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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

WALTER FREEMAN JORDAN JR.

PETITIONER,

v.

UNITED STATES OF AMERICA

RESPONDENT.

On Petition for a writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit.

QUESTION(S) PRESENTED

Where Post Conviction Counsel filed only two issues that were both meritless in the face of "more obvious" meritorious issues, and then filed the meritless issues late, or "out of time"; Did the Fifth Circuit Court of Appeals err in denying Petitioner A C.O.A.?

PARTIES TO THE PROCEEDINGS

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PETITION FOR A WRIT OF CERTIORARI

PETITIONER WLAHER FREEMAN JORDAN III petitions this Court for a writ of certiorari to review the Judgment of the United States Court of Appeals for the Fifth Circuit.

DECISIONS BELOW

The Fifth Circuit's decision is unpublished and is included as Appendix A. The May 9, 2023, Memorandum of Opinion and Order of the United States District Court for the Southern District of Texas denying PETITIONER'S RULE 60 (b) Motion is included as Appendix B. Order of the District Court denying PETITIONER'S 3:22-55 is included as Appendix C. The Fifth Circuit's decision denying Direct Appeal is at 945 F.3d at 245, 251, 255-259.

JURISDICTION

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on October 31, 2023. This petition is filed within 60 days of the Judgment. This Court has Jurisdiction under 28 U.S.C. § 1254(i).

~~CONSTITUTIONAL~~ PROVISIONS INVOLVED

The Sixth Amendment to the U.S. Constitution provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

On September 25, 2017, Jordan pleaded not Guilty to one Count of Aiding and Abetting the robbery of a Credit Union in violation of 18 U.S.C. §§ 2113 (a), (d), and 2; and one Count of Aiding and Abetting the brandishing of a firearm, in violation of 18 U.S.C. § 924 (e) (1) (A) (ii) and 2. The trial took place from January 22, 2018, through January 25, 2018, and the Jury returned a guilty verdict on both counts and sentenced Jordan to 262 months on Count One, to be served consecutively with 84 months on Count two, for a total of 346 months incarceration, followed by 5 years supervised release. Jordan timely appealed and the Fifth Circuit affirmed the conviction and sentence on December 13, 2019, Jordan, 945 F.3d at 245, 251, 255-259. Jordan filed a petition for certiorari in the Supreme Court, which was denied on April 20, 2020. Jordan was then referred to Attorney Norwood Nicholas Richardson of Houston, Texas, whom Jordan subsequently retained to research the case and identify appealable issues, then perfect and file his § 2255. Mr. Richardson defrauded Jordan out of his money and filed two issues without merit "past the filing Deadline". On 12/11/21 the Respondent filed A Motion to dismiss as "time barred", and on May

16, 2022 the Court GRANTED Respondent's Motion to Dismiss.

On or About April 25, 2023 Jordan filed A pro se motion for relief under Federal Rules of Civil Procedure 60(b)(2) and (b)(6) citing Ineffective Assistance of Counsel Because Jordan filed the motion eleven months after the Court denied his § 2255 the Court dismissed the Rule 60 motion as "ultimately". Jordan appealed the dismissal of the Rule 60 motion to the Fifth Circuit Court of Appeals identifying 12-meritorious issues the Counsel failed to raise and asked the Court to grant a C.O.A. Jordan, No. 23-20247. On October 31, 2023 the Fifth Circuit denied the appeal stating that "Jordan challenges the validity of his convictions and sentences in various claims raised for the first time before the Court and "does not meaningfully challenge the district Court's dismissal of his Rule 60(b) motion." As such, it appears that the Fifth Circuit failed to factor in Post Conviction Counsel's ineffectiveness and it resulted in Mr. Jordan being denied post conviction relief where he had valid and meritorious arguments that he would have prevailed upon had it not been for Counsel's ineffectiveness.

REASON(S) FOR GRANTING THE PETITION

REASONABLE JURISTS COULD DEBATE WHETHER
TRIAL AND POST CONVICTION COUNSEL WAS
INEFFECTIVE. THUS PETITIONER WAS ENTITLED TO
A CERTIFICATE OF APPEALABILITY (COA).

I COA SHOULD HAVE BEEN ISSUED

"DETERMINATION WHETHER TO ISSUE CERTIFICATE OF
APPEALABILITY REQUIRES OVERVIEW OF CLAIMS IN
HABEAS PETITION AND GENERAL ASSESSMENT OF
THEIR MERITS." MILLER-EL V. COCKRELL, 537 U.S.
322 (2003) (QUOTING 28 U.S.C. A. § 2253(C)).

