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SUPREME COURT U.S.

22-6562

No.

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE S. SCHRAND, JR., - Petitioner

vs.

UNITED STATES OF AMERICA - Respondent

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

PETITION FOR WRIT OF CERTIORARI

George S. Schrand, Jr.
R 16623-045
P.O. Box 2049
Pollock, LA 71467
PRO SE

AMN

QUESTIONS PRESENTED

1. Whether the court below clearly erred in finding the district court had considered all Petitioner's constitutional claims.
2. Whether Petitioner has established prejudice.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

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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

The opinion of the United States Court of Appeals
appears at Appendix A to the petition and its
designation is unknown to petitioner.

The opinion of the United States District Court appears
at Appendix B-4 to the petition and its designation is
unknown to petitioner.

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 13, 2022.

No petition for rehearing was filed in my case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend., V	"Due Process"
U.S. Const., amend., VI	"Right to Counsel"
18 U.S.C. § 3006A	"Ancillary Matter"
18 U.S.C. § 2255	"Collateral Review"

STATEMENT OF THE CASE

On January 12, 2022 the United States District Court for the Western District of Missouri (Kansas City), denied Petitioner's Section 2255 Motion. See Appendix C; Doc.

14. The order addressed the following arguments:

(1) Defense Counsel was ineffective for four separate reasons:

1(a). Failure to object to superseding indictment;

1(b) Failure to object to the drug conversion;

1(c) Failure to object to prior convictions;

1(d) Failure to object to the Government's improper vouching; and

(2) ineffective assistance based on the cumulative effect of all alleged errors. Id. at 3-7.

On February 11, 2022 Petitioner filed a Rule 60(b)(1), (6) Motion to set aside judgment, arguing inter alia, that he "should be granted relief ... because [the district court] abused its discretion when it denied [his] motion to appoint counsel." See Appendix D; Doc. 16 at 1-3. Petitioner contended that "a prisoner must have at least one opportunity to present a claim that trial counsel was

¹ "Doc." refers to the docket number entries in Petitioner's civil case, Case No. 4:21-cv-00751-BCW; also at: Appendix B.

ineffective - and to present it with the assistance of effective counsel." Appendix D at 1; Doc. 16 at 1. Notably, (Doc. 14) did not address this claim.

On February 11, 2022 the district court ordered that the Rule 60(b) Motion (Doc. 16) be "denied for the reasons set forth in this Court's January 12, 2022 Order (Doc. 14) and because Movant fails to set forth any appropriate argument for this Court to reconsider that Order." See Appendix E; Doc. 17.

Petitioner timely appealed. The Court of Appeals for the Eighth Circuit denied a COA on March 31, 2022. See Appendix F; Doc. 21.

On July 29, 2022 Petitioner filed the instant Rule 60(b)(4) Motion arguing, inter-alia, that the district court never considered his claim, that the district court "abused its discretion when it denied Schrand's motion to appoint counsel." (Doc. 16 at 1-3). See Appendix G; Doc. 23 at 1-2.

The gist of Petitioner's argument was that (Doc. 17) was void because the district court failed to consider his arguments that he had a constitutional right to counsel. A claim that was not considered by the Court of Appeals for the Eighth Circuit.

On August 3, 2022 the district court denied Petitioner's Rule 60(b)(4) Motion (Doc. 23). See Appendix B at 4; Doc. 24. Petitioner timely appealed.

On October 13, 2022 the Court of Appeals for the Eighth Circuit summarily affirmed the district court.
See Appendix A.

Petitioner did not petition for a rehearing in this case.

REASONS FOR GRANTING THE PETITION

"It is well established that a district court must generally consider the parties nontrivial arguments before it." Conception v. United States, 597 U.S. —, — (2022) (Slip op., at 17) (citing Golan v. Saada, 596 U.S. —, — (2022) (Slip op., at 11)); see also Fed. R. Civ. P. 54(b) ("When more than one claim for relief is presented in an action, ... any order ... which adjudicates fewer than all the claims ... shall not terminate the action as to any of the claims ... and the order ... is subject to revision at any time ..."); accord United States v. Rodriguez, No. 94-Cr-313, 2020 U.S. Dist. LEXIS 66715 (S.D.N.Y. April 15, 2020).

This makes sense because a court of appeals will not consider claims not addressed in the district court. "This we clearly cannot do. We can do no more than remand the case to the district court to consider all remaining claims ..." Clisby v. Jones, 960 F.2d 925, 935 (11th Cir. 1992); Black v. Davis, 902 F.3d 541, 545 (5th Cir. 2018) ("this court has no jurisdiction to issue a COA on an issue on which the district court did not deny a COA.").

This Petition should be allowed because it involves a controlling question of law which there is substantial ground for difference of opinion.

As in the Eighth Circuit, it is highly unlikely a prisoner has a meaningful opportunity to raise an ineffective

assistance of trial counsel claim on direct appeal, United States v. Mathison, 760 F.3d 828, 831 (8th Cir. 2014). Where the initial-§ 2255 proceeding is the first designated proceeding for a prisoner to raise the ineffective assistance claim:

- (1) whether the collateral proceeding is the equivalent of a prisoner's direct appeal, implicating an "ancillary matter" for purposes of 18 U.S.C. § 3006A as to that claim; and
- (2) whether the collateral proceeding is a narrow exception to the rigid rule in Pennsylvania v. Finley, 481 U.S. 551, 555 (1987), that "a defendant has no federal constitutional right to counsel when pursuing a discretionary appeal..." (citing Boyd, 405 U.S. at 7, n. 2)).

The proper functioning of our criminal justice system depends in large part on its legitimacy, fundamental fairness, integrity, and public reputation. See Rosales-Mireles v. United States, 138 S.Ct. 1897, 1908 (2018) (noting that "the public legitimacy of our justice system relies on procedures that are neutral, accurate, consistent, trustworthy, and fair," and that "a sentence that lacks reliability because of unjust procedures may well undermine public reputation of the proceedings.").

What reasonable person would not have a diminished view of judicial proceedings after seeing a court can circumvent the judicial process by failing to consider a nonfrivolous argument?

Prejudice is presumed where the right to counsel is denied. United States v. Cronin, 466 U.S. 648 (1984).

CONCLUSION

The right to counsel is fundamental to our criminal justice system and prejudice is presumed where the right to counsel is denied. Because the district court denied (Doc 16, 23) without addressing this claim, the court below clearly erred by summarily denying this claim.

Based on the reasons above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

George Schrand

George S. Schrand, Jr.

R16623-045

USP Pollock

P.O. Box 2099

Pollock, LA 71467

AMH