

No. 21-7837 **ORIGINAL**

Supreme Court, U.S.
FILED

MAY 10 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

CEDRIC D. BURNS — 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 Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cedric Burns

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QUESTION(S) PRESENTED

- 1) Did the panel of the Fifth Circuit err by deciding the merit of an appeal not properly before the court to justify the denial of a certificate of appealability.
- 2) Has the Supreme Court of the United States overturned its own precedent in *Buck v. Davis*, 137 S.Ct. 759 (2017); Where the Supreme Court held that the Fifth Circuit exceeded the limited scope of the COA analysis.
- 3) Did the Fifth Circuit err by denying Mr. Burns first Request for an Extension of time to file his Motion for Rehearing for 30 days.

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:

1. The United States District Court for the Northern
District of Texas (Dallas Division)

Case No: USDC No. 4:21-cv-414

2. The United States Court of Appeals for the Fifth Circuit

Case No. 21-10669

RELATED CASES

1. *Buck v. Davis*, 132 S.Ct. 759 (2017)
2. *Lafler v. Cooper*, 132 S.Ct. 1376, 1385 (2012)
3. *Lee v. United States*, 137 S.Ct. 1958, 1966 (2017)
4. *Hill v. Lockhart*, 474 U.S. 52,59(1985)
5. *Tennard v. Dretke*, 542 U.S. 274, 283 (2004)
6. *Miller v. Cockrell*, 537 U.S. 322 at 336-37 (2003).

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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 is unpublished.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 is unpublished.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 February 24, 2022.

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: _____, 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. § 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

THE FIFTH AMENDMENT: No person shall be held to answer for a Capital, or otherwise infamous crime, unless on a present-
ment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. § 2255(c)(1)(B): "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 proceeding under Section 2255."

28 U.S.C. §2255(a) "A prisoner in custody under sentence a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."

STATEMENT OF THE CASE

Mr. Burns' Sixth Amendment Constitutional right to effective assistance of counsel was violated based on counsel's failure to advise Mr. Burns that he face two enhancement for leadership role and obstruction of justice based on his guilty plea and his sentence would be at the top of the Statutory sentencing range, resulted in Mr. Burns' unknowing and involuntary guilty plea. Also Counsel failed to object to the enhancements at the request of Mr. Burns.

The failure of the District Court to hold an Evidentiary hearing on the merits of Burns' ineffective assistance of counsel claims was a direct and purposeful disregard for the mandates set forth by the Statute 28 U.S.C. § 2255(b); Because "the motion and the files and records of the case [do not] conclusively show [Bruns] is entitled to no relief, the court shall...grant a prompt hearing thereon, determine the issues and make finding of fact and conclusions of law with respect thereto.

The failure of the Fifth Circuit Court of Appeals to issue a COA on Burns claim before determining the merits was a direct and purposeful disregard for the mandates set forth, by the Supreme Court in Buck V. Davis, 137 S.Ct. 759 (2017); Where the Supreme Court held that the Fifth Circuit exceeded the limited scope of the COA analysis. The COA statute sets forth a two-step process, the initial determination whether a claim is reasonably debatable, and then if it is, an appeal in the normal course. As the Supreme Court made it clear in its decision on the case of Miller-EL V. Cockrell, 537 U.S. 322, 123 S.Ct. 1029, 1039, 154 L.Ed 2d 931 (2003), a COA is a "Jurisdictional prerequisite", and "until a COA has been issued, the federal Courts of Appeals lacks jurisdiction to rule on the merits of appeals from

habeas petitioners". When considering a request for a COA., "the question is the debatability of the underlying constitutional claim, not the resolution of that debate", Id. at 1042.

The Fifth Circuit Court of Appeals stated in its denial that when the district court denies a COA on the merits, the movant must demonstrate that "reasonable jurists would find district court's assessment of the constitutional claims debatable or wrong." Slack V. McDaniel, 529 U.S. 473, 484(2000). When the district court's denial is based on a procedural ruling, the prisoner must demonstrate that "jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Id. Burns has not made the required showing. See id. Accordingly, his motion for COA is DENIED.

The United States Court of Appeals held Burns to a far more standard than a pro se litigant with no experience in the field of law. See, Haines v. Kerner, 404 U.S. 519 (1972); that pro se litigant to be held to a lesser stringent standard than formal pleadings drafted by lawyers.

REASONS FOR GRANTING THE PETITION

- I. [Question One] Did the panel of the Fifth Circuit err by deciding the merit of an appeal not properly before the court to justify the denial of a certificate of appealability?

A panel improperly sidestepped the C.O.A. process by denying relief based on its view of the merits.