BECAUSE POST CONVICTION COUNSEL FAILED TO
IDENTIFY SEVERAL MERITORIOUS ISSUES ON APPEAL
AND FURTHER COMPOUNDED HIS INADEQUACY BY
FILING MR. JORDAN'S § 2255 LATE AND CAUSING
IT TO BE DISMISSED AS "UNTIMELY", PETITIONER
WAS FORCED TO IDENTIFY HIS OWN APPEALABLE
ISSUES AND APPEAL TO THE FIFTH CIRCUIT
COURT OF APPEALS TO ISSUE A COA AFTER
THE DISTRICT COURT DENIED HIS RULE 60(b)
MOTION. (SEE MOTION FOR A COA; APP. D)

ATTORNEY NORWOOD RICHARDSON ATTEMPTED
TO ADVANCE ONLY TWO ARGUMENTS IN HIS
§ 2255 MOTION; (1) THE SUFFICIENCY OF THE
EVIDENCE TO SUPPORT THE CONVICTION FOR
THE FIREARMS OFFENSE IN VIOLATION OF 18
U.S.C. §§ 924(C)(1)(A)(ii), AND (2) THE COURT'S
TECHNICAL APPLICATION OF THE SENTENCING

GUIDELINES BASED ON AN ADJUSTMENT FOR
OBSTRUCTION OF JUSTICE.

THE GOVERNMENT FILED A MOTION TO
DISMISS STATING THAT THE § 2255 MOTION IS
"UNTIMELY" AND "INADEQUATELY PLED." id.
Doc. 396 Filed on (12/1/21).

ATTORNEY RICHARDSON FAILED TO RESPOND TO
THE MOTION TO DISMISS AND THE COURT
ADOPTED THE GOVERNMENT'S REASONING AND
DISMISSED THE § 2255. Doc 413 (5/16/22)

MR. JORDAN RELIED ON STRICKLAND v.
WASHINGTON, 466 U.S. 668 [104 S.Ct. 2052, 80
L.Ed. 2d 674] (1984) AND MARTINEZ v. RYAN
566 U.S. 1, 132 S.Ct. 1309, 182 L.Ed. 2d 272
(2012) TO ADVANCE HIS OWN PRO SE INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIMS AND IDENTIFIED
THE TWELVE APPEALABLE MERITORIOUS ISSUES SET
FORTH THEREIN (SEE App. D)

THE FIFTH CIRCUIT DENIED THE MOTION FOR A
COA STATING THAT "JORDAN CHALLENGES THE
VALIDITY OF HIS CONVICTIONS AND SENTENCES
IN VARIOUS CLAIMS FOR THE FIRST TIME BEFORE
[THE] COURT." AND "HE THUS DOES NOT
MEANINGFULLY CHALLENGE THE DISTRICT COURT'S
DISMISSAL OF HIS RULE 60(b) MOTION." id.

THE FIFTH CIRCUIT FAILED TO FACTOR IN JORDAN'S
INEFFECTIVE ASSISTANCE OF COUNSEL'S CLAIMS
AND THAT COUNSEL "INADEQUATELY PLED" ONLY
TWO UNMERITORIOUS ISSUES AND HE FILED

those issues late and the § 2255 was dismissed as "untimely", thus there was, in essence no § 2255 for the Court to review.

In Jordan's Motion for a COA Mr. Jordan laid out the issues that Counsel "Should have pled 'adequately', relied on ineffective assistance of Counsel precedent to explain why they were not filed on § 2255 and why the issues was before the Court in the COA motion. Jurists of reason could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. 28 U.S.C.A. § 2253(c); Thus a COA should have been issued.

II EQUITABLE TOLLING WAS WARRANTED

"Equitable tolling is warranted where [], the petitioner can establish that he was affirmatively misled by the attorney." United States v. Wynn, 292 F.3d 226, 230 (5th Cir. 2002); United States v. Riggs, 314 F.3d 796, 799 (5th Cir. 2002). (Noting that an attorney's intentional deceit may be a basis for equitable tolling.) It's clear that Attorney Richardson lied about his qualifications in order to swindle Mr. Jordan out

of his money; no "qualified attorney" would inadequately plead every issue he put forth as Attorney Richardson did, and then file the petition out-of-time.

Mr. Richardson's conduct was 'sufficiently Egregious' and this alone Justifies

Equitable tolling. Wessinger v. Cain, 358 F. Supp. 2d 1523, 529-30 (M.D. LA. 2005).

The Court(s) have held that Equitable tolling "of the one year clock may be allowed if (1) 'You've been pursuing your rights diligently'; and (2) 'Some Extraordinary Circumstance' stood in your way and prevented timely filing." Holland v. Florida, 560 U.S. 631 (2010). Mr.

