No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BLAKE SANDLAIN — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Sixth Circuit District Court

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

Blake Sandlain
(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, BLAKE Sandlin, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0	$ 0	$ 0	$ 0
Self-employment	$ 0	$ 0	$ 0	$ 0
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child Support	$ 0	$ 0	$ 0	$ 0
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ 0	$ 0	$ 0
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): N/A	$ 0	$ 0	$ 0	$ 0
Total monthly income:	$ 0	$ 0	$ 0	$ 0

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	$ 0 $ 0 $ 0

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	$ 0 $ 0 $ 0

4. How much cash do you and your spouse have? $ 0
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
N/A	$ 0 $ 0 $ 0	$ 0 $ 0 $ 0

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value 0

☐ Other real estate
Value 0

☐ Motor Vehicle #1
Year, make & model N/A
Value 0

☐ Motor Vehicle #2
Year, make & model N/A
Value 0

☐ Other assets
Description N/A
Value 0

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	$ 0	$ 0
	$ 0	$ 0
	$ 0	$ 0

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ 0	$ 0
Are real estate taxes included? ☐ Yes ☒ No		
Is property insurance included? ☐ Yes ☒ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0
Home maintenance (repairs and upkeep)	$ 0	$ 0
Food	$ 0	$ 0
Clothing	$ 0	$ 0
Laundry and dry-cleaning	$ 0	$ 0
Medical and dental expenses	$ 0	$ 0

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 0	$ 0
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$ 0
Life	$ 0	$ 0
Health	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Other: N/A	$ 0	$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): N/A	$ 0	$
Installment payments		
Motor Vehicle	$ 0	$ 0
Credit card(s)	$ 0	$ 0
Department store(s)	$ 0	$ 0
Other: N/A	$ 0	$ 0
Alimony, maintenance, and support paid to others	$ 0	$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ 0
Other (specify): N/A	$ 0	$ 0
Total monthly expenses: N/A	$ 0	$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? ~~$~~

If yes, state the attorney's name, address, and telephone number: N/A

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? ~~$~~

If yes, state the person's name, address, and telephone number: N/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I'm indigent

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 30, 2021

Blake Sandlin

(Signature)

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

BLAKE SANDLAIN — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BLAKE SANDLAIN
(Your Name)

P.O. Box 1009
(Address)

Welch W.V. 24801
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

When the district COURT ORDERS the government to Respond to a 2255, and do not allow Petitioner due p-Rocess to defend the government Response, shall a (COA) had issued ON a 60 (B)(4) Void Judgment motion?

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

14-CR-20283 (GAD)

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

STATUTES AND RULES

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

fifth Amendment Right to due process to be heard.

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INDEX TO APPENDICES

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 Lexis# 26209; 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 _____ 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

[N] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was August 30, 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: _____, 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).

STATEMENT OF THE CASE

Petitioner filed a 28 U.S.C. 2255. The District Court ordered the government to Respond to the 28 U.S.C. 2255. Thereafter Without Providing Petitioner With Notice and Opportunity to Respond to the government Response, denied the 28 U.S.C. 2255 Solely ON the government Response alone. Petitioner then filed a 60(b)(4) Void Judgment Motion, to Correct the fundamental Procedural defect in the integrity of the 28 U.S.C. 2255. The District Court and the Sixth Circuit Court of appeals in deciding this matter, denied the 60(B)(4) Motion and the Certificate of appealability (C.O.A).

