

No. 22-6119

Supreme Court, U.S.
FILED

NOV 08 2022

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JAKUES OMAR FEARENCE — PETITIONER
(Your Name)

vs.

B.M. CASH; WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAKUES OMAR FEARENCE - V51385
(Your Name)

CMF, P.O. Box-2500
(Address)

VACAVILLE, CA 95696-2500
(City, State, Zip Code)

NONE
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1.) IN APPLYING HARRINGTON V. RICHTER, 562 U.S. 86 (2011), TO A RULE 60 (b)(6) MOTION, ABUSING HIS DISCRETION BY DENYING BASED ON THE UNREASONABLE APPLICATION OF THE CONSTITUTIONAL STANDARD FOR THE RULE 60 (b)(6) MOTION, ABUSING HIS DISCRETION BY DENYING THE MOTION WITHOUT CONSIDERING ATTORNEY ABANDONMENT, AND DENY COA.
- 2.) IN APPLYING HARRINGTON V. RICHTER, 562 U.S. 86 (2011), TO A RULE 60 (b)(6) MOTION BASED ON THE STATES AND FEDERAL UNREASONABLE APPLICATION OF THE CONSTITUTIONAL STANDARD FOR ATTORNEY ABANDONMENT.
- 3.) WHETHER JURIST OF REASON COULD CONCLUDE THAT THE U.S. DISTRICT COURT'S DISMISSAL ON PROCEDURAL GROUNDS IS DEBATABLE OR INCORRECT.
- 4.) WHETHER JURIST OF REASON COULD FIND IT DEBATABLE AS TO PETITIONER STATING A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT.

TABLE OF CONTENTS

OPINIONS BELOW.....	1 ¶ 2
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2 ¶ 3
STATEMENT OF THE CASE.....	3 ¶ 4
REASONS FOR GRANTING THE WRIT.....	5-13
CONCLUSION.....	13

INDEX TO APPENDICES

APPENDIX A	OPINION FROM DIRECT APPEAL BY THE CALIFORNIA COURT OF APPEAL.
APPENDIX B	ORDER AND JUDGMENTS BY THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.
APPENDIX C	REPORT AND RECOMMENDATION FROM THE DISTRICT COURT
APPENDIX D	ORDERS FROM THE U.S. DISTRICT COURT AND NINTH CIRCUIT COURT OF APPEAL DENYING COA.
APPENDIX E	ORDERS FROM STATE COURTS DECISIONS.
APPENDIX F	

LIST OF PARTIES

- ☒ 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

HOHN V. U.S., 524 U.S. 236 (1998)
MILLER V. COCKRELL, 537 U.S. 322 (2003)
SLACK V. MCDANIEL, 529 U.S. 473 (2000)
GONZALEZ V. CROSBY, 545 U.S. 524, 535 (2005)
U.S. V. WINKLES, 795 F.3d 1134 (9TH CIR. 2015)
LYNCH V. BLODGETT, 999 F.2d 401, 403 (9TH CIR. 1993)
FOLEY V. BITER, 793 F.3d 998 (9TH CIR. 2015)
HOLLAND V. FLORIDA, 130 S. CT. 2549 (2010)
MAPLES V. THOMAS, 132 S. CT. 912 (2012)
GIBBS V. LEGRAND, 767 F.3d 879 (9TH CIR. 2014)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
HOHN V. U.S., 524 U.S. 236 (1998)	2
MILLER V. COCKRELL, 537 U.S. 322 (2003)	3
SLACK V. McDANIEL, 529 U.S. 473 (2000)	3 & 13
GONZALEZ V. CROSBY, 545 U.S. 524 (2005)	12
U.S. V. WINKLES, 795 F.3d 1134 (9TH CIR. 2015)	13
LYNCH V. BLODGETT, 999 F.2d 401 (9TH CIR. 1993)	13
FOLEY V. BITER, 793 F.3d 998 (9TH CIR. 2015)	13
HOLLAND V. FLORIDA, 130 S. CT. 2549 (2010)	8
MAPLES V. THOMAS, 132 S. CT. 912 (2012)	8
GIBBS V. LEGRAND, 767 F.3d 879 (9TH CIR. 2014)	9
STATUTES AND RULES	
28 USC § 1254	2
28 USC § 2254	2
AEDPA	2
PENAL CODE § 187	4
PENAL CODE § 12022.53(d)	4
HEALTH AND SAFETY CODE § 11351.5	4
FRCP, RULE 60(b)(6)	4, 5, 9, 10, 11, & 12
28 U.S.C.S. § 2244	12

