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No. 23- _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re THOMAS J.M. GOODIN,

Petitioner,

ON PETITION FOR WRIT OF MANDAMUS
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF MANDAMUS

March 13, 2023

Thomas J.M. Goodin
R 20647-035
USP Pollock
P.O. Box 2099
Pollock, LA 71467
PRO SE

QUESTIONS PRESENTED

The United States Court of Appeals denied Thomas Goodin's Application for a Certificate of Appealability ("COA"). First, it found it did not have jurisdiction to consider "new arguments," contravening this Court's clearly established precedent in Yee v. City of Escondido, 503 U.S. 519, 534 (1992) (holding, if an issue is "properly presented, a party can make any argument in support of that[issue]; parties are not limited to the precise arguments they made below.""). Next, the Fifth Circuit side-stepped the threshold COA process by first deciding the merits of Goodin's appeal, and then justified its denial of the COA based on its adjudication of the actual merits, thereby in essence deciding the appeal without jurisdiction, contravening this Court's clearly established precedents in Buck v. Davis, 137 S.Ct. 759, 774 (2017), and Miller-El v. Cockrell, 537 U.S. 322, 336-37 (2003): Whether granting of this writ will be in aid of this Court's appellate jurisdiction; that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court?

LIST OF PARTIES

All parties do not appear in the caption of the cover page. A list of the name and office or function of every person against whom relief is sought is as follows:

The United States Court of Appeals action from which this petition arises is entitled United States v. Goodin, No. 30507 (5th Cir. Nov. 14, 2022). The Fifth Circuit denied this appeal on November 14, 2022, the Honorable Edith Brown Clement, Leslie H. Southwick, and Stephen A. Higginson, Circuit Judges presiding. (Appendix C). The Fifth Circuit denied a motion for Rehearing En banc on January 11, 2023. (Appendix E). Petitioner is the defendant-appellant in that action.

Petitioner

Petitioner is Thomas J.M. Goodin, Federal prison # 20647-035.

Petitioner is the defendant-appellant in the action described above.

Petitioner is proceeding pro se, his address is:
USP Pollock; P.O. Box 2099; Pollock, LA 71467-2099.

Respondent

Respondent United States of America ("United States"),

is the plaintiff/appelle in the action described above. Respondent United States is represented by: The Solicitor General of the United States; Room 5616; Department of Justice; 950 Pennsylvania Ave., NW; Washington, DC 20530-0001.

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

Petitioner Thomas Goodin respectfully petitions this Court for a writ of mandamus directing the United States Court of Appeals for the Fifth Circuit (the Honorable Clement, Southwick, and Higginson, Circuit Judges presiding), in the case entitled United States v. Goodin, No. 22-30507 (5th Cir. Nov. 14, 2022) to:

1. Set aside the order of November 14, 2022, denying Petitioner's COA;
2. Consider Petitioner's "new arguments" raised for the first time on appeal; and
3. Apply the proper COA analysis by asking the "threshold question": has the applicant shown that "jurist of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further," before deciding the actual merits of his appeal.

OPINIONS BELOW

The District Court's decision denying Mr. Goodin's habeas corpus relief is available at United States

v. Goodin, No. 3:18-CR-154-1 (W.D. La. Aug. 11, 2022) (Appendix A). The District Court issued a short order declining the issuance of a COA. United States v. Goodin, No. 3:18-CR-154-1 (W.D. La. Aug. 11, 2022) (Appendix B). The Fifth Circuit denied a COA and a petition for rehearing en banc. United States v. Goodin, No. 22-30507 (5th Cir. Nov. 14, 2022) (Appendix C); United States v. Goodin, No. 22-30507 (5th Cir. Jan. 11, 2023) (Appendix E).

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1651(a). This petition is timely filed. The judgment of the court of appeals was entered on November 14, 2022. A petition for rehearing en banc was denied on January 11, 2023. Sup. Ct. R. 20.

