

NO. 1:08-CV-1911-JTC

21-6697

ORIGINAL

Supreme Court, U.S.
FILED

NOV 03 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MELVIN WALKER — PETITIONER

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

MELVIN WALKER
55590-019

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Jonesville Virginia 24263

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

This case presents an important nationwide issue(s) concerning procedures of the District and Courts of Appeals regarding due process in Federal Rules of Civil procedure Rule 60(b) motions as well as a District Courts authority / Unquestionable authority to manage its own docket vs. the Anti-Terrorism and Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2255 (f), *Clay v. U.S.*, 537 U.S. 522, 525 (2003) Mr. Walker presents the questions that follow:

- (1) Did congress, with the enactment of 28 U.S.C. § 2255 (f), and the AEDPA, provide also that a District Court's unquestionable authority to manage its own docket would in some cases extend the statute of limitations without consideration of the provisions as prescribed?
- (2) Would a Court of Appeals violate a movant's right to Due Process if it were to decide a mixed Fed. R. Civ. Pro. Rule 60(b) motion on the merits after the government concedes and the Appellate Court agrees that the District Courts denial for lack of jurisdiction WAS in error?
- (3) Would a procedural default bar a claim of Fraud upon the court under Fed. R. Civ. P. Rule 60(b), when such collateral proceeding was the first place to challenge a conviction on such ground of the denial of effective assistance of counsel?

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:

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Clay v. U.S., 537 U.S. 522, 525 (2003)

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AEDPA (1) year statute of limitations

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OTHER

5th Amendment U.S. Constitution

14th Amendment U.S. Constitution

**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, B, E, 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

☐ 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 5, 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: October 28, 2021, and a copy of the order denying rehearing appears at Appendix E.

☐ A 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).

☐ 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

28 U.S.C. § 2255 (f) which states:

1-year period starts to run from latest date:
on which judgment of conviction becomes final;
date on which impediment to making a motion
created by government action in violation of
constitution or laws of U.S. is removed, if movant
was prevented from making by such governmental
action; date on which right initially recognized
by Supreme Court, if that right has been newly
recognized by Supreme Court and made retro-
actively applicable on collateral review; or
date on which facts supporting claim's presented
could have been discovered through due diligence

Federal Rules of Civil Procedure Rule 60 (b)

**GROUND FOR RELIEF FROM A FINAL JUDGMENT,
ORDER, or Proceeding.**

On motion and just terms, the court may
relieve a party or its legal representative from
a final judgment, order, or proceeding for the
following reasons; relevant here are;

- (2) newly discovered evidence, that with reasonable
diligence, could not have been discovered in time
to move for a new trial under Rule 59 (b);
- (3) fraud on the court;
- (4) the judgment is void;
- (6) any other reason that justifies relief.

5th Amendment U.S. Constitution: relevant part;

"Nor be deprived of life, liberty, or property,
without due process of law,"

14th Amendment U.S. Constitution: relevant part;

Nor shall any state deprive any person of life,
liberty, or property, without due process of law.

STATEMENT OF THE CASE

On May 29, 2008, Mr. Walker's 28 U.S.C. § 2255 motion to vacate, set aside or correct sentence and judgment was docketed and timely filed in the district court, seeking post conviction relief.

On September 26, 2008 the district court ordered the government to respond to the §2255 motion within thirty (30) days of entry of the order to respond.

On October 14, 2008 the government requested an extension of time to file its response, of which the court granted October 15, 2008.

On December 3, 2008, the government requested an extension of time, and on December 3, 2008, the district court denied the governments motion.

On February 4, 2009 the district court re-submitted Mr. Walker's §2255 motion upon its own initiative.

On April 18, 2009, Mr. Walker filed a pro se Motion for summary Judgment, because the government failed to respond as ordered.

On April 13, 2009, the court ordered the government to respond within thirty (30) days to Mr. Walker's §2255 motion.

On August 20, 2009 the district court denied the §2255 motion to vacate. All of Mr. Walker's appeals were either denied or dismissed.

In 2020 Mr. Walker submitted a pro se motion pursuant to Fed. Rules of Civil Pro. Rule 60(b), to the district court which was denied for lack of jurisdiction. Mr. Walker raised two claims, "Void for lack of jurisdiction" and that there was Fraud upon the court. Both claims were collateral.

The 11th circuit court of Appeals denied Mr. Walker's appeal. And thereafter upon rehearing rehearing en banc Affirmed the appellate justices decision.

