

NOV 19 2021

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No. 21-7269

IN THE
SUPREME COURT OF THE UNITED STATES

Bartholomew Antonio Guzman — PETITIONER
(Your Name)

VS.

BOBBY LUMPKIN, Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bartholomew Antonio Guzman
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ORIGINAL

QUESTION(S) PRESENTED

QUESTION No. 1: Whether this Court's decision in *Buck v. Davis*, 137 S.Ct. 759 (2017) foreclosed the Petitioner's argument that a COA is not required to appeal the denial of a Rule 60(b) Motion that called into question a defect in the integrity of a federal habeas proceeding and not the complaint of detention that arose of the process issued by the State court?

QUESTION No. 2: Did the Panel of the Court of Appeals for the Fifth Circuit err by deciding the merits of an appeal not properly before the court to justify the denial of a Certificate of Appealability?

QUESTION No. 3: Whether a criminal defendant is deprived of his constitutional rights to Due Process under the 14TH Amendment to the United States Constitution when a federal tribunal fails to consider and address a habeas petitioner's claim as presented and argued?

QUESTION No. 4: Can a federal court acquire jurisdiction over a federal habeas corpus proceeding under Title 28 U.S.C., Section 2254 and adjudicate the merits of the habeas claims while those claims are still being considered and pending in the State habeas court.

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: Ken Paxton, Attorney General, State of Texas, P.O. Box 12548, Austin, Texas. 78711-2548

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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 is unpublished.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 on which the United States Court of Appeals decided my case was June 01, 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: June 28, 2021, and a copy of the order denying rehearing appears at Appendix D.

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

United States Constitution 14TH Amendment; Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges 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 the laws.

Federal Rules of Civil Procedure, Rule 60(b): On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons; (4) the judgment is void; (6) any other reason justifying relief from the operation of the judgment.

Title 28 United States Code Annotated, Section 2253(c)(1)(A): Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from; the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court.

Title 28 United States Code Annotated, Section 2254(a): The Supreme Court, a Justice thereon, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the grounds that he is in custody in violation of the Constitution or laws or treaties of the United States.

STATEMENT OF THE CASE

The underlying proceedings stem from a federal habeas proceeding before the United States District Court for the Southern District of Texas, Houston Division under Title 28 U.S.C., Section 2254 et seq. in No. #H-17-0596, Styled: Bartholomew Antonio Guzman v. Lorie Davis, Director, Texas Department of Criminal Justice-Correctional Institutions Division.

On February 14, 2018 the district court granted the Respondent's Motion for Summary Judgment and dismissed the underlying federal habeas petition. The United States Court of Appeals for the Fifth Circuit denied the Petitioner's Application for A Certificate of Appealability on October 23, 2019 in No. #18-20162, Styled: Bartholomew Antonio Guzman v. Lorie Davis, Director, Texas Department of Criminal Justice-Correctional Institutions Division.

The Petitioner subsequently filed a Motion pursuant to Rule 60(b)(4) and (6) of the Federal Rules of Civil Procedure specifically and concisely arguing that the district court did not have the authority or jurisdiction to entertain and enter a Judgment dismissing the petition in the underlying proceedings because the claims adjudicated by the district court were still pending before the State habeas court and had not been adjudicated on the merits by the State habeas court. The Petitioner argued that since the State habeas court had not issued mandate with respect to the State habeas proceedings there had not been a final resolution of the habeas proceedings before the State court and the case was still pending before that court within the meaning of Title 28 U.S.C., Section 2244(d)(2). On February 20, 2020 the district

court entered an Order denying the Petitioner's motion under Rule 60(b) of the Federal Rules of Civil Procedure. (Appendix B).

As basis for the denial, the district court misconstrued the Petitioner's argument to be that the Judgment in this case was void because the underlying federal habeas petition contained both exhausted and unexhausted claims and should have been dismissed without prejudice. The district court furthered that the Petitioner did not demonstrate that the judgment is void for any deficiency in this court's jurisdiction and did not otherwise show that Rule 60(b)(4) or (6) applies. (Appendix B).

