

No. 23-6076

IN THE SUPREME COURT OF THE UNITED STATES

RKB
TIMOTHY R. PEDRAZA,

Petitioner,

Supreme Court of the United States
FEB 05 2024

OFFICE OF THE CLERK

v.

BOBBY LUMPKIN,
DIRECTOR, TDCJ-CID.

Respondent,

PETITION FOR REHEARING

COMES NOW Petitioner, Timothy R. Pedraza, Pro Se, and Prays this Honorable Court grant Rehearing pursuant to Rule 44, of its decision for a Writ of certiorari that was entered on January 16, 2024. Thereafter, grant Pedraza's Writ of Certiorari to review the opinion of the United States Court of Appeals Fifth Circuit. In support, Pedraza states the following:

REASONS FOR GRANTING REHEARING

Ground One: The United States Court of Appeals Fifth Circuit ERRED by deciding an important federal question in a way that conflicts with the decision of another state court of last resort, also the Fifth Circuit decided an important question of federal law that has not been, but should be, settled by this Honorable Court.

GROUND ONE ARGUMENT

Pedraza disagrees with the Fifth Circuit decision because he presented FACTS, record proof/exhibits as evidence to support his claim(s) of a Due Process violation by the State of Texas by NOT HONORING Government Code 508.145(d), which governs Pedraza's release and not a Parole Panel Decision.

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The Fifth Circuit adopted the Southern District of Texas fact finding and conclusion of law, thus resulting in Pedraza's 2254 Petition being denied, also his (COA). However, the Court overlooked that another Federal Judge from the Northern District of Texas, "Mark T. Pittman" assessment pertaining to the same State Statute, ie. 508.145(d), also State of Texas Board of Pardons and Parole PO IV. Official, "Fernando Barrera" [BOTH] whom Truster of the State have **different analyses** then the Fifth Circuit Court and Southern District Court when construing the language inside of 508.145(d). See Appendix I & J.

Pedraza is similar situated liken unto Larry Gill and Jonathan T. Head. "ALL" three prisoners are Governed under 508.145(d), because of the nature of their offenses. Any doubt by the 5th Circuit as to the correctness of its prior ruling, and the fact that Pedraza's case is similar situated liken unto Larry Gill and Jonathan T. Head justifies the exception to the finality of litigation doctrine in the interest of justice, See Jeanette E. Gondeck vs. Pan American World Airways, Inc. 1966 AMC 12, 382 U.S. 25. No. 919 OT 1961.

Pedraza argues [if] two different Federal Court Judges in the United States District Court of Texas **construing and interpreting** the same State Statute **differently** (ie. 508.145(d)), whom both well advance with the knowledge and understanding of the law, surely petitioner has shown and demonstrated with clear and convincing evidence he has put forth compelling reasons that the decision of the 5th Circuit and Southern District is in conflict with the decision of the Northern District on the same important matter.

Therefore, Pedraza requesting that this Honorable Court reconsider its decision and grant rehearing to determine the true intent of the legislature when they enacted 508.145 and specifics need to be drawn in Petitioner's Questions he has presented, as to (1) whether Pedraza has an entitled liberty interest in his release to a mandated statute release, (2) whether the State Statute at issue, ie. 508.145 (d) in conjunction with Offenders Handbook (g.) & (f.), as Pedraza reads it, a contract on how Pedraza is to earn his eligibility to **release on parole**, (3) **more importantly**, whether Pedraza's release to parole is governed by statute or a parole panel review process [which] Pedraza is mandated ***not to be considered for**".

The issues listed herein ground one is sufficient as to why this Court should exercise sound judicial discretion and grant petitioner's rehearing. "The basic element of a full and fair "hearing" include the right of each party to be apprised of all the evidence upon which a factual adjudication rests, plus the right to examine, explain, or rebut all such evidence." See U.S. V. Dillman, 146 F.2d 572. "Denial of petition for certiorari should not be treated as definitive determination in Supreme Court, subject to all consequences of such an interpretation." See Flynn V. United States, 75 S.Ct. 285, 99 L.Ed 1298 (1955).

Ground Two: The United States Court of Appeals Fifth Circuit ERRED by adopting the Southern District of Texas Facts and Conclusion of Law, thus resulting in violating Pedraza's 5th & 14th US Constitutional Right to "DUE PROCESS".

GROUND TWO ARGUMENT

Pedraza hereby argues that the 5th Circuit abused its discretion and/or commits PLAIN ERROR by (1) adopting the Southern District of Texas Facts and Conclusion of law, (2) misapplying Federal Habeas Law to Petitioner claim(s), thus depriving a citizen of his constitutional Rights to Due Process of Law. The 5th Circuit decision was erroneous, therefore Pedraza was prejudiced by the 5th Circuit by applying incorrect law principles to the facts of petitioner's "Due Process" claim(s). The Court's adjudication on the merits "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States. See Williams (Terry) v. Taylor, 529 U.S. 362 (2000) .

