

CASE NO. 22-6206

IN THE UNITED STATES SUPREME COURT

ALBERT HOLLAND, JR.  
Petitioner,

vs.

STATE OF FLORIDA  
Respondent.

---

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

**RESPONDENT'S BRIEF IN OPPOSITION**

ASHLEY MOODY  
ATTORNEY GENERAL OF FLORIDA

CAROLYN M. SNURKOWSKI  
Associate Deputy Attorney General  
*Counsel of Record*

LISA-MARIE LERNER  
Assistant Attorney General

Office of the Attorney General  
PL-01 The Capitol  
Tallahassee, Florida 32399-1050  
(850) 414-3566

carolyn.snurkowski@myfloridalegal.com  
capapp@myfloridalegal.com

COUNSEL FOR RESPONDENT

## **QUESTIONS PRESENTED**

(Capital Case)

(Restated)

Whether this Court should deny certiorari where Petitioner filed a successive habeas petition under the guise of a Rule 60(b) motion in order to evade the requirement of receiving authorization from the Eleventh Circuit which led the district court to deny it for a lack of jurisdiction?

## TABLE OF CONTENTS

|   |     |
|---|-----|
| QUESTION PRESENTED FOR REVIEW .....   | i   |
| TABLE OF CONTENTS .....   | ii  |
| TABLE OF AUTHORITIES.....   | iii |
| CITATION TO OPINION BELOW .....   | 1   |
| JURISDICTION .....  | 1   |
| CONSTITUTIONAL PROVISIONS INVOLVED.....   | 1   |
| STATEMENT OF THE CASE AND FACTS.....  | 2   |
| REASONS FOR DENYING THE WRIT.....   | 7   |
| HOLLAND HAS FAILED TO SHOW THAT REASONABLE JURISTS<br>WOULD FIND THE DISTRICT COURT’S PROCEDURAL RULING<br>DEBATABLE..... | 7   |
| CONCLUSION .....  | 14  |
| CERTIFICATE OF SERVICE.....   | 14  |

## TABLE OF AUTHORITIES

| Cases  | Page(s) |
|--|---------|
| <i>Faretta v. California</i> ,<br>422 U.S. 806 (1975) .....                              | 4       |
| <i>Florida v. Holland</i> ,<br>513 U.S. 943 (1994) .....                                 | 2       |
| <i>Gonzalez v. Crosby</i> ,<br>545 U.S. 524 (2005) .....                                 | 6, 8    |
| <i>Holland v. Florida</i> ,<br>534 U.S. 834 (2001) .....                                 | 3       |
| <i>Holland v. Florida</i> ,<br>539 F.3d 1334 (11th Cir. 2008) .....                      | 3       |
| <i>Holland v. Florida</i> ,<br>775 F.3d 1294 (11th Cir. 2014) .....                      | 4       |
| <i>Holland v. Sec’y, Fla. Dept. of</i> ,<br>941 F.3d 1285 (11th Cir. 2019) .....         | 5       |
| <i>Holland v. State</i> ,<br>636 So. 2d 1289 (Fla. 1994) .....                           | 2       |
| <i>Holland v. State</i> ,<br>773 So. 2d 1065 (Fla. 2000) .....                           | 2       |
| <i>Holland v. State</i> ,<br>916 So. 2d 750 (Fla. 2005) .....                            | 3       |
| <i>Miller-El v. Cockrell</i> ,<br>537 U.S. 322, 123 S.Ct. 1029 (2003) .....              | 9, 10   |
| <i>Picket v. United States</i> ,<br>2021 WL 3521062 (11th Cir. Aug. 11, 2021) .....      | 11      |
| <i>Slack v. McDaniel</i> ,<br>529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000) ..... | 10      |
| <i>State v. Gray</i> ,<br>654 So. 2d 552 (Fla.1995) .....                                | 6       |
| <i>United States v. Cotton</i> ,<br>535 U.S. 625 (2002) .....                            | 13      |

**Statutes**

28 U.S.C. §2253(c)(1) ..... 1  
28 U.S.C. §2254 ..... 9, 11, 12  
28 U.S.C. §1254(1)..... 1  
28 U.S.C. §2241 ..... 4  
28 U.S.C. §2244(b)..... 5, 8  
28 U.S.C. §2244(b)(2) ..... 8  
28 U.S.C. §2253(c)(1) ..... 1  
28 U.S.C. §2253(c)(2) ..... 1, 9  
§2253(c)..... 10  
§2244 ..... 8

**Rules**

Federal Rule of Civil Procedure 59(e) ..... 5  
Federal Rule of Civil Procedure 60(b) ..... Passim

**Other Authorities**

C.S.S.B. 166 ..... 2

## **CITATION TO OPINION BELOW**

The decision which Petitioner seeks discretionary review of is *Holland v. Florida*, No. 22-10095 (11th Cir. July 28, 2022).