The Petitioner followed the district court's determination with a Motion under Rule 59(e) of the Federal Rules of Civil Procedure arguing that the district court erred by misconstruing the claim, and that it had misapplied the law in relation to the facts regarding whether it had jurisdiction, notwithstanding that it fail to consider and address the claim as to whether or not it had jurisdiction over the claims to adjudicate them while they were still pending and had not been adjudicated on the merits by the State habeas court. The Petitioner furthered, that there was an important federal question to be decided because if the claims had not been adjudicated on the merits by the State court, then the district court's assessment of the Petitioner's constitutional claims under Title 28 U.S.C., Section 2254(d)(1) and (2) was erroneous because the rigorous standard of review would have been inapplicable to claims not adjudicated on the merits in the State court proceedings. On March 05, 2020 the

district court denied the motion. (Appendix C).

The Petitioner gave a timely notice of appeal to the United States Court of Appeals for the Fifth Circuit and timely filed an Application for A Certificate of Appealability in No. #20-20172, Styled: Bartholomew Antonio Guzman v. Bobby Lumpkin, Director, Texas Department of Criminal Justice-Correctional Institutions Division.

Before the court of appeals, the Petitioner argued that the district court erred in it's determination that he did not demonstrate that the judgment is void for any deficiency in that court's jurisdiction and did not otherwise show that Rule 60(b)(4) or (6) applied, and that reasonable jurists would find the district court's assessment of the matter wrong or debatable because the record unequivocally showed that the constitutional claims that were adjudicated on the merits by the district court were pending and had not reached final resolution by the State habeas court because mandate had not issued in accordance with State law upon the State habeas proceedings. Thus, the district court did not have the authority or jurisdiction to adjudicate the claims. The Petitioner further advanced that a COA was not required in order to appeal from the decision of the district court.

On June 01, 2021 the court of appeals by and through Andrew S. Oldham, Circuit Judge entered an Order denying the Petitioner's Application for A Certificate of Appealability. (Appendix A).

Notwithstanding the Petitioner's argument before the court of appeals that the district court erred when it misconstrued the claim, the court of appeals held that where the district

denies relief under Rule 60(b), the COA question is whether a reasonable jurist could conclude that the district court abused its discretion in declining to reopen the judgment. Citing, *Buck v. Davis* 137 S.Ct. 759, 777 (2017). The court of appeals simply stated that the Petitioner could not make the requisite showing. Buck forecloses his argument that a COA is not required to appeal the denial of a Rule 60(b) motion, and the Petitioner was incorrect that the district court lacked jurisdiction to deny his claims on the merits before he exhausted them in State court. Citing, Title 28 U.S.C., Section 2254(b)(2) as allowing this result. (Appendix A).

The Petitioner sought a Panel Rehearing arguing that the Circuit Judge erred by failing to issue a COA, because the issue as presented was not considered and addressed as presented when the district court misconstrued the claim, and the matter at hand was not whether the claims had been exhausted, but whether the district court had jurisdiction to adjudicate the claims while they were still pending and before the State habeas corpus. On June 28, 2021 the Panel of the court of appeals denied the Petitioner's Motion for Panel Rehearing. (Appendix D).

REASONS FOR GRANTING THE PETITION

Given the prospective of this Court's authority and jurisdiction over this case, Title 28 U.S.C., Section 2253(c)(1)(A) provides that "unless a circuit justice or judge issues a certificate of appealability (COA), an appeal may not be taken to the court of appeals from; the final order in a habeas proceeding in which the detention complained of arises out of process issued by a State court." Thus, the Petitioner has not only the right to have this Court review the denial of a COA by the court of appeals, but has also a statutory right to seek a COA for the purpose of appeal from this Court or the Circuit Justice for the United States Court of Appeals for the Fifth Circuit. Cf., *Hohn v. United States*, 118 S.Ct. 1969 (1998); the United States Supreme Court has jurisdiction to review the denial of a COA by a court of appeals.

Therefore, under the avenue of Section 2253(c)(1)(A) the Petitioner is not subject to the stringent requirements of Rule 10 of the Supreme Court Rules indicating the character of the reasons the Court considers in granting a writ of certiorari, as a petition for a writ of certiorari will be granted only for compelling reasons under the indicated character of the reasons this Court considers under Rule 10 of the Supreme Court Rules, although not controlling, in the granting of a petition for a writ of certiorari.

