

No. _____

23-7301

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 22 2024

OFFICE OF THE CLERK

In Re Reginald Burrell — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF **CERTIORARI**

PETITION FOR WRIT OF **CERTIORARI**

Reginald Burrell

(Your Name)

1401 Highway 20 west

(Address)

Decatur, Alabama 35601

(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Whether the U.S. Court of appeals for the Eleventh Circuit entered a decision, or proposed to enter a decision in conflict with other U.S. Courts of appeals and this U.S. Supreme Court on the same important matter of granting equitable relief against fraudulent judgments.

Whether the U.S. Court of appeals for the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceeding, - to review its lower court decision denying a Fraud on the Court Rule 60(b) motion for abuse of discretion, - have sanctioned the lower court to enter the decision in conflict with other U.S. Courts of appeals and this U.S. Supreme Court on the same important matter of granting equitable relief against fraudulent judgments as to call for an exercise of this Court's Supervisory power.

Whether the U.S. Court of appeals for the Eleventh Circuit has presumptively decided an important question of federal law that has not been, but should be, settled by this Court + that 28 U.S.C. § 2253(c)(2) requisite to equitable relief against uncontested fraudulent judgments on Rule 60(b)(3) motions.

PARTIES TO THE PROCEEDING

Alabama Department of Corrections, Central Records Division;
Alcorneilla Terry, Correctional Records Director;
Steve Watson, Director ADOC;
Warden Sharon Langford.

Corporate Disclosure Statement

Petitioner is a individual, which, is not a publicly traded company.

Alabama Department of Corrections or any of the parties associated with the administrative agency is not a publicly traded company.

STATEMENT OF RELATED PROCEEDINGS

THIS CASE ARISES FROM AND IS RELATED TO THE ONGOING
FOLLOWING PROCEEDING, NOW IN ALABAMA COURT OF CIVIL
APPEALS:

CL-2024-0199

EX PARTE REGINALD BURRELL PETITION FOR WRIT OF HABEAS
(In re: State of Alabama v. Reginald Burrell) (Mobile
Circuit Court: CC-18-688)

THERE ARE NO ADDITIONAL PROCEEDINGS IN ANY COURT
THAT ARE DIRECTLY RELATED TO THIS CASE WITHIN THE
MEANING OF THIS COURT'S RULE 14(b)(ii).

LIST OF ALL PROCEEDINGS, STATE AND FEDERAL

Fed. R. Civ. P. Rule 60(b) motion; U.S. District Court Southern District of Alabama Southern Division; Case No. 1:21-CV-25-TFM-B; Reginald Burrell v. Sharon Langham (Warden); Order: 3/16/2023

REMAND; U.S. Court of Appeals For The Eleventh Circuit; Case No. 23-11134-D; Reginald Burrell v. Warden; Order: 11/14/2023

Certificate of Appealability; U.S. District Court Southern District of Alabama Southern Division; Case No. 1:21-CV-25-TFM-B; Reginald Burrell v. Sharon Langham (Warden); Order: 11/15/2023

Certificate of Appealability; U.S. Court of Appeals for the Eleventh Circuit; Case No. 23-11134-D; Reginald Burrell v. Warden;
Order: [No entry date]

LIST OF ALL PROCEEDINGS, STATE AND FEDERAL

Appeal; Circuit Court of Appeals Montgomery County Alabama,
CV-2020-000486.00, Reginald Burrell v. Alabama Department
of Corrections, Order: Sept. 4, 2020

Appeal; Court of Criminal Appeals of Alabama, CR-19-1146,
Reginald Burrell v. Alabama Department of Corrections,
Order: Oct. 2, 2020

WRIT OF Mandamus; Alabama Supreme Court; case No. 1200049;
Reginald Burrell v. Alabama Department of Corrections;
Order: Nov. 20, 2020

Habeas Corpus Petition; U.S. District Court Southern District of
Alabama, Civil Action No. 1:21-cv-00025-TFM-B, Reginald Burrell
v. Sharon Langham (Warden); Judgment: 7/29/2022

Habeas; Certificate of Appealability; U.S. Court of Appeals for
the Eleventh Circuit; case No. 22-12799A; Reginald Burrell
v. Sharon Langham (Warden); Judgment: 3/20/2023

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Memorandum Opinion and Order, United States District
 Court for the Southern District of Alabama, Reginald
 Burrell v. Sharon Langham, case No. 1:21-cv-25-TFM-B
 (March 16, 2023)

Appendix 16

Order, United States Court of Appeal for the Eleventh Circuit, Reginald Burrell v. Warden, Case No. 23-11134-D (Nov. 14, 2023)

