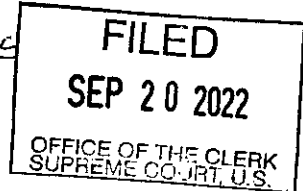


CASE NUMBER **22-5703**

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES



CHARLES MICHAEL LEDFORD,

Petitioner,

Vs.

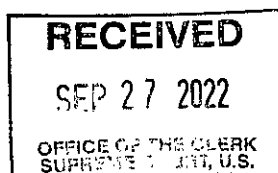
UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ of Certiorari
To The Fourth Circuit Court of Appeals

PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

Charles Michael Ledford
USM # 34931-058
FCI Edgefield
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QUESTION PRESENTED

1. Whether it is Inconsistent With this Court's Slack v. McDaniel, 529 U.S. 473 (2000) Standard For a Court of Appeals to decline to issue a Certificate of Appealability to Examine whether a district Court Violates a Habeas Movant's Fifth Amendment Right to a Full and Fair Opportunity to Exercise 28 U.S.C. ss 2255 Processes by failing to Give a Pro Se Movant an Opportunity to Amend a Poorly Pleased Format Motion Pursuant to Fed. R. Civ. P. 15 before Summarily Dismissing the Motion With Prejudice Merely Six (6) days after it was filed and only three (3) Months into the ss 2255(f)(1) Statute of limitations.

LIST OF PARTIES

Petitioner

Charles Michael Ledford

Respondent

United States of America

Other Parties to the Proceedings Below

There are Currently no Other Parties to the Proceedings Below

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1. It is Inconsistent with this Court's Slack v. McDaniel, 529 U.S. 473 (2000) Standard for a Court of Appeals to decline to issue a Certificate of Appealability to examine whether a district court violates a Habeas Movant's Fifth Amendment right to a full and fair Opportunity to Exercise 28 U.S.C. Processes by failing to give a Pro Se Movant an Opportunity to Amend a Poorly Plead Form Motion Pursuant to Fed. R. Civ. P. 15 before summarily Dismissing the Motion with Prejudice merely six days after it was filed and only three (3) months into the ss 2255(f)(1) Statute of limitations.

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- A. The Supreme Court is Justified in Granting Certiorari in this Case to Offer a Definitive Uniform Interpretation of Rule 4(b) of the Rules Governing Section 2255-- as contrasted with a Pro Se Litisant's Right to a Full and Fair Opportunity to Present Habeas Claims and Amend Such Claims Consistent with Rule 15, Fed. R. Civ. P. 6 - 11

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Charles Michael Ledford, by and through this Pro Se Petition respectfully requests of this Honorable Court to grant a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Fourth Circuit in this Case denying a Certificate of Appealability.

ORDER AND JUDGMENT BELOW

The case below was styled as United States v. Ledford, No. 22-6248 (4th Cir. June 28, 2022). The Fourth Circuit Court of Appeals' Order denying a Certificate of Appealability is attached hereto.

JURISDICTION

The Fourth Circuit Court of Appeals entered its Order denying a Certificate of Appealability on June 28, 2022. Therefore, the Jurisdiction of this Court is invoked Pursuant to 28 U.S.C. ss 1254(1) and Supreme Court Rule 10(a) & (c).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The Present case involves the application of Fundamental Due Process of law under the Fifth Amendment of the United States Constitution as applied to a Pro Se 28 U.S.C. ss 2255 Movant's right to a full and fair opportunity to Present and Amend claims of Ineffective Assistance of Counsel. This Petition also involves the Sixth Amendment right to effective Assistance of Counsel. In addition, this Petition involves Federal Rule of Civil Procedure 15(a) and (b) insofar as this Rule creates a Habeas Litigant's right to Amend a Pleading at least once before Summary Dismissal Proceedings may be initiated. Moreover, this Petition involves important questions concerning the Certificate of Appealability Standard under 28 U.S.C. ss 2253(c)(2) as applied to Summary dismissal of Section 2255

Motions in the District Courts.

Accordingly, because of the important Procedural, Substantive and Constitutional issues present in this case that justify this Court's intervention to achieve definitive, uniform interpretation and application of Due Process and Amendment Standards of 28 U.S.C. ss 2255 and other Habeas type Writs under Federal Rule of Civil Procedure 15, that will have a direct causal affect on the majority of Habeas litigants, exercise of this Court's Certiorari jurisdiction is warranted and appropriate.

