IN THE 23 - 7437

SUPREME COURT OF THE UNITED STATES

NO. _____

OVERILLE DENTON THOMPSON,JR.
Petitioner,

vs.

BOBBY LUMPKIN
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit in No. 23-20182

PETITION FOR WRIT OF CERTIORARI

Overille Denton Thompson, Jr.
Petitioner, Pro Se
TDCJ No. 2068451
McConnell Unit
3001 South Emily Drive
Beeville, Texas 78102

(Directed to the
Honorable Ketanji Brown Jackson)

QUESTIONS PRESENTED

1. Whether the Fifth Circuit utterly failed or abandoned its duty to engage in the COA process with respect to four remaining COA issues: Issues One, Two, Four and Five, by erroneously suggesting that such were but mere arguments and claims raised in the §2254 application - which therefore, need not be addressed because they stray from the procedural questions.

2. Whether the Fifth Circuit sidestepped the COA process, as well as the federal adversary appeal process, by treating the motion for COA like an appellant's brief to affirm the denial of the Rule 11 motion for sanctions; and, in so doing, did the Fifth Circuit err in sanctioning the district court's impairment of the federal litigation and appeal processes through the Fifth Circuit's utter departure from its own well-settled legal precedent.

3. Whether the Fifth Circuit sidestepped the COA process, by treating the motion for COA like an appellant's brief, to hold in conclusion that the appeal regarding the denial of the motion for continuance had been "abandoned," and, in order to adjudicate the merits of the appeal challenging the denial of the Rule 11 motion for sanctions at the COA stage.

LIST OF PARTIES AND INTERESTED PERSONS

All parties or interested persons may not appear in the caption of the case on the cover page. A list of all parties or persons interested in the proceeding in the court whose judgement is the subject of this petition is as follows:

1. Overille Denton Thompson, Jr., Petitioner, Pro Se;
2. Andrew S. Hanen, United States District Judge, Southern District of Texas, Houston Division;
3. Ken Paxton, Texas Attorney General
4. Jennifer Wren, Assistant Attorney General; and
5. Bobby Lumpkin, Respondent.

RELATED CASES

1. United States Court of Appeals, Fifth Circuit, USCA Case No. 23-20182
2. United States District Court, Southern District of Texas, Houston Division, USDC Case No. 4:22-cv-01197
3. Texas Court of Criminal Appeals, TCCA Case Nos. WR-83,787-06
WR-83,787-08
WR-83,787-09
WR-83,787-10
4. 185th District Court of Harris County, Texas, Trial Court Case Nos. 1445929-B
1445930-B

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CORPORATE DISCLOSURE STATEMENT

As required by Sup.Ct.R.29.6, Petitioner Overille Denton Thompson, Jr., Pro Se, states the following:

If OVERILLE DENTON THOMPSON, JR. is considered to be a corporation, it is believed at this time that 10% or more of the corporation's stock is owned by the Texas Department of Criminal Justice, as well as those state and federal courts operating in or doing business with the State of Texas.

Respectfully submitted on this 22nd day of April, 2024.

By: Overille Denton Thompson, Jr.

Pursuant to 28 U.S.C.§1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 4/22/2024

Name: Overille Denton Thompson, Jr.

Overille Denton Thompson, Jr.
Petitioner, Pro Se
TDCJ No. 2068451
McConnell Unit
3001 South Emily Drive
Beeville, Texas 78102

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TO THE HONORABLE JUSTICE KETANJI BROWN JACKSON:

COMES NOW, Petitioner Overille Denton Thompson, Jr. Pro Se, and pursuant to Supreme Court Rule 13 and 28 U.S.C.§1254, he respectfully prays that the Court issue a Writ of Certiorari to review the judgement below.

In support, Mr. Thompson shows the Court the following:

I.
DECISIONS BELOW:

The judgement of the United States Court of Appeals for the Fifth Circuit is unreported. It is cited in the table at 2023 U.S.App.LEXIS 24461 (5th Cir. September 14, 2023 and a copy is attached hereto as Appendix A (A.2-5). The orders of the United States District Court for the Southern District of Texas are not reported. A copy of each order is attached hereto, respectively, as Exhibit F and Exhibit G (A.14-40 & A.41-44).

