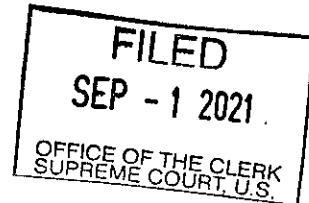


**ORIGINAL**

No. 21-411

IN THE  
SUPREME COURT OF THE UNITED STATES



DAMON B. COOK — PETITIONER  
(Your Name) PRO-SE

vs.

George M. GALAZA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

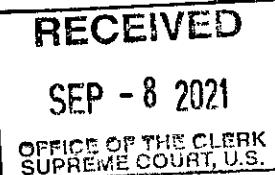
PETITION FOR WRIT OF CERTIORARI

DAMON B. COOK  
(Your Name)

CCI-Ad-Seg-B8-Bed 201  
(Address) P.O. Box 1906

Tehachapi, CA. 93581  
(City, State, Zip Code)

(661) 822-4402  
(Phone Number)



QUESTION(S) PRESENTED

1.) Whether The Petitioner DAMON COOK HAS MADE A SubStantial Showing of The Denial OF A CONSTITUTIONAL Right Pursuant To 28 USC 2253(c)(2) IN ORdeR TO Obtain A CertiFiCate OF APPeALAbility ? Denial OF DUE Process

See Slack v. McDaniel (2000) 529 U.S. 473, 483

See NELSON v. Walker (2nd Cir. 1997) 121 F.3d 828, 832

See MILLER-EL v. COCKRELL (2003) 537 U.S. 322

2.) Whether The Petitioner's 3Rd Rule 60(b)(6) Motion WAS Timely Filed Within A Reasonable Time After The 9th Circuit's CASE OF: BYNOE v. BACA (9th Cir. 2020) 966 F.3d 972, 980 Filed JULY 24, 2020 ?  
See United States v. Holtzman (1985) 762 F.2d 720, 725 (9th Cir.)

3.) Whether The Petitioner's 3Rd Rule 60(b)(6) Motion PreSented ExtraORDINARY Circumstances Warranting RE-OPENING The FINAL Judgment AS ALL(6) PhelPs's Factors SuPPorted ReCoNSidering The District Court's 2002 Habeas Corpus Judgment ?  
See PhelPs v. Alameida (9th Cir. 2009) 569 F.3d 1120, 1134-1140  
See BYNOE v. BACA (9th Cir. 2020) 966 F.3d 972, 980 (Cook)  
See DAVIS v. MORONEY (7th Cir. 2017) 857 F.3d 748, 750-753 (Cook)

4.) Whether There WAS INSUFFICIENT Evidence Of Force To Establish Petitioner DAMON COOK's Guilt BeYond A Reasonable DoubT ?

See People v. Griffin (2004) 33 CAL. 4th 1015, 1028-29

See JACKSON v. Virginia 443 U.S. 307, 316, 99 S.Ct. 2781, 2791

See IN RE WINSHIP 397 U.S. 358, 364, 90 S.Ct. 1068

See Fiore v. White 531 U.S. 225, 229 121 S.Ct. 712 (2001)

## Continue Page To Question Presented No.1,3

1  
2 The 28 USC 2253(c)(2) Statute does NOT SpeciFY  
3 That A Petitioner MUST Show That (1) Jurists OF Reason  
4 Would Find It debatable Whether The District COURT  
5 Abused Its discretion IN denYing The Rule 60(b)(6) Motion  
6 And (2) Jurists OF Reason Would Find It debatable  
7 Whether The underlying Section [2254 Petition] STATES  
8 A Valid Claim OF The Denial OF A Constitutional Right

9  
10 See SLack v. McDaniel 529 US 473, 483

11 See Nelson v. Walker 121 F.3d 828, 832

12  
13 The 28 USC 2253(c)(2) Statute ONLY SpeciFies That The COURT  
14 MAY ISSUE A CERTIFICATE OF APPEALABILITY ONLY WHEN  
15 The Petitioner HAS Made A Substantial Showing OF The  
16 Denial OF A Constitutional Right, Which The Petitioner  
17 DAMON COOK HAS Made A Substantial Clear Showing OF  
18 INSUFFICIENCY OF The Evidence of Force Which  
19 AMOUNT TO A Denial OF DUE Process OF LAW,  
20 A Constitutional Right, IN VIOLATION OF The  
21 14th AMENDMENT To The United States CONSTITUTION.

