No. 23-7066

IN THE
Supreme Court of the United States

TREMANE WOOD,
Petitioner,

vs.

CHRISTE QUICK, WARDEN, OKLAHOMA STATE PENITENTIARY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Petitioner Tremane Wood respectfully replies to Respondent Christe Quick's arguments opposing his Petition for a Writ of Certiorari. Respondent claims, first, that the question presented here—i.e., whether federal appellate jurisdiction exists under 28 U.S.C. § 1291 over the final Rule 60(b) *decision* of a district court in a habeas case if, in a single *order*, the district court decides that a Rule 60(b) motion is a second-or-successive habeas petition and transfers that petition to the court of appeals for authorization under 28 U.S.C. § 2244(b)—is moot due to the court of appeals' decision in *In re Tremane Wood*. In that decision, the court of appeals construed Mr. Wood's Rule 60(b) Motion as an unauthorized second-or-successive habeas petition that fails to comply with § 2244(b)[1] and denied his request for remand on that basis.[2] (Br. in Opp. at 1–2, 7–11.) Second, Respondent disagrees that the Tenth Circuit's § 1631 transfer procedure for adjudicating Mr. Wood's Rule 60(b) motion is an "outlier" among the federal courts of appeals. (Br. in Opp. at 11–12.) And third, Respondent maintains it is clear that § 2244(b)(3)(E) does not strip this Court of jurisdiction to review the court of appeals' *In re Tremane Wood* decision. (Br. in Opp. at 13 & n.9.)

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[1] Unless otherwise noted, unadorned statutory citations are to Title 28 of the United States Code.

[2] Mr. Wood will be seeking this Court's certiorari review of that decision. (*See* Pet. at 2, n.2.)

As demonstrated by Mr. Wood's Petition and herein, Respondent's first two arguments don't hold up under scrutiny.[3] Meanwhile, Respondent's third argument—while appreciated and one that Mr. Wood hopes is ultimately correct—is far from clear cut and will be among the questions presented to this Court for resolution in Mr. Wood's anticipated Petition for a Writ of Certiorari to review the court of appeals' *In re Tremane Wood* decision which will be filed on or before May 9, 2024.

This Court should grant the Petition, summarily reverse the decision below, and remand with instructions for the court of appeals to take jurisdiction over Mr. Wood's appeal.

ARGUMENT

I. The question presented here is not mooted by the court of appeals' *In re Tremane Wood* decision where it remains unclear whether this Court can review that decision by way of a writ of certiorari given 28 U.S.C. § 2244(b)(3)(E)'s jurisdiction-stripping provision.

Respondent argues that the Question Presented "is a procedural question that has no bearing on the outcome of his case" because "the Tenth Circuit has already

[3] Nor does the record support Respondent's claim that "Wood committed the murder, not his brother." (Br. in Opp. at 2.) Indeed, it is precisely because the State had *no evidence* that Mr. Wood killed the victim, especially considering that Mr. Wood's brother confessed to carrying out the killing, that the State charged Mr. Wood with felony murder rather than with premeditated murder. *See Wood v. State*, 158 P.3d 467, 470 (Okla. Crim. App. 2007) (reflecting that Mr. Wood was charged with first degree felony murder under Okla. Stat. Ann. tit. 21, § 701.7(B)); *see also* Okla. Stat. Ann. tit. 21, § 701.7(B) (2004) (defining first degree felony murder as a death that occurs in the course of an enumerated felony caused by "that person *or any other person*" engaged in the felony (emphasis added)).

decided the issue at the heart of Wood's procedural question in a separate appeal." (Br. in Opp. at 7–8.) Respondent's argument is misguided.

"[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969). But "[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016) (quoting *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)) (internal quotation marks omitted)). Under this test, Respondent's effort to portray the jurisdictional question presented here as mooted by the court of appeals' *In re Tremane Wood* decision is a red herring.

The controversy here concerns the finality and appealability under 28 U.S.C. § 1291 of the district court's Rule 60(b) decision. Mr. Wood's Petition argues that under the test of finality announced by this Court in *Catlin v. United States*, 324 U.S. 229, 233 (1945), the district court's decision that his Rule 60(b) Motion was "not a true Rule 60(b) motion" is final and appealable under 28 U.S.C. § 1291, and the court of appeals below erred in dismissing his appeal for lack of jurisdiction to review that decision. (Pet. at 9–17.) Here, as in the court of appeals below, Respondent counters that the court of appeals lacked appellate jurisdiction under 28 U.S.C. § 1291 to review the district court's Rule 60(b) decision. (Br. in Opp. at 13–16; Pet. App. 113a–131a.) That amounts to a "live" controversy wherein Mr. Wood suffered a concrete injury—i.e., dismissal of his appeal—and in which he retains a concrete interest in

the outcome. *Powell*, 395 U.S. at 496; *Campbell-Ewald Co.*, 577 U.S. at 161. Respondent's mootness argument has no basis in law or fact, and this Court should reject it.

II. The Tenth Circuit's 28 U.S.C. § 1631 transfer procedure for adjudicating Rule 60(b) motions in habeas cases is an outlier among the lower federal courts.

Without rebutting Mr. Wood's showing that the § 1631 transfer procedure for adjudicating Rule 60(b) motions in habeas cases is unique to the Tenth Circuit, rendering how the court below handled Mr. Wood's Rule 60(b) motion an outlier among the lower federal courts, Respondent nonetheless insists that the Tenth Circuit is not an outlier. (Br. in Opp. at 11–12.) But simply stating as much does not make it so. Respondent points to no other circuit court of appeals that handles Rule 60(b) motions in habeas cases the way the court below treated Mr. Wood's motion.

