22-5960

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

STEVEN VILLALONA — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Steven Villalona, Paralegal., Reg. No.: 55457-018
(Your Name)

FCI-1, Oakdale., Unit, R-1., PO BOX 5000
(Address)

Oakdale, LA 71463
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1) Whether the dismissal of an independant action in equity seeking to set aside a judgment based on fraud on the court may be considered a "final order" under 28 U.S.C. § 2253(c)(1)(B)?

2) What factors should courts consider when determining whether to allow post-judgment discovery under Fed. R. Civ. P. 60(d)(3)?

3) Whether a criminal defendant retains the right to have the Government correct false testimony in a post conviction proceeding under Napue v. Ill., 360 U.S. 264 (1935)?

4) Whether the Government was obligated to provide Villalona with his attorney's payment voucher under Giglio v. U.S., 405 U.S. 150, 154-55 (1972), during a post-conviction proceeding addressing counsel's ineffectiveness?

5) Who removed Villalona's attorney's payment voucher and when was it removed from the record in this case?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v. Villalona, 506 F. App'x 902 (11th Cir. 2013)

Villalona v. U.S., 714 Fed. App'x. 994 (11th Cir. 2018)

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Gonzalez v. Sec'y for the Dep't Corr., 366 F.3d 1253, 1263 (11th Cir. 2004) (en banc). 9-10

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U.S. Timmons, 672 F.2d 1373, 1378 (11th Cir. 1982). 10

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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 judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 05/19/2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 07/25/2022, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment Due Process Clause

Sixth Amendment right to the effective assistance of counsel

Criminal Justice Act

STATEMENT OF THE CASE

After the eleventh circuit court of appeals affirmed his convictions for armed drug trafficking and fifteen year prison sentence, Steven Villalona moved in the district court to vacate his conviction and sentence, because his right to the effective assistance of counsel, as guaranteed by the Sixth Amendment was violated. Villalona claimed that he instructed his attorney to withdraw his plea of guilty on January 23, 2012, during a pre-sentence interview with the probation officer, and eight days before his guilty plea was accepted by the district court. Villalona contended that had his counsel moved to withdraw his plea at that time, when he would have had an absolute right to withdraw and proceed to trial, that the outcome of the proceedings would have been different. However, the district court denied the motion without an evidentiary hearing because it found that Villalona had not established a fair and just reason for withdrawing the guilty plea.

On appeal, Villalona argued that the district court had abused its discretion by denying the motion without an evidentiary hearing and the United States conceded. The eleventh circuit vacated the denial and remanded for an evidentiary hearing, because Villalona's claim, "if true," would establish a violation of Villalona's right, and because "the record, motion, and files" failed to conslusively show that Villalona is not entitled to relief. Villalona v. U.S., 714 Fed. App'x. 994 (11th Cir. 2018)

At the evidentiary hearing held on August 15, 2018, the district court was presented with conflicting testimony. Villalona's attorney, Mr. Hued testified that on January 23, 2012, he was "fired" by Villalona, and that he believed Villalona would have been filing a motion to withdraw his guilty plea through new counsel. Mr. Hued also stated that he did not receive instruction to withdraw Villalona's plea and that he believed that Villalona did not want him to

act on Villalona's behalf "at all." On the other hand, Villalona testified that he expressly requested from his counsel to withdraw his guilty plea and, that when Mr. Hued declined to do so, because he was not paid enough money to represent Villalona at trial, Villalona requested the appointment of substitute counsel. Furthermore, Villalona stated that he was financially unable to retain private counsel to withdraw the guilty plea, so he requested for Mr. Hued to do so.

Ultimately, the district court credited Mr. Hued's testimony and denied Villalona's motion to vacate. The district court found that Villalona "fired" Mr. Hued on January 23, 2012, and Mr. Hued's failure to move to withdraw the guilty plea was reasonable because Villalona "fired" his court appointed attorney.[1] On appeal, the eleventh circuit denied Villalona a Certificate of Appealability and this Court denied a petition for a writ of certiorari. Villalona v. U.S., 2019 U.S. App. LEXIS 6032 (11th Cir. 2019); Villalona v. U.S., 2019 U.S. LEXIS 6890 (U.S. Nov. 12, 2019). See Appendix F.

Unsatisfied with the manner in which the matter was adjudicated, Villalona investigated whether the record contained evidence of impropriety. Villalona requested Mr. Hued's payment voucher which was entered into the record at Docket entry # 98. The United States did not oppose and a Magistrate Judge granted the request. The court found that Mr. Hued's payment voucher was "in the record." Appendix D. However, Villalona did not receive the payment voucher, so he moved to compel the clerk of the district court to produce the voucher, which the court granted. In response, the clerk provided Villalona with a letter which stated that Mr. Hued was paid "$5,758.71" and that the "original voucher is no longer available and a copy cannot be produced." Appendix E.

