

23-6167

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

NOV 29 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In Re: Dwight Carter Sr.

(Your Name)

— PETITIONER

VS.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF HABEAS CORPUS

28 U.S.C. § 2241

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF HABEAS CORPUS

Dwight Carter Sr.

(Your Name)

USP Coleman II

(Address)

Coleman, FL 33521

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether 28 U.S.C. § 2244(b)(1) apply to second or successive applications filed by federal prisoners?

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Winerske v. United States</i> , 913 F.3d 765, 768-769 (8 th Cir. 2019).....	5
<i>Gallagher v. United States</i> , 711 F.3d 315 (2 nd Cir. 2013).....	5
<i>In re Baptiste</i> , 828 F.3d 1337, 1340 (11 th Cir. 2016).....	3, 4, 5
<i>In re Bourgeois</i> , 902 F.3d 446, 447 (5 th Cir. 2018).....	5
<i>In re Cannon</i> , 931 F.3d 1236 (1 st Cir. 2019).....	3
<i>In re Gomez</i> , 830 F.3d 1225 (1 st Cir. 2016).....	3
<i>In re Graham</i> , 61 F.4th 433 (4 th Cir. Mar. 8, 2023).....	5
<i>Jones v. United States</i> , 36 F.4th 974 (9 th Cir. Jan. 10, 2022).....	5
<i>Taylor v. Gilbey</i> , 314 F.3d 832-836 (7 th Cir. 2002).....	5
<i>United States v. Carter</i> , 484 F. Appx. 449 (1 st Cir. 2012).....	3
<i>United States v. Davis</i> , 139 S.Ct. 2319 (2019).....	3, 4
<i>United States v. Winkelmann</i> , 746 F.3d 134, 135-136 (3 rd Cir. 2014).....	5
<i>Williams v. United States</i> , 927 F.3d 427 (6 th Cir. 2019).....	5
STATUTES AND RULES	
18 U.S.C. § 1111.....	2
18 U.S.C. § 1951(a).....	2
18 U.S.C. § 924(c).....	3
18 U.S.C. § 924(c)(1)(A).....	2
18 U.S.C. § 924(c)(3)(B).....	3
28 U.S.C. § 2241.....	4
28 U.S.C. § 2244.....	5
28 U.S.C. § 2244(b)(1).....	4, 5, 6
28 U.S.C. § 2254.....	5
28 U.S.C. § 2255.....	3, 4, 5
28 U.S.C. § 2255(h).....	4
28 U.S.C. § 2255(h)(2).....	3
OTHER	
U.S. Const. Amend. V (Not shall any person be... deprived of life, liberty, or property without due process of law...)	

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	VI
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	IV
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6
REASONS FOR NOT MAKING APPLICATION TO DISTRICT COURT (RULE 20.4)	6

INDEX TO APPENDICES

APPENDIX A	In re Dwight Carter Sr. Case: 22-14046-B Date: 1-4-23
APPENDIX B	In re Dwight Carter Sr. Case: 19-12456-B Date: 7-26-19
APPENDIX C	In re Dwight Carter Sr. Case: 20-10066-G Date: 2-6-20
APPENDIX D	
APPENDIX E	
APPENDIX F	

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 1-4-23.

☐ 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. § 2241

☐ 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).

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.

STATEMENT OF THE CASE

Carter is a federal prisoner serving a life-plus 105 year total sentence for conspiracy to commit Hobbs Act robbery, Hobbs Act robbery, possession of a firearm in connection with a crime of violence resulting in death, conspiracy to possess with intent to distribute cocaine, possession with intent to distribute cocaine, and possession of a firearm in furtherance of a drug trafficking crime.