This petition is tendered to this Court under three (3) aspects, (1) as an application to the Court or the Circuit Justice for the United States Court of Appeals for the Fifth Circuit for the

issuance of a COA to appeal the decision of the district court; (2) as a petition to determine whether the court of appeals should have issued a COA in this case to appeal the decision of the district court; and (3) as a petition for a writ of certiorari under the character of reasons indicated under Rule 10 of the Supreme Court Rules that this Court considers in granting a writ of certiorari.

QUESTION No. 1

Whether this Court's decision in *Buck v. Davis*, 137 S.Ct. 759 (2017) foreclosed the Petitioner's argument that a COA is not required to appeal the denial of a Rule 60(b) Motion that called into question a defect in the integrity of a federal habeas proceeding and not the complaint of detention that arose of the process issued by the State court?

In its decision the Fifth Circuit did not hold that this Court's decision in *Buck* overruled Fifth Circuit precedent holding that a COA is not required to appeal the denial of a Rule 60(b) motion based on equitable claims. See., *Fierro v. Johnson*, 197 F.3d 147 (5th Cir. 1999). The appeal from the denial of a Rule 60(b) motion brings up only the denial of the motion for review, and not the merits of the underlying judgment. See., *Floyd v. Lows*, 929 F.2d 1390 (9th Cir. 1991). In its decision the Fifth Circuit merely held that *Buck* foreclosed the Petitioner's argument that a COA is not required to appeal the denial of a Rule 60(b) motion. (Appendix A; p. 2). The Fifth Circuit did not address whether the Petitioner's Rule 60(b) motion was based on equitable claims, and clearly the decision of the Fifth Circuit to hold that *Buck* overruled the Petitioner's argument is contrary to the decision established in *Fierro*.

It is the thrust of the Petitioner's argument that the facts and circumstances that resulted in this Court's decision in Buck is distinguishable from the facts and circumstances in this case. In *Buck* this Court held that it was error to deny a prisoner a COA to pursue his 6TH Amendment claims on appeal where he demonstrated ineffective assistance when his attorney called an expert who testified about a connection between his race and the likelihood of violence, and that error entitled him to relief under Rule 60(b)(6) of the Federal Rules of Civil Procedure. Thus, this Court's decision in Buck was based upon a "merit issue," and not some defect in the integrity of the federal habeas proceeding. Cf., *Gonzales v. Crosby*, 125 S.Ct. 2641 (2005); when the Rule 60(b) motion attacks some defect in the integrity of the federal habeas proceedings, and not a merit issue, it is not an impermissible successive motion. Given that the decision of a district court to grant or deny a Rule 60(b) motion is a discretionary function of the judiciary, upon a merit based motion a COA would be required to appeal the determination of the district court even in view of any argument advanced that the motion should be considered a successive federal habeas petition.

The Petitioner is mindful that nowhere in the Buck decision did this Court explicitly hold that a COA was required to appeal from a decision of a district court denying a Rule 60(b) motion, however, it is evident that a COA is required when the Rule 60(b) motion is merit based. This would be in accordance with Section 2253(c)(1)(A) when the Rule 60(b) motion is merit based, as the underlying decision upon a merit based Rule 60(b) motion would

clearly represent and entail the final order in a habeas corpus proceeding in which the detention complained of arose out of process issued by a State court. In this case, the district court's Order is not based upon the detention that arose out of process issued by the Court because the Rule 60(b) motion was not merit based. Thus, it is the Petitioner's argument that Buck as used by the Fifth Circuit does not foreclose and did not foreclose the Petitioner's argument that a COA was not required to appeal the decision of the district court denying his Rule 60(b) motion because it was not merit based.

As stated under Rule 10 of the Supreme Court Rules, that a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law, the Petitioner states that the granting of a petition for a writ of certiorari is warranted under Rule 10(c) of the Supreme Court Rules because the Fifth Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with this Court's decision in Buck.

This Court should settle whether a COA is required to appeal from any and all Rule 60(b) motions, or whether a COA is only required to appeal from the denial of a Rule 60(b) motion by the district court only when the motion is merit based for the purpose of Section 2253(c)(1)(A).

