

No.

22-5490

ORIGINAL

Supreme Court, U.S.
FILED

JUN 15 2022

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

NICHOLAS WUKOSON - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
U.S. DISTRICT COURT OF SOUTHERN DISTRICT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

NICHOLAS WUKOSON, #19092-104
FSL JESUP
2680 HWY. 301 SOUTH
JESUP, GA 31599

QUESTIONS PRESENTED

Question 1

Whether it is acceptable for the U.S. Circuit Court of Appeals in the 11th Circuit to depart from its accepted and usual course of judicial proceedings of both granting a Certificate of Appealability for and then remanding all unaddressed claims back to the district court to address. This precedent rule was established in Clisby v. Jones, 960 F.2d 925, 936 (11th Cir. 1992) and accepted countless times since, even by the same judge, but not in this case.

Question 2

Whether it is acceptable for the U.S. Circuit Court of Appeals in the 11th Circuit to refuse to review unpreserved claims of factual error under the plain error test, as per Federal Rule of Civil Procedure 52(b) and this court's ruling in Davis v. U.S., 140 S.Ct. 1060, 1061 (2020). See also U.S. v. Zinn, 321 F.3d 1084, 1087 (11th Cir. 2003).

LIST OF PARTIES

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
U.S. CIRCUIT OF APPEALS IN THE ELEVENTH CIRCUIT

RELATED CASES

U.S. v. WUKOSON, No. 18-CR-80166, U.S. District Court for the Southern District of Florida. Judgement entered 04/29/2019.

WUKOSON v. U.S., No. 20-CV-81547, U.S. District Court for the Southern District of Florida. Judgement entered 09/29/2021.

WUKOSON v. U.S., No. 21-13604, U.S. Circuit Court of Appeals for the Eleventh Circuit. Final Judgement entered 03/31/2022.

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APPENDIX A - ITEM 1 - Motion to Vacate / Reverse
Conviction under 28 U.S.C. §2255.
(CV DE 13)(Included here as Exhibit 1)

APPENDIX B - ITEM 2 - Movant's Reply to Government's Response.
(CV DE 30)(Included here as Exhibit 2)

APPENDIX C - ITEM 3 - Decision of District Court. (CV DE 32)
(Included here as Exhibit 3).

APPENDIX D - ITEM 4 - Request for Certificate of Appealability.
(Included here as Exhibit 4).

APPENDIX E - ITEM 5 - Decision of Circuit Court.
(Included here as Exhibit 5).

APPENDIX F - ITEM 6 - Motion for Reconsideration.
(Included here as Exhibit 6) *See pgs:
10-17 for clear outline of factual
support/evidence/merit behind cognizable
claims made. NOTE: ALL UNADDRESSED CLAIMS LISTED HERE.

APPENDIX G - ITEM 7 - Decision of Circuit Court.
(Included here as Exhibit 7).

APPENDIX H - ITEM 8 - Motion for Plain Error. Rule 52(b) Review.
(Included here has Exhibit 8).

APPENDIX I - ITEM 9 - Clerk of Circuit Court Notice claiming
"No action will be taken" (Included here
as Exhibit 9).

APPENDIX J - ITEM 10 - Clerk of Circuit Court Form claiming
"No action being taken" (Included here
as Exhibit 10).

APPENDIX K - ITEM 11 - Letter to Clerk of Circuit Court
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APPENDIX N - ITEM 14- AUSA admission to threatening consequences
for Petitioner's son during plea conference
(CV DE 23)(Included here as Exhibit 13.
See page 4).

APPENDIX O - ITEM 15 - AUSA admission to legally destroying
or losing the exculpatory internet device
that had been concealed from defense.
(Exhibit 11 of CV DE 13).

APPENDIX P - ITEM 16 - AUSA admission to having prior knowledge
to the internet device's exculpatory value,
with his admitting how the "phone" was
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(teenage). (Exhibit 13 here, pg. 4)

TABLE OF AUTHORITIES CITED
(WITHIN PETITION)

CASES

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STATUTES AND RULES

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

FEDERAL COURT CASES:

The opinion of the United States Eleventh Circuit Court of Appeals appears at Appendix E and G to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix C to the petition and is unpublished.

JURISDICTION

FEDERAL COURT CASES:

The date on which the United States Court of Appeals decided my Certificate of Appealability was 02/08/2022 and a copy of this order appears at Appendix E.

A timely petition for rehearing was denied by the United State Court of Appeals on the following date: 03/31/2022, and a copy of the order denying rehearing appears at Appendix G.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

UNITED STATES CONSTITUTION AMENDMENT 5

DUE PROCESS OF LAW

"No person shall ... be deprived of life, liberty or property, without due process of law[.]"

