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22-7358  
No.

Supreme Court, U.S.

FILED

MAR 22 2023

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IN THE SUPREME COURT OF THE UNITED STATES

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In re: Ronnie Dante Thomas

Petitioner.

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On Petition for a Writ of Mandamus to the  
United States Court of Appeals for the  
Sixth Circuit

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PETITION FOR WRIT OF MANDAMUS

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/s/   
Ronnie Dante Thomas #254903  
pro se  
Saginaw Correctional Facility (SRF)  
9625 Pierce Rd.  
Freeland, Michigan 48623

QUESTIONS PRESENTED

1. IS The U.S. Court of Appeals for The Sixth Circuit ("Sixth Circuit") Application of 28 U.S.C. § 2244(b)(3)'s Procedural Bar To a Collateral Challenge To a Prior Juvenile Adjudication That Was Used To Enhance Sentence Where Petitioner Alleged That The Prior Juvenile Adjudication Was Procured In Violation Of The Sixth Amendment Right To Counsel, In Violate U.S.C. § 2243's Law And Justice Mandate?

PARTIES TO THE PROCEEDCING

1. Petitioner Ronnie Dante Thomas

The Petitioner Ronnie Dante Thomas (hereinafter "Petitioner") is State prisoner incarcerated since 2004 pursuant to the Judgment of Conviction and Sentence of the Seventeenth (17th) Judicial Circuit Court of the State of Michigan, County of (KENT).

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states that no parties are corporations.

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OPINIONS AND ORDERS ENTERED

On January 5, 2023, the Sixth Circuit denied Petitioner's application for authorizing the District Court to Consider a second or successive 28 U.S.C. § 2254 habeas Corpus Petition, 28 U.S.C. § 2244(b)(3), Despite Petitioner's Legal Claim Alleging That a Prior Juvenile Adjudication Was Procured In Violation of the Sixth Amendment Right To Counsel, Based On Petitioner's Factual Predicate that the trial court erred in using a Uncounseled Juvenile Adjudications To Calculate Petitioner's Sentencing Range Under The State Sentencing Guidelines Does Not Demonstrate That No Reasonable Juror Would Have Convicted Petitioner Of The Underlying Offense Of Carjacking And Armed Robbery, § 2244(b)(2)(ii). Appx.

--A.

JURISDICTION

The date on which the Sixth Circuit denied Petitioner's application for authorizing the District Court to Consider a second or successive habeas corpus petition was January 5, 2023. A copy of that decision appears at Appx. --A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1651.

RELEVANT LEGAL PROVISIONS

I. Custis v United States, 511 U.S. 485, 114 S.Ct. 1732; 128 L.Ed.2d 517 (1994) this Court held:

"[a]s a matter of federal law, a criminal defendant possesses the constitutional right to collaterally challenge a prior conviction that is used to enhance a sentence when that defendant alleges that the prior conviction was procured in violation of the Sixth Amendment right to counsel."

II. Brown v Allen, 344 U.S. 443, 462, 73 S.Ct. 397, 410; 97 L.Ed. 469 (1953) this Court said:

"[A] federal judge on a habeas corpus application is required to summarily hear and determine the facts, and dispose of the matter as law and justice require' \*

RULE 20.1 STATEMENT

There exist truly exceptional circumstances that mandate the issuance of the writ sought by Petitioner in this matter. As set forth in detail below, Petition was denied the constitutional right to collaterally challenge a prior conviction that was used to enhance sentence where it was alleged that the prior conviction was procured in violation of the Sixth Amendment right to counsel based on the procedural bar (§ 2244(b)(3))'s operation against the filing of "second or successive" habeas corpus petition's. This is fundamentally wrong on two levels. First, it violates Petitioner's sacrosanct constitutional right (as set forth in Custis, supra,) to collaterally challenge prior conviction(s) because they were based on the right to counsel. Id. 114 S.Ct. at 1734. Moreover, this Court ruled that collateral attacks based on the "right to have appointed counsel established in Gideon v Wainwright, 372 U.S. 335; 83 S.Ct. 792; 9 L.Ed.2d 799 (1963)" could not be constitutionally denied by otherwise applicable procedural bars. Id. 114 S.Ct. 1738. On a more macro level, the Sixth Circuit's decision is at odds with § 2243's law and justice mandate. If this Court's holding in Custis, supra, 114 S.Ct. at 1738, states that procedural bar can not constitutionally apply to collateral challenges to prior conviction(s) alleging violations of the Sixth Amendment right to counsel, and the Sixth Circuit applied § 2244(b)(3)'s procedural bar to Petitioner's alleged Gideon violation, then § 2243's law and justice mandate has been overlooked or misapprehended.