REASONS FOR GRANTING THE PETITION

Certiorari shall be granted pursuant to Supreme Court Rule (10) where the lower courts entered a decision that conflict with decisons of United States Court of appeals, and the Supreme Court. The Supreme Court Ruling of United States V Hayman, 342 U.S. 205(1952). The Supreme Court Ruled that in 2255 proceeding. when the district court orders the government to respond to a 2255, the proceeding ceases to be ex parte, and becomes an ordinary adversary proceeding in which each party is entitled to be served with any pleadings or Affidavits filed by his adversaries, and to be given adequate opportunity to refute his opponent's evidence. Also see United States V Antoin Deandre Mcdonald, 1 Fed appx 198(4th cir 2001)(Holding that when the district court orders the government Response to the 2255, if the petitioner is not allowed due process to defend the government Response to the 2255, the 2255 has to be Vacated); White V United States, 175 Fed appx 292(11th cir 2006)(Same). In addition the federal court Rules was amended in (2004), and made it madatory that when the district court orders the governm to Respond to a 28 U.S.C. 2255, the petitioner has a due process Right to Respond to the government Response to the 2255. See, Court Rules attached at appendix (C).

In Gonzalez V Crosby, 545 U.S. 524(2005), this Supreme Court Ruled that 60(b) motions can be used to attack some defect in the integrity of the 2255 proceedings. Also see, in Re Abdur' Rahman, 392 F.3d 174(6th cir 2004)(same) here will be a miscarriage of Justice if this Supreme Court does not Grant Certiorari, as petitioner has shown that the lower district courts Rulings is in conflict with the Court of appeals, and the Supreme Court. As this Supreme Court has held, a 60(b)(4) void Judgment applies where a Judgment like in petitioner case is premised on a violation of due process depriving notice or opportunity to be heard, United States Aid funds, inc. V espinosa, 559 U.S. 260(2010).

CONCLUSION

The petition for a writ of certiorari should be granted. AND APPOINT COUNSEL

Respectfully submitted,

Blake Sundheim

Date: November 30, 2021

BLAKE JOSEPH SANDLAIN, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
2021 U.S. App. LEXIS 26209
No. 20-1697
August 30, 2021, Filed

Counsel {2021 U.S. App. LEXIS 1}BLAKE JOSEPH SANDLAIN, Petitioner - Appellant, Pro se, Welch, WV.

For UNITED STATES OF AMERICA, Respondent - Appellee: Susan E. Fairchild, Assistant U.S. Attorney, United States Attorney's Office, Detroit, MI.

Judges: Before: STRANCH, Circuit Judge.

Opinion

ORDER

Blake Joseph Sandlain, a federal prisoner proceeding pro se, appeals the district court's order denying his motion for leave to file a Federal Rule of Civil Procedure 60(b)(4) motion for relief from the district court's judgment denying his 28 U.S.C. § 2255 motion to vacate his sentence. Sandlain has filed an application for a certificate of appealability ("COA"), a motion to expedite the ruling on his COA application, and a motion to stay proceedings.

In 2015, Sandlain pleaded guilty to being a felon in possession of a firearm and possessing with intent to distribute at least 100 grams of heroin. The district court sentenced him to a total term of 180 months of imprisonment. Sandlain did not appeal. Rather, he filed a § 2255 motion to vacate his sentence, arguing that his attorney performed ineffectively by failing to: (1) raise a specific Fourth Amendment argument at his suppression hearing; (2) argue that the search of his apartment was not authorized by the Michigan Department of Corrections' home-visit policy; (3) call{2021 U.S. App. LEXIS 2} a particular parole officer to testify at the suppression hearing; and (4-5) adequately cross-examine government witnesses at the suppression hearing. He supplemented his motion to include an argument that trial counsel performed ineffectively by failing to cite caselaw in support of an argument that he had asked her to raise. Sandlain requested an evidentiary hearing. The government responded to the § 2255 motion, and, eight days later, the district court denied Sandlain's § 2255 motion on the merits and denied as moot his request for an evidentiary hearing. Six days after the district court entered its judgment, it docketed Sandlain's reply to the government's response. This court denied Sandlain's application for a COA, concluding that reasonable jurists could not disagree with the district court's resolution of his claims. *Sandlain v. United States*, No. 15-2519, slip op. at 3-5 (6th Cir. July 8, 2016) (order).