OTHER

PETITION FOR A WRIT OF CERTIORARI

PETITIONER JAMES OMAR FEARENCE RESPECT-
FULLY PETITIONS FOR A WRIT OF CERTIORARI TO
REVIEW THE JUDGMENT OF THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT, DENYING
PETITIONER'S APPLICATION FOR CERTIFICATE OF
APPEALABILITY.

OPINIONS BELOW

THE FOLLOWING OPINIONS AND ORDERS BELOW
ARE PERTINENT HERE, ALL OF WHICH ARE UNPUB-
LISHED: [1] OPINION ON DIRECT APPEAL BY THE
CALIFORNIA COURT OF APPEAL, SECOND APPELLATE
DISTRICT, DIVISION FIVE, AFFIRMING
PETITIONER'S CONVICTION AND SENTENCE (10/26/05);
[2] ORDER (6/17/22) AND JUDGMENT (6/17/22) BY
THE U.S. DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA (HON. PERCY ANDERSON),
DENYING PETITIONER'S RULE 60 (b)(6) MOTION OF
THE FRCP (6/17/22); [3] DISTRICT COURT
ORDER DENYING REQUEST OF CERTIFICATE OF
APPEALABILITY (6/17/22); [4] ORDER BY THE
NINTH CIRCUIT COURT OF APPEALS DENYING REQUEST
FOR CERTIFICATE OF APPEALABILITY (9/29/22);
AND ORDERS AND JUDGMENTS OF STATE COURT
DECISIONS (3/5/10), (5/26/10), (8/18/10), (9/24/13),
(1.)

(3/6/14), AND (5/21/14) DENYING PETITIONER'S
STATE WRITS OF HABEAS CORPUS ON PROCEDURAL
GROUNDS. (SEE APPENDIX FOR COPIES.)

STATEMENT OF JURISDICTION

THE DISTRICT COURT AND THE COURT OF
APPEALS FOR THE NINTH CIRCUIT DENIED
PETITIONER'S REQUEST FOR CERTIFICATE OF
APPEALABILITY. IN *HOHN V. U.S.*, 524 U.S.
236 (1998), THIS COURT HELD THAT, PURSUANT
TO 28 U.S.C. § 1254 (1), THE UNITED STATES
SUPREME COURT HAS JURISDICTION, ON
CERTIORARI, TO REVIEW A DENIAL OF A REQUEST
FOR CERTIFICATE OF APPEALABILITY BY A
CIRCUIT JUDGE OR PANEL OF A FEDERAL COURT
OF APPEALS.

STATUTORY PROVISIONS INVOLVED

THE RIGHT OF A STATE PRISONER TO SEEK
FEDERAL HABEAS CORPUS RELIEF IS GUARANTEED
IN 28 U.S.C. § 2254. THE STANDARD FOR RELIEF
UNDER "AEDPA" IS SET FORTH IN 28 U.S.C. §
2254 (d)(1).

STANDARD OF REVIEW: DENIAL OF
CERTIFICATE OF APPEALABILITY
(2.)

