

In The
Supreme Court of the United States
Washington DC

Stevie Wyre
Petitioner.

v.

Bobby Lumpkin
Respondent.

No. _____

Motion for Rehearing

To The Honorable Supreme Court said:

Comes Now, Stevie Wyre, Petitioner, pro-Se pursuing a Motion for Rehearing to this Court, In Good Faith and not for delay to present this Motion, with accuracy, brevity, clarity and adequate understanding of the following:

Jurisdiction

This Honorable Court has jurisdiction over the parties and the subject of the matter, under Rule 44 and Rule 12.2. Petitioner is an inmate confined in an institution and proceeding in forma pauperis and not represented by counsel, In Good Faith and not for delay.

(1).

Ground of Issue

Did the United States Court of Appeals, Fifth Circuit and the United States District Court for the Southern District of Texas, Abused its discretion on Wyre's Petition.

Certification

I, Steve Wyre, Petitioner is accordance to Rule 44 and, asks in Good Faith and not for delay, and would show the Court the following:

The Ground of Issue, presented to this Court concerns, Wyre's Actual Innocence Claim and the Judgment by the United States Court of Appeals Fifth Circuit and the judgment of the United States District Court for the Southern District of Texas, I, Wyre does not attempt to relitigate the Claim, But asks this Court to De novo review the judgment of "Both" Courts herein to see, if Both Courts are in compliance with Supreme Court Decision, in like issue's as (McCleskey v. Zant, 499 U.S. 467 111, S.Ct. 1454, 1470, 113 L.Ed. 2d. 517 (1991) cited in (Rodriguez v. Johnson 104 F.3d. 694 (5th Cir. 1997)

Argument and Authorities

I. Standard of Review

A. Court's discretion

The United States Court of Appeals, Fifth Circuit in *Rodriguez v. Johnson* 104 F.3d. 694 (5th Cir. 1997) has held a district Court's decision to dismiss a second or subsequent federal habeas petition for abuse of the writ, lies within its sound discretion. "We will reverse such a dismissal only, if we find an abuse of that discretion". *McGary v. Scott*, 27 F.3d 181, 183 (5th Cir 1994) (citing *Sanders v. United States*, 373 U.S. 183 S.Ct. 1068, 1078-79, 10 L.Ed. 2d. 148 (1963). A district court abuse its discretion, when it dismisses a petition on an erroneous legal conclusion or clearly erroneous finding of fact. *Id.*

IN Rule 9(b) provides that a judge may dismiss a second or successive habeas petition, if the judge find that it fails to alleges new or different grounds for relief and the prior determination was on the merits or if new and different grounds are alleged the judge finds that the failure of the petitioner to assert those ground in a prior petition constitutes an abuse of the writ. Rule 9(b) Governing section 2254 Cases at 104 F.3d. 697; 28 U.S.C. § 2254.

IN *McCleskey v. Zant* the Supreme Court determined that raising a new or different claim in a subsequent habeas petition constitutes an abuse of the writ, unless the petitioner can demonstrate both "cause" for his failure to assert the claim in an earlier petition and "prejudice" if the Court fails to consider the new claim, 499 U.S. 467, 111 S.Ct. 1454, 1470, 113 L.Ed. 2d. 517 (1991); *Saahir v. Collins*, 956 F.2d. 115 (5th Cir. 1992); *Woods v. Whitley*, 933 F.2d. 321, 323 (5th Cir. 1991).

The Cause standard requires a habeas petitioner to show that some objective factor external to the defense "prevented petitioner from raising the claim." *McCleskey*, 111 S.Ct. at 1470 (quoting *Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639, 2645, 91 L.Ed. 2d. 397 (1986)).

- Example of external impediment includes "Active government interference or the reasonable unavailability of the factual or legal basis for the claim." 111 S.Ct. at 1472.

If the petitioner cannot demonstrate "cause" he may ultimately prevail, if he can demonstrate that a fundamental miscarriage of Justice would result from the failure to entertain the new or successive habeas claim. *Id.*...

In the Instance Case, Petitioner Wyre had presented a Actual Innocence Claim, accompanied by a claim of Constitutional violation, with newly discovered evidence, as clear and convincing evidence, in the "entire proceeding". In November of 2020, Wyre filed for a Motion for Authorization to the Court of Appeals, 5th Circuit, in the Appendix A, the Court of Appeals, Granted, then, in Appendix B, Denied the petition, due to the Court had imposed a sanction on the petitioner, then Wyre filed the same (petition in Ex B) the U.S. Southern District Court in Appendix D, dismissed without prejudice, as an unauthorized petition and stated: it was meritless and the Court of Appeals, Denied it, due to an imposed sanction unpaid (in *Wyre v. Davis* No. 4:19-cv-4168, Court of Appeal, No. 19-20795) - which in *Wyre v. Davis* No. 4:19-cv-4168 was dismissed without prejudice and dismissed with prejudice, "that would be a conflict of the Court". Then, Before Wyre' paid the sanction, He contested that he was indigent unable to paid any fee's, but file to the Court's an Application to proceed in forma pauperis. The Court of Appeals in Appendix L, Reinstated the appeal in No. 21-20134 then in Appendix - O, Wyre paid the sanction imposed, then the Southern District Court in Appendix Q, Granted in forma pauperis, but stated the Court will not

Here the petition, because its decision earlier stands the petition as an unauthorized successive petition, then the Court of Appeals held the petition for 9 months, until March 2, 2022 in Appendix 21. Denying the petition, stating Wyre paid the sanction, thinking it would defer the Court from Denying the petition and stated if Wyre file any other petition this Court will sanction him \$200⁰⁰ dollar if he petition again to this Court in No. 21-20134; Wyre v. Lumpkin No. 21-12-CV-462.

Petitioner Wyre contends, this is a miscarriage of Justice where both Courts abused its discretion in the proceeding of Wyre's petition where the Court's decision was on an erroneous legal conclusion or clearly erroneous findings of facts; and where the active government interference or a reasonable unavailability of the factual or legal of the claim and by failure to consider his petition or claim (see Appendix No. 21-7617 for Support)

Prayer / Relief

Wherefore premise, Petitioner, Wyre pro-Se prays that this Honorable Court Grants the relief sought as, vacate of the sentence and judgment, whereas Petitioner present this Motion for Rehearing, In Good Faith and not for delay.

Respectfully Submitted

Stevie Wyre #1858012
pro-Se.

Certificate of Service

I, Stevie Wyre #1858012 do swear declare, certify and understand any false statement will subject me to perjured of penalties 28 U.S.C. § 1746 and, is true and correct and has been post mail on the 2nd day of September, 2022

Sincerely
Stevie Wyre #1858012
pro-Se.