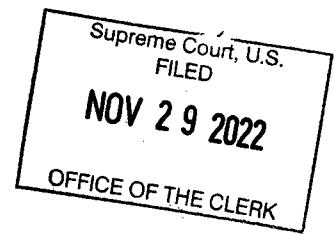


22-6416 **ORIGINAL**



IN THE  
SUPREME COURT OF THE UNITED STATES  
NOVEMBER TERM 2022  
No. \_\_\_\_\_

NICHOLAS LEE BLAIR,  
Petitioner,  
-against-  
UNITED STATES OF AMERICA, et al.,  
Respondents

PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE 5th CIRCUIT

Nicholas Lee Blair  
BETO UNIT-Texas Department of Criminal Justice  
1391 FM 3328  
Tennessee Colony, Texas 75880

QUESTION PRESENTED

Whether a Petitioner can utilize a motion under Rule 60(b) Federal Rules of Civil Procedure, or similar vehicle, to overcome a dismissal without prejudice time bar to unadjudicated claims previously filed in a motion for application under 28 U.S.C. § 2255, when those claims are supported by new evidence proffered by the Rule 60(b).

PARTIES

The petitioner is Nicholas Lee Blair, a prisoner at George Beto Unit in Texas Department of Criminal Justice-Correctional Institutional Division. The respondents are the United States of America, represented by the ~~the~~ Solicitor General for the United States.

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DECISIONS BELOW:

The decision of the United States Court of Appeals for the 5th Circuit is unreported. A copy is attached in Appendix A (App. A.1). The United States District Court for the Northern District of Texas, Lubbock Division, is unreported. A copy is attached in the Appendix A (App. A.2).

JURISDICTION

The final decree by the United States Court of Appeals for the 5th Circuit was entered October 6, 2022. That decree is attached in Appendix A (App. A.1). Jurisdiction is conferred by 28 U.S.C. § 1254(1),

RULES AND STATUTORY PROVISIONS INVOLVED

This case involves the RULES GOVERNING SECTION 2255, which provides:

The "RULES GOVERNING" states that a motion under § 2255 must "...specify all grounds for relief".

The Federal Rules of Civil Procedure provide:

"These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81."-Rule 1.

"These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:(A) is not specified in a federal statute, the Rules Governing Section 2254, or the Rules Governing Section 2255 Cases; and (B) has previously conformed to the practice in civil actions."-Rule 81(4)(A) and (B).

The Statute provides cadence to the Rules by stating:

28 U.S.C. § 2255(f)provides a "1-year period" start time for filing a motion under such statute when "the date on which impediment created by unlawful governmental action is removed if movant is prevented from making motion by such governmental action;" and "date on which facts supporting claims presented could have been discovered through due diligence" 2255(f)(2)(4).

STATEMENT OF THE CASE

Blair filed a motion under Rule 60(b) in an attempt to proffer new evidence which supported the facts of his claims, part of which were claims of deceptive tactics by the State of which the Government rests its case, for a § 2255

left unadjudicated yet filed nearly five years prior.

The § 2255 making claims of deceptive tactics causing violations of the Constitution were made by Blair in November of 2017. The motion was dismissed without prejudice by the United States District Court mentioned above for denial of equitable tolling, as moved by Blair. The Court of Appeals for the 5th Circuit affirmed in July of 2018.

Blair's action that brings this Writ of Certiorari stems from actions of the State of Texas and the very representatives Blair made claim against in his motion under § 2255 that transpired on November 5, 2021 and January 5, 2022, respectively. Blair, unaware of how to proceed, filed a motion under Rule 60(b) of the Fed. R. of Civ. Proc. in order to "restart the clock" under the provisions spelled out in 28 U.S.C. § 2255(f)(2) and (4). Blair was initially denied by the United States District Court for filing a Rule 60(b) that was construed as a successive/second motion, thus creating a lack of jurisdiction for the district court under 28 U.S.C. § 2244(b). See App. A.3. Blair filed an appeal immediately after notification of the denial. See App. A.4. Blair contended, from the beginning, that he was using the Rule 60(b) to overcome the timebar that was put on his motion under § 2255, in 2017. On September 19, 2022, the district court, *sua sponte*, changed its stance and denied Blair a certificate of appealability, apparently construing the Rule 60(b) motion as an initial motion. See App. A.5. This was objected to by Blair on October 5, 2022. See App. A.6. The denial was affirmed by the United States Court of Appeals for the 5th Circuit on October 6, 2022, days before the objection was received from Blair. See App. A.7.

#### REASONS FOR GRANTING THE WRIT

To Blair's knowledge, there is no precedent set for the utilization of

a motion under Rule 60(b) of the Fed. R. of Civv P. to overcome the time bar to unadjudicated claims of a motion under 28 U.S.C. § 2255, previously filed. In fact, this Court's ruling in Gonzalez v. Crosby, 545 U.S. 524 (2005) explaining the need for "one full round" of habeas review seems to denote such exception to procedural bars. Blair contends that he was prevented this "full round" by the State's deceptive tactics. New evidence collected by Blair provides facts supporting his claims for his unadjudicated motion under § 2255. The same evidence shows a propensity by the State to use deceptive tactics to create wrongful convictions and prevent relief from such acts. Blair has still been denied from having his claims adjudicated on the merits as he is collectively barred by statute of limitations and lower court rulings that are applied to Blair's attempts outside the intent of his filings. Blair is now compelled to the higher successive/second motion standard set in § 2244(b) without being heard on the merits in his § 2255 motion filed previously. Blair's Rule 60(b) motion is inadequate to reach meritable determination as it is void of the entirety of the claims.