In the district court, Sandlain continued to challenge his convictions and sentences by filing numerous post-judgment motions. Eventually, the district court enjoined him from filing motions unless he obtained leave from the court. Undeterred, Sandlain continued filing post-judgment motions. On April 2, 2020, he filed a motion for leave to file a Federal Rule of Civil Procedure

APPENDIX (A)

12250088

60(b)(4) motion for relief{2021 U.S. App. LEXIS 3} from judgment, arguing that the district court procedurally erred by denying his § 2255 motion before giving him an opportunity to reply to the government's response. He cited *United States v. Hayman*, 342 U.S. 205, 72 S. Ct. 263, 96 L. Ed. 232 (1952), *Shelton v. United States*, 800 F.3d 292 (6th Cir. 2015), and *United States v. McDonald*, 1 F. App'x 198 (4th Cir. 2001), in support of this argument. The district court denied the motion, finding that it was meritless, because *Shelton* involved the denial of a § 2255 motion on a procedural ground, whereas it had denied Sandlain's § 2255 motion on the merits.

In his application for a COA, **Sandlain** continues to rely on *Hayman*, *Shelton*, and *McDonald* to argue that the district court erred by denying his § 2255 motion before giving him an opportunity to file a reply to the government's response. Sandlain's motion to stay proceedings is premised solely upon the fact that he has filed a motion for compassionate release in the district court and will be appearing at a hearing on that motion.

This court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner may meet this standard by showing that reasonable jurists could debate whether the petition should have been determined in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further."{2021 U.S. App. LEXIS 4} *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983)).

Rule 60(b)(4) authorizes district courts to grant relief if a "judgment is void." Fed. R. Civ. P. 60(b)(4). "A judgment is not void . . . simply because it is or may have been erroneous." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010) (quoting *Hoult v. Hoult*, 57 F.3d 1, 6 (1st Cir. 1995)). Instead, the movant must show that "a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *Id.*

Even assuming that Sandlain's argument could be construed as arguing that he was deprived of notice or the opportunity to be heard, reasonable jurists could not debate the district court's conclusion that relief was not warranted. In *Hayman*, the Supreme Court held that the district court erred by failing to hold a hearing in the prisoner's presence because "there [we]re substantial issues of fact as to events in which the prisoner participated." 342 U.S. at 223. In Sandlain's case, the district court did not need to determine any disputed issues of fact to conclude that relief was not warranted. Reasonable jurists would agree that, in such a situation, *Hayman* cannot be construed as preventing the district court from ruling on a § 2255 motion before receiving a reply from the movant.

Reasonable jurists also would agree that *Shelton*{2021 U.S. App. LEXIS 5} is inapplicable here. In *Shelton*, this court held that a district court could not *sua sponte* dismiss a federal prisoner's § 2255 motion on timeliness grounds without giving the movant an opportunity to respond. 800 F.3d at 294. Sandlain's § 2255 motion, however, was dismissed because the district court concluded it lacked merit. Finally, *McDonald*, an unpublished Fourth Circuit case, was not binding on the district court.

Accordingly, this court **DENIES** Sandlain's application for a COA and motion to stay proceedings and **DENIES** as moot his motion to expedite.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BLAKE JOSEPH SANDLAIN,

Petitioner

v.

Case No.: 14-20283
Hon. Gershwin A. Drain

UNITED STATES OF AMERICA,

Respondent.
_____/

ORDER DENYING PETITIONER LEAVE TO FILE A MOTION FOR PRODUCTION OF PLEA AND SENTENCING TRANSCRIPTS [#144], DENYING PETITIONER LEAVE TO FILE A RULE 60(b)(4) MOTION [#146], DENYING MOTION FOR STATUS OF WHY PETITIONER HAS NOT RECEIVED A COPY OF HIS PLEA/SENTENCING TRANSCRIPTS [#148], DENYING MOTION REQUESTING APPEAL BOND [#150], DENYING MOTION TO SUPPLEMENT LEAVE TO FILE 60(b)(4) [#151], DENYING MOTION FOR JUDICIAL NOTICE TO REQUEST THAT INJUSTICES BE REMEDY [#153] AND DENYING MOTION PURSUANT TO 28 U.S.C. § 455(a) REQUESTING THAT THE ABOVE JUDGE RECUSE HIMSELF FROM HEARING PENDING MOTION FOR LEAVE TO FILE 60(b)(4) MOTION BEFORE THE COURT [#154]