Petitioner is challenging the specific fact finding of the 5th Circuit and argues that the findings was not supported by factually and legally sufficient evidence. To the contrary, petitioner presented factually and legally sufficient evidence supporting a **substantial showing** 'of the denial of a constitutional right; such evidence resides in 508.145(d) itself acting in conjunction with the State's TDCJ-Offender Handbook, pg.81(g.) "The statutory text is the only **definitive evidence** of what the legislators intended when the statute was enacted into law." See Boykin v. State 818 S.W. 2d. 782, 785; also Coit v. State, 808 S.W. 2d 473, 475.

The 5th Circuit denied Petitioner's (COA), based on the grounds that petitioner has not made a substantial showing of a denial of a constitutional right and petitioner has not made the requisite showing that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong, then cited Slack v. McDaniel, 529 U.S. 473, 484, (2002). However, the Court overlooked the evidence that was presented from the Northern District of Texas, ordering the State of Texas to supplement its answer, addressing the substantive merits of Head's claims. See Appendix I.

Jonathan T. Head is similar situated liken unto Pedraza, both are governed under 508.145(d). The record clearly shows that you have two Federal Courts assessment of the language inside of 508.145(d). surely debatable, contrary to the decision of the 5th Circuit.

Petitioner was furthered prejudiced by the 5th Circuit by adopting the Southern District assessment when the court applied their own incorrect law principles to the facts. The Court's stated...,

"Additionally, "[a] state prisoner's liberty interest in parole is define by a state statute." Id. Texas law creates no liberty interest in parole, (emphasis added) See Appendix B. pg.2."

The Southern District is wrong and their assessment is contrary to the State's own Holding in GEIKEN 28 S.W. 3d 553, 558 where it states in part..., "the language of the statute does create a liberty interest." GEIKEN Id. The Court's assessment is clearly in conflict with the State's own holding in Geiken. "A state prisoner liberty interest in parole is defined by state statute". See Bd of Pardons v. Allen, 482 US. 369, 371, 107 S.Ct 2415 (1987).

The Supreme Court has already determined that a liberty interest in parole is created when state law provide an expectancy of parole by limiting official discretion to deny parole. Green Holtz Id., at 442 U.S. (1979). The 5th Circuit decision was contrary to clearly established federal law as determined by the Supreme Court. See (Terry) Williams Id.

Petitioner argues the Statute at issue 508.145(d), First governs his release to parole, Second, the language inside the statute sets the mandate on how Pedraza will be entitled to such eligibility to release on parole, third, the statute sets the conditions entitling Petitioner to expect his eligibility [and] that eligibility is directed ONLY TO HIS RELEASE TO PAROLE. The only take-away from the text and mandates of the statute is, it specifically entitles an expectation of release after enumerated factors are triggered, i.e. "ONE-HALF THE SENTENCE SERVED IN FLAT CALENDAR TIME AND WITHOUT CONSIDERATION OF GOOD CONDUCT TIME BEING APPLIED TO AN EARLIER "ELIGIBILITY" AND/OR "RELEASE TO PAROLE", The only subject matter of the statute. The most important factor at issue is Statute 508.145(d) DOES NOT ENVOKE ANY SPECIFIC OR OTHERWISE INFERENCE TO PETITIONER BEING DENIED RELEASE "BASED ON" (denied release to parole due to his **criminal history and the nature of the offense**). These expressed reasons given by (BPP), and the Courts for denial of petitioner's release are not expressed or mandated within 145 statute and go against the application of principles of law set by the (CCA) in Geiken Id, Boykin Id, and Coit Id.

CONCLUSION

For the foregoing reasons stated, the above grounds listed herein are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

The law of Due Process entitles Pedraza to a **just determination and construing of the statute(s)** at issue as set in principles by the Court(s) and Law(s) cited within this Petition for Rehearing and his writ of certiorari; to see if in fact Pedraza is held in illegal restraint in violation of his U.S. Const. Amend. 5th & 14th Protected Rights by the State of Texas.

PRAYER FOR RELIEF

For the reasons herein alleged, petitioner prays the court grant this petition for rehearing, set aside its judgment entered on January 16, 2024, and review the judgment and opinion of the Fifth Circuit Court of Appeals.

CERTIFICATE OF GOOD FAITH

Petitioner, Timothy R. Pedraza, make certification that his petition for rehearing is presented to this Court in good faith pursuant to Rule 44. Pedraza further states that the grounds listed herein this petition are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

IN THE INTEREST OF JUSTICE, Pedraza request that the Court reconsider its judgment because he believes he has met the constitutional requirements in his petition that would allow under conditions of fundamental miscarriage of justice, this Honorable Supreme Court hearing his claim(s) on the merits and determining the facts as to his illegal restraint.