

21-7164
In the Supreme Court of the United States
Docket No.

CHARLES PYNE,

Petitioner,

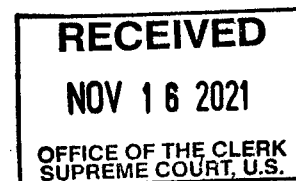
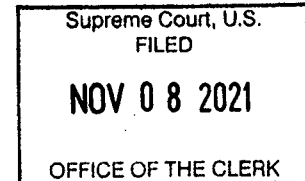
v.

UNITED STATES ,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

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QUESTIONS PRESENTED

1. Whether a certificate of appealability should issue where there is a conflict in the Circuits concerning the ability to employ Fed.R.Civ.P. 60(b) by a petitioner in a 2255 proceeding.

2. Whether Fed.Civ.P. 60(b) may be employed to review defects in subject matter jurisdiction.

3. Whether core judicial powers may be delegated to the unreviewable determination of a magistrate judge.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

LIST OF CASES

1. U.S. v. Pyne 175 Fed.Appx. 639 , 4th Cir.(Md.) , Apr. 25, 2006

Certiorari Denied by

2. Pyne v. U.S. 549 U.S. 915 , U.S. , Oct. 02, 2006

Post-Conviction Relief Denied by

3. Pyne v. U.S. 2007 WL 2556968 , D.Md. , Aug. 30, 2007

Appeal Dismissed by

4. U.S. v. Pyne 281 Fed.Appx. 197 , 4th Cir.(Md.) , June 13, 2008

Certiorari Denied by

5. Pyne v. U.S. 555 U.S. 1119 , U.S. , Jan. 12, 2009

Motion for Relief from Judgment Denied by

6. Pyne v. United States 2009 WL 10670881 , D.Md. , July 22, 2009

Post-Conviction Relief Dismissed by

7. Pyne v. U.S. 2009 WL 2213466 , D.Md. , July 22, 2009

Appeal Dismissed by

8. U.S. v. Pyne 354 Fed.Appx. 765 , 4th Cir.(Md.) , Dec. 04, 2009

Certiorari Denied by

9. Pyne v. U.S. 559 U.S. 984 , U.S. , Mar. 01, 2010

Post-Conviction Relief Denied by

10. Pyne v. United States 2012 WL 12551919 , D.Md. , July 05, 2012

11. Pyne v. United States 2016 WL 1377402 , D.Md. , Apr. 07, 2016

Reconsideration Denied by

12. United States v. Pyne 2016 WL 11477388 , D.Md. , Nov. 15, 2016

Appeal Dismissed by

13. United States v. Pyne 686 Fed.Appx. 157 , 4th Cir.(Md.) , Apr. 24, 2017

TABLE OF CONTENTS

QUESTIONS PRESENTED	<u>i</u>
LIST OF PARTIES	<u>i</u>
LIST OF CASES	<u>i</u>
TABLE OF AUTHORITIES	<u>v</u>
OPINIONS BELOW	<u>1</u>
JURISDICTION.....	<u>1</u>
STATUTORY PROVISIONS INVOLVED.....	<u>2</u>
STATEMENT OF THE CASE	<u>4</u>
REASONS FOR GRANTING THE WRIT	<u>6</u>
A. The Decisions Below Are in Conflict with Gonzalez v. Crosby, 545 U.S. 524, (2005)	<u>6</u>
B. Conflict Over Whether Relief May Be Obtained Under Rule 60(b) for Lack of Subject Matter Jurisdiction	<u>7</u>
C. Core Judicial Powers May Not Be Delegated to the Unreviewable Determination of a Magistrate Judge	<u>7</u>
CONCLUSION	<u>9</u>
CERTIFICATE OF SERVICE.....	<u>10</u>

