

22-5184

No. _____

FILED
JUL 14 20

OFFICE OF THE CLERK
SUPREME COURT OF THE
UNITED STATES.

ORIGINAL RECORDED IN THE CLERK'S
COURT OF COMMON PLEAS

IN THE

SUPREME COURT OF THE UNITED STATES

Dwayne Stoutamire — PETITIONER
(Your Name)

vs.

Tim Shoop — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Sixth
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE) circuit

PETITION FOR WRIT OF CERTIORARI

Dwayne Stoutamire # 532253
(Your Name)

P.O. Box # 5500
(Address)

Chillicothe, ohio 45601
(City, State, Zip Code)

(Phone Number)

Questions presented

Do a petitioner need to obtain a certificate of Appealability from the denial of a civil rule 60(b) motion?

Did the court of appeals properly apply section 2253 of the certificate of Appealability statute?

If the lower courts improperly applied a procedural default to a claim that was properly presented to the state courts can the courts apply a more lenient application of the miscarriage of justice rule?

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

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	21
CONCLUSION.....	22

INDEX TO APPENDICES

APPENDIX A - decision by the United States District court
for the northern District of ohio

APPENDIX B - The United States court of appeals for the
Sixth circuit decision

APPENDIX C - denial of motion for reconsideration

APPENDIX D - prison mailbox - declaration

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
JOHNSON v. Bell, 605 F.3d 333 (6th Cir. 2010)	5
Harrison v. Bell, 566 U.S. 180 (2009)	5
U.S. v. McRae, 793 F.3d 392 (4th Cir. 2015)	6
U.S. v. Hohn, 524 U.S. 236 (1998)	7
Ayestas v. Davis, 138 S. Ct. 1080 (2018)	7
Miller-EL v. Cockrell, 537 U.S. 322 (2003) ...	8, 10, 12
Buck v. Davis, 137 S.Ct. <u>759</u> (2018) ...	8, 9, 10, 11, 12, 14, 15, 19
Banister v. Davis, 140 S.Ct. 1698 (2020) ...	8
Maryland v. Dyson, 527 U.S. 465 (1999) ...	11
Schweiker v. Hansen, 450 U.S. 785 (1981) ...	12
Lawrence on behalf of Lawrence v. Carter, 516 U.S. 165 (1995) ...	13
Coonce v. U.S., 142 S.Ct. 25 (2021) ...	13
Stuton v. U.S., 516 U.S. 193 (1996) ...	14, 15
Wells v. Hall, 558 U.S. 220, 225 (2010) ...	14
Reed v. Ross, 468 U.S. 1 (1984) ...	16
Brown v. Plata, 563 U.S. 493 (2011) ...	16
Horne v. Flores, 557 U.S. 433 (2009) ...	17
Parker v. Turner, 626 F.2d 1 (6th Cir. 1980) ...	17
Pilchak v. Camper, 935 F.2d 145 (8th Cir. 1991) ...	17
McQuiggan v. Perkins, 569 U.S. 383 (2013) ...	18
Fay v. Noia, 372 U.S. 391 (1963) ...	19

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 B to the petition and is

reported at 21 - 3671; 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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 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: April 18th, 2022, and a copy of the order denying rehearing appears at Appendix (c).

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

U.S.C. § 2253(c) (certificate of appealability)

Statement of the Case

I filed a civil rule 60(b) motion before the District court for the Northern District of Ohio (stoutamire v. Shoop, 4:10-cv-2657; Doc. # 96-1). This motion was denied (Doc. # 101).

(Appendix # A)

I timely appealed to the Sixth circuit court of Appeals requesting a certificate of Appealability (COA) but it was denied (Appendix # B) that motion was denied. So I timely requested a motion for reconsideration, but that was denied (Appendix # C)

so I now come before the court seeking the court to grant me a COA or to remand my COA back to the court of Appeals so they may properly apply the COA statute.

