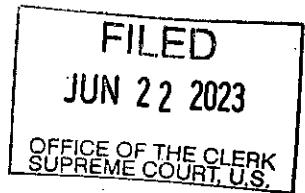


23-5026 ORIGINAL

No. \_\_\_\_\_



IN THE

SUPREME COURT OF THE UNITED STATES

Washington, D.C. 20543

Isaiah L. Dunbar — PETITIONER  
(Your Name)

vs.

Sec'y, FIA. Dep't of Com. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Eleventh Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Isaiah L. Dunbar  
(Your Name)

Desoto Annex 13617 S.E. Hwy 70  
(Address)

Arcadia, Fla. 34266-7800  
(City, State, Zip Code)

N/A  
(Phone Number)

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QUESTION(S) PRESENTED

Whether the denial by the 11th Circuit Court of Appeals of Petitioner's COA resulted in a procedural due process violation in the untimeliness of his 2254 habeas petition?

## **LIST OF PARTIES**

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**

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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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.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 \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ 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 6-2-2023.

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: \_\_\_\_\_, 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

### Constitutional of the United States Amendment 14

SECTION 1. ALL PERSONS BORN OR NATURALIZED 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 ABEIDE 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; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) mandates a one-year statute of limitations for filing a federal habeas corpus petition. 28 U.S.C.S. (d)(1). This period is tolled, however, for the time during during which a properly filed application for state post-conviction relief or other collateral review with respect to the pertinent judgment or claim is pending. 28 U.S.C.S. 2244(d)(2).

## STATEMENT OF THE CASE

On March 20, 2020, Petitioner filed a pro se 28 U.S.C. 2254 petition, arguing that he was convicted of a charge not made in his information. The district court dismissed the petition as untimely. Subsequently, Petitioner filed three Fed. R. Civ. P. 60(b)(6) motions, which the district court denied. Petitioner appealed the district court's denial of his third Rule 60(b)(6) motion. Petitioner moved the United States Court of Appeals for a certificate of appealability and leave to proceed in forma pauperis. The United States Court of Appeals denied the petition stating: REASONABLE JURISTS WOULD NOT DEBATE WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING DUNBAR'S THIRD RULE 60(B)(6) MOTION AS HE HAS FAILED TO SHOW THAT EXTRAORDINARY CIRCUMSTANCES WOULD JUSTIFY RELIEF UNDER RULE 60(B)(6). SEE GONZALEZ, 545 U.S. AT 535. AS AN INITIAL MATTER, DUNBAR MERELY REALED THE SAME ARGUMENTS ALREADY PRESENTED IN HIS SECOND RULE 60(B)(6) MOTION. SEE WILCHOMBE V. TEE VEE TOOLS, INC., 555 F. 3d 949, 957 (11TH CIR. 2009). IN ANY EVENT, HIS ASSERTION THAT THE DISTRICT COURT HAD MISAPPLIED THE STATUTE OF LIMITATIONS IN DENYING HIS PETITION AS UNTIMELY IS WITHOUT MERIT. DUNBAR MISREADS THE SUPREME COURT'S DECISION IN DETER V. BENNETT, 531 U.S. 4 (2000), AND BOTH THE SUPREME COURT AND THIS COURT HAVE EXPLICITY HELD THAT A STATE POST-CONVICTION MOTION, WHICH IS DISMISSED AS UNTIMELY, IS NOT PROPERLY FILED AND CANNOT TOLL THE STATUTE OF LIMITATIONS. PACE V. DIGULISIMO, 544 U.S. 408, 417 (2005); JONES V. SEC'Y, FIA. DEPT OF CORR., 906 F. 3d 1339, 1352 (11TH CIR. 2018).

## REASONS FOR GRANTING THE PETITION

Pursuant to Rule 10(a), there is clearly a conflict with the decision the United States Court of Appeals 11th Cir. held against Petitioner when the 11th Cir. denied his COA stating reasonable jurists would not debate whether the District Court abused its discretion in denying Dunbar's third Rule 60(b)(6) motion, as he has failed to show that extraordinary circumstances would justify relief under Rule 60(b)(6). The 11th Cir. decision against Petitioner are in direct conflict with the Appellate Courts of *Love v. Lewis*, 2021 U.S. Dist. Lexis 190350 (2021); *Brown v. Moore*, 532 U.S. 968, 121 S.Ct. 1548, 149 L.Ed.2d 464 (2001); *Gonzalez v. Crosby*, 545 U.S. 524, 162 L.Ed.2d 480 (2005) because the Courts in these cases came to the same conclusion on the same important matter that the Supreme Court's decision in *Arvizu v. Bennett*, 531 U.S. 4, 121 S.Ct. 361, 148 L.Ed.2d 213 (2000) holding that an application for state post-conviction relief was properly filed and would toll the one-year limitations period for filing a habeas petition, even if the state court's dismissed it as procedurally barred, did constitute extraordinary circumstances as required for Petitioner to prevail in motion for relief from District Court's dismissal of petition. The change in the law worked by *Arvizu v. Bennett* is all the less extraordinary in *Gonzalez v. Crosby*, because of his lack of diligence in pursuing review of the statute-of-limitations issue. Unlike the petitioner