Appendix 17

Order, United States District Court for the Southern District of Alabama, Reginald Burrell v. Sharon Langham, Case No. 1:21-cv-25-TFM-B (Nov. 15, 2023)

Appendix 18

Presumptive, Order and Opinion, United States Court of Appeals for the Eleventh Circuit, Reginald Burrell v. Warden, Case No. 23-11134-D [No Entry Date of order]

Appendix 19

Other States and Rules Involved

28 U.S.C. § 2253(c)(2)

28 U.S.C. § 2241(c)(3)

28 U.S.C. § 2254

Rule 22 (1) & (2), Federal Rules of Appellate Procedure

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<i>Gonzalez v. Sec'y for the Dep't of Corr.</i> , 366 F.3d 1253 :: April 26, 2004	20, 26, 27, 30, 31
<i>Hazel-Atlas Glass Co. v. Hartford Empire Co.</i> , 322 U.S. 238, 88 L.Ed. 1250, 64 S.Ct. 997 (1944)	1, 24, 25, 26 27, 30, 32
<i>Herring v. United States</i> , 424 F.3d 384, 386 (3d Cir. 2005) ...	29,
<i>Huddleston v. Dwyer</i> , 322 U.S. 232, 64 S.Ct. 1015, 88 L.Ed. 1246 (1944)	24,
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Petition For writ of Certiorari

This case is framed around the equity rule promulgated under Federal Rules of Civil Procedure, Rule 60(b)(3) that, according to the United States Supreme Court by authority HAZEL-ATLAS GLASS CO. V. HARTFORD-EMPIRE CO., 88 LED 1250, 322 US 238, was firmly established in English practice long before the foundation of our Republic, and from the beginning there has existed alongside the term rule a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry. And that this equity rule, the courts have developed and fashioned to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule.

"Every" element of the fraud disclosed in this case should demand the exercise of the historic power of equity to set aside fraudulently begotten judgments obtained from officers deliberately planned and carefully executed schemes to defraud not only the District Court but the Circuit Court of Appeals.

OPINIONS BELOW

The presumptive Eleventh Circuit's opinion is reported at Appendix 18.

The district court's opinion is reported at Appendix 17, and 15.

Citations of the Orders entered by the Courts

1. The Citation of the U.S. District Court order on Fed. R. Civ. P. 60(b) motion is as follows: SEE Appendix 15

Rule (b)(2), newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

Rule (b)(6), any other reason that justifies relief.

2. The citation of the U.S. District Court order on whether a Certificate of Appealability ("COA") should issue as to the denial of the Rule 60(b)(3) motion is as follows: SEE APPENDIX 17

28 U.S.C. § 2253(c)(2). A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right. The motion was not made in a reasonable period of time, was no reasonable diligence.

3. The citation of a Unofficial, or Propose Order of the U.S. Court of Appeals on denial of certificate of appealability of the Rule 60(b)(3) motion is as follows: SEE APPENDIX 18

28 U.S.C. § 2253(c)(2). A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

THE BASIS FOR JURISDICTION IN THIS
COURT; PETITION FILED UNDER RULE 11..

4.

This case is of such imperative public importance as to justify deviation from normal appellate practice because there exist an active, present, deliberately planned and executed scheme to subvert said normal appellate practices, after discovered fraud had already subverted the administration of Justice initially, where it had continued without break through the federal appeals court Eleventh Circuit.

The case has now been subjected to abnormal proposed orders, (repeatedly) all of which deliberately lacked date of entry, and, all are identically the same, and none of which, relate's to the case before the Eleventh Circuit Appeals Court. The lack of entry dates on the purported orders conflicts with normal appellate practices - that the time to file a petition runs from the date of entry of the Judgment or Order sought to be reviewed. (Supreme Court Rule 13.3 Time for Petitioning) (28 U.S.C. § 2101(c)) For each notice given to the Eleventh Circuit of the deficient order, the same identical deficient order was remailed. In addition, the deficient orders' does not relate to the Rule 60(b) action that's before it's court. SEE Appendix 18. IF it's to be construed as a decision on the issues, compels the Questions Presented in this case.

The normal appellate practice has been subverted, besides the deficient orders shown in Appendix 18, the Court is unresponsive to rehearing and reconsideration. 28 U.S.C. § 1254
28 U.S.C. § 2101 (e)

BASIS FOR JURISDICTION
(Continues)

5.