1 IN MILLER-EL V. COCKRELL, 537 U.S.
2 322, 123 S. CT. 1029 (2003), THIS COURT
3 CLARIFIED THE STANDARDS FOR ISSUANCE OF A
4 CERTIFICATE OF APPEALABILITY [HEREAFTER
5 "COA"] : ... A PRISONER SEEKING A COA NEED
6 ONLY DEMONSTRATE A "SUBSTANTIAL SHOWING
7 OF THE DENIAL OF A CONSTITUTIONAL RIGHT."
8 A PETITIONER SATISFIES THIS STANDARD BY
9 DEMONSTRATING THAT JURIST OF REASON COULD
10 DISAGREE WITH THE DISTRICT COURT'S RESOLUT-
11 ION OF HIS CONSTITUTIONAL CLAIMS OR THAT
12 JURIST COULD CONCLUDE THE ISSUES PRESENTED
13 ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO
14 PROCEED FURTHER ... WE DO NOT REQUIRE
15 PETITIONER TO PROVE, BEFORE THE ISSUANCE
16 OF A COA, THAT SOME JURIST WOULD GRANT
17 THE PETITION FOR HABEAS CORPUS. INDEED, A
18 CLAIM CAN BE DEBATABLE EVEN THOUGH EVERY
19 JURIST OF REASON MIGHT AGREE, AFTER THE
20 COA HAS BEEN GRANTED AND THE CASE HAS
21 RECEIVED FULL CONSIDERATION, THAT PETITIONER
22 WILL NOT PREVAIL. *Id.*, 123 S. CT. AT 1034
23 CITING SLACK V. MCDANIEL, 529 U.S. 473, 484
24 (2000).

25
26 STATEMENT OF THE CASE

27
28 BY INFORMATION FILED APRIL 22, 2004,
(3.)

1 PETITIONER WAS CHARGED WITH FIRST DEGREE
2 MURDER (PEN. CODE § 187), COUNT ONE, AND
3 WITH POSSESSION FOR SALE OF COCAINE BASE,
4 IN VIOLATION OF HEALTH AND SAFETY CODE §
5 11351.5, COUNT TWO. (CT 32, 33.) IT WAS
6 ALLEGED THAT PETITIONER PERSONALLY DISCHARGED
7 A GUN, IN VIOLATION OF PENAL CODE § 12022.53
8 (d). (CT 32, 33.) ON JULY 12, 2004, A JURY
9 FOUND PETITIONER GUILTY AS CHARGED, AND IT
10 FOUND THE FIRE ~~ARM~~^{ARMS} TRUE. (CT 136, 137, 138 RT.)
11 ON SEPTEMBER 16, 2004, PETITIONER WAS
12 SENTENCED TO 51 YEARS AND 4 MONTHS TO
13 LIFE IN PRISON, AND WAS ORDERED TO PAY A
14 RESTITUTION FINE OF \$10,000.00 PLUS A PAROLE
15 REVOCATION FINE IN THE SAME AMOUNT TO BE
16 SUSPENDED UNLESS PAROLE IS REVOKED. (CT
17 143, 144, RT 1802, 1803, & 1804.)

18 19 STATEMENT OF PERTINENT FACTS

20
21 ON JUNE 2, 2022, PETITIONER FILED A RULE
22 60(b)(6) MOTION FOR RELIEF FROM JUDGMENT
23 WITHOUT REASSERTING OR ASSERTING CLAIMS OF
24 ERROR IN HIS STATE CONVICTION, BUT ONLY
25 CHALLENGING ONLY THE DISTRICT COURT'S FAILURE
26 TO REACH THE MERITS IN THE U.S. DISTRICT
27 COURT OF CENTRAL DISTRICT OF CALIFORNIA
28 DUE TO EXTRAORDINARY CIRCUMSTANCES ALLEGING
(4.)

1 ATTORNEY ABANDONMENT BY HIS APPELLATE
2 COUNSEL WILLIAM L. MCKINNEY ON DIRECT
3 APPEAL, THE FOLLOWING FACTORS WERE ALL
4 PRESENT IN THIS CASE:

