

JUL 28 2021

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No. 21-5741

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

JONATHAN GODWIN – Petitioner

vs.

MARK S. INCH, SECRETARY, DEPARTMENT OF
CORRECTIONS, STATE OF FLORIDA – Respondent(s)

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

PETITION FOR WRIT OF CERTIORARI

Mr. Jonathan Godwin
Wakulla Correctional Institution
110 Melaleuca Drive
Crawfordville, FL 32327

Petitioner, *pro se*

QUESTIONS PRESENTED

1. WHETHER AN APPLICANT HAS TO DEMONSTRATE BOTH THE DEBatability OF CONSTITUTIONAL CLAIM(S) AND THE DEBatability OF PROCEDURAL RULING(S), BEFORE ISSUANCE OF A CERTIFICATE OF APPEALABILITY PURSUANT TO 28 U.S.C. § 2253(C), WHERE THE APPLICATION FOR THE CERTIFICATE PRESENT ONLY MERIT DETERMINE CLAIMS REACHED BY THE DISTRICT COURT?

2. WHETHER THE STANDARD FOR ISSUANCE OF A CERTIFICATE OF APPEALABILITY AS SET FORTH IN *SLACK V. McDANIEL*, 529 U.S. 473 (2000) REQUIRE AN APPLICANT TO DEMONSTRATE BOTH THE DEBatability OF CONSTITUTIONAL CLAIM(S), AND THE DEBatability OF PROCEDURAL RULING(S), IRRESPECTIVE OF THE APPLICANT'S ABANDONMENT OF THOSE CLAIM(S) THE DISTRICT COURT DISMISSED ON PROCEDURAL GROUNDS?

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:

RELATED CASES

- *Godwin v. Secretary*, No. 8:16-cv-02253-SDM-SPF, U.S. District Court for the Middle District of Florida. Judgment entered Oct. 23, 2020.
- *Godwin v. Secretary*, No. 20-14490-E, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered May 3, 2021.

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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 is unpublished.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 B 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 is unpublished.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 which the United States Court of Appeals decided my case was March 30, 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: May 3, 2021, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for 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).

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 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2253 -

- (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
- (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
- (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from -
 - (A) The final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State Court; or
 - (B) The final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

After unsuccessful attempts and exhaustion of obtaining relief in state courts, Godwin timely filed a habeas petition pursuant to 28 U.S.C. § 2254. The petition alleged a total of ten constitutional claims for relief. On October 23, 2020, the Middle District Court (Tampa Division), State of Florida, without conducting an evidentiary hearing, summarily denied all claims upon the merits except one. (Appendix B attached)¹ Naturally, the district court denied Godwin a certificate of appealability and leave to appeal *in forma pauperis*. *Id.*

Ultimately, Godwin appealed to the United States Court of Appeals for the Eleventh Circuit. Thereafter, he timely applied for a certificate of appealability (COA) asserting six of the ten claims presented in his habeas petition. (Appendix D attached). None of the claims presented in the application for a COA were dismissed by the district court on procedural grounds. *Id.* Nevertheless, on March 30, 2021, United States Circuit Judge Robert J. Luck, concluded that Godwin failed to make the requisite showing, “that reasonable jurists would find debatable both: (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. See U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000)” (Appendix A attached)

Within ten business days, Godwin filed a motion for rehearing. (Appendix E attached) The motion asserted that in *Slack*, this Honorable Court established two

¹ The district court also ruled that Claim One alleging an unreasonable seizure was deemed waived. However, that issue pose no relevance to the questions presented herein.

distinct standards for review before the issuance of a COA. When the district court has rejected the constitutional claims on the merits, “the petitioner must demonstrate that reasonable jurist would find the district court’s assessment of the constitutional claims debatable or wrong.” However, “[w]here the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claims, a COA should issue when the prisoner shows, at least, that jurist of reason would find debatable whether the petition states a valid claim of denial of a constitutional right and that jurist of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Essentially reiterating that the “district court rejected Godwin’s constitutional claims on the merit, and therefore, to satisfy 28 U.S.C. § 2253(c), Godwin was only required to demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Ibid.*

On May 3, 2021, Rosenbaum and Luck, Circuit Judges, denied Godwin’s motion for Rehearing, Reconsideration, or Modification “because he has offered no new evidence or arguments of merit to warrant relief.” (Appendix C attached) This timely petition follows.

REASONS FOR GRANTING THE PETITION

The standard for appealability under 28 U.S.C. § 2253(c)(2) is somewhat different depending upon whether the district court has rejected the issue sought to be appealed on its merits or on procedural grounds.

