No. 23-5637

IN THE

SUPREME COURT OF THE UNITED STATES

DANIEL LEE REED — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN-DIRECTOR TDCJ RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANIEL LEE REED
(Your Name)

2101 F.M. 369 N.
(Address)

IOWA PARK, TEXAS 76367
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Question #1:
Did the Fifth Circuit err by denying a COA for failure to properly consider the F.R.C.P.60(b)(6)under the framework in which successive petions are mandated to be reviewed, but instead relied upon and erroneous application of 2253(c)?

Question #2:
Is it proper for the Fith Circuit to deny COA under the 2253 framework concerning the necessity of a "substantial showing of the denial of a constitutional right...", when the COA is being sought for the expressed purpose of challenging a district court's dismissal of a Rule 60(b)(6) as a subsequent writ based its erroneous ruling that Petitioner was circumventing the AEDPA successive bar by trying to relitigate the time bar dismissal of his previous constitutional challenges?

Question #3:
Does the Fifth Circuit's denial of COA represent a direct conflict with the Court's jurisprudence in Gonzalez V Crosby when it is very clear that the only thing challenged in the 60(b) motion was a defect in the federal time bar proceedings, that if corrected, would allow equitable adjudication of the Sixth Amendment violations raised?

LIST OF PARTIES

[X] 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

Reed V Director., 2021 U.S. Dist. LEXIS 58781

U.S.D.C. No.6;19-CV-432

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT No.23-40053
Appendix-A.

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STATUTES AND RULES

OTHER

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,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 JUNE 7, 2023.

[X] 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

SIXTH AMENDMENT U?S. CONSTITUTION:

In all criminal prosecutions,the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crimeshall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

28 U.S.C. § 2244(d)

28 U.S.C. § 2253(c)

STATEMENT OF THE CASE

The case boils down to a very simple issue. The issue, the United States District Judge who dismissed the original 2254 writ of habeas corpus,Jeremy D. Kernodle, dismissed the petition as time barred based on an egregious and false statement that Petitioner had presented **"no evidence"** of attorney abandonment. DKT #23 p.2 now Appendix-C. The sole issue here on F.R.C.P.60(b)(6) asks the Court to look back at the 2254 petition and see not only does it present substantial constitutional violations of constitutional magnitude, but also ample evidence of attorney deception causing the time bar at issue. Those exhibits are A-E of the petition and show that the District Judge's summation that Petitioner presented no evidence is a defect in the federal proceedings worthy of 60(b) relief and reopening the federal proceedings in order to have Petitioner's otherwise barred constitutional violations adjudicated on their merits or at least a fair decision, based on that presented evidence of deception, made as to the equitable tolling argument advanced and decided. **No evidence** is simply not the truth.

Upon filing the 60(b) motion, Judge Kernodle, without requiring the State to respond or employing a magistrate in any manner, denied the 60 (b) motion DKT #39 Appendix-B on completely erroneous determinations concerning it being a subsequent writ attempt. None of the three reasons given are true and easily provable by the record and motion filed. This will be explained below, but first it is important to show the Court that Judge Kernodle, who no doubt fully understood what Petitioner was asserting in the 60(b)motion,did not point the Court to the contested defect in his own Appendix-C

DKT #23 p.2 denial. The Judge only pointed back to his previous adoption of Magistrate Love's Report and Recommendations completely ignoring the elephant in the bath tub defect Petitioner was actually raising as grounds for reopening his case. Instead of discussing the true defect in the federal proceedings, the Judge, as respectfully as a prisoner petitioner can put it, invented the three reasons for denying 60(b) relief. The Judge does properly cite the Supreme Court precedent that controls 60(b)...Gonzalez v Crosby including the defect in the integrity of the federal proceedings. The Judge first claims the 60(b) motion raises new claims, strangely and evidence of intention, without pointing to or discussing where-or what-the "new claims" appear in the motion. The Judge knows, just as any reasnoable jurist who reads the motion, that there is absolutely no new claim raised in the 60(b) motion.That finding by the Judge is just as false as his, not the Magistrate's, finding, that no evidence was presented to show attorney deception. Secondly, the Judge resorts to claiming Petitioner attacks the Court's previous adjudication of his constitutional challenges. This is false for two reasons. First there is absolutely no where any reasonable jurist can point to in the 60(b) motion to even remotely claim an attack on the Court's previous adjudication of his constitutional challenges. And thirdly, there has never been an adjudication of any of Petitioner's constitutional challenges from this District Court Judge based solely on the fact that a time bar precluded any adjudication of them. These are facts that cannot be disputed. The District Court's reasons and ultimate successive writ determination are past erroneous on to deceptive and intentionally so. That is a bold statement but supported by the fact the judge discusses that

..."to the extent Petitioner seeks relief in the form of setting aside the judgement and reopening the case in order for the court to reconsider the recommendations in the Report, the Court would still agree with the Magistrate...that the petition was untimely." The Judge knew full well that it is not the Magistrate's recommendations that are the quest of the 60(b) motion, it is his added and false **"no evidence presented of attorney deception"** statement that is challenged as the defect in the federal proceeding. Yet, no mention of it appears.