RELEVANT PROVISIONS

This case involves a federal prisoner's constitutional rights under the Fifth and Sixth Amendments, and is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified in relevant part at 28 U.S.C. § 2255.

The Fifth Amendment to the United States Constitution provides:

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

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to ~~***~~ have the Assistance of Counsel for his defense.

This case also involves the application of 28 U.S.C. § 2253(c), which states:

(1) Unless a circuit justice or judge issues a Certificate of Appealability, an appeal may not be taken to the court of appeals from -

(B) the final order in a proceeding under Section 2255.

Further, a COA should not issue absent "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The initial rule guiding a district court's consideration of a COA was Federal Rules of Appellate Procedure 22, which concerns appeals in habeas proceedings. It was amended by AEDPA. Fed. R. App. P. 22(b) (1997).

- STATEMENT OF THE CASE

Petitioner Thomas J.M. Goodin, federal prisoner # 20647-035, sought a certificate of appealability (COA) to appeal the District Court's dismissal and denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. His § 2255

motion (D. Ct. Doc. 278, 278-1)¹ challenged his convictions and sentences for conspiracy to distribute methamphetamine, possession with intent to distribute methamphetamine, and possession with intent to distribute phencyclidine. *Id.*

Goodin argued that his trial counsel was ineffective for failing to move to suppress a warrantless search of a FedEx package and that appellate counsel was ineffective for failing to move to challenge the district court's enhancement of his sentence based on a prior conviction in which he was constructively denied the assistance of counsel.

In support of his claim that trial counsel was ineffective, Goodin raised "new arguments" for the first time on appeal that record is void a warrant under La. Rev. Stat. 9:2603; while an actual search warrant had been attached the the Application for Search Warrant, Affidavit, and Return Receipt, it covered only a residence and not the FedEx package; that an additional search of the FedEx package

¹ D. Ct. Doc. "—", refers to Docket Entries in *United States v. Goodin*, No. 3:18-CR-154-1 (W.D. La.).

occurred two and a half hours before the search at issue; that the K-9 officer involved in the search was off duty; and that there was no probable cause to search the package. The motions panel found it did not have jurisdiction to consider these new arguments, citing Black v. Davis, 902 F.3d 541, 545 (5th Cir. 2018).

Everyone agrees that the actual search warrant for the FedEx package was not attached. And, it is uncontroverted that Petitioner's retained counsel (Mr. Hansen) enrolled as co-counsel in the prior state proceeding; that Mr. Hansen did not know the facts of petitioner's case or how the law applied to those facts.

In denying Petitioner's motion for COA, the motions panel stated, "if first, the package search was not warrantless; the record is clear that a warrant was issued. Trial counsel was not ineffective for failing to move to suppress evidence on this ground. Second, Goodin had counsel on his prior conviction and was not constructively denied counsel's assistance. Appellate counsel was not ineffective for failing to challenge the prior-conviction enhancement." As Petitioner set out fully and in great detail in his Motion for Rehearing En Banc from the denial of a COA at the Fifth Circuit (see Appendix D)

Black v. Davis, 902 F.3d 541, 545 (5th Cir. 2018) did not apply, because he properly raised issue that trial counsel was constitutionally ineffective for failing to move to suppress a warrantless search. Any new arguments before the court in support of that argument should have been considered; and by deciding the merits of his appeal instead of asking "only if the District Court's decision was debatable." Buck, 137 S.Ct. at 774 (quoting Miller-El, 537 U.S. at 327); the motions panel sidestepped the threshold COA process and first decided the merits of Goodin's appeal, and then justified its denial of the COA based on its adjudication of the actual merits, thereby in essence deciding the appeal without jurisdiction.

The Fifth Circuit's order (See Appendix C) holding that it did not have jurisdiction to consider new arguments raised for the first on appeal; and its inverting of the statutory order of operations by deciding the merits of the appeal before determining whether the legal questions were debatable, contravenes this Court's holdings in Yee, 503 U.S. at 534; Buck, 137 S.Ct. at 774; and Miller-El, 537 U.S. at 327- respectively.