1. March 7, 2023 the Petitioner filed Motion for Relief from Judgment Pursuant Rule 60(b), Fed. R. Civ. P in the U.S. District Court Southern District of Alabama Southern Division, Seeking Relief from the U.S. District Court July 29, 2022 Judgment. March 16, 2023 the U.S. District Court issued order denying the motion.
2. November 14, 2023 the U.S. Court of Appeals for the Eleventh Circuit issued a limited remand for the U.S. District Court to state whether a Certificate of appealability will issued on the Rule 60(b) motion.
3. November 15, 2023 the U.S. District Court denied a certificate of appealability.
4. November 27, 2023 the Petitioner filed a request for a certificate of appealability in the U.S. Court of Appeals for the Eleventh Circuit.
5. [The facility received a proposed order, Lacking a date of entry, on February 12, 2024, SEE Appendix 18]
6. February 15, 2024 the Petitioner gave notice of the deficient order, and, motioned for a rehearing citing A conflict with the U.S. Supreme Court and other federal appeals Court.

BASIS FOR JURISDICTION
(Continues)

7. [The facility received the same proposed order, Lacking a date of entry, March 1, 2024, SEE Appendix 18]
8. March 1, 2024 the Petitioner filed motion for entry of Judgment; Notice pursuant Rule 36(b), Fed. R. App. P in the U.S. Court of Appeals for the Eleventh Circuit requesting entry of Judgment and notice on his request for a Certificate of appealability.
9. March 1, 2024 the Petitioner filed a motion for reconsideration citing A conflict with the U.S. Supreme Court and other federal appeals courts.
10. [The facility received the same proposed order, Lacking a date of entry, March 18, 2024, SEE Appendix 18]

This Court has Jurisdiction under 28 U.S.C. § 1254 (1),
and/or 28 U.S.C. § 2101(c) or (e).

Notification Requirement

The Petitioner has not served notice to the parties until, or if, this case pass the initial screening to avoid the financial burden of reproducing copies.

The Constitutional, Statutory, and/or Rules Involved In this Case

Federal Rules of Civil Procedure

Title VII. Judgment

Rule 60. Relief from a Judgment or Order

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

(c) Timing and Effect of the Motion. (1) Timing. A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

Federal Rules of Appellate Procedure

VII. General Provisions

Rule 36. Entry of Judgment; Notice

(b) Notice. On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion — or the judgment, if no opinion was written — and a notice of the date when the judgment was entered.

TITLE 28 JUDICIARY AND JUDICIAL PROCEDURE

Part VI. Particular Proceedings

§ 2253. Appeal

(c)(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right

STATEMENT OF THE CASE

January 14, 2021 the Petitioner filed a Habeas Corpus Petition in the United States District Court, which the court received as the operative pleading in the case January 19, 2021. SEE Appendix 6, Page 1, Footnote 2., where the Petitioner ground for relief was: Current confinement is unlawfully extended by use of inaccurate, incomplete and misleading information. Supporting facts: On August 7, 2018 Judge Ben H. Brooks sentence me to a 15 year sentence. He ran that sentence concurrent with the 11 years remaining on my prior sentence. That day my 15 year sentence became my current controlling sentence. Central Records continue to hold in its records that my current sentence remain 30 years. The Petition provided other facts establishing State court remedies were inadequate, ineffective, or unavailable, stating the Circuit Court of Montgomery, Criminal Court of Appeals, and the Supreme Court of Alabama have usurped Ala. Code §41-9-645 that prohibited State courts from requiring prepayment on Appeals from an agency of the state refusal to correct inaccurate information, State Courts' knowing I am actually indigent, demanded up front cost, knowing I cannot come up with that type of money.

February 3, 2021 the U.S. District Court issued a show cause order with a copy of the Petitioner Habeas Corpus Petition on the Respondent

Warden and Attorney General of the State of Alabama. SEE Appendix 6. Page 1., 2, and 3., informing the Respondent of his/her obligation to come forward with the record.

May 26, 2021 The Respondent Warden Electronically filed a response that include an Affidavit from a Employee of the Department of Correction. The Respondent Warden relied on the Affidant, SEE Appendix 7., Page 1., and stated "AT Times" Burrell PMOD account showing Substantial sums of money available. SEE Appendix 7, Page 2., No. 4.

The Affiant referred the U.S. District Court to a forged sentencing transcript after stating it had been Certified by the Mobile County Circuit Court Clerk. SEE Appendix 8., Page 2. The Affiant's Attachment #6 was sentencing transcript to the Petitioner's 15 year concurrent sentence. It had been altered from it's original and entries added to it that communicated both sentences, the (30) and (15) ends September 2, 2029. The Affiant reinforces the forgery stating in the Affidavit that a clerk, Tammy Daley advised the sentences were correct as shown on sentencing transcripts. The Affiant provided a hand computation that showed the same September 2, 2029 as the forged sentencing transcript. SEE Appendix 8., Page 2.