II.
JURISDICTION

The judgement of the United States Court of Appeals for the Fifth Circuit was entered on September 14, 2023. After the Fifth Circuit recalled its mandate due to a 97-day lack of notice, an order denying a petition for rehearing was

entered on February 6, 2024, and a copy of both those orders are attached hereto respectively as Exhibit B and Exhibit E (A.6-7 & A.12-13). Thereafter, the Fifth Circuit granted leave to petition for rehearing en banc out of time, and an order denying the petition for rehearing en banc was entered on March 5, 2024. Both those orders are attached hereto respectively as Exhibit C and Exhibit D (A.8-9 & A.10-11). Jurisdiction is conferred by 28 U.S.C.§1254(1).

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

> Section 1. 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.
>
> * * *
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

This case also involves 28 U.S.C.§2253 which provides, in relevant part:

> (a) In a habeas proceeding...before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
>
> * * *
>
> (c)(1)(A) Unless a circuit justice or judge issues a certificate of appealability an appeal may not be taken to the court of appeals from...the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court[.]
>
> * * *
>
> (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.
>
> (c)(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

IV.

STATEMENT OF THE CASE

Mr. Thompson sought authorization to appeal five issues in his motion for issuance of a certificate of appealability (hereafter, "motion for COA" or "COA motion"). USCA Doc.No.14 at 5-20, ¶¶ 23-95. However, when a panel from the

Fifth Circuit considered the COA motion, it heard only Issue Three regarding the district court's abuse of discretion for denying Mr. Thompson's Rule 60(b) motion for relief from the judgement as such pertained to two related matters: the district court's denial of a motion for continuance and its denial of a subsequent motion for Rule 11 sanctions (hereafter, "Rule 11 motion for sanctions"). USCA Doc.No.14 at 8-10, ¶¶ 38-47; USDC Doc.No.38 at 2-5, ¶¶ 11-13; A.42-44 (USDC Doc.No.40 at 1-3). See also USDC Doc.Nos.34 & 37.

In so doing, the panel broke Issue Three into two separate issues and first concluded that the appeal of the denial of the motion for continuance had been "abandoned." A.4 (USCA Doc.No.36 at 2). Next, the panel affirmed, the district court's denial of the Rule 11 motion for sanctions as "conclusory." A.5 (USCA Doc.No.36 at 3). Lastly, the panel avoided consideration of four remaining COA issues - Issues One, Two, Four and Five, by suggesting that such concerned the denial of several other motions "that merely expound upon arguments and claims raised" in Mr. Thompson's §2254 application. A.4,n.1 (USCA Doc.No.36 at 2n.1).

Ultimately, Mr. Thompson petitioned the Fifth Circuit for rehearing en banc arguing that en banc reconsideration was necessary because the panel decision conflicts in numerous ways with a relevant controlling Supeme Court decision, and, a long line of Fifth Circuit decisions. USCA Doc.No.62 at 6-15, ¶¶ 26-79. Thereafter, the panel denied the petition for rehearing en banc because no member of the panel or judge of the Fifth Circuit "request that the court be polled on rehearing en banc." A.9 (USCA Doc.No.64-1).

V.
BASIS FOR FEDERAL JURISDICTION

The questions raised in this case implicate impairments of the Great Writ of Habeas Corpus, as were brought about through impairments of the federal appeal process and the federal adversary litigation process itself - in particular, with respect the filings of a pro se prisoner; thus, further implicating the deprivation of rights clearly protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

VI.

