

22-5384

Docket No.:

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: RANDELL JOSEPH REDMOND

On Petition for a Writ of Mandamus to the United States
Court of Appeals for the Fifth Circuit
22-50098 and 22-50112

PETITION FOR WRIT OF MANDAMUS

Submitted by and for:

R. Redmond

RANDELL J. REDMOND

LeBlanc Unit # 727110

3695 FM 3514

Beaumont, Texas 77705

FILED

JUL 05 2022

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

ORIGINAL

QUESTION(S) PRESENTED

Introductory. There are different ways that a petitioner can be denied the right to petition the Government for a redress of grievances [Amend. I of the Const.]. The lower courts can refuse to enter decisions in conflict with relevant decisions of The Supreme Court, thus, violating a petitioner the equal protection of the laws [Amend. XIV.].

Q: (1) Does the United States Supreme Court allow the United States Courts of Appeals to violate prisoners' Constitution Amendment Rights when, instead of entering a decision of Constitutional Magnitude, uses erroneous factual findings to avoid entering that decision.

(2) Has the United States Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

This petition represents an opportunity for the Supreme Court to determine if it is or is not constitutional for any court to make a judgment in any case by assigning a different case number other than the one it was filed under, thus to mischaracterize it.

LIST OF PARTIES

All parties appear on the caption to the case on the cover page. Mr. Redmond is the Appellant below. Mr. Bobby Lumpkin is the Appellee below.

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Supreme Court Rule 29.6, RANDALL JOSEPH REDMOND, makes the following disclosure:

- 1) Mr. Redmond is not a subsidiary or affiliate of a publicly owned corporation.
- 2) There is not a subsidiary or affiliate of a public owned corporation, not a party to the appeal, that has a financial interest in the outcome of this case.

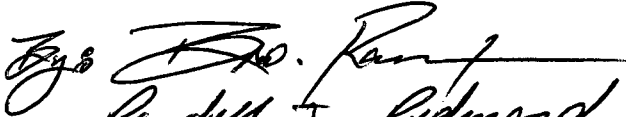
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SUPREME COURT RULES

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29.6

1

PETITION FOR A WRIT OF HABEAS CORPUS

Mr. Redmond respectfully petitions the Supreme Court to issue a writ of mandamus to the Fifth Circuit of the United States Court of Appeals. He asks this Court to order the Fifth Circuit to provide its honest service, to fulfill its duty, and to follow its very own mandates in *Harbizon v. Bell*, 556 U.S. —, 173 L.Ed. 2d 347 (2009).

JURISDICTIONAL STATEMENT

The Supreme Court of the United States has the original and exclusive jurisdiction in any case where the Constitutional validity of an act of Congress is questioned. In Mr. Redmond's case he questions if 28 U.S.C. § 2254 is void-for-vagueness under Rule 60(b) of the Federal Rules of Civil Procedure and Rule 52(b) of the Federal Rules of Criminal Procedure.

Moreover, the Supreme Court has exclusive jurisdiction because Mr. Redmond seeks a writ of mandamus to the Fifth Circuit, Court of Appeals, asking that the Court of Appeals be ordered to execute its duty. Under 28 U.S.C. § 1651(a), the remedy of mandamus against a lower federal court is a drastic and extraordinary remedy reserved for really extraordinary causes. It is given that the writ's traditional use in aid of appellate jurisdiction, both at common law and in the federal courts, has been to confine the lower court against which mandamus is sought to a lawful exercise of the lower court's prescribed jurisdiction. Because of the Fifth Circuit's failure to exercise

its jurisdiction in Mr. Redmond's case the effectiveness and validity of an act of congress is left in question.

The Supreme Court has exclusive jurisdiction to issue a writ of mandamus to a circuit of the U.S. Court of Appeals. Authority is vested in the Supreme Court by 28 U.S.C. § 11651, and Rules of the Supreme Court, Rule 20.

