

MAR 21 2022

OFFICE OF THE CLERK

No. 21-7863

IN THE
SUPREME COURT OF THE UNITED STATES

JACQUES OMAR FEARENCE — PETITIONER
(Your Name)

vs.

B.M. CASH; WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JACQUES OMAR FEARENCE - V51385
(Your Name)

CMF, P.O. BOX-2500, MI-107
(Address)

VACAVILLE, CA 95696-2500
(City, State, Zip Code)

NONE
(Phone Number)

ORIGINAL

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

HOHN V. U.S., 524 U.S. 236 (1998)
MILLER V. COCKRELL, 537 U.S. 322 (2003)
SLACK V. MCDANIEL, 529 U.S. 473 (2000)
FOLEY V. BITER, 793 F.3d 998 (9TH CIR. 2015)
IN RE FRIEND, 280 CAL. RPTR. 3d 313 (2021)

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STATUTES AND RULES

28 USC § 1254 (1)
28 USC § 2254 (d)(1)
AEDPA
PENAL CODE § 187
HEALTH & SAFETY CODE § 11351.5
PENAL CODE § 12022.53(d)
RULE 60(b)(6)
28 USCS § 2244 (b)
PENAL CODE § 1509
PENAL CODE § 1509.1

OTHER

PETITION FOR A WRIT OF CERTIORARI
PETITIONER JACQUES OMAR FEARENCE
RESPECTFULLY PETITIONS FOR A WRIT OF
CERTIORARI TO REVIEW THE JUDGMENT OF THE
UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT, DENYING PETITIONER'S APPLICATION
FOR CERTIFICATE OF APPEALABILITY.

OPINIONS BELOW

THE FOLLOWING OPINIONS AND ORDERS
BELOW ARE PERTINENT HERE, ALL OF WHICE ARE
UNPUBLISHED: [1] OPINION ON DIRECT APPEAL
BY THE CALIFORNIA COURT OF APPEAL, SECOND
APPELLATE DISTRICT, DIVISION FIVE, AFFIRMING
PETITIONER'S CONVICTION AND SENTENCE (10/26/05);
[2] ORDER (12/22/21) AND JUDGMENT (12/22/21)
BY U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT
OF CALIFORNIA (HON. PERCY ANDERSON), DENYING
PETITIONER'S RULE 60(b)(6) MOTION OF THE
FEDERAL ~~RULES~~ RULES OF CIVIL PROCEDURE
(12/22/21); [3] DISTRICT COURT ORDER DENYING
REQUEST OF CERTIFICATE OF APPEALABILITY
(12/22/21); [4] ORDER BY NINTH CIRCUIT
COURT OF APPEALS DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY (3/2/22); AND
[5] ORDERS OF STATE COURTS DECISIONS (3/5/10),
(5/26/10), (8/18/10), (9/24/13), (3/6/14), AND
(5/21/14) DENYING PETITIONER'S STATE WRITS OF
(1.)

1 HABEAS CORPUS ON PROCEDURAL GROUNDS. (SEE
2 APPENDIX FOR COPIES.)

3 STATEMENT OF JURISDICTION

4 THE DISTRICT COURT AND THE COURT OF
5 APPEALS FOR THE NINTH CIRCUIT DENIED
6 PETITIONER'S REQUEST FOR CERTIFICATE OF
7 APPEALABILITY. IN HOHN V. U.S., 524 U.S.
8 236 (1998), THIS COURT HELD THAT, PURSUANT TO
9 28 USC § 1254 (1), THE UNITED STATES SUPREME
10 COURT HAS JURISDICTION, ON CERTIORARI, TO
11 REVIEW A DENIAL OF A REQUEST FOR CERTIFICATE OF
12 APPEALABILITY BY A CIRCUIT JUDGE OR PANEL
13 OF A FEDERAL COURT OF APPEALS.

14 STATUTORY PROVISIONS INVOLVED

15 THE RIGHT OF A STATE PRISONER TO SEEK
16 FEDERAL HABEAS CORPUS RELIEF IS GUARANTEED
17 IN 28 USC § 2254. THE STANDARD FOR RELIEF
18 UNDER "AEDPA" IS SET FORTH IN 28 USC § 2254
19 (d)(1).

