23-6206

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

KEN EJIMOFOR EZEAH — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

KEN EJIMOFOR EZEAH
(Your Name)

L.S.C.I BUTNER, P.O. BOX 999
(Address)

BUTNER, NC 27509
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

SHOULD THE U.S SUPREME COURT ANNOUNCE A NEW RULE GUIDING THE LOWER COURTS APPLICATION OF THE CLEAR ERROR STANDARD OF REVIEW TO HABEAS CORPUS MATTERS PURSUANT TO THE FRAME-WORK IN BLACKLEDGE V. ALLISON 431 U.S 63 (1977)?

DOES THE SAVINGS CLAUSE PROVISION IN SECTION 2255(E) ALLOW THE COURT HAVING JURISDICTION OVER A PRISONERS CUSTODY PURSUANT TO 28 U.S.C 2241, ENTERTAIN A SUCCESSIVE 60(B) PETITION FOLLOWING THE DENIAL BY THE ORIGINAL 2255 HABEAS COURT AS UNAUTHORIZED?

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:

RELATED CASES

UNITED STATES OF AMERICA V. KEN EJIMOFOR EZEAH, No 5:19-CV-00939-D, U.S District Court for the Western District Of Oklahoma. Judgement entered September 26, 2022.

UNITED STATES OF AMERICA V. KEN EJIMOFOR EZEAH, U.S Court Of Appeals for the Tenth Circuit. Judgement entered February 7, 2023.

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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[ ] is unpublished.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[ ] is unpublished.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.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 2/7/2023.

[ ] 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: 3/20/2023, 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 8/17/2023 (date) on 7/24/2023 (date) in Application No. 23A59.

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 CONSTITUTIONAL PROVISIONS INVOCUED – FIFTH AMENDMENT AND SIXTH AMENDMEN
FOURTEENTH AMENDMENT

STATUTORY PROVISIONS – Code 28 U.S.C §2255
Code 28 U.S.C § 2241
Federal Rule of Civil procedure 60(B)

STATEMENT OF CASE

Petitioner filed a 60(b) petition in the Western District Court of Oklahoma on September 26 2022 requesting the court address three specific errors that affected the integrity of his Original 2255 petition filed and decided by the same court and subsequently denied by the Tenth Circuit Court of appeals in June of 2022.The District court treated the 60(b) petition as an unauthorized second or successive 28 U.S.C 2255 motion without clear reason and dismissed it for lack of jurisdiction and denied that motion on October 12 2022.

Petitioner claimed that the district courts written opinion and judgement in his 2255 petition failed to reflect the district courts consideration of his brothers supporting witness affidavit included and accepted into the record of that habeas proceeding, evidence that he claimed buttresses his alleged claim of counsels ineffectiveness during his judicial proceeding. Secondly, Petitioner pointed to Blackledge v. Allison, 431 U.S 63 (1977),arguing that the Supreme Court had emphasized that an evidentiary hearing is necessary to expose the truth especially in the absence of any counter-affidavit by the opposing party contradicting the petitioners posture of conversations that occured outside the record. Petitioner therefore alleged that while the district court relied on Blackledge in denying the original 2255, it had cherry picked the parts of that opinion and not embodied the entire reasoning of Blackledge. Petitioner claimed the district court was required to request supporting counter-affidavits from the opposing party knowledgable about the agreement and therefore made the habeas record incomplete.

Lastly, petitioner claimed that the district court failed to acknowledge his conflict of interest substitue for proof of prejudice which was clearly made in his opening brief and such claimed handsomely supported by settled circuit precedence when making an ineffective assistance of counsel claim.

These claims he asserted were attacks on the integrity of the proceedings rather than the merits.Petitioner insisted that not one of the three claims advocated or compelled the distruct court to decide his 2255 petition one or another.

Petitioner emphasized consistently that his case is materially indistinguishable from Blackledge v. Allison or at the very least is strikingly similar and therefore, compells the same result.

The Tenth circuit in denying Petitioners motion disagreed with that comparison and claimed the only similarity between the petitioners case and Blackledge was that they were both motions for reconsideration of a ruling.The Tenth Circuits panel paid no attention to anyother outlined factual similarities the petitioner clearly explained in his petition.

The Tenth circuits decision the petitioner claimed parted ways with the Fifth Circuit and the Fourth Circuit that decided Blackledge and more importantly with the U.S Supreme Court that affirmed the Fourth Circuits decision to grant Allison an Evidentiary hearing.