JUNE 6, 2021 the Petitioner filed a reply to the Respondents response informing the District Court the Respondents attempt to conceal or

Cover up the computation of his controlling 15 year sentence from it's court. And the Petitioner provided the court the computation of his controlling 15 year sentence as follows:

08 07 2018 Sentence Date

15 Term

08 07 2033

-10 08 Jail Credit

10 30 2032 Release Date

And furthered informed the District Court that under Ala. Code § 14-9-41(g)(2), Corley v. State, 988 So. 2d 593:: March 2, 2007, state's, "the commencement of a sentence is the starting point for computing an appellant's remaining sentence. If the sentence runs concurrently with another sentence, and if the expiration date of the second sentence is beyond the expiration date of the first sentence, then the second sentence in essence causes the first sentence to cease to exist."

June 14, 2021 the Petitioner motioned the District Court to strike the Respondents Affidavit and Attachment # 6. Sentencing transcript due to tampering with evidence, forgery, and willful deceit by making it to appear that the Circuit Court of Mobile, the Judge or Clerk certified that the release date to Petitioner's 15 year sentence is September 2, 2029 to cover up the controlling sentence. But Officers within the District Court permitted the fraud to proceed. SEE Appendix 9.

April 15, 2022, ten months after the District Court had been put on notice of the Respondents attempt to defraud the court by filing a forged sentencing transcript, officers' within the District Court presented a report (report and recommendation) that relied on the Affidavit, in which, the Affidavit relied on the forged sentencing transcript. SEE Appendix 10., Page 18., footnote 10, stating, the court notes that an affidavit submitted by the government from Alcornelia Terry, Correctional Records Director with the ADOC, indicates that the ADOC reviewed in detail Burrell's claims of miscalculation of his sentence and verified, by hand calculation, that he has received all of the credit to which he is entitled in determining his end of sentence date. The report then precariously concluded that the Petitioner's Habeas had asserted inaccurate end of sentence date and good time credits, in which the Department of Corrections unlawfully refused to correct, to be consistent with the Employee Affidavit and forged sentencing transcript. SEE Appendix 8, Page 2; Also Appendix 10., Pages 7, 19, and 21.

The report, after having misrepresented the Petitioner's Habeas Petition ground claim and supporting facts, continued, and stripped away the Habeas Petition claims asserting indigency and the Petitioner's inability to pay state court filing fees, and that, state courts' usurped Ala. Code § 41-9-645 that prohibited state courts' from requiring prepayment on appeal, and precariously

Concluded, that, the Habeas Petition asserted, by requiring the Petitioner to pay a filing fee on appeal state courts violated his rights under Ala. Code § 41-9-645, etc.. SEE Appendix 10., Pages 7, and 11..

The report, after creating a false pretense, that, the Habeas Petition and/or Petitioner was complaining about being required to pay filing fees on appeal, SEE Appendix 10., Page 11., the report highlighted [EMPHASIZED] a false financial statement asserting the Petitioner had \$732.19 available in his inmate account, and then, fabricated that state court made the finding as a fact. SEE Appendix 10., Page 12., footnote 8..

July 29, 2022 the District Court issued a memorandum opinion and order, that, overruled the Petitioner's objection to the report. SEE Appendix 11., The Petitioner had objected to the report [report and recommendation] falsely asserting that after he was imprisoned in 2017, that, in 2018 he escaped from custody; ~~SEE~~ SEE Appendix 10., Page 2.; the false claim that the Circuit Court of Montgomery made a factual finding he was not indigent based on his inmate account balance showing he had \$732.19 in his account, WHEN his ACCOUNT SHOWED \$0.00 or insufficient funds; that he was sentence to serve a 15 year sentence administrators rejected, subsequently he's being held in confinement on a prior sentence that lawfully ceased; that "END OF SENTENCE" is not his actual claim nor is it an accurate description of his claim; And

pursuant Ala. Code § 41-9-645 he was not required to pay in advance when he appealed his action in the Circuit Court of Montgomery from the Department of Corrections decision.

But the District Court ignore the fraudulent report [report and recommendation] and stated, "However, this does not offset the well-reasoned analysis of the report regarding jurisdiction and the lack of federal claim, and the report is ADOPTED as the opinion of this court." SEE Appendix 11., and that, it is ordered that this action is DISMISSED without prejudice, etc..

July 29, 2022 the District Court entered Judgment in accordance with the Memorandum Opinion and Order entered on the same date, that the HABEAS Petition is Dismissed without prejudice. SEE Appendix 12..

March 20, 2023, The Eleventh Circuit Court of Appeals Denied the Petitioner a Certificate of appealability on the dismissal of his Habeas Corpus Petition, in which, relied on the District Court's fraudulent, adopted opinion. SEE Appendix 13., Pages 1, and 2., where it's order repeats the misrepresentations originating from the initial report, that was adopted as the Judgment of the District Court.