For the sake of the Petitioner's argument, this Court should

grant review to determine whether the Fifth Circuit was correct in its determination that Buck foreclosed the Petitioner's argument that a COA was not required to appeal from the decision of the district court's denial of his Rule 60(b) motion that was not merit based.

QUESTION No. 2

Did the Panel of the Court of Appeals for the Fifth Circuit err by deciding the merits of an appeal not properly before the court to justify the denial of a Certificate of Appealability? (COA)?

The Petitioner argues that the Panel of the court of appeals improperly sidestepped the COA process by denying a COA based on its view of the merits.

In reviewing the facts and circumstances of the Petitioner's case, the panel of the Fifth Circuit "paid lip service" to the principles of law that is suppose to guide the court in the determination of the issuance of a COA. *Tennard v. Dretke*, 542 U.S. 274 (2004), but in actuality the panel held the Petitioner to a far more stringent standard. Specifically, the panel sidestepped the threshold COA process by first deciding the merits of the Petitioner's appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, thereby in essence deciding an appeal without jurisdiction. *Miller-El v. Cockrell*, 123 S.Ct.31029 (2003).

This Court held in *Miller-El* that the threshold nature of a COA inquiry would mean very little of appellate review were denied because the petitioner did not convince a judge, or, ofr that matter, three judges, that he or she would prevail. In the Petitioner's case, however, that is exactly what the panel did. The Petitioner filed an application in the Fifth Circuit seeking the issuance

of a COA, so that he could appeal the district court's determination upon the misconstruction of the claim that in essences it had jurisdiction over the case. The panel specifically held that the district court had jurisdiction over the case relying on and citing Section 2254(b)(2) of Title 28 U.S.C., in the misconstruction of the Petitioner's claim. (Appendix A; p. 2). Although, the panel stated that the standard of review from the district court's denial of the Rule 60(b) motion was for abuse of discretion, the standard was not applied in the determination of whether to grant or deny the COA. Thus, the panel concluded that the Petitioner should be denied a COA because the appeal was obviously meritless. The panel impremissibly sidestepped the COA inquiry in this manner by denying relief because the subsequent appeal would be meritless. The panel could not possibly resolved the merits of the appeal based solely on a application seeking a COA. Moreover, without the issuance of a COA and the district court's record before the panel, the panel was without jurisdiction to determine the merits of the appeal, which it did when it held that the district court had jurisdiction over the case.

The Petitioner argues that review should be granted under Rule 10(a) of the Supreme Court Rules because the court of appeals has so far departed from the accepted and usual course of judicial proceedings; and as to call for an exercise of this Court's supervisory authority and power, because the court of appeals exceeded the scope of a COA requirement under this Court's decision in *Miller-El*, and *Slack v. McDaniel*, 120 S.Ct. 1595 (2002).

For the sake of the Petitioner's argument, this Court should grant review to determine whether the court of appeals had jurisdiction to determine whether the district court had jurisdiction a matter and issue that was the substance of an appeal to the court of appeals without first issuing a COA and allowing additional briefing on the issue.

QUESTION No. 3

Whether a criminal defendant is deprived of his constitutional rights to Due Process under the 14TH Amendment to the United States Constitution when a federal tribunal fails to consider and address a habeas petitioner's claim as presented and argued?

It is the Petitioner's argument that he was deprived of his constitutional rights to Due Process as implicated by the 14TH Amendment to the United States Constitution when both the district court and the court of appeals fail to reach the merits of the claim presented in the Rule 60(b) motion as argued, and misconstrued and/or mischaracterized the claim to achieve a result unfavorable to the Petitioner.

The Petitioner is unaware of any precedent set by this Court holding that a habeas petitioner is deprived of his right to Due Process under the 14TH Amendment to the United States Constitution by failing to consider and address a habeas petitioner's claim as presented and argued, much less to misconstrue and/or mischaracterize the claim to achieve a result non-favorable to the habeas petitioner.

