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Case Number

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IN THE SUPREME COURT OF THE UNITED STATES

CHARLES MICHAEL LEDFORD

Petitioner,

Vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ of Certiorari
To The Fourth Circuit Court of Appeals
Case No. 23-6015

PETITIONER'S PROSE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether a Certificate of Appealability Should issue to Review whether the United States District Court for the Western District of North Carolina Violated Petitioner's Fifth Amendment Due Process right to a full and fair opportunity to Present 28 U.S.C. ss 2255 based claims when the district court declined to ReOpen the ss 2255 Proceeding Pursuant to Fed. R. Civ. P. 60(b)(1) to allow Petitioner to Amend his initial undeveloped ss 2255 Form Motion that the District Court denied without Notice Just Six days after Petitioner filed it in the middle of the COVID-19 Global Pandemic lockdown at FCI Edgefield.

LIST OF PARTIES

Petitioner

Charles Michael Ledford

Respondent

United States of America

Other Parties to the Proceedings Below

Honorable Chief United States District Judge Martin Reidinger, United States District Court for the Western District of North Carolina, Asheville, Division.

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1. The Petition for Certiorari should be granted and a Certificate of Appealability issued to review whether District Courts violate fundamental principles of due process under the Fifth Amendment by refusing to reopen a 28 USC, ss 2255 Proceeding Pursuant to Fed. R. Civ. P. 60(b)(1) and allow amendment of an undeveloped ss 2255 Form Motion. The district court here decided such a request to amend was a futile gesture notwithstanding the fact that the district court denied the ss 2255 Motion six days after it was filed, failed to Notice Petitioner of the Court's intent to summarily dismiss his Motion, and failed to give Petitioner an opportunity to Amend his Pleadings under Fed. R. Civ. P. 15(a) or 15(b). 5 - 6

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Charles Michael Ledford, by and through this Pro se Petition respectfully requests of this Honorable Court to Grant a Writ of Certiorari, issue a Certificate of Appealability, Vacate the Judgment of the United States Court of Appeals for the Fourth Circuit and Remand this case for further Proceedings.

ORDER AND JUDGMENT BELOW

The case below was styled as United States v. Ledford, No. 23-6015 (4th Cir. Mar 23, 2023). The Fourth Circuit Court of Appeals' Order denying a Certificate of Appealability is attached hereto as Exhibit A.

JURISDICTION

The Fourth Circuit Court of Appeals entered its Order denying a Certificate of Appealability on Mar 23, 2023. Therefore, the Jurisdiction of this Court is invoked Pursuant to 28 U.S.C. ss 1254(1) and Supreme Court Rules 10 (a) and (c).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED HERE

The case at Bench involves the application of fundamental bedrock Principles of Due Process under the Fifth Amendment of the United States Constitution as applied to a Pro se 28 U.S.C. ss 2255 Movant's right to a full and fair opportunity to Present Constitutional claims arising under the Sixth Amendment. In addition, this Petition involves important

questions concerning the application of Federal Rules of Civil Procedure 60(b) and 15(a) and (b) insofar as these Rules create a right for a Habeas Corpus litigant to Reopen and Amend a Pleading at least once before a district Court summarily dismisses a Poorly Pled ss 2255 Form Motion, a mere six days after it was filed. Lastly, this Petition involves questions concerning the Certificate of Appealability Standard as applied to Rule 60(b)(1) Motions to Reopen and Amend Prematurely Dismissed ss 2255 Proceedings.

Accordingly, given the strict finality concerns of the AEDPA's Iron Curtain, there are very important Procedural, Substantive, and Constitutional issues underlying this case that beg of this Court's intervention to achieve definitive, uniform application of Due Process Principles and amendment Standards germane to reopening and amending 28 U.S.C. ss 2255 Motions and other Habeas type Writs Pursuant to Federal Rules of Civil Procedure 60(b) and 15. Exercise of this Honorable Court's Certiorari Jurisdiction is therefore warranted and hereby respectfully requested.