Petitioner Blake Sandlain pleaded guilty to possession of a firearm by a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and possession with intent to distribute 100 grams of heroin, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). The Court sentenced Petitioner to 180 months imprisonment. Petitioner did not

pursue a direct appeal.

Petitioner has filed two 28 U.S.C. § 2255 Motions to Vacate, Set Aside or Correct Sentence and numerous post-judgment motions challenging his conviction and sentence, many of which raise identical arguments that have already been considered and rejected by this Court. As a result, the Court enjoined Petitioner from filing additional motions without obtaining leave from the Court. *See* ECF No. 118. On April 27, 2020, the United States Court of Appeals for the Sixth Circuit affirmed this Court's imposition of prefiling restrictions in this matter, holding that "Sandlain's actions demonstrate why such orders are necessary. This motion marks his third attempt to circumvent the district court's restriction on filing frivolous motions without leave to do so." *United States v. Blake Sandlain*, No. 19-2100 (6th Cir. Apr. 27, 2020).

Consistent with his previous filings, Petitioner continues to file frivolous motions without requesting and receiving leave to do so. The few instances where Petitioner has sought leave to file a motion likewise do not merit granting his requested relief.

Petitioner's first request for leave seeks permission to file a motion for his sentencing and plea hearing transcripts. ECF No. 144. Title 28 U.S.C. § 753(f) governs the production of transcripts free of charge in criminal proceedings, which

states in relevant part:

> Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. § 3006A), or in habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis, shall be paid by the United States out of moneys appropriated for these purposes. Fees for transcripts furnished in proceedings brought under section 2255 of this tile [28 U.S.C. § 2255] to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose *if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.* Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).

28 U.S.C. § 753(f) (emphasis supplied).

Petitioner has not established he is entitled to free transcripts at government expense under 28 U.S.C. 753(f). Petitioner does not explicitly state that he needs his sentencing and plea transcripts in order to assert his proposed claim in a successive habeas petition, however the correct mechanism for a federal prisoner to challenge his conviction is through a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. Because Petitioner has already filed two previous § 2255 Motions, his ability to bring a successive habeas petition is constrained by § 2255(h). Additionally, Petitioner would need to receive permission from the Sixth Circuit Court of Appeals to bring a successive § 2255 petition. *See* 28 U.S.C. §2244(b)(3)(A) (requiring petitioners to obtain authorization from the court of

appeals "before a second or successive [habeas] application is filed in the district court."). Because Petitioner's request for leave to file a motion for his transcripts relies on a frivolous claim in support of his anticipated successive § 2255 habeas petition, the Court will deny his request for leave.

Specifically, in order to bring a successive § 2255 habeas petition, Petitioner must allege a claim (1) based on "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense," or (2) based on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2255(h).

Here, Petitioner relies on *Rehaif v. United States*, 139 S.Ct. 2191 (2019) in support of his request for plea and sentencing transcripts. The Supreme Court held in *Rehaif* that, "in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." *Id.* at 2200. Petitioner fails to provide any specificity concerning how the circumstances of his case are impacted by the decision in *Rehaif*. He only states that *Rehaif* "makes a particularized showing that petitioner [sic] plea agreement were

