

23-5006
No.

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JUN 20 2023

OFFICE OF THE CLERK

ROBERT TIMOTHY BLAKE , PETITIONER

V.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI
TO THE

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ROBERT TIMOTHY BLAKE

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BASTROP, TEXAS 78602

(no institution phone available)

Pro Se Petitioner.

Robert Timothy Blake 6-20-2023

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SUPREME COURT, U.S.

QUESTIONS PRESENTED FOR REVIEW

1. Whether, Consistent with the Due Process Clause, a defendant may suffer prejudice, when a Court will order a Consolidation of Cases, where one case will lose its specific issues raised on appeal. Issues that are properly raised, and are relevant to the Appeal and its outcome.
2. May it be permissible for the Circuit Court of Appeals to consolidate cases, on its own, without providing the movant any opportunity to object or comment.
3. Will the Circuit Court of Appeals abuse it's discretion when, it will consolidate cases without any notice that one case will contain valid raised issues that have experienced dispute by both parties of the case. When the Consolidation Action by the Court will cause the "issue in dispute", to be Deleted from the record without any comment, order, or respectful ruling. When the issue in dispute is relevant and material to the matters at hand in the Appeal. When it's (issue at hand) deletion may Prejudice the Defendant.

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APPENDIX D	UNITED STATES V. ROBERT TIMOTHY BLAKE 21-50215 (5 th Cir. September 1, 2022).
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APPENDIX G	UNITED STATES V. ROBERT TIMOTHY BLAKE 21-50215 (5 th Cir. Jan 5, 2022). Doc. 88 *STRICKEN* APPELLANT'S SUPPLEMENTAL BRIEF FILED. Appendix G mailed Separate due to mail restrictions. Certified Mail 70182090000041064841 6-21-2023

LIST OF PARTIES

All Parties appear in the caption of the Case on
the cover page.

TABLE OF AUTHORITIES CITED

CASES	PAGE
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STATUTES AND RULES

Rule 42, Rule 42(a)(2)	2, 12, 13,16, 17.
18 U.S.C. 3553(a)	7,13,15,16.

OPINION BELOW

1. The Opinion of the United States Court of Appeals for the Fifth Circuit Affirming the District Court's Order , on appeal for Robert Timothy Blake is attached to this petition as Appendix A. Opinion is Unpublished.
2. The Opinion of the United States Court of Appeals for the Fifth Circuit , that will deny Robert Blake's petition for reconsideration is attached to this petition as Appendix B. Opinion is Unpublished.
3. The Opinion's related to the District Court for this Matter, are attached to this petition as Appendix C. Opinion's are Unpublished.

JURISDICTION

The Opinion and Judgment of the court of Appeals were entered on **January 11, 2023.**

A timely Petition for rehearing was denied by the United States Court of Appeals on **April 4, 2023** , and a copy of the order denying rehearing appears at Appendix B.

The Jurisdiction of this Court is invoked under,

28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides, in pertinent part: "No person shall be ... deprived of life, liberty, or property, without due process of law."
2. Fourteenth Amendment to the United States Constitution; Movant was deprived the Right of a fair Trial and Due Process of the Federal Constitution's Fourteenth Amendment.

FEDERAL RULES OF PROCEDURE INVOLVED

Rule 42.

The U.S.C.S., Court Rules, Federal Rules of Civil Procedure,

Rule 42, Rule 42(a)(2),

Provide Per Statute Precedent: " **Consolidation Pursuant to Rule 42(a) does NOT Cause actions to lose their Seperate Identity.**"

STATEMENT OF THE CASE

Original Proceeding in the District Court and Direct Appeal

On January 7, 2016, Robert Timothy Blake pleaded guilty to one count of possessing child pornography in violation of 18 U.S.C. 2252(a)(5)(B), and one count of distributing child pornography in violation of 18 U.S.C. § 2252A(a)(2). ROA.922-50. On June 29, 2019, the District Court sentenced Mr. Blake to serve a total term of imprisonment of 262 months. ROA.181-88, 951-94. The District Court additionally ordered that Mr. Blake be placed on supervised release for life after he is released from prison. ROA.181-88. This Court affirmed Mr. Blake's conviction and sentence. *United States v. Blake*, Fifth Circuit No. 16-50874 (Sept. 20, 2017).