STATEMENT OF THE CASE

Mr. Ledford was indicted in a multi-count, multi-party indictment on a single count of conspiracy to distribute and possess with intent to distribute 50 grams or more of actual methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), §§ 841(b)(1)(A), and §§ 846. (Count One). (CR DOC. 63). On October 9, 2019, on advice of counsel, Ledford signed a written plea agreement to Count one. (CR DOC. 106). / Fn. 1. In the Agreement, the parties stipulated that the amount of methamphetamine involved in the conspiracy was 3,890.86 grams. (ID at ¶ 7(a)); the base offense level would be increased by two levels pursuant to U.S.S.G. §§ 2D1.1(b)(12) for maintaining a drug premises; the plea was timely pursuant to 3E1.1(a); and the career offender or ACCA provision could be used in determining the sentence, if applicable. (DOC 106 PD 7(b), (c), & (d)).

Critically, the plea agreement specifically indicated that Ledford remained free to argue his position regarding any other specific offense characteristics, cross references, special instructions, reductions, enhancements, departures, and adjustments to the offense level and to seek a departure or variance from the applicable guideline range. (DOC 106 at ¶ 7(e)-(f)).

The plea agreement also set forth the rights Ledford waived by entering the plea agreement: jury trial, confrontation of witnesses, self incrimination, and appellate and post conviction rights except for claims of ineffective assistance and

☐ / Fn. 1 Ledford rejected the first plea agreement offer because it embodied enhancements under U.S.S.G. §§ 2D1.1(b)(1) (possession of a dangerous weapon) and §§ 3C1.1 (obstruction of justice). Counsel negotiated a second plea agreement without the enhancements in the body of the agreement but instead were contained in a written factual basis attached to the plea agreement that surreptitiously included the facts necessary to secure the enhancements through the PSR at sentencing. Counsel's involvement in this bait-and-switch maneuver compromised the agency relationship and is evidence of his ineffectiveness during plea negotiations.

Prosecutorial misconduct. (CR DOC 106 at ¶¶ 15-16).

In addition to the Plea Agreement itself and its concomitant terms, Ledford was advised by counsel that he was required to sign a written factual basis proffered by the Government in order to effectuate his Plea Agreement. (CR DOC 107). The Factual Basis contained all the material facts to sustain the firearm and obstruction enhancements that caused Ledford to reject the first Plea Agreement. A Rule 11 Plea Hearing was conducted on October 9, 2019 by Honorable Judge Metcalf.

A PSR was prepared that incorporated verbatim the offense conduct alleged in the Factual Basis. (CR DOC 143, PSR at ¶¶ 25-26, 38, 44). The PSR calculated the base offense level at 36 based on the stipulated drug quantity in the Plea Agreement pursuant to U.S.G. ss 2D1.1(a)(5). Ledford's offense level was increased a total of six additional levels for specific offense characteristics, including Possessing a dangerous weapon, ss 2D1.1(b)(1); maintaining a drug premises, ss 2D1.1(b)(12), and obstructing justice, ss 3C1.1 (CR DOC 143). Three levels were deducted for acceptance of responsibility, resulting in a total offense level of 39. (CR DOC 143 ¶¶ 63-65). Ledford had 5 Criminal History Points resulting in a Criminal History Category of III. The resulting Guideline range was a draconian 324-405 months imprisonment and five years supervised release. (ID. at 100, 103). On February 27, 2020 the district court sentenced Ledford to the bottom of the Guideline range of 324 months imprisonment. (CR DOC 169). Defense counsel raised no objection to the PSR or sentence.