REASONS FOR GRANTING THE WRIT

A. Conflicts with Buck v. Davis and Miller-El

To treat the motion for COA like an appellant's brief in order to decide the merits of an appeal at the COA stage, the panel chiefly relied upon a Fifth Circuit case decided before the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") to hold that Mr. Thompson did "not substantively address, and has therefore abandoned any challenge to, the district court's denial of [his] motion [for continuance] as moot." Thompson v. Lumpkin, 2023 U.S.App.LEXIS 24461, *1 (5th Cir. September 14, 2023)(unpublished)(citing Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993)). But in Yohey, the appellant was required under the predecessor of Fed.R.App.P.28(a)(8)(A) to prove his case by presenting arguments "in the body of his [appellant's] brief...'with citation to the authorities, statutes and parts of the record relied on.'" Yohey, 985 F.2d at 224-25 (quoting Fed.R.App.P.28(a)(4)[now Rule 28(a)(8)(A)])(citation and internal quotation marks omitted).

As a result, Yohey conflicts with Buck v. Davis and Miller-El by requiring prospective appellants to prove that an issue is meritorious at the COA stage through the submission of a brief governed by Rule 28(a)(8)(A), as opposed to showing that the issue is debatable through the submission of a motion governed by Fed.R.App.P.27(2)(A). See Buck v. Davis, 580 U.S. 100, 116 (2017)("That a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable."); see also id. at 116-17 (citing Miller-El v. Cockrell, 537 U.S. 332, 336-337 (2003)).

Accordingly, it is clear that the panel sidestepped the COA process by employing a procedure that "placed too heavy a burden on the prisoner at the COA stage" and is thus not a procedure authorized at that stage because it is not "consonant with the limited nature of the inquiry." Buck, id. at 117.

Likewise, treating the motion for COA like an appellant's brief, the panel affirmed the district court's denial of Mr. Thompson's Rule 11 motion for sanctions by first making a jurisdictional decison that a COA was "unnecessary." Thompson, 2023 U.S.App.LEXIS 24461 at **2-3. Thereafter, however, the panel then impaired adversary appeal process by deciding the appeal on the merits of the COA motion without providing Mr. Thompson with a reasonable opportunity to file

an appellant's brief to prove beyond the threshold inquiry that the issue is meritorious.

Thus, to the extent that a hearing on a motion for COA is the COA stage, it is clear that the panel employed a procedure that both "placed too heavy a burden on the prisoner at the COA stage," and violated Mr. Thompson's right to "an appeal in the normal course." Buck, 580 at 117.

Furthermore, the panel overlooked or avoided, and therefore failed to consider, four remaining COA issues which ask only if it is "debatable whether the district court was correct in its procedural rulings." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Specifically, the panel avoided consideration of the following four COA issues:

Issue One:	The District Court Erroneously Decided That Petitioner Was Not Entitled to Statutory Tolling Based on a Procedural Rule That Is Not Clear, Applicable, or Even Cognizable;
Issue Two:	The District Court Reasonably Also Should Have Applied Statutory Tolling to the Subsequent Mandamus Actions Which Sought Reinstatement of the State Habeas Proceedings;
Issue Four:	The District Court Abused Its Discretion for Denying Other Relevant Issues Presented in the Motion for Relief from Judgement; and
Issue Five:	The Alleged Procedural Default, Rendering the State Habeas Petitions as Not "Properly Filed," Was Implemented Through Actions Involving Criminal Acts and/or Violations of Due Process.

USCA Doc.No.14 at 5-8 & 10-20, ¶¶ 23-25, 36-37 & 48-95.

Instead of considering, the "debatability" of these procedural questions, the panel misstated the facts or evidence to suggest that such questions need not be addressed because such only concern motions that "merely expound upon the arguments and claims raised in [the] §2254 application." Thompson, 2023 U.S.App. LEXIS 24461 at *2n.1. Consequently, the panel violated Mr. Thompson's due process, and impaired the federal appeal process, by failing or refusing to consider the debatability of the four remaining COA issues - which procedure conflicts with Buck and Miller-El as an utter or complete abandonment of the panel's duty to engage in the two-step process prescribed by 28 U.S.C.§2253. Buck, 580 U.S. at 117.