Legal Action in the Bureau of Prisons

On April 17, 2020, Mr. Blake submitted an administrative request to the Bureau of Prisons ("BOP") for a sentence reduction and to be placed on home confinement. ROA.569-70. As grounds for his request, Mr. Blake explained that he is suffering from an "unresolved serious cardiac condition . . . that causes a dangerous irregular heartbeat" and emphysema, a respiratory condition. ROA.569. Mr. Blake concluded that exposure to COVID-19 could be dangerous to him while in custody because the BOP had been unable to treat his medical conditions. ROA.570.

On April 22, 2020, Mr. Blake's BOP case manager informed Mr. Blake that his request had been denied because he had only served 29.2% of his prison sentence, and 50% was required for eligibility for a sentence reduction or home confinement. ROA.569. Mr. Blake's case manager also observed that Mr. Blake's was disqualified due to his "psf of sex offender." ROA.564. On June 23, 2020, the warden issued a memorandum formally denying Mr. Blake's request. The warden indicated that Mr. Blake did not meet the criteria as outlined in policy, but gave no further explanation. ROA.565.

Between July and the end of September of 2020, Mr. Blake submitted inmate requests to appeal, reconsider, or obtain a response to his request for home confinement, arguing that his medical conditions received no consideration. ROA.566-67, 571-72. On October 1, 2020, Warden Ma'at issued a response explaining to Mr. Blake that his request for compassionate release/reduction in sentence was denied because he was only 50 years' old, had only served 30.6% of his sentence, was not disabled or unable to provide self-care, and presented "a public safety factor." ROA.573.

Proceedings Begin in the District Court

On January 4, 2021, Mr. Blake filed in the District Court a *pro se* Motion for Sentencing Reduction Pursuant to 18 U.S.C. § 3582 with attachments, ROA.553-622,

and a brief in support of his motion. ROA.623-63. Mr. Blake contended that a sentence reduction was appropriate due to extraordinary and compelling circumstances. ROA.553-663. In sum, Mr. Blake argued that he suffers from several cardiac and respiratory conditions which remained untreated and/or unresolved by the BOP. ROA.553-663. Thus, Mr. Blake asserted he was particularly vulnerable to a COVID-19 infection and the BOP could not provide a safe environment for Mr. Blake to care for himself. ROA.553-54.

Counsel for the Government filed a response in opposition to the Motion on March 1, 2021. ROA.1503-16. Counsel for the Government argued that the Court should deny Mr. Blake's motion for two reasons: (1) Mr. Blake had failed to show he is not a danger to any other person or the community and (2) Mr. Blake had failed to show that the statutory sentencing factors listed in 18 U.S.C. § 3553(a) would support his request for a reduced prison term. ROA.1503. Counsel for the Government also asserted that Mr. Blake violated the Court's orders by contacting his daughters, one of whom testified at sentencing, **and was found NOT to be Credible.** ROA.1510-11.

The First Ruling by the District Court

On March 3, 2021, the District Court denied Mr. Blake's Motion, finding that, “[e]ven if extraordinary and compelling reasons for early release exist, the relevant

policy statements provide for a reduction in sentence only if a defendant is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. § 3142(g)." ROA.19 (text entry) (citing U.S.S.G. 1B1.13(2)). After listing the factors for consideration under 18 U.S.C. § 3142, the Court explained:

The Government argues that the Defendant continues to pose a danger to public safety. The Court agrees. The Defendant even while incarcerated has violated no contact orders.

ROA.19 (text entry).