20 STANDARD OF REVIEW: DENIAL

21 OF CERTIFICATE OF APPEALABILITY

22 IN MILLER-EL V. COCKRELL, 537 U.S.
23 322, 123 S. CT. 1029 (2003), THIS COURT CLARIFIED
24 THE STANDARDS FOR ISSUANCE OF A CERTIFICATE
25 OF APPEALABILITY [HEREAFTER "COA"]... A
26 PRISONER SEEKING A COA NEED ONLY DEMONSTR-
27 ATE A "SUBSTANTIAL SHOWING OF THE DENIAL

(2.)

1 OF A CONSTITUTIONAL RIGHT". A PETITIONER
2 SATISFIES THIS STANDARD BY DEMONSTRATING
3 THAT JURIST OF REASON COULD DISAGREE
4 WITH THE DISTRICT COURT'S RESOLUTION OF
5 HIS CONSTITUTIONAL CLAIMS OR THAT JURIST
6 COULD CONCLUDE THE ISSUES PRESENTED ARE
7 ADEQUATE TO DESERVE ENCOURAGEMENT TO
8 PROCEED FURTHER... WE DO NOT REQUIRE
9 PETITIONER TO PROVE, BEFORE THE ISSUANCE OF
10 A COA, THAT SOME JURIST WOULD GRANT THE
11 PETITION FOR HABEAS CORPUS. INDEED, A
12 CLAIM CAN BE DEBATABLE EVEN THOUGH EVERY
13 JURIST OF REASON MIGHT AGREE, AFTER THE
14 COA HAS BEEN GRANTED AND THE CASE HAS
15 RECIEVED FULL CONSIDERATION, THAT PETITIONER
16 WILL NOT PREVAIL. Id., 123 S. CT. AT 1034,
17 CITING SLACK V. MCDANIEL, 529 U.S. 473, 484
18 (2000).

19 STATEMENT OF THE CASE

20 BY INFORMATION FILED APRIL 22, 2004,
21 PETITIONER WAS CHARGED WITH FIRST DEGREE
22 MURDER (PEN. CODE §187), COUNT ONE, AND WITH
23 POSSESSION FOR SALE OF COCAINE BASE, IN
24 VIOLATION OF HEALTH AND SAFETY CODE §11351.5,
25 COUNT TWO. (CT 32, 33.) IT WAS ALLEGED
26 THAT PETITIONER PERSONALLY DISCHARGED A
27 GUN, IN VIOLATION OF PENAL CODE §12022.53
28 (d). (CT 32, 33.) ON JULY 12, 2004, A JURY
(3.)

1 FOUND PETITIONER GUILTY AS CHARGED, AND IT
2 FOUND THE FIREARMS TRUE. (CT 136, 137, 138, RT.)
3 ON SEPTEMBER 16, 2004, PETITIONER WAS
4 SENTENCED TO 51 YEARS AND FOUR MONTHS TO
5 LIFE IN PRISON, AND WAS ORDERED TO PAY A
6 RESTITUTION FINE OF \$10,000.00 PLUS A PAROLE
7 REVOCATION FINE IN THE SAME AMOUNT TO BE
8 SUSPENDED UNLESS PAROLE IS REVOKED. (CT 143,
9 144, RT 1802, 1803, & 1804.)

10 STATEMENT OF PERTINENT FACTS

11 ON MAY 16, 2021, PETITIONER FILED A RULE
12 60(b)(6) MOTION FOR RELIEF FROM JUDGMENT
13 IN THE U.S. DISTRICT COURT OF CENTRAL
14 DISTRICT OF CALIFORNIA DUE TO EXTRAORDINA-
15 RY CIRCUMSTANCES ALLEGING ATTORNEY
16 ABANDONMENT BY HIS APPELLATE COUNSEL
17 WILLIAM L. MCKINNEY ON DIRECT APPEAL,
18 THE FOLLOWING FACTORS WERE ALL PRESENT
19 IN THIS CASE:

20 REASONS FOR GRANTING THE WRIT

21 ARGUMENT SUMMARY

- 22 1.) PETITIONER WAS INEXCUSABLY AND
23 GROSSLY NEGLECTED BY APPELLATE COUNSEL
24 ON DIRECT APPEAL.
- 25 2.) PETITIONER WAS ABANDONED BY APPELLATE
26 COUNSEL ON DIRECT APPEAL.
- 27 3.) APPELLATE COUNSEL JEOPARDIZED PETITIONER'S
28 APPELLATE RIGHTS ON DIRECT APPEAL.

(4.)