## **STATEMENT OF JURISDICTION**

Petitioner, Albert Holland, is seeking jurisdiction pursuant to 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

A state prisoner may not appeal from a district court's final order in a habeas case "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. §2253(c)(1). The statute governing appeals in habeas corpus case, 28 U.S.C. § 2253(c)(2), provides:

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

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

## PROCEDURAL HISTORY

On August 16, 1990, Holland was indicted for first-degree murder, armed robbery, sexual battery, and attempted first-degree murder, all stemming from incidents that occurred on July 29, 1990. Holland was convicted on all counts and sentenced to death, but those convictions and sentences were reversed on appeal by the Florida Supreme Court. *See Holland v. State*, 636 So. 2d 1289 (Fla. 1994). The State filed a Petition for Writ of Certiorari in the United States Supreme Court, challenging the reversal. However, on October 11, 1994, this Court denied the petition. *Florida v. Holland*, 513 U.S. 943 (1994). After a retrial, Holland was again convicted and sentenced to death on February 7, 1997.

In April 1992, the Florida Legislature amended the first sentence of subsection (1) of the Florida armed-robbery statute, § 812.13, by inserting the phrase “with intent to either permanently or temporarily deprive the person or the owner of the money or other property,” which became effective on October 1, 1992. *See* 1992 Fla. Sess. Law Serv. Ch. 92-155 (C.S.S.B. 166) (West).

The Florida Supreme Court affirmed the convictions and sentences on direct appeal. *Holland v. State*, 773 So. 2d 1065 (Fla. 2000). It found that, after smoking crack, Holland had attacked and brutally beaten T.J. in Pompano Beach, Florida. When witnesses intervened, Holland ran off. Police searched for him, and Officer Scott

Winters found Holland. The two struggled and Holland grabbed the officer's gun and shot him twice. Later, while in custody, Holland admitted that he took Officer Winters's gun and shot him twice. *Id.* at 1068. Thereafter, on May 4, 2001, Holland filed a Petition for Writ of Certiorari in the United States Supreme Court. On October 1, 2001, the United States Supreme Court denied the petition. *Holland v. Florida*, 534 U.S. 834 (2001).

On September 19, 2002, Holland filed a post-conviction motion to vacate his convictions and sentences in the state trial court. The trial court held an evidentiary hearing, after which it denied all the claims. Holland appealed the denial of his post-conviction motion to the Florida Supreme Court which affirmed the denial of the post-conviction motion and denied the habeas petition. *Holland v. State*, 916 So. 2d 750 (Fla. 2005). The Florida Supreme Court issued the mandate on December 1, 2005. On February 8, 2006, Holland filed a Petition for Writ of Certiorari in the United States Supreme Court which denied it on April 17, 2006.

Before the Petition for Writ of Certiorari was filed in the United States Supreme Court, Holland filed a *pro se* Petition for Writ of Habeas Corpus on January 19, 2006. The district court originally dismissed the petition as untimely and denied Holland's claim of equitable tolling. On appeal, the Eleventh Circuit Court of Appeals affirmed. *Holland v. Florida*, 539 F.3d 1334 (11th Cir. 2008). The United States Supreme Court



granted *certiorari* and reversed. *Holland v. Florida*, 130 S.Ct. 2549 (2010).

On remand, the Eleventh Circuit transferred the case back to the district court to determine whether Holland was entitled to equitable tolling. The district court determined that Holland met the standard for equitable tolling under the Supreme Court decision and granted him leave to file an amended habeas corpus petition.

