

No. 23-5746

Supreme Court, U.S.

FILED

JUL 20 2023

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES H. HAYES — PETITIONER
(Your Name)

vs.

JERRY HOWELL, et. al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court, District of Nevada
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES H. HAYES
(Your Name)

SDCC; P.O. BOX 208
(Address)

INDIAN SPRINGS, NEVADA 89070
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

MR. HAYES ALLEGES THAT THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENIAL FOR A CERTIFICATE OF APPEALABILITY CONCERNING UNITED STATES DISTRICT COURT DENIAL OF MR. HAYES FEDERAL RULE OF CIVIL PROCEDURE 59(e) MOTION WAS WRONG. MR. HAYES MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT. THE NINTH CIRCUIT DENIED MR. HAYES RELIEF, AS THE PANEL EXPRESSED THE VIEW THAT JURISTS OF REASON WOULD FIND IT DEBATEABLE WHETHER THE PETITION STATES A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT AND THAT JURISTS OF REASON WOULD FIND IT DEBATEABLE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS PROCEDURAL RULING, WAS NOT SHOWN. THE CASE THUS PRESENTS THE FOLLOWING QUESTION(S).

Did the Ninth Circuit err in standard for review, the appropriate standard is "substantial showing that the district court abused its discretion" by denying the Rule 59(e) motion, rooted in the Supreme Court's decisions in Starbuck and Gonzalez. Here, the Ninth Circuit's decision was based on the district court's flagrant misreading of Mr. Hayes' 59(e) motion as a Rule 60(b) motion. Thus, this is an open question that has an impact in every case involving a denial of COA for a Rule 59(e) motion, and should be decided by the U.S. Supreme Court.

(i)

TABLE OF AUTHORITIES CITED

CASES

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OTHER

(iii)

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 is unpublished.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 B 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 April 21, 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

THE FOLLOWING STATUTORY AND CONSTITUTIONAL PROVISIONS
ARE INVOLVED IN THIS CASE.

FEDERAL RULE OF CIVIL PROCEDURE 59(e) MOTION

A motion to alter or amend under Rule 59(e) must rely on
ONE OF THREE MAJOR GROUNDS: 1) AN INTERVENING CHANGE IN
CONTROLLING LAW; 2) THE AVAILABILITY OF NEW EVIDENCE NOT
AVAILABLE PREVIOUSLY; OR 3) THE NEED TO CORRECT A CLEAR ERROR OF
LAW OR PREVENT MANIFEST INJUSTICE (WHITE V. NEW HAMPSHIRE DEP'T
OF EMPLOYMENT SEC., 455 U.S. 445)

(3)

STATEMENT OF THE CASE

In January 2017, a jury found Mr. Hayes guilty of burglary. In 2016 Harrah's Hotel and Casino in Las Vegas, Nevada set up a bait room, with \$350.00 in a wallet and other valuables including jewelry and an IPAD and left the door open. The clear and convincing evidence showed that Mr. Hayes arrived at Harrah's Hotel via monorail and proceeded to hotel elevator went to the 12th floor to meet with registered hotel guests. Mr. Hayes was in the hotel room with prostitutes for over an hour, drinking and smoking weed. During all of that time there was no indication of committing burglary, nor a trespass or unlawful entry. In fact, Mr. Hayes intent was to commit solicitation of prostitution and the decision to go to 9th floor was to meet prostitute at her room for sex. Thus, Mr. Hayes actions was not a conscious objective to cause the result or to engage in the conduct of the crime of burglary. It was not planned, and it did not occur until after entry of room on the 9th floor and finding that prostitute was not present after checking room for her presence. The idea that intent was proved by the very fact of the subsequent solicitation misconstrues the purpose of the burglary statute, which is to penalize the act of entering a building with the intent to commit a felony or larceny. Here, there was no evidence presented at trial that Mr. Hayes had formed the intent to commit burglary, and the proximity in time does not give rise to a reasonable inference of intent.

REASONS FOR GRANTING THE PETITION

- 1.) THE NINTH CIRCUIT'S MISAPPLICATION OF THE PROPER STANDARD FOR A CERTIFICATE OF APPEALABILITY FOR MR. HAYES FEDERAL RULE OF CIVIL PROCEDURE 59(e) MOTION WARRANTS THIS COURT'S ATTENTION.
- 2.) THE DECISION OF THE NINTH CIRCUIT IS IN CONFLICT WITH THE DECISIONS OF THE U.S. SUPREME COURT AND OTHER CIRCUITS.
- 3.) ABUSE OF DISCRETION MUST BE THE APPROPRIATE STANDARD.

THE NINTH CIRCUIT'S ORDER MISAPPLIED THE SLACK TEST FOR A CERTIFICATE OF APPEALABILITY AND FAILED TO APPLY THE ABUSE OF DISCRETION STANDARD, AS THE DISTRICT COURT CONSTRUED MR. HAYES 59(e) MOTION, TYPICALLY FILED AS A RULE 60(b) MOTION IN ERROR AND PREJUDICE ENSUED. WHEREFORE, JURISTS WOULD FIND IT DEBATEABLE THAT THE DISTRICT COURT PROCEDURE RULING WAS CORRECT.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James H. Sharp

Date: July 17, 2023

(b)