On direct appeal, counsel argued the district court erred by accepting enhancements that were not part of the Plea Agreement and that counsel was ineffective for failing to object to these enhancements. The Fourth Circuit Court of Appeals dismissed the appeal on the grounds that the substantive claim was barred by the appellate waiver and the effectiveness of counsel claim was

not cognizable on direct appeal because ineffectiveness did not conclusively appear on the face of the record. United States v. Ledford, 834 Fed. App'x 12 (4th Cir. 2021). This Court denied Certiorari on May 17, 2021. Ledford v. United States, 2021 WL 1951-996 (2021).

On August 21, 2021 three months into the applicable Statute of limitations, Ledford filed a bare bones Format Motion Pursuant to 28 USC. ss 2255 with the assistance of a jailhouse law hustler that raised a single ineffectiveness of Counsel claim, essentially restating the argument from the direct appeal.

On August 27, 2021, merely six days after filing his ss 2255 Form Motion, Honorable Chief Judge Martin Reidinger denied and dismissed Ledford's Motion without Ordering a Response nor giving Ledford an opportunity to Amend his one shot at Habeas review Pursuant to Fed. R. Civ. P. 15(a) or (b). (CV Doc. at 2).

Subsequent to the filing of Ledford's Section 2255 Motion, FCI Edgefield, where he is housed, experienced back-to-back 24/7 lockdown Procedures with inmates being confined to their locked cells due to COVID-19 break out cases, CODE RED Modified Institutional Operations and restricted movement of inmates, several inmate deaths from drug overdoses and several arrests of staff involved in drug trafficking. Mailroom services were interrupted, delayed and mail came up missing and/or was never delivered to or received by numerous inmates. (CV Doc. at 5). Ledford did not receive notice of or a copy of the District Court's August 27, 2021 Memorandum Decision and Order. (CV Doc. 5 at 913).

On January 25, 2022, after not having received any correspondence from the district court concerning his ss 2255 Motion, Ledford consulted a different inmate

writ writer who helped him write a letter to the Court Clerk requesting a status update on his ss 2255 Motion he filed in August, 2021. On February 11, 2022 Ledford received a letter and copy of a Civil Docket Statement from the Clerk of Court. On Docket entry No. 2 it appeared the District Court had denied Ledford's ss 2255 Motion on August 27, 2021-- Just days after the Motion was filed.

Shortly after receiving this correspondence from the Clerk's office, Ledford filed a Consolidated Motion to Reopen time to appeal and Notice of Appeal Pursuant to Fed.R. App.P. 4(a)(6). (CV Doc at 5). On March 22, 2022 the district court granted Ledford's Motion and deemed the Notice of Appeal as timely filed. (CV Doc at 9).

On April 18, 2022 Ledford filed an Informal Brief in the Fourth Circuit requesting a Certificate of Appealability to examine several issues of due process and ineffective assistance of counsel during plea negotiations. A Panel of the Fourth Circuit declined to issue a Certificate of Appealability in an unpublished Per curiam opinion. United States v. Ledford, No. 22-6284 (4th Cir. June 28, 2022).

On August 8, 2022 Ledford filed a Motion under Federal Rule of Civil Procedure 60(b)(1) requesting the Western District Court of North Carolina to Reopen its Judgment Summarily Dismissing his 28 U.S.C. ss 2255 Motion on August 28, 2021. See (CV Doc 11).

On October 30, 2022, the District Court denied Ledford's Rule 60(b)(1) Motion to Reopen and Amend his Summarily Denied ss 2255 Motion as a futile matter. (CV Doc 13). Ledford timely filed a Notice of Appeal and requested a Certificate of Appealability be issued by the Fourth Circuit Court of Appeals on February 24, 2023. See USCA04 No. 23-6015. The Fourth Circuit declined to issue a Certificate of Appealability May 23, 2023.