STATEMENT OF THE CASE

Mr. Ledford was indicted in a multicount, Multi-Party Indictment on a single count of Conspiracy to distribute and Possess with intent to distribute 50 grams or more of actual methamphetamine in violation of 21 U.S.C. ss 841(a)(1), ss 841(b)(1)(A), and ss 846. (Count One). (CR DOC. 63). On October 9, 2019, on advice of counsel, Ledford signed a Written Plea Agreement to Count one. (CR DOC. 106). / Fn. 1. In the Agreement, the Parties stipulated that the amount of Methamphetamine involved in the Conspiracy was 3,890.86 grams. (ID at p 7(a)); the base offense level would be increased by two levels Pursuant to U.S.S.C. ss 2D1.1(b)(12) for maintaining a drug Premises; the Plea was timely Pursuant to 3E1.1(a); and the Career offender or ACCA Provision could be used in determining the Sentence, if applicable. (DOC 106 PD 7(b), (c), & (d)).

Critically, the Plea Agreement specifically indicated that Ledford remained free to argue his position regarding any other specific offense characteristics, cross references, special instructions, reductions, enhancements, departures, and adjustments to the offense level and to seek a departure or variance from the applicable guideline range. (DOC 106 at ¶ 7(e)-(f)).

The Plea Agreement also set forth the rights Ledford waived by entering the Plea Agreement: Jury Trial, Confrontation of witnesses, self incrimination, and appellate and post conviction rights except for claims of ineffective assistance and

/ Fn. 1 Ledford rejected the first Plea Agreement offer because it embodied enhancements under U.S.S.C. ss 2D1.1(b)(1) (Possession of a dangerous weapon) and ss 3E1.1 (Obstruction of justice). Counsel negotiated a Second Plea Agreement without the enhancements in the body of the Agreement but instead were contained in a written factual basis attached to the Plea Agreement that surreptitiously included the facts necessary to secure the enhancements through the PSR at sentencing. Counsel's involvement in this bait-and-switch maneuver compromised the agency relationship and is evidence of his ineffectiveness during plea negotiations.

Prosecutorial misconduct. (LCR DOC 106 at ¶¶ 15-16).

In addition to the Plea Agreement itself and its concomitant terms, Ledford was advised by Counsel that he was required to sign a written factual basis proffered by the Government in order to effectuate his Plea Agreement. (LCR DOC 107). The Factual Basis contained all the material facts to sustain the firearm and obstruction enhancements that caused Ledford to reject the first Plea Agreement. A Rule 11 Plea Hearing was conducted on October 9, 2019 by Honorable Judge Metcalf.

A PSR was prepared that incorporated verbatim the offense conduct alleged in the Factual Basis. (LCR DOC 143, PSR at ¶¶ 25-26, 38, 44). The PSR calculated the base offense level at 36 based on the stipulated drug quantity in the Plea Agreement pursuant to U.S.S.G. §§ 2D1.1(c)(5). Ledford's offense level was increased a total of six additional levels for specific offense characteristics, including possessing a dangerous weapon, §§ 2D1.1(b)(1); maintaining a drug premises, §§ 2D1.1(b)(12), and obstructing justice, §§ 3C1.1 (LCR DOC 143). Three levels were deducted for acceptance of responsibility, resulting in a total offense level of 39. (LCR DOC. 143 ¶¶ 63-65). Ledford had 5 Criminal History Points resulting in a Criminal History Category of III. The resulting Guideline range was a draconian 324-405 months imprisonment and five years supervised release. (Id. at 100, 103). On February 27, 2020 the District Court sentenced Ledford to the bottom of the Guideline range of 324 months imprisonment. (LCR DOC 169). Defense counsel raised no objection to the PSR or sentence.

On direct appeal, Counsel argued the District Court erred by accepting enhancements that were not part of the Plea Agreement and that Counsel was ineffective for failing to object to these enhancements. The Fourth Circuit Court of Appeals dismissed the appeal on the grounds that the substantive claim was barred by the appellate waiver and the effectiveness of Counsel claim was

not cognizable on direct appeal because ineffectiveness did not conclusively appear on the face of the record. United States v. Ledford, 834 Fed. App'x 12 (4th Cir. 2021). This Court denied Certiorari on May 17, 2021. Ledford v. United States, 2021 WL 1951-996 (2021).