Memorandum in Support

Do a petitioner need to obtain a Certificate of Appealability from the denial of a Civil

Rule 60(b) motion?

I come asking this question before the court due to the conflict of decisions raging before the court of appeals concerning this same issue. The court of appeals have had different of opinions concerning if a COA is needed to be able to appeal from the denial of a Civil rule 60 motion straight to the Court of Appeals or not.

When I filed to the Sixth Circuit court of appeals they required me to have to obtain a COA in order to obtain a means to obtain review from the denial of my Civil Rule 60 motion. See Appendix# 8 . Pursuant to Sixth Circuit precedence Ruled in, **Johnson v. Bell, 605 f.3d 333, 336 (6th cir. 2010)**, the courts have been requiring petitions to obtain a COA in order to obtain review of the denial of their civil rule 60(b) motions. When the sixth circuit court of appeals made this decision they did not consider this court's ruling in, **Harribison v. Bell, 566 U.S. 180 (2009)**. They did not cite any law or state any reasonable basis in law to justify its ruling, the court of appeals based their decision in only a two sentence statement.

But there are other courts that do not require petitioners to have to obtain a COA in order for them to be able to obtain review of their appeal. Since this court made its decision in, **Harribison v. Bell, 566 U.S. 180 (2009)**, the court of appeals has been at odds on if a COA is needed in order to appeal from the denial of a civil rule 60(b) motion from the district court.

The courts in, **United States v. McRae, 793 f.3d 392 (4th cir. 2015)**, pointed out the courts that have questioned the requiring the application of the COA statute to such appeals from such motions, so this court is in need to take review of this issue and clarify it for all courts do not have to question this topic any further.

“ in the wake of Harbison, other circuits have questioned the continued validity of requiring a habeas petitioner to obtain a COA before appealing a denial of a rule 60(b) motion.” **United States v. McRae, 793 f.3d 392, 399 (4th cir. 2015)**

As the sixth circuit has required a petitioner to obtain a COA before receiving review of the denial of their civil rule 60 motion. Other courts do not require a petitioner to have to obtain a COA before they can obtain review of the denial of their civil rule 60(b) motions. So I ask the court to accept review of this topic so the courts can not be in conflict concerning how to consider such request for appeal because it is unfair for a petitioner to be able to obtain review of their issues in one court but have to meet the substantial standard of the COA statute within another court. So I ask this Court to expect review of this issue that is affecting multiple courts and litigants. This issue will not take up to much of this courts resources and time and this is an important issue because this may affect a person’s first opportunity for habeas review. After civil rule 60(b) the only other options a petitioner has is motions under the second and successive statute of 2244. So I pray that the court accept review of this much needed consideration.

Did the Court of Appeals properly apply Section 2253 of the Certificate of Appealability statute?

I come before this Honorable Court asking that it remand my request for a Certificate of Appealability (COA) back to the United States Court of Appeals for the Sixth Circuit so they can properly apply this statute to the facts of my case.

I presented a civil rule 60(b) motion before the United States District Court for the Northern District of Ohio (**Dwayne Stoutamire v. Warden Shoop, 4:10-cv-02657: (Doc.# 96)**). The district court denied this motion (**see appendix# A;Doc.# 101**), (in which I attempted to obtain a COA from the Court of Appeals for the Sixth Circuit (**Dwayne Stoutamire v. Warden Shoop, case no. 21-3671; appendix# B**), but they denied my request and my timely motion for reconsideration (**Appendix# C**).

This court stated that it has the authority to review the denial of a COA motion from the Court of Appeals.

“we hold this court has jurisdiction under 1254(1) to review denial of applications for certificate of appealability by a circuit judge or a panel of court of appeals.” **United States v. Hohn, 524 U.S. 236, 253 (1998)**

“we may review the denial of a COA by the lower courts. When the lower courts deny a COA we conclude that their reason for doing so is flawed, we may reverse and remand so that the correct legal standard may be applied.” **Ayestasi v. Davis, 138 S.Ct. 1080. 1089 (2018)**

I come asking the court to remand my COA request back to the Court of Appeals because their decision is clearly flawed, so I ask that it is sent back to them so the proper application of section 2253 may be applied.

