No. 20-8360

IN THE

SUPREME COURT OF THE UNITED STATES

RAFAEL VERDEJO RUIZ, Petitioner

v.

UNITED STATES, Respondent

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Rafael Verdejo Ruiz #17670-035
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QUESTIONS PRESENTED

I.

WAS MILITARY APPELLATE COURT OBLIGATED TO ACCEPT PETITIONER'S LATE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WHERE IT WAS FILED BY APPELLATE COUNSEL WITHOUT A SHOWING OF GOOD CAUSE WHERE THE MILITARY APPELLATE COURT HAD NOT YET MADE A FINAL DECISION IN THE CASE?

II.

QUESTION OF CONSTITUTIONAL IMPORTANCE, NAMELY, WHETHER OR NOT CIVILIAN COURTS MUST REVIEW A MILITARY MEMBER'S CONVICTION FOR AN INEFFECTIVENESS OF COUNSEL CLAIM EVEN IF NOT RAISED ON DIRECT APPEAL?

III.

WHETHER OR NOT CIVILIAN COURTS MUST REVIEW A MILITARY MEMBER'S CONVICTION IF THE MILITARY APPELLATE COURT REFUSED TO ACCEPT AND REVIEW AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM ON DIRECT APPEAL OR THE APPEAL WAS LEGALLY INADEQUATE?

IV.

CAN A VIOLATION OF A FULL AND FAIR MILITARY APPEAL BE EXEMPT OF BEING PROCEDURALLY DEFAULTED AND BE RAISED AT ANY TIME TO A CIVILIAN COURT?

V.

CAN A MILITARY MEMBER RAISE A LACK OF SUBJECT-MATTER JURISDICTION CLAIM AT ANY TIME AND ANYWHERE TO INCLUDE DURING HABEAS CORPUS PROCEEDINGS, AND IS A CIVILIAN COURT OBLIGATED TO ACCEPT, REVIEW, AND ADDRESS THE CLAIM EVEN IF NOT ORIGINALLY RAISED?

VI.

WHETHER TRIAL COUNSEL'S FAILURE TO PRESENT TO THE JURY FACTS WHICH ARE HIGHLY PROBATIVE OF AN AFFIRMATIVE DEFENSE WHICH IF ACCEPTED BY A JURY WOULD RESULT IN PETITIONER'S ACQUITTAL, AND WERE UNDISPUTED AND UNCONTROVERTED BY RESPONDENT IN HABEAS CORPUS PROCEEDINGS, CONSTITUTES A SUFFICIENT SHOWING OF 'ACTUAL INNOCENCE' TO EXEMPT HIS CLAIMS FROM THE BAR OF PROCEDURAL DEFAULT?

VII.

DOES SUPREME COURT CASE LAW IN MARTINEZ V. RYAN, EVITTS V. LUCEY, MASSARO V. UNITED STATES, RHEUARK V. SHAW, DOUGLAS V. CALIFORNIA, AND GRIFFIN V. ILLINOIS ALTER AND/OR CLARIFY SUPREME COURT PRECEDENT IN BURNS V. WILSON AS TO A CIVILIAN COURT'S LIMITS IN REVIEWING MILITARY CONVICTIONS?

VIII.

IS A MILITARY MEMBER'S INEFFECTIVENESS OF COUNSEL CLAIM EXCEPTED FROM THE JURISDICTIONAL BAR IN CIVILIAN COURTS AS AN ESSENTIAL JURISDICTIONAL PREREQUISITE THAT MUST BE REVIEWED EVEN IF NOT RAISED ON MILITARY APPEAL?

IX.