PROCEEDING IN THE FIFTH CIRCUIT

The Fifth Circuit,in Appendix-A, fully understood that Petitioner, without stating particularly what the defect was, that a defect in the federal proceeding is what was raised and the relief sought. The Fifth Circuit also addressed the argument that the successive finding was erroneous because, as Petitioner set out above, he was not raising a new claim or attacking any prior adjudications of his claims on the merits. Those understandings show at least that Petitioner had gotten his argument accross to them sufficiently for them to understand exactly what he was asserting. But instead of agreeing with Petitioner that the District Court was in error or finding Petitioner was in error, they made an alternate finding in order to deny the COA. There is no doubt that the District Court's successive writ and no jurisdiction finding dimissing the 60(b) was in error. A simple reading of the motion will prove the matter.

The Fifth Circuit's denial of COA rests entirely on the alternative failure to state a substantive constitutional violation rather than making a Gonzalez V Crosby determination. The fact that the District Court, as fully understood by the Fifth Circuit, relied on the fact that Petitioner was attacking the prior adjudication of

his constitutional claims to dismiss the 60(b) motion. Therefore, Petitioner was very careful to prove that was not the case and instead focused on the issue at hand.i.e The fact he was not challenging the prior adjudication of his constitutional claims and only mentioned the claim expressly for the purpose of fulfilling the necessity of doing so. See page 3-4 of the COA Motion where this is discussed. Also, where Petitioner shows the concern by reporting his use of the Buck v Davis actual draft in drafting his own as a lay-man at law and drafting, yet, the Fifth Circuit resorted to denying COA on the issue when the issue of substantial constiutional violations has been raised throughout and unadjudicated due to the time bar and false no evidence claims by the District Court in so doing. Now the District Court makes up two absolutely false claims to dismiss the 60(b) and the Fifth Circuit recognizes it and goes completely off track and denies COA on other grounds when substantial constitutional violations have been presented throughout.

ARGUMENT

The Fifth Circuit,by going off track and refusing to find the District Court abused its discretion in dismissing the rule 60(b) motion as a successive petition on clearly erroneous and false grounds, has departed so far from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower cour, it calls for the exercise of this Honorable Court's supervisory power.

The true issue on COA is did Gonzalez v Crosby 545 U.S.524, 531-32 authorize the dismissal of Petitioner's 60(b) motion/based on the District Court Judge's finding it was successive for the reasons stated? That is the true issue that requires in equity that the case be remanded to the Fifth Circuit for a proper Gonzalez v Crosby

analysis. The AEDPA is not offended by allowing a district court to entertain a Fed.R.Civ.60(b) motion challenging the state procured dismissal of a petitioner's first habeas corpus proceeding by making fraudulent representations to the district court. However, a District Court Judge may be offended when an inmate filer outright accuses him of making fraudulent determinations in order not to allow him to overcome the AEDPA one year statute of limitations. It appears that Petitioner has offended District Judge Kernodle in claiming he intentionally comitted fraud on the Court himself by stating Petitioner has presented no evidence of attorney deception in his petition for equitable tolling based on the fact the appeal attorney lied to him in documented letters(EXHIBITS A-E)of the petition. The very specific issue raised in the 60(b)motion. In fact, the only issue presented in the 60(b) motion. The offending of the Judge is evident by his ruling of no jurisdiction because his opinion the 60(b) was a successive writ was based on two reasons that are completely false. There are no new claims raised and there is no challenge to the previous resolution of his constitutional claims other than the defect in that ruling. **The defect is his own statement that amounts to fraud on the court.** The harrassment concerning the IFP Motions is another indication of the offended Judge's behavior and ultimate denial of the IFP when it is clear Petitioner no longer has the funds to pay the filing fees he has paid in the past.

The Supreme Court in Gonzalez V Crosby at 526 held: Because Petitioner's Rule 60(b) motion challenged only the District Court's previous ruling on AEDPA limitations, it is not a successive habeas petition and can be ruled upon by the District Court without precertification by the Eleventh Circuit. In Petitioner's case, that should

have been the end of the inquiry after the Fifth Circuit acknowledged that is what was raised. It was not the end of the inquiry it was then ignored and denied COA on a completely different theory no one has ever raised and ironically one of the reasons the District Court relied on in its dismissal-the raising of constitutional grounds. Had Petitioner raved on about a substantial constitutional violation, the issue the Fifth Circuit faulted him for not doing, then it would have lent credence to the District Court's position that this was truely an attack on his previous ruling. This was a claim of false reasons to deny 60(b) based on a 60(b) that challenged the same Judge's false no evidence ruling in dismissing the federal petition under the AEDPA's one year statute of limitations based upon a equitable tolling request. The exact purpose of a 60(b) motion according to Gonzalez v Crosby, respectfully, and expressly understood by the Fifth Circuit prior to its departure off the usual course in determining if the District court's dismissal of the 60(b) was an abuse of discretion. Essentially, if the 60(b) does not raise a new claim or attack the prior adjudication of a claim, it is a 60(b) motion any departure from that course is a direct departure from Supreme court precedent that it calls for the use of this Court's supervisory power and that is what is requested by way of remand and proper Gonzalez V Crosby analysis. Otherwise Gonzalez V Crosby is of no other use to the Fifth Circuit in a situation where the 60(b) is a true useful tool in reopening of cases where a defect in the federal proceedings is apparent from the record and evidence on both the Judge's no evidence finding and allowing him to use false reasons to refuse to adjudicate the 60(b) in its proper use and manner.