In light of the amount Mr. Hued was paid and the rate in which court ap-

[1] An indigent criminal defendant does not have a right to have a particular lawyer represent him. See Morris v. Slappy, 461 U.S. 1, 13 (1983).

pointed counsels are compensated under the Criminal Justice Act, Villalona filed an independent action in equity seeking relief from a final judgment based on fraud on the court under Fed. R. Civ. P. 60(d)(3). Villalona claimed that Mr. Hued's testimony at the evidentiary hearing - that Mr. Hued was "fired" by Villalona on January 23, 2012, and that Mr. Hued believed that Villalona did not want him to act on his behalf at all was false. Furthermore, Villalona alleged that this false testimony was aided by the removal or concealing of Mr. Hued's payment voucher from the record. Villalona contended that had the district court had the benefit of Mr. Hued's payment voucher, which the court approved, the court would not have credited his testimony, because the payment voucher contains Mr. Hued's justifications for being compensated $5,758.71, thereby negating his testimony. Villalona requested an evidentiary hearing and leave to conduct discovery to determine who and when was the payment voucher removed from the record in this case.

However, Villalona's request for discovery and evidentiary hearing was denied because Villalona did not prove his fraud on the court claim by clear and convincing evidence. Appendix B. Likewise, the request for relief was denied because Villalona did not provide clear and convincing evidence. Appendix B. On appeal, Villalona argued that the district court abused its discretion when it denied an evidentiary hearing and discovery because it used the wrong standard to adjudicate the requests. The eleventh circuit denied a Certificate of Appealability because it found that Villalona "failed to make the requisite showing." Appendix A. Villalona then sought a reconsideration because the COA requirement did not apply to an independent action and, that under this Court's holding in Napue v. Ill., 360 U.S. 264, 269 (1935), the Government should have corrected the false testimony which was provided to the court because they had Mr. Hued's payment voucher. However, on July 25, 2022, the court of appeals denied reconsideration. Appendix C. Consequently, this appeal ensues.

REASONS FOR GRANTING THE PETITION

There are four good reasons why this petition should be granted. First, it is a crime to remove, conceal, or destroy public records in the possession of the clerk of the court under 18 U.S.C. § 2071(a). Therefore, Mr. Hued's payment voucher, which was entered into the record at docket entry 98, is public record under the Criminal Justice Act (18 U.S.C. § 3006A (d)(4), and should not have been removed. Indeed, the removal of the payment voucher only occurred after the eleventh circuit court of appeals found that "Villalona's motion and files and records of the case [failed] to conclusively show that he is entitled to no relief[.]" Villalona v. U.S., 714 Fed. App'x. 994 (11th Cir. 2018). This crime not only affected Villalona's ability to impeach Mr. Hued's testimony that Mr. Hued was "fired" on January 23, 2012, and that Mr. Hued believed Villalona did not want him to act on Villalona's behalf "at all," but EVERYONE WHO relies on the judicial branch to adjudicate controversies. The destruction of these public records to advance false testimony not only deprived the United States of their peace and dignity, but also Villalona's right to withdraw an involuntary guilty plea. What is more, is that by denying this petition, this Court leaves intact the district court's finding that Villalona, an indigent defendant, "fired" Mr. Hued, a court appointed attorney, eight days before Villalona's plea was accepted, when he had an absolute right to withdraw and proceed to trial. Such a finding by the district court is in itself unlawful, because the failure to provide Villalona with a counsel, when he could not afford to retain private counsel, and did not waive his right to counsel, deprives the courts of jurisdiction to convict and sentence Villalona. See Johnson v. Zerbst, 304 U.S. 458, 467 (1938).

Secondly, the Government is a party to this cause. However not only did the United States fail to provide Villalona with his attorney's payment voucher,

but also failed to correct Mr. Hued's false testimony, in violation of Villalona's right to Due Process under Napue [2] and Giglio [3]. Indeed, Mr. Hued's payment voucher, Criminal Justice Act form 20, contains a sworn declaration specifying "the time expended, services rendered," which plainly contradicts Mr. Hued's testimony. 18 U.S.C. § 3006A (4)(5). Given that Mr. Hued was paid $5,758.71 and the rate at which appointed counsel are compensated under the CJA, it is plain that Mr. Hued was not "fired" on January 23, 2012, or believed that Villalona did not want Mr. Hued to act on his behalf "at all." [4] The point behind disclosing Mr. Hued's payments is to "protect the defendant's 6th Amendment rights to the effective assistance of counsel[,]" the sole matter before the district court on Villalona's motion to vacate conviction and sentence. Id. at (D)(ii). Hence the reason Mr. Hued's payment voucher was removed from the record. Because the "United States wins its point whenever justice is done its citizens in the courts[,]" this Court should find that Due Process requires both that the United States correct testimony known to be false and disclose impeaching information regardless of whether it is a post-conviction proceeding.

Third, courts are not uniform in the showing they require to grant post-judgment discovery. Some require that the movant make a "colorable" claim of fraud, while others appear to require a prima facie showing. [5] Given that a complaint for "fraud upon the court" involves "far more than an injury to a single litigant[,]" the courts cannot afford discordance in the manner in which requests for discovery are determined. [6] Therefore, this Court should pronounce a standard by which courts may effectively weigh society's interest in the finality of judgments with a party's interest in a fair determination of the controversy.