REASONS FOR GRANTING THE PETITION

(1) The federal statute 28 U.S.C. § 2255 (F), was enacted without any ambiguity that allows lower courts to disregard the intentions Congress. Every court that has addressed the statute of limitation's issue with regards to pro se, or counseled late filings of motions pursuant to 28 U.S.C. § 2255, has adhered to strict compliance with the one (1) year statutory provisions as provided, and granted extensions after a litigant establishes grounds for equitable tolling of the limitation period.

In this case the 11th Circuit Court of Appeal has for the first time used the reasoning, that a "court's unquestionable authority" to manage its own docket" enables a district court to re-submit a § 2255 motion to its docket in order to provide the government with an opportunity to respond to a § 2255 motion well after the limitation period's described in § 2255 (F), and the AEDPA's provisions.

The 11th Circuit is setting a new precedent which is contrary to well established Supreme Court authority and statutory provisions. See *Clay v. United States*, 537 U.S. 522, 525 (2003).

The 11th Circuit court has not disputed the fact that the § 2255 was re-submitted, as a first § 2255 motion, and has found that the District Court effectively ruled upon Mr. Walker's FIRST § 2255 motion. Mr. Walker submits and asks that this court decide whether the re-submitted § 2255 motion was in fact and law his first § 2255 motion, or in fact and law an unauthorized second successive § 2255, submitted at the direction of the court, without regard for the statute of limitations, and without Mr. Walker's knowledge or consent. In violation of his right to Due process upon his initial timely filed § 2255 motion which was not responded to by the government.

(2) The government conceded, and the 11th Circuit court of Appeals agreed that Mr. Walker's Fed. R. Civ. P. Rule 60(b) motion, was properly before the District court for a merits determination. However the 11th circuit decided the merits of the Rule 60(b) motion which was directed at the §2255 proceeding.

If it is true that the district court must reach the merits of a §2255 motion, then it must also rule upon a Rule 60(b) motion which is properly filed, where the court has jurisdiction of the 60(b) motion already established by the court of Appeals. As it appears, the 11th Circuit circumvented the process by which Mr. Walker's claims could and should have been dealt with, by the district court. Mr. Walker's claim was that the District court did not rule upon his first timely filed §2255 motion. But rule on a unauthorized second successive §2255, submitted (re-submitted), by the court in direct violation of the (1) year statute of limitation.

Mr. Walker asked the 11th Circuit to decide the issue en banc, And it refused. And now Mr. Walker asked that the U.S. Supreme court decide whether or not Mr. Walker was denied due process upon his Rule 60(b) motion, where it was established that its decision in denying the Rule 60(b) motion for lack of jurisdiction was in error, and the 60(b) motion posed mixed grounds for relief. Should this court allow a new precedent in deciding Rule 60(b) motions with alleged mixed grounds for relief to be established by the 11th Circuit, where if the district courts jurisdiction has been agreed to exist, should be remanded. A decision would keep uniformity within the circuits regarding resolution of 60(b) motions by the district court where jurisdiction exists.

(3) Mr. Walker alleged Fraud upon the court in a collateral proceeding for the first time, where he challenged the courts authority to replace his CSA appointed Attorneys with two untrained and unskilled attorneys without notice to him or any opportunity to respond to contest the removal. Mr. Walker discovered the Fraud through diligence and is procedurally defaulted from raising the issue in any other forum. The 11th Circuit de novo review of the merits of the claim on appeal from the district courts finding that it lacked Jurisdiction of a Rule 60 (b) motion, violated Mr. Walker's right to due process, where the district court has broader discretion in ruling upon such matters.

The district court did not find that it lacked jurisdiction over the fraud claim, but that it lacked jurisdiction over the Rule 60 (b) motion and denied it. Had the district court ruled (where it did have jurisdiction) of the rule 60 (b) motion, the court could have allowed Mr. Walker to withdraw the Fraud ground or dismiss the ground without prejudice, for his right to seek permission to file a successive §2255 motion. Also in the interest of justice, the district court could have reach the merits of the Fraud claim raised for the first time in a collateral proceeding.

Mr. Walker was not provided with any opportunity to respond to nor defend the district courts rule or the court of Appeals, consistent with due process. This court must decide whether or not the courts below provided Mr. Walker with proper procedure due process which is important in being consistent with other Circuits.

CONCLUSION

Mr. Walker respectfully pleads that this court grant petition for a writ of certiorari and permit briefing and argument on the issues within. The petition for a writ of certiorari should be granted.

Respectfully Submitted

Melvin D. Walker

Date: November 3, 2021