Therefore, it is clear that such an abandonment of duty is not a procedure "consonant with the limited nature of the [threshold] inquiry" at the COA stage,

Buck, id., and thus, such constitutes a complete departure from the accepted and usual course of federal appeals "as to call for an exercise of this Court's supervisory power." Sup.Ct.R.10(a).

B. Conflicts Also with a Long Line of Fifth Circuit Decisions

When the panel affirmed the district court's denial of Mr. Thompson's Rule 11 motion for sanctions - by treating his motion for COA like an appellant's brief in order to adjudicate the merits of the appeal, the panel decision did not only conflict with Buck v. Davis and Miller-El. Indeed, the decision also conflicts with a long line of Fifth Circuit decisions as well. See Felton v. Dillard University, 122 Fed.Appx. 726, 728 (5th Cir. 2004)(unpublished); Copeland v. Wasserstein, Perella & Co., Inc., 278 F.3d 472, 485-86 (5th Cir. (2000); Thomas v. Capital Security Services, Inc., 836 F.2d 866, 882-83 (5th Cir. (1998); Schwarz v. Folloder, 767 F.2d 125, 133 (5th Cir. 1985)(citing Lee v. Southern Home Sites Corp., 429 F.2d 290, 296 (5th Cir. 1970)). See also Friends for Am. Free Enterprise Ass'n v. Wal-Mart Stores, Inc., 985 F.3d 575, 577-78 (5th Cir. 2002).

Specifically, according to this long line of Fifth Circuit decisions, it is well settled that the Fifth Circuit "cannot exercise meaningful review" of a district court's denial of Rule 11 sanctions when it is not provided with specific explanation as to the district court's disposition of the Rule 11 motion. Felton, id.; Copeland, 278 F.3d at 485; Schwarz, 767 F.2d at 133 (citing Lee, 429 F.2d at 296). Thus, in situations like the present case in which "the basis and justification for a Rule 11 decision is not readily discernible on the record, an adequate explanation by the [district] court will be necessary [and,] [i]n its absence, prompt remand for such findings will be made." Thomas, 836 F.2d at 883; Felton, 122 Fed.Appx. at 728 ("usual course of action is to remand...[for] explanation); Copeland, 278 F.3d at 485 (reversing and remanding "for more detailed findings with respect to [defendants'] motion for sanctions"); Schwarz, 767 F.2d at 133 ("remand[ing] for further findings by the district court")(citing Lee, 429 F.2d at 296). Cf. Friends, 284 F.3d at 578 (remanding to district court "so that the district court may consider or reconsider the question of sanctions under Rule 11").

As a result, it is clear that the panel's decision with respect to Petitioner's Rule 11 motion for sanctions is a departure from the accepted and usual course of federal appeals in the Fifth circuit "as to call for an exercise

of this Court's supervisory power." Sup.Ct.R.10(a). Indeed, "[a] panel from the Fifth Circuit is bound by Fifth Circuit precedent." Brown v. Livingston, 457 F.3d 390, 391 (5th Cir. 2006).

Furthermore, in theory, the Court could and should grant the writ in aid of its appellate jurisdiction because, if the Fifth Circuit 'cannot exercise meaningful review' when 'the basis and justification for a Rule 11 decision is not readily discernible on the record,' the exercise of meaningful review will be denied this Court as well. See Sup.Ct.R.20.

C. Importance of the Questions Presented

For over two decades, this Court has been trying to guide the Fifth Circuit in the proper application of the COA standard. See Miller-El v. Cockrell, 537 U.S. 322 (2003); Buck v. Davis, 580 U.S. 100 (2017). Yet, when the Fifth Circuit decided this case in Thompson v. Lumpkin, 2023 U.S.App.LEXIS 24461 (5th Cir. September 14, 2023)(unpublished), the panel misapplied the COA standard by treating the COA motion like an appellant's brief in order to decide the merits of Issue Three at the COA stage. And perhaps even more telling is the fact that the panel utterly abandoned its duty under the COA statute to resolve or determine the "debatability" of the procedural questions raised in the four remaining COA issues - Issues one, Two, Four and Five - through its erroneous suggestion that such were arguments expounding upon constitutional claims raised in the §2254 application. See supra at pp.5-6.