REASON FOR GRANTING THE WRIT

The Petition for Certiorari should be Granted and a Certificate of Appealability issued to review whether district courts violate fundamental Principles of due Process under the Fifth Amendment by refusing to reopen a 28 U.S.C. ss 2255 Proceeding Pursuant to Fed.R.Civ.P. 60(b)(1) and allow Amendment of an undeveloped ss 2255 Form Motion. The district court here decided such a request to amend was a futile gesture notwithstanding the fact that the district court denied the ss 2255 Motion six days after it was filed, failed to Notice Petitioner of the court's intent to summarily Dismiss his Motion, and failed to give Petitioner an opportunity to Amend his Pleading under Fed.R.Civ.P. 15(a) or (b).

Petitioner Charles Michael Ledford respectfully requests of this Honorable Court to Grant a Writ of Certiorari, Vacate the Fourth Circuit Panel decision denying him a Certificate of Appealability and Remand for further consideration of the district court's denial of Fed.R.Civ.P. 60(b)(1) relief requesting to Reopen Petitioner's ss 2255 Proceeding and allow him to file an Amended Sixth Amendment claim Pursuant to Rule 15.

The Fourth Circuit's decision to deny a Certificate of Appealability to review the district court's denial of Rule 60(b)(1) relief as futile on the ground that Petitioner failed to make a "Substantial Showing of the denial of a Constitutional right" is inconsistent with the record of Proceedings below and the Prevailing threshold Standard for obtaining a Certificate of Appealability under Slack v. McDaniel, 529 U.S. 473 (2000).

A Certificate of Appealability should issue because Petitioner Presents a substantial question concerning the denial of his Constitutional right to Due Process, Notice, and Full and fair Opportunity to Present habeas claims and complimentary Civil Rules of Procedure. The issues underlying this case deserve further review because there are important unresolved questions that neither this Court nor the Fourth Circuit have answered that would have Potentially wide-ranging implications on the Claim Processing and Notice requirements on Summary Dismissal Proceedings attendant to Pro Se 28 U.S.C. ss 2255 Motions as well as the role Rule 60(b)(1) may Play in remedying violations of Due Process in these contexts.

The two questions at bench in this case include: whether Fed.R.Civ.P. 15(a), as amended, creates a right for a Habeas litigant to amend a Pleading at least once within 21 days before a district court may act to summarily dismiss such Pleading; and Second, whether Fed.R.Civ.P. 60(b)(1) may be invoked to correct a district court's premature dismissal of a Habeas Petition where the Court provided no Notice of its intent to dismiss before 21 days had expired nor otherwise Permitted the Habeas Movant an opportunity to amend his claim(s) subsequently for good cause.

A. The Supreme Court is justified in Granting Certiorari in this case to establish a minimum threshold benchmark for a Pro Se litigant to invoke Rule 60(b)(1) to reopen and amend a Prematurely dismissed Habeas Petition to ameliorate the Pro Se litigant's right to a full and fair opportunity to Prosecute Substantial Constitutional Claims.

Central to Petitioner's request of this Court to exercise Certiorari Jurisdiction in this case is the Fourth Circuit Court of Appeals denial of a Certificate of Appealability aimed at reviewing the district court's denial of Petitioner's Rule 60(b)(1) Motion requesting to reopen his ss 2255 Proceeding and amend his undeveloped ss 2255 Form Motion as futile. See (DOC. 13 at 4). In drawing its futility conclusion, the district court's reasoning appears inconsistent with Rules 12(b)(6) and 56 governing Summary Proceedings. The district court's further analysis gave short shrift to Petitioner's sworn statements and arguments concerning Pre-Plea Discussions with his attorney that led to Petitioner's misadvised acceptance of a Second Proffered Plea agreement, and concomitant statements at the Rule 11 Plea Hearing. That Petitioner's answers at the Rule 11 Hearing were tainted by defective -- if not deceptive advise of counsel should have tempered the district court's analysis and compelled the district court to provide Petitioner a full and fair opportunity to present his Amended Section 2255 claims.