As a brief factual background, a federal grand jury originally charged Carter in a superseding indictment with conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a) (count 1); substantive Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a) (count 2); carrying and using a firearm during a crime of violence, "as set forth in counts 1 and 2," in violation of 18 U.S.C. § 924(c)(1)(A) (count 3). Count 3 further charged that "in the course of this violation, the defendant's caused the death of a person, Carlos Alvarado, through the use of a firearm, which killing was a murder, as defined in 18 U.S.C. § 1111." Carter was also charged with three other drug and firearm charges in counts 4, 5, and 6, which are not relevant to the instant petition.

Carter was charged with a codefendant, Emmanuel Maxime, on each of the three relevant counts in the superseding indictment. Carter and Maxime proceeded to trial separately. At Carter's trial, in regard to count 3, the district court instructed the jury that it could find Carter guilty if it found that he committed the crime of violence charged in count 1 or count 2, and that he carried a firearm during the commission of that offense. The jury returned a guilty verdict on each count without specifying which predicate offense it was relying on. Notably, the jury found Carter guilty of count 3, and specifically found that, during the course of violating count 3, he caused the death of Mr. Carlos Alvarado through the use of a firearm, and the killing was murder.

The district court later sentenced Carter to serve the statutory maximum terms for all 6 counts, with each sentence set to run consecutively to each other, resulting in an aggregate prison term of life plus 105 years; consecutive 20-year sentences on counts 1, 2, 4, and 5, a consecutive life sentence on count 3, and a consecutive 25-year sentence on count 6. The court entered a judgment to take effect in 2010. Carter appealed, but the Eleventh Circuit affirmed

his convictions. See United States v. Carter, 484 F. Appx. 449 (11th Cir. 2012) (unpublished).

In 2014, Carter, proceeding pro se, filed his original § 2255 motion, arguing that he received ineffective assistance of counsel in various respects, which the district court denied on the merits. Carter appealed, but a single judge on the Eleventh Circuit declined to issue a certificate of appealability ("COA").

In 2016, Carter, proceeding pro se, twice filed applications for leave to file second or successive § 2255 motions in the Eleventh Circuit, both of which were denied.

In 2019, Carter filed a third application for leave to file a second or successive § 2255 motion, arguing that his § 924(c) conviction was unlawful in light of the Supreme Court's decision in Davis, which invalidated § 924(c)(3)(B)'s residual clause. The Eleventh Circuit denied Carter's third application over Judge Martin's dissent. See App'x B.

Thereafter, in January 2020, Carter filed a fourth successive application which sought to raise two claims in a second or successive § 2255 motion. In his first claim, he argued that his conviction and sentence for the § 924(c) offense (count 3) were unlawful, given the Eleventh Circuit's ruling on his co-defendant's (Maxime) application. See App'x C.

A panel of the Eleventh Circuit later dismissed Carter's fourth successive application in part and denied it in part. The panel denied Carter's first claim, noting that their ruling on Maxime's application did not qualify as a new rule of constitutional law under 28 USC § 2255(h)(2) and did not rely on newly discovered evidence. Next, it dismissed Carter's second Davis-based claim because it raised the same claim that he had raised in his third application. See App'x C.

In his fifth application, the application at issue here, Carter attempted to bring one claim in a second or successive § 2255 motion - that his "conviction and sentence on (count 3) are unlawful because they are partially predicated on conspiracy to commit Hobbs Act robbery, which is not a crime under § 924(c), and because it was obtained through a general verdict." Carter also argued that In re Baptiste does not bar his current application, because this Court's decision on his first Davis claim was "clearly erroneous and would work manifest injustice if not corrected." Carter also explained that Baptiste did not limit the Eleventh Circuit's power to "sua sponte rehear" its prior orders that were erroneously denied. Second, he argued the law-of-the-case doctrine does not bar his instant application because the prior decision was clearly erroneous. He also argued that he is "similarly situated" to his co-defendant Maxime, as well as the defendant's in In re Gomez, 830 F.3d 1205 (11th Cir. 2016), and In re Cannon, 931 F.3d 1236 (11th Cir. 2019), who were permitted to file successive § 2255 petitions.