## REASON FOR GRANTING THE PETITION

in GONZALEZ v. CLEOSBY, Petitioner has exhibited diligence in pursuing his habeas claims. The diligence analysis overlaps significantly with the timeliness requirement in Rule 60(b); a petitioner who has filed his motion within a reasonable time under the rule has diligently pursued his claim. In BYNOE v. BACA, 966 F.3d at 984. Petitioner's first Rule 60(b)(6) was filed on May 4, 2022 which is within a reasonable time. Fed. R. Civ. P. 60(c)(1).

The 11<sup>th</sup> Cir. decision which held that Petitioner's state post-conviction motion which is dismissed as untimely, is not properly filed and cannot toll the statute of limitation according to AKTUR v. BENNETT, 531 U.S. 4, 121 S.Ct. 361, 148 L.Ed.2d 213 (2000) is erroneous because PACE v. DIGULILMO, 544 U.S. 408, 417 (2005) and JONES v. SEC'Y, Fla. Dep't of CORR., 906 F.3d 1339, 1352 (11th Cir. 2018) does not change the outcome of Petitioner's case. For the reason being, PACE and JONES filed 3.850 motions that was not filed within 2-YEARS. Therefore, since PACE and JONES motions was filed outside of the 2-YEARS statute limitations their motions could not be initiated or considered due to the failure to include a timely claim is not properly filed for purposes of 2244(d)(2). AKTUR v. BENNETT, At 417, 125 S.Ct. At 1814. Under the common understanding of "properly filed" that guided the AKTUR Court, A petition filed after a time limit, which does not fit within ANY exceptions to that limit,

## REASON FOR GRANTING THE PETITION

is no more "properly filed" than a petition filed after a time limit permitting no exception. "Conditions to filing" are merely those conditions NECESSARY to get a court to accept the petition, not conditions requiring judicial consideration; that a condition that must be applied on a claim-by-claim basis cannot be a "condition to filing"; and the 11<sup>th</sup> Cir. interpretation is unfair to petitioners who try in good faith to exhaust their state remedies - are rejected. *Artuz* does not require a different result. There is an obvious distinction between time limits, which go to the very initiation of petition and a court's ability to consider that petition, and the type of rule-of-decision procedural bars at issue in *Artuz*, which go to the ability to obtain relief. It is clear that the Petitioner filed a habeas corpus pursuant to 79.01 F.S.(2013) which provides as follows: when a person detained in custody, whether charged with a criminal offense or not, applies to the Supreme Court or any justice thereof, or to any district court of appeal or any judge thereof or to any circuit judge for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he or she is detained without lawful authority, the court, justice, or judge to whom such application is made shall grant the writ forthwith, against the person in whose custody the applicant is detained and returnable immediately before any of the court, justices, or judges as the writ directs.

## REASON FOR GRANTING THE PETITION

This is what the Petitioner did. Petitioner is detained in custody pursuant to his 2009 convictions and sentence, and he filed a state habeas corpus petition on January 10, 2016 before the expiration of the AEDPA one-year statute of limitations which was April 5, 2016 alleging that he was being illegally detained based on his unlawful convictions. Though he did not ultimately obtain relief on his claims because they should have been brought in Rule 3.850 motion, this fact did not preclude the Petitioner from initiating his habeas petition under 79.01 nor did it preclude the Florida court from considering the petition in the first instance because the Florida post-conviction court construed Petitioner's January 10, 2016 state habeas petition as a motion for post-conviction relief and dismissed the construed motion as untimely. So, the petition otherwise complied with the filing requirements. Once again Pace and Jones does not change the outcome of Petitioner's case. Quoting Thompson v. Sec'y, Dep't of Coll., 545 F.3d 1233 (2010). The actions of the United States Court of Appeals 11th Cir. has deprived the Petitioner of his liberty, without due process of law and denied Petitioner within its jurisdiction the equal protection of the laws. SEE U.S.C.A. Const. Amend. 14

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph L. Donahue

Date: 0.22.2023