The First Appeal

Mr. Blake filed a *pro se* notice of appeal on the specific issue of his motion for compassionate relief and to reduce his sentence. ROA.676-78. The Court docketed that appeal under Case No. 21-50215. *United States v. Blake*, Fifth Circuit No. 21-50215. On August 6, 2021, the Government filed the Appellee's Motion to Remand for Further Proceedings & Suspend Briefing. *United States v. Blake*, Fifth Circuit No. 21-50215 (Aug. 6, 2021). On September 2, 2021, The Court Ordered that "the government's motion for limited remand to the district court to consider the parties' further submissions, before ruling on Robert Timothy Blake's motion for sentence reduction, is Granted." *United States v. Blake*, Fifth Circuit No. 21-50215 (Sept. 2, 2021). The Circuit Court further explained "pending the district court's resolution

of Blake's motion on remand, 5th Cir. will otherwise retain jurisdiction over this appeal." *Id.*

On Remand

On remand, the District Court appointed attorney David Acosta to represent Mr. Blake. ROA.774 (entered on Sept. 20, 2021). On November 5, 2021, Mr. Acosta filed an Amended Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). ROA.1783-98. The Government responded on November 30, 2021. ROA.1503-16. That same day, the District Court entered the following text order:

Text Order DENYING 162 Sealed Motion as to Robert Timothy Blake (1) Entered by Judge Xavier Rodriguez. A court, on motion by the BOP or by the defendant after exhausting all BOP remedies, may reduce or modify a term of imprisonment, probation, or supervised release after considering the factors of 18 U.S.C. § 3553(a), if extraordinary and compelling reasons warrant such a reduction [U.S.S.G.] § 3582(c)(1)(A)(i). In commentary, the Sentencing Guidelines describe extraordinary and compelling reasons to include a terminal illness (i.e., a serious and advanced illness with an end of life trajectory) such as metastatic cancer, though no specific prognosis of life expectancy is required. [U.S.S.G.] § 1B1.13 (p.s.), comment. (n.1(A)(i)). *United States v. Chambliss*, 948 F.3d 691, 692[-]93 (5th Cir. 2020). The Defendant has various medical ailments, including heart disease. His conditions are being treated and do not rise to "extraordinary and compelling reasons." However, even "if extraordinary and compelling reasons for early release exist, the relevant policy statements provide for a reduction in sentence only if a defendant is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. § 3142(g). U.S.S.G. § 1B1.13(2). Factors relevant to this inquiry include:

(1) the nature and circumstances of the offenses of conviction, including whether the offense is a crime of violence, or involves a minor victim, a controlled substance, or a firearm, explosive, or destructive device; (2) the weight of the evidence; (3) the defendant[']s history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant[']s release. See 18 U.S.C. § 3142(g). United States v. Jackson, No. 4:14-CR-00576, 2020 WL 1955402, at *4 (S.D. Tex. Apr. 23, 2020). Defendant continues to violate no contact orders with minors and continues to be a danger to the community. (This is a text-only entry generated by the court. There is no document associated with this entry.) (XR) (Entered 11/30/2021)

ROA.25-26.

Final Proceedings in the District Court Related to This Appeal

Mr. Acosta timely filed a notice of appeal on December 10, 2021. ROA.789.

At the same time, Mr. Acosta moved to withdraw because he does not practice before the United States Court of Appeals for the Fifth Circuit. ROA.786-88. On January 21, 2022, the District Court appointed **Mr. Sullivan** to represent Mr. Blake in the following fashion:

It is **FURTHER ORDERED** that Attorney James Scott Sullivan is hereby **APPOINTED** to represent Petitioner Blake in the Fifth Circuit in connection with—and *only in connection with*—the appeal to the United States Court of Appeals for the Fifth Circuit from the denial of his motion for sentence reduction. Upon completion of that appeal in the Fifth Circuit, the appellate appointment shall terminate unless otherwise ordered.

ROA.803-04 (emphasis in original).