**Conflicts with decisions in other Courts.**

Blair falls under the jurisdiction of the United States Court of Appeals for the Fifth Circuit which has precedent to analyze Rule 60(b) motions as successive, or inapplicable to habeas review, if presenting new evidence, as it is construed as a new claim(s). In re Edwards, 865 F. 3d 197, 201, 204-05 (5th Cir. 2017) and; United States v. Frias, 795 Fed. Appx. 296, 297 (5th Cir. 2020). Blair presented new evidence to prior claims. The evidence presented was intended to help prove the claims made in the prior § 2255 and explain the reason behind timely filing to that motion. No new claims needed to be asserted. Some Circuits claim no successive/second motion when using a Rule 60(b) with

new evidence or facts alleging prior claims. Barnett v. Roper, 904 F. 3d 623, 632-33 (8th Cir. 2018); and Zakrzewski v. McDonough, 490 F.3d 1264,1265, 1276 (11th Cir. 2007). The difference in Blair's case is that Blair attempts to utilize the Rule 60(b) motion to also overcome the time bar he faced in his § 2255 filing. The Fifth Circuit states new evidence is a new claim. Blair disagrees.

**Unprecedented decision and importance of the question presented.**

This case presented a fundamental question to the applicability of Rule 60(b) in habeas cases and whether a petitioner can overcome a statute of limitations time bar when new evidence provides the facts which support the claims presented prior, regardless of the timeliness of the prior filing. Blair concedes that his circumstance is an extraordinary case. Nonetheless, it carries National importance to use of the Civil Rules in habeas proceedings while setting standards of regularity among Circuits as well as explaining the extent of the reach of statute under § 2255, coupled with equitable means to achieve meritable determinations of such motions.

Blair's circumstances, specifically, show the deception of the State during investigation and fraud during Blair's habeas proceedings. The idea of a statute of limitations is to prevent one from 'sitting on their hands' when filing motions and petitions, least evidence or recollections be lost. The purpose of a clause to overcome such time restraints is to allow a window when equitably necessary. Blair is prevented by both, due to the actions of the lower courts and State misconduct. It should be pointed out here that Blair has overcome those time restraints with the same new evidence but in the higher threshold set in his first filing for his State conviction under 28 U.S.C. § 2254, a conviction resulting from the same investigation and thus having the

same State actors alleged against in Blair's Federal habeas claims. The idea of denying Blair by time bar because he did not wait until the evidence was ripe, had that ever occurred, is counter-intuitive to the reasoning for a statute of limitation. When considering Blair has now overcome the standard of factual predicate in § 2254, rather than the 'facts supporting' standard in § 2255 motions, the denial to his Rule 60(b) seems the more inequitable and illogical.

One only need to look at the Rules Governing Section 2255, Rule 9, to see that Blair is effectively prevented from filing a successive/second motion entirely in light of his § 2255 having never been adjudicated on the merits, as Rule 9 states a successive/second motion must come after a determination on the merits. Note 3015. As Blair's Rule 60(b) did not provide all grounds for relief, as it relied on his § 2255 motion filed previously, Blair was prevented from having the Rule 60(b) properly heard. The determination by the district and Circuit court was one, presumably, of a first filing of a § 2255. Again, misconstruing Blair's intent and effectively denying him a remedy, even when it has been shown meritable in the same court, different judge. See Section 2255 Rules, Rule 2(b)-(c) for "all grounds for relief" standard.

The rulings, as it stands.

Blair's showing of merit to overcome the statute of limitations time bar he faced with the same circumstances, same investigation and same investigators in his § 2254 as is shown in his Federal habeas, as attached to with the same new evidence, proves the need for clarification as to the ability to use the Civil Rules. Equitably speaking, Blair has been denied his ability to ever have his claims heard. First by the State and their misconduct and then by perfunctory rulings in the lower court which only slightly apply to Blair's

circumstances. Blair concedes that the new evidence rests more squarely on the State conviction than the Federal but points out that the Government rests the entirety of its case on the evidence collected illegally, and with invalid affidavit for search warrant, that was obtained by the State actors who have shown misconduct to secure a wrongful conviction. Although relevant to Blair's case, it is secondary to the issue of this Writ of Certiorari.

Habeas corpus has its roots in equity and is "governed by equitable principles". Munaf v. Gerem 553 U.S. 284, 93 S. Ct. 1038, 35 L.Ed. 2d 297 (1973) quoting Fay v. Noia, 371 U.S. 391, 438 83 S. Ct. 822, 9 L. Ed. 2d 837 (1963). To allow the circumstances set in Blair's case and orders from the lower courts to stand would allow bad, and illegal conduct of the State to be used to secure a conviction and then provide, judicially, a way for the State and/or Government, to maintain that wrongful conviction while condoning the acts which secured it. An outlook completely contradictory to the limits set in the Constitution as well as the idea of equity standards, specifically the 'Clean Hands Doctrine'.

**Conclusion.**

For the foregoing reasons, certiorari should be granted in this case.

Respectfully submitted,