Tellingly, the only case Respondent cites is a federal district court case out of the District of Columbia in which a pro se federal prisoner filed what was indisputably a successive collateral attack on "his conviction and sentence" mislabeled as a Rule 60(b) motion that the district court transferred to the court of appeals for authorization under § 2255(h) and § 2244(b). (Br. in Opp. at 12 (citing *United States v. Akers*, 519 F.Supp.2d 94, 95–97 (D.D.C. 2007).) Mr. Wood's Rule 60(b) Motion, by contrast, did not advance a collateral attack on his conviction or sentence, rather it challenged the defect in his habeas proceeding stemming from the district court's failure to discharge its independent duty to review the last-reasoned state

court decision adjudicating his *Strickland*[4] claim. (*See* Pet. at i.) *Akers* is thus distinguishable on its facts. It also had nothing to do with the finality and appealability under § 1291 and this Court's precedent of a district court's decision that a Rule 60(b) motion in a habeas case is "not a true Rule 60(b) motion."

III. Whether this Court has jurisdiction to review the court of appeals' *In re Tremane Wood* decision given 28 U.S.C. § 2244(b)(3)(E)'s jurisdiction-stripping provision is far from clear cut and remains to be decided.

Contrary to Respondent's suggestion otherwise (Br. in Opp. at 8–13), the court of appeals' *In re Tremane Wood* decision is only relevant insofar as it illustrates the dilemma created by the court of appeals' decision below dismissing Mr. Wood's appeal of the district court's Rule 60(b) decision for lack of jurisdiction given the jurisdiction-stripping provisions enacted by Congress in § 2244(b)(3)(E).

As Mr. Wood's Petition explains (Pet. at 18–21), he intends to seek this Court's certiorari review of the court of appeals' *In re Tremane Wood* decision where among the questions presented will be whether this Court can review that decision given § 2244(b)(3)(E). If the answer to that question is "no"—i.e., that § 2244(b) strips this Court of jurisdiction to review the court of appeals' *In re Tremane Wood* decision—then unless appellate jurisdiction over the district court's Rule 60(b) decision exists here under § 1291, the outlier transfer procedure used by the court below for adjudicating Mr. Wood's Rule 60(b) Motion will have circumscribed the operation of

[4] *Strickland v. Washington*, 466 U.S. 668 (1984).

Rule 60(b) contrary to AEDPA, Congressional intent, the federal civil and appellate rules, and this Court's decisions in *Gonzalez v. Crosby*, 545 U.S. 524 (2005), and *Browder v. Director, Dept. of Corr. Of Illinois*, 434 U.S. 257 (1978). (Pet. at 17–21.)

While Respondent insists that § 2244(b)(3)(E) will pose no barrier to this Court's certiorari jurisdiction over the court of appeals' *In re Tremane Wood* decision (Br. in Opp. at 12–13 & n.9), that is far from a foregone conclusion considering the record and procedural context of that decision, AEDPA's statutory text, and the narrowness of the question answered by this Court in *Castro v. United States*, 540 U.S. 375 (2003). (*See e.g.*, Pet. at 18–19 n.6.)

IV. The district court's decision below that Mr. Wood did not bring a "true Rule 60(b) motion" is final and appealable under 28 U.S.C. § 1291.

Respondent acknowledges that under § 1291 federal appellate jurisdiction exists over final *decisions* of the district courts, and that final decisions are those that "end[] the litigation on the merits[]" in a given forum. (Br. in Opp. at 13 (quoting *Catlin*, 324 U.S. at 233).) Respondent also does not appear to disagree that the district court's decision that Mr. Wood's Rule 60(b) Motion was "not a true Rule 60(b) motion" ended the litigation over that motion in the district court. Instead, the crux of Respondent's argument is that the district court's *order* disposing of Mr. Wood's Rule 60(b) Motion wasn't final or appealable under § 1291 because, in addition to deciding that Mr. Wood's Rule 60(b) Motion did not challenge a defect in the integrity of his habeas proceeding, the district court also transferred what it reconstrued as a second-

or-successive petition to the court of appeals for authorization under § 2244(b). And, so goes Respondent's argument, because "a transfer *order* pursuant to 28 U.S.C. § 1631 typically does not end the litigation[,]" the district court's Rule 60(b) *decision* contained in that same order is unreviewable by way of appeal. (Br. in Opp. at 13 (emphasis added).) The problem with Respondent's argument is that it presupposes that a single *order* cannot contain both final and non-final *decisions*—a presupposition that collapses under this Court's decision in *Radio Station WOW v. Johnson*, 326 U.S. 120 (1945), where it rejected such a hyper-technical approach to federal appellate jurisdiction. (*See* Pet. at 10–14.)

In an effort to avoid *Radio Station WOW*'s straightforward lesson, however, Respondent purports to distinguish it by reducing it to its bare facts: Because "Wood's case obviously does not involve the immediate delivery of physical property[,]" it is, according to Respondent, irrelevant. (Br. in Opp. at 14.) But that ignores *Radio Station WOW*'s extensive threshold discussion of federal appellate jurisdiction, including this Court's rejection of "mechanical rule[s]" and its analysis of the finality and reviewability of various *decisions* "decreed *in the same order*." 326 U.S. at 125–26 (emphasis added).

CONCLUSION

This Court should grant the petition, summarily reverse the decision below, and remand with instructions to take jurisdiction over Mr. Wood's appeal.

Respectfully submitted: May 7, 2024.

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