On August 21, 2021 three months into the applicable Statute of limitations, Ledford filed a bare bones Format Motion Pursuant to 28 USC. ss 2255 with the assistance of a jailhouse law hustler that raised a single ineffectiveness of Counsel claim, essentially restating the argument from the direct appeal.

On August 27, 2021, merely six days after filing his ss 2255 Form Motion, Honorable Chief Judge Martin Reidinger denied and dismissed Ledford's Motion without Ordering a Response nor giving Ledford an opportunity to Amend his one shot at Habeas Review Pursuant to Fed. R. Civ. P. 15(a) or (b). (CV Doc. at 2).

Subsequent to the filing of Ledford's Section 2255 Motion, FCI Edgefield, where he is housed, experienced back-to-back 24/7 lockdown Procedures with inmates being confined to their locked cells due to COVID-19 break out cases, CODE RED Modified Institutional operations and restricted movement of inmates, several inmate deaths from drug overdoses and several arrests of staff involved in drug trafficking. Mailroom services were interrupted, delayed and mail came up missing and/or was never delivered to or received by numerous inmates. (CV Doc. at 5). Ledford did not receive notice of or a copy of the District Court's August 27, 2021 Memorandum Decision and Order. (CV Doc. 5 at ¶ 3).

On January 25, 2022, after not having received any Correspondence from the District Court concerning his ss 2255 Motion, Ledford consulted a different inmate

with a writer who helped him write a letter to the Court Clerk requesting a status update on his ss 2255 Motion he filed in August, 2021. On February 11, 2022 Ledford received a letter and copy of a Civil Docket Statement from the Clerk of Court. On Docket entry No. 2 it appeared the District Court had denied Ledford's ss 2255 Motion on August 27, 2021-- Just days after the Motion was filed.

Shortly after receiving this correspondence from the Clerk's office, Ledford filed a consolidated Motion to Reopen time to appeal and Notice of Appeal Pursuant to Fed.R. App.P. 4(a)(4). (LCV DOC at 5). On March 22, 2022 the district Court granted Ledford's Motion and deemed the Notice of Appeal as timely filed. (LCV DOC at 9).

On April 18, 2022 Ledford filed an Informal Brief in the Fourth Circuit requesting a Certificate of Appealability to examine several issues of due process and ineffective assistance of counsel during plea negotiations. A Panel of the Fourth Circuit declined to issue a Certificate of Appealability in an unpublished Per curiam opinion. United States v. Ledford, No. 22-6284 (4th Cir. June 28, 2022).

REASONS FOR GRANTING THE GRANT

1. It is inconsistent with this Court's Slack v. McDaniel, 529 U.S. 473 (2000) Standard for a Court of Appeals to decline to issue a Certificate of Appealability to examine whether a district Court violates a Habeas Movant's Fifth Amendment right to a full and fair opportunity to exercise 28 U.S.C. § 2255 Processes by failing to give a Prose Movant an opportunity to Amend a Poorly Plead Form Motion Pursuant to Fed. R. Civ. P. 15 before summarily Dismissing the Motion with Prejudice merely six (6) days after it was filed and only three (3) months into the § 2255(f)(1) Statute of Limitations.

Petitioner Charles Michael Ledford respectfully requests of this Honorable Court to Grant a Writ of Certiorari, Vacate the Fourth Circuit Panel decision denying him a Certificate of Appealability and Remand for further Consideration of the Constitutionality of the district Court's Summary Dismissal of his 28 U.S.C. § 2255 Motion without Notice or opportunity to Amend.

The Fourth Circuit Court of Appeals' decision to deny a Certificate of Appealability on the ground that Ledford failed to make "a Substantial Showing of the denial of a Constitutional right" is inconsistent with the record of Proceedings below and the Prevailing threshold Standard for obtaining a Certificate of Appealability announced by this Court in Slack v. McDaniel, 529 U.S. 473 (2000). A COA should have issued in this case because Ledford Presented a Substantial question concerning the denial of his Constitutional rights to Due Process and effectiveness of Counsel under the Fifth and Sixth Amendments. Indeed, the issues underlying this case and application for a COA deserve further review because there are important questions to which there exists neither Fourth Circuit nor Supreme Court Precedent that would have Potentially wide

raising implications on the notice and Claim Processing requirements on Summary Dismissal Proceedings attendant to Pro Se 28 U.S.C. ss 2255 Motions.