I ask the court, “can the court of appeals rely on independent reasoning, different from that stated by the District Court, to deny a COA request?” I ask that the court states no.

This court stated that the courts reviewing a request for a COA only look to the District Courts decision to determine if that decision is debatable or deserves further encouragement.

“the certificate of appealability inquiry in a habeas corpus matter “ask only” if the district court’s decision was debatable.” **Miller-El v. Cockrell, 537 U.S. 322, 348 (2003)**

“we look to the district court’s application.... of AEDPA to petitioner’s constitutional claims and ask whether that resolution was debatable amongst jurist of reason.” **Id. at page 336**

“at the COA stage, the only question is whether the applicant has shown that jurists of reason could disagree **with the district court’s resolution** of his... claims...”. **Buck, supra, 137 U.S. at page 773**

““at the outset, the opinion leaves intact Miller-El’s well worn COA standard for habeas petition: court of appeals should deny applications when the district court’s ruling is not debatably wrong.” **Buck, supra, 137 S.Ct at page 786** (Justice Thomas, with whom Justice Alito, joins, dissenting)

“if the petitioner is dissatisfied with the district court’s decision and wants to appeal, he must seek permission from the appropriate court of appeals and must set out **the errors he thinks the district court made.**” **Banister v. Davis, 140 S.Ct. 1698, 1711 (2020)** (Justice Alito, with whom Justice Thomas joins, dissenting)

As this court stated, the only inquiry is to ask only if the district court’s decision is debatable. This court in Miller, *supra*, clearly focused on what the district court decided not on some other independent reasoning to justify its decision. The court of appeals clearly made a

merits determination, then based its denial of my COA on this independent reasoning. When the Sixth Circuit decided my COA they relied on issues not even stated by the District Court. This court stated that the reviewing court must determine if jurist of reason could find that the District Court's decision is debatable or deserves further encouragement. Looking at the District Court's decision he relied on two basis to deny my Civil rule 60(b) motion; (1) that it believed that I only presented a self-serving affidavit and no other evidence in behalf of my actual innocence argument, and (2) that my civil rule 60 motion is nothing other than a second and successive habeas petition (**Dwayne Stoutamire v. Warden Shoop, case no.# 4:10-CV-02657 at pages 2 - 3 ; Doc.#101 at pages 2).**

Looking at the Court of Appeals decision they do not even Acknowledge the District Court's ruling, instead they rely on their own findings to deny my Civil rule 60 motion. the court of appeals rely on a ruling that was their belief on how the civil rule 60(b) motion should have been decided, not if the district court's decision is debatable. the district court never relied on the law of the case doctrine as the court of appeals did in its decision, and the other basis of its decision is clearly its own merits determination. This court stated that a reviewing court cannot base their denial of a COA on a decision that is in essence a merits determination, then base their denial of the COA on this same basis.

"when a reviewing court... inverts the statutory order of operations and first decides the merits of an appeal, then justifies its denial of a COA based on its adjudication of the actual merits, has placed too heavy a burden on the prison at the COA stage." **Buck v. Davis, 137 S.Ct. 759, 774 (2018)**

"when a court of appeals side steps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction." **Miller-El, supra, 537 U.S. at pages 336-337**

The court of appeals clearly did their own independent review of my civil rule 60(b) motion rather than determine if "jurist of reason" can determine if the district court's decision is debatable or the issues before the court deserves further encouragement. So I ask the court to remand my COA back to the court of appeals instructing them to determine if the district court's reasoning to deny my civil rule 60 motion is debatable or deserves further encouragement.