However, the United States Court of Appeals for the Eleventh Circuit has routinely held that "when a district court fails to address all the claims presented in a federal habeas petition," and where a district court has failed to address all the claims

presented in a federal habeas petition, the case will be vacated without prejudice and remanded to the district court for the consideration of all the remaining claims under its supervisory authority. See., Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992, en banc). The United States Court of Appeals for the Fifth Circuit made a similar holding in Galtieri v. Wainwright, 582 F.2d 348 (5th Cir. 1978, en banc).

In this case the Petitioner concisely presented and argued to the district court in a Rule 60(b) motion that the previous judgment entered was void because the district court did not have jurisdiction over the parties and subject matter. Specifically, that the district court did not have jurisdiction over the case and to adjudicate the claims while those claims were still pending in the State habeas corpus for adjudication and were still pending because the State habeas court had not issued mandate in accordance with State law that is a product of a final ruling and/or resolution of the case before it. The district court and the court of appeals was well, misconstrued the Petitioner's contention and argument as one that the judgment in the case was void because the federal habeas petition contained both exhausted and unexhausted claims, and did not address the matter of whether it had jurisdiction while the claims to be adjudicated were pending in the State habeas court.

In view of the decision of both the district court and the court of appeals it would appear that these were the claims and arguments presented by the Petitioner, however, contrary to the facts tendered by the district court and the court of appeals,

they are incorrect and erroneous, as well as not supported by the record, which is not completely before this Court... The Petitioner cannot obtain a file stamped copy of the Rule 60(b) motion for the presentment with the foregoing petition to prove the matter asserted. However, this Court has the power and authority to order the transmission of the record to this Court for review.

Given the probative value of the Petitioner's statements and the significant's of having the record set straight, this Court should order the record to be transmitted to this Court given the nature and extent of the constitutional issue before the Court.

This Court should grant review in this case to set a consensus of the Court that it is a violation of a parties constitutional rights to Due Process under the 14TH Amendment to the United States Constitution for a federal tribunal to evade and/or allude a parties claim by misconstruing the claim, and by failing to consider and address a claim as presented and argued by the parties, notwithstanding, to consider and address all the claims presented in a pleading.

This Court should grant review to determine whether the Petitioner's constitutional rights to Due Process were violated because the district court and the court of appeals fail to consider and address the Petitioner's claim as presented and argued in whole.

Further, review should be granted under Rule 10(a) of the Supreme Court Rules as the federal judiciary has departed from the accepted and usual course of judicial proceeding as to call for an exercise of this Court's supervisory power.

QUESTION No. 4

Can a federal court acquire jurisdiction over a federal habeas corpus proceeding under Title 28 U.S.C., Section 2254 and adjudicate the merits of the habeas claims while those claims are still being considered and pending in the State habeas court?

(A). Whether the court of appeals should have issued a COA from the district court's determination that it did not lack jurisdiction when reasonable jurists considering the issue could find that the district court abused its discretion by denying the Petitioner's Rule 60(b) on the question of jurisdiction where there was evidence and support that would question the jurisdiction of the district court.

The Petitioner does now waive the argument that a COA was not required in order to appeal the non-merit based decision of the district court upon his Rule 60(b) motion. However, given that matter it is clear that the standard of review from the district court's denial of the Petitioner's Rule 60(b) motion is for abuse of discretion. See., *Buck v. Davis*, 137 S.Ct. 759 (2017). Thus, review as guided by *Miller-El v. Cockrell*, 122 S.Ct. 1029 (2003) is whether jurists of reason could disagree or find it debatable whether the district court abused its discretion in denying relief under Rule 60(b). The measures of this review then turns on whether the court of appeals should have issued the COA, and whether the Petitioner is entitled to the issuance of a COA by this Court or the Justice for the Fifth Circuit.

It is to note that this Court has not explicitly defined the term "abuse of discretion" as it pertains to a denial of a Rule 60(b) motion by the district court. However, case law clearly implicates that a "court" abuses its discretion when its ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. See., *Cooter & Gell v. Hartmarx Corp.*,

110 S.Ct. 2447 (1990). Cf., *Walker v. Packer*, 827 S.w.2d 833 (Tex. Sup. Ct. 1992); a trial court abuses its discretion when it acts without reference to any guiding rules and principles, if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error in law or fact. Further, a trial court abuses its discretion when it clearly fails to correctionally analyze or apply the law. *Id.* However, if the court reaches the right result, then it has not abused its discretion.