TABLE OF AUTHORITIES

FEDERAL CASES

Buck v. Davis, 137 S. Ct. 759, 197 L. Ed. 2d 1 (2017)	<u>6</u>
Gonzalez v. Crosby, 545 U.S. 524 (2005)	<u>6, 7</u>
McDonough v. Smith, 139 S.Ct. 2149, 204 L.Ed.2d 506 (2019).....	<u>9</u>
Marshall v. Bd. of Educ., 575 F.2d 417 (3d Cir.1978)	<u>7</u>
N.L.R.B. v. A-Plus Roofing, Inc., 39 F.3d 1410 (9th Cir.1994)	<u>8</u>
Phelps v. Alameida, 569 F.3d 1120 (9th Cir. 2009)	<u>6</u>
Richardson v. Thomas, 930 F.3d 587 (4th Cir. 2019), cert. denied, 140 S. Ct. 2522, 206 L. Ed. 2d 471 (2020)	<u>6</u>
Retirement Plans Comm. of IBM v. Jander, 140 S.Ct. 592, 205 L.Ed.2d 432 (2020)	<u>8</u>
Satterfield v. Dist. Att’y Philadelphia, 872 F.3d 152.....	<u>6</u>
Tamayo v. Stephens, 740 F.3d 986 (5th Cir. 2014)	<u>6</u>
United States v. Lang, 836 F. App’x 823 (11th Cir. 2020).....	<u>8</u>

FEDERAL STATUTES

18 U.S.C. § 3006A	<u>2</u>
28 U.S.C. § 636.....	<u>2, 8</u>
28 U.S.C. § 2255.....	<u>4, 5, 8</u>
Fed.R.Civ.P. 60(b)	<u>1, 3, 5, 7</u>

MISCELLANEOUS

11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 2862 (2d ed.1995)	6
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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

The Opinion of the United States Court of Appeals for the Fourth Circuit is reported as not for publication at 848 F. App'x 606. It is contained in the Appendix Appendix at A2.

The Opinions of the United States District Court for the District of Maryland may be found at 2021 WL 593994 and in the Appendix at A4.

JURISDICTION

The Court of Appeals issued its decision on May 28, 2021. A timely petition for rehearing and rehearing en banc was denied on August 17, 2021. A copy of the order denying rehearing and rehearing en banc may be found in the Appendix at A1.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 636:

(a) Each United States magistrate judge serving under this chapter shall have within the district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law—

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

* * *

(b) (1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial [1] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

18 U.S.C. § 3006A:

(c) Duration and Substitution of Appointments.—

A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial

appearance before the United States magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate judge or the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate judge or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate judge or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

Fed.R.Civ.P. 60(b)(4):

(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:

(4) the judgment is void;

STATEMENT OF THE CASE

Petitioner was convicted conspiracy to distribute and possess with intent to distribute more than one kilogram of heroin and possession with intent to distribute approximately 223.4 grams of heroin. He was sentenced to a 144-month term of imprisonment. His conviction and sentence were affirmed on appeal. See *United States v. Pyne*, 175 F. App'x 639 (4th Cir.), cert. denied, 549 U.S. 915 (2006).

In a timely 28 U.S.C. § 2255 motion, he alleged (1) that his trial counsel rendered ineffective assistance of counsel when he failed to appeal the August 16, 2004 decision of the Magistrate Judge denying Petitioner replacement counsel; (2) that his trial counsel rendered ineffective assistance of counsel in failing to object to the trial court's alleged abuse of discretion in not recusing itself from presiding over the entire trial; and (3) that his appellate counsel rendered ineffective assistance of counsel when he failed to advance or present as an issue on appeal trial counsel's ineffective assistance of counsel.

The motion was denied on August 30, 2007. *Pyne v. United States*, 2007 WL 2556968 (D.Md.). The United States Court of Appeals for the Fourth Circuit denied a Certificate of Appealability on June 13, 2008.

United States. v. Pyne, 281 Fed.Appx. 197 (4th Cir. 2008).

In this proceeding, Petitioner made application, pursuant to Fed.R.Civ.P. 60(b) to set aside the August 31, 2007 order denying his 28 U.S.C. Section 2255 motion. The district court denied the motion and the Court of Appeals for the Fourth Circuit denied a certificate of appealability, concluding that the current application was a successive petition which required pre-filing authorization.