[sic] not knowingly and voluntarily [sic], and that the district court failed to establish a factual basis for the plea." ECF No. 144, PageID.834. He does not assert that his proposed *Rehaif* claim is based on newly discovered evidence. Nor is *Rehaif* "a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court," rather it is "a matter of statutory construction that has not been made retroactive." *In re Kelly*, No. 20-5091, 2020 U.S. App. LEXIS 17509 (6th Cir. Jun. 3, 2020) (citing *Khamisi-El v. United States*, 800 F. App'x 344, 349 (6th Cir. 2020)); *see also In re Palacious*, 931 F.3d 1314, 1315 (11th Cir. 2019). Moreover, by pleading guilty, Petitioner waived his right to attack the sufficiency of the evidence to sustain his conviction. *See United States v. Manni*, 810 F.2d 80, 84 (6th Cir. 1987) ("[A]n attack on the sufficiency of the evidence that might have been produced at trial [is] clearly waived by [a] defendant's guilty plea.").

To the extent Petitioner's intent is to argue that the Government was required to prove he knew he was not permitted to possess a firearm in order to sustain his conviction under § 922(g), such an argument is without merit. The *Rehaif* court explained that:

> We hold that the word "knowingly" applies both to the defendant's conduct and to the defendant's status. To convict a defendant, the Government therefore must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.

Id. at 2194. As such, the Government was required to prove that Petitioner "was aware of his 'relevant status,' meaning that he knew that he was a 'felon, an alien unlawfully in the country, or the like,' it does not include proof that the defendant specifically knew that he was prohibited from possessing firearms." *Dillon v. Warden*, No. 6:19-295-DCR, 2019 U.S. Dist. LEXIS 219075, *8-9 (E.D. Ky. Dec. 20, 2019) (internal citation omitted) (citing *United States v. Bowens*, 938 F.3d 790, 797 (6th Cir. 2019)) (concluding that "[t]he defendants' reading of *Rehaif* goes too far because it runs headlong into the venerable maxim that ignorance of the law is no excuse."). Petitioner does not assert that he was unaware of his status as a convicted felon, nor could he when he stipulated to this fact in his plea agreement, "and because *Rehaif* does not require more, his [anticipated successive] petition fails to state any viable claim for relief." *Dillon*, 2019 U.S. Dist. LEXIS 219075, at *10.

The plea and sentencing transcripts are therefore unnecessary to resolve Petitioner's frivolous claim under *Rehaif*. Petitioner is not entitled to free transcripts at government expense. As such, leave to file a motion for plea and sentencing hearing transcripts will be denied.

Next, Petitioner seeks leave for permission to file a Rule 60(b)(4) motion stemming from this Court's October 20, 2015 Opinion and Order denying § 2255 relief. This denial has been affirmed on appeal. *Sandlain v. United States*, 15-2519

(6th Cir. Jul. 8, 2016).

Petitioner argues that he is entitled to Rule 60 relief based on the holding in *Shelton v. United States*, 800 F.3d 292 (6th Cir. 2015), because this Court failed to review Petitioner's reply brief before resolving Petitioner's August 26, 2015 § 2255 Petition. In *Shelton,* the issue before the Sixth Circuit was whether the district court could *sua sponte* dismiss a § 2255 habeas petition based on untimeliness grounds. *Id.* at 293-94. The *Shelton* court ultimately concluded the parties must be given notice and an opportunity to be heard on the matter prior to *sua sponte* dismissal on untimeliness grounds. *Id.* Unlike the petitioner in *Shelton*, this Court denied Petitioner § 2255 relief on the merits, concluding he could not establish a right to relief on his ineffective assistance of counsel claims under *Strickland v. Washington*, 466 U.S. 668 (1984). *See* ECF No. 72; *see also Sandlain v. United States*, 15-2519 (6th Cir. Jul. 8, 2016).