In fact, this Court in Lackawanna Cnty. Dist. Atty. v Coss, 532 U.S. 394, 121 S.Ct. 1567, 149 L.Ed.2d 608 (2001) noted that the "'failure to appoint counsel for an indigent [is] a unique constitutional defect ... ris[ing] to - the level of a jurisdictional defect,' which warrants special treatment among constitutional violations." Id. 532 U.S. at 404, 121 S.Ct. 1567 (quoting Custis

v United States, 511 U.S. 485, 496, 114 S.Ct. 1732 (1994)).

The Court's decision to grant Petitioner's petition would go a long way toward remedying Circuit Court's applying procedural bar's to habeas corpus petitioner's exercising the constitutional right to collaterally challenge a prior conviction that was used to enhance a sentence when those petitioner's alleges that the prior conviction was procured in violation of the Sixth Amendment right to counsel.

Lastly, Petitioner is left without any adequate relief from any other court, as the Sixth Circuit was clearly aware that its decision to deny Petitioner's § 2244(b)'s application to file a second or successive petition in the district court was not subject of any appeal or review. Appx. --A. Thus, this Petition is Petitioner's only avenue for relief.

#### STATEMENT OF THE CASE

##### I. Background Facts

In 2005, a state jury convicted Petitioner of carjacking and armed robbery, and the trial court sentenced him to a total term of 22 to 66 years of imprisonment. The Michigan Court of Appeal Affirmed. People v Thomas, No. 267334, 2007 WL 1227708 (Mich. Ct. App. Apr. 26, 2007), perm. app. denied, 737 N.W.2d 702 (Mich 2007). In 2008, Petitioner filed a § 2254 petition in the U.S. District Court, claiming that trial court gave an unduly coercive Allen charge (Allen v United States, 164 U.S. 492, 501 (1896)) (approving supplemental instruction to deadlocked jury under certain circumstances)) to the jury. The District Court denied this claim on the merits, and the Sixth Circuit Court of Appeals denied Petitioner a Certificate of Appealability (COA). Thomas v Ludwick, No. 10-2142 (6th Cir May 25, 2011). Petitioner filed a Rule 60(b) motion (Fed.R.Civ.Proc. 60(b)) back to the District Court ten (10) years later claiming that the District Court failed to assess Petitioner's Allen charge

under the "totality of the circumstances," and that such an omission amounted to a "defect in the integrity of the proceeding" (Gonzalez v Crosby, 545 U.S. 524, 530-32 (2005)). Nevertheless, the District Court construed Petitioner's Rule 60(b) motion as "second or successive" petition and issues an order transferring Petitioner's motion to the Sixth Circuit as such pursuant to 28 U.S.C. § 1631. Thomas v Ludwick, No. 2:08-cv-15020 (E.D. Mich January 4, 2022). The Sixth Circuit denied Petitioner authorization to file another habeas petition claiming Petitioner's claim within the submitted Rule 60(b) motion was a "new" claim even though this Court's clearly established law required a federal court reviewing an Allen charge to assess it's coercive effect "in it's context, and under the totality of the circumstances." Lowenfield v Phelps, 484 U.S. 231 (1988). In re Thomas, No. 22-1009, U.S. App. LEXIS 12412, at \*2-4 (6th Cir 2022).