Instead, the district court's ruling that Petitioner's uncontested sworn statements concerning extra record occurrences were "self serving and unsupported contentions" that "counsel misled him about the Plea Agreement and factual basis", (DOC 13 at 6), is symptomatic of a wide spread practice

and trend in habeas cases in which District Courts tend to summarily reject without an evidentiary hearing a Petitioner's extra-record Sixth Amendment claims concerning attorney-client plea discussions -- and supplant that process for reliance solely on a Rule 11 sworn statements cure-all side stepping of traditional fact development processes.

1. Federal Rule of Civil Procedure 60(b)(1).

As relevant here, a Party may seek relief within one year under Rule 60(b)(1) based on "mistake, inadvertence, surprise, or excusable neglect." Fed.R.Civ.P. 60(b)(1), (c). This Court most recently spoke of "mistake" in Rule 60(b)(1) to include a Judge's errors of law. Kemp v. United States, 142 S.Ct. 1856 (June 13, 2022). Ultimately, relief under Rule 60(b)(1) is equitable and, thus requires the court to weigh the totality of circumstances. Nora v. Frank, 488 F.3d 187, 193-94 (3d Cir. 2007).

2. [] Whether there is a Defect in the Integrity of the Underlying Section 2255 Proceeding that constitutes a "mistake" or "legal error" warranting reconsideration under Rule 60(b)(1) and an opportunity for Petitioner to have amended his ss. 2255 Motion.

Petitioner submits the district court committed legal error by dismissing his Pro se Format ss 2255 Motion merely six days after he filed it without providing notice or an opportunity to amend it. In light of this Court's decision in Kemp compounded by fundamental principles of Due Process this Honorable Court should grant the writ of Certiorari, vacate the Fourth Circuit's Dismissal Order and Remand for further

Proceedings subsequent to issuance of a Certificate of Appealability.

Support for Petitioner's Position comes from a variety of sources, including Federal Rule of Civil Procedure 15(a) & (b), the Due Process clause of the Fifth Amendment, the Anti Terrorism and Effective Death Penalty Act (AEDPA), and several analogous claim processing rules established by this Court and State Post Conviction Processing rules, as well as several Circuit Courts' decisional law.

a. Rule 4(b) of the Rules Governing Section 2255 Motions and the Circuit Courts' decisional law.

While Rule 4(b) of the Rules Governing Section 2255 generally governs the initial consideration of a 28 U.S.C. ss 2255 Motion -- Principles of fundamental fairness and Due Process must temper the Rule by requiring a Pro Se habeas movant receive a full and fair opportunity to present and litigate Section 2255 claims. Generally, Rule 4(b) directs courts to consider "the motion, any attached exhibits, and the record of Prior Proceedings" related to the Judgment under attack and authorizes summary dismissal if it "plainly appears" from those materials "that the moving Party is not entitled to relief." Rule 4(b), Section 2255 Rules. Otherwise, the Rule directs the district courts to require the Government to file an Answer. Id. If an Answer is required, the Movant will have an opportunity to submit a Reply. See Rule 5(b), Section 2255 Rules.

In Pro Se cases, Summary Dismissal under Rule 4(b) is a drastic disposition not generally available in other civil litigation and disfavored in many Circuits' habeas Corpus decisional law. For example, the Second Circuit in Cuandra v. Sullivan, 837 F.2d 56, 58-59 (2d Cir. 1988) cautioned that "Sua Sponte Dismissal of Pro Se Petitions which contain non-frivolous claims without requiring service upon respondents or granting leave to amend is disfavored." Similarly, in Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004) the Third Circuit recognized that Pro Se Petitioners often should be afforded an opportunity to amend their Pleadings before a Prayer for relief is denied, unless it is clear that granting further leave to amend would be futile, or result in undue delay.