These two issues include: whether a District Court violates a ss 2255 Petitioner's due process right to a full and fair opportunity to litigate poorly Pled Pro Se claims of ineffective assistance of counsel by denying and dismissing such claims without first providing the Movant an opportunity to Amend his Pleadings Pursuant to Federal Rule of Civil Procedure 15; and Second, whether Fed. R. Civ. P. 15(a) creates a right to Amend a ss 2255 Motion at least once within twenty-one (21) days before a Court may summarily dismiss a Section 2255 Motion.

A. The Supreme Court is justified in Granting Certiorari in this Case to offer a Definitive Uniform Interpretation of Rule 4(b) of the Rules Governing Section 2255 -- as contrasted with a Pro Se Litigant's Right to a Full and Fair Opportunity to Present Habeas Claims and Amend Such Claims Consistent With Rule 15, Fed. R. Civ. P.

Rule 4(b) of the Rules Governing Section 2255 govern the initial consideration of a 28 U.S.C. ss 2255 Motion. The Rule directs courts to consider "[t]he motion, any attached exhibits, and the record of prior proceedings", relating to the Judgment under attack, and authorizes summary dismissal if it "plainly appears" from these materials "that the moving party is not entitled to relief." Rule 4(b), Section 2255 Rules. Otherwise, it directs courts to require the Respondent to file an Answer. *Id.* If an answer is required, the Movant will have an opportunity to submit a Reply. Rule 5(d), Section 2255 Rules.

Summary dismissal under Rule 4(b) is a drastic disposition not generally available in other civil litigation and disfavored in habeas corpus in

many circuits. See Cuadra v. Sullivan, 837 F.2d 56, 58-59 (2d Cir. 1983) ("Summary dismissal of Pro Se Prisoner Petitions which contain non-frivolous claims without requiring service upon respondents or granting leave to Amend is disfavored"); United States v. Marr, 856 F.2d 1471, 1472 (10th Cir. 1988) ("Summary dismissal of ineffective assistance of counsel claim is not appropriate unless District Court states in written opinion that it reviewed entire record and that record conclusively shows no entitlement to relief."); Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004) (recognizing that Pro Se Petitioners often should be afforded an opportunity to Amend their Pleadings before a Prayer for relief is denied, unless it is clear that granting further leave to amend would be futile, or result in undue delay"); Peña v. United States, 157 F.3d 984, (because summary dismissals are disfavored, a Court generally errs in dismissing or denying a Pro Se Party's Pleading without providing an opportunity to Amend); United States v. Martinez, 181 F.3d 627, 628-29 (5th Cir. 1999) (vacating and remanding the denial of a 28 U.S.C. ss 2255 motion in order to provide the movant an opportunity to state his IAC claims with greater specificity).

Accordingly, under applicable legal standards, dismissal is appropriate only when a Petition for Section 2255 relief presents obviously untenable arguments that further factual development, explication or the assistance of counsel cannot make tenable. Here, Ledford's claim of ineffectiveness of counsel in his Forfeiture Motion was not so untenable under the totality of circumstances underlying this case so as to warrant summary dismissal without providing him with an opportunity to Amend his motion in an effort to expand his issues.

In this case, there are several factors germane to an analysis of whether Ledford's Constitutional rights were substantially denied thereby warranting the issuance of a Certificate of Appealability including: (1) Ledford filed his Form 55 2255 Motion months before the statute of limitations under 28 U.S.C. ss 2255(f)(1) on the mistaken advice of an inmate that it accrued from his sentencing date; (2) the district court summarily dismissed Ledford's Section 2255 Motion only six (6) days after it was filed; (3) Rule 15(a) and (b) of the Fed. R. Civ. P. and Rule 12 Governing Section 2255 Motions Permits a 2255 Movant to amend a Motion as a right within 21 days of filing the motion -- and with leave of court thereafter before the court enters any dispositive orders; (4) Ledford rejected the Government's first Plea offer precisely because of the inclusion of the firearm and obstruction enhancements; (5) the Government executed a bait-and-switch maneuver with its second Plea offer by including a written factual basis for the offense that surreptitiously included the very same disputed allegations that caused Ledford to reject the first Plea offer; (6) Defense Counsel materially misadvised Ledford concerning the consequences of admitting to the proffered factual basis and actively aided the Government in securing the enhancements they were seeking in violation of defense counsel's agency relationship; (7) allowing Ledford an opportunity to amend his ss 2255 Motion to properly expound on his IAC claims is consistent with fundamental Principles of Due Process that require a ss 2255 Movant receive a full and fair opportunity to present habeas claims; (8) the district court recognized the potential of amending Ledford's ss 2255 with an ineffectiveness claim during Plea negotiations

