

CASE No. _____

In The Supreme Court of the United States

CLARK WESLEY BETTS, JR.

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is a certificate of appealability needed to appeal an order unrelated to the merits of a habeas proceeding if that order is part of an order on the merits.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Clark Wesley Betts, Jr. (“Petitioner”) respectfully petitions this Court for a writ of certiorari to review the United States Court of Appeals for the Eighth Circuit's judgment.

OPINIONS BELOW

The Eighth Circuit's opinion and judgment was entered April 21, 2022. (“App.”) A. The district court's opinion was entered July 20, 2021. App. B.

JURISDICTION

The Eighth Circuit's judgment was entered on April 21, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), and Part III of the Rules of the Supreme Court of the United States. This petition is timely pursuant to Supreme Court Rule 13.1.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2253(c) provides:

- (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
 - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

STATEMENT OF THE CASE

1. Betts moved for 28 U.S.C. § 2255 relief in the district court.
2. Betts was originally represented by counsel.
3. On June 29, 2021, Betts filed two *pro se* motions with the district court.
4. The first motion asked that Betts' retained counsel be discharged.
5. The second motion asked for an extension of time to hire new counsel and to present an amended § 2255 motion.
6. On July 20, 2021, the district court denied Betts' § 2255 motion. App. B. As part of that order, the district court denied Betts' procedural motions in a footnote. App. B at 3A.
7. Betts filed a timely notice of appeal from the district court's denial to the Eighth Circuit.
8. Betts moved for an order dispensing with the necessity of a certificate of appealability ("COA") with the Eighth Circuit.

Betts also asked the Eighth Circuit to establish a briefing schedule.

9. In that motion, Betts argued that a COA was not needed to appeal the district court's denial of his motion to fire retained 28 U.S.C. § 2255 counsel and for an extension of time to find new counsel.
10. On April 21, 2022, the Eighth Circuit entered its judgment dismissing Betts' appeal. App. A. The Eighth Circuit specifically denied Betts' request to dispense with the necessity of a COA.

REASONS FOR GRANTING THE WRIT

I. A CERTIFICATE OF APPEALABILITY IS NOT NEEDED TO APPEAL THE DENIAL OF AN ORDER THAT DOES NOT GO TO THE MERITS OF A 2255 MOTION.

11. The instant case presents an excellent vehicle to resolve a question this Court noted, but did not decide, in *Ayestas v. Davis*, 138 S. Ct. 1080, 1088 n.1 (2018). Specifically, This Court said:

In this case, petitioner appealed an order of the District Court that denied both his request for

funding under 18 U. S. C. §3599 and his underlying habeas claims. The Court of Appeals denied a COA as to the merits of his request for habeas relief but held that a COA was not required insofar as petitioner challenged the District Court's denial of funding under §3599. The Fifth Circuit relied on *Harbison v. Bell*, 556 U. S. 180, 129 S. Ct. 1481, 173 L. Ed. 2d 347 (2009), in which a prisoner appealed from an order that denied counsel under §3599 for a state clemency proceeding but that did not address the merits of any habeas petition. This Court held that a COA was not required. Here, petitioner took his appeal from the final order in his habeas proceeding.

The parties have not briefed whether that difference between *Harbison* and the present case is relevant or whether an appeal from a denial of a §3599 request for funding would fit within the COA framework, and we find it unnecessary to resolve the issue. Though we take no view on the merits, we will assume for the sake of argument that the Court of Appeals could not entertain petitioner's §3599 claim without the issuance of a COA.

Ayestas v. Davis, 138 S. Ct. 1080, 1088 n.1 (2018).

12. In *Harbinson*, this Court held that a COA is unnecessary to appeal the denial of a motion to appoint counsel in a federal habeas proceeding because such an order does not go to the

“merits of a habeas corpus proceeding--a proceeding challenging the lawfulness of the petitioner's detention.” *Id.*

13. The same is also true in the converse situation. The district court's order denying Betts' motion to discharge his counsel and for an extension of time to retain new counsel do not go to the merits of Betts' § 2255 proceeding nor do those orders affect the lawfulness of Betts' detention. Accordingly, consistent with *Harbinson*, no COA was needed to appeal those two issues.

14. The Eighth Circuit's refusal to dispense with the necessity of a COA places itself at odds with not only *Harbinson*, but decisions from other courts.

15. In *Hickman v. Cameron*, 531 F. App'x 209, 211 (3d Cir. 2013), the Third Circuit held that a COA was not needed for a defendant to appeal a filing injunction that was wrapped up with an order denying a Rule 60(b) motion that did require a COA. This was because the filing injunction “was not connected with the merits of the underlying habeas corpus proceeding.” *Id.*

16. The Second and Fifth Circuits have also held that orders not going to the merits of a habeas proceeding do not require a COA.

Illarramendi v. United States, 906 F.3d 268, 270 (2d Cir. 2018) (“a COA is not required when appealing from orders in a habeas proceeding that are collateral to the merits of the habeas claim itself, including the denial of bail”); *Norman v. Stephens*, 817 F.3d 226, 234 (5th Cir. 2016)(no COA needed to appeal denial of evidentiary hearing).

17. The Court should grant *certiorari* to resolve the split among the circuits on this important procedural question that frequently arises in federal habeas proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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