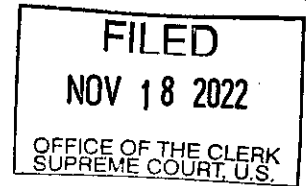


22-6177
No. _____

ORIGINAL



**IN THE
SUPREME COURT OF THE UNITED STATES**

**SANDERS M. CARTER
PETITIONER**

vs.

**DEXTER PAYNE, DIRECTOR ,
ARKANSAS DIVISION OF CORRECTION
RESPONDENT**

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
ARKANSAS IN CASE No. 5:16-cv- 00367**

PETITION FOR WRIT OF CERTIORARI

**SANDERS McDANIEL CARTER, Pro Se
ADC No 088350
TUCKER MAXIMUM SECURITY UNIT
2501 STATE FARM ROAD
TUCKER, ARKANSAS 72168**

QUESTION(S) PRESENTED

Did the United States Court of Appeals for the Eighth Circuit impose an improper and unduly burdensome **Certificate of Appealability (COA)** standard that contravened, the Supreme Court's precedents in **Brady v. Maryland, 373 U.S. 83 (1963)**, and created a divergent from the gatekeeping provision established by Congress in 1996, 28 U.S.C.A. §2255(h)(i), **Antiterrorism and Effective Death Penalty Act (AEDPA)**, when the U.S. District Court Judge denied Carter's motion to reopen, Carter's case, via an independent action by the court pursuant to Rule 60(d)(1), of the FED.R.Civ.P., and obtain federal habeas corpus review of his **Brady** violation claim?

LIST OF PARTIES TO THIS ACTION

All parties to this action appear in the caption of the case.

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JURISDICTION

The United States Court of Appeals for the Eighth Circuit entered its judgment on September 9, 2022. This United States Supreme Court has jurisdiction under 28 U.S.C. § 1254 (1), which states:

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

RELEVANT CONSTITUTIONAL, STATUTORY PROVISIONS, AND COURT RULES.

This case involves a state criminal defendant's constitutional rights under the Fifth Amendment, and Fourteenth Amendments to the United States Constitution. The Fifth Amendment provides in relevant part:

No person shall be ... deprived of life, liberty, or property without due process of law.

The Fourteenth Amendment provides in relevant part:

Nor shall any State ...deny to any person within its jurisdiction the equal protection of the laws.

This case also involves the application of 28 U.S.C. § 2253(c), and Rule 60(d)(1) of the FED.R.Civ.P., and Rule 60(d)(3), of the FED.R.Civ.P., Statute 28 U.S.C. § 2253(c), states in relevant part:

(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.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of a constitutional right.

Rule 60(d)(1) FED.R.Civ.P., states:

(d) Other Powers To Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

Rule 60(d)(3) FED.R.Civ.P., states:

(3) set aside a judgment for fraud on the court.

STATEMENT OF CASE

INTRODUCTION

This is an extraordinary case. Petitioner Sanders M. Carter, who was convicted in June 3, 1987, on the charges of rape, burglary, and aggravated robbery, on which he was sentenced to life on the rape, twenty years on the burglary, and twenty years on the aggravated robbery. (See Appendix "C", Judgment and Commitment Order). Carter's direct appeal and subsequent post-conviction relief proceedings in the Supreme Court of Arkansas were both affirmed by the Court. In the year of 2001, the state of Arkansas enacted a DNA law, (Act 1780). Carter, acting pro se immediately filed in his trial court, his pro se motion for forensic DNA testing of the evidence collected in his case, in order to prove his innocence. At Carter's trial, testimony from the state crime lab's serologist (Mr. Edward Vollman), testified that out of the evidence that he examined, he only founded one negroid public hair and eight small fragment hairs, and that of said negroid hairs he was unable to determine whether they came from Carter, Mr. Vollman further testified that out of all of the evidence that he examined, he found nothing that would be incriminating to Carter. He (Vollman) further testified, at trial, that if he have had more than one hair,... he would have had a better pool of hairs to examined, but because he only had the one hair, his examination was inconclusive in regards to the hair. This testimony by Mr. Vollman was basically the same during Carter's forensic DNA hearing, conducted in the year 2001, accept for the added caveat which was that now at this date and time, (August 29, 2001), the evidence in Carter's case were either lost or destroyed, or in any case it couldn't be found, and petitioner Carter's DNA testing petition was denied.