IS A MILITARY APPEAL JUDGMENT VOID AB INITIO WHERE THE ORIGINAL MILITARY OPINION IS CONDUCTED ILLEGALLY BY WAY OF A CONFIRMED-ILLEGALLY-APPOINTED JUDGE AND THE SUBSEQUENT DECISION IS CONDUCTED WELL AFTER PETITIONER HAD REQUESTED GRANT OF REVIEW TO THE COURT OF APPEALS FOR THE ARMED FORCES (CAAF), AND NO REMAND EXISTS FROM THE CAAF FOR THE AIR FORCE COURT OF CRIMINAL APPEALS (AFCCA) TO CONDUCT THE SUBSEQUENT OPINION, AND ARE THE CIVILIAN COURTS IN A HABEAS PROCEEDING OBLIGATED TO REVIEW PETITIONER'S CLAIMS, OR IS THERE ANY REMAINING JURISDICTION FOR THE AIR FORCE COURT VIA ANOTHER AVENUE TO REVIEW PETITIONER'S CLAIMS DUE TO PETITIONER NOT HAVING FULL, FAIR, AND COMPLETE APPELLATE REVIEW IN ACCORDANCE WITH ARTICLES 66, 67, AND 70 OF THE UNIFORM CODE OF MILITARY JUSTICE, AND WOULD A FUTURE OPINION DUE TO THIS FAILURE TO PROVIDE A FAIR APPELLATE REVIEW CONSTITUTE PETITIONER'S FIRST APPEAL AND NOT A COLLATERAL ATTACK, CAUSING ANY NEW SUPREME COURT DECISIONS TO APPLY TO PETITIONER?

X.

THE MILITARY TRIAL COURT LACKED SUBJECT-MATTER JURISDICTION TO PROSECUTE AND THE MILITARY APPELLATE COURT'S JUDGMENT IS VOID AB INITIO DUE TO A LACK OF SUBJECT-MATTER JURISDICTION. ARE CIVILIAN COURTS OBLIGATED TO ADDRESS THESE CLAIMS AT ANYTIME AND ANYWHERE TO INCLUDE ON APPEAL OF CIVILIAN HABEAS WRIT AND EVEN NOW IN THE SUPREME COURT?

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LIST OF PARTIES

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

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

1- The opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix **A** to the petition. It is unpublished.

2- The opinions of the United States District Court of the Fifth Circuit appear at Appendix **E** to the petition. Reported as 2019 U.S. LEXIS 35347.

3- The first opinion of the United States Air Force Court of Criminal Appeals (AFCCA) appears at Appendix **B** to the petition and is unpublished. Reported as 2013 CCA LEXIS 680, ACM 37957.

4- The Second opinion of the Air Force Court of Criminal Appeals (AFCCA) appears at Appendix **C** to the petition and is unpublished. Reported as 2014 CCA LEXIS 607, ACM 37957(recon).

5- The opinion of the Court of Appeals for the Armed Forces (CAAF) appears at Appendix **D** to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided my case was **April 6, 2021**.

A timely petition for rehearing was filed in my case. This timely petition for rehearing was denied by the United States Court of Appeals for the Fifth Circuit on **18 May 2021**, and a copy of the opinion appears at Appendix **A**. A copy of the order denying rehearing appears at Appendix **F**.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254, §1259 and §1251. This Court has the power to issue Petitioner's writ of habeas corpus ad subjiciendum.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, 6th Amendment, Due Process

United States Code of Military Justice (UCMJ)

10 U.S.C. §866

10 U.S.C. §867

10 U.S.C. 870

10 U.S.C. §810

10 U.S.C. §844

Rule for Courts Martial (RCM) 707(d)

Air Force Court of Criminal Appeals rules 19(b)

Air Force Court of Criminal Appeals rules 19(d)

Crim. App. R. 150.24

Crim. App. R. 150.25

Crim. App. R. 150.19

RELATED CASES

Burns v. Wilson, 346 U.S.137, 73 S. Ct. 1045, 97 L. Ed. 1508 (U.S. S. Ct. (1953))

Evitts v. Lucey, 105 S. Ct. 830, 83 LED 2d 821, 469 U.S. 387 (U.S. S. Ct. (1984))