The Fifth Circuit in Peña v. United States, 157 F.3d 984, 987 & n. 3 (5th Cir. 1998) also went on record to observe that because Summary Dismissals are disfavored, a court generally errs in dismissing or denying a Pro Se Party's Pleading without providing an opportunity to amend. See also United States v. Martinez, 181 F.3d 622, 628-29 (5th Cir. 1999) (Vacating and remanding the denial of a 28 U.S.C. ss 2255 Motion in order to provide the Movant an opportunity to state his ineffective assistance of Counsel claims with greater specificity).

Accordingly, in light of these decisional law examples Summary Dismissal of a Pro Se ss 2255 Petition is appropriate only when a Petition Presents

obviously untenable arguments that further factual development, explanation, or the assistance of counsel cannot make tenable. Petitioner's claim of ineffective assistance of counsel in his Format Section 2255 Motion was not so untenable under the totality of circumstances underlying his case to warrant summary dismissal six days after its filing without providing him an opportunity to Amend his Motion in an effort to expound on his issues. Rule 4(b) does not direct a contrary outcome.

- b. Federal Rule of Civil Procedure 15 militates toward district courts abstaining from summary dismissal for at least 30 days after a Pro Se ss 2255 Movant files a Format Motion to Provide a Minimal Period for Amendment "as a matter of course" in a ss 2255 Proceeding.

Rule 15(a)(1) of the Federal Rules of Civil Procedure, as recently modified allows a Section 2255 Movant to Amend a Pleading once as a matter of course, without leave of court provided such amendment is filed within 21 days of the original Motion being filed. Rule 12 of the Rules Governing Section 2255 Proceedings for the United States District Courts Permit the application of the Federal Rules of Civil Procedure in collateral proceedings pursuant to ss 2255, but only to the extent they are not inconsistent with any statutory provision or the Section 2255 Rules. See also Fed. R. Civ. P. 81(a)(4) (Explaining that the Federal Rules of Civil Procedure are applicable to Proceedings for habeas Corpus.).

Rule 15(a)(2) states that a Section 2255 Movant may amend his Motion by Written Consent of the Parties or Leave of Court. A district court should grant leave to amend freely "when justice so requires." Rule 15(a)(2). Thus, "district courts may withhold leave to amend only for reasons such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowing amendment, or futility of amendment." United States ex rel Richie v. Lockheed Martin Corp., 558 F.3d 1161, 1166 (10th Cir. 2009).

The upshot of Rule 15(a) is that it appears to supply Section 2255 movants a "right-to-amend" a Motion at least once within 21 days of its service. Several circuit courts of appeal agree and have held that Rule 15(a) supplies a right to amend within 21 days. See Galustian v. Peter, 591 F.3d 724, 730 (4th Cir. 2010) (explaining that Plaintiff had a right to amend once without leave of court); Postelle v. Carpenter, 901 F.3d 1202, 1225 (10th Cir. 2018) ("under the Federal Rules of Civil Procedure a party generally has a right to amend his pleadings once within 21 days of its service"); United States v. Pittman, 209 F.3d 314, 317 (4th Cir. 2000) (Federal Rule of Civil Procedure 15 applies in the ss 2255 context). Accordingly, in light of Rule 15(a)'s apparent right-to-amend, the district court's denial of

of Petitioner's Section 2255 Motion six days after its service on the district court is a mistake of law by virtue of fundamental fairness and Constitutional Due Process to Petitioner's right to an opportunity to a full and fair habeas Proceeding. A COA should therefore issue to resolve this issue.

C. The Anti-terrorism and Effective Death Penalties Act, (AEDPA) Supports the Petitioner's request for reconsideration under Rule 60 (b).

It is well understood in modern habeas corpus practice that the AEDPA severely curtails criminal defendants' ability to challenge convictions and sentences once they become final. It is however, axiomatic that "under the AEDPA, a prisoner receives one complete round of litigation, which as in other civil suits includes the opportunity to amend a Pleading before Judgment" is entered. Johnson v. United States, 196 F.3d 802, 805 (7th Cir. 1999); United States v. Thomas, 221 F.3d 430, 436 (3d Cir. 2000) (same); see also Mederos v. United States, 218 F.3d 1252, 1253 (11th Cir. 2000) (when a Pro se Petition might state a claim upon which relief can be granted, a district court should give a Petitioner an opportunity to amend his motion instead of dismissing it); Donald v. Cook City Sheriff's Dept, 95 F.3d 548, 555-56 (7th Cir. 1996) (reminding district courts of their "special responsibility" to give Pro se Plaintiff's ample opportunity to amend their claims).