Finally, Carter argued that if he is not allowed to file a successive § 2255 petition based on Davis, his Equal Protection rights under the Fourteenth Amendment will be violated. Because he presented the same evidence as Maxime in support of his application to file a successive § 2255, he argued, he likewise established a prima facie case of the existence of the grounds under 28 U.S.C. § 2255(h) and he should be given the chance - like Maxime - to file a successive application under § 2255.

The Eleventh Circuit soon after dismissed Carter's fifth and final Davis based application in part holding that: "to the extent Carter is relying on Davis as a new rule of constitutional law which was made retroactive on collateral review which entitles him to file a second or successive § 2255 motion, he has made that claim twice before. Accordingly, this claim must be dismissed. 28 U.S.C. § 2244(b)(1); see also, Baptiste, 828 F.3d at 1339.

Carter also requested that the Eleventh Circuit certify this question of federal law to the United States Supreme Court for further review, but the Eleventh Circuit declined that initiation as well. See App. x A.

The current 28 U.S.C. § 2241 petition now ensue.

REASONS FOR GRANTING THE PETITION

As the Honorable Justice Brett Kavanaugh succinctly stated in a recent case:

Federal prisoners can seek post-conviction relief by filing an application under 28 U.S.C. § 2255. State prisoners can seek federal post-conviction relief by filing an application under § 2254. The issue in this case concerns second or successive applications. As relevant here, the law provides that a "claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed, § 2244(b)(1).

The text of that second or successive statute covers only applications filed by state prisoners under § 2254. Yet six Courts of Appeals have interpreted the statute to cover applications filed by state prisoners under § 2254 and by federal prisoners under § 2255, even though the text of the law refers only to § 2254. See Gallagher v. United States, 711 F.3d 315 (2d Cir. 2013); United States v. Winkelman, 746 F.3d 134, 135-136 (3d Cir. 2014); In re Bourgeois, 902 F.3d 446, 447 (5th Cir. 2018); Taylor v. Gilbey, 314 F.3d 832-836 (7th Cir. 2002); Winterspe v. United States, 913 F.3d 765, 768-769 (8th Cir. 2019); In re Baptiste, 828 F.3d 1337, 1340 (11th Cir. 2016).

On the flip side, the 4th, 6th, and 9th Circuits have all concluded that § 2244(b)(1) applies only to state prisoners under § 2254, not federal prisoners. See Williams v. United States, 927 F.3d 427 (6th Cir. 2019); Jones v. United States, 36 F.4th 974 (9th Cir. Jan. 10, 2022); In re Graham, 61 F.4th 433 (4th Cir. Mar. 8, 2023).

Importantly too, the United States now agree with the 4th, 6th, and 9th Circuits that "section 2244(b)(1) does not apply to section 2255 motions" and that the contrary view is inconsistent with the text of section 2244. In other words, the government now disagrees with the rulings of the six Courts of Appeals that had previously decided the issue in the government's favor. So the question is does "section 2244(b)(1) apply to both state and federal prisoners, or does section 2244(b)(1) apply only to state prisoners under § 2254?"

Rule 20.4: Reasons For Not Making Application To The District Court

Mr. Carter did not file this petition in the district court because:

- 1) The district court has no authority to review gatekeeping orders under 28 U.S.C. § 2244.
- 2) The district court can not provide the type of relief sought in this petition.
- 3) This petition is used as a vehicle to allow this court to review a second or successive application which are normally non-appealable, AND
- 4) Review of this current petition by the district court would be improper as the district court has no authority to review or overrule an appeal court decision.

CONCLUSION

Based upon the foregoing petition, Mr. Carter prays that this Honorable Court grant a writ of habeas corpus to allow this Court to review and resolve a circuit split involving a very important federal statute. We are begging to know this Court's interpretation of 28 U.S.C. § 2244(b)(1).
The petition for a writ of certiorari should be granted.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Dwight Carter Jr.

Date: 11/16/2023