Massaro v. United States, 538 U.S. 500 (U.S. S. Ct. (2003))

Martinez v. Ryan, 182 LED 2d, 566 U.S. 1 (U.S. S. Ct. (2012)

Johnson v. Zerbst, 304 U.S. 458 (U.S. S. Ct. (1938))

Diaz v. JAG of the Navy, 59 MJ 34 at 39 (Court of Appeal for the Armed Forces (CAAF 2003))

United States v. Doty, 51 MJ 464, 465 (CAAF (1999))

United States v. Murphy, 50 MJ 4, 5 (CAAF 1998)

Witham v. United States, 355 F. 3d. 501, 2004 U.S. App. LEXIS 427 (U.S. Ct. App. 6th Cir. at *10)

STRUNK v. United States, 412 U.S. 434, 37 LED 2d 56

Johnson v. Zerbst, 304 U.S. 458 (U.S. S. Ct. (1938))

Douglas v. California, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed. 811 (1963)

Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed 891 (1956)

United States v. LaBella, 2014 CCA LEXIS 385

United States v. Riley, 55 MJ 185, 188 (CAAF 2001)

United States v. Riley, 58 MJ 305 (CAAF 2003)

United States v. Rodriguez, 67 MJ 110 (CAAF 2009)

Bowles v. Russell, 551 U.S. 205, 127 S. Ct. 2360, 168 L. Ed. 2d 96 (2007)

Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278, 97 S. Ct. 568, 571, 50 L. Ed. 2d 471 (1977)

Louisville & Nashville R.R. Co. v. Motley, 211 U.S. 149, 152, 53 L. Ed. 126, 29 S. Ct. 42 (1908)

Sumner v. Mata, 449 U.S. 539, 547 n.2, 66 L. Ed. 2d 722, 101 S. Ct. 764 (1981)

United States v. Alabama, 791 F. 2d. 1450, 1454 (11th Cir. 1986), cert. denied, 479 U.S. 1085, 94 L. Ed. 2d 144, 107 S. Ct. 1287 (1987)

Jones v. Giles, 741 F. 2d 245, 248 (9th Cir. 1984)

Alabama Hosp. Ass'n v. United States, 228 Ct. Cl. 176, 656 F. 2d 606, 610 (1981), cert. denied, 456 U.S. 943, 72 L. Ed. 465, 102 S. Ct. 2006 (1982)

United States v. Wright, 160 F. 3d. 905, 908 (2d. Cir. 1998)

Ex Parte Milligan, 18 L. Ed. 281, 4 Wall 2 at 132 (U.S. S. Ct. (1866))

United States v. Janssen, 73 MJ 221

United States v. Dalmazzi, 76 MJ 1 at 2, 2016 CAAF LEXIS 995

Richards v. Wilson, 2018 CCA LEXIS 509 (AFCCA)

Chapman v. United States, 75 MJ 598 (AFCCA)

Delta Coal Program v. Libman, 743 F. 2d. 852 at 854 (U.S. Ct. Appeal for the 5th Cir. (1995)), 1995 U.S. App. LEXIS 36690

Pleasant v. Thaler, 2011 U.S. Dist. LEXIS 14569 at 6-7

Highland Vill. Parents Group v. United States Fed. Highway, 562 F. Supp. 2d. 857 at 862 (2008 U.S. Dist Ct. 5th Cir.)