Jordan showed reasonable diligence by first hiring an Attorney to pursue his rights, and when that attorney's deficient performance cost him his \$2255, Mr. Jordan showed further diligence by hiring a "Jailhouse Lawyer" to equitably toll the clock because said lawyer filed the \$2255 late.

The Jailhouse Lawyer filed a motion pursuant to Rule 60(b) and the Court denied the motion as "untimely" because the Jailhouse Lawyer filed it almost eleven months later which brings us to where we are today and Mr. Jordan's continuing acts of diligence.

III WHY THE COURT SHOULD GRANT CERT.

The Sixth Amendment right to Counsel "is the right to the effective Assistance of Counsel." Strickland, 466 U.S., at 686, 104 S.Ct. 2052 (quoting McMann v. Richardson, 397 U.S. 759, 771, n. 14, 90 S.Ct. 1441, 25 L.Ed. 2d 763 (1970)). Mr. Jordan here shows that his counsel performed deficiently, and that deficient performance caused him prejudice. 466 U.S. at 687, 104 S.Ct. 2052. Mr. Jordan relied on his attorney (an officer of the court) to identify meritorious appealable issues, and to file those issues in a timely manner; The attorney failed in both regards.

"When Counsel's ineffectiveness rises to the level of affirmative misrepresentation it may warrant equitable tolling. See Didon v. Winchester, 2011 U.S. Dist. LEXIS 13113 (S.D. Miss. 2011); Olive v. Quarterman, 2007 U.S. Dist. LEXIS 101814 (N.D. Tex. 2007); Hurst v. Cain, 2008 U.S. Dist. LEXIS 70262 (E.D. La. 2008).

Mr. Jordan, a prisoner going through a global pandemic of COVID-19 with the prisons many restrictions limiting his access to legal resources and the courts took pains to hire an attorney in the courts jurisdiction whom professed to know the court rules pertaining to § 2255. That attorney's deficient performance set

off a chain reaction that have led us here to the Supreme Court. Thus the Rule 60(b) holding would be reviewed for Abuse of discretion during a merits appeal; see 11.

C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2857 (3d Ed. 2012).

The COA question is therefore whether a reasonable Jurist could conclude that the District Court Abused its discretion in declining to reopen the Judgment?

IV. BY FILING ONLY TWO ISSUES, BOTH WITHOUT MERIT, WHERE MORE "OBVIOUS AND CLEAR" MERITORIOUS ISSUES EXIST; AND THEN FILING THE MERITLESS ISSUES LATE COUNSEL RENDERED CONSTITUTIONALLY INEFFECTIVE ASSISTANCE REGARDING REOPENING THE JUDGMENT

For the reasons discussed Supra, the Court's refusal to reopen its Judgment and allow Mr. Jordan to present the issues pro se that deficient Counsel neglected to file violated Jordan's constitutional rights without regard to Attorney Richardson's effectiveness as counsel; Furthermore, the Court's refusal to reopen the Judgment allowing for equitable tolling where

deficient Counsel filed Jordan's 32255 "out of time" violated Jordan's Constitutional rights without regard to Attorney Richardson's effectiveness as Counsel and has caused a fundamental miscarriage of Justice, Mr. Richardson's failure to identify and file the more "obvious and clear" meritorious issues and to file them in a timely manner constituted ineffective assistance under Strickland v. Washington; Supra Martinez v. Ryan; Supra. And United States v. Cronin, 466 U.S. 648 (1984).

Attorney Richardson's actions or inaction represents the "most obvious" ineffective assistance of Counsel claim; the complete denial of counsel. Cronin; Supra. In this case Counsel's failure alone "demonstrate[s] a denial of the 'right to have the effective assistance of Counsel,'" and Jordan "need not demonstrate prejudice in order to obtain relief" Cuyler v.

Sullivan, 446 U.S. 335, 349 (1980). Criminal Attorney's bears "the overarching duty to advocate the defendant's cause,"

Strickland, 466 U.S. at 688, and "must take all reasonable lawful means to attain the objectives of the client."

Alex v. Whiteside, 475 U.S. at 166 (1986);

SEE ALSO, E.G., ADR MODEL RULE 1.2.(a)
("A lawyer shall abide by a client's
decisions concerning the objectives of
the representation"). But Attorney Richardson
failing to identify clearly obvious merit-
orious issues and filing those issues
in a timely manner stripped Jordan
of his prerogative to determine the
ultimate objective of the representation.
It is difficult to imagine a more
prejudicial course for counsel to take.
Jordan is entitled to have his judgment
reopened.

CONCLUSION

The Fifth Circuit's Judgment should
be REVERSED.

Respectfully Submitted
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