22 Therefore, A Certificate OF APPEALABILITY Should HAVE BEEN  
23 ISSUED IN This CASE Pursuant To 28 USC 2253(c)(2) AND

24 The INSUFFICIENCY OF The Evidence of Force IS A  
25 Meritorious CLAIM Which AMOUNT TO AN EXTRAORDINARY  
26 CIRCUMSTANCE UNDER Federal Rule 60(b)(6) Pursuant To

27 See DAVIS v. MORONEY (7th Cir. 2017) 857 F.3d 748, 750-753

28 Potentially Meritorious Claim, Diligent EFForts To Pursue CASE AND  
Irregularities OF District COURT'S Handling OF CASE, AMOUNTED TO EXTRAORDINARY  
CIRCUMSTANCES

## CONTINUED

5.)

QUESTION(S) PRESENTED

■ Whether The District Court's denial of 3rd Petitioner DAMON COOK's Rule 60(b)(6) Motions Was AN Abuse of Discretion ?

See BUCK v. DAVIS (2017)

137 S.C.T. 759, 778

2017 U.S. Lexis 1429

197 L.Ed. 2d 1

See BYNOE 966 F.3d At 987 (COOK)

See BYNOE v. BACA (9th Cir. 2020) 966 F.3d At 979

See DAVIS v. MORONEY (7th Cir. 2017)

857 F.3d 748, 750-753 (COOK)

See United States v. Holtzman (9th Cir. 1985)

762 F.2d 720, 725 (COOK)

We Review For "Abuse of Discretion" A District Court's Decision To Deny A Rule 60(b)(6) Motion, And Review de Novo ANY Questions Of Law Underlying That Decision. See LAL v. CALIFORNIA 610 F.3d 518, 523 (9th Cir. 2010)

See BYNOE v. BACA (9th Cir. 2020) 966 F.3d 972, 979, 980

## LIST OF PARTIES

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

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

See BUCK v. DAVIS (2017) 137 S.CT. 759, 778

See PAGE(5) ON 3RD MOTION TO REOPEN THE CASE

See HALL v. HAWS (9th Cir. 2017) 861 F.3d 977, 987

See PAGE(5) ON 3RD MOTION TO REOPEN THE CASE

See BYNOE v. BACA (9th Cir. 2020) 966 F.3d 972, 980 (Cook)

See PAGES 1, 6, 8, ON 3RD MOTION TO REOPEN THE CASE

See JACKSON v. VIRGINIA (1979) 443 U.S. At 316, 324  
99 S.CT. At 2791 - See IN RE WINSHIP 397 U.S. 358, 364

See PAGES 2, 4, 3, 1, 5, 8, ON 3RD MOTION TO REOPEN THE CASE

STATUTES AND RULES

See 28 USC 2253(C)(2)

See PAGE(4) ON PETITIONER'S TIMELY NOTICE OF APPEAL AND REQUEST FOR A CERTIFICATE OF APPEALABILITY

FEDERAL RULE CIVIL PROCEDURE 60(b)(6)

See 3RD RULE 60(b)(6) MOTION AT PAGES 1, 2, 3\*, 4, 5, 8 (EXTRAORDINARY CIRCUMSTANCES)

OTHER

See DAVIS v. MORONEY (7th Cir. 2017)

857 F.3d 748, 750-753 (Cook)



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A CERTIFICATE OF APPEALABILITY

APPENDIX B - PETITIONER'S TIMELY NOTICE OF APPEAL AND  
REQUEST FOR A CERTIFICATE OF APPEALABILITY

APPENDIX C - THE U.S. DISTRICT COURT'S ORDER DENYING PETITIONER'S  
3RD RULE 60(b)(6) MOTION TO REOPEN THE CASE

APPENDIX D - PETITIONER'S 3RD RULE 60(b)(6) MOTION TO REOPEN  
THE FIRST FEDERAL HABEAS CORPUS CASE

APPENDIX E - ACTUAL INNOCENCE CLAIM BASED ON  
FALSE EVIDENCE, FALSE TESTIMONY, PERJURED TESTIMONY

APPENDIX F

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was AUGUST 13, 2021

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

See Hohn v. United States (1998) 524 U.S. 236, 245  
118 S.Ct. 1969, 1974, 141 L.Ed.2d 242, 254

For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th AMENDMENT TO THE UNITED STATES CONSTITUTION

See Jackson v. Virginia (1979) 443 U.S. at 316, 324  
99 S.Ct. 2781, 2791

See IN RE Winship (1970) 397 U.S. 358, 364  
90 S.Ct. 1068, 25 L.Ed.2d 368

See Fiore v. White (2001) 531 U.S. 225, 229  
121 S.Ct. 712, 714

See Wright v. West (1992) 505 U.S. 277, 295-297

See Herrera v. Collins (1993) 506 U.S. 390, 401-402

See 28 U.S.C. 2253(c)(2) (COA)

INSUFFICIENT EVIDENCE OF FORCE

HAS BEEN PROVEN - Denial of FAIR DUE PROCESS

OF LAW IN VIOLATION OF THE 14th AMENDMENT

TO THE UNITED STATES CONSTITUTION

See Slack v. McDaniel 529 U.S. 473, 483  
120 S.Ct. 1595 (2000) (COA)

STATEMENT OF THE CASE

See The United States Magistrate Judge's Report And Recommendation on The First Federal Habeas Corpus Petition IN The CASE OF:

DAMON B. COOK v. George M. GALAZA  
IN CASE Number CV00-8569 RJK(MC)  
For The FACTS AND

STATEMENT OF THE CASE.