The Supreme Court has recognized that "where a district court persistently and without reason refuses to adjudicate a case properly before it, the Court of Appeals may issue the writ in order that it may exercise the jurisdiction of review given by law." *Will v. Calvert Fire Ins. Co.*, 98 S.Ct. 2552 (1978) (quoting *Ins. Co. v. Comstock*, 83 U.S. 258 (1873)). Actual innocence, if proved, held to be gateway through which state prisoner petitioning for federal habeas corpus relief might pass, regardless of whether impeded by procedural bar or expiration of 28 U.S.C. § 2244(d)(1)'s limitation period. See *McDuggin v. Perkins*, 135 L.Ed. 2d 1019 (2013). The emphasis on actual innocence allows the reviewing tribunal also to consider the probable force of relevant evidence that was either excluded or unavailable at trial; the habeas corpus must make its determination concerning the petitioner's innocence in light of all the evidence, ... - but with due regard to any ... and evidence claimed to have been wrongfully excluded or to have become available only after trial. Habeas Corpus § 11B, 120. *Schlup v. Delo*, 130 L.Ed. 2d 814 (1995).

The U.S. Supreme Court is the only court in the country that has the authority to decide the question of whether 28 U.S.C. § 2254 is void-for-vagueness.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1651 which states:

- "(a) The Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of these respective jurisdictions and agreeable to the usage and principles of laws.
- (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction."

28 U.S.C. § 2254 which states:

(b)(3)(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three judge panel of the court of appeals.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court. The limitation period shall run from the latest of -

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

Statement of the Case

- 1) The case began with newly discovered evidence on 8-12-19
- 2) Filed motion for authorization on 1-29-20
- 3) Case reinstated on 2-06-20
- 4) Dismissed 2-13-20
- 5) Filed meritorious 28 U.S.C. § 2254 under Fed. R. Civ. P. 60(b) on 6-29-20
- 6) Filed motion under Fed. R. Crim. P. 52(b) on 7-27-20
- 7) Received judgment and dismissal/ order on 7-27-20
- 8) Filed notice of appeal no. 20-50635 on 7-27-20
- 9) Clerk of Circuit Court issued notice - appeal cannot proceed until sanctions in case no. 17-50335 is satisfied
- 10) Clerk acknowledge receipt of C.D.A. on 9-2-20, but refused to file it
- 11) Appeal no. 20-50635 closed on 11-18-20
- 12) Motion for rehearing denied 12-14-20
- 13) Petition for Writ of Certiorari no. 20-7261 filed * 2-26-21
- 14) Denied 4-26-21
- 15) Filed Rule 60(b) and 52(b) on 12-27-21
- 16) Dismissed 1-07-22
- 17) Notice of Appeal filed 2-02-22
- 18) Motion for Order of Designation of Record filed 2-11-22
- 19) Motion for Designation of Record in Circuit Ct. filed 4-14-22
- 20) Certificate of Appealability filed 4-09-22 no. 22-50090
- 21) Dismissed on 5-12-22 as case no. 22-50112
- 22) Filed objection and motion for extension of time to file for rehearing on 5-18-22
- 23) Clerk claimed it was untimely on 5-25-22

- 24) Filed Motion for Rehearing/Rehearing En banc on 6-13-22
- 25) No action letter 6-23-22.

REASON TO GRANT THE WRIT

The federal statute, 28 U.S.C. § 2254, under Rule 60(b) of the federal Rules of Civil Procedure and Rule 52(b) of the federal Rules of Criminal Procedure, was enacted with an ambiguity that allows lower courts to disregard its own precedents and that of the Supreme Court. The ambiguity, between the discretion and the character of the reasons the Court considers decisions that conflicts with relevant decisions of this Court is for the lower court to avoid making a decision on issue(s) that a petition for a writ of certiorari is rarely granted. This ambiguity has never been before addressed, directly, by the Supreme Court. The one question that, it seems, need to be answered for the Western District of Texas and the Fifth Circuit Court of Appeals is, does a petitioner have to move for authorization in the circuit court to file a Rule 60(b) motion under Fed. R. Civ. Proc. and Rule 52(b) of Fed. R. Crim. Proc.

For a petitioner who invokes the Supreme Court controlling doctrine of *Haines v. Kerner*, 404 U.S. 519, 520-21, there is no clear and definite path to relief - let alone a formatted Rule 60(b) and Rule 52(b) motion(s).

This is an "Actual Innocence" and a "Plain Error" claim based on "Newly Discovered" evidence.

The lower courts are aware that a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. Yet that's exactly what the Western District of Texas and the Fifth Circuit Court of

Appeals has resulted to in order to keep from making decisions that the Supreme Court has actually settled concerning the "extraordinary" case. For instance

The Fifth Circuit Judges made an erroneous factual finding to dismiss for want of jurisdiction on May 12, 2022. Six (6) days later, Mr. Redmond filed an Objection to the Order and Motion for Extension of Time to file a Petition for Rehearing and/or Rehearing En Banc. See letter of Clerk (appendix "A"). Deputy Clerk Monica R. Washington, states "We will take no action on your documents... because it is untimely."