Another flaw in the court of appeals decision is that they used the same language this court rejected in, **Buck v. Davis, 137 S.Ct. 759 (2017)**. The court of appeals stated the following:

"Although it does not appear that Stoutamire previously presented exhibits (2),(3),(6),(11), or (12), **these exhibits do not show "exceptional or extraordinary circumstances" warranting relief under rule 60(b)(6).**" (Appendix# 6 at page 5)

This court stated that a petitioner does not have to show that his argument will show a "exceptional or extraordinary circumstances" in order to beable to receive a COA. This court stated that this requirement is reserved for the merits determination when it determines if a civil rule 60(b)(6) motion show be granted, not a COA. See **Buck, supra, 137 S.Ct. at page 773** so when the court of appeals decided my COA , determining that my actual innocence evidence did not meet the exceptional or extraordinary requirement of civil rule 60(b)(6) "it reached that conclusion only after essentially deciding the case on the merits." **Buck, supra, 137 S.Ct. at page 773**

When the court of appeals rely on reasoning not relied on by the district court it is in essence making its own independent determination on the merits and then using that reasoning to deny the COA. This is then not a COA inquiry but instead a merits analysis, one that is made without the benefit of briefing. The court of appeals place people like me at a disadvantage, the court is making a decision without us having the opportunity to show the flaws in its decisions.

When I filed my motion for reconsideration to the Sixth Circuit they should have seen the error in their decision and given my motion ,for a COA, proper consideration. The Sixth Circuits... "failure to remand is legally erroneous, and that error is obvious in light of...**Buck v. Davis, Supra.**" Quoting **Gonzales v. Thomas, 547 U.S. 183, 185** (2006). So I ask the court to summary reverse the Court of Appeals decision and remand my COA back to the court of appeals instructing them to determine if the district court's reasoning to deny my civil rule 60(b) motion is debatable or if my issues deserves further encouragement. I ask this court to summary reverse my COA back to the court of appeals so the they can properly apply the COA requirements and not decide my COA based on the same standard of review this court rejected in **Buck v. Davis, supra.** This review will conserve this courts resources, not requiring full briefing for a issue that is clearly in error.

"Summary reversal does not decide any new or unanswered question of law, but simply corrects a lower courts demonstrably erroneous application of federal law." **Maryland v. Dyson, 527 U.S. 465, 467 f.n. 1 (1999)**

"a summary reversal is a rare disposition, usually reserved by this court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." **Schweiker v. Hansen, 450 U.S. 785, 791 (1981)** (Justice Marshall, with justice Brennan, joins, dissenting)

"we have sometimes granted review and summarily reversed in cases where it appeared that the lower court had conspicuously disregarded governing supreme precedent,..." **Taylor v. Rojas, 208 L.Ed.2d 164, 166-167 (2020)** (Justice Alito, concurring in judgment)

This should easily be met. The law is settled and stable concerning the application of the COA standard. This court stated in, **Miller-El v. Cockrell, 537 U.S. 322** at page 336 and in **Buck v. Davis, 137 S.Ct. 759, 773**, that a court must consider the district court's decision to determine if "jurist of reason" could find that the district court's decision is debatable or deserves further encouragement. And that the court of appeals cannot make a merits determination and deny the COA based off that merits determination, **Miller-El, supra, 537 U.S. at page 336** and **Buck, supra, 137 S.Ct. at page 773**. the facts are not in dispute, the only thing in dispute is how the court of appeals applied the law to my COA request. And the decision of the court of appeals decision is clearly in error. The court of appeals required me to meet the "extraordinary circumstance" standard of civil rule 60(b)(6) when deciding my COA motion. This court stated that a petitioner does not have to meet this heavy standard during this stage. That the "extraordinary circumstance" language stated in civil rule 60(b)(6) is reserved for the merits determination not the COA inquiry. See **Buck, supra, 137 S.Ct. at page 773**

If this court is not incline to grant my motion and summary reverse it due to some reason, I ask that the court review my motion under the G.V.R. standard (grant/vacate/reverse).