("The State of California Failed To Prove The Element of Force")

See Kelly v. Roberts (10th Cir. 1993)  
998 F.2d 802, 809-10, FN 11.

See Fiore v. White (2001) 531 U.S. 225, 229  
121 S.Ct. 712, 714

This COURT's Precedents Make Clear That  
DAMON B. COOK's CONVICTIONS AND CONTINUED INCARCERATION  
ON THESE CHARGES VIOLATES DUE PROCESS OF LAW  
IN VIOLATION OF THE 14th AMENDMENT U.S. CONSTITUTION

REASONS FOR GRANTING THE PETITION

This United States Supreme Court Should Grant The Petition  
FOR WRIT OF CERTIORARI TO ACCOMPLISH "JUSTICE"  
IN THIS CASE.

This United States Supreme Court Should Grant The Petition  
FOR WRIT OF CERTIORARI TO RESOLVE THE IMPORTANT QUESTION  
PRESENTED FOR REVIEW TO DETERMINE WHETHER THE PETITIONER  
DAMON COOK HAS MADE A SUBSTANTIAL SHOWING OF THE  
DENIAL OF A CONSTITUTIONAL RIGHT PURSUANT TO  
28 U.S.C. 2253(C)(2) IN ORDER TO OBTAIN A  
CERTIFICATE OF APPEALABILITY? "Denial of Due Process"  
See Slack v. McDaniel 529 U.S. 473, 483  
120 S.Ct. 1595 (2000) (CoA)

This COURT Should Grant Review To Determine Whether The Petitioner's  
3RD RULE 60(b)(6) MOTION WAS TIMELY FILED WITHIN A REASONABLE TIME  
AFTER THE 9TH CIRCUIT'S CASE OF: BYNOE v. BACA (9th Cir. 2020)  
966 F.3d 972, 980 (Cook)

See United States v. Holtzman (9th Cir. 1985) 762 F.2d 720, 725 (Cook)  
This COURT Should Grant Review To Determine Whether The Petitioner's  
3RD RULE 60(b)(6) MOTION PRESENTED EXTRAORDINARY CIRCUMSTANCES  
WARRANTING RE-OPENING THE FINAL JUDGMENT, AS ALL (6) PHELPS  
FACTORS SUPPORTED RECONSIDERING THE DISTRICT COURT'S 2002  
HABEAS CORPUS JUDGMENT? See DAVIS 857 F.3d 748, 750-753

This COURT Should Grant Review To Determine Whether  
There WAS INSUFFICIENT EVIDENCE OF FORCE TO ESTABLISH  
Petitioner DAMON COOK'S GUILT BEYOND A REASONABLE DOUBT?

This COURT Should Grant Review To Determine Whether  
The DISTRICT COURT ABUSED ITS DISCRETION DENYING  
Petitioner's 3RD RULE 60(b)(6) MOTION?

NOTE: I, DAMON B. COOK HAVE WORKED HARDER  
THAN PHELPS AND BYNOE IN TRYING  
TO OBTAIN RULE 60(b)(6) RELIEF.

This U.S. Supreme Court have held that the Due Process Clause of the Fourteenth Amendment forbids a state to convict a person of a crime without proving the elements of that crime beyond a reasonable doubt.

See Jackson 443 U.S. at 316

See IN RE WINSHIP 397 U.S. 358, 364

See Fiore v. White 531 U.S. 225, 229

See Wright v. West 505 U.S. 277, 295-297

See Herrera v. Collins 506 U.S. 390, 401-402

"No Trial Testimony on the Element of Force."

"Insufficiency of the Evidence of Force."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Damon B. Cook

Date: September 1, 2021

[2] This Court's precedents make clear that Cook's Fiore's conviction and continued incarceration on this charge violate due process. We have held that the Due Process Clause of the Fourteenth Amendment forbids a state to convict a person of a crime without proving the elements of that crime beyond a reasonable doubt. See Jackson, 443 U.S. at 316, 99 S.Ct. 2781; In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). In this case, failure to possess a permit is a basic element of the crime of which Fiore was convicted. Scarpone, supra, at 279, 634 A.2d, at 1112. And the parties agree that the