5
6 REASONS FOR GRANTING THE WRIT
7 ARGUMENT SUMMARY
8

9 1.) THE DISTRICT COURT ABUSED ITS DISCRETION
10 BY DENYING PETITIONER'S RULE 60(b)(6) MOTION
11 PURSUANT TO FRCP. THE FACTS SHOWED ABANDON-
12 MENT BY APPELLATE ATTORNEY OF RECORD WHICH
13 CONSTITUTES EXTRAORDINARY CIRCUMSTANCES.
14 THE PROPER REMEDY FOR ABANDONMENT IS A
15 RULE 60(b)(6) MOTION UNDER FRCP, RELIEF
16 FROM JUDGMENT, AND THE PETITIONER SATISFIED
17 THAT ELEMENT, SO RELIEF SHOULD HAVE BEEN
18 GRANTED. THE DISTRICT COURT ABUSED ITS
19 DISCRETION, AND JURIST OF REASON COULD
20 DIFFER AS TO THE DISTRICT COURT'S RESOLUTION
21 OF PETITIONER'S CONSTITUTIONAL CLAIMS
22 AND JURIST OF REASON COULD CONCLUDE HIS
23 ISSUES PRESENTED ARE ADEQUATE TO DESERVE
24 ENCOURAGEMENT TO PROCEED FURTHER.

25
26 2.) THE DISTRICT COURT ERRED BY ADOPTING
27 THE INCORRECT ANALYSIS FROM THE U. S.
28 MAGISTRATE JUDGE. THE MAGISTRATE STATED
(5.)

1 THAT PETITIONER'S HABEAS PETITION BE DIS-
2 MISSED ON PROCEDURAL GROUNDS, AND THE
3 DIRECT APPEAL CLAIMS ARE TIME-BARRED
4 UNDER AEDPA. THE PETITIONER WAS ENTITLED
5 TO EQUITABLE TOLLING DUE TO HIS APPELLATE
6 ATTORNEY'S EGREGIOUS MISCONDUCT, AND
7 IT SHOULD HAVE BEEN EXTENDED DUE TO
8 MCKINNEY'S FAILURE TO COMMUNICATE AND
9 ADVISE HIM OF THE APPELLATE PROCEDURES
10 ON DIRECT APPEAL. PETITIONER HAD NO
11 LEGAL TRAINING BUT, TRIED TO PRESERVE
12 HIS FIRST APPEAL OF RIGHT AND FEDERAL
13 HABEAS REVIEW THE BEST OF HIS ABILITIES,
14 AND DUE TO MCKINNEY'S FAILURE TO PROVIDE
15 HIM OF THE NECESSARY INFORMATION ON
16 MEETING DEADLINES TO FILE A PETITION
17 FOR REVIEW AND FEDERAL WRIT OF HABEAS
18 CORPUS UNDER THE AEDPA. NOR DID MCKINNEY
19 SECURE OTHER COUNSEL FOR PETITIONER, THUS,
20 DEPRIVING HIM OF FEDERAL HABEAS REVIEW.
21 PETITIONER AND HIS FAMILY WERE DILIGENT
22 IN PURSUING HIS RIGHTS TO PROCEED IN
23 FEDERAL COURT. MCKINNEY WAS THE CAUSE OF
24 PETITIONER'S SUBSEQUENT FAILURE TO FILE
25 PROMPTLY IN FEDERAL COURT AFTER THE IMPACT
26 OF HIS ACTIONS CEASED, THATS WHY HE WAS
27 GRANTED EQUITABLE TOLLING DUE TO ATTORNEY
28 ABANDONMENT, EXTRAORDINARY CIRCUMSTANCES,
(6.)

1 AND EGREGIOUS ATTORNEY MISCONDUCT. (SEE
2 EXHIBIT 1.) JURIST OF REASON COULD DIFFER
3 AS TO THE DISTRICT COURT'S RESOLUTION OF
4 PETITIONER'S CONSTITUTIONAL CLAIMS AND
5 JURIST OF REASON COULD CONCLUDE HIS ISSUES
6 PRESENTED ARE ADEQUATE TO DESERVE ENCOUR-
7 AGEMENT TO PROCEED FURTHER.

