

No. 21-5199

IN THE
SUPREME COURT OF THE UNITED STATES

VINCENT JOHNSON - Plaintiff

VS.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT - Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
REHEARING

RECEIVED
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QUESTION OF FEDERAL LAW FOR REVIEW

What is the correct vehicle and avenue inwhich a petitioner may challenge a COA violation by a circuit court pursuant to Buck v. Davis 137 S. Ct. 759 once Certiorari has been denied by the U.S. Supreme court.

RELIEF SOUGHT

To be immediately released from prision.

LIST OF PARTIES

all parties in the caption of the case on the cover page.

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IN THE
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REHEARING

OPINIONS BELOW

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Order denying COA by the Sixth Circuit at Appendix D

Opinion and order by the Southern District of Ohio Eastern Division denying independent action at Appendix E

JURISDICTION

The U.S. Southern District Court Eastern Division rendered its decision on movant's 60(d) on Feb. 3 2021. Vincent Johnson filed a timely request for COA to the Sixth Circuit which was denied on April, 5, 2021. A timely petition for rehearing en banc was submitted it was denied on May 18, 2021. A Writ of Certiorari was submitted the U.S. Supreme court it was denied Oct. 4 2021. The jurisdiction of this court is invoked under 28U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTIONAL PROVISIONS

BILL OF RIGHTS

United states Constitution, Bill of Right

Amendment XIV

Section 1. All person born or naturalized in the United States and subject to the jurisdiction thereto, are citizens of the United States and of the wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

STATUES

Federal R. of Civil Procedure 60 (b) & (d)

Rule 60 relief from a judgement order on motion and just terms the court may relieve a party or it's legal representative from a finale judgement or order or proceeding.

- (d) other powers to grant relief. This rule does not limit a court
- (1) entertain an independent action to relieve a party from a judgement or order or proceeding.

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

In a habeas proceeding or a proceeding under 2255 before a district judge the finale order shall be subject to review on appeal by the court po of appeals for the circuit in which the proceeding is held. (c)(2) a certificate of appealability may issue under paragraph (1) only if applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

This case is being pursued to appeal the Sixth circuit's April, 5, 2021 order denying petitioner's request for COA. Petitioner believes during his initial habeas proceedings both the Dist. and the Sixth Cir. court of appeals improperly denied his request for COA. Because petitioner had pursued his appeal to this U.S. Supreme court. As normal procedure requires that the merits of a 60(b) be first presented to the Dist. court. To resolve the issue of the COA violation petitioner presented a 60(b) to the Dist. court. The 60(b) was submitted before a decision was made on petitioner's writ of certiorari so that the motion would filed within the one year time fram of the Dist. court's intial denial of petitioner's request for COA. The 60(b) motion was denied. The Dist. court ruled, it lacked jurisdiction to make a determination on a COA violation once the Sixth cir. has denied a petitioner's application for COA. In response to this decision a 60(b) was presented to the Sixth Cir. court of appeals, arguing a COA violation pursuant to Buck v Davis 137 S. Ct. 759. The clerk for the Sixth Cir. refused to file the motion for the reason of the case being closed. Because petitioner had no other path or vehicle to resolve this issue. A independent action was submitted to the Dist. court arguing a COA violation by the Sixth Cir. pursuant to Buck v Davis. The motion was asking the Dist. court to issue a Coa so that the merits of the violation could be presented to the Appellate court. The 60(d) was denied. The Dist. court improperly construed the 60(d) as a motion for recosideration of it's previous denial of movant's 60(b).

The court again denied COA. A request for COA was submitted to the Sixth Cir. The request was denied. The court ruled the application for COA was not properly before the court. In light of this ruling petitioner now seeks this court's guidance. Asking, what is the proper path in which a petitioner must take to pursue a COA violation by a Circuit court once Certiorari has been denied.

