Case No. 22A81

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH MICHAEL DEGRAW,

Petitioner

v.

RICKY DIXON, SECRETARY OF THE FLORIDA DEPARTMENT OF CORRECTIONS, ASHLEY MOODY, ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents

On Petition for Writ of Certiorari
from the United States Court of Appeals
of the Eleventh Circuit

PETITIONING FOR WRIT OF CERTIORARI

Joseph Michael Degraw, Pro Se
D.C. # C10445, Housing B1122L
Everglades Correctional Institution
1599 SW 187th Avenue
Miami, FL 33194-2801

QUESTION PRESENTED

Whether the Federal Courts should, sua sponte, construe a state prisoner's pro se filed pleadings, in 28 U.S.C. Section 2254 proceedings, citing the wrong rule, as properly filed under the appropriate rule, which is already mandated to be done with pleadings filed by federal prisoners filing pro se under 28 U.S.C. Section 2255, pursuant to Andrew v. United States, 373 U.S. 334, 83 S. Ct. 1236, 10 L. Ed. 2d 383 (1963)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Degraw v. Dixon, No. 20 – 14034 – MARRA - U.S. District Court for the Southern District of Florida. Judgement entered June 24, 2021.

Degraw v. Dixon, No. 21 – 12275, U.S. Court of Appeals for the Eleventh Circuit. Judgement entered May 21, 2022

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IN THE SUPREME COURT OF THE UNITED STATES
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Petitioner respectfully prays that a writ of certiorari issue to review the judgement below:

OPINION BELOW

Federal Courts' opinions are being sought to be reviewed with this petition:
The opinion of a U.S. Court of Appeals appears as Appendix A to the petition and unpublished: *Degraw v. Sec'y, Fla. Dept. of Corr.*__F. 3d____(11th Cir. 2022)

Also, the opinion of a U.S. District Court appears as Appendix B to this petition and is reported: *Degraw v. Sec'y., Fla. Dept. of Corr.*__F Supp. 3d___(S. D. Fla. 2021)

CERTIFICATE OF INTERESTED PERSONS

In compliance with this Court's rules here is a list of interested persons who may have interest in the outcome of these proceedings:

Ciklin, Hon. Cory J.....(State Appellate Judge)
Colton, H. Bruce.....(State Attorney)
Cox, Hon. Cynthia L.....(State Court Judge)
Damoorgian, Hon. Dorian K.....(State Appellate Judge)
D., Joseph.....(Petitioner)
Egber, Mitchell A.....(Asst. Attorney General)
Farquharson, David.....(Detective)
Forfar, Jahna.....(Victim)
Forfar, Sean..... (Victim)
Forst, Hon. Alan O.....(State Appellate Judge)
Gard, Suzanna.....(Victim)
Haughwout, Carey.....(Public Defender)
Hendry, Peter F.....(Victim)

Hendry, Edna R.....(Victim)
Isom, Jesse W.....(Appellate Counsel)
Kerensky, Brian.....(Detective)
Klingensmith, Hon. Mark W.....(State Appellate Judge)
Kurzinger, Betsy.....(Victim)
Laboda, Pamela.....(Victim)
Levine, Hon. Spencer D.....(State Appellate Judge)
Long, James T.....(Post Conviction Counsel)
Marra, Hon. Kenneth A.....(U.S. District Judge)
Masterson, Jena.....(Victim)
Masterson, John.....(Victim)
Moody, Hon. Ashley.....(Florida's Attorney General)
Murphy, Virginia.....(Appellate Counsel)
Pegg, Hon. Robert L.....(State Court Judge)
Reid, Hon. Lisette M.....(U.S. Magistrate Judge)
Rhodeback, Michelle M.....(Trial Counsel)
Robinson, Nikki.....(Asst. State Attorney)
Terenzio,Celia.....(Asst. Attorney General)
Vaughn, Hon. Dan L.....(State Court Judge)
Workman, Brian.....(Asst. State Attorney)

There are no public held corporations that own 10% or more interest in any party to this case.

JURISDICTION

Federal courts' opinions are what are being sought review with this writ. The date on which the U. S. Court of Appeals for the Eleventh Circuit decided the Petitioner's case was May 21, 2022. Furthermore, an extension of time to file the petition for Writ of Certiorari was granted to and including August 23, 2022, on July 24, 2022 in Application No. 22A81. The jurisdiction of this Court is thus invoked under 28 U.S.C. section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article one, section 9 of the U.S. Constitution, stating in pertinent part: "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it."

Amendment V of the U.S. Constitution, stating in pertinent part: "No person shall be...deprived of life, liberty, or property, without due process of law..."
28 U.S.C. Section 2254(a), stating in pertinent part: Habeas relief can be granted if a petition filed by a state prisoner demonstrates he or she is in custody "in violation of the U.S. Constitution, laws or treaties of the United States."

STATEMENT OF THE CASE

After the Petitioner exhausted all his state court remedies, he proceeded to collaterally challeng the judgement of his conviction, by challenging the constitutionality of his trial attorney's representation, in a timely filed petition for Writ of Habeas Corpus in the U. S. District Court of the Southern District Court of Florida. Unfortunately, the prisoner assisting him in preparing his Habeas Corpus application was no longer available and he had to seek help elsewhere. When the new prisoner learned the Petitioner's statute of limitations was about to expire, he

quickly drafted his Habeas application. Unbeknown to Petitioner at the time, this prisoner rushed to get the application filed in time and ultimately reiterated the same ineffective assistance of counsel claims that were raised in the first state motion for post conviction. The problem with that was Petitioner's first state motion for post conviction relief was insufficiently pled and he eventually had to file an amended one to cure insufficiencies.