8
9 3.) PETITIONER IS ENTITLED TO RELIEF
10 FROM JUDGMENT OF DISMISSAL OF HIS
11 FEDERAL ACTION DUE TO EXTRAORDINARY
12 CIRCUMSTANCES IN HIS CASE. MCKINNEY
13 AGREED TO PROSECUTE PETITIONER'S DIRECT
14 APPEAL, MCKINNEY ABANDONED PETITIONER'S
15 DIRECT APPEAL, AND CONSEQUENTLY DEPRIVED
16 HIM OF FEDERAL HABEAS REVIEW. DURING
17 PETITIONER'S DIRECT APPEAL, NO ATTORNEY
18 ADVISED HIM, NOR MISADVISED HIM. JURIST
19 OF REASON COULD DIFFER AS TO THE DISTRICT
20 COURT'S RESOLUTION OF PETITIONER'S CONSTI-
21 TUTIONAL CLAIMS AND JURIST OF REASON COULD
22 CONCLUDE HIS ISSUES PRESENTED ARE ADEQUATE
23 TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

24
25 4.) THE DISTRICT COURT ERRED ^{IN} ~~THE~~ ITS
26 ORIGINAL DETERMINATION REGARDING THE
27 UNTIMELINESS AND PROCEDURAL DEFECTS OF
28 PETITIONER'S CLAIMS DUE TO MCKINNEY'S
(7.)

1 FAILURES TO CAUSE HIM TO LOSE WHAT WAS
2 LIKELY THE SINGLE OPPORTUNITY FOR FEDERAL
3 HABEAS REVIEW OF THE LAWFULNESS OF HIS
4 IMPRISONMENT WHICH MADE HIS GROUNDS
5 PROCEDURAL DEFAULTED AND TIME-BARRED
6 UNDER AEDPA. PETITIONER'S CASE COMPARES
7 TO HOLLAND AND MAPLES. SEE HOLLAND V.
8 FLORIDA, 130 S. CT. 2549, 177 L. ED. 2D 130
9 (2010) AND MAPLES V. THOMAS, 132 S. CT. 912,
10 181 L. ED. 807 (2012). MCKINNEY ENGAGED
11 IN EGREGIOUS PROFESSIONAL MISCONDUCT
12 AND LEFT PETITIONER WITHOUT ANY FUNCTION-
13 ING ATTORNEY OF RECORD. UNDER AGENCY
14 PRINCIPLES, PETITIONER CANNOT BE CHARGED
15 WITH THE ACTS AND OMISSIONS OF MCKINNEY
16 WHO HAS ABANDONED HIM, AND NOR CAN
17 PETITIONER BE FAULTED FOR FAILING TO ACT
18 ON HIS OWN BEHALF WHEN HE LACKS REASON
19 TO BELIEVE MCKINNEY, ATTORNEY OF RECORD,
20 IN FACT, ARE NOT REPRESENTING HIM. JURIST
21 OF REASON COULD DIFFER AS TO THE DISTRICT
22 COURT'S RESOLUTION OF PETITIONER'S
23 CONSTITUTIONAL CLAIMS AND JURIST OF
24 REASON COULD CONCLUDE HIS ISSUES PRESENTED
25 ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO
26 PROCEED FURTHER.

27
28 5.) THE DISTRICT COURT ERRED BY NOT
(8.)