4.) THE U.S. DISTRICT JUDGE ABUSED IT'S DISCRETION BY DENYING PETITIONER'S RULE 60 (b)(6) MOTION OF THE FEDERAL RULES OF CIVIL PROCEDURE WITHOUT CONSIDERING WHETHER HE WAS ABANDONED BY APPELLATE COUNSEL ON DIRECT APPEAL.

5.) ATTORNEY ABANDONMENT SHOULD HAVE CONSTITUTED AS AN EXCEPTION TO THE STATUTORY BAR ON SECOND OR SUCCESSIVE HABEAS PETITIONS UNDER 28 USCS § 2244 (b), AND ALSO, PENAL CODE § 1509 AND 1509.1 PURSUANT TO IN RE FRIEND, 11 CAL. 5TH 720, 280 CAL. RPTR. 3d 313 (2021), SHOULD APPLY RETROACTIVELY TO PETITIONER'S CASE DUE TO ALLEGED SUCCESSIVE PETITIONS.

REASONS WHY ISSUANCE OF COA SHOULD BE GRANTED

1.) WHEN THE U.S. DISTRICT COURT DENIES A HABEAS PETITION ON PROCEDURAL GROUNDS WITHOUT REACHING THE PETITIONER'S UNDERLYING CONSTITUTIONAL CLAIMS JURIST OF REASON WOULD FIND IT DEBATABLE WHETHER THE U.S. DISTRICT COURT PROPERLY DISMISSED PETITIONER'S RULE 60(b)(6) MOTION BASED ON THE FACT THAT THE U.S. DISTRICT STATED THAT PETITIONER DID NOT STATE A BASIS FOR POST-JUDGMENT RELIEF UNDER RULE 60(b)(6). PETITIONER DID STATE A BASIS FOR RELIEF

(5.)

1 WHEN ALLEGED THAT HIS APPELLATE COUNSEL
2 WILLIAM L. MCKINNEY ABANDONED HIM ON
3 DIRECT APPEAL THUS, JEOPARDIZING HIS
4 APPELLATE RIGHTS WHICH CONSTITUTED
5 EXTRAORDINARY CIRCUMSTANCES, AND
6 ESTABLISHED ~~THAT~~^{ED} THAT PART, RELIEF SHOULD
7 HAVE BEEN GRANTED UNDER RULE 60(b)(6)
8 SATISFYING THE STANDARD FOR A VALID
9 CLAIM OF A DENIAL OF A CONSTITUTIONAL
10 RIGHT ON THAT PART. THE U.S. DISTRICT
11 COURT ABUSED IT'S DISCRETION BY DENYING
12 PETITIONER'S RULE 60(b)(6) MOTION AND
13 THAT MADE HIS RULING DEBATABLE AND
14 INCORRECT.

15 2.) JURIST OF REASON WOULD FIND IT DEBATA-
16 BLE AS TO THE U.S. DISTRICT COURT
17 ACCEPTING THE U.S. MAGISTRATE'S REPORT
18 AND RECOMMENDATION THUS, DISMISSING
19 PETITIONER'S RULE 60(b)(6) MOTION AS
20 A SECOND OR SUCCESSIVE HABEAS PETITION.
21 THE U.S. DISTRICT COURT WAS INCORRECT
22 IN HIS RULING DUE TO THE FACT PETITION-
23 ER SATISFIED THE STANDARD SET IN,
24 EXTRAORDINARY CIRCUMSTANCES ATTORNEY
25 ABANDONMENT SO, RELIEF SHOULD HAVE
26 BEEN GRANTED PURSUANT TO RULE 60(b)(6),
27 AND FOR REASONS STATED ABOVE.

28 3.) JURIST OF REASON WOULD FIND IT DEBATABLE
(6.)

1 AS TO EVEN IF PETITIONER'S RULE 60(b)(6)
2 MOTION REALLY IS A SECOND OR SUCCESSIVE
3 HABEAS PETITION AS ALLEGED, HE ALREADY
4 ESTABLISHED ATTORNEY ABANDONMENT AND
5 SATISFIED REQUIREMENTS FOR RELIEF UNDER
6 RULE 60(b)(6) WHICH CONSTITUTES
7 EXTRAORDINARY CIRCUMSTANCES AND CAN
8 BE AN EXCEPTION TO THE STATUTORY BAR ON
9 SECOND OR SUCCESSIVE HABEAS PETITIONS
10 UNDER 28 USCS § 2244(b), AND SECONDARY
11 EXCEPTION TO THE SUCCESSIVE RULE BE APPLIED
12 RETROACTIVELY PURSUANT TO PENAL CODE §
13 1509 AND 1509.1 PURSUANT TO IN RE FRIEND,
14 11 CAL. 5TH 720, 280 CAL. RPTR. 3d 313
15 (2021). THE U.S. DISTRICT COURT'S RULING
16 WAS DEBATABLE AND INCORRECT DUE TO THE
17 FACT THE PETITIONER STATED A VALID
18 CONSTITUTIONAL CLAIM AND RELIEF SHOULD
19 BE GRANTED AS LONG AS ISSUANCE OF
20 COA IS GRANTED FOR REASONS STATED
21 ABOVE AS WELL.