II. THE EXTRAORDINARY CIRCUMSTANCES

On the date of August 23, 2013, petitioner Carter, now being represented by the Innocence Project, out of New York state, staff attorney, Ms. Karen Thompson, filed a motion in the Arkansas Supreme Court for admission to practice by comity in the State of Arkansas as petitioner Carter's attorney, and on September 12, 2013, said motion was granted. And on the date of July 16, 2015, Carter learned that the alleged lost and/or destroyed evidence in his case had been found, along with thirty-four (34), additional whole negroid hairs and hair fragments recovered from the victim's pink bed sheet.

On the date of, December 9, 2016, Carter filed in the United States District Court for the Eastern District of Arkansas, his pro se federal habeas corpus, citing a violation of his United States Constitutional Rights under the Fifth and Fourteenth Amendments, via a **Brady** violation, (See Doc. No. 2). Due to Carter's limited knowledge of the law and the complexity in his case, Carter filed in the U. S. District Court, on the date of December 4, 2016, his pro se motion for the appointment of counsel in his case, which the Magistrate Judge denied, on the date of December 13, 2016, stating that; "Carter's habeas petition does not appear to be any more complex than the normal habeas petition."

On the date of March 1, 2017, the Magistrate Judge filed her proposed Findings and Recommendations,(Doc.No.12). Carter filed objections to the Magistrate's findings, (Doc. No.12), on the date of March 10, 2017, (Doc. No. 13). The District Court Judge, on the date of April 25, 2017, entered a court order declining the Magistrate's recommendation to dismiss, as a second or successive petition, Doc.No. 12, and denying respondent Kelley's motion to dismiss, Doc. No.. 8, and further ordered the case returned to the Magistrate for further proceedings because the District Judge stated in his order that based on his de novo review of the case records, that he was unable to determine whether Carter's Brady claim is material and, thus, whether his petition requires pre-authorization. (See Doc. No. 14.). The Magistrate Judge then, on the date of, May

9, 2017, issued a Court Order, to respondent Kelley, to file an amended response to Carter's petition for the writ of habeas corpus, (see Doc. No. 2, also see Doc. No. 15.).

On the date of, July 18, 2017, respondent Kelley filed with the court, respondent's amended response, (see Doc. No.21). On the date of July 24, 2017, the court issued an Order according Carter an opportunity to file a reply to Kelley's response, (see Doc.No. 22.). On the date of August 2, 2017, petitioner Carter filed with the District Court, petitioner's amended petition and traverse to the respondent's amended response (see Doc.No. 23.). On the date of August 31, 2017, the Magistrate Judge filed with the District Court, her second proposed Findings and Recommendations, (see Doc. No. 26.). On the date of September 11, 2017, petitioner Carter filed with the court petitioner's objections to the Magistrate's Proposed findings and Recommendation, (see Doc. No. 27.). On the date of September 21, 2017, the U. S. District Court Judge, issued a court order, adopting the Magistrate's recommendations, No. 26, as modified and overrules Carter's objections, No. 27, (see Doc. No. 28.). On the date September 25, 2017, petitioner Carter's case in the U. S. District Court for the Eastern District of Arkansas, Case No. 5:16-cv-00367-DPM, was transferred, and docketed in the United States Court of Appeals for the Eighth Circuit, under Eighth Circuit Case No. 17-3076, (see Doc. No. 29.). On the date of September 12, 2021, petitioner Carter filed in the United States District Court for the Eastern District of Arkansas, in Case No. 5:16-cv-00367-DPM, petitioner's pro se motion for relief from judgment or order pursuant to Rule 60(d)(3), of the FED.R.Civ.P.. On the date of March 24, 2021, the U. S. District Court issued a court order denying petitioner's motion for relief from judgment or order, pursuant to Rule 60(d)(3), of the FED.R.Civ.P., (see Doc. No. 31.). On the date of April 9, 2021, petitioner Carter filed in the U. S. District Court, petitioner's application for a Certificate of Appealability, (see Doc. No. 32.). On the date of April 13, 2021, the U. S. District Court issued a court order denying petitioner Carter's motion for a certificate of appealability, (see Doc. No. 34.).