Accordingly, because the AEDPA dramatically transformed the legal landscape of Post conviction relief Proceedings for all Prisoners, Courts must be vigilant to Provide Pro se Petitioners a full and fair opportunity to Present their habeas claims with a liberal eye toward facilitating amended Pleadings to give the litigant a chance to fully develop the contours of a potentially meritorious claim, create better, the substance of a Pro se motion's claims and its underlying basis, and Prevent the disastrous deprivation of a current or future opportunity to have a well justified grievance adjudicated.

That said, given the cautionary tale that the AEDPA represents, the district court's summary dismissal of Petitioner's Format Motion merely six days after it was served without providing an opportunity to amend or expound upon it -- fits squarely into the broad spectrum of cases to which the admonishments above are directed. Rule 60(b)(1) relief was therefore justified to rectify the mistake of the district court. A Certificate of Appealability should have issued in the Fourth Circuit on these grounds because there exists a substantial showing of the denial of a Constitutional right. Accordingly, Certiorari jurisdiction is warranted in this Court to Grant the COA, Vacate the lower Courts rulings and Remand with instructions to brief the merits of Petitioner's Sixth Amendment complaint -- after Amendment and fact development Procedures are executed.

2. This Court's decision in Castro v. United States, 540 U.S. 373 (2003) and analogous state Post conviction statutes Support Certiorari Jurisdiction to grant a Certificate of Appealability, Vacate the Fourth Circuit's Judgment and Remand for further Proceedings.

Although not on all fours with Petitioner's claim that the District Court committed legal error in dismissing his Section 2255 Motion without Permitting Petitioner an opportunity to amend his Motion -- thereby establishing both a "mistake" and "defect in the integrity of the underlying habeas Proceeding" justifying Rule 60(b) relief -- this Court's Castro decision is analogously instructive.

In Castro, the Court held where a Pro se defendant's mislabeled Motion is filed in a district Court and the Court intends to recharacterize the motion as a first Section 2255 Motion, before adjudicating and dismissing it -- the District Court(s) must Provide the Pro se litigant Notice of the Court's intent to recharacterize the Pleadings, warn the litigant -- and Provide him or her with the opportunity to amend the motion so it contains all the ss 2255 claims he believes he has. Castro, 540 U.S. at 383. The Parallels between the Castro mandate and the conduct of the district court in the case at bench may be used to influence whether the Court will issue a Writ of Certiorari, Vacate the lower courts denial of a Certificate of Appealability and Remand for further Proceedings in accordance with Principles of Due Process.

In addition, many State Post Conviction Statutes have been interpreted to require a Court to give a defendant an opportunity to amend when the defendant files a deficient, vague or legally insufficient Pleading before resorting to Summary Dismissal Proceedings. For example, in Spera v. State, 971 So. 2d 754, 761 (Fla. 2007), the Court held "when a Defendant's initial motion for Post Conviction relief is determined to be legally insufficient for the failure to meet either the rule or other Pleading requirements, the trial Court abuses its discretion when it fails to allow the defendant at least one opportunity to amend the Motion."

With this dynamic of compelled notice and fair opportunity to amend poorly Pled and mislabeled motions masquerading as ss 2255 Motions before they are recharacterized and disposed of according to their merit, it is not such a stretch of due Process to require District Courts to provide a Pro se Section 2255 litigant the opportunity to amend a poorly or partially Pled Motion to avoid the harsh consequences of summary dismissal and finality. This is particularly true with ineffectiveness assistance of counsel claims that almost always encompass extra-record evidence that may require further factual development.