When the Petitioner had this mistake pointed out to him in the response to his Habeas application, he made an attempt, himself, at trying to cure what the insufficiencies were in his claims by presenting additional facts in his reply to response. The District Court, nonetheless, found because the claims were largely insufficiently pled, Petitioner had not presented a prima facie claim of ineffective assistance of counsel that would warrant habeas relief. A couple of days after the district court rendered this final order, Petitioner found another prisoner to help him in his habeas relief endeavors.

Once this new prisoner assisting him identified the aforementioned mistake, he had Petitioner file a motion moving the district court to reconsider its final order denying habeas relief. Although this new prisoner assisting the Petitioner cited Rule 60(b) as the authority the motion was being under, all the post judgement motion was requesting the district court do was reconsider its basis for rendering the final order denying habeas relief. The Petitioner also filed the motion within 28

days of the date the District Court rendered the final order in accordance with the Pro Se Litigant Mail Box Rule.

The District Court also denied that motion, stating that a rule 60(b) motion was technically an unauthorized second or successive 2254 petition, without making a merits ruling. (Appx. B). Petitioner then appealed to the U.S. Court of Appeals of the Eleventh Circuit and sought permission to appeal the district court's strict construing of his pro se filed post judgement motion and its decision not to treat it as properly filed under Rule 59(e).

The circuit court denied appealability and subsequently dismissed Petitioner's appeal for his failure to file brief, despite his inability to do so due to their subsequent denial of him a certificate of appealability on any of his issues he was requesting a Certificate of Appealability on.

REASONS FOR GRANTING THE WRIT

This court announced in its 1963 opinion in *Andrew v. United States*, 83 S. Ct. 1236 (1963), that whenever all manner of a prisoner's pro se filed pleading otherwise meets the pleading requirements of another rule, and not the one the pro se prisoner litigant cites, the federal courts are mandated to treat the pleading as if it were filed under the appropriate rule. The case that gave rise to this precedent

being established regarded a federal prisoner challenging the constitutionality of his federal court conviction and it has not been clarified since then whether this principal should also be applied to pro se state prisoner pleadings challenging the constitutionality of a state court conviction, under 28 U.S.C. section 2254, filed after the enactment of the Anti Effective Death Penalty Act (AEDPA) of (1996).

In 2020 this court ruled that 28 U.S.C. section 2244(b), which set out the AEDPA's post judgement filing restrictions Congress enacted to promote expedient resolutions of 2254 proceedings and finality in challenged state court convictions, do not circumvent rule 59(e) motions, and thus, such motions are permissible. *Banister v. Davis*, 140 S. Ct. 1698, 1704 (2020) ld. According to this Court's rationale in the Banister case, Petitioner was authorized under rule 59(e) to move the district court within 28 days of its final order to reconsider the final order if he could demonstrate it overlooked facts in the record and ignored controlling authority in rendering the final order.

Although the Petitioner did cite the wrong rule, he still was only pointing out in the post judgement motion how the record showed an amendment in the state post conviction proceedings cured the same insufficiencies the district court largely relied upon to deny him habeas relief, thus supporting his request for leave to file an amended 2254 application, but the district court never considered that point because it found the motion was unauthorized under the rule Petitioner cited. The

district court may have given Petitioner an opportunity under Rule 15 to amend his 2254 application if the sua spote authority announced in Andrews was clear it could also be applied in pro se state prisoners' cases, especially when considering the record before it demonstrated the pleading insufficiencies could be cured. Chambers v. Sec'y., Dept. of Corr., 397 Fed. Appx. 520 (11th Cir. 2021).

Granting this writ and issuing an opinion that broadens the Andrews application places more discretion in the federal courts and clearer guidance on how to handle pro se prisoner filings, both state and federal, that works under a different rule than the one the laymen of the law cite out of ignorance of the rules and procedures. Thus, allowing the question presented herein to go unresolved would be the equivalent of holding a pro se litigant like the Petitioner, to the same strict standards courts hold attorneys, which would not be fair nor in compliance with the due process clauses referenced above. It would also equate to an all-out suspension of the writ of Habeas Corpus to Petitioner and others who would find themselves faced with similar circumstances in violation of Article One, Section 9.

Therefore, the question this Court should answer is whether the dictates of the 1963 Andrews case, pre AEDPA, mandate federal courts to apply the appropriate rule when a pro se state prisoner cites the wrong rule in his pleading that otherwise works under another rule? This court's guidance on how this scenario should work out is greatly needed because it affects a penal system that, collectively, far

surpasses its federal counterpart, and thus, will certainly affect a large amount of habeas cases.

The only way to protect this class of American citizens from arbitrary judicial proceedings, which are supposed to be the interpreters and enforcers of those inalienable rights enshrined in the portions of the U.S. Constitution cited above, which were designed to protect persons from the unfair taking of their liberty by officials of the executive branch of our government, is for this Court to take judicial action and establish clarity on the issue presented herein.

CONCLUSION

The petition of Writ of Certiorari should be granted.

Respectfully submitted,

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Date: 8-19-2022