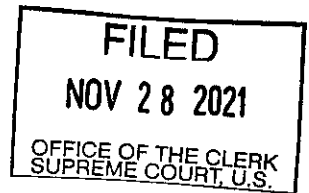


21-7099
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Edwin Disla — PETITIONER
(Your Name)

vs.

United States Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Edwin Disla # 31120-069

(Your Name)

Federal Correctional Complex - LOW
P.O. Box 1031

(Address)

Coleman, FL 33521

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- I. Whether a Rule 60(b)(3) MOTION for Fraud on the Court overcomes a Second and Successive Ruling Pursuant to the dictates of Supreme Court Precedent set forth in *Gonzalez v. Crosby*, 545 U.S. 524, 538 (2003), as well as a Circuit Court's own precedent set forth in *Gonzalez v. Sec'y for the Dept. of Corrections*, 366 F.3d 1253, 1262, 1278 (11th Cir. 2004)

and if so,

Should the cause be remanded back to the Lower Court's so that the Precedents be properly applied to the review of the Rule 60(b)(3) MOTION alleging Fraud on the Court during the § 2255 proceedings.

- II. Whether the Eleventh Circuit is bound to apply its own precedent of *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978), to the review of a denial of a Rule 60(b)(3) motion from the District Court.

and if so,

Whether the Supreme Court has the inherent power to do a Summary remand back to the lower Court so it may apply the *Rozier* Precedent in determining the merits of the Rule 60(b)(3) MOTION.

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

CRIMINAL CASE No. 07-CR-60096-ZLoch (S.D.FL)

Civil Case No. (§2255) 10-61569-KMW (S.D.FL)

1st Request for COA on Rule 60(b)(3); 19-13479-D 11th Circuit

2nd Request for COA on Rule 60(b)(3); 20-12535-J 11th Circuit

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Gonzalez v. Sec'y the Dept. of Corrs., 366 F.3d 1253, 1262, 1278 (11 th 2004)	6
UNITED STATES V. BUENO-SIERRA, 723 Fed. Appx. 850 (11 th 2018)	6
ROZIER V. FORD MOTOR Co., 573 F.2d 1332, 1338 (5 th Cir. 1978)	

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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 No. 20-12535-J; 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 No. 20-12535-J; 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 2/19/2021.

☐ 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: 7/06/2021, and a copy of the order denying rehearing appears at Appendix B.

☐ 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).

☐ 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

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Rule 60. Relief from a Judgment or Order.

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds 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:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (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 (whether previously called intrinsic or extrinsic), misrepresentations, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, release, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

STATEMENT OF THE CASE

Petitioner, Edwin Disla, proceeded to trial in Januray 2008. Petitioner was sentenced on or about April 2008. Petitioner filed an Appeal from the conviction and sentence to the United States Court of Appeals for the Eleventh Circuit, affirmed. United States v. Disla, 358 Fed. Appx. 121 (11th Cir. 2009), cert. denied, 130 S.Ct. 2419 (2010). In 2010, Petitioner submitted a 28 U.S.C. 2255.

In his 2255 Motion, the Petitioner had Police/Prosecutor Mis-Conduct grounds. Petitioner set forth that the Government had committed Brady & Giglio, Due Process violations, withheld evidence. Petitioner requested Discovery under Rule 6, to further develop the Government Misconduct allegations. The Government responded that they had not committed any Brady or Giglio violations, that the Petitioner's claims were "palpably incredible". The Court denied the 2255 motion without further review and did not allow for discovery on the government misconduct grounds. 2255 motion denied on July 6, 2011. Request for COA denied on or about Nov 29, 2011. United States v. Disla, No. 11-13294-B (11th Cir.). The request for Rehearing deied Feb. 23, 2012.

Request for Writ of Certiorari denied on the issue. Petitioner then filed a Freedom of Information (FOIA) Request for Responsive documents to the Government. That FOIA request produced responsive documents which proved the Government Misconduct, Brady & Giglio Due Process violations which the Government stated during the 2255 proceedings were not committed and "palpably incredible". The Petitioner the proceeded to seek relief and filed a Rule 60(b)(3) Motion in the District Court, for Fraud on the Court by the Government, during the initial 2255 Proceedings. Petitioner submitted the FOIA

evidence as exhibits in the Rule 60(b)(3) Motion. The FOIA evidence established that the Government fabricated evidence and committed perjury during trial, then compounded the misconduct during the §2255 proceedings, where they denied the misconduct. The Rule 60(b)(3) was denied by the District Court as Second and Successive. The Court asserted that the Rule 60(b)(3) was the same as a Rule 60(b)(6) which the Petitioner had filed years prior, thus the Rule 60(b)(3) was Second and Successive.