The date of the clerk's letter is May 25, 2022. The rule quoted states that an appellant has 14 days to file for rehearing. It's obvious that Mr. Redmond filed his Objection and Motion for Extension of Time within the time allowed because the letter written by the clerk is 13 days after the ruling. And that letter is referencing Mr. Redmond's Objection and Motion. See App. "A".

Rule 10 of the Fed. R. Appellate Procedure states:

(a) Time to File

(1) Time. Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment.

The clerk of court quoted rule 27. But is not referring to a Motion for rehearing. And disregards the Supreme Court controlling doctrine of *Haines v. Kerner*.

Before Elrod, Olvham, and Wilson, Circuit Judges, per curiam, the court's simple solution to avoid making a decision that conflicts with this court is to claim that no such motion(s) as a Rule 60(b) and Rule 52(b) have been filed. See appendix "B."

A careful review of the order of Chief District Judge Orlando L. Garcia (Appendix "C") specifies that Mr. Redmond's Motion for Relief from Judgment Pursuant to Fed. R. Civ. Proc. 60(b) and 52(b) was before the court, filed December 27, 2021 (DKT. No. 25). It was dismissed 1-07-2022.

In the circuit court's dismissal, No. 22-50112, it states, "A review of the district court docket sheet shows no such motions have been filed."

See also appendix "D," which is a letter by the district court's financial deputy stating that Mr. Redmond's document was filed into 5:20-CV-00803-OLG as a Motion for Relief of Judgment. And app. "E" rules 60/52 motions.

Mr. Redmond clearly stated in his Notice of Appeal submitted on February 2, 2022, that he received notice of dismissal and order denying a certificate of appealability dated January 7, 2022, on February 1, 2022. Certificate of service is dated 2-2-22. It's clear that Redmond was appealing docket no. 25 - without question. App. "F" And within the 30 days allowed.

Deputy Clerk Renee McDonough assigned case no. 22-50098 on 2-18-22; not 22-50112. See App. "G." The letter stated that Mr. Redmond must apply for a C.O.A. Then in app. "H," the clerk told Mr. Redmond to pay the filing fee; which he did.

Mr. Redmond paid the \$200 worth of sanctions against him; \$30 twice for copies; and \$505 for this quality of appeal. In addition; the district clerk sent his motion of Order of Designation of Record back unfiled. Mr. Redmond filed it in the Fifth Circuit under the assigned no. 22-50098. Deputy Clerk sent a letter stating, "We have received the entire record on appeal from the district court, we are taking no action on this motion." See App. "I." This happened twice; also changing case no.

But remember; the circuit judges stated, "A review of the district court docket sheet shows no such motions have been filed." Rule 45. Clerk's Duties states (b) Records

The clerk must record all papers filed with the clerk and all process, and judgments.

Mr. Redmond was required to file two copies of his C.O.A. which he did file on the 9th day of April, 2022, and never heard nothing of it since placing it in the unit's mailbox. See App. "J" Application for Issuance of a Certificate of Appealability. filed as appeal no. 22-50098.

A petitioner invoking the Supreme Court controlling doctrine of *Haines v. Kerner*, 404 U.S. 519, 520-21, is easily misled by the district court denying a C.O.A. and a Circuit Court who did not inform the petitioner when it was required, that in order to appeal, petitioner must apply for a C.O.A. See app. "C" and "G."

In Mr. Redmond's application for C.O.A. he cites

Harbison v. Bell, 556 U.S. —, 173 L.Ed.2d 347 (2009). The appeal of a rule 60(b) motion is limited to a determination of whether the district court abused its discretion in dismissing a petitioner's 28 U.S.C. § 2254 writ Application grounds and fourteenth Amendments right to the Constitutional claims without adjudicating them on the merits.

Regardless of previous rulings in the Supreme Court, the lower courts continue to operate in the same manner prior to their opinions being reversed. For instance, as in Mr. Redmond's case, it was the Western District Court of Texas that dismissed *Garcia v. Quarterman* for lack of jurisdiction, 573 F.3d 214, 222.