BLACK'S LAW DICTIONARY (11th Edition)

DUE-PROCESS RIGHTS

The right (as to life, liberty and property) so fundamentally importantly as to require compliance with due-process standards of fairness and justice.

FUNDAMENTAL-FAIRNESS DOCTRINE

The rule that applies the principles of due process to a judicial proceeding. The term is commonly considered synonymous with due process.

The Due Access Clause centrally concerns the fundamental fairness of government activity.

STATEMENT OF THE CASE
(original motion sent and dated)

UNITED STATES SUPREME COURT

Case No. 18-CR-80166-MIDDLEBROOKS
20-81547-CV-MIDDLEBROOKS
21-13604 (USCA 11th Circuit)

NICHOLAS WUKOSON,

Petitioner,

v.

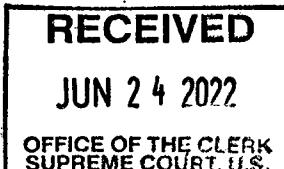
UNITED STATES OF AMERICA,

Respondent.

MOTION FOR WRIT OF CERTIORARI

I, pro se Petitioner Nicholas Wukoson, am motioning this Supreme Court of the United States to correct the lower court's foundational errors in refusing to address my cognizable claims before them by remanding the claims that should have been addressed in the first instance.

This court has said that "the Due Process Clause guarantees the fundamental elements of fairness in a criminal trial", Spencer v. Texas 385 U.S. 554, 563-564 (1967), and that the "touchstone of due process is protection of individual against arbitrary action of government." Wolff v. McDonnell, 418 U.S. 539 (1974). What this motion, and its exhibits, will show is that both the District and Circuit Courts arbitrarily chose to disrespect and deprive myself of that guarantee of fundamental fairness. Any reasonable person would agree that if a clearly made claim for relief is timely and not barred, the claim should be addressed and resolved by the appropriate court. That same reasonable person would also agree that when that court chooses to completely ignore the claim, deliberately avoiding any mention of it at all, then a very serious American injustice occurred by the hands of those we the people entrusted to protect our right of due process and justice. An injustice that this Supreme Court can easily correct by simply ordering the appropriate courts to address my claims.



CASE SUMMARY [References to follow]

While it is heartbreaking to see how this case started over a child custody struggle, it is disturbing to learn just how far a federal prosecutor will egregiously go to force a conviction with no regard for accountability or ethics. This case factually shows several examples of shameful prosecutorial misconduct that should enrage this court. Conduct that includes extreme examples of suppressing critical evidence and gamesmanship with discovery, concealing known exculpatory evidence and lying to the court. All on the record. But it also includes the prosecutor's own **admission** to suppressing exculpatory evidence while coercing a plea [13], **admission** to threatening consequences for my teenage son while coercing a plea [14], and even his own **admission** to running out to destroy known exculpatory evidence only five days prior to my (then) new counsel's opportunity to have an expert examine the material evidence [15]. Evidence that was long suppressed and thus was in serious violation of the court's specifically made discovery order some five-plus months prior. My case proves just how easy it is for a prosecutor to manipulate the narrative, to take advantage of his breathtaking power over the plea "coercing" process, to destroy critical evidence with no worries and to cheat our constitutional right to a fair trial process. In short, it's a very ugly case for this prosecutor and exposes just how easy it was for him to cheat it.

Now we are a nation built on incredible principles that includes a system of checks and balances. A system designed "to protect the people from the improvident exercise of power", INS v. Chadha, 462 U.S. 919, 957 (1983). Thus when such outrageous prosecutorial misconduct is proven and shown, the courts should address and correct the errors. But what happens here in this case goes against said foundational principles. In a case in which the misconduct is meritoriously proven behind many claims of the Ineffective Assistance of Counsel, where my Sixth Amendment right was violated, the prosecutor goes on to NOT OPPOSE most of the claims. The district court then goes on to completely ignore and fail to address 13 clearly made claims that all just so happen to expose the misconduct summaries above [3]. All of which claims were timely made and not procedurally barred [1][2]. The court treated my cognizable claims like they weren't there at all.