United States v. Humphries, 2011 CCA LEXIS 312 (AFCCA 2011)

STATEMENT OF THE CASE

Petitioner was tried by a military courts martial. On 13 July 2013 petitioner's case was affirmed by the Air Force Court of Appeals. See Appendix **A**. Petitioner received a second opinion as a "reconsideration." See Appendix **B**. Petitioner was not timely notified by appellate counsel of the finality of his military appeals. Further, Petitioner had lost his military record of trial while he was in military custody. While on appeal, Petitioner informed appellate counsel that he did not have his record of trial due to military staff losing his property. Petitioner was transferred from military custody to the Federal Bureau of Prisons (FBOP) in 2016. After Petitioner arrived at the FBOP, Petitioner once again began pursuing recovering a replacement record of trial to include any other trial-related documentation. See Appendix **G**. While in FBOP custody, Petitioner was also precluded from reviewing his record of trial and other pertinent documents. Petitioner submitted to the civilian courts a cease and desist request. See Appendix **H**. While in FBOP custody Petitioner's trial documents have been lost or misplaced by FBOP staff multiple times during transfers. Appendix **I**. While in FBOP custody, after Petitioner contacted the Appellate division (Appendix **G**), Petitioner received a replacement record of trial. In addition to this, Petitioner received a copy of the appellate record which he never had prior to this. After some review of this appellate record, Petitioner discovered Appellate counsel's ineffectiveness.

Petitioner filed for Habeas Corpus review in the Fifth Circuit on February 9, 2018. Petitioner submitted an affidavit to military appellate counsel claiming the trial ineffectiveness of counsel. See Appendix **J**. Petitioner in his habeas writ to the civilian court claimed Appellate counsel's ineffectiveness by failure to present Petitioner's IAC claims to the military appellate court. Petitioner also claimed that he did not receive full and fair appellate review among other claims. Respondent in that Habeas proceeding did not controvert or dispute petitioner's contentions. Instead, Respondent claimed that Petitioner was procedurally barred for a failure to present his claims to the military courts by addressing Supreme court precedent in Burns v. Wilson. Petitioner now brings this issue to this court in light of Martinez v. Ryan, Evitts v. Lucey, Massaro v. United States, Rheuark v. Shaw, Douglas v. California, and Griffin v. Illinois which the Supreme Court had declared that Trial-IAC claims are not procedurally defaulted, the constitution guarantees a defendant an effective counsel just as it guarantees a defendant an effective trial counsel, ineffectiveness of trial and appellate counsel are basic constitutional rights,

and ineffectiveness of appellate counsel which precludes a claim from judicial review is also sufficient to overcome procedural default. However, none of these cases have addressed whether they apply to military court-martial cases raised in a civilian court. Burns v. Wilson does not adequately cover the cases mentioned, causing a very limited window of review as was applied by the Fifth Circuit. Additionally, the Fifth Circuit in reviewing court-martial claims deviates from other districts which have reviewed military habeas corpus petitions that claimed ineffectiveness of counsel. Further, since Burns v. Wilson, the military courts have changed their position regarding habeas corpus review stating that the military lack the authority to review habeas corpus writs. See for example Richards v. Wilson, 2018 CCA LEXIS 509 (2018 AFCCA) and Chapman v. United States, 75 MJ 598 at 600 (2016 AFCCA).

On Direct Appeal, Petitioner submitted his ineffective assistance of counsel claims to his military appellate counsel. See Appendix J. However, appellate counsel failed to give to the military appellate court good cause for the late filing. Because appellate counsel failed to present good cause (even if late), and even though the military appellate court had not yet made a final determination in the case, the military court did not accept nor reviewed Petitioner's affidavit. All of petitioner's submissions were submitted via appellate counsel. During direct appeals, all of Petitioner's submissions were done by appellate counsel to include all motions. This is undisputed and uncontroverted. Appellate counsel submitted Petitioner's claim on 24 June 2014 (Appendix J) and the Air Force Court conducted its opinion on 14 August 2014 (Appendix C). Without a proper showing of good cause, the military did not have jurisdiction to accept nor review Petitioner's IAC claims. See AFCCA rules 19(b) and 19(d) (Crim. App. R. 150.24, 150.25, and 150.19(d)). During direct appeals, the government opposed the submission of Petitioner's IAC claim arguing lack of jurisdiction. See Appendix L. The appellate review does not enumerate the IAC claim (See Appendix C at page 6) and the military appellate court explicitly (manifestly) denied accepting the claim for review (Appendix C at page 7). Is the civilian court now obligated to review the IAC claim due to the military court's refusal to review it? Is the appellate counsel's deficiency by failure to show good cause sufficient to apply Martinez v. Ryan to Petitioner's military case? Did the military appellate court err by failing to accept Petitioner's IAC claim despite a appellate counsel's failure to show good cause?

