

22-6480

No. _____

FILED

DEC 16 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Anthony Rohlf — PETITIONER
(Your Name)

vs.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Federal Court Of Appeals, 5th Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Anthony Rohlf
(Your Name)

899 FM 632
(Address)

Kenedy TX. 78119
(City, State, Zip Code)

N/A
(Phone Number)

I

QUESTION(S) PRESENTED

- 1.) Does the definition of the term "Claim", given by this court in Gonzales V. Crosby, 545 U.S. 524, 530-32(2005), still stand as the law of the land?; If so:
- 2.) Did the ruling made in the 5th circuit in Rohlf V. Lumpkin, No.22-10038 (5th Cir[Tex.] Aug.11 2022) use a different definition of "Claim", making a ruling squarely in conflict with relevant decisions of this court, and other circuit courts as well?
- 3.) Could the 5th circuit's ruling, that my 60(b)(3) motion was a successive writ, effect other citizens similarly situated, I.E., Pro-Se Prisoner petitioners with no other adequate remedies at law?

Please keep in mind that, had I prevailed in my 60(b)(3) motion based on fraud, misrepresentation, and misconduct of the state for knowingly relying on the fraud or misrepresentation, I would have only been entitled to De Novo review of the Federal §2254 petition, and not the underlying State court judgment of conviction to be overturned.

It was an attack on the Federal District court proceeding's integrity, specifically, the refusal to take these acts of misconduct into consideration, and then make a decision. I simply seek my right to a fair hearing, as stated in Napue V. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed 2d. 1217(1959), free from false evidence, affidavits, and information.

It was also an attack on the application of the statutory required difference to the states findings of facts, which also would have only entitled me to de novo review.

LIST OF PARTIES

[x] 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

- Rohlf v. State, No. 2-16-00367-CR, 2nd District Court of Appeals of Texas. Judgment entered 2018(Tex.App.Fort Worth 2018, Pet. Ref'd.)
- Rohlf v. State, No. PD-154-18(Tex.Crim.App.2018). In the Court of Criminal Appeals of Texas, judgment entered 2018.
- Ex Parte Rohlf, C-2-W011471-1411869-A(Tex.Crim.(2019-20)) In the Court of Criminal Appeals. Denied without a written order based on the states purported findings of facts in 2019-20.
- Rohlf v. Davis, 4:20-CV-200-0 (N.D.Tex.2021) Original §2254 petition, in Northern District of Texas, Fort Worth Division. Judgment entered 2021.
- Rohlf v. Lumpkin, USCA # 21-1096(Cir.5[2021]) Certificate Of Appealability motion, in the Federal 5th Circuit, denied late 2021.
- Rohlf v. Lumpkin, USCA #22-10038 (Cir.5,2022, pet. reh. ref'd) Motion for certificate of appealability in underlying 60(b)(3) motion. In the Federal 5th circuit of appeals, rehearing denied on 9-12-22

TABLE OF AUTHORITIES CITED

CASES

Gonzalez v. Crosby 545 U.S. 524, 125 S.Ct. 2641 (2005)
Mafie v. Illinois 79 S.Ct. 1173 (1959)
U.S. v. Wallace 673 F.Supp 205 (S.D. Tex. 1987) (citing Mafie)
Jackson v. Crosby 437 F.3d 1290 (11th Cir. 2006)

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STATUTES AND RULES

60(B)(3)
28 USC § 2244
28 USC § 2254
Supreme Court Rule 10

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OTHER

N.A.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the 2nd District Court of Appeals of Texas court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 08-11-22.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 9-12-22, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment 14 Sec. 1

"All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges 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;..."

(Claim is a restraint in my liberty interest of proceedings free of fraud)

Supreme Court Rules, 10(a)&(c)(Ruling conflicts with sister and supreme court)

Federal Rules Of Civil Procedure, 60(b)(3);

(b) "Grounds For relief from a final judgment, order, or proceeding. On motion ... the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons:

including

(3) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;..."

28 USC § 2254(d)&(e)(Deferential Standards)

28 USC § 2244(b)(1)(successive writs based on "claims")

STATEMENT OF THE CASE

I. Procedural History (NOTE: This is not an attack on the State Conviction)

I am in custody pursuant to a judgment and sentence of the Criminal District Court No. 2 of Tarrant County, Texas, in case number 1411869D, Styled The State Of Texas v. Anthony Rohlf. This judgment was the result of a trial by jury, at which I plead not guilty to two counts of aggravated assault as a repeat offender. At trial, I plead self-defense against multiple assailants, and recieved the jury instruction in that regard. Ther Jury split their decisions found me to be not guilty by reason of self-defense in the first assault, in the first of the two assaults in the sequence. They found me guilty in the second, and the court sentenced me to twenty-five years of confinement on Sepetember 15, 2016.