Thus, the questions presented by this petition are of great public importance because some very serious due process concerns are raised by the Fifth Circuit's continual misapplication of the COA standard. Cf. Buck, 580 U.S. at 116-17; Miller-El, 537 U.S. at 336-37. Indeed, this case will affect hundreds if not thousands of pro se prisoners whom have properly sought but were denied a COA to appeal with the Fifth Circuit, including also those whom will be current and future appellants. Such is clear because the resolution of this case will provide the Fifth Circuit with further guidance on the proper application of the COA standard.

The importance of the questions are enhanced where the lower courts have "so departed from the accepted and usual course of judicial proceedings" brought under 28 U.S.C.§§2253, 2254, and Fed.R.Civ.P.11, as would call into question the fairness and integrity of those judicial proceedings. For example, when the

district court denied the Rule 11 motion for sanctions without explanation on March 28, 2023, A.42-44(USDC Doc.No.40 at 1-3), the court already knew or should have known through already existing law that the Fifth Circuit could not "exercise meaningful review" of its Rule 11 decision. See supra at pp.6-7. As such, although it is right now unclear whether the §2254 proceeding in the district court was impaired through sanctionable conduct by the respondent, it is abundantly clear that the district court's failure or refusal to provide reasoned explanation for its Rule 11 decision is, in fact, an impairment of the federal appeal process.

In turn, when the Fifth Circuit failed or refused to take action by promptly remanding the case to the district court for adequate explanation as to its Rule 11 decision, the Fifth Circuit sanctioned the district court's departure (or impairment) through a departure from its own long line of decisions establishing its usual course of action in promptly remanding for explanation; thus, impacting the fairness of the appeal process and the adversary litigation process itself. See, e.g., Fed.R.Civ.P.11, advisory committee's notes (1983 admendments)("Since its original promulgation, Rule 11 has provided for the striking of pleadings and the imposition of sanctions to check abuses in the signing of pleadings."). Indeed, as one court has observed,

> Rule 11 of the F.R.Civ.P., was amended in 1983 to emphasize the representations implicit in a lawyer's signature on a pleading. He represents that, after appropriate investigation and inquiry, he reasonably believes that a proper legal claim or defense is stated. The admendment was also designed to facilitate the imposition of appropriate sanctions, including attorney's fees, upon lawyers who violate.

Chu v. Griffith, 771 F.2d 79, 81 (4th Cir. 1985)(citing 5 Wright and Miller, Federal Practice & Procedure, Rule 11§1331, et seq.).

As a result, not only will the outcome of this case affect the fairness of the federal appeal process in the three states within the jurisdiction of the Fifth Circuit - that is, Texas, Louisiana, and Mississippi, but it will also likewise affect the fairness of the adversary litigation process with respect to the due process concerns of pro se prisoners and litigants throughout the 50 states, including also the District of Colombia. See, e.g., Camreta v. Greene, 563 U.S. 692, 710 (2011)(granting certiorari review "only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict [in the lower courts], or some matter affecting the interests

of this nation...demands such exercise")(quoting Forsyth v. Hammond, 116 U.S.

Indeed, such requirement raises perhaps the most material aspect of this case. Specifically, this Court has charged the lower courts with the highest duty of maintaining the Great Writ of Habeas Corpus unimpaired. Johnson v. Avery, 393 U.S. 483, 485 (1969). Yet, where the lower courts have triggered impairments of the Great Writ through their own obvious impairments of the adversary litigation process and the federal appeal process, it is clear that the lower courts no longer have any regard for maintaining the Great Writ unimpaired. Thus, the Court should exercise its supervisory power to correct such unconstitutional defects, or rather, deter such abuses of the federal appeal process and the adversary litigation process itself.

V.
CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted on this 22nd day of April, 2024.

By: Overille Denton Thompson, Jr.
Overille Denton Thompson, Jr.

Pursuant to 28 U.S.C.§1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 4/22/2024

Name: Overille Denton Thompson, Jr.
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