"Title 28 U.S.C. 2106 appears on its face to confer upon this court a broad power to GVR: the supreme court... or ... any other court of appellate jurisdiction may ... vacate .. any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and .. require such further proceedings to be had as may be just under the circumstances." **Lawrence on Behalf of Lawrence v. Carter, 516 U.S. 165, 166 (1995)**

"the GVR order has, over the past 50 years, become an integral part of this court's practice, accepted and employed by all sitting and recent Justices." **Id.**

"in cases involving unpreserved but plain errors, GVR appropriate where we think there's a reasonable probability that curing the error will yield a different outcome." **Coonce v. United States, 142 S.Ct. 25, 30 fn. 5 (2021)**

The standard of review is somewhat a lesser burden then the writ of certiorari's standard of consideration.

"Naturally, **because GVR orders are premised on matters that we have reason to believe the court did not fully consider**, and because they require only further consideration, the standard that we apply in deciding whether to GVR is somewhat liberal than the all writs act standard, under which relief is granted only upon a showing that a grant of certiorari and eventual reversal are probable, used in accordance with this approach, the GVR order can improve the fairness and accuracy of judicial outcomes while at the same time serving as a cautious and deferential alternative summary reversal in cases whose precedential significance does not merit our plenary review." **Lawrence, supra, 516 U.S. at page 167**

"this practice has some virtues. In an appropriate case, a GVR order conserves the scarce resources of this court that might otherwise be expended on plenary consideration,

assist the court below by flagging a particular issue that it does not appear to have fully considered, assists this court by procuring the benefit of the lower court's insight before we rule on the merits, and alleviates the potential for unequal treatment that is inherent in our inability to grant plenary review of all pending cases raising similar issues." **Id. 516 U.S. at page 167**

"remand the case (GVR) for further consideration in light of potentially pertinent matters which it appears that the lower court "may" not have considered." **Stuton v. United States, 516 U.S. 193, 194 (1996)**

"a GVR order conserves the scarce resources of this court, ... and ... assists the court below by flagging a particular issue that it does not appear to have fully considered..." **Wells v. Hall, 558 U.S. 220, 225 (2010)**

This standard of review should be easily met because it is clear that the Court of Appeals failed to consider this court's decision in, **Buck v. Davis, supra.**.. the Court of Appeals did not cite this court's ruling and clear committed the same errors the 5th circuit did which brought review of, **Buck v. Davis, supra**, before the court ("the district court's opinion did not advert to our decision in..." **Stuton, supra, 516 U.S. at page 194**). So this court should remand my COA back to the Court of Appeals so they can properly consider **Buck v. Davis, supra**, and avoid the same error that they did, by ruling on the merits of the civil rule 60(b) motion and then relying on that merits determination to deny my COA.

it seems that the Court of Appeals are doing everything in their power to ignore decisions by this court and blatantly making clear errors of review, just to push it out of their court and put it at another's doorstep. The court is to protect justice and fairness in the courts, I am asking the court to remand my petition back before the court of appeals so the courts may

grant me the review that my constitutional claims deserve if not for the lower courts failure to recognize this court's decision in, **Buck v. Davis, supra.**

"when a litigant is subject to the continuing coercive power of the Government in the form of imprisonment, our legal traditions reflect a certain solicitude for his rights, to which the important public interests in judicial efficiency and finality must occasionally be accommodated. We have previously refused to allow technicalities that cause no prejudice to the prosecution to preclude a remand under 28 U.S.C. 2106 in the interest of justice. And procedural accommodations to prisoners are a familiar aspect of our jurisprudence." **Stutson, supra, 516 U.S. at page 196**

If the lower courts improperly applied a procedural default to a claim that was properly presented to the state courts can the courts apply a more lenient application of the miscarriage of justice rule?

I fail how this should be such a uphill battle for me to have my issues reviewed. The claims that I am trying to obtain review for I properly presented before the Ohio state courts.