Holland filed his amended petition and the State responded. Holland filed a Reply. In an order dated March 30, 2012, the district court granted relief based on a violation of *Faretta v. California*, 422 U.S. 806 (1975). The court denied all of his other claims regarding both the guilt and penalty phases. Holland filed a notice of appeal and the State filed notice of a cross-appeal. The district court granted a certificate of appealability (“COA”) to Holland on one issue. The Eleventh Circuit Court of Appeals expanded the COA to include two additional issues. After briefing and argument, the court denied Holland’s appeal but reversed the district court’s grant of relief on the *Faretta* claim. *Holland v. Florida*, 775 F.3d 1294 (11th Cir. 2014). Holland sought certiorari review which this Court denied on November 30, 2015. *Holland v. Florida*, 577 U.S. 1021 (2015).

In 2009 Holland filed a petition under 28 U.S.C. §2241 in the Middle District of Florida. The district court dismissed that petition without prejudice, after finding that although Holland labeled the petition as one arising under §2241, the petition

challenged the validity of his conviction and was, therefore, subject to the second or successive requirements set out in 28 U.S.C. §2244(b), including the requirement that he seek the Eleventh Circuit Court of Appeals's authorization before filing it. Since Holland failed to obtain that authorization, the district court concluded that it lacked subject matter jurisdiction over the petition. Both the district court and the Eleventh Circuit denied Holland a certificate of appealability. *See Holland v. Sec'y, Dep't of Corr.*, No. 09-13497 (11th Cir. Nov. 24, 2010).

In 2017 Holland filed another habeas petition in the Middle District of Florida. Once again, he did not obtain authorization to do so. So once again, the district court dismissed the petition without prejudice for lack of subject matter jurisdiction and denied Holland a certificate of appealability. Holland then filed a motion for reconsideration, which the district court denied after concluding that it did not meet the requirements for altering or amending a judgement under Federal Rule of Civil Procedure 59(e) or for relief from final judgement under Federal Rule of Civil Procedure 60(b). The Eleventh Circuit Court of Appeals found that Holland's petition was, in fact, a successive habeas and the district court did not have jurisdiction to consider it. *Holland v. Sec'y, Fla. Dept. of Cor.*, 941 F.3d 1285 (11th Cir. 2019).

In 2020 Holland petitioned the Eleventh Circuit to allow him to file a successive petition for habeas corpus, involving the same issues he raised in the purported Rule

60(b) motion. The court denied the application with a written order. *In re: Albert Holland, Jr.*, No. 20-10330 (2020).

In 2021 Holland filed another petition under the guise of a Rule 60(b) motion in the Southern District of Florida. That petition argued substantially the same issues that he tried to raise in the 2017 petition and in his application for COA in 2020. Holland contended his state convictions and sentences were void because the state trial court did not have jurisdiction to try him because of defects in the indictment. The alleged defects were that the armed robbery statute was modified in 1992 and the prosecution did not seek a new indictment under the revised statute, thereby depriving the state trial court of jurisdiction. Holland made similar claims regarding the attempted felony murder charge based on the Florida Supreme Court's opinion in *State v. Gray*, 654 So. 2d 552 (Fla.1995), which abolished the crime of attempted felony murder in Florida. Holland went on to argue that his conviction for attempted sexual battery violated double jeopardy since it was the same as the charge of attempted felony murder. Finally, Holland contended that the murder charge was also void because the "underlying" felonies were void. Based on that substance of the motion, the district court found that Holland's motion was in actuality a habeas claim, citing *Gonzalez v. Crosby*, 545 U.S. 524, 531 (2005). The court determined it did not have jurisdiction to entertain the petition since it was not authorized by the Eleventh Circuit; it, therefore,

denied the Rule 60(b) motion without prejudice. The Eleventh Circuit denied a COA.

This petition followed.