Petitioner also did not receive a full, fair and adequate appellate review. Petitioner claimed this in his habeas corpus writ to the civilian court.

However, during that process the Respondent in his motion for summary affirmace raised a lack of subject-matter jurisdiction argument. Upon this statement being made by Respondent, Petitioner reviewed for the lack of subject-matter jurisdiction and discovered that his appellate review was illegally conducted. Specifically, that his first appellate decision was conducted by Judge Soybel who was appointed in violation of the appointments clause. Appendix **B**. See also United States v. Janssen. As shown, this opinion was made on 18 July 2013. On 6 September 2013 Petitioner moved for grant of review to the Court of Appeals for the Armed Forces (CAAF). In accordance with United States v. Riley, this timely filing for grant of review to the CAAF divested jurisdiction in the AFCCA and vested the CAAF with jurisdiction. No remand was ever made by the CAAF instructing the AFCCA to conduct the (Appendix **C**) reconsideration. What the government did was resort to a procedural maneuver to remedy the jurisdictional bar placed on the AFCCA court when Petitioner moved for grant of review. Specifically, the government requested to go back in time to a motion Petitioner had submitted prior-to the grant of review request, convert that into a request for reconsideration, so that the AFCCA could conduct the appellate review. Therefore the government's motion to "treat as reconsideration" did not constitute a qualifying "petition for reconsideration" of the original decision under CAAF rules. A lack of subject matter jurisdiction cannot be remedied retroactively by resort to procedural rules. See Delta Coal Program v. Libman. The government's motion (Appendix **K**) did not toll the limitations period because it was filed after the limitations period had expired. See Pleasant v. Thaler. The AFCCA had 60 days from the opinion (Appendix **B**) to conduct reconsideration on its own as imposed by Congress. The court may not expand its jurisdiction beyond this limit. See Highland Vill. Parents Group v. United States Fed. Highway, 562 F. Supp 2d. 857 at 862. A military court has statute-based jurisdictional limitations and do not have the authority to even create equitable exeptions to jurisdictional requirements. In other words, the military appellate courts cannot expand its jurisdiction beyond the limits imposed by Congress. Congress gave the military appellate courts 60 days to reconsider on its own or before Petitioner filed for grant of review. The AFCCA could only regain jurisdiction via a remand from CAAF. See United States v. Riley. On remand, the AFCCA can only take action that conforms to the limitations and conditions prescribed by the remand. See United States v. Humphries. No remand exists giving AFCCA jurisdiction to conduct the second opinion (Appendix **C**). This Court has expressed that when an appeal has not been prosecuted in the

manner directed, within the time limited by the acts of Congress, it must be dismissed for want of jurisdiction. See Bowles v. Russell at 104. Therefore, the question remains is, whether Petitioner is not procedurally barred, and whether the civilian court is obligated to review and to conduct a full appellate review of petitioner's case since the military courts lack jurisdiction at this point, issue a reversal of petitioner's military conviction in its entirety, or other alternative. Petitioner did not request a retrial.

As shown, Petitioner's military appellate decisions are legally inadequate. The first decision was conducted by an illegally appointed Judge and the second decision conducted well after Petitioner submitted for review to the CAAF. Because no remand exists, was the first and second military review legally sufficient to meet Articles 66, 67, and 70 of the Uniform Code of Military Justice, 10 USC §866, §867, and §870 and if not legally sufficient, is the civilian court obligated to review all of Petitioner's claims because he has not received a direct appeal as guaranteed in the Constitution? Will this be an exempt to being procedurally defaulted?