With respect to constitutional claims rejected on their merits, this Honorable Court has applied to certificates of appealability the standard for granting certificates of probable cause set forth in *Barefoot v. Estelle*, 463 U.S. 880 (1983), and followed in the Antiterrorism and Effective Death Penalty Act (AEDPA). See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Under this standard, the appellant must make a showing that each issue he or she seeks to appeal is at least “debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.” *Barefoot*, 463 U.S. at 893 n. 4 (internal quotations omitted; bracketed insertions original) The “substantial showing” standard “does not compel a petitioner to demonstrate that he or she would prevail on the merits.” *Id.*

As to claims denied on procedural grounds (that is, where the district court has not reached the merits), this Honorable Court in *Slack* clarified that the certificate of appealability standard is somewhat different and easier to meet:

- (1) “whether jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right” (in other words, does the petition at least alleged a valid claim, even though it hasn’t been proven yet), and (2) whether “jurists of reason would find it debatable

whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 478

Here, the district court rejected nine out of the ten constitutional claims presented by Godwin’s habeas petition on the merits. (Appendix B) While simultaneously denying a COA and leave to appeal *in forma pauperis*. *Id.* Godwin appealed and subsequently applied for a COA from the United States Court of Appeals for the Eleventh Circuit. Except for an alleged *Clishy* violation, the five constitutional claims presented by Godwin’s application seeking a COA were rejected by the district court on the merits. (Appendix D)¹

The sister circuits adhere to this Honorable Court’s framework in *Slack, supra*, at 484, and agree that both of the questions presented herein should be answered in the negative. See e.g. *Rhagi v. Artuz*, 309 F.3d 103, 106 (2nd Cir. 2002) (per curiam) (to receive COA for issue denied in the district court on procedural grounds, petitioner must show that reasonable jurists would find both substantive and procedural issues debatable); *Pabon v. Mahoney*, 654 F.3d 385, 392-93 (3rd Cir. 2011) (same); *U.S. v. McDonald*, 641 F.3d 596, 607-08 (4th Cir. 2011) (same); *McGowen v. Thaler*, 675 F.3d 482, 498 (5th Cir. 2012) (same); *Webb v. U.S.*, 586 F.3d 383, 401 (6th Cir. 2009) (same); *Rodriguez v U.S.*, 286 F.3d 972, 978 (7th Cir.)(same), amended by 2002 U.S. App. LEXIS 9497(7th Cir. 2002) (same); *Jennings v. Woodard*, 290 F.3d 1006, 1010 (9th Cir. 2002) (same); *U.S. v. Saro*, 252 F.3d 449, 453 (D.C. Cir. 2001) (same).

¹ *Clishy v. Jones*, 960 F.2d 925 (11th Cir. 1992) (en banc)

Hence, it is axiomatic that where a district court denies a habeas petition (issue) on procedural grounds without reaching the underlying merits, an applicant seeking a COA of said issue(s) must show that reasonable jurists would find both substantive and procedural issues debatable. Why then was this standard applied to Godwin's application seeking a COA, where the district court rejected the underlying constitutional claims presented on the merits?

Ultimately, there is a manifest inconsistency amongst Eleventh Circuit jurisprudence executing the mandate established by this Honorable Court in *Slack, supra*. Most recently that inconsistency was illustrated in *Swain v. Florida Commission on Offender Review*. Upon rejecting *Swain's* constitutional claims on the merits, Magistrate Judge Patrick A. White, report recommended that *Swain's* habeas petition be denied. In evaluating whether a COA should issue, the magistrate stated; "To merit a COA, Petitioner must show that reasonable jurists would find debatable both: (1) the merits of the underlying claim, and (2) the procedural issues that he seeks to raise. Consequently, denying *Swain* a COA. *Swain*, 2017 U.S. Dist. Lexis 173310 (S.D. Fla., Oct. 18, 2017). Then U.S. District Judge Cecilia M. Altonaga stated; "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy 2253(c) is straightforward: The [Movant] must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed. 2d 542 (2000) (Alteration added) ... reasonable jurists can disagree regarding whether reliance on

charges for which Petitioner was acquitted – in violation of regulations governing the Commission – constitutes a violation of Petitioner’s due process rights.” Thus, issuing a COA. See *Swain*, 2018 U.S. Dist. Lexis 66089 (S.D. Fla., April 18, 2018) Thereafter, *Swain* applied for an expansion of the COA in the U.S. Court of Appeals for the Eleventh Circuit. See *Swain*, 2018 U.S. App. LEXIS 20447 (11th Cir., July 23, 2018) U.S. Circuit Judge Charles R. Wilson, stated; “...*Swain* must show that reasonable jurists would find debatable both: (1) the merits of an underlying claims; and (2) the procedural issues that he seeks to raise. See 28 U.S.C. 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S.Ct. 1595, 146 L.Ed. 2d 542 (2000). Because he has failed to make the requisite showing, *Swain*’s motion to expand his certificate of appealability is DENIED. However, *Swain* may proceed on the COA issued by the district court.” *Id.* Between the magistrate and the Eleventh Circuit Court of Appeals, it would appear that the district court judge applied the correct standard to *Swain*’s application for a COA.

Godwin respectfully submits that this Honorable Court should exercise it’s discretion, grant certiorari, and answer the questions presented in the negative quashing the decision below.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Jonathan Godwin
Jonathan Godwin
Petitioner, *pro se*

Date: September 3, 2021