The Tenth Circuit denied COA on the 7th of February 2023 and rehearing was denied on the 20th of March 2023.

knowledge of the agreement" but that advice was never resolved as a rule,probably the court hoped that the lower courts would apply its discretion willingly to make this a practice but like in this case, several cases have been denied and gone unanswered by accused attorneys and subsequently denied as frivilous. It should never be so easy to dismiss a habeas litigants petition as frivilous with merely the district courts discretion to believe in a record that maybe incomplete in someone elses view.
It has not gone unnoticed that judges are human beings and are never excited about reopening a case theyve participated in its closure.Their apprehension is very well understood but Finality should not sacrificed for fairness in our system.That metric hurts the system in the long run more than it could ever help and errods public confidence in the entire process.

This court has consistently settled that given the seriousness of defendants entering guilty pleas Federal constitution insists among other things that (1) such plea be voluntary and (2) defendant must make related waivers knowingly, intelligently and with sufficient awareness of relevant circumstances and likely consequences United States v. Ruiz (2002,US) 153 L.Ed 2d 586,122 Sct 2450. Criminal defendants guilty plea can not be inferred from silence, it must be based on express affirmations made intelligently and voluntarily Florids v. Nixon (2004) 543 US 175,125 Sct 551,160 L.Ed 2d 565.

In this case the petitioner protests in his petition that he was adviced by his counsel to deny any other agreements just like Allison alleged in Blackledge.The allegation that he was silenced by his attorney and adviced to deny agreements, denied the defendant truthful expression of affirmation of the intelligence and voluntariness of that guilty plea.The constitutional requirements of due process are not met in such circumstances , Machibroda v. United States (1962) 368 US 487, 7 L.Ed 2d, 473, 82, Sct 510 , McCarthy v. United States (1969) 394 U.S 459, 22L Ed 2d 418, 89 Sct 1166. Petitioner protestion that his case is materially indistinguishable from Blackledge and compels the same result is for this honorable court to decide. Justice Breyer vibrantly stated "Judicial decisions are reasoned decisions and confidence in a judges use of reason underlies the public's trust in the judicial institution".

Petitioner invokes the governing jurisdictional review rule of the U.S Supreme Court (Rule 10(a)).That the Tenth Circuit Court of Appeals has entered a decision that cconflicts with Blackledge v. Allison, 431, U.S 63 (1977). "But before dismissing facially adequate allegations shorts of an evidentiary hearing, ordinarily a district court judge should seek as a minimum to obtain affidavits from all persons likely to have first hand knowledge of the existence of any plea agreement. see Walters v. Harris 460 F.2d, at 992.

The Tenth Circuits decision in this case effectively precludes the petitioner from demonstrating the merits of his claim and just like Allison in Blackledge v. Allison 431 U.S 63 (1977) was denied a full and pair opportunity to presentation and careful considertion of the relevant facts.The lower courts decision clearly creates a conflict with Blackledge and its progeny and it not addressed, will limit the ability of many criminal defendants to vindicate their constitutional right to effective counsel.

The Tenth circuits decision in this matter, recognizing the striking similarities between the arguments in Blackledge being similar to this case, has decided a matter in a manner that directly and unrefuttably conflicts with the decision of the fourth circuit in the Blackledge case at the appellate level and more importantly it conflicts with the Supreme Courts concurrence with the Fourth Circuits ruling on that matter.

The Fifth circuit has also developed a three prong approach modelled behind this courts decision in Blackledge.It speaks to the national importance of this case because if the Fifth Circuit found it prudent to implement a three prong approach that demands credible supporting third party evidence to support such a claim just as he Blackledge court found, then it is only because that Circuit is one who recognized the importance of this kind of challenge and i pray this court endorses the Fifth circuits approach and endorse such a multi pronged approached to reinforce how important Blackledge has become to the promotion of fairness during guilty plea negotiations.

This honorable court may find this case necessary to seek Amicus intervention on these constitutional questions to effectively and properly unpack these matters raised by a pro-se litigant, as petitioner here requests affirmatively for Oral Argument on these very important matters of constitutional magnitude.

A rule 60(b) petition attacking the intergrity of a habeas proceeding is in actuality an allegation by a habeas petitioner that he never had his first bite at the apple at all.If then transferred to the court having jurisdiction over the prisoners custody and that court determines that the 60(b) petition is infact a true 60(b) petition, parting ways with the trial court, that court would have essentially made the determination that defendant has met the burden that his orginial 2255 petition to the trial court was inadequate or ineffective, and incompliance with the savings clause under section 2255 should trigger the courts jurisdiction to review that petition pursuant to 28 U.S.C 2241.

