

23-6620

FILED

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SUPREME COURT U.S.

No. \_\_\_\_\_

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_, TERM, 202\_\_\_\_\_

BRUCE A. QUARLES, PETITIONER

VS.

WARDEN MARIANNA FCI, ET. AL., RESPONDENTS

PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Bruce A. Quarles, #AM6335  
SCI-Phoenix  
1200 Mokychic Drive  
Collegeville, PA 19426

QUESTIONS PRESENTED

A. IS AN IMPOSITION OF A DILIGENCE REQUIREMENT UPON A TIMELY FILED FEDERAL RULES OF CIVIL PROCEDURE 60(d)(1) MOTION A VIOLATION OF THE RULE?

Suggested Answer: Yes

B. DOES AN EX POST FACTO IMPOSITION OF A DILIGENCE REQUIREMENT UPON A TIMELY FILED RULE 60(d)(1) MOTION AND DENYING THE MOTION BECAUSE IT COULD HAVE BEEN FILED SOONER WITHOUT PROVIDING PETITIONERS WITH AN OPPORTUNITY TO PRESENT AN EXPLANATION FOR WHY THE MOTION WAS NOT FILED SOONER VIOLATE THE DUE PROCESS CLAUSE OF THE CONSTITUTION?

Suggested Answer: Yes

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PETITION FOR A WRIT OF CERTIORARI  
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Petitioner, Bruce A. Quarles, respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Third Circuit entered on July 24, 2023.

I.

OPINION BELOW

The order of the Court of Appeals is attached as Appendix A. The Court of Appeals September 13, 2023, Sur Petition for Panel Rehearing Order denying Petitioner's petition for panel rehearing is attached as Appendix B. The District Court for the Eastern District of Pennsylvania order and opinion are attached as Appendix C.

II.

JURISDICTION

The order of the Court of Appeals for the Third Circuit denying Petitioner's motion for a panel rehearing was filed on September 13, 2023. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

III.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment, Section One of the United States Constitution provides:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV.

STATEMENT OF THE CASE

Pursuant to Federal Rules of Civil Procedure 60(d)(1), in February, 2023, Petitioner filed a timely motion in the U.S. District Court for the Eastern District of Pennsylvania for an independent action to have the 1991 Order denying his pro se §2254 habeas corpus petition vacated because the District Court's resolution on the Brady violation presented in the habeas petition constitutes a miscarriage of justice. There being no time restrictions on when such a motion can be filed, Petitioner did not include in his motion an explanation for why he did not file it sooner because the Rule, nor the U.S. District Court for the Eastern District of Pennsylvania Local Rules of Civil Procedure, indicates that a diligence showing is required with a timely filed Rule 60(d)(1) motion seeking an independent action. The Third Circuit recognized that there are no time restrictions on the motion via its statement that "there are no express time limits to motions under Rule 60(d)," but contradicts that recognition in its upholding of the District Court's denial of the motion because Petitioner "did not need to wait to bring his Motion" and was "negligent by failing to bring it sooner" (District Court Opinion, 3/14/23, p. 3, Appendix C): "Nothing in the record explains, much less excuses, the thirty-year delay in filing Appellant's Rule 60(d) motion." (Third Circuit 7/24/23 Order, Appendix A).

V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO EXPOUND ON THE INDEPENDENCE OF THE INDEPENDENT ACTION.

The Third Circuit in this case has upheld a non-legislative expansion of the diligence requirements that the Legislature enacted to apply exclusively to untimely filed 28 U.S.C. §2254 habeas corpus and Federal Rules of Civil

Procedure 60(b) motions, to apply to motions filed timely pursuant to Federal Rules of Civil Procedure 60(d)(1) for an independent action.

B. IF ALLOWED TO STAND, THE DILIGENCE REQUIREMENT THE THIRD CIRCUIT UPHELD HERE WILL DENY PETITIONERS THE DUE PROCESS RIGHT GUARANTEED TO THEM BY THE U.S. CONSTITUTION.

In this case the District Court imposed the diligence requirements for untimely filed §2254 habeas corpus and Rule 60(b) motions upon Petitioner's timely filed Rule 60(d)(1) motion after it was filed and denied the motion assuming Petitioner could have filed it sooner. No notice of the Court's intent to subject Petitioner's motion to those motions' diligence requirements was given, nor did the District Court afford Petitioner with an opportunity to present an explanation as to why he did not file the motion sooner before it denied the motion for not having been filed sooner. Imposing the diligence requirement ex post facto on Petitioner's motion and not giving him notice of its intent and an opportunity to present an explanation as to why he could not file the motion sooner, violates the due process clause of the U.S. Constitution.

#### VI.

#### CONCLUSION

This case presents an important constitutional issue regarding the Legislative intent in enacting Federal Rules of Civil Procedure 60(d)(1) to provide citizens with a procedure for obtaining an independent action to relieve them from a judgment, order, or proceeding for various reasons, including in a case of a miscarriage of justice. The Third Circuit has here sanctioned a lower court's deviation from the procedure in a way that implicitly restricts the "no express time limit" the Third Circuit says itself that petitioners have to seek an independent action for a resolution of a miscarriage of justice. This Court here has an opportunity to expound on the Legislature's intent for enacting the no time limit independent action. This

case has established a dangerous precedent which if not clarified, other lower courts might unwisely choose to adopt.

Respectfully submitted,

*B. A. Quarles*

Bruce A. Quarles, #AM6335  
SCI-Phoenix  
1200 Mokychic Drive  
Collegeville, PA 19426

Dated: December 1, 2023