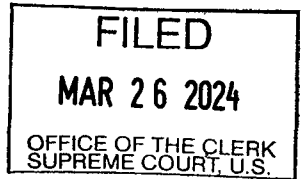


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IN THE

SUPREME COURT OF THE UNITED STATES

In Re WILLIAM WRIGHT, JR. - PETITIONER

ON PETITION FOR A WRIT OF MANDAMUS
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 23-674

PETITION FOR WRIT OF MANDAMUS

William Harold Wright, JR.

FCI Otisville

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QUESTION(S) PRESENTED

DID THE COURT OF APPEAL ERRED FOR
FAILURE TO GRANT WRIGHT'S EMERGENCY
MOTION FOR CERTIFICATE OF APPEALABILITY
PURPORTLY BECAUSE LACK OF JURISDICTION

LIST OF PARTIES

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RELATED CASES

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OPINION BELOW

The opinion of the Court of appeals (No. 23-674) has been designated for publication but is not yet reported; or, is Unpublished. The opinion of the district court Trans Fer Order (23-cv-1570) is reported at 2023 U.S. Dist. LEXIS 34293 (SDNY March 1, 2023).

JURISDICTION

The judgment of the court of appeals was entered on September 25, 2023. A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 6, 2023.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1251.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provide in relevant part:

No person shall be ... deprive of life, liberty or property, without due process of law.

INTRODUCTION

This case concerns a deliberate unreasonable delay, and "mischaracterization" of Wright's § 2241 petition as a § 2255 Second or Successive motion. Wright appeal the decision to the Court of appeals. On September 25, 2023, the Court helded sua sponte that it lack jurisdiction over the appeal because a final order has not been issue by the district court as contemplated by 28 U.S.C. 1291. Clearly "erroneous" and patently absurd.

The district court "Clearly erred" transferring Wright's § 2241 petition under 28 U.S.C. § 1631. Because the court dispositive action resulted from an "erroneous" application of the law, the action constituted an abuse of discretion.

The Court of appeals applied the incorrect legal standard "sua sponte" and decided to "dismiss" Wright appeal in "Clear error." Moreover, lacking jurisdiction to entertain an appeal from such transfer order, it was implicit that the Court of appeals should have "construed" Wright's application as a motion for retransfer to the district court on the basis that he argued that his § 2241 petition was not a second or successive motion. See *Marmolejos v. United States*, 789 F.3d 66 (2d Cir 2015).

The Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291, over all final decision of the district court.

How the Writ will be in Aid of the Court Appellate Jurisdiction:

The writ will aid this Court in its Appellate Jurisdiction both at common law and in the Federal Courts to confine an inferior court to a lawful exercise of its prescribe jurisdiction or to compel it to exercise its authority when it is its duty to do so. *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 87 L Ed 1185, 63 S Ct 938 (1943); *Ex parte Peru*, 318 U.S. 578, 584 87 L Ed 1011, 63 S. Ct. 793 (1943).

The writ of mandamus is an appropriate remedy to require the District Court to entertain the certificate of appealability. Repeated decision of this Court have established the rule... that the writ lie in a proper case to direct a subordinate Federal Court to decide a pending cause, "*Insurance Co. v. Constock*, 16 Wall 258, 270 21 L Ed 493 (1873), or to require "a

Federal Court of inferior jurisdiction to reinstate a case, and to proceed to try and adjudicate the same." *McClellan v. Carland*, 217 U.S. at 280, 54 L. Ed. 762, 30 S. Ct. 501.

There is nothing in this Court later cases dealing with the extraordinary writ that leads us to question the availability of mandamus in circumstances where the district court has refused to properly adjudicate a case.

Exceptional Circumstances Warrant the Exercise of the Court's Discretionary Power:

Under 28 U.S.C. § 2253(c), a Certificate of Appealability shall issue upon an applicant's "substantial showing of the denial of a Constitutional Right." See 28 U.S.C. § 2253(c).

L.A.R. 22.3 ("if any judge of the Panel is of opinion that applicant has made the showing required by 28 U.S.C. § 2253, the Certificate will issue.").

This Court has held that this standard is met, and a Certificate of Appealability "must" issue, when "reasonable jurist could debate whether . . . the [§2255] petition should have been resolved in a different manner or that the issue presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); See also *Lambert v. Blackwell*, 387 F.3d 210, 230 (3d Cir. 2004).

The Due Process under the Fifth Amendment provide that "no person . . . shall be deprived of life, liberty, or property without due process of law. . . ." It protect individual against two types of government action.