The conflict with the Fifth Circuit's own ruling is that it addressed this difficulty in *Garcia v. Quarterman*. It concluded that a subsequent § 2254 petition that was based on a defect that did not arise until after the proceedings on the previous petition were complete was not successive, *Id.* at 224.

As with *Garcia*, Mr. Redmond argues that his petition was "non-successive" because it's based on "Newly Discovered" evidence that was unavailable to him at the time of his first petition, *Id.* at 220.

The Supreme Court reasoned in *Janetti v. Quarterman*, 551 U.S. at 543-45, 127 S.Ct. at 2853... "that because the petitioner's Ford claim did not ripen until after his first habeas petition was fully adjudicated on the merits, his subsequent petition was not 'second or successive' under AEDPA..."

The district judge knows that it has not made a determination on the merits, but denies a C.O.D. And even though a Rule 60(b) motion and a Rule 52(b) motion does not require authorization, its an abuse of discretion when a district court dismisses them for lack of jurisdiction. because district courts does have jurisdiction. This is the preferred remedy instead of entering a decision in conflict with *Gehlap V. Delo*, *Buck V. Davis*, and *U.S. v. Frady*.

Without a clear and definite path to relief, Mr. Redmond did file a Motion for Authorization in the fifth Circuit. See App. "K" - case reinstated.

Even though this is an actual innocence claim under *Gehlap V. Delo* and *McNuggin V. Perkins*, a clerk of the court dismissed case no. 18-50813 regarding monetary sanctions imposed on March 12, 2020. See App. "L."

The fifth Circuit own rule states:

§ 2244 (b)(3)(B)

A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three judge panel of the court...

The catch-22 is the district judge claiming he lacks jurisdiction over a Rule 60(b) and 52(b) motion unless and until the fifth Circuit Court of Appeals gives authorization. The new evidence was discovered in July, 2019; three years of justice delayed is justice denied.

The ambiguity to avoid making a decision on the issues is for the lower courts to deny a prisoner's first Amendment right to petition the government for a "redress of grievances."

The forementioned errors are stacked up without having to mention that Actual innocence, if proved, held to be gateway through which state prisoner petitioning for federal habeas corpus relief might pass, regardless of whether impeded by procedural bar or examination of 28 U.S.C. § 2244(d)(1)'s limitation period. *McDuggin v. Perkins*, 133 S.Ct. 1424 (2013).

For a petitioner invoking *Haines v. Kerner*, the lower courts are sending mixed messages. In *United States v. Brady*, Rule 52(b) of Fed. R. Crim. Proc. permits the district court in a habeas corpus procedure to notice plain error and that it has applicability in a habeas procedure. See 102 S.Ct. 2287 (1982).

Mr. Redmond filed his first Rule 60(b) motion, since discovering the new evidence, on or about July 02, 2020, waiting in prison for his case to be "reopened."

In violation of the 5th, 6th, and 14th Amendments to the Constitution of the United States, Mr. Redmond was denied the opportunity to present a defense at trial, which is the denial of due process of the law and the equal protection of the law.

It's no dispute that on May 20, 1995, he shot and killed his brother-in-law, Danny Armetin. But Mr. Redmond testified that Danny Armetin struck him first. S.D.F. p. 434 L. 17-23.

He wanted to use his disability of Chronic Shoulder dislocation(s) to show his mindset and why he was fearful

of a physical altercation. Mr. Redmond's Rule 60(b) motion filed July 02, 2020, was not even recognized as a true Rule 60(b) motion and was mischaracterized as a memorandum in support. Which is why his most recent Rule 60(b) motion was not on the merits of the claim, but attacked the integrity of the Court. Mr. Redmond attached there the 21 names of qualified expert witnesses who were willing to testify in Redmond's favor. But trial counsel failed to develop their testimonies for trial.

Trial Counsel caused a conflict of interest when he approached trial judge, Dwight E. Peschal, with his findings instead of Mr. Redmond. They were derelict in finding an inexperienced chiropractor to testify about her lack of experience concerning the subject matter. See S.D.F. p.31 L.18-20.

Trial Counsel admitted in open court that he and trial judge made a mistake in doing this. S.D.F. p.32 L.1-6.

It was Redmond's own counsel and trial judge, working together, who introduced damaging testimony in the nature of an admission against interest, more likely to be taken at face value. See *Buck v. Davis*, 137 S.Ct. —, 197 L.Ed.2d, at 19-20 (2017).