The Second Appeal

On December 13, 2021, this latest notice of appeal was docketed by The Court under the case styled *United States v. Blake*, Fifth Circuit No. 21-51194. On January 27, 2022, The Court accepted the appointment of Mr. Sullivan as CJA counsel in this case. Mr. Sullivan was never appointed to represent Mr. Blake in *United States v. Blake*, Fifth Circuit No. 21-50215. **

Petitioner continues Appeal No. 21-50215, PRO - SE .

On 12/ 10/2021 , the Fifth Circuit Court of Appeals will Resume Briefing for this case. The Briefing for No.21-50215 will continue before the appointment of Mr. Sullivan to Case No. 21-51194. Neither the Court or Mr. Sullivan will advise Movant Blake of two separate cases, or for the reason why. The Cases will remain separate, and experience separate briefing for over 8 Months.

On 09/ 01/ 2023 , More than 8 Months later the Circuit Court will Consolidate case No.21-50215 and No. 21-51194, Appoint Attorney Sullivan , and alter the record by "STRIKING" petitioners previous Pro Se brief's, Supplemental Brief, Reply Brief. The Circuit Court will also "STRIKE" any Filings or briefs provided by the Government that are related to Movant's Deleted Brief's. (see Docket.21-50215, all Court Actions on 09/ 01/ 2022. , 125,126,132.).

On the Same Day the Circuit Court will Appoint Attorney Sullivan

Sullivan to the Consolidated cases, after removing Blake's Pro se pleadings, that the Circuit Court will " STRIKE ". (see Docket 21-50215 ,130, on 09/01/2023).

The Circuit Court will next, and immediately Close the Briefing for the, now consolidated 21-50215. (see Docket 21-50215 ; 135 , on 09/01/2023).

Concerning this Petition,

The Circuit Court disposed of movant Blake's Pro Se pleadings without any consideration to a distinct and separate issue raised in movant Blake's appeal prior to Consolidation. The Non Frivilous , and relevant issue of Bias of the District Court did NOT survive the consolidation action of the Circuit Court.

Neither Movant Blake , Nor, Attorney Sullivan were provided with any notice, or opportunity to oppose, react, or consider the Circuit Court's consolidation actions.

The Circuit Court will not provide any authority for the action of consolidation , and will Fail to notice that, there is a distinct separate issue in Blake's Pro Se motion's, and Supplement Motion.

(see No.21-50215, Doc.156-1, on 01/11/2023). And ,
(No.21-50215, Doc.00516456812 , on 09/01/2022).(Appendix D).

REASONS FOR GRANTING THE WRIT

THE COURT SHOULD GRANT CERTIORARI TO RESOLVE WHETHER APPEALS COURTS HAVE THE AUTHORITY AND UNRESTRICTED DISCRETION TO CONSOLIDATE CASES, AND ELIMINATE ISSUES RAISED ON APPEAL WITHOUT NOTICE OR COMMENT.

Concerning the matter at hand the Action of Consolidation was made by the Circuit Court of Appeals on it's own volition. The Defendant was not notified or involved.

The Consolidation Action caused a critical issue on appeal to be lost to the Petitioner by the intentional actions of the Circuit Court, and it's Discretion.

The Court would rather delete and remove the petitioner's properly raised issues, rather than provide a proper **Review** , evaluation , and Opinion that May have favored the Defendant/Petitioner. Therefore causing Prejudice to the Defendant.

without considering the potential of Prejudice, and knowing of the issues that were being discarded. It becomes **Obvious** that the Circuit Court's actions during it's consolidation process were NOT intended to prevent Prejudice, or Provide fairness and Justice.

The Petitioner here was harmed by the Circuit Court's actions, and respectfully will ask this Court to Please consider the Miscarriage of Justice committed by the Circuit Court's decision to remove and delete the properly raised issue of Bias by the District Court.

within the Circuit Court's Consolidation order it will state that:

" Blake assert's the same issue - whether the district Court abused it's discretion in denying his motion for compassionate release."

(see Consolidation Order Doc.00516456812)(appendix D).

Please Notice that the above, is the only mention of an issue in Blake's two Seperate appeals.