Thankfully, the 11th Circuit Court of Appeals has a 30-year long standing precedent rule called the "Clisby rule" that automatically grants Certificates of Appealability (C.O.A.) and then remands the unaddressed claims back to the District court to discuss and address what they should have initially. See Clisby v. Jones, 960 F.2d 925, 936 (11th Cir. 1992). In fact, in Clisby at 936, the Circuit court stated "we are disturbed by the growing number of cases in which we are forced to remand for consideration of issues the district court chose not to resolve," and then, "accordingly, we now exercise our supervisory power over the district courts, see U.S. v. Jones, 899 F.2d 1097, 1102 (11th Cir. 1990) and instruct the district courts to resolve all claims for relief raised in a petition for writ of habeas corpus... regardless whether habeas relief is granted or denied." Why the 11th Circuit has strongly stood behind Clisby countless times over the past 30 years is truly a constitutional no-brainer. It's what our courts all should do in the name of fairness. Furthermore, in Blake v. Kemp, 758 F.2d 523, 543 (11th Cir. 1985), Circuit Judge Tjoflat dissented, "[a] one-proceeding treatment of a petitioner's case enables a more thorough review of his claims, thus enhancing the quality of the judicial product" and also how the circuit is "powerless to review a district court order... unless the order finally disposes of all the claims the petitioner has presented. Andrews v. U.S., 373 U.S. 334, 340 (1963); Collins v. Miller, 252 U.S. 364, 365 (1920)." See Blake at 535. In 1992, this Supreme Court also stated, "[p]articularly in an era of excessively crowded lower court dockets, it is in the interest of the fair and prompt administration of justice to discourage piecemeal litigation." Re: James Blodgett, 502 U.S. 236, 243 (1992) (quoting Kerr v. U.S. District Court for Northern District of California, 426 U.S. 394, 403 (1976)) And in 2017, this Supreme Court stated, "this court has not in the past hesitated to vacate and remand a case when a court has failed to address an important question that was raised[.]" Truehill v. Florida, 138 S.Ct.3 (2017); see also Beer v. U.S., 546 U.S. 1050 (2011).

So in response to the district court's 13 irrefutable Clisby rule violations, I filed a pro se motion to the 11th Circuit Court of Appeals requesting the C.O.A. with 13 clearly outlined Clisby claims, 2 abuses of discretion, and a plain error review [4]. Based on the precedent rules shown above and why those rules are controlling, the Clisby claims alone should have automatically been granted a C.O.A. for panel review. But for some unknown

reason, the circuit court decided to part ways with equal protections under the law by **completely ignoring** my claims including the Clisby claims themselves [5]. The irony here is disturbing.

Also note how the 11th Circuit has made clear that when there is a Clisby violation, the circuit "will not address whether the underlying claim has any merit", Stackhouse v. U.S., 2021 U.S. App. LEXIS 20970 (11th Cir. 2021), and how "the ultimate merit of any issue for which a C.O.A. is granted 'would not be reviewed in a Clisby violation'" (quoting Long v. U.S., 626 F.3d 1167, 1170 (11th Cir. 2010)). So while ignoring my Clisby violation claims, why then is the circuit quickly denying my C.O.A.'s while addressing merit in claims never addressed by the lower court? It is truly conscience shocking to see two different courts go out of their way to decrease the quality of the judicial product by ignoring claims that coincidentally exposes several examples of cheated justice in a case that never should have been. I then filed a motion for reconsideration [6] that vividly made clear how the court ignored the Clisby claims (and others). I also went above and beyond in clearly outlining all of the merit and evidence behind each claim, considering how the court went against its own precedence in addressing it. I wanted to establish the record, in outline form, with all of the incredible merit and incontestable evidence behind each claim. In truth, I anticipated the court to again violate their own precedent rules to hide my claims. Sadly, I proved correct in that anticipation with the court ignoring everything yet again with a quick copy-and-paste denial that claimed "no arguments of merit to warrant relief." [7] I can officially tell this Supreme Court that the 11th Circuit is outright **refusing** to stand behind its own Clisby precedence in making sure this petitioner's claims are addressed and resolved with discussion. Which is an incredibly strong argument of merit to warrant relief.

Like a bouncer at a club, the circuit judge was successful in keeping my meritorious claims out of the circuit court and away from the panel for review. Regardless of how wrong he was in doing so. However, under Federal Rule of Civil Procedure 52(b), I learned that I could submit the due process violation as plain error to the circuit panel for review. As I did not clearly state said violation as a separate claim in the district court, this plain error should be reviewed by the circuit. In fact, "when a defendant fails to clearly state the grounds for an objection in the district court, we review

for plain error." U.S. v. Zinn, 321 F.3d 1084, 1087 (11th Cir. 2003). In Davis v. U.S., 140 S.Ct 1060, 1061 (2020), this Supreme Court **required** the unpreserved claims of factual error be reviewed by the circuit court under the full plain error test. So with these rules and requirements in place, I filed a motion for Plain Error, Rule 52(b) Review that shows incredibly strong merit and evidence [8], the prosecutor's own admissions behind his **concealing known exculpatory evidence** [16], then running out to **destroy said evidence** only three days after newly hired counsel pressed him to share all of the suppressed evidence. This deliberate destruction also occurred **only 5 days** prior to the defense expert's opportunity to inspect all the suppressed material evidence. Bad faith is clearly shown here. The defense only learned of all this by pure chance, weeks after its destruction. All of which is on the record, including the prosecutor's own admission to his knowing of the devices exculpatory value prior to destroying it. I outlined all of this and more in the motion, but had that door slammed in my face by the Clerk of Court's office this time [9]. They claimed the case was closed. I went back and forth with the Clerk's Office, showing the rules and requirements [11], but the Clerk's office clearly didn't care as they continued to reject my motion [10][12]. Final notice was on May 26, 2022.

