

No. _____

22-6153

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
NOV 09 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

VINCENT JOHNSON- Plaintiff

VS.

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT - Respondent**

**ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS OF FEDERAL LAW FOR REVIEW

1. What is the correct mechanism and procedure which would allow a petitioner to present a COA violation made by a Circuit court pursuant to **Miller El v. Cockrell**, 537 U.S. 322 and **Buck v. Davis** 137 S. Ct. 759, to the appellate court once Certiorari has been denied by the U.S. Supreme Court.
2. Did the District court's decission to deny petitioner's 28 U.S.C. 1631 motion, violate petitioner's procedural due process rights.
3. Did the Sixth Circuit go beyond a threshold inquiry pursuant to **Miller El v. Cockrell**, 537 U.S. 322 and **Buck v. Davis** 137 S. Ct. 759. In it's Agust, 12, 2022, order denying petitioner's COA application.

RELIEF SOUGHT

1. To be given the mechanism and procedure which would allow petitioner to present and argue the mistake made by the Sixth Circuit, during it's April, 27, 2017, COA inquiry

OR

2. Vacate the Sixth Cir. Agust,12,2022, order and remand this case back to the Sixth Cir. for a proper COA inquiry. Consistant with this court's ruling in **Miller El v. Cockrell**, 537 U.S. 322 and **Buck v. Davis** 137 S. Ct. 759.

LIST OF THE PARTIES

all parties in caption of the case on the cover page.

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CONSTITUTIONAL PROVISION

Fourteenth Amendment, United States Constitution

IN THE
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OPINIONS BELOW

Order by the Sixth Cir. denying rehearing en banc at Appendix A.

Order denying COA by the Sixth Cir. at Appendix B.

Opinion and Order by the District Court Southern Dist. Of Ohio denying independent action and motion to transfer independent action at Appendix C.

JURISDICTION

The U.S. District Court Southern Dist. rendered it's decision on movant's 28 U.S.C. 1631 and 60(d) motion April 12, 2022. Vincent Johnson filed a timely request for COA to the Sixth Cir. which was denied on Agust, 12, 2022. A timely petition for re hearing en banc was submitted it was denied on Oct. 5, 2022. The jurisdiction of this court is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTIONAL PROVISIONS

BILL OF RIGHTS

United states Constitution, Bill of Right

Amendment XIV

Section 1. All person born or naturalized in the United States and subject to the jurisdiction thereto, are citizens of the United States and of the wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

STATEMENT OF THE CASE

This case raises a procedural due process claim. It presents a question of great importance stemming from the intervening circumstance of the clerk for the Sixth Cir. refusing to file movant's Civil R. 60(b) motion. In petitioner's orginal habeas proceedings. The Sixth Cir. violated the inquiry of a COA application pursuant to *Miller El v. Cockrell*, 537 U.S. 322 and *Buck v. Davis* 137 S. Ct. 759. Petitioner had pursued his appeal to this Supreme Court, therefore to resolve the mistake made during the COA inquiry a civil R. 60(b) was submitted to the Sixth Cir. court of appeals. The clerk refused to file the motion for the reason of the case being closed. This intervening circumstance denied petitioner a mechanism in which to present the mistake made by the Circuit court during it's COA inquiry. It has also shaped the judicial process of this case. As a result of the action by the clerk. Petitioner submitted a 28 U.S.C. 1631 motion to the U.S. District Court Southern Dist. of Ohio asking the court to transfer his Civil R. 60(d) motion. The District court misconstrued the issue of this case. The claimed 'injury which' was before the court, was not the merits of the 60(d) motion, rather it was the merits of the 28 U.S.C. 1631 motion. This case is about procedure. It presents a question as to what is the correct mechanism and procedure which would allow a petitioner to present a mistake made by a appeals court during a COA inquiry. This question and the intervening circumstance were presented in petitioner's motion to transfer. They were left unresolved.

CONTINUES

Leaving this question unresolve has allowed the clerk in this case to essentialy determine the appeals court's jurisdiction. It has also allowed the Sixth Cir. in it's Agust, 12, 2022 ruling denying petitioner's COA application. To again go beyond a threshold inquiry, set forth in this court's rulings in **Miller El v. Cockrell**, 537 U.S. 322 and **Buck v. Davis** 137 S. Ct. 759, as there is no clear procedure which would allow petitioner to present this mistake if Certiorari is denied.

FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED

On Nov. 27, 2017 this United States Supreme court denied Mr. Johnson petition for Writ of Certiorari case No. 17-6045. Mr. Johnson had earlier filed a 60(b) with the District court arguing a COA violation. The motion was denied , Aug. 17, 2017 case No. 2:15-CV-0097. In response to both this Supreme court's decision and the Dist. court's opinion and order where the Dist. court ruled that it did not have jurisdiction to rule on a decision by the Sixth Cir. . Mr. Johnson attempted to submit a 60(b) to the Sixth Cir. The motion was returned unfiled for the reason of the case being closed. Exhausting all available avenues. Petitioner submitted a 60 (d) with the Sixth circuit . The motion was returned unfiled for the same reason as the 60(b). Mr. Johnson then filed a 28 U.S.C. 1631 motion with the District court requesting for the court to transfer petitioner's independent action to the Sixth circuit. Both motions were denied on April 12, 2022, case No. 2:15-CV-0097. Mr. Johnson submitted a COA application to the Sixth Circuit court of appeals. It was denied Agust 12, 2022. In response to the court's decision a timely motion for re hearing En Banc was submitted this was denied on Oct. 5, 2022. This case is now before this U.S. Supreme court.

REASONS WHY THIS SUPREME COURT SHOULD ACCEPT JURISDICTION.

a. Question of great importance.

This case is about a procedural due process violation. It involves a question of great importance which ask, what is the proper procedure that would allow a petitioner to pursue a COA violation pursuant to **Miller El v. Cockrell, 537 U.S. 322** and **Buck v. Davis 137 S. Ct. 759**, once certiorari has been denied. The Sixth Circuit has so far departed from the accepted and usual course of judicial proceeding that it calls for an exercise of this court's supervisory power. This question of first impression stems from the clerk for the Sixth Circuit refusing to file movant's Civil R. 60(b) and then later his independent action. The procedural issue in this case has greatly compromised judicial integrity.

The Sixth Circuit in it's April, 27, 2017, order denying petitioner's application for COA committed an error in the COA process of the habeas proceedings pursuant to **Miller El v. Cockrell, 537 U.S. 322** and **Buck v. Davis 137 S. Ct. 759**. In both cases this Supreme court emphasized the COA inquiry is not coextensive with an merit analysis at the COA stage. The appeals court should limits it's examination to a threshold question, which should be decided without full consideration of the factual legal bases adduced in support of the claim. To address the issue of the COA violation, a Federal R. 60(b) and then a independent action was submitted to the Sixth Circuit. Petitioner assert's as there is no clear procedure which would allow one to pursue a COA violation made by a circuit court. It gave the clerk for the Sixth Cir. grounds to refuse to file the motions for the reason of the case being closed.

This was a critical intervening circumstance. It compromised the integrity of the judicial process, by denying petitioner a meaningful proceeding to present his claim. Specially significant in that it presents a procedural due process violation. It deprives a petitioner of liberty without due process of law, without adequate procedure see, *Daniels v. Williams* 474 U.S. at 339. This case is ripe for appellate review. To leave this question unresolved would lame this court's decisions in both *Miller El* and *Davis*. There being no clear procedure for a petitioner to challange a defect in a COA inquiry. It would potentialy allow a circuit court free range when reviewing a COA application. It is for the reasons presented petitioner humbly states this court's guidance is needed.

b. The District Court's decision to deny petitioner's 28 U.S.C. 1631 motion, violated petitioner's procedural due process rights.

The District Court misconstrued the essential nature of what this case is about. The court made incorrect determinations about petitioner's 60(d). While at the same time stating the independent action was making claims beyond the reach of the court, citing, *United States v. Cook* No. 5:06-183-DRC 2017 WL. This case is not about the merits presented in the independent action. The merits of the 60(d) are an auxillary issue, and have never been fully presented in a formal proceeding. This case is about an intervening circumstance which has denied the petitioner a fair judicial proceeding to have the merits of the 60(d) motion adjudicated. It presents a procedural due process violation by both the intervening circumstance raised in the 28 U.S.C. 1631 motion and by the District court's resloution of the motion.