STATEMENT OF THE FACTS

On Nov. 27, 2017 this United States Supreme Court denied Mr. Johnson's petition for a Writ of Certiorari of his intial habeas proceedings case No. 17-6045 . To persue a COA violation made by the Dist. court movant submitted a 60(b) to the Dist. court case No. 16-4076. The motion was denied Agust 17, 2017, . Petitioner attempted to submitte a 60(b) to the Sixth Cir. The clerk for the Sixth Cir. refused to file the motion for the reason of the case being closed,

. A writ of Mandamus was submitted to the Sixth Cir. to compell the clerk to file movant's 60(b) motion. It was denied July, 16, 2018, case No. 18-3492 . A Enbanc was filed and denied Sept. 5, 2018 s . A timely Writ of Certiorari was submitted to this Supreme Court case No. 18-7688 it was denied April 1, 2019, s . A Mandamus was then submitted to this Supreme Court case No. 19-5257 and was denied Oct. 7, 2019, . A 2244 petition was then presented to the Sixth Cir case No. 20-3036 this was denied May 20, 2020, s . Mr. Johnson then attempted to submitt a 6(d) to the Sixth Cir. it was returned unfiled, . A 60(d) was submitted to the Dist. court case No.2:15-CV-00971 it was denied Feb. 3, 2021

. An apllication for COA was submitted to the Sixth Cir. and denied April, 5 , 2021 : . A Enbanc was presented in response and denied May, 18, 2021, .

a. Reasons to grant rehearing.

This petition for rehearing presents itervening circumstances of a substantial effect justifying application of the established doctrine. That the interest in finality of litigation must yield, where the interest of justice would make unfair the strick application of the court's rule by which litigation in this case would otherwise be final, see United States v. Ohio Power Co. 353 U.S. 98,99.

In petitioner's original habeas proceedings the Sixth circuit committed an error in the COA process, pursuant to Buck v. Davis 137 S.Ct. 759. In Buck this court emphasized the COA inquiry is not coextensive with a merit analysis at the COA stage. The appeals court should limit it's examination to a threshold question, which should be decided without full consideration of the factual legal bases adduced in support of the claim.

To address the issue of the COA violation, a Federal R. of Procedur 60(b) was filed the Sixth Cir. as certiorari had been denied by this Supreme court. Petitioner asserts, there is no clear path or vehicle inwhich to pursue a COA violation by a circuit court. This allowed the clerk for the Sixth Cir. grounds to refuse to file movant's 60(b), for the reason of the case being closed. This was a critical intervening circumstance, which put movant outside of the judicial process, as he was completely denied access to the appeals court. It was specially significant in that it ultimately effected the Sixth Circuit's decision to deny COA in this case. In doing so it raised a question of great importance which ask, **what is the correct procedure to adress a COA violation pursuant to Buck v. Davis once certiorari has been denied by the Supreme court.** This question presents Fourteenth admendment due process issues.

In hopes to correct the COA violation and to gain access to the court movant submitted an independent action to the District court asking the court to grant a COA under 28 U.S.C. 2253(c)(2). The Dist. court denied the request. An application for COA was then filed with the Sixth Cir. court of appeals. The Sixth Cir. in it's April 5, 2021 order denying petitioner's request ruled. In substance petitioner's Dec. 22, 2020 motion sought a certificate of appealability and order ruling on a COA is not appealable citing Sims v. United States 244 F. 3d. 509. The Sixth circuit reason for not accepting jurisdiction demonstrates, the ruling was greatly influenced by the intervening circumstance of the clerk refusing to file movant's R. 60(b) motion. This denied petitioner due process giving petitioner no choice , but to go to the District court to request a COA to gain access to the Sixth Circuit.

b. conclusion.

It is based on the facts argued, petitioner states this honorable court's guidance is needed. Therefore petitioner humbly ask that the court grant certiorari. Not only to correct an injustice, but also to ensure that a petitioner will be given a proper review of his or her application for COA. If not, a vehicle inwhich to remedy the error.

CERTIFICATE OF PARTY UNREPRESENTED BY COUNSEL

I Vincent Johnson do swear that this petition for rehearing is restricted to the grounds specified and is being presented in good faith and not for delay.

Vincent Johnson
Vincent Johnson 688-089

SWORN TO & SUBSCIBED IN MY PRESENCE THIS DAY 8th OF November. 2021



Sandra K. Furniss -Lindsey
Notary Public, State of Ohio
My Commission Expires 4-4-22

Sandra K. Furniss -Lindsey
Notary Public