On the date of November 8, 2021, petitioner Carter filed in the U. S. District Court, his motion for Relief from Judgment, pursuant to Rule 60(d)(1), of the FED.R.Civ.P.), (see Doc. No. 41.). On the date of April 26, 2022, the U. S. District Court issued a Court Order denying petitioner's motion for relief from judgment, (see Doc. No. 42.). On the date of May 19, 2022, petitioner Carter filed in the U. S. District Court his motion to Alter or Amend a Judgment, pursuant to Rule 59(e), of the FED.R.Civ.P.,(see Doc. No. 43.). On the date of April 27, 2022, the U. S. District Court issued a court order denying his motion, Doc. No. 43, (see Doc. No. 44.). On the date of June 17, 2022, petitioner Carter filed in the U. S. District Court, petitioner's Notice of Appeal, of both his Rule 60(d)(1), motion, and his Rule 59(e), motion, Doc. No. 41, & Doc. No. 43, (see Doc. No. 45.). On the date of June 17, 2022, the U. S. District Court entered a Notification of Appeal and NOA supplement, (see Doc. No. 46.). On the date of June 21, 2022, petitioner appealed from the District Courts denial of his Rule 60 (d)(1), motion, which was filed in the Eighth Circuit Court of Appeals, under Case No. 22-2302. On the date of July 1, 2022, petitioner/appellant, Carter filed in the court of appeals, in Case No. 22-2302, his application for a Certificate of Appealability (COA). On the date of August 4, 2022, the Eighth Circuit Court of Appeals denied appellant's application of a COA. (See attached Appendix "A" Court of Appeals denial of Appellant's application for a COA, in Case No. 22-2302.). On the date of August 17, 2022, the appellant filed in the court of appeals his petition for an en banc rehearing by panel. (See attached Appendix "B" Petition for Rehearing En banc; also see Pro Se Notice of Docket Activity in Case No. 22-2302.).

Intervening precedents from this Court establishes that the procedural failure by the Magistrate, which was accepted by the District Court as an understandable "mistake" (see Doc. No. 31, at 4 & 5.). This acceptance of the Magistrate's procedural failure to correctly assess, the materiality of Carter's Brady evidence, created a confluence of circumstances that rendered Carter's case **extraordinary**

SUMMARY OF THE ARGUMENT

The District Court in this case, issued a court order to the Magistrate Judge to conduct additional hearings in order to determining whether petitioner Carter's Brady claim evidence was nonmaterial and, thus, requiring preauthorization to file in the District Court. (Doc. No. 14.). Accordingly, the Magistrate submitted that she had conducted said hearings as ordered. However, upon an indepth investigation by the petitioner, into the Brady evidence that was ordered to be assessed regarding it's materiality, Carter found that said evidence, was not tested and/or assessed by the Magistrate or anyone else, which in turn created an extraordinary circumstance. Whereas, under any standard of review, the district court's denial of Carter's Rule 60(d)(1) motion was erroneous, as well as the denial by the Eighth Circuit Court Of Appeals, of the petitioner's application for a certificate of appealability. As a COA is required so long as reasonable jurists could find the denial of relief debatable or that the issues presented by petitioner is adequate to encourage petitioner to proceed further. Carter's case and circumstances are extraordinary as reflected, in his application for the COA, in the court of appeals.