In reviewing the facts and circumstances of Burns's case, the Fifth Circuit panel "paid lip service to the principles guiding issuance of a C.O.A." *Tennard v. Drétke*, 542 U.S. 274, 283 (2004), but in actuality the panel held Burns to a more stringent standard. Specifically, the Fifth Circuit panel "sidestepped the threshold C.O.A. process by first deciding the merits of Burns's appeal, and then justifying its denial of a C.O.A. based on its adjudication of the actual merits, thereby "in essence deciding an appeal without jurisdiction." *Miller-El v. Cockerll*, 537 U.S. 322 at 336-37 (2003).

As the Supreme Court held on *Miller-El*, 537 U.S. 322 at 337.

In Burns's case however, that is exactly what the panel did.

Burns filed a motion in the Fifth Circuit seeking a certificate of appealability, so that he may appeal the district court's denial of his §2255 motion. The panel however, determined that Burns appointed lawyer had, indeed, provided effective assistance without an evidentiary hearing. Thus,

the panel concluded that Burns should be denied a certificate of appealability because the appeal was obviously meritless.

The panel impermissibly sidestepped the C.O.A. inquiry in this manner by denying relief because the subsequent appeal would be meritless. The panels assessment of the merits is patently wrong. The panel could not possibly resolve the merits of the appeal based solely on a motion seeking a certificate of appealability. Moreover, without the issuance of a C.O.A. and the district court's record before the panel, the panel was without jurisdiction to determine the merits of the appeal.

II. [Question Two] Has the Supreme Court of the United States overturned its own precedent in *Buck V. Davis*, 137 S.Ct. 759 (2017); *Lafler v. Cooper*, 132 S.Ct.1376, 1385 (2012); *Lee v. United States*, 137 S.Ct. 1958,1966 (2017); *Hill v. Lockhart*, 474 U.S.52,59 (1985). Where the Court decided in evaluating a claim that guilty plea was unknowing or involuntary due to ineffective assistance of counsel, the defendant must show that "there is a reasonable probability that but for counsel's error he would not have pleaded guilty and would insisted on going to trial; the Supreme Court held and instructed Courts in determining prejudice to focus on

a defendant's decisionmaking, which may not turn solely on the likelihood of conviction after trial; The Supreme Court held that attorney's misadvice regarding the consequences of a plea agreement can render the guilty plea involuntary.

A. The Fifth Circuit of the Court of Appeals held that, when the district Court denies a COA on the Merits, the Movant must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong." Burns has not made the required showing. Accordingly, his motion for COA is denied.

Burns's Sixth Amendment constitutional right was indeed violated due to ineffective assistance of counsel that he received when Counsel failure to object to the leadership, obstruction enhancements. Therefore, Burns's Claims of ineffective assistance of counsel are not meritless nor are they conclusory allegations. To establish ineffective assistance of counsel, Burns must show counsel's performance was objectively unreasonable and prejudicial. *Strickland v. Washington*, 466 U.S. 668 (1984). Burns can satisfy the first prong by demonstrating that his counsel's performance fell below an objected standard of reasonableness. *Id.*, at 688. The second prong can be satisfied by demonstrating that "there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different." *Id.*

Burns's Sixth Amendment Constitutional right to effective assistance of counsel was violated based on counsel's failure to advise Burns that he face two enhancements for leadership role and

obstruction of justice based on his guilty plea and his sentence would be at the top of the Statutory sentencing range, resulted in Burns unknowing and involuntary guilty plea. Also counsel failure to object to the enhancements at the request of Burns.

The Sixth Amendment to the United States Constitution provides that "a criminal defendant shall have the right to the assistance of counsel for his defense..." "The right has been accorded, [The Courts] have said, 'not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. "Mickens V. Taylor, 535 U.S. 162 (2002) (quoting United States v. Cronic, 466 U.S. 648 (1984)).

The District Court denying Burns ineffective assistance of Counsel claim without an evidetary hearing was err and did not get a declaration from Burn's counsel. When there are issues of unresolved facts that is material to the legality of a defendant confinement an evidetary hearing is required. Allegations that are not conclusively refulted by the record warrant evidentiary hearing.

II. [Question Three] Did the Fifth Circuit err in denying Burns's frist Motion for Extension of Time to file his Motion for Rehearing.

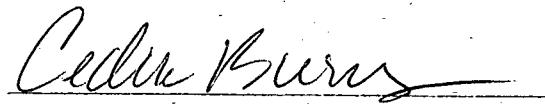
Burns was denied his first extension of time to file his Motion for Rehearing. The Motion was made in good faith and not for delay, but in the interest of justice. Burns was unable to perfect his chance of having his Brief for COA granted.

CONCLUSION

WHEREFORE, Cedric D. Burns, Pro se Petitioner ask this Court to Grant Vacate and Remand (GVR) to the Fifth Circuit Court of Appeals or the District Court or whatever this Court deem appropriate.

The petition for a writ of certiorari should be granted.

Respectfully submitted,


CEDRIC D. BURNS # 39804-177

Date: 4-30-22