Petitioner raised the lack of subject-matter jurisdiction during the habeas corpus proceedings. However, Petitioner had not included them in the initial brief submitted to the civilian court. Petitioner raised this claim in response to Respondent's statement at the habeas appeal level that jurisdiction had ceased. Petitioner claimed that the trial court lacked subject-matter jurisdiction because it violated Article 10, UCMJ and Rules of Court-Martial 707 by bringing him to trial after the 120-day brightline jurisdictional time that bars prosecution. Petitioner was preferred charges on 12 October 2010. See Appendix **M**. However, arraignment occurred at trial when Petitioner pled not guilty at on 22 February 2012. In accordance with Article 10, UCMJ and the 6th Amendment, The Air Force was barred from prosecuting Petitioner. See also United States v. Doty. See also United States v. Wilder, and STRUNK v. United States. Petitioner also did not originally submit in his brief the lack of subject-matter jurisdiction claims as to the military appellate review due to the illegally appointed judge and the subsequent opinion that was conducted without a remand. Is the fact that they were presented during habeas corpus proceedings, even though submitted after Respondent raised the argument in reply and Petitioner had not presented in the initial brief, sufficient to obligate the civilian courts to review the lack of subject-matter jurisdiction claims?

Has Supreme Court precedent in Burns v. Wilson been altered by Martinez v. Ryan (Appellate ineffectiveness during direct appeal by failing to comply with

court's requirements precluding adjudication on the merits of his claims is not procedurally barred), Evitts v. Lucey (Appellate counsel ineffectiveness causes an appeal to not be adjudicated in accordance with due process of law as guaranteed under the Constitution just like Trial ineffectiveness), Massaro v. United States (Ineffectiveness of counsel not procedurally barred because there has been no opportunity to develop the record on the merits of these allegations), Rheuark v. Shaw (when an accused is given a right to appeal, it must meet the requirements of due process and equal protection), Douglas v. California, and Griffin v. Illinois as to a civilian court's limits in reviewing military convictions? Is a civilian court obligated to review a military member's IAC claim regardless if the claim was not submitted for review in a military appellate court? Burns v. Wilson does not expressly give guidance as to this matter and the circuits are inconsistent in applying the procedural bar as was made in Petitioner's case.

"It is not until that appeal of right is complete that we can rest assured the interests of justice have been served." See United States v. Wright.

"Petitioner is not being afforded an appellate review of his findings and sentence that comports with the requirements of Article 66 and Article 70. These rights must be recognized, enforced and protected by the Government, by the appellate attorneys, by the Court of Criminal Appeals, and by this Court." See Diaz v. JAG of the Navy.

Petitioner provided undisputed and uncontroverted evidence that if accepted by a jury would result in Petitioner's acquittal. Namely, that Appellate counsel had witnesses that could raise reasonable doubt as to the timeframe of the allegations that he failed to present to the jury, and the fact that Petitioner was not in the Continental United States at the time of the allegations. Petitioner was charged with a timeframe within the Continental united states between 1 August 2004 and on or about 30 September 2004. See Appendix **M**. However, Petitioner was stationed in Hawaii since June 2004. See Appendix **N**. These documents were provided to the civilian court on habeas review and were not controverted or disputed. At trial no evidence was presented that showed Petitioner was within the Continental United states during the charged timeframe. Is a civilian court obligated to review whether this showing is sufficient showing of 'actual innocence' to exempt the claims from the procedural default bar?

The Fifth Circuit has applied Burns v. Wilson without considering other cases mentioned above. For this reason, Petitioner requests that this Court

decide for all courts under the United States Flag whether they are obligated to review military IAC claims raised for the first time in a civilian court among other issues mentioned above. Petitioner believes Burns v. Wilson is outdated and is being applied without considering other Supreme Court cases that alter what is a substantial Constitutional right in regards to military appellate challenges on collateral review.