Courts agree that pursuant to the savings clause in 28 U.S.C 2255 a federal prisoner may bring a claim challenging his conviction or imposition of sentence under 28 U.S.C 2241, if it appears that the remedy afforded under 2255 is inadequate or ineffective to test the legality of his detention.Significantly, the 2255 remedy is not considered inadequate or ineffective simply because *2255 relief has already been denied or because the petitioner is procedurally barred from pursuing relief under *2255, or because the petitioner has been denied permission to file a second or successive motion to vacate. It is the petitioners burden to establish that his remedy under *2255 is inadequate or ineffective.

Petitioner here argues that is exactly what a Rule 60(b) petition embodies. It is a petition that all courts agree should be attacking the integrity of a habeas proceedings and not the merits determination of that proceeding.It focuses on the fairness of the process.Therefore its easy to understand that such a motion doesnt argue that the *2255 motion was denied or that it should permit the petition to be considered as a successive *2255 claim, rather it argues that regardless of the outcome, the process could not have been fair.That attack essentially alleges that his right to the one bite at the section *2255 apple was never truly had and could not have been an effective vehicle for him to have been heard.

Under the savings clause in *2255, a federal prisoner could challenge his conviction under 2241,if the 2255 remedy was inadequate or ineffective- Charles v. Chander 180 F.3d 753 (6th cir.1999).

Petitioner contends that the 7th Circuit has reasoned in similar fashion that "the savings clause applies only when a structural problem in 2255 forcloses even one round of effective collateral review" Taylor v. Gilkey 314 F.3d 832,835(7th cir.2002).That something more than a lack of success with a section 2255 motion must exist before the savings clause is satisfied.A determination by a court having jurisdiction over the prisoner,that has been presented a true 60(b) motion alleges exactly that,Not that the *2255 was unsuccessful but it was unreasoned therefore the savings clause thus should apply.

And just because no court has applied the savings clause to a 2241 petition outside the context of an actual innocence claim in seeking proof of establishing the inadequecy or ineffectiveness of a 2255, does not mean it is a question ignored. Infact it makes that question even more important to encourage the public to learn that such a vehicle is available to them if they can meet the burden.

Let us discuss the human contention.It isnt far fetched for us as humans to understand that a trial judge may not be enthusiatic to reopen a matter he has since closed by honoring a 60(b) petition. The courts have wrestled with the whether on not the same trial court should hear a section 2255 petition attacking its own trial determination.Too many criminal defendants have argued for a different judge to hear their 2255 motions only because they fear bias that they sense but maynot be able to prove.The courts however have sided with judicial economy and decided that a trial judge that is well knowledgable about the case should be the one to correct errors brought by collateral attack.Offering the court the chance to develop the record with facts that may have been unrecorded during the trial phase.All this in the hopes that the process enjoys a truly impartial adjudication.

The circuit courts are themselves overwhelmed by the number of appeals and COA requests,that it would reduce at the very least COA requests for denied 60(b) motions and allow another district court to look at the matter, promoting federalism as should be embraced in accordance with constitutionalism.In addition,a successive a 60(b) petition to a different court doesnt offend the law as it stands Under 2255(e)savings clause which permits another court to review that habeas matter after a certain standard has been met.

Pursuant to 28 U.S.C.S 2244(b)(3)(c), the applicant is required to make a prime facie showing that he is entitled to relief before permission to file a second or successive motion can be granted.

Whether courts having jurisdiction over a prisoners custody should entertain a successive 60(b) petition as a gateway to access 2241 jurisdiction? is a question for this court to answer.Once again,constitutional rights should not be violated and sacrificed for judicial expediency or finality.

The importance of this question was sufficiently emphasized by the nationwide interest in the outcome of Jones v. Hendrix but this matter wasnt fully resolved by that case because the nation and constitutional experts still want to understand the meaning and applicability of 2255(e).Why would Congress provide a savings clause for a near impossible scenerio?.This honorable court is so tasked.

Once again,finality over fairness hurts the system in the long run more than it helps.Even today the public's doubtful sentiments about of a fair chance at getting justice in the system continues to increase.Our justice system begs for light.Courts can no longer stand by judicial expediency as an excuse to everything.The roads less travelled must eventually serve the purpose they were paved for,someday and at some point.Thank you.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

KEN EJIMOFOR EZEAH

Date: 8/28/2023