Ineffective Assistance of Counsel (failure to investigate) (case number's 2009 - Ohio - 6228 at {P 48} (the Ohio Court of Appeals) (Dwayne Stoutamire v. Morgan, case no. 4:10-cv- 26 S 7 Doc. # 24 - 2 - appendix# 28) and I timely appealed to the Ohio Supreme Court. See (state of Ohio v. Dwayne Stoutamire, case 1010 - 0069 (Stoutamire v. Morgan, case no. 4:10-cv- ;Doc# 24- 2 appendix# 30 Ohio Northern District Court)) .

Prosecutorial misconduct (Brady claim). I properly presented this claim before the Trial court and the Ohio Court of Appeals reviewed my appeal from the denial of my post conviction motion (case ~~2009~~-Ohio-6228 at {P 30 - 41})(Dwayne Stoutamire v. ~~morgan~~, case no. 4:10- CV-~~02657~~; Doc. 24-2 at appendix# ~~28~~ (Ohio Northern District Court)). And I timely appealed this decision to the Ohio Supreme Court (case no. 2010 - 0069)(Dwayne Stoutamire, case no. # 4:10-cv- ~~2657~~; Doc. # 24-2 at appendix# ~~30~~). The Ohio Courts reviewed and denied my claims on their merits, yet I have been fighting a procedural bar every since I presented my claims before the federal courts. See Dwayne Stoutamire v. ~~morgan~~, case no. 4:10-cv-~~2657~~; (Doc. # ~~46~~ at page ~~41~~). (2011 - U.S. Dist. Lexis 149987 at C* b -7)

The Procedural default rule is a judge made rule that has no basis in the statute, when congress drafted up the AEDPA statute it could have easily incorporated this rule into its statutes knowing that this court has been applying it for decades beforehand. So congress has left it to the courts to fashion and form such rules in its own courts.

Is this really what justice means, that the courts apply procedural rules so draconically that its citizens cannot even have their constitutional claims reviewed. Is that the easy way out? I thought the federal courts are here to protect our constitutional rights.

"there can be no doubt that in enacting 2254, congress sought to interpose the federal courts between the states and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action." **Reed v. Ross, 468 U.S. 1, 10 (1984)**

"courts nevertheless must not shrink from their obligation to enforce the constitutional rights of all persons." **Brown v. Plata, 563 U.S. 493, 511 (2011)**

“federal courts must vigilantly enforce federal law and must not hesitate in awarding necessary relief.” **Horne v. Flores, 557 U.S. 433, 450 (2009)**

“federal courts exists to fearlessly protect constitutional rights.” **Parker v. Turner, 626 f.2d 1, 6 (6th cir. 1980)**

As one of the court of appeals has recognized some time ago that the standard of review concerning procedural defaults and the basis to overcome these defaults, at times, should be lenient in its application.

“we believe that this is an unusual case. We do not reach a decision that permits a bypass of the cause-prejudice requirements of wainwright without trepidation. There are times, however, that justice requires a more expansive and compassionate application of the rule. This is one of those times.” **Pilchak v. Camper, 935 f.2d 145, 149 (8th cir. 1991)**

This is one of those times that a expansive and compassionate application of the miscarriage of justice rule needs to be applied. I did everything thing that I was required to do in the state courts so that my constitutional claims could be properly reviewed before the federal courts. But due to the district courts erroneous application of the procedural default rule I have been trying for almost a decade to just obtain review of claims that were never procedurally defaulted. Should I lose my opportunity to show the court that my constitutional rights were violated due to the lower courts committing a error and failing to correct it when they had a chance. Should I lose my right to invoke my constitutional rights due to the courts improperly utilizing a judge made rule that does not even apply to me. Does judge made rules have more weight than the constitution? Didn’t this court state that constitutional claims should be reviewed on their merits?