I was appointed an attorney to prepare an appeal, but he filed an Anders (Citation omitted) brief. I responded, but the appellate court affirmed my judgment in January of 2018. Rohlf v. State, No. 02-16-00367-CR, 2018 WL 359907. (Tex.App.-Fort Worth 2018, pet.ref'd). I then filed a petition for discretionary review, but it was refused in June of 2018. Rohlf v. State, No. PD-154-18 (Tex.Crim.App.2018) I next filed a state habeas application under Tex.Code of Crim. Proc. Art 11.07, styled and numbered Ex Parte Rohlf, c-2-W011471-1411869-A (Tex.Crim.2019), but was denied by the Texas Court of Criminal Appeals (CCA) in October of 2019. I file

I then filed an Original § 2254 petition in the Federal District Court, Northern district of Texas, Fort Worth Division, but was denie early 2021. Rohlf v. Davis, 4:20-CV-200-O (N.D. Tex. 2021.). I filed a motion requesting a Certificate Of Appealability (COA) in the Federal court of appeals for the 5th Circuit, but was ultimately denied. Rohlf v. Lumpkin, USCA # 21-1096 (Cir.5-2021) While awaiting the response in the 5th circuit for the COA, I filed a rule 60(b)(3) motion in the federal District court, Nothern District of Texas, Fort Worth Division. It was ultimately denied, but not based on the complained of fraud on the federal court, or the misconduct of the State for relying on that fraud knowingly. The denial was based on the prior ruling in that court. (SEE APPX. B, Opinion of the Federal District court)

Which brings us to the judgment from which I now seek review, the certificate of appealability file in regards to the denial of the 60(b) motion. Rohlf v. Lumpkin, USCA #22-10038 (Cir.5 2022) The 5th circuit ruled the motion to be a successive writ, and remanded the case back to the District court with orders to dismiss, because the "claim" had been raised in the original petition. The Instant petition follows.

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STATEMENT OF THE CASE

II. Statement Of The Facts

There are a few material facts that should be considered in resolution of the questions presented. They are as follows;

1. The ruling of the 5th circuit was based on this court's ruling in Gonzalez v. Crosby, 545 U.S. 524, 530-32(2005).
2. The 5th Circuit stated, in pertinent part;
"...However, the court had no jurisdiction to consider his motion because it constituted a successive § 2254 application, and Rohlf had not obtained authorization to proceed from this court. (citing Gonzalez). Although Rohlf purported to rely on fraud on the court pursuant to Rule 60(b)(3), the underlying claim was raised in his § 2254 petition..."
see APPX. B pg.2
3. "Claim" is defined in Gonzalez, I.D., as;
"...these statutes and our own decisions, make clear that a "claim" as used in § 2244(b) is an asserted federal basis for relief from a state court's judgment of conviction."
Gonzalez v. Crosby, 125 S.Ct.2641, 2647 (2005)
4. The ruling in Gonzalez, I.D., has not been overruled.
5. I did not raise an issue of fraud, misrepresentation, or misconduct of the State's attorney by knowingly relying on the fraud in the § 2254 petition, although I did mention them in reference to the state's findings of fact not being entitled to difference, and me being entitled to de novo review in federal court, and the federal district court's ruling was only that that information was not cognizable in federal habeas proceedings. In any event, these were not an attack on the conviction.
6. My 60(b) motion did not attack the state court's judgment of conviction, but only the integrity of the federal proceeding, I.E. the lack of fundamental fairness in an official proceedings being free from fraud.
7. I have a liberty interest in not having false statements, reports, and evidence presented at official proceedings. Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed 2d. 1217 (1959)
8. It follows that when a proceeding is tainted by false statements and false evidence, I.E. an affidavit, the requirement of fundamental fairness is lacking. U.S. v. Wallace 673 F.Supp 2055(S.D.Tex.1987)(Citing Napue, I.D.)
9. I have practiced due diligence throughout this process.
10. The ruling of the 5th cir., that the 60(b) motion raised "claims",

STATEMENT OF THE CASE

as defined in Gonzalez, I.D., creates a definition of "claim" in conflict with the rulings made by this court in Gonzalez, I.D., standing presedent of this court.