but dismissed such possibility in a footnote and on an incomplete record; (9) liberal construction of a less than Perfect Pleadings-- which Ledford's Format Motion clearly was -- warranted the district Court Providing an opportunity to Amend his Motion; and (10) had Ledford been advised of his right to do so by counsel, he would have executed an open Plea to Count one to preserve his rights to appellate and collateral review.

The upshot of these facts demonstrates a substantial showing of the denial of a Constitutional right. Given the timing of the district Court's Dismissal Order (six days after Ledford's ss 2255 Motion was filed), juxtaposed with Fed.R.Civ.P. 15(a)'s 21 day Amend-as-a-right Presumption, should give this Court Pause to Consider a GVR Order to the Fourth Circuit Court of Appeals because Mr. Ledford has shown that "Jurists of reason could disagree with the district Court's resolution of [the Sixth Amendment] claim or that Jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Slack v. McDaniel; 529 U.S. at 484.

In any event, a COA should have issued on Ledford's Sixth Amendment claim because once Amended, his claims of ineffective assistance of counsel would have required a Response from the Government and avoided the severe consequence of Summary Dismissal. Indeed, as discussed below, it is not plainly evident that Ledford's Potential amended claims would not entitle him to relief. Therefore, Ledford, a Pro se Prisoner litigant, should have been afforded the liberal opportunity to

amend his ss 2255 Motion to expound upon and state his ineffective assistance claims with greater specificity. Thus, the district court's Summary Dismissal merely six days after Ledford filed his ss 2255 Motion denied his Due Process right to Amend his claim not only Pursuant to the 21 day Period associated with Rule 15(a), Fed.R.Civ.P., but also Pursuant to 15(b) with Leave of Court. Ultimately, Six day Summary Dismissal Denies due Process and the Petitioner's right to a full and fair opportunity to exercise the Writ of Habeas Corpus. Ledford has therefore made a Substantial Showing of the denial of Constitutional Due Process under the Fifth Amendment.

Turning last to Ledford's Amended Section 2255 claims -- had the district court afforded him the opportunity to file it, this Court will find two Primary claims of Constitutional dimension that Support a GVR Order. First, trial counsel was ineffective for advising Ledford to Sign a Written Factual Basis drafted by the Government with admissions to disputed material facts that not only was the basis for Ledford's resection of the first Plea offer, but also Contradicted the Plain terms of the Plea agreement itself and Circumscribed Ledford's ability to meaningfully object to and raise arguments against several Sentencing Guidelines enhancements; and Second, Counsel was ineffective for failing to advise Ledford of: (a) his option to enter an Open Plea to Count one to Preserve his right to fully Challenge the applicable Guideline range at Sentencing; (b) to Preserve his right to appeal; and (c)

Preserve his full rights to collateral review.

Accordingly, a Certificate of Appealability should have been issued by the Fourth Circuit Court of Appeals' Panel because Ledford has made a substantial showing of the denial of Constitutional rights that an Amended Section 2255 Motion states valid claims of ineffectiveness of counsel during and in connection with the Plea negotiation Process and the District Court violated Ledford's due Process right to a full and fair opportunity to present such claims by summarily dismissing his Motion six days after it was filed without providing Ledford any notice or opportunity to amend his Motion to save it from such a drastic and final disposition.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner Charles Michael Ledford hereby respectfully requests of the Honorable Supreme Court to Grant a Writ of Certiorari, Vacate the Fourth Circuit's Per Curiam Opinion and Remand with instructions to Grant a Certificate of Appealability so that Mr. Ledford may proceed to present his claims to the Fourth Circuit Court of Appeals in accordance with Slack v. McDaniel, 529 U.S. 473 (2000).

Dated on this 20 day of September, 2022.

Respectfully Submitted
Charles Michael Ledford