22 NOTWITHSTANDING ALL OF THE ABOVE
23 FACTORS, BASED ON THE NINTH CIRCUIT'S
24 DECISION IN FOLEY V. BETER, 793 F.3d 998
25 (9TH CIR. 2015), AND PENAL CODE § 1509 AND
26 1509.1 PURSUANT TO IN RE FRIEND, 11 CAL.
27 5TH 720, 280 CAL. RPTR. 3d 313 (2021) WHICH
28 SHOULD BE APPLIED TO PETITIONER'S CASE

1 RETROACTIVELY DUE TO EXTRAORDINARY
2 CIRCUMSTANCES AND CHANGES IN ^{THE} LAW
3 PURSUANT TO PROP. 66, PENAL CODE § 1509
4 AND ~~1509~~ 1509.1; IN RE FRIEND, 11 CAL. 5TH
5 720, 280 CAL. RPTR. 3d 313 (2021), AND
6 ALLEGING THAT HE WAS INEXCUSABLY AND
7 GROSSLY NEGLECTED BY APPELLANT COUNSEL
8 WILLIAM L. MCKINNEY ON DIRECT APPEAL
9 IN A MANNER AMOUNTING TO ATTORNEY
10 ABANDONMENT IN EVERY MEANINGFUL SENSE
11 THAT HAS JEOPARDIZED HIS APPELLATE
12 RIGHTS, THE U.S. DISTRICT JUDGE SHOULD
13 HAVE GRANTED RELIEF PURSUANT TO FEDERAL
14 RULES OF CIVIL PROCEDURE, RULE 60(b)(6).
15 FOLEY V. BITER, 793 F.3d 998 (9TH CIR.
16 2015). THE U.S. DISTRICT JUDGE MUST AND
17 SHOULD HAVE MADE A FINDING AS TO WHETHER
18 PETITIONER HAS, IN FACT, BEEN ABANDONED
19 BY APPELLATE COUNSEL WILLIAM L.
20 MCKINNEY ON HIS DIRECT APPEAL. THE
21 U.S. DISTRICT JUDGE FAILED TO MAKE
22 SUCH A FINDING, AND THE FACTS ~~■~~ SHOWED
23 ABANDONMENT, THE U.S. DISTRICT JUDGE
24 ABUSED IT'S DISCRETION. EVEN IF THE
25 COURT FINDS THAT PETITIONER'S RULE 60
26 (b)(6) MOTION AS A SECOND OR SUCCESSIVE
27 HABEAS PETITION, ATTORNEY ABANDONMENT
28 SHOULD CONSTITUTE AS AN EXCEPTION TO THE
(8.)

1 STATUTORY BAR ON SECOND OR SUCCESSIVE
2 HABEAS PETITIONS UNDER 28 USCS §2244
3 (b), AND SUCCESSIVE HABEAS PETITIONS
4 UNDER PENAL CODE §1509 AND 1509.1,
5 PROP. 66 PURSUANT TO IN RE FRIEND, 11
6 CAL. 5TH 720, 200 CAL. RPTR. 3d 313
7 (2021), AND SO, THE PETITIONER HAS AND HAD
8 SHOWN THAT HE WAS ABANDONED ON DIRECT
9 APPEAL IN THIS CASE.

10 CONCLUSION

11
12 BASED ON THE FOREGOING, THIS COURT
13 SHOULD GRANT THE PETITION FOR WRIT OF
14 CERTIORARI AND ORDER FULL BRIEFING.

15
16 DATED: 3/18/22

RESPECTFULLY SUBMITTED

17 *Jaques Omar Fearence*
18 JACQUES OMAR FEARENCE-V51385
19 PETITIONER IN PRO SE
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