1 EXTENDING MORE EQUITABLE TOLLING AND
2 LIFTING THE PROCEDURAL BAR DUE TO
3 ATTORNEY ABANDONMENT / EXTRAORDINARY
4 CIRCUMSTANCES. THE RULE 60 (b)(6) MOTION
5 VESTED POWER IN THE DISTRICT COURT ADE-
6 QUATELY TO ENABLE HIM TO VACATE PETITIONER'S
7 JUDGMENT BECAUSE IT WAS APPROPRIATE TO
8 ACCOMPLISH JUSTICE FOR THE PETITIONER.
9 THE PETITIONER WAS PREVENTED FROM TAKING
10 TIMELY ACTION TO PREVENT AND CORRECT
11 AN ERRONEOUS JUDGMENT, AND SHOULD BE
12 EXCUSED FROM CONSEQUENCES OF MCKINNEY'S
13 CONDUCT THAT EFFECTIVELY SEVERED THE PRINCIPAL-
14 PAL-AGENT RELATIONSHIP. SUBSEQUENTLY, IN
15 GIBBS V. LEGRAND, THIS COURT HELD THAT
16 FAILURE TO INFORM A CLIENT THAT HIS CASE
17 HAS BEEN DECIDED, PARTICULARLY WHERE THAT
18 DECISIONS IMPLICATES THE CLIENT'S ABILITY
19 TO BRING FURTHER PROCEEDINGS AND THE ATTOR-
20 NEY HAS COMMITTED HIMSELF TO INFORMING
21 HIS CLIENT OF SUCH A DEVELOPEMENT, CONSTITUTE
22 ATTORNEY ABANDONMENT. 767 F.3d 879,
23 886 (9TH CIR. 2014). UNDER THESE CIRCUMSTAN-
24 CES, PETITIONER WAS EFFECTIVELY DEPRIVED OF
25 THE OPPORTUNITY TO HAVE A FIRST APPEAL OF RIGHT
26 AND HIS APPELLATE RIGHTS HAVE BEEN JEOPARD-
27 IZED. APPELLATE COUNSEL WILLIAM L.
28 MCKINNEY'S FAILURE TO COMMUNICATE, FAILURE
(9.)

1 TO PRESERVE PETITIONER'S ABILITY TO APPEAL,
2 AND FAILURE TO WITHDRAW FROM THE CASE
3 CLEARLY CONSTITUTED ABANDONMENT. SEE
4 MAPLES, 132 S.CT. AT 924-26. MCKINNEY'S
5 ACTIONS CONSTITUTED EXTRAORDINARY
6 CIRCUMSTANCES WHICH WAS ATTORNEY ABAN-
7 DONMENT THAT, 1.) VIOLATED FUNDAMENTAL
8 CANONS OF PROFESSIONAL RESPONSIBILITIES,
9 2.) FAILED TO PERFORM REASONABLY COMPETENT
10 LEGAL WORK, 3.) FAILED TO COMMUNICATE
11 WITH PETITIONER, 4.) FAILED TO IMPLEMENT
12 PETITIONER'S REASONABLY REQUEST, AND 5.)
13 FAILED TO KEEP PETITIONER INFORMED ON KEY
14 DEVELOPMENTS ON HIS DIRECT APPEAL, INC-
15 LUDING FORWARDING HIM THE RECORD AND
16 CASE FILE SO HE CAN TRY TO PROSECUTE HIS
17 DIRECT APPEAL IN A TIMELY MATTER HIMSELF.
18 TO PROVE ABANDONMENT, A RULE 60 (b) (6)
19 MOVANT MUST SHOW THAT HIS LAWYER AGREED
20 TO PROSECUTE HIS APPEAL, ABANDON IT, AND
21 CONSEQUENTLY DEPRIVE HIM OF ANY OPPORTU-
22 NITY TO BE HEARD AT ALL. THE PETITIONER
23 HAS SATISFIED THAT ELEMENT. JURIST OF
24 REASON COULD DIFFER AS TO THE DISTRICT
25 COURT'S RESOLUTION OF PETITIONER'S
26 CONSTITUTIONAL CLAIMS AND JURIST OF
27 REASON COULD CONCLUDE HIS ISSUES PRES-
28 ENTED ARE ADEQUATE TO DESERVE ENCOURAGE-
(10.)

MENT TO PROCEED FURTHER.