Recap: March 7, 2023 the Petitioner filed a Rule 60(b) motion, Fed. R. Civ. P., SEEKING relief from the District Court's July 29, 2022 Judgment, LESS than 8 months from the date of it's entry, and before the Eleventh Circuit appeals entered Judgment denying a Certificate of appealability on Habeas Petition dismissal).

The Rule 60(b) motion recapped unfuted facts specified in the Habeas Corpus Petition, and then, pointed to, but not limited to, his inmate account statement, filed in state courts, which showed state courts had no available account statements of how much money was available on his account, but only had statements of deposits from the past. Appendix 1, showed the Circuit Court of Montgomery was only interested in his 12 preceding months deposits, showing state court did not make the statement he had \$732.19 available on his account, and that the District Court had adopted a fabricated \$732.19 to find he failed to pay. And argued that August 9, 2022 the Petitioner obtained a transaction report from a certified accountant of Alabama Department of Corrections, for year 2020, showing that when the Circuit Court required him to prepay \$246.00, his available account balance was .35 cents; \$105.35 when Alabama Court of Criminal Appeals ordered him to pay \$200; And \$83.00 when Alabama Supreme Court ordered him to pay \$150.00...

The motion further pointed out how the Affiant had acknowledged that August 7, 2018 the Petitioner was sentenced to a 15 year Concurrent sentence, and that, the Affiant did not contest 11 years remained on his prior sentence. That there only remained a issue of law with the Affiant, but not a genuine issue. But the process was subverted by misrepresenting uncontested facts of the Habeas Petition in the Court's adopted opinion,

stating, "In his [Burrell] instant Petition, Burrell asserts that Central Records unlawfully refused to correct inaccurate information in it's records including good time credit and his end of sentence date". Then the Court made findings to it's own misrepresentation resulting in the dismissal of his Habeas Petition.

March 16, 2023 the District Court issued a Memorandum Opinion and Order on the Rule 60(b) motion, stating, the Court finds that over eight months have passed since the Court entered it's [July 29, 20] Memorandum Opinion and Judgment. As a result, in this particular case on these facts, the Rule 60(b) motion was not made within a reasonable period of time which alone is sufficient cause for denial, stating the Rule 60(b) motion is denied. SEE Appendix 15., Page 2.

November 14, 2023 the Eleventh Circuit Court of Appeals REMANDED on a limited basis so that the District Court may consider whether a COA should issue as to the denial of Burrell's Rule 60(b) motion, that the District Court should state the reason pursuant Fed. R. App. P. 22(b) should the District Court determine that a COA should not issue. SEE Appendix 17,

November 15, 2023 the District Court issued a order denying a certificate of appealability, stating, For the reasons stated

in the July 29, 2022 Memorandum Opinion and Order (Doc. 52) and again in the March 16, 2023 Memorandum Opinion and Order (Doc. 61), and that it was not made in a reasonable period of time, and with reasonable diligence this supposed "newly discovered evidence" could not have been previously discovered. SEE Appendix 1b, Page 1-2.

November 27, 2023 the Petitioner Requested for a Certificate of Appealability from the U.S. Court of Appeals for the Eleventh Circuit. He argued that the District Court rulings were not on his claims, that the District Court never denied that it's July 29, 2022 memorandum Opinion and order was not fraud in it's order and memorandum Opinion filed March 16, 2023. This shows that the District Court used fraud. That the Petitioner's motion for relief from Judgment filed March 7, 2023 outlined how the District Court adopted a fabricated \$732,19, used by the District Court to determine it lacked Jurisdiction. That officers within it's own court made the falsified financial statement, including willfully misrepresenting his ground claim and supporting facts to his Habeas Petition. That the District Court abused it's discretion excluding subsections (2), (3), and (4) of his Rule 60(b) motion because the rule allowed the Petitioner the timing of no more than a year to file his motion for relief. But the District court limited his to eight months.

February 12, 2024 a purported order arrived at the Facility from United States Circuit Judge, Robert J. Luck. The purported order lacked a date in which it issued. SEE Appendix 18., in which, mistreated the Rule 60(b) motion like it is a Writ of Habeas Corpus citing Slack v. McDaniel, 529 U.S. 473, 484 (2000), that governs when a District Court deny a State prisoner's Habeas Petition, and that, involved a Challenge to a Conviction, Sentence, and Judgment of State Court. But this Petitioner's Case only involves a decision made by prison officials in the execution of his sentence, and the Rule 60(b) motion involve Fraud officers of the District Court perpetrated on the federal court resulting in the dismissal of his, in substance, 28 USC § 2241 Habeas Corpus Petition.