Finally, the Court notes that the Rules governing habeas corpus proceedings do not require the filing of a reply brief. *See* Rule 5(d), Rules Governing Section 2255 Cases ("The petitioner may submit a reply . . . ."). The Advisory Committee Notes to the 1976 Amendment state that similar to "Rule 5 of the § 2254 rules, there is no intention here that such a traverse be required, except in exceptional circumstances." *See also* Rule 5(e), Rules Governing Section 2254 Cases, 1976

Advisory Committee Note (stating that "Rule 5 . . . . does not contemplate a traverse to the answer, except under special circumstances . . . . where it will serve a truly useful purpose" such as where the answer raises facts that the district judge finds to be untrue). Petitioner's reply would have served no useful purpose. *See* ECF No. 83, PageID.570 ("The Court rendered its denial of the Petitioner's Section 2255 motion not because it is biased against the Petitioner, but because the Court possessed enough facts to base its decision without the need for a reply."). Based on the foregoing considerations, Petitioner's Request for Leave to File a Rule 60(b)(4) Motion will also be denied.

Petitioner's remaining filings fail to comply with this Court's previous order enjoining Petitioner from filing further motions without first seeking and obtaining leave of the Court. These motions will therefore be summarily denied. *See* ECF Nos. 118; 148, 150-51, 153-54; *see also United States v. Blake Sandlain*, No. 19-2100 (6th Cir. Apr. 27, 2020) (affirming this Court's imposition of prefiling restrictions against Petitioner for repeated and vexatious filings).

Accordingly, Petitioner's Request for Leave to File Motion for Production of Plea and Sentencing Hearing Transcripts [#144] is DENIED. Petitioner's Request for Leave to File a Rule 60(b)(4) Motion [#146] is DENIED. Petitioner's Motion for Status of Why Petitioner Has Not Received a Copy of his Plea/Sentencing

Transcripts on Motion for Leave [#48] is DENIED. Petitioner's Motion Requesting Appeal Bond [#150] is DENIED. Petitioner's Motion to Supplement Leave to File 60(b)(4) with this Court [#151] is DENIED. Petitioner's Motion for Judicial Notice to Request that an Injustice be Remedied [#153] is DENIED. Petitioner's Motion Pursuant to 28 U.S.C. § 455(a) Requesting that the Above Judge Recuse Himself from Hearing Pending Motion for Leave to File 60(b)(4) Motion before the Court [#154] is DENIED.

SO ORDERED.

Dated: June 22, 2020

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record and on Blake Sandlain, #12250-088, FCI McDowell, 101 Federal Drive, Welch, WV 24801 on June 22, 2020, by electronic and/or ordinary mail.

/s/ Teresa McGovern
Deputy Clerk

Rule 5. The Answer and the Reply

(a) When required. The respondent is not required to answer the motion unless a judge so orders.

(b) Contents. The answer must address the allegations in the motion. In addition, it must state whether the moving party has used any other federal remedies, including any prior post-conviction motions under these rules or any previous rules, and whether the moving party received an evidentiary hearing.

(c) Records of prior proceedings. If the answer refers to briefs or transcripts of the prior proceedings that are not available in the court's records, the judge must order the government to furnish them within a reasonable time that will not unduly delay the proceedings.

(d) Reply. The moving party may file a reply to the respondent's answer or other pleading. The judge must set the time to file unless the time is already set by local rule.

HISTORY: As amended April 26, 2004, eff. Dec. 1, 2004; April 25, 2019; eff. Dec. 1, 2019.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Notes of Advisory Committee on Rules.

Unlike the habeas corpus statutes (see 28 USC §§ 2243, 2248) § 2255 does not specifically call for a return or answer by the United States Attorney or set any time limits as to when one must be submitted. The general practice, however, if the motion is not summarily dismissed, is for the government to file an answer to the motion as well as counter-affidavits, when appropriate. Rule 4 provides for an answer to the motion by the United States Attorney, and rule 5 indicates what its contents should be.

There is no requirement that the movant exhaust his remedies prior to seeking relief under § 2255. However, the courts have held that such a motion is inappropriate if the movant is simultaneously appealing the decision.