**REASONS FOR DENYING THE WRIT**

**HOLLAND HAS FAILED TO SHOW THAT REASONABLE JURISTS WOULD FIND THE DISTRICT COURT'S PROCEDURAL RULING DEBATABLE AND THERE IS NO IMPORTANT OR UNSETTLED QUESTION OF LAW PRESENTED IN THE DENIAL OF THE CERTIFICATE OF APPEALABILITY.**

Petitioner Holland seeks this Court's review of the Eleventh Circuit Court of Appeals' decision denying his application for certificate of appealability [COA]. There is no basis for granting certiorari review of this case. There is no conflict between the Eleventh Circuit and this Court or any other circuit court regarding the denial of a COA, and Holland has not established any reason for this Court to grant review. Holland contends that the district court incorrectly dismissed his underlying *pro se* petition on procedural grounds and that the Eleventh Circuit used the wrong standard in reviewing the dismissal of his motion, which he insists was correctly filed under Rule 60(b). He argues that a COA was not required for him to appeal the dismissal of his petition. The State points out, however, that the Eleventh Circuit ruling simply involved the denial of a COA for the procedural dismissal by the district court of Holland's successive habeas petition. Certiorari must be denied.

Holland does not cite any decision from any court of appeals granting a COA on

this issue and there is no conflict between the Eleventh Circuit's decision and that of any other circuit. He merely asserts that the circuit court erred in denying his appeal. He makes no attempt to explain how any potential error in the actual ruling below merits this Court's certiorari review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari will only be granted for compelling reasons.").

Initially, Holland maintains that the motion he filed in the district court was a true Rule 60(b) motion, despite acknowledging that it was filed as such because he did not have §2244 leave to proceed. (cert. pet. P. 10, para. 10). The district court properly determined that it was actually a habeas claim since it challenged the state court convictions. Although Holland asserts that his claim does not involve any constitutional claim, at its heart lies a claim of a lack of due process. This Court has said that a habeas petitioner filing a 60(b) motion should be held to the standards of section 2244(b) if his motion contains a "claim" as the term is used in that section - that is, "an asserted federal basis for relief from a state court's judgment of conviction." *Gonzalez v. Crosby*, 545 U.S. 524, 532, 125 S.Ct. 2641, 2647-48, 162 L.Ed.2d 480 (2005).

Raising such a claim in a Rule 60(b) motion is an improper attempt to avoid AEDPA's second-or-successive restrictions and is not permitted. *See* 28 U.S.C. § 2244(b)(2) (requiring a new claim presented in a second or successive habeas petition

to be dismissed unless it relies on either a “new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court,” or a new factual predicate that “could not have been discovered previously” and that would establish the petitioner's innocence by clear and convincing evidence). “Claims of error in [his] state conviction” is not a basis for relief under Rule 60(b). *Gonzalez*, 125 S.Ct. at 2651. The law is clear that a petitioner cannot use a Rule 60(b) motion to evade the second or successive petition bar. *See Gonzalez*, 125 S.Ct. at 2647 (While Rule 60(b) permits a party to seek relief from a judgment on certain limited grounds, it cannot be used by habeas petitioners to raise new claims for habeas relief: this use would circumvent the AEDPA requirement that a petitioner obtain the approval of the appropriate court of appeals before filing a second or successive habeas petition.).

A prisoner in state custody challenging the validity of a state court conviction through post-conviction habeas relief under 28 U.S.C. §2254 has no automatic right to appeal a district court’s denial or dismissal of the petition. He must first seek and obtain a COA. *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S.Ct. 1029 (2003). Holland must show two distinct elements in order to appeal a denial of COA from a circuit court. He must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. §2253(c)(2), which this Court has interpreted to require that the "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the

constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). Additionally, as Justice Scalia pointed out in his concurrence in *Miller-El*, 537 U.S. 322, that this Court imposed "another additional requirement: A circuit justice or judge *must* deny a COA, even when the habeas petitioner has made a substantial showing that his constitutional rights were violated, if all reasonable jurists would conclude that a substantive provision of the federal habeas statute bars relief." *Id.* at 349-50 (emphasis added). "When the district court denies a habeas petition on procedural grounds, without reaching petitioner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurors of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484. In *Slack*, this Court emphasized that the statute "*mandates that both showings be made before the court of appeals may entertain the appeal.* Each component of the §2253(c) showing is part of a threshold inquiry, and a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments." *Slack*, 529 U.S. 473, 484-485 (e.s.).