The Court Fails to Notice the seperate and distinctly different issue of "BIAS", that was properly raised in Blake's Pro Se Brief's.

The Circuit Court also Fails to Cite any authority to exercise it's discretion to Consolidate. Movant can only assume that the Circuit Court will Not rely on Rules to complete it's task.

Analogous to the Circuit Court's consolidation action, petitioner respectfully presents for this Court's consideration , Rule 42.

The U.S.C.S., Court Rules, Federal Rules of Civil Procedure, Rule 42, Rule 42(a)(2) , Provide the most logical guidence regarding the matter at hand.

It has been consistent in every Circuit that,

" Consolidation Pursuant to Rule 42(a) does Not cause seperate actions to lose their seperate identity. "

" That the avoidance of Prejudice is paramount ".

Petitioner here now presents that in this case, That Rule 42(a)(2), and it's logical precedent as established, May show that he has suffered Prejudice, and was denied Due Process as provided by the Constitution. May this Court issue a Writ.

Despite the Merits of Petitioner's motion 3582 that was denied by the District Court, and Affirmed by the Circuit Court, It is valuable to present details, Not so Obvious. First, The District Court will Deny Petitioners motion 3582 on 03/03/2021 , by Docket Text (appendixC-2). The Denial was only supported by the Court's reliance on False information provided by the Government. The Court will also Deny wholly Based upon " Dangerousness", and only rely on the 3553(a) factors. The Court will not consider the Medical issues that were raised, In No Meaningful way. The Court's use of the false information , On Appeal caused a REMAND.

On Remand, The motion 3582 was fully briefed by Attorney Acosta, who was also appointed to represent Blake in his Motion 2255 evidentiary hearing.

On Remand the District Court will Deny Blake's motion 3582 for the same reasons as before for a second time. Despite Blake's medical issues , the District Court will once more rely on The same, and More False information to consider it's Denial. The District Court will Not express any meaningful opinion on the Raised Medical issues.(Appendix C').

The Second Appeal is on the Docket for the District Court's second Denial. The Petitioner will present Pro Se for over 8 months on Appeal prior to Consolidation, at issue.

Petitioner here wishes to show this Court that his Due Process Rights have been violated by, delay, unfortunate use of False information, and Consolidation Tactics.

This Delay is harmful and unfrotunate. Rights are further implicated by this delay of Justice, because Petitioner can Not receive the proper ongoing Cardiac care needed, and still needed at this time.

I respectfully move this Court to notice the Prejudice, despite the extended merits of the motion 3582.

The Bias Issue is Not Frivilous or without merit.

During movant Blake's appeal, as Pro se , he has presented Bias of the District Court in this Case, and matter at hand. Issues of Bias have been presented that are Judicial, and **Non- Judicial** in Nature. Please see Petitioners Pro Se Supplemental Brief, provided in the appendix with this petition. (Appendix G). **Circuit Approval:** (Appendix F).

The Circuit Court , Did create a creative way to avoid the critical issue of Bias that was properly raised by Defendant. As previously noted, Petitioner was acting as Pro se for 8 months on appeal in case No.21-50215. His experience of ths District Court's actions will cause him to present his concerns of bias on appeal.

Moreover the Petitioner, during his appeal can **Only appreciate** , That the District Court will deny his motion 3582 solely and exclusively related to the 3553(a) factors, and the False information to support the denial. The District Court will even qualify in it's Opinion's (both denials) , That despite Blake's Medical Issues, and even "if extraordinary and compelling reasons for early release exist." The Court finds that it's assesment of 3553(a) factors will controll it's opinion, and denial. The District Court Fails to offer any meaningful opinion on defendant's ongoing Cardiac condition, that is NOT being properly treated, or treated in a **Timely Manner**. See,(Appendix C,C-2).

Please also Notice other Document's provided to Blake during his Pro Se motion 3582 actions. Included in this petition are District Court Text document's, that will show the District Court based it's denial on the 3553(a) factors, "Despite Defendant's medical conditions, the Court has found that he poses a danger to the public and the section 3553 factors have guided the Court..."