Ultimately, the upshot of the facts underlying this case demonstrate a substantial showing of the denial of a Constitutional right. Given the timing of the District Court's dismissal order, juxtaposed with Fed.R.Civ.P. 15(a)'s 21

day amend-as-a-right Presumption, should give this Court real Pause to consider granting a writ of Certiorari, Vacating the Fourth Circuit's Order denying a COA and Remanding for further Proceedings because Petitioner has shown that "Jurists of reason could disagree with the District Court's resolution of [Petitioner's Sixth Amendment] claim or that Jurists could conclude the issues Presented are adequate to deserve encouragement to Proceed further." Slack v. McDaniel, 529 U.S. at 484.

In any event, a COA should have been issued on Petitioner's Rule 60(b) Motion because reopening his ss 2255 and allowing amendment viz Rule 15(a) in order to expound upon the contours of Petitioner's Sixth Amendment claims would have required a Response from the Government and ameliorated the severe consequences of a premature summary dismissal. Indeed, it is not evident from the record that Petitioner's amended claims would not entitle him to relief. Therefore, Petitioner's Pro Se efforts should have been afforded the liberal treatment to which they were entitled so that Petitioner could have amended his ss 2255 Motion to expound upon and state his ineffective assistance of counsel claims with greater specificity.

Turning last to Petitioner's Proposed Amended Section 2255 Motion, had

the district court afforded Rule 60(b)(1) relief to reopen and amend [it], the Court will find several Constitutional Claims that support granting Certiorari. First, the District Court erred in refusing to grant Rule 60(b)(1) relief for Petitioner to amend his ss 2255 Motion to explore the contours of counsel's ineffectiveness for advising Petitioner to sign a written factual basis drafted by the Government that contained admissions to disputed material facts that was not only the basis for Petitioner's rejection of the first Plea Agreement offer, but also contradicted the black letter terms of the Plea Agreement itself and circumscribed Petitioner's ability to object to and raise arguments against drug Purity, Weight and other Sentencing Guidelines enhancements. Second, Counsel for Petitioner rendered Constitutionally defective representation for failing to advise Petitioner that he could enter an "Open Plea" to the single count indictment to preserve his rights to challenge the Guidelines range and all its various enhancements, to preserve his right to appeal any adverse outcome at Sentencing and otherwise preserve his full array of rights to Collateral review. See e.g., United States v. Basset-Essien, 2015 U.S. Dist. LEXIS 9526 (S.D. Tex. Jan 28, 2015); United States v. Vera-Sawmi, 2022 U.S. Dist. LEXIS 104893 (D.N.J. Jun. 13, 2022).

In Sum, Petitioner has made a substantial showing of the denial of

a Constitutional right sufficient to have been granted a Certificate of appealability by the Fourth Circuit to review the Western District of North Carolina's denial of Petitioner's Rule 60(b)(1) Motion to reopen and amend his ss 2255 Motion as futile. Petitioner has further demonstrated that his due process rights under the Fifth Amendment and Sixth Amendment right to effective assistance of Counsel were violated in the combined proceedings below and that he sufficiently pled grounds in his Rule 60(b)(1) Motion to warrant amending his ss 2255 consistent with Rule 15, 12(b) and 56 of the Federal Rules of Civil Procedure. Certiorari Jurisdiction of this Court should therefore be invoked.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner Charles Michael Ledford hereby respectfully requests of the Honorable Supreme Court to grant a Writ of Certiorari, Vacate the Fourth Circuit's Order denying a Certificate of Appealability and Remand this case with instructions to the Fourth Circuit for further Proceedings. Petitioner further requests for any other and further relief in this case to which the Court may deem just and Properly in the interests of Justice.

Dated on this 8th day of August, 2023.

Respectfully Submitted,
Charles Michael Ledford