UNITED STATES V. FRADY

Mr. Redmond's case differs from Frady because Redmond actually demonstrated "cause and prejudice" when Counsel and trial judge hindered him from putting forth a defense that supports a lesser offense. Mr. Redmond also made a request for a manslaughter charge. See App. "M."

Trial judge denied the request for special charges. The actual charge given to the jury refers to "Reasonable belief" held by an ordinary and prudent person. The charge makes reference to "Serious bodily injury" and "All relevant facts and circumstances." (See App. "N.")

Mr. Redmond contends that there is nothing ordinary and prudent about the disabled in a fist fight. The jury could not connect Mr. Redmond's disability with serious bodily injury and therefore; all relevant facts and circumstances was not considered by the jury who would have concluded that Mr. Redmond's crime was only manslaughter at the most. See 4-2. V. Brady, 102 S. Ct. 1584, Crim. Law § 74.

New evidence would have changed outcome of trial.

Newly Discovered Evidence

App. "O" 4 pages

On July 9, 2019, Mr. Redmond requested to speak to a psychologist about his mentality with his disability during a physical confrontation. Page 2.

On July 12, 2019, he was interviewed by Mental Health Clinician MA, Anthony W. Freeman and discussed his case in detail in connection with his disability: when someone is fighting, can that affect their psychological health and would they react more intensely when fighting out of fear that their shoulder(s) will dislocate. (p. 3).

The mental health clinician's assessment and summary findings: from what he (Redmond) described it is possible for

someone to react in that manner. (p. 4).

The discovery of this new evidence

- 1) has been discovered since trial
- 2) is material
- 3) proves its not just cumulative
- 4) is not merely impeaching
- 5) is not privileged or incompetent
- 6) is trustworthy
- 7) due diligence was used to discover it in time for trial, but failed
- 8) will likely produce a different outcome at a retrial

Mr. Redmond's claim satisfy all of the criteria above, when the circuit clerk dismissed the motion for authorization is violation of the court's rule that a three-judge panel shall determine it, Mr. Redmond had no other remedy of law, but to file a Rule 60(b) of Fed. R. Civ. Proc. and 52(b) of Fed. R. Crim. Proc.

The district court's dismissal for lack of jurisdiction in the first Rule 60(b) motion precluded a merits determination. Such an error raised in a Rule 60(b) empowers the federal court to hear his challenge. *Hernandez V. Thaler*, 630 F.3d 420, 427-27 (5th Cir. 2010), citing *Gonzales V. Crosby*, 545 U.S. 524, 531-32, 125 S.Ct. 2641, (2009).

The problem with this is that although Mr. Redmond asked Chief Judge Orlando L. Garcia to recuse himself from making a determination in a Rule 60(b) motion that

attacks his previous ruling, he simply ignored that request and dismissed the Rule 60(b) motion challenging the integrity of the court as lack of jurisdiction.

Consistent with his theory, Redmond did raise justification, excuse, and mitigating circumstances to warrant a manslaughter charge by presenting colorable evidence that the jury was not given an adequate opportunity to consider a manslaughter verdict. The trial court's instruction relieved the State of the burden of proving malice, an element of the crime of murder, beyond a reasonable doubt, thus, demonstrating that the instruction given to the jury was so prejudicial, it will support a collateral attack on the constitutional validity of a state court's judgment even greater than the showing required to establish plain error. See *Henderson v. Kibbe*, 97 S.Ct. 1730 (1977).

This case is "extraordinary" because Mr. Redmond's claim of actual prejudice has validity. The error in the instruction concerning an element of the crime charged eliminated particular circumstances surrounding the individual case. And that worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.

Think on this; if the jury heard an instruction based on Mr. Redmond's defense and the new evidence stating that he reacted in that manner because of his disability, the verdict would have been different.

But the prosecutor, Mr. Frank Follis, stated for the record that none would support Mr. Redmond's claim. G.O.F. p. 35

L. 10-12 and p. 55B L. 1- p. 559 L. 8.

Dr. Freeman was the first qualified expert to speak on the subject matter. Mr. Redmond doubts if there are any qualified expert witnesses who would challenge his Claims.