(see text doc.3/3/2021,USDC)(Appendix E)(emphasis added).

AND,

" The Court denied Defendant's motion for compassionate release,finding Defendant continues to pose a danger to public safety." (emphasis added).

(see text doc.4/9/2021, USDC) (Appendix E-2)

The ONLY example provided by the Court for "continues to pose danger", is False Information ,that was disputed.

After two seperate Denials by the District Court, fully supported by the Court's reliance upon the 3553(a) factors, and disputed False information , The Circuit Court of Appeals will affirm the District Court and write in it's opinion:

" We do not reach the District court's alternative holding that early release was unmerited because Blake presented a danger to society."

(emphasis added)(see, No.21-50215, Doc.156-1)(Appendix A).

The District Court's Primary Holding, was now "ALTERNATIVE." **May this Court** notice the above, and decide that the Petitioner has experienced prejudice due to the Consolidation Actions of the Circuit Court. Where the Petitioner's concerns are with merit, and do have Due Process implications.

Also, to please notice that it is established in other Circuit Court's in the Nation,to properly execute it's discretion, to "Consolidate with care to avoid Prejudice". (See Rule 42(a)(2)).

That the Circuit Court has created a situation to refuse to evaluate Petitioners properly presented petitions for review by the Court of Appeals. That Due Process has been stressed to failure, and has caused a miscarriage of Justice. **The Petitioner has afforded the Circuit Court** an opportunity to correct it's action in his request for a rehearing.

There in, Petitioner will raise the " Consolidation " issues, same as in this petition. The Circuit Court Denies a review. (see 21-50215, No.184,185 on 3/15/2023).

Circuit Court Opinion, and laws established in the Court's
for the Nation, Concerning " Consolidation of Actions ".

1. " Suits Administrativly Consolidated for hearings
retain their independent existence."

Window World of Chigagoland, LLC v. Window World, INC
811 F.3d 900 (7th Cir. Janurary 27, 2016).

2. " Findings of Fact and declarations of law, seperately
stated, should be made on every question presented
by pleadings, where cases are similar and involve
common questions of law and fact but where some
material difference exist."

Hudspeth v. Standard Oil Co., 13 Lab. Cas.(cch) 4023,
74 F. Supp.123,20 L.R.R.M. (BNA) 2624, 13 Lab.Cas (CCH)
P64023 (D. Ark. 1947).

3. " Consolidation Should Not be ordered under Federal
Rule of Civil Procedure 42(a) if it would Prejudice
Defendant."

Flintkote Co. v. Allis - Chalmers Corp., 73 F.R.D.
463,22 Fed. R. Serv .2d (Callaghan) 1492(S.D.N.Y. 1977).

4. Consolidation is inappropriate if it leads in the
opposite direction, " to inefficiency, inconvenience
or unfair Prejudice to a Party."

EEOC v. HEB Corp ., 135 F.3d 543-551 (8th Cir. 1998).

5. "We held that Consolidation Could Not Prejudice Rights
to which the parties would have been due had
Consolidation never occurred."

(2018 U.S. LEXIS 21) (LEXIS 22).

Hall v. Hall, 138 S. Ct. 1118, 200 L. Ed. 2d 399,2018 U.S.
LEXIS 2062 (U.S., Mar. 27, 2018).

6. " An Appellate Court reviews a District Court's decision to Consolidate cases for an abuse of discretion, and will only reverse upon the clearest showing that the procedures have resulted in actual and substantial Prejudice to the complaining litigant."

Hall V. Hall 753 Fed. Appx. 96 (3 rd. Cir. May 1, 2018).

7. Fifth Amendment to contain a gurantee of equal protection from that Amendment's prohibition of Federal Government discriminatory action " so unjustifiable as to be Violative of Due Process. "
Abdul - Akbar V. Mc Kelvie, 239 F. 3d 307, 316 (3rd Cir. 2001)(en-banc).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rabat Franky Blake

Date: June 20, 2023