ARGUMENT

This court has stressed, a COA is required so long as a habeas petitioner makes a "threshold" showing that the District Court's decision was debatable amongst jurists of reason." Miller-El, 537 U. S. at 336. Thus, "a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief." Id. at 337. Instead, " a prisoner seeking a COA need only demonstrate a substantial showing" that the district court erred in denying relief. Id. at 327, (quoting Slack v. McDaniel, 529 U. S. 473, 474, 484 (2000), and 28 U.S.C.A. § 2253(c)(2). That standard is satisfied when reasonable jurists could either disagree with the district court's denial of

relief, or determine that the issues presented ... deserve encouragement to proceed further." Miller-El, 537 U. S. at 327, 336.

Thus, Carter is entitled to a COA so long as the district court's decision denying his Rule 60(d)(1), motion was at least debatable among reasonable jurists. *Id.* at 342; see also *id.* at 348 (Scalia, J., concurring).

(a COA must be granted if resolution of the petitioner's claim is not "undebatable"). Petitioner Carter unquestionably meets that standard with respect to both the procedural issue of whether extraordinary circumstances exist and the underlying constitutional issue of whether the government illegally withheld material evidence in violation of the precedent established by this Court in **Brady v. Maryland, 373 U. S. 83 (1963)**, (when a petition is dismissed on procedural grounds, determining whether a COA should issue requires consideration of whether reasonable reasonable jurists could debate both the underlying constitutional claims and the district court's procedural ruling.)

Here, the principle issue in the District Court, regarding Carter's Brady violation claim is whether the Brady violation evidence is material and, thus, whether his petition requires preauthorization, (see Doc. No. 14.). However, the Magistrate Judge who was ordered to conduct further proceedings in order to assess the materiality of said Brady evidence, failed to do so, instead, the Magistrate introduced false and prejudicial assessments of the Brady evidence, which was the epitome of the procedural failure of assessing the materiality of that Brady evidence, which also deprived the petitioner of a fair trial, a trial whose result is reliable. "*Harrington v. Richter*, 562 U. S. 86, 104 (2011) (quoting *Strickland*, 466 U. S. at 687)" The results of a proceeding can be rendered unreliable, and hence the proceeding it self unfair, as was the unfairness of the materiality assessment of

Carter's Brady violation evidence.

In further regards to the district courts's procedural ruling on petitioner Carter's Rules 60(d)(1), motion. Rule 60(d)(1), of the FED.R.Civ.P., allows a party to seek relief from a judgment, order,

or proceedings. This Court has identified the following elements required for Rule 60(d)(1), relief; (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevent the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any remedy at law. In re Golf 255, Inc., 652 F. 3d 806, 809 (7th. Cir. 2011). The petitioner meets all of the stated elements required under Rule 60(d)(1), and it is to be noted that the district court conceded that the Magistrate Judge, who was ordered to conduct the hearing to determine the materiality of the Brady violation evidence, made a "mistake" in her assessment processes. (see Doc. No. 31, at 4 & 5.). Reasonable jurists would find the District Court's decision respecting petitioner Carter's underlying constitutional violations to be wrong or, at least, debatable. Because the facts and circumstances of petitioner Carter's case is uniquely extraordinary, he is entitled to relief under Rule 60(d)(1). The District Court's conclusion to the contrary is wrong and (at a minimum debatable), and the Eighth Circuit erred in denying Carter's COA.

CONCLUSION

For all of the reasons detailed above, petitioner Carter's case is extraordinary, and he has demonstrated his entitlement to relief under Rule 60(d)(1), of the FED.R.Civ.P. . The lower court's decisions to the contrary are in error or, at a minimum debatable amongst jurists of reason. Petitioner Carter is entitled to a COA.

Respectfully submitted this 18th day of
November 2022.

Sanders M. Carter

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