I ask the court to except review of this issue and create a reasonable exception for review when this court sees that the lower courts found a claim procedurally defaulted, when in fact that finding was made in error. I ask the court to allow a more lenient method of consideration so a claim could receive proper review, especially when the petitioner did everything he had to do so he could receive review by the federal courts. Do the court not see the irony in the fact that a petitioner like myself did everything to avoid the many landmines created by the judge made procedural default and exhaustion standards, only to make it to the federal court and be denied review of their constitutional claims due to the courts finding of a procedural default that does not even apply. Must my constitutional rights be violated merely because the courts do not want to correct their own mistakes?

This court needs to make a exception to the miscarriage of justice statute and make it more lenient for petitioners who are trying to overcome a procedural bar that should not have applied in the first place so a miscarriage of justice does not apply. So I ask the court to create a modified standard of review based on the miscarriage of justice standard that is lenient and obtainable so a miscarriage of justice does not occur due to the courts own folly.

“what courts have created, courts can modify...” **McQuiggin v. Perkins**, 569 U.S. 383, 403 (2013) (Justice Scalia, with the chief Justice Thomas joining whom Justice Alito joins in part I, II, and III, dissenting)

“there is nothing inherently inappropriate (as opposed to merely unwise) about judge-created exceptions to judge-made barriers to relief.” *Id.*

“where a petitioner would, but for a judge-made doctrine like procedural default, have a good habeas claim, it offends no command of congress’s for a federal court to consider the petition.” *Id.*

This court has stated that review of a constitutional claim is the goal of the federal courts. That finality should not defeat this goal.

"conventional notions of finality in criminal litigation cannot be permitted to defeat the manifest federal policy that federal constitutional rights of personal liberty shall not be denied without the fullest opportunity for plenary federal judicial review." **Fay v. Noia, 372 U.S. 391, 424 (1963)**

So I ask this Honor Court to take review of this topic and fashion a remedy for people in my situation who did everything they had to do so their constitutional claims could be preserved for federal review yet the district courts find procedural default rules that do not apply to the case and the court of appeals improperly applies the COA statute cutting off any proper consideration of the constitutional claim from the onset. So I pray for this courts intervention and make it possible for my constitutional claims that I presented to the district court obtain proper review before the courts.

Conclusion

I ask the Court to summary reverse my COA back to the Sixth Circuit Court of Appeals instructing them to follow the guidance laid out in this court's decision in, **Buck v. Davis, 137 S.Ct. 759 (2017)**, and grant review of the miscarriage of justice standard for issues concerning findings of procedural defaults the lower courts apply that do not apply to the petition. People need protections of their constitutional rights, is it not the foundation of our nation. If we lose consideration by this court due to some error by the same court applying judge made rules, isn't it just right that the court made a judge made exception so it don't bring doom up the

same constitution they were created to protect. I pray that the court grants my motion and give some due relief to the same citizens it say will protect it and their constitutional rights.

Respectfully submitted,"

Dwayne Stoutamire
Dwayne Stoutamire

REASONS FOR GRANTING THE PETITION

The reason for this court granting this petition is due to the sixth circuit's blatant disregard of this court's precedents. I ask, what is the point of precedents if they can be disregarded with ease. If the court of Appeals can overlook this court's decisions without any repercussions from this court all this court's decisions will turn into guiding lights without any force behind them. The court of Appeals will consider this court's decisions when it fits their belief what the law is and not even acknowledge this court when it does not conform to their decision.

This court gave instructions to the lower courts in, *Buck v. Davis*, 137 S.Ct. 759 (2017), on how to conduct a COA inquiry. But the court of Appeals did not even acknowledge this court's decision and when I point out this court's decision to the lower court showing their error they just brushed it off. The court will see that the court of Appeals for the Sixth circuit committed the same error the court of Appeals for the Fifth circuit did in, *Buck v. Davis*, *supra*. I ask again what is precedents from this court if it can be pushed aside.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Desirée Stautman

Date: July 13, 2022