February 15, 2024 the Petitioner responded, As a motion for rehearing, giving notice that the purported order lacked a date in which it entered, and proceeded arguing that the order was in conflict with prior decisions of federal appeal courts, and the United States Supreme Court on the same important matter of whether a Certificate of appealability ("COA") should issue on the denial of a Rule 60(b) motion for relief that question the very legitimacy of the Judgment for fraud on the federal court. And that federal appeal courts adopted the "two exception rule" from the U.S. Supreme Court in Calderon, which indicated that only two exceptions apply to the Rule 60(b) motion. One is to correct a

mere clerical error in the Judgment, *Id.* at 557, 118 S.Ct. at 1501. The other is that there was "fraud upon the court, calling into question the very legitimacy of the Judgment". SEE *Id.*, at 557, 118 S.Ct. at 1501-02.

And argued that applying the "exception rule" to Petitioner's Request for a Certificate of Appealability, even the Eleventh Circuit Court concluded that a ("COA") from the denial of Petitioner's Rule 60(b) motion should issue because Petitioner made a substantial showing of the denial of a Constitutional right and a substantial showing that the procedural ruling which resulted in the dismissal of his Habeas Petition was wrong. Citing *Gonzalez v. Sec'y for the Dep't of Corr.*, 366 F. 3d 1253:: April 26, 2004.

March 1, 2024 the Petitioner received another blank, purported order. SEE Appendix 18.

March 1, 2024 the Petitioner filed a motion for Entry of Judgment and Notice, pursuant Rule 36(b) Fed. R. App. P., arguing the purported orders were deficient, lacking a date in which it issued, and deprive's the U.S. Supreme Court Clerk of the ability to determine whether an appeal or writ of Certiorari was applied for within ninety days after entry of such Judgment. Citing 28 USC § 2101 (C).. SEE Appendix 18..

Statement of the Case

21.

March 18, 2024 the facility received the same purported order lacking a date of entry. SEE Appendix 18..

Argument

22.

Why WRIT Should BE Granted

This case presents a situation where ~~XXXXXX~~ officers working for a U.S. District Court engaged in a deliberately planned and executed scheme to defraud a federal Court, that, continued without break up to the Federal Appeals Court, Where the fraud committed was clearly obvious to the party affected thereby, but the Pro Se litigant objections thereto was powerless at effecting a remedy during the proceeding in the officers' presents, who was motivated to aid prison officials subvert the administration of Justice, that resulted in the District Court and Eleventh Circuit Court of Appeals never entertained the fraud committed on their courts during the Habeas Corpus proceeding or on appeal, which compelled the Petitioner to seek equitable relief on Rule 60(b) motion, Federal Rules of Civil Procedure.

The same ~~XXXXXX~~ officers' that committed Fraud on the Court during the Habeas Corpus Proceeding, stood waiting and committed fraud on the Petition's Rule 60(b) motion seeking equitable relief, by relying on the previously committed fraud. SEE Appendix 15. There never was a state Court finding as a fact the Petitioner had \$732.19 available.

Instead, the Circuit Court of Montgomery directed the petitioner to submit a Affidavit of Hardship with a copy of his 12 month PMOD, which only showed state court deposits he had received in the past. SEE Appendix 1.; SEE ALSO Appendix 2., showing the court never stated Petitioner had \$732.19 available.

understood that federal law dictated it's duty to ascertain and apply state law in a case in which such law is controlling. Huddleston v. Dwyer, 322 U.S. 232, 64 S.Ct. 1015, 88 L.Ed. 1246 (1944).

Since officers of the court realized the Respondent Warden, and the Affiant had misapplied the state law, because a statute in which the Affiant relied, had been previously rejected in the case of Corley v. State, 988 So.2d 593: March 2, 2007, and that the Petitioner was in fact serving a 15 year sentence as alleged in his HABEAS supporting facts; Officers of the court blocked the Petitioner's effort to strike the Affiant forged sentencing transcript, and the Affidavit. Both of which was used to induce fraud on the court. SEE Appendix 10., Page 18., Page 21, where officers used the Affidavit to change the Petitioner's HABEAS Petition ground claim and supporting facts into a claim relating to an end of sentence date and good time credits, was a deliberately planned and executed scheme for the District Court to conclude a lack of a federal claim. SEE Appendix 10., Page 21., Page 22-23..