REASONS FOR GRANTING THE WRIT

A. The Decisions Below Are in Conflict with *Gonzalez v. Crosby*, 545 U.S. 524, (2005)

The determinations below are in conflict with *Gonzalez v. Crosby*, 545 U.S. 524 (2005) and decisions of other Circuits. In that case, this Court held that where, as here, the Petitioner's Rule 60(b) motion challenged only the District Court's previous ruling on an issue, it is not the equivalent of a successive habeas petition and can be ruled upon by the District Court without precertification by the Court of Appeals. See also *Buck v. Davis*, 137 S. Ct. 759, 777, 197 L. Ed. 2d 1 (2017); *Phelps v. Alameida*, 569 F.3d 1120, 1128 (9th Cir. 2009) (only "Rule 60(b) motions raising new factual issues and new evidence and seeking to relitigate issues that had already been decided on the merits" should be barred by the successive-petition rule).

As noted by the United States Court of Appeals for the Third Circuit, the decisions in the Circuits are very much in disarray on the subject. See *Satterfield v. Dist. Att'y Philadelphia*, 872 F.3d 152, 161 n. 9 (3d Cir. 2017) (rejecting, *inter alia*, *Tamayo v. Stephens*, 740 F.3d 986, 990 (5th Cir. 2014)). The Fourth Circuit is in conflict with the Third. See *Richardson v. Thomas*, 930 F.3d 587, 594 (4th Cir. 2019), cert. denied, 140 S. Ct. 2522, 206 L. Ed. 2d 471 (2020).

B. Conflict Over Whether Relief May Be Obtained Under Rule 60(b) for Lack of Subject Matter Jurisdiction.

Rule 60(b) provides that “[o]n motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons: ... (4) the judgment is void....” Fed.R.Civ.P. 60(b)(4). A judgment entered by a court that lacks subject matter jurisdiction is void. See *Gonzalez v. Crosby*, 545 U.S. at 534 (“Rule [60(b)] preserves parties’ opportunity to obtain vacatur of a judgment that is void for lack of subject-matter jurisdiction....”); *Marshall v. Bd. of Educ.*, 575 F.2d 417, 422 (3d Cir.1978) (“A judgment may indeed be void, and therefore subject to relief under [Rule] 60(b)(4), if the court that rendered it lacked jurisdiction of the subject matter....”); 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2862 (2d ed.1995) (reporting that, under Rule 60(b)(4), a judgment is void “if the court that rendered it lacked jurisdiction of the subject matter”).

Consequently, the issues raised by Petitioner were properly raised in the context of a Rule 60(b) motion and should have been considered by the Fourth Circuit.

C. Core Judicial Powers May Not Be Delegated to the Unreviewable Determination of a Magistrate Judge

The precise question here, whether a magistrate judge has unreviewable

discretion to promptly and adequately consider motions to substitute counsel is an open one. See *United States v. Lang*, 836 F. App'x 823 (11th Cir. 2020) (declining to resolve issue because not properly raised before district court).

Be that as it may, magistrate judges are not Article III judges; they are simply "creatures of statute, and so is their jurisdiction. We cannot augment it...." *N.L.R.B. v. A-Plus Roofing, Inc.*, 39 F.3d 1410, 1415 (9th Cir.1994). That jurisdiction is both set forth and limited in § 636 of Title 28 U.S.C. Section 636(e).

In this case, Petitioner contends that, in denying his request for replacement counsel in the 2255 application, the Magistrate Judge exceeded the authority granted to federal magistrate judges in 28 U.S.C. § 636(b)(1)(A) and (B). By issuing the denial without final authority, the Magistrate Judge engaged in a rare usurpation of the district court's jurisdiction. Because of the pretrial jurisdictional errors, the trial judge lacked subject matter jurisdiction over the 2006/2007 section 2255 proceedings and accordingly, the court's order denying his § 2255 petition should be voided.

Because the Court of Appeals did not pass on the issue, in accordance with this Court's standard practice, upon reversal, the Court of Appeals should have an opportunity to decide the issue in the first instance. See *Retirement Plans Comm. of IBM v. Jander*, 140 S.Ct. 592, 595, 205 L.Ed.2d

432 (2020) (per curiam); *McDonough v. Smith*, 139 S.Ct. 2149, 2156, n.3, 204 L.Ed.2d 506 (2019).

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment vacated, and the matter remanded to the Fourth Circuit for further proceedings.

Dated: November 3, 2021

/s/ CHARLES PYNE

Charles K. Pyne