The civilian court failed to address Petitioner's lack of subject matter jurisdiction claims although Petitioner submitted the claims during the habeas corpus prooceedings. See Apendix **E**. Petitioner in his request for a rehearing expressed the failure to address the lack of subject matter jurisdiction claim among other claims raised before this court. See Appendix **O**. Petitioner was denied the rehearing. See Appendix **F**.

This Court has stated that a lower court's failure to follow Supreme Court precedent would be anarchy. The fifth Circuit does so by refusing to apply other Supreme Court cases in Petitioner's case by keeping focusing only on the 1953 Burns v. Wilson case as if no other Supreme Court caselaw applies to military members seeking to challenge their convictions via habeas corpus in a civilian court. Since Burns v. Wilson, the Supreme Court has expanded or clarified other circumstances which are excepted from the procedural bar doctrine. The Supreme Court should now declare whether they apply to us military-convicted.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit has applied Burns v. Wilson without acknowledging whether Martinez v. Ryan, Evitts v. Lucey, Massaro v. United States, Rheuark v. Shaw, Douglas v. California, and Griffin v. Illinois alter or clarify Supreme Court precedent established in Burns v. Wilson regarding the limitations of civilian courts reviewing military court-martial convictions in habeas corpus proceedings. Burns v. Wilson does not address whether the claims mentioned in the aforementioned cases apply to military court-martial cases seeking to challenge their convictions on habeas corpus. Burns v. Wilson does not clarify whether those circumstances in the aforementioned cases are exceptions that also would apply for military members seeking to challenge their convictions. Petitioner requests that this Court decide for all courts under the United States flag whether they are obligated to review military IAC claims raised for the first time in a civilian court. Burns v. Wilson is outdated and is being applied without considering other newer Supreme Court cases that alter and redefine what is a substantial Constitutional right in regards to military appellate challenges on collateral review.

Further, the Fifth Circuit deviated from Supreme Court precedent by failing to review a lack of subject matter jurisdiction claim even if the applicant for habeas corpus did not originally submit the claim for review. Because it is not clear to the Fifth Circuit that a military member can raise a lack of subject matter jurisdiction claim at any time and anywhere, which includes as a reply to Respondent's motion to dismiss, Petitioner seeks clarification.

Although this court rarely grants review via certiorari, Petitioner's case is an exception because military habeas cases are rarely seen in civilian courts. Petitioner's case is the first reviewed by the Fifth Circuit in over 10 years. Further, this Court should ensure Petitioner receives the appeal he is entitled to. Petitioner claimed that the military trial court and appellate court lacked subject matter jurisdiction. The trial court made a speedy trial violation by exceeding the 120 days to try Petitioner in violation of Article 10, UCMJ and Rules for Courts-Martial 707 which barred prosecution. The military appellate court used administrative procedures to remedy retroactively jurisdiction which had ceased to exist. The civilian courts have failed to do their duty and verify these facts. Petitioner's questions pose specific issues related to the collateral review by a civilian court which have not been addressed since 1953 in Burns v. Wilson. In fact, this Court and the military courts have changed their position as to whether a military court have the power

to review habeas corpus petitions. The military courts say no. Therefore, Burns v. Wilson is clearly outdated in a multitude of ways and the civilian courts and military members seeking to challenge their convictions in a civilian court require guidance from this Court.

The Court of Appeals has entered a decision in conflict with the decision of other courts of appeals. Namely, the Fifth Circuit when reviewing military convictions on habeas does not acknowledge other Supreme Court precedents mentioned above. Additionally, the Appellate court has failed to fulfill their duty to review lack of subject matter jurisdiction claims raised at any time which calls for an excercise of this Court's supervisory power. Last, the Appeals court has decided an important federal question in a way that conflicts with relevant decisions of this court. Namely, that all Supreme Court decisions and procedural bar exceptions after Burns v. Wilson apply to military cases reviewed by civilian courts.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Rafael Verdejo Ruiz, #17670-035

28th day of May 2021