This Supreme Court held in the case of Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 88 L.Ed 1250, 64 S.Ct 997 (1944), that, "From the beginning there has existed alongside the term rule a rule of equity to the effect that under certain

Circumstances, one of which is after-discovered fraud, relief will be granted against judgment regardless of the term of their entry". [322 US 244]

This is where the District Court has entered decisions in conflict with this Court's holding, and, the Eleventh Circuit appear to be sanctioned such a conflict.

The District Court, when issuing its order March 16, 2023 [memorandum opinion] does not hold that the officers of the Court fraud fell short of that which prompts equitable intervention. But instead, the District Court stated it could not find that with reasonable diligence this information could not have been previously discovered, and that, the Court finds that over eight months have passed since the Court entered its memorandum opinion and Judgment, and denied the Rule 60(b) motion stating it was not made within a reasonable period of time. SEE Appendix 15., Page 2..

This Court stated in HAZEL-ATLAS [322 US 246] Even if the highest degree of diligence was not exercised, fraud cannot be condoned for that reason alone. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process

must always wait upon the diligence of litigants. "BUT!"

The District Court assessment of due diligence and timing is not accurate though. The record, or facts of the case shows A diligent Petitioner objecting to the report and recommendation, but was disregarded, objecting in the issues on appeal, but was disregarded, and the Petitioner filed the Rule 60(b) motion back in the District Court before the Eleventh Circuit Court of Appeals denied him a Certificate of Appealability on Habeas Corpus. And despite the Petitioner raising the issue, in substance, of fraud, the Eleventh Circuit Court of Appeals relied on the fraud to deny him a Certificate of Appealability, citing 28 U.S.C. § 2253(c)(2),

The fraud perpetrated by the officers have not been disputed. Even the Eleventh Circuit Court of Appeals say that this Supreme Court decision in Calderon v. Thompson, 118 S.Ct. 1489, 140 LEd2d 728, 523 US 538, "is instructive," in the case of Gonzalez v. Sec'y for the Dep't of Corr.: 366 F.3d 1253: April 26, 2004, when the Eleventh Circuit quoted, "the Supreme Court saying, "This also is not a case of fraud upon the court, calling into question the very legitimacy of the Judgment," citing Hazel-Atlas. Then the Eleventh Circuit concluded, that, a Rule 60(b) motion seeking to reopen the Judgment in a § 2254 or § 2255 case should be denied by the District Court, unless

it is filed to correct a clerical mistake or is filed pursuant to Rule 60(b)(3) to remedy a fraud agents of the government perpetrated on the federal court. ~~SEE Appendix~~

But it now appears that the Eleventh Circuit has sanctioned the lower District Court to depart from the fraud exception rule on Rule 60(b) motions, and has, itself entered an unofficial decision that conflicts with this court decision regarding fraud perpetrated on the federal court. SEE Appendix 18., where 28 U.S.C. § 2253(c)(2) is cited as a requisite to equitable relief.

But this unofficial order (lacking a date in which it issued) conflict's, the Rule 60(b) motion like it is a writ of Habeas Corpus citing Slack v. McDaniel, 529 U.S. 473, 484 (2000), that governs when a District Court deny a State prisoner Habeas Petition, and that, involved an attack, or challenging a conviction or sentence of Judgment from State Court. This mistreatment conflict's with the "Fraud" exception indicated by the U.S. Supreme Court in Hazel-Atlas [322 US 244]; And in Calderson, as adopted by other federal appeals courts' including the Eleventh Circuit Court of Appeals in the case Gonzalez v. Sec'y for the Dep't of Corr., relating to the Rule 60(b)(3) motion. In addition, the Petitioner's Habeas Petition DO NOT challenge State Court Judgment - conviction - sentence! Even the fraud that resulted in the dismissal of Petitioner Habeas Corpus - The Habeas Corpus Petition challenged ~~challenge~~ prison officials decision in the execution of sentence properly cognizable under 28 USC § 2241

At bottom, the supporting facts of the Petitioner's Habeas Petition established that, by law, he had been serving a 15 year sentence since the date the Judge ordered it concurrent and to begin. Without officers within the District Court presenting a report that eliminated the Petitioner's supporting facts, the District Court would have been bound to apply applicable law that was available and controlling, and the Petitioner would have received all the relief he was entitled.

The same for the Petitioner's uncontested facts that he was actually indigent, was not able to pay state court filing fees. Without officers within the District Court presenting a report, in which the court relied, eliminating the uncontested facts, and replacing it with fabricated state court findings, the District Court would have exercised jurisdiction because the Respondent had not contested to his indigency.

The proposed order, Appendix 18, does not refer to the Rule 60(b) motion, but it does contain the case number to the Rule 60(b) action, and was repeatedly mailed to the facility, done after the Petitioner requested a certificate of appealability, presenting the uncontested issues of fraud on the court, after motion for rehearing, and after motion for reconsideration. The same proposed order, Appendix 18, was mailed to the facility without any indication of what it referenced to, nor a date in which it issued.