REASONS WHY ISSUANCE OF COA SHOULD BE GRANTED

1.) WHEN THE U.S. DISTRICT COURT
~~REFUSES~~ DENYS A HABEAS PETITION ON PRO-
CEDURAL GROUNDS WITHOUT REACHING THE
PETITIONER'S UNDERLYING CONSTITUTIONAL
CLAIMS AND THEN DENYS HIS RULE 60(b)(6)
MOTION UNDER FRCP JURIST OF REASON WOULD
FIND IT DEBATABLE WHETHER THE U.S. DISTRICT
COURT PROPERLY DISMISSED PETITIONER'S
HABEAS PETITION AND HIS RULE 60(b)(6)
MOTION UNDER FRCP BASED UPON AN ERRONEOUS
JUDGMENT. PETITIONER STATED A VALID BASIS
FOR RELIEF WHEN HE ALLEGED THAT HIS APPELL-
ATE COUNSEL WILLIAM L. MCKINNEY ABANDONED
HIM ON DIRECT APPEAL THUS, JEOPARDIZING
HIS APPELLATE RIGHTS WHICH CONSTITUTED
EXTRAORDINARY CIRCUMSTANCES, AND THAT
ELEMENT WAS ESTABLISHED, SO RELIEF
SHOULD HAVE BEEN GRANTED UNDER RULE 60
(b)(6) PURSUANT TO FRCP WHICH SATISFIED
THE STANDARD FOR A VALID CLAIM OF A DEN-
IAL OF A CONSTITUTIONAL RIGHT. THE U.S.
DISTRICT COURT ABUSED ITS DISCRETION
BY DENYING PETITIONER'S RULE 60(b)(6)

(11.)

1 MOTION AND THAT MADE ITS RULING DEB-
2 ATABLE AND INCORRECT.

3
4 NOTWITHSTANDING, ALL OF THE ABOVE
5 FACTORS, BASED ON THE U.S. SUPREME
6 COURT'S DECISION IN GONZALEZ V.
7 CROSBY, 545 U.S. 524 (2005), IN ADDR-
8 ESSING A FEDERAL RULES OF CIVIL PROCEDURE
9 RULE 60 (b)(6)'S APPLICATION TO HABEAS
10 CORPUS CASES IN THE GONZALEZ CASE, THE
11 U.S. SUPREME COURT PROCLAIMED THAT A
12 FRCP RULE 60(b)(6) MOTION IN A 28 U.S.C.
13 § 2254 CASE IS NOT TO BE TREATED AS A
14 SUCCESSIVE HABEAS PETITION IF IT DOES
15 NOT ASSERT, OR REASSERT CLAIMS OF ERROR
16 IN THE MOVANT'S STATE CONVICTION. A
17 MOTION THAT CHALLENGES ONLY THE DISTRICT
18 COURT'S FAILURE TO REACH THE MERITS DOES
19 NOT WARRANT SUCH TREATMENT, AND CAN BE
20 THEREFORE BE RULED UPON BY THE DISTRICT
21 COURT WITHOUT PRECERTIFICATION BY THE
22 COURT OF APPEALS PURSUANT TO 28 U.S.C.S.
23 § 2244(b)(3). ALSO, A PARTY SEEKING
24 RELIEF UNDER RULE 60(b)(6) MUST SHOW
25 EXTRAORDINARY CIRCUMSTANCES JUSTIFYING
26 THE REOPENING OF A FINAL JUDGMENT WHICH
27 WAS DEMONSTRATED BY THE PETITIONER
28 AND THAT ELEMENT WAS SATISFIED BY HIM

1 AS WELL. (SEE U.S. V. WINKLES, 795 F.3d
2 1134, 1143 (9TH CIR. 2015); 28 U.S.C. § 2253
3 (c)(2); SLACK V. MCDANIEL, 529 U.S. 473,
4 484 (2000); LYNCH V. BLODGETT, 999 F.2d
5 401, 403 (9TH CIR 1993); AND FOLEY V. BITER,
6 793 F.3d 998 (9TH CIR. 2015).

7 8 CONCLUSION

9
10 BASED ON THE FOREGOING, THIS COURT
11 SHOULD GRANT THE PETITION FOR WRIT OF
12 CERTIORARI AND ORDER FULL BRIEFING.

13
14 DATED: 11/3/22 RESPECTFULLY SUBMITTED

15 *Jaques Fearence*
16 JAMES OMAR FEARENCE
17 PETITIONER IN PRO SE
18
19
20
21
22
23
24
25
26
27
28