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[2] Napue v. Ill., 360 U.S. 264, 269 (1935)

[3] Giglio v. U.S., 405 U.S. 150, 154-55 (1972)

[4] Transcripts of the evidentiary hearing will be supplemented.

[5] See e.g., Pearson v. First NH Mortg. Corp., 200 F.3d 30, 35 (1st Cir.

Lastly, in Gonzalez[7] the eleventh circuit held that a COA "is required for the appeal of any denial of a Rule 60(b), motion for relief from judgment in a [habeas proceeding]." The court found that "[t]here is no reason to treat orders denying habeas relief and subsequent orders denying motion to reopen those earlier orders differently for purposes of the certificate of appealability requirement and there is every reason to treat them the same." Id. at 1264. On the other hand, although this Court in Gonzalez v. Crosby[8] did not decide if the eleventh circuit court of appeals' construction of the COA requirement was correct, the Court noted that "fraud on the habeas court" was a defect in the integrity in the proceeding, and was not a claim attacking a prior resolution on the merits. Id. at n.7, and n.5.

However, there is a difference between a Fed. R. Civ. P. 60(b) motion claiming a defect in the integrity of a habeas proceeding, and an independent action in equity to set aside a judgment for fraud on the court. In Bankers[9] the eleventh circuit explicated the distinction between two procedures for obtaining relief from a final judgment under 60(b). The first is by motion which 60(b) provides "(a) the authority to secure relief by motion, (b) the time limitation within which the motion must be filed, and (c) the gounds on which relief can be predicated. [...] No independent jurisdictional ground is necessary because the motion is considered ancillary to or a continuation of the original suit." Id. (Emphasis added by Villalona).

Conversely, the second procedure contemplated by Rule 60(b) is an independent action to obtain relief from a judgment, order, or proceeding. Id. "The first saving clause specifically provides that 60(b) does not limit the power

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1999); White v. Nat'l Football League, No. 92-CV-906, 2015 U.S. Dist. LEXIS 13834, 2015 WL 501973, at *2 (D. Minn. Feb. 5, 2015); Ames True Temper, Inc. v. Myers Indus., Inc., No. 05-CV-1694, 2007 U.S. Dist. LEXIS 91452. 2007 WL 4268697, at *5 (W.D. Pa. Nov. 30, 2007).

[6]Hazel-Atlas Glass Company v.Hartford-Empire Company, 322 U.S. 238, 245-46

of the court to entertain such an action." (Emphasis added by Villalona). "This action should under no circumstaces be confused with ancillary common law and equitable remedies or their modern substitue, the 60(b) motion." (Emphasis added by the eleventh circuit). Furthermore, the eleventh circuit cited 7 Moore's Federal Practice § 60.36 for the premise that:

> When a court grants relief from a judgment or decree by a new trial or rehearing, or by one of the ancillary common law or equitable remedies or their modern substitute, a motion, it is exercising a supervisory power of that court over its judgment; but the original bill, or independent action, to impeach for fraud, accident, mistake or other equitable ground is founded upon an independent and substantive equitable jurisdiction." (Emphasis added by the eleventh circuit.

As such, the matter at bar is not a motion under Fed. R. Civ. P. 60(b), except an independent action in equity which is founded upon an independent and substantive equitable jurisdiction. Univ. Oil Prods. Co. v. Root Refining Co., 328 U.S. 575, 580 (1946). Therefore, the eleventh circuit's holding in Gonzalez[10] does not extend to independent actions in equity. Indeed, equitable relief against fraudulent judgments is not of statutory creation. Hazel-Atlas, supra, at 248. See also, U.S. v. Timmons, 672 F.2d 1373, 1378 (11th Cir. 1982) ("A court may [...] entertain an independent action in equity for relief from judgment on the basis of its independent and substantive equitable jurisdiction."). Accordingly, it was an error to subject this cause to a COA standard.

(1944).

[7] Gonzalez v. Sec'y for the Dep't of Corr., 366 F.3d 1253, 1263 (11th Cir. 2004)(en banc).

[8] Gonzalez v. Crosby, 545 U.S. 524 (2005)

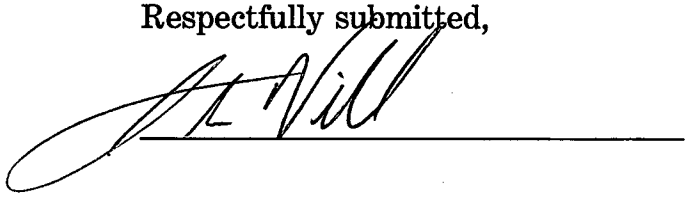
[9] Banker Mortage Company v. U.S., 423 F.2d 73, 77-79 (5th Cir.), cert. denied, 399 U.S. 927 (1970).

[10] 366 F.3d 1253 (11th Cir. 2004)(en banc)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 19, 2022