

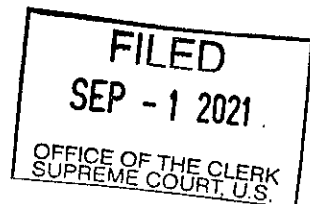
ORIGINAL

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-Seq-B8-Bed 201

(Address)

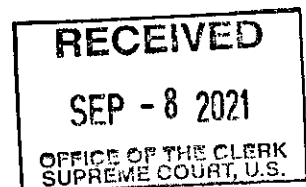
P.O. Box 1906

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(b) 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

The 28 USC 2253(C)(2) Statute does NOT SPECIFY
That A Petitioner MUST Show That (1) Jurists OF Reason
Would Find It debatable Whether The District COURT
Abused Its discretion IN denYING The Rule 60(b)(6) Motion
And (2) Jurists OF Reason Would Find It debatable
Whether The UNDERLYING Section [2254 Petition] States
A Valid Claim OF The Denial OF A CONSTITUTIONAL RIGHT

See SLACK v. McDaniel 529 US 473, 483

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

The 28 USC 2253(C)(2) Statute ONLY SPECIFIES That The COURT
MAY ISSUE A Certificate OF APPEALABILITY ONLY When
The Petitioner HAS Made A Substantial Showing OF The
Denial OF A CONSTITUTIONAL RIGHT, Which The Petitioner
DamonCook HAS Made A Substantial Clear Showing OF
INSufficiency OF The Evidence OF Force Which
AMOUNT TO A Denial OF DUE Process OF LAW,
A CONSTITUTIONAL RIGHT, IN VIOLATION OF The
14th AMendMENT TO The United States CONStitution.

Therefore, A Certificate OF APPEALABILITY Should HAVE BEEN
ISSUED IN This CASE Pursuant TO 28 USC 2253(C)(2) AND

The INSufficiency OF The Evidence OF Force IS A
Meritorious CLAIM Which AMOUNT TO AN Extraordinary
Circumstance UNDER Federal Rule 60(b)(6) Pursuant TO

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

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.Ct. 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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APPENDIX D -	PETITIONER'S 3RD RULE 60(b)(6) MOTION TO REOPEN THE FIRST FEDERAL HABEAS CORPUS CASE
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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.C.T. 2781, 2791

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

See Fiore v. White (2001) 531 U.S. 225, 229
121 S.C.T. 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 US 473, 483
120 S.C.T. 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 ")
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

Cook's [2] This Court's precedents make clear that
Fiore's conviction and continued incarceration on
this charge violate due process. We have held that
the Due Process Clause of the Fourteenth [531 U.S.
229] 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