Thereafter Petitioner procured from the Michigan Dept. of Correction (upon request) (MDOC) a prior juvenile adjudication record demonstrating the absence of counsel. Petitioner submitted a motion for an order authorizing the district court to consider a second or successive § 2254 habeas corpus petition under § 2244(b)(3). Petitioner sought permission to raise two separate but related claims that the trial court miscalculated his sentencing range under the Michigan Sentencing Guidelines by using an uncounseled juvenile adjudication to score his prior record variables. Lackawanna Cnty. Dist. Atty., supra. Second Petitioner claimed that he is actually innocent of the sentencing enhancement based on this variable. Dretek v Haley, 541 U.S. 386 (2004). Both of these claims were based on the records procured from the MDOC showing the Kent Cnty., Michigan, Probate Court in July 1994, when Petitioner was 15 years old, the Court (Probate) adjudicated Petitioner on several counts of stealing motor vehicle's. It is not clear, or the record is "silent", however, whether Petitioner was represented by counsel in those proceedings. Burgett v Texas, 389

U.S. 109, 114-15 (1967). In spite of the unique nature of Petitioner's claims, the Sixth Circuit applied a procedural bar to Petitioner's allegation that a prior conviction was procured in violation of the Sixth Amendment right to counsel, and denied Petitioner's motion for authorization. See, Appx. --A.

Despite the Sixth Circuit's unconstitutional application of a procedural bar to Petitioner's Gideon claim, Petitioner submitted a 28 U.S.C. § 2241 petition in the District Court, using the Sixth Circuit's finding (that the record is either "unclear" or "silent") whether Petitioner had counsel during the prior juvenile adjudication proceedings, as evidence to substantiate Petitioner's underlying substantive claim as set forth in Lackawanna, supra. Appx. --A. The District Court transferred Petitioner's § 2241 petition to the Sixth Circuit as a "second or successive" petition for some "odd" reason in spite of this Court's clearly established law in Custis, supra, and Panetti v Quarterman, 551 U.S. 930, 943-44 (2007). Again, the Sixth Circuit applied § 2244(b)(3)'s procedural bar to Petitioner's Gideon claim, and denied Petitioner authorization. The Court did not address Petitioner's contention as to whether the transfer of Petitioner's § 2241 petition was necessary. Appx. --A.

#### REASON FOR GRANTING THE WRIT

I. This Case Involves Petitioner's Constitutional Due Process Rights To Collaterally challenge A Prior Conviction That Was Used To Enhance A Sentence When Alleging That The Prior Conviction Was Procured In Violation Of The Sixth Amendment Right To Counsel. Custis, supra, 114 S.Ct. at 1737.

The Sixth Circuit's application of § 2244(b)(3)'s procedural bar to Petitioner's Gideon violation has adopted a circuit policy that denies Petitioner the constitutional right to collaterally challenge a prior conviction that was or is, used to enhance a sentence when alleging that the prior conviction was procured in violation of the Sixth Amendment. This flies in the

face of this Court's well-settled law, that if the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stand a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty[.] ... The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus." [Id., 114 S.Ct. 1737 (quoting Johnson v Zerbst, 304 U.S. 458, 468; 58 S.Ct. 1019; 82 L.Ed. 1461 (1938).] Notably, while affording "jurisprudential significance" to alleged Gideon claims, this Court expressly limited the availability of collateral challenges to these particular Sixth Amendment violations and refused to extend the opportunity for relief to other alleged constitutional infirmities. Custis, 114 S.Ct. 1732 at 1734 ('We hold that a defendant has no such right [with the sole exception of convictions obtained in violation of the right to counsel] to collaterally attack prior conviction"). This limitation was based, in part, on the "historical basis in [United States Supreme Court] jurisprudence of collateral attacks for treating the right to have counsel as unique...." Id., 114 S.Ct. at 1737-1738.

This Court further emphasized that such a limitation was compelled by the ease of administration that accompanied such exceptional claims, and by the federal court's interest in promoting the finality of judgments for other non-Gideon challenges. Id., 114 S.Ct. at 1739.

In like manner, this Court reiterated in Lackawanna, supra, the right to constitutionally challenge a prior conviction that is used to enhance a sentence where it is alleged that a prior conviction was procured in violation of the Sixth Amendment right to counsel. Id., 532 U.S. at 404-05. In that case, this Court held that once a state conviction is no longer open to direct or collateral attack in its own right because the petitioner failed to pursue those

remedies while they were available (or because he or she did so unsuccessfully), the conviction may be regarded as conclusively valid. Therefore, if that conviction is later used to enhance a criminal sentence, a habeas petitioner generally may not challenge the enhanced sentence through a petition under § 2254 on the ground that the prior conviction was unconstitutionally obtained. Id. However, this Court recognized an exception to the general rule for § 2254 petitions for challenges to an enhanced sentence on the basis that the prior conviction used to enhance the sentence was obtained where there was a failure to appoint counsel for the petitioner in violation of the Sixth Amendment. Id., quoting Custis, supra, 511 U.S. at 496. This Court went on to hold further that, when "an otherwise qualified § 2254 petitioner can demonstrate that his current sentence was enhanced on the basis of a prior conviction that was obtained where there was a failure to appoint counsel in violation of the Sixth Amendment, the current sentence cannot stand and habeas relief is appropriate." Id.