No one should have to fight so hard to simply have his timely and cognizable claims reviewed, discussed, and ruled on by the court. Regardless of how they will judge, the claims should be addressed. It's about fairness, due process, and equal justice under the law. I appreciate why the courts are likely doing this as the claims expose a lot of wrongs by an egregious prosecutor who got caught deliberately **cheating justice** badly. The case also exposes the district judge ignoring my motion for help and transfer as I endured physical assaults for weeks while in county jail. It is clearly an ugly case for the government. But instead of doing the right thing, the American thing, in protecting we the people... the courts have chosen to cover it up by ignoring it all. Including the same district judge who also recused the magistrate judge prior to her completing her recommendations on the record. All done to deny my motion while ignoring the claims.

None of this should have happened, but it all did. The facts and evidence are clearly established in this disastrous case. And I have all the federal rules, requirements, and Constitutional rights and principles in my

corner. I am asking this Supreme Court to stand behind them with me to correct the lower court's errors.

CONCLUSION

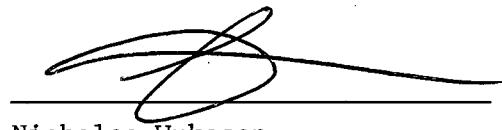
As stated, this case is no longer only about a prosecutor who showed no moral compass through his ethically dubious tactics of destruction, suppression, and deception instead of professionalism, fairness, and truth-seeking. No longer only about a prosecutor who played hide-and-seek with critical and exculpatory evidence, including his own admission to destroying known exculpatory evidence in clear bad faith mere days before his finally allowing the defense to inspect the long-suppressed evidence. These are actions that truly constitute felony obstruction of justice and are grounds for disbarment. Actions that should hold him accountable to our rules and laws just as it would any other citizen. No, this case is no longer about that but now it is also about the courts doing all it can to cover up the outrageous conduct stated by ducking and dodging any and all discussion or review of any claim showing the prosecutor's egregious actions. And in turn, forcing the case up the chain to further crowd the docket of this Supreme Court.

I am asking this Court to restore constitutional justice and fairness to this case. To show the people that equal protections under the law still exists and that no one person is above that law, even a prosecutor. I am asking this Court to vacate and remand the unaddressed claims back to the lower court before a new judge to be discussed and addressed. I am also asking for this Court to address directly or remand the plain error and abuse of discretion claims for resolution.

Every American citizen has a right to be heard. To have their timely and cognizable claims discussed and ruled on. That's what I am asking this Court to protect here.

Submitted, this the 15 day of June, 2022.

Respectfully submitted,



Nicholas Wukoson

REASONS FOR GRANTING THE PETITION

This Supreme Court should grant certiorari here to restore the fundamental elements of fairness to this case by granting, vacating and remanding all unaddressed claims back to the district court. Cognizable and timely claims made that should have been addressed in the first instance with discussion.

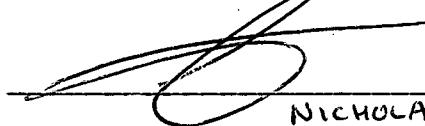
The decision by the 11th Circuit Court to deny the Certificate of Appealability (C.O.A.) was blatantly erroneous as it not only departed from the circuits accepted and usual course of judicial proceedings, but boldly went against the court's 30 year precedence in both granting a C.O.A. and then automatically remanding all unaddressed claims back to the district court for thorough review. Said precedence is called the "Clisby rule" for Clisby v. Jones, 960 F.2d 925, 936 (11th Cir. 1992) and has been applied in countless cases ever since, even by the same judge who chose to not acknowledge or apply it in this case.

The national importance of having this Supreme Court directly review and decide the questions involved is immense. Elemental and even foundational fairness in a case is at stake here. Especially after recognizing what the unaddressed claims expose and thus why they are likely being ignored against all precedence established in our due process clause and in the circuits "Clisby rule." It is also of national importance as this case represents, thus far, how broken and ignored our system of checks and balances is in our nation today. Seen through the lower courts absolute refusal to address any claim that irrefutably shows egregious and unconstitutional conduct by the federal prosecutor, much that he even admits to on the record. This case truly is of national importance for this Supreme Court to review, grant, vacate and remand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



NICHOLAS WUKOSON

Date: 08-15-2022