 1986);
Prellwitz v. Sisto, 657 F.3d 1035 (9th Cir. 2011);
King v. Kelley, 797 F.3d 508 (8th Cir. 2015); and,
U.S. v. Coppedge, 2017 U.S. App. LEXIS 2820 (4th Cir. 2017) (same).

Thus, regardless of the label given to the District Court's 01-06-11 Order, where the Court has failed to adjudicate or resolve claims 1(h)(j), and 5(a) in Petitioner's original 2255 Motion, there has never been a "final judgment" in this case regarding counsel's performance at sentencing and on direct appeal.

Pursuant to 28 U.S.C. § 453, all federally appointed judges must take an oath or affirmation to solemnly uphold the U.S. Constitution. While the District Court is under no obligation to grant relief in these proceedings, unless warranted, that court is, pursuant to Fed. R. Civ. P. 54(b), required to address and adjudicate all claims raised/presented in a habeas petition under 28 USC § 2255, lest the U.S. Constitution's provisions of habeas corpus be suspended or otherwise violated.

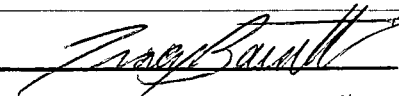
CONCLUSION

Wherefore, based on the above facts, the Court should grant the petition for a writ of certiorari, resolve the circuit split among the U.S. courts, and remand this case back to the U.S. District Court (S.D. IA.) directing that the Court address and adjudicate unresolved claims 1(h),(i), and 5(a) in Petitioner's original B255 Motion so that there may be an appealable "final judgment" in this matter.

Respectfully submitted,

06-17-20

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