In petitioner's orginal habeas proceedings the Sixth Cir. committed an error during it's COA inquiry pursuant to *Miller El v. Cockrell*, 537 U.S. 322 and *Buck v. Davis* 137 S. Ct. 759. To address this issue petitioner attempted to submit a civil R. 60(b) to the Sixth Cir. court of appeals. The clerk for the Sixth Cir. refused to file the motion for the reason of the case being closed. See appendixs D and E. Due to the actions by the clerk and the District court's lack of jurisdiction to resolve the claims made in the 60(b), as the court was without authority to alter a decision made by a circuit court. To bring these concerns to the district court's attention. Petitioner submitted a 28 U.S.C. 1631 motion, requesting that the 60(d) be transferred to the Sixth Cir. The claims made in the 1631 motion were conveniently overlooked by the District court. When the District court denied the transfer of petitioner's 60(d) it violated petitioner's procedural due process rights. The deprivation was the consequence of a negligent act by the court. The District court violated the constitution by failing to provide an appropriate procedural response in light of it's lack of authority to resolve the claims made in the 60(d) and by the facts and circumstances presented in the motion to transfer. In a procedural due process claim, it is not the deprivation of property or liberty that is unconstitutional. It is the deprivation of property or liberty without due process of law, without adequate procedure, see, *Daniels v. Williams* 474 U.S. at 339. The District court's ruling is based on the incorrect premise that petitioner's 60(d) simply seeks reconsideration of the Sixth Cir. order denying his orginal application for COA. On that premise the District court denied movant's 28 U.S.C. 1631 motion.

The independent action contested the integrity of the Circuit court's April, 27, 2017, order based on a mistake which accured during it's COA inquiry, however this issue was not before the District court. The 60(d) was never submitted to the District court to be adjudicated in a legal proceeding by the court. The 60(d) was submitted to the court, do to the action by the clerk. To gain access to the legal process as there was no clear procedure which would allow petitioner to present his COA violation to the Circuit court. The clerk refusing to file petitioner's 60(d) motion has not only affected the corse of action taken. It has also compremised judicial integrity and fairness in petitioner's pursuit for justice. The intervening legal developement presented in the motion to transfer not only should have been taken into consideration but should have been reviewed as the essence of this case.

c. The Sixth circuit violated the COA inquiry pursuant to *Miller El v. Cockrell*, 537 U.S. 322 and *Buck v. Davis* 137 S. Ct. 759. In it's Aug. 12, 2022, order.

The Sixth circuit's examination at the COA stage went completely beyond a threshold inquiry. A state prisioner whose petition for writ of habeas corpus is denied by a federal district court does not enjoy a absolute right to appeal. Federal law requires that he first obtain a COA from a circuit Justice or Judge 28 U.S.C. 2253 (c)(1). A COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right 2253(c)(2), until the prisoner secures a COA the court of appeals may not rule on the merits of his case, *Miller El v. Cockrell*, 537 U.S. 322.

A COA inquiry is not coextensive with a merit analysis, at the COA stage the only question is whether the applicant has shown that jurist of reason could disagree with the district court's resolution of his constitutional claim or that jurist could conclude the issue presented are adequate to deserve encouragement to proceed futher Id. at 327. In this case the appellate court twice inverted the statutory order of operation for a COA application inquiry. The panel incorrectly determined the merits of petitioner's independent action and off of that determination denied petitioner's application for COA. The panel stated on pg. 2 paragraph 5, " To the extent that he seeks to appeal the denial of his R. 60(d) motion, which as before essentially seeks review of the denial of a certificate of appealabilty, the denial of the 60 (d) motion is not appealable". By the paneles decsion, to secure a COA petitioner would have to show the dist. court's determination of his 60(d) to be incorrect rather than the threshold question of whether the district court's resolution of the 60(d) being debatable among jurist of reason. The panel went on to state in paragraph 7, of page 2, " although the district court's denial of Johnson motion to transfer his 60(d) independent action to this court is technically appealable, there no process this court may use to redress his claimed injury". This stament, the panel's decision speaks for itself. This decision has nothing to do with whether the district court's resolution of the motion to transfer was debatable among jurist of reason. The paneles decision to deny COA was clearly based off of whether the appeal would succeed. The Sixth Cir. inverted the statutory order of operation by first deciding whether there was a process which would allow the court to redress the claims made in the independent action,

and on that conclusion denied COA. A claim can be debatable even though every jurist of reason might agree after the COA has been granted and the case has received full consideration that petitioner will not prevail **Miller El**, 537 at 338. This Supreme court has stated, whatever procedure are employed at the COA stage should be consistent with the limited nature of the inquiry **Buck v. Davis** 137 S Ct. 759, here that clearly was not the case.

CONCLUSION

The issue presented to the District court, was an intervening circumstance. It challenged the integrity of the judicial process. It raised a question as to how one may present to the court of appeals a mistake which accrued during it's COA inquiry. The District court's ruling on this matter failed to demonstrate a judicious resolve to this issue and question. This was compounded, by the Sixth Cir. again going beyond a threshold inquiry of petitioner's COA application. It is for these reasons petitioner humbly and respectfully request that this Supreme Court grant certiorari.



VINCENT JOHNSON