11. This petition is brought under the Rules of the Supreme Court of the United States, Rule 10(a)and (c).

REASONS FOR GRANTING THE PETITION

The petition should be granted because, by making the ruling the 5th circuit did, it had decided an important federal question in a way that conflicts with relevant decisions of this court, and other United States courts of appeals on the same important matter. (See Supreme Court Rule 10(a)&(c)) They also sanctioned conduct by the lower court that so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. (See Rule 10(a))

The 5th circuit did that by departing from the stated definition for "claim" in Gonzalez v. Crosby 125 S.Ct. 2641, 2647(2005), which stated in pertinent part;

"... a "claim" as used in § 2244(b) is an asserted federal basis for relief from a state court's judgment of conviction." at 2647

What the 5th circuit refers to as an underlying "claim" in their 8-11-22 judgment, was some passing references to fraud upon the court in the § 2254 petition's memorandum. However, these allegations do not assert a federal basis for relief from the state court's judgment of conviction. On the contrary, they assert a federal basis for de novo review of the **federal** petition, and nothing more. Even if the court found in my favor on those allegations, I would only have been entitled to review without difference to the fraudulent information. (I'll note here I am entitled to official proceedings free of false information, also by relevant decisions of this court made in Napue v. Illinois, 360 U.S. 264, 79 S.Ct 1173, 3 L.Ed 2d. 1217(1959))

In any event, the ruling of the Federal district court, based on the information the 5th circuit now labels a "claim", was as follows;

"Petitioner's claim that the fact-finding process was inadequate is not a basis for federal habeas-corpus relief. It is well established that alleged errors or defects in state habeas proceedings are not cognizable in federal habeas review. (citations omitted)"

See Appx C Pg. 1

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REASONS FOR GRANTING THE PETITION

The ruling of the federal district court, to a lay person, would seem like the anti-thesis to Gonzalez's(I.D.) definition of claim, right?

"...not a basis for federal habeas-corpus relief...not cognizable in federal habeas review..." (N.D.Tex. Ruling, appx.c)

"... an asserted federal basis for relief from a state court's judgment of conviction..." (Gonzalez, I.D.)

I took that to mean that what I had referenced in the § 2254 petition's memorandum as fraud upon the court, was not a "claim" as defined in Gonzalez, I.D., and that the proper remedy would be through a 60(b)(3) motion. I still think this evaluation is correct. I now face a situation where the 5th circuit is refusing to rule on the merits of my 60(b) motion, despite no "claim" being presented. This further conflicts with Gonzalez, I.D., as it states in pertinent part;

" (2) When no "claim" is presented within the meaning of § 2244(b), there is no basis for contending that a Rule 60(b) motion should be treated like a habeas corpus application." (162 L. Ed. 2d 482, H.N 1)

What is most disturbing about this situation, is that the federal district court clearly stated what issues, or "claims", had been raised in the underlying federal petition, and nowhere in those listed issues was "fraud upon the court, misrepresentation, or misconduct of the State's representative". The federal court of appeals seems to have dug deep to find a reason to deny this 60(b)(3) on anything but the merits, and that is why this proceeding has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

Further more, the 11th circuit has made rulings also in conflict with the ruling made here. In Jackson v. Crosby 437 F.3d. 1290(11thCir.2006), it is stated;

" The court held that 'a Rule 60(b)(6) motion in a [28 USC] § 2254 case is not to be treated as a successive habeas petition [and thus subject to the precertification requirements of 28 U.S.C. § 2244(b)] if it does not assert or reassert, claims of error in the movant's state conviction"

REASON FOR GRANTING THE PETITION

Again, because the only relief I was asking for in the motion was to be free from the procedural constraints of deference to the state court's finding of facts, the motion did not contain a "claim". This doubly differential standard is procedurally required by 28 U.S.C. § 2254(d) and (e), and in essence, my 60(b)(3) motion only challenged those procedural requirements application to me, which is a pure 60(b) motion by definition.

In this way, the ruling of the 5th circuit has rendered this entire process lacking in fundamental fairness, and in turn, has violated my 14th amendment right to due process in an official proceeding, in violation of this Honorable court's ruling in Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L. Ed 2d. 1217 (1959).

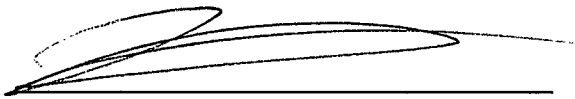
Lastly, to allow this ruling to stand would effect every other pro-se prisoner petitioner, who don't really know how to articulate their legal issues in ways that will not be misconstrued as procedurally barred. To put this another way, no matter how valid their claim, and their right to a liberal construction, the majority of prisoners who make it to the 5th circuit are determined to have become barred, regardless if they really are or not. I understand the state has an interest in finality, but citizens of the United States, whether prisoner or otherwise, had an ever bigger interest in the due process of law in official judicial proceedings. This could become (if it is not already) a common practice of the 5th circuit toward all its prisoner petitioners.

If granted review, I still would not be entitled to relief from the underlying state conviction, just the procedurally required doubly differential standard of review in the federal district court. That is the only thing that will repair the damage done by the presence of fraud, and the states purposeful reliance on it, in the federal proceeding.

CONCLUSION

In conclusion, I ask that this Honorable court grant review, and make the ultimate ruling that the procedural required difference be disregarded, and De Novo review of the Original § 2254 petition be conducted, after granting 60(b).
The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized, cursive 'Z' or 'S' shape, followed by a horizontal line.

Date: 12-5-22