This Court has explicitly held that every federal appellate court has a special obligation to satisfy not only of its own jurisdiction, but also that of the lower court in a cause under review, even though the parties are prepared to concede it. See., *Steel Co. v. Citizens for A Better Env't.*, 118 S.Ct. 1003 (1998).

If, a district court lacked jurisdiction, then the appellate court's jurisdiction extends not to the merits but merely for the purpose of correcting the error of the lower court entertaining the suit. *Id.*

The Fifth Circuit has determined that in a petition for a writ of habeas corpus, an appellate court reviews *de novo* a district court's determination that it was without jurisdiction to consider a habeas petitioner's claim. See., *Garcia v. Quarterman*, 573 F.3d 214 (5th Cir. 2009). However, for such a review to be conducted, clearly a COA must have issued.

Title 28 U.S.C., Section 2254 under its provisions is a jurisdictional statute that specifically confers jurisdiction on the federal courts to consider collateral attacks on a State court judgment. There is no discretion as to its operation.

As already determined by this Court, relief under Rule 60(b)(6) is available only in extraordinary circumstances. See., Gonzalez v. Crosby, 125 S.Ct. 2641 (2005). In determining whether such circumstances are present may include consideration of a wide range of factors, including the risk of injustice to the parties and the risk of undermining the public's confidence in the judicial process. See., Liljeberg v. Health Services Acquisition Corp., 108 S.Ct. 2194 (....). See., Rule 60(b)(6) any other reason justifying relief from the operation of the judgment, or Rule 60(b)(4) the judgment is void.

It is settled law, that a judgment entered by a court without jurisdiction is void.

The matter before the district court and the court of appeals was whether the district court had jurisdiction over the Petitioner's claims while those claims were still pending and being considered by the State habeas court. Neither the court of appeals nor the district court addressed this matter, but, however construed the Petitioner's claim as being that the district court did not have jurisdiction because the habeas petition contained both exhausted and unexhausted claims. Citing, Title 28 U.S.C., Section 2254(b)(2). As a matter of Due Process the Petitioner was entitled to have the issue considered and addressed as presented in the Rule 60(b) motion. Therefore, under this Court's supervisory authority under Rule 10(a) of the Supreme Court Rules should reverse and remand the case for consideration. Alternatively, issue a COA for the determination of the issue. Notwithstanding the Petitioner's argument, jurists of reason could disagree whether or debate

whether the district court abused it's discretion in denying the Petitioner's Rule 60(b) motion by failing to consider and address the issue a presented.

In one more breath to reach vindication of the issue given the determination made in this case that the Petitioner is incorrect that the district court lacked jurisdiction over the proceedings to deny his habeas claims on the merits before he exhausted them in the State court because Section 2254(b)(2) allows this result is contrary to federal law. If, the case remains pending in the State habeas court the adjudication of the claim by a federal district court would be a clear envasion of the State habeas court's jurisdiction, and clearly there is no State court record that is complete upon which a federal court can accord the presumption of correctness. The district court accorded the presumption of correctness to the Findings of Fact and Conclusions of Law of the State habeas court that were not a final adjudication of the claims on the merits by the State habeas court because the case remained pending before the State habeas court absent the issuance of mandate as required under State law. Thus, the Petitioner's claims of ineffective assistance of counsel should not have been reviewed by the district court under the rigorous standard of review under Title 28 U.S.C., Section 2254(d)(1) and (2). Therefore, this issue questions whether the district court had the authority or jurisdiction to determine the mertis of the federal habeas claims that were pending before the State habeas court, thus, presents a federal issue that should be determined by this Court under Rule 10(c) of the Supreme Court Rules. Further, it is

clear that the district court used the wrong standard of review when it considered and addressed the Petitioner's ineffective assistance of counsel claims in the prior proceedings, however, at issue is whether the district court had jurisdiction. This Court should take the opportunity to consider and determine whether an United States District Court has jurisdiction to consider claims that are pending before a State habeas court for consideration and adjudication under Rule 10(c) of the Supreme Court Rules.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Bartholomew Antonio Guzman
Petitioner, In propria persona
Date: February 04, 2022