However, the proposed order stated, if it's in reference to the Rule 60(b) motion, Fed. R. Civ. P., that, request for certificate of appealability of the Rule 60(b) motion, that, to merit a certificate of appealability, a movant must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues he seeks to raise. Citing 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000). And that Reginald Burrell has failed to make the requisite showing.

This requisite showing conflicts with even the Eleventh Circuit previous decisions regarding Rule 60(b) motions, and the majority of circuits held ~~that~~ that the movant must show " (1) an intentional fraud; (2) by officers of the court; (3) which is directed at the court itself; and (4) in fact deceives the court." Herring v. United States, 424 F.3d 384, 386 (3d Cir. 2005); United States v. Buck, 281 F.3d 1336, 1342 (10th Cir. 2002); Cobell v. Norton, 334 F.3d 1128, 1150, 357 U.S. App. D.C. 306 (D.C. Cir. 2003); United States v. MacDonald, No. 97-7297, 1998 U.S. App. Lexis 22073, 1998 WL 637184, at *4 (4th Cir. Sept. 8, 1998). The Sixth Circuit, however, has held that fraud on the court may be either "intentionally false, willfully blind to the truth, or in reckless disregard of the truth." Rodriguez v. Schwartz, 465 F. App'x 504, 509 (6th Cir. 2012).

The fraud committed in this case by officers of the Court that resulted in the dismissal of the Petitioner's Habeas Corpus Petition is not in dispute, nor have been disputed by the District Court.

The Eleventh Circuit has held "a Rule 60(b) motion seeking to reopen the judgment in a 28 U.S.C. §§ 2254 or 2255 case should be denied by the district court, unless it was filed to correct a clerical mistake or was filed pursuant to Fed. R. Civ. P. 60(b)(3) to remedy a fraud agents of the government perpetrated on the federal court, and that, applying these rules, the court concluded that COAS should issue because a substantial showing was made of the denial of a Constitutional right and a substantial showing that the procedural ruling, which resulted in the dismissal of the habeas petition was wrong. Gonzalez v. Sec'y for the Dep't of Corr., 366 F.3d 1253, April 26, 2004.

The Eleventh Circuit failed to review the District Court decision denying the Rule 60(b) for an abuse of discretion which resulted in the court acting in conflict with other federal appeals courts, including the Eleventh Circuit, and the U.S. Supreme Court decisions. Since the Petitioner's Rule 60(b) motion, substance, was fraud on the Court, that was filed within one year, and diligence was apparent from the record. Hazel-Atlas

Conclusion

The U.S. Court of appeals for the Eleventh Circuit Refused to Entered Judgment within the meaning of Federal R. App. P., Rule 36(b) because the order lack a date of entry in spite of the Petitioner giving notices, and motioning the Eleventh Circuit to enter Judgment and notice for appellate purpose.

The U.S. Court of appeals for the Eleventh Circuit was given notice that the purported order, lacking a date of entry, conflicted with it's own decision that a Rule 60(b)(3) Fed. R. Civ. P should not be denied when it is filed to remedy fraud agents of the government perpetrated on the federal court, citing *Gonzalez v. Sec'y for the Dep't of Corr*, 366 F.3d 1253, April 26, 2004 (in turn citing) *Calderson v. Thompson*, 118 S.Ct. 1489, 140 LEd2d 728, 523 US 538, stating that the U.S. Supreme Court fraud exception is instructive.

The U.S. Court of appeals for the Eleventh Circuit bypassed reviewing the U.S. District Court decision to deny a fraud on the Court, Rule 60(b)(3) motion, for abuse of discretion, which has departed from the acceptable and usual course of reviewing lower U.S. District Courts decision denying rule 60(b) motions, Fed. R. Civ. P., resulting in conflict with this Court and other federal appeals courts decisions on the same important matter. This case is exceptional, Subversion of the administration of Justice.

AS Mr. Justice Roberts stated in Hazel-Atlas, that
No fraud is more odious than an attempt to subvert the
administration of justice.

This case request to nullify the Judgment that the
fraud procured it, and if the Petitioner is entitled
to relief, be accorded an effective and orderly remedy
at hand. This is a suit in equity. Such a proceeding
that's required by settled federal law and should be
tried in open court with living witnesses, to avoid
repeated disorderly remedy by a disregard to law as
applied in federal courts ever since they were established.

I, the Petitioner, swear under the penalty of perjury that the
statements made herein are true and correct.

Executed on this 3rd day of April 2024.

Reginald Burrell
Reginald Burrell