The district court correctly noted the law when it ruled:

As a result, he must first seek authorization from the Eleventh Circuit before the Court may consider his successive habeas petition. The recently decided *Picket v. United States* offers a useful example. No. 20-13149, 2021 WL 3521062 (11th Cir. Aug. 11, 2021). The Eleventh Circuit held that the petitioner's claim of innocence due to a substantive change in law was not an attack on the federal habeas proceedings and, thus, operated as a successive habeas petition. In contrast, the court also held that petitioner's claim that the district court considering his habeas relief failed to hold an evidentiary hearing was an attack on the federal proceedings and, thus, appropriate under Rule 60(b). *Id.* at \*2-3. Here, as Holland's claims only attack the validity of the indictment in the state criminal trial, this Court must deny the motion for lack of jurisdiction, and does not reach the merits of Holland's claims.

(Order at p. 6). This procedural requirement is not debatable and, thus, the COA was properly denied. In denying the request for a COA, the district court cited the relevant standard; the court concluded that the denial of Holland's Rule 60(b) motion was not a matter subject to debate among reasonable jurists. Holland has not challenged this conclusion with any specificity, but he simply re-asserts his habeas claims and disputes the propriety of their denial.

Furthermore, both the Eleventh Circuit and the district court properly concluded that Holland's petition was actually a fourth successive habeas petition under §2254 rather than a Rule 60(b) motion because he clearly was challenging the propriety of his conviction in state court while he was a prisoner in state custody. Holland argues that his convictions should be void due to the aforementioned "problems" in the indictment.



That is clearly a post-conviction attack on his state court conviction. Furthermore, he is also clearly a sentenced prisoner in custody pursuant to a state court judgement. 28 U.S.C.A. §2254 restricts the habeas petition on prisoners in Holland's position and places requirements for the filing and appeal of petitions.

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that- ...

*Id.* (emphasis added). Further, it is undisputed that Holland has his initial §2254 habeas petition, clearly making this a successive petition for which he did not get permission from the Eleventh Circuit to file. Consequently, the fact that Holland is bound by both the requirements mandating permission to file a fourth petition as well as those involving obtaining a COA in order to appeal the denial is not debatable.

In an attempt to bolster his contention that his motion was actually a Rule 60(b) motion, Holland tosses out the phrase from *Gonzalez* that the Eleventh Circuit's decision indicated "some defect in the integrity of the federal habeas proceedings." *Gonzalez*, 545 U.S. at 532. Holland then embarks on a recitation of the Circuit Court's decisions, essentially saying that since that court had denied him a COA in 2010, it was barred from rendering its decision on the first habeas petition in 2014 where it reversed

the district court's grant of a new trial. He then addresses the Eleventh Circuit's 2020 denial of his application to file a second successive habeas petition, arguing that the court's denial was wrong since the case it relied on, *United States v. Cotton*, 535 U.S. 625 (2002), did not come out until after his case was final, meaning that the indictment in his case did affect the state court's jurisdiction. Holland closes by saying that the Eleventh Circuit refused to follow the law and acknowledge that Holland already had won the case. To the extent that this petition can be construed as a challenge to either or both the 2014 and the 2020 Eleventh Circuit cases, Holland is time barred from raising them now in this current petition. *See* Sup.Ct. R. 13.1 (allowing ninety days to file certiorari petition in United States Supreme Court seeking review of a judgment from "a United States court of appeals.").

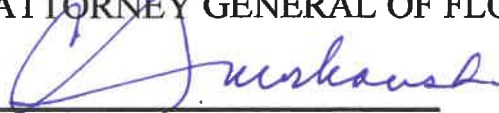
Nowhere does Holland cite any authority which conflicts with the Eleventh Circuit's denial nor has he shown that jurists of reason would find the district court's decision debatable. He merely argues the merits of his underlying petition. Certiorari must be denied.

**CONCLUSION**

Based on the foregoing arguments and authorities, Respondent respectfully requests that this Honorable Court deny Petitioner's request for certiorari review.

Respectfully submitted,

ASHLEY MOODY  
ATTORNEY GENERAL OF FLORIDA



CAROLYN SNURKOWSKI  
Associate Deputy Attorney General  
Florida. Bar No. 158541  
*Counsel of Record*

LISA-MARIE LERNER  
Assistant Attorney General  
Florida Bar No. 698271

Office of the Attorney General  
PL-01 The Capitol  
Tallahassee, Florida 32399-1050  
(850) 414-3566  
carolyn.snurkowski@myfloridalegal.com  
capapp@myfloridalegal.com

COUNSEL FOR RESPONDENT