REASONS FOR GRANTING THE PETITION

The Honorable Court's supervisory powers should be utilized and are warranted, not only because of the negative effect the District Court's actions have had in this case for requested equitable tolling, but in all cases accross the United States where a district court has made egregiously false statements in the case in order to keep from conducting a fair tolling analysis. Not only would allowing the District Court's actions in this present case be inequitable to Petitioner, it would breed a culture of attitude that a Judge may use a false statement of "no evidence", such as was the case presently at bar, in all confidence that it would stand-even if completely false-knowing the likelihood of it ever being reversed on a 60(b)(6). This is especially so since not even the mention of the actual defect in the federal proceedings was broached by the District Judge in his non-show cause order and magistrate used 60(b) denial. In stead of even mentioning the defect raised, the challenged District Judge, and sadly any other reader of the opinions below could follow as a culutral norm judicially, felt completely at ease making up two reasons to deny relief on 60(b) that are a matter of factual record false. This culture has led to the Fifth Circuit refusing to review the false statements, of at least this one Judge in two different instances (both appended to this writ), and instead veering of the usual course of Certificate of Appealability and deciding, not the correctness of the District Court's procedural ruling or how the defect altered the outcome of the procedural ruling above and deciding to deny COA on a completely different section of 2253(c) when certainly a substantial constitutional right abrogation has been presented. The complained cul-

ture warned against here,and the continued breeding thereof, must be viewed in light of the fact that raising a new or exhausted constitutional claim is what the District Court relied upon in denying 60(b) in the first place and then the Fifth Circuit denied COA for not raising a substantial constitutional violation would by nature have to be either a new claim or previously challenged and denied constitutional claim. This would be exactly what the District Court found in Appendix-B p.3(emphasis added).In no equitable way should the Fifth Circuit wholly and completely fail to adiudicate whether the District Court's denial of 60(b) was even remotely correct much less completely false. That analysis must also entail the Fifth Circuits stated understanding of exactly what Petitioner was alleging under Gonzalez v Crosby 545, U.S. 524,531-32. There is no interpretation of the Supreme Court precedent in Gonzalez that can be twisted into a true finding that Petitioner's 60(b) Motion was a successive petition. The Fifth Circuit's departure actually in this instance, and any other left unchecked, amounts to allowing a District Judge to falsely state there is no evidence of attorney abandonment by deception,when 5 documented letters telling two completely different stories led directly to Petitioner missing the 2244(d)AEDPA timelimit(See 2254 exhibit A-E) were entered. Assuming the Judge(Appendix-C p.2)made a mistake,and affording the public and prisoners the opportunity to present a defect in a federal proceeding under FRCP 60(b),is not a reasonable assumption when the Judge is given the opportunity to review the record and petition exhibits,he possibly could have missed in the first instance,and he fails to even acknowledge the evidence entered at all and then makes two more completely false claims to deny re-opening the case.

This amounts to fraud of the highest kind and if the culture that is complained about has evolved to the point that a District Judge can rely on the Fifth Circuit or any Circuit Court of Appeals to allow it,then the Court's supervisory powers are unquestionably the only hope the public or this prisioner has of ever being heard. Otherwise, it will be business as usual and no matter how far fetched a District Court' finding may be, or how false his attempt to cover it up in a legal proceeding to point it out,that congress has mandated as a viable avenue for doing so 60(b)-a judge can have full confidence that the Fifth Circuit will find an alternate reason for denying COA.

The final and end all statement in this case is simply, if there is evidence of an attorney lying to his client and causing him to miss the AEDPA time limit-**and there is**-and a judge states there isn't and then gives two completely false reasons for passing on his opportunity to correct his false statement knowing he can rely of a Circuit Court of Appeals to find another way to deny COA then what hope of justice is there? Yes that statement is actually a question, but if the truth be told by a Federal District Judge this case would have never been in the hands of the Fifth Circuit to depart from its usual course of judicial proceedings. The truth is what is actually at stake here, simply the truth. Did Petitioner present evidence that his paid appellate attorney lied to him about filing the 2254 petition and relevant timelines based on the record in this case? That question because of lying has never been addressed. If any petitioner told two completely different stories,as this attorney did to Petitioner, to this Honorable Court he would be guilty unquestionably of aggravated perjury. Equitable tolling, not reversal, is the request, respectfully.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daniel Ramirez
02040919

Date: 8-22-2023