Because Mr Goodin's application for a COA was denied without the Fifth Circuit considering all his arguments in support of his issues; and in essence without jurisdiction, there is little doubt that the Fifth Circuit committed legal errors that are clear and indisputable; and that there exists no alternate procedural means available to correct the error or remedy the harm.

REASONS FOR GRANTING THE WRIT

I. Mandamus Should Be Granted Because It would Be In Aid of This Court's Jurisdiction

Mr. Goodin's case involves questions of jurisdiction. He has no other adequate means to obtain the relief he desires. The Fifth Circuit found that it did not have jurisdiction to consider "new arguments" in support of a claim of ineffective assistance of trial counsel. In addition, the Fifth Circuit exceeded the scope of the COA analysis by reaching its conclusions only after essentially deciding the circumstances. The question for the Fifth Circuit was: whether jurists of reason could debate these issues.

The Fifth Circuit's order in this case contravenes the clear precedent of this Court and forecloses the possibility that the court will reach a different conclusion if presented with the same issues in another case.

A. Petitioner Has No Other Adequate Remedy

No other court can order the Fifth Circuit to execute its duty, correct the error, or remedy the collateral harm that will flow from the error.

B. Order of the Fifth Circuit Is Clear Abuse of Discretion

1. The Fifth Circuit erred in finding it did not have jurisdiction to hear new arguments in support of Petitioner's claim that trial counsel was ineffective for failing to move to suppress evidence obtained in a warrantless search. See Yee, 503 U.S. at 534. "[T]here is a difference between raising new issues and making new arguments on appeal. If an issue is properly presented, a party can make any new argument in support of that [issue]; parties are not

limited to the precise arguments they made below." Id. at 534.

2. The Fifth Circuit erred by inverting the statutory order of operations by deciding that a search warrant had issued; that Petitioner had counsel on his prior conviction. See Buck, 137 S. Ct. at 774 (quoting Miller-El, 537 U.S. at 327). By exceeding the limited scope of the COA analysis, and deciding this appeal on the merits, in essence deciding this appeal without jurisdiction.

C. Extraordinary Relief Is Warranted in This Case

Determining whether such circumstances are present may include consideration of a wide range of factors, including "the risk of injustice to the parties" and "the risk of undermining the public's confidence in the judicial process." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 863 (1988).

A COA is jurisdictional. "A Court of Appeals may not rule on the merits of [the prisoner's] case" until a COA is issued. Buck, 137 S. Ct. at 773, see also Miller-El, 537 U.S. at 335-36.

The Fifth Circuit's denial of Goodin's COA rested

largely on its determination that it did not have jurisdiction to consider new arguments and its inverting the statutory order of operations by deciding the merits of the appeal and then denying a COA based on adjudication of the actual merits. This is a disturbing departure from the basic rule of law as construed and interpreted in Yee, 503 U.S. 519; Buck, 137 S. Ct. 759; and Miller-El, 537 U.S. 322.

The consequence of not granting this writ will be that Petitioner does not have his claims properly heard by the Fifth Circuit; risking to undermine the public's confidence in the judicial process.

"It is an elementary rule that a writ of mandamus may be used to require an inferior court to decide a matter within its jurisdiction and pending before it for judicial determination..." Ex parte Morgan, Pet., 114 U.S. 174, 175 (1885).

CONCLUSION

For the reasons stated, Petitioner prays that this Court grant the requested writ of mandamus and direct the United States Court of Appeals for the Fifth Circuit to: 1. Set aside the order of November 14, 2022, denying Petitioner's COA; 2. Consider Petitioner's "new arguments" raised for the first time on appeal; and 3. Apply the proper COA analysis by asking the "threshold question" has the applicant shown that "jurist of reason could disagree with the

district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further," before deciding the actual merits of his appeal.

Respectfully submitted,
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