The instant Petitioner has legally satisfied the instant standard. Appx. --  
A. Nevertheless, the Sixth Circuit's application of § 2244(b)(3)'s procedural bar is at odd's with the spirit of Gideon, Custis, and Lackawanna Cnty.

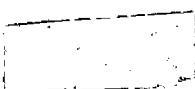
II. The Sixth Circuit's Decision Invokes § 2243's Substantive Due Process Right To Have A Habeas Corpus Petition Disposed Of As "Law" And "Justice" Required.

"A federal judge on a habeas corpus application is required to 'summarily hear and determine the facts, and dispose of the matter as law and justice require'...." 28 U.S.C. § 2243; Brown v Allen, supra, 344 U.S. at 462. It is easy to see why the Sixth Circuit's decision is problematic. As indicated supra, at --, if alleged Gideon violations "could not be constitutionally denied by otherwise applicable procedural bars," then the Sixth Circuit's decision applying § 2244(b)(3) in the instant case, is also at odd's with § 2243's law and justice mandate. Id. Custis, 114 S.Ct. at 1736. Indeed, in Custis, 114 S.Ct.

at 1737, this Court found that the clear language of the Armed Career Criminal Act of 1984, 18 U.S.C.S. § 924(e) reveals that "Congress did not intend to permit collateral attacks on prior convictions under § 924(e)." This Court, however, found that the defendant possessed a constitutional right to collaterally challenge his prior convictions because they were based on the right.

To permit a conviction obtained in violation of Gideon to be used against a person either to support guilt or enhance punishment for another offense is to erode the principles of that case. Burgett v Texas, 389 U.S. 109, 114, 115 (1967). Thus, the Sixth Circuit's application of § 2244(b)(3)'s procedural bar to Petitioner's alleged Gideon claim was a 'usurpation of judicial power' because the factors considered do not accord with those required by the policy underlying Petitioner's substantive right as set forth under § 2243's law and justice mandates or the weight given Petitioner's Gideon claim was not consistent with that necessary to effectuate § 2243. Langnes v Greer, 282 U.S. 531, 51 S.Ct. 243, 75 L.Ed. 520 (1931). "Meaningful appellate review of the exercise of discretion requires consideration of the basis on which the trial court acted. If the factors considered do not accord with those required by the policy underlying the substantive right or if the weight given those factors is not consistent with that necessary to effectuate that policy, then the reviewing tribunal has an obligation to require the exercise of discretion in accordance with 'what is right and equitable under the circumstance and the law'").

In sum, the issuance of the writ in the instant case is an appropriate remedy for Petitioner's Gideon claim presents "exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion." Cheney v U.S. Dist. Ct., 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004).



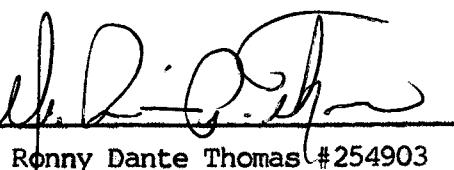
CONCLUSION

Based on the foregoing, the Court should grant Petitioner Thomas' Petition for habeas corpus relief, as the Sixth Circuit had a duty to dispose of Petitioner's § 2241 petition in accord with necessary requirements of due process of law (§ 2243 (law and justice)). Reasonably the "law and justice" intended by Congress was the decisions of this Court.

To continue a rule which is honored by this Court only with lip service is not a healthy thing and in the long run will do disservice to the federal system. Gideon, 327 U.S. at 351. Time is of the essence in considering and ruling upon this Petition, as Petitioner has been incarcerated on a sentence, enhanced on the basis of a Gideon violation for the last 18 years; Petitioner is "actually innocent" of the instant sentence.

Date: 3/1/23

Respectfully submitted,

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