We are of the view that there is no jurisdictional bar to the District Court's entertaining a Section 2255 motion during the pendency of a direct appeal but that the orderly administration of criminal law precludes considering such a motion absent extraordinary circumstances. *Womack v United States,* 395 F.2d 630, 631 (DC Cir 1968).

Also see *Masters v Eide,* 353 F.2d 517 (8th Cir 1965). The answer may thus cut short consideration of the motion if it discloses the taking of an appeal which was omitted from the form motion filed by the movant.

APPENDIX (C)

There is nothing in § 2255 which corresponds to the § 2248 requirement of a traverse to the answer. Numerous cases have held that the government's answer and affidavits are not conclusive against the movant, and if they raise disputed issues of fact a hearing must be held. *Machibroda v United States*, 368 US 487, 494, 495 (1962); *United States v Salerno,290 F.2d 105, 106 (2d Cir 1961); Romero v United States,* 327 F.2d 711, 712 (5th Cir 1964); *Scott v United States,* 349 F.2d 641, 642, 643 (6th Cir 1965); *Schiebelhut v United States,* 357 F.2d 743, 745 (6th Cir 1966); and *Del Piano v United States,* 362 F.2d 931, 932, 933 (3d Cir 1966). None of these cases make any mention of a traverse by the movant to the government's answer. As under rule 5 of the § 2254 rules, there is no intention here that such a traverse be required, except under special circumstances. See advisory committee note to rule 9.

Subdivision (b) provides for the government to supplement its answers with appropriate copies of transcripts or briefs if for some reason the judge does not already have them under his control. This is because the government will in all probability have easier access to such papers than the movant, and it will conserve the court's time to have the government produce them rather than the movant, who would in most instances have to apply in forma pauperis for the government to supply them for him anyway.

For further discussion, see the advisory committee note to rule 5 of the § 2254 rules.

Notes of Advisory Committee on 2004 amendments. The language of Rule 5 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Revised Rule 5(a), which provides that the respondent is not required to file an answer to the motion, unless a judge so orders, is taken from current Rule 3(b). The revised rule does not address the practice in some districts, where the respondent files a pre-answer motion to dismiss the motion. But revised Rule 4(b) contemplates that practice and has been changed to reflect the view that if the court does not dismiss the motion, it may require (or permit) the respondent to file a motion.

Finally, revised Rule 5(d) adopts the practice in some jurisdictions giving the movant an opportunity to file a reply to the respondent's answer. Rather than using terms such as "traverse," see 28 U.S.C. § 2248, to identify the movant's response to the answer, the rule uses the more general term "reply." The Rule prescribes that the court set the time for such responses, and in lieu of setting specific time limits in each case, the court may decide to include such time limits in its local rules.

Notes of Advisory Committee on 2019 amendments. The moving party has a right to file a reply. Subsection (d), added in 2004, removed the discretion of the court to determine whether or not to allow the moving party to file a reply in a case under § 2255. The current amendment was prompted by decisions holding that courts nevertheless retained the authority to bar a reply.

As amended, the first sentence of subsection (d) makes it even clearer that the moving party has a right to file a reply to the respondent's answer or pleading. It retains the word "may," which is used throughout the federal rules to mean "is permitted to" or "has a right to." No change in meaning is intended by the substitution of "file" for "submit."

As amended, the second sentence of the rule retains the court's discretion to decide when the reply must be filed (but not whether it may be filed). To avoid uncertainty, the amended rule requires the court to set a time for filing if that time is not already set by local rule. Adding a reference to the time for the filing of any reply to the order requiring the government to file an answer or other pleading provides notice of that deadline to both parties.

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Blake Sandlain — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

PROOF OF SERVICE

I, Blake Sandlain, do swear or declare that on this date, November 30, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows: Solicitor General of the United States. 950 Pennsylvania, N.W., Room# 5616, Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2021

Blake Sandlain
(Signature)