The Court asserted that the Rule 60(b)(3) for Fraud on the Court, New Evidence, Brady & Giglio Violations found through a FOIA Request, was the same as a Rule 60(b)(6) filed years prior for Ineffective Assistance of Appellate Counsel, where Appellate Counsel had failed to put forth the denial of the Entrapment Defense at trial on Direct Appeal review.

The Eleventh Circuit denied a Request for COA on the issue. It affirmed that a Rule 60(b)(3) for Fraud on the Court, New Evidence obtained through FOIA Request was the same as a Rule 60(b)(6) for Ineffective Appellate Counsel, Entrapment Defense.

REASONS FOR GRANTING THE PETITION

I. The District Court and Circuit Court denied the Petitioner's Rule 60(b)(3) motion without applying the Precedent set forth in the Supreme Court Case *Gonzalez v. Crosby*, 545 U.S. 524, 538 (2003), as well as its own circuit precedent *Gonzalez v. Sec'y the Dept. of Corr.*, 366 F.3d 1253, 1262, 1278 (11th Cir. 2004) (holding that a Rule 60(b)(3) motion alleging Fraud on the Court, which led to the denial of a § 2255 motion, should not be treated as a second or successive 2255); Also *UNITED STATES v. BUENO-SIERRA*, 723 Fed. Appx. 850 (11th Cir. 2018) (citing *Gonzalez*, *id.* explaining that this holding applied equally to federal prisoner's § 2255 motion).

The Lower Courts denied the Rule 60(b)(3) without following the precedents. The Rule 60(b)(3) had FOIA Exhibits as evidence, setting forth Fraud on the Court by the Government, where the FOIA documents established that the Government fabricated evidence and committed perjury during trial, violating *Brady & Giglio*. The Lower Courts violated *Gonzalez v. Crosby* and *Gonzalez v. Sec'y of Dept. of Corrs.* Precedents, *id.* where they determined that the Petitioner's Rule 60(b)(3) Motion was Second and Successive.

The Petitioner's claim fit squarely within the *Gonzalez* precedents, specifically establishing that a Rule 60(b)(3) which alleges Fraud upon the Court, during a § 2255 Proceeding, should NOT be ruled as Second and Successive. The Supreme Court can order a Summary remand so that the Lower Courts may properly apply the *Gonzalez* precedents in this cause. The case should be remanded for judicial economy, to prevent clear error and manifest injustice.

II. The District Court denied Petitioner's Rule 60(b)(3) motion without applying the two (2) prong Rozier standard before denying the Petitioner's Rule 60(b)(3) motion. The District Court never determined if, one (1) the adverse party engaged in fraud or misconduct, and two (2), that the misconduct prevented the moving party from fully and fairly presenting his case. The District Court issued a blanket denial with no substantive comment. It never applied the Rozier Standard before making its final determination.

The Supreme Court would serve justice by issuing a Summary Remand so the Lower Courts may apply the precedents. The evidence shows that the Government violated due process, fabricated evidence, and committed perjury. Each day which passes without holding the Government to account, will embolden and enable them to continue further misconduct. The same Zeal applied to pursue Justice against defendants alleged to have broken laws, should be also applied to hold Government officers to account for constitutional violations.

CONCLUSION

Wherefore, for the foregoing reasons, the Petitioner
Submits that justice would be served by this Court
Granting the Requested relief herein.

Respectfully Submitted,

/s/ EDWIN DISLA

EDWIN DISLA #31120-069
FEDERAL CORRECTIONAL Complex - LOW
P.O. BOX 1031
Coleman, FL 33521

*** MAIL BOX RULE ***

I swear under the penalty of perjury that I have
Placed this Petition for Writ of Certiorari in the institutional
mailbox for mailing to the U.S. Supreme Court in Washington,
D.C. ON this 03rd day of FEBRUARY 2022. IN Coleman,
FLORIDA 33521.

/s/ EDWIN DISLA

EDWIN DISLA