U.S. v. Correa Ventural, 6 F.3d 1070, 1076 (5th Cir. 1993), As a general proposition, a defendant is entitled to an instruction as to any recognized defense for which there exist evidence sufficient for a reasonable jury to find in his favor, see *Matthew v. U.S.*, 108 S. Ct. 883, 886 (1988), and we presume an abuse of discretion "where the District Court refused a charge on a defense theory for which there is an evidentiary foundation and which, if believed by the jury, would be legally sufficient to render the accused innocent" *Id.* (Quoting *U.S. v. Rubio*, 634 F.2d 442, 446 (5th Cir. 1980).

Mr. Redmond is entitled to the same equal protection. By changing the appeal no. 22-50098 to 22-50112, the United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the subject matter of overlooking claims. In a recent appeal in the Eleventh Circuit the court held:

"Under well settled principles in this circuit, *pro se* applications for post-conviction relief are to be liberally

construed," *United States v. Brown*, 117 F.3d 471, 475 (11th Cir. 1997). And under *Chisby*, district courts are to resolve all claims for relief raised in a petition for writ of habeas corpus, 'regardless [of] whether habeas relief is granted or denied.' 960 F.2d at 936; see *Rhoads v. United States*, 583 F.3d 1289, 1291 (11 Cir. 2009) (Per Curiam) (holding that *Chisby* applies to motions to vacate under 28 U.S.C. § 2255). When a district court has overlooked a claim, our practice is to vacate the judgment without prejudice and remand the case for consideration of that claim *Chisby*, 960 F.2d at 936." see *Heffield v. United States*, case no 17-14480 (11th Cir. 2009).

Even though the Fifth Circuit Court of Appeals has dismissed case no. 22-50112, case no. 22-50098 is still a breathing document being held in violation of the law and the Constitution as the denial of justice. And as can be seen herein, the lower courts has fought tooth and nail to keep an innocent man incarcerated for a crime that should have been a lesser charge if not at all - not guilty.

ABANDONING PRECEDENTS

stare decisis - the requirement that each court stand by previous decisions made by it, and by higher courts in its jurisdiction - ensures that the law is predictable, that similar acts are adjudicated similarly, and that the

consequences of a given action are known.

The Supreme Court grants and hears argument in only 1% of the cases that are filed each term. The rare and extraordinary cases are even less than that.

McBurgin v. Perkins, 133 S.Ct. 1924, (2013): Actual innocence, if proved, held to be gateway through which state prisoner petitioning for federal habeas corpus relief might pass, regardless of whether impeded by procedural bar or expiration of 28 U.S.C. § 2244(d)(1)'s limitations period.

In the instant case, Mr. Redmond brought an actual innocence claim that should have "opened" his case. But was procedurally barred because of sanctions.

The district court dismissed Perkins case; but dismissed Mr. Redmond for lack of jurisdiction - the same as the Fifth Circuit Court of Appeals. The U.S. Supreme Court granted certiorari to resolve a conflict among circuits on whether 28 U.S.C. § 2244(d)(1) could be overcome by showing of actual innocence.

The district court and Fifth Circuit court of appeals are so confident that only 1% of cases that are filed each term gets granted and heard, they can simply dismiss a claim, as in this case, for lack of jurisdiction. And even go so far as to say that Mr. Redmond did not even file a Rule 60(b) motion; even though the evidence shows otherwise.

The conclusion of a given case by the Supreme Court is likely to affect a line of cases far into the future. But to the lower courts its the end of the life of the law.

Mr. Redmond's grounds of Actual Innocence and Plain Error goes unaddressed. The Eleventh Circuit's long standing mandate of *Clisby v. Jones*, *960 F.2d 925, (1992) (en banc) holds that:

"untill [federal habeas] proceedings have been concluded, they cast doubt on a prisoner's conviction and interfere with the state's administration of its correction program. Our procedures for handling habeas petitions are designed, in part to minimize such disruption... and we emphasize the importance of litigating all of a petitioner's claims in one habeas proceeding, both at the trial and appellate levels."

Mr. Redmond now petitions The Supreme Court of The United States to intervene by issuing a writ of mandamus; not only for resolution of his own claims, but also for the lower courts to provide form for Rule 60(b) motions of the fed. R. Civ. P. and Rule 52(b) motions of the fed. R. Crim. P.

CONCLUSION

Mr. Redmond moves this Supreme Court of The United States to grant the writ of mandamus, thereby providing a clear and definite path to relief by remanding the case

for consideration of his claims or whatever this court
deem appropriate.



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