"Substantive Due Process" prevent the government from engaging in conduct that shocks the conscience," *Rochin v. California*, 342 U.S. 165, 172, 72 S. Ct. 205, 209, 96 L. Ed

183 (1952), or interferes with right "implicit in the concept of order liberty." Palko v. State of Connecticut, 302 U.S. 319, 324, 58 S. Ct. 149, 151, 82 L. Ed. 288 (1937). "Procedure Due Process" ensure that government cannot unfairly and without meaningful process deprive a person of life, liberty, or property. Mathew v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

Statutory Framework For District Court to Issue Writ of Habeas Corpus:

"The writ of habeas Corpus is so foundational to our legal framework that the Constitution provide: the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion of the public safety require it." This language, along with the Judiciary Act of 1789, establishes the authority for at least the Supreme Court to issue writ of habeas corpus when they believe a detention is unlawful.

See *Ex parte Yerger*, 75 U.S. 85, 86, 19 L. Ed. 2d 332 (1868).

The same authority vested to the Supreme Court above has been extended by Congress to the district Court through the Habeas Corpus Act of 1867, whenever a petitioner is in custody in violation of the Constitution or laws and treaties of the United States. U.S.C. Section 2241.

A Court, justice, or judge entertaining an application for writ of habeas Corpus shall forthwith award the writ or issue and order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

In the instant case the district Court had appropriate subject matter jurisdiction

to adjudicate this issue. To begin, neither party disputed that the district court had subject matter jurisdiction over the instant issue, pursuant to its power under the Habeas Corpus Act. Whether or not Appellant ("Wright") detention - almost eight years now - is lawful is a question over which the district court undoubtedly had jurisdiction. See 28 U.S.C. § 2241 (authorizing district courts to grant writ of habeas Corpus whenever a petitioner is in custody in violation of the Constitution or laws or treaties of the United States").

Although a demand for a decision pursuant to 28 U.S.C. § 2241 was made on February 13, 2023, the district court refused to issue a decision. But instead deliberately "mischaracterize" Appellant ("Wright") § 2241 petition as a second or successive.

In sum, the Fifth Amendment's Due Process Clause forbids the Government to deprive

Wright of Substantial "procedural safeguards"; Such as those connected with Criminal trial and conviction. *Zadvydas II*, 533 U.S. at 690 (the "Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that clause protects") (Citing *Fauchon v. Louisiana*, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992) (internal marks omitted)). (The "essence" of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner at a meaningful time.").

The record reflects Wright was denied the right to be heard in a meaningful manner at a meaningful time. On November 12, 2021, Petitioner filed a Section 2255 motion in the trial court. See *Wright v. United States*, No. 8:21-CV-2691 (KKM) (SPF) (M.D. Fla. Feb. 15, 2023). At the time Petitioner filed this petition by placing it into

the prison mail system on February 13, 2023, his Section 2255 motion was pending. On February 15, 2023, the Middle District of Florida denied Petitioner's Section 2255 motion.

On March 1, 2023, the district court "mischaracterize" the § 2241 petition as a § 2255 motion and transferred it under 28 U.S.C. § 1631 to the Eleventh Circuit for certification. In "clear error."

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. No. 104-132, 110 Stat. 1214 (1996), does not define what constitutes a "second or successive" 28 U.S.C. § 2255 motion. Nonetheless, it is clear that for a petition to be "second or successive" within the meaning of the statute, it must at a minimum be filed subsequent to the conclusion of a proceeding that counts as the first. A petition that has reached final decision counts for this purpose.

The United States Court of Appeals for the second Circuit holds that when a 28 U.S.C. § 2255 motion is filed before adjudication of an initial 28 U.S.C. § 2255 motion is complete, a district court should construe the second 28 U.S.C. motion as a motion to amend the pending § 2255 motion. See *Ching v. United States*, 298 F.3d 174 (2d Cir. 2002).

Also, the United States Court of Appeals for the second Circuit holds that a motion to amend a 28 U.S.C. § 2254 petition brought while an initial 28 U.S.C. § 2254 petition is still pending before a district court cannot be construed as second or successive. Therefore Fed. R. Civ. P. 15, governs such motion to amend, rather than the more stringent standard of the Antiterrorism and Effective Death Penalty Act of 1996. Pub. L. No. 104-132, 110 Stat. 1214 (1996). *Ching v. United States*, 298 F.3d 174 (2d Cir. 2002).

It is well-settled that a district Court may convert a § 2241 petition to a § 2255 motion in appropriate circumstances. *Diminian V. Nash*, 245 F.3d 144, 148 (2d Cir 2001); *cf. Adam V. United States*, 155 F.3d 582, 584 (2d Cir 1998) (noting that a post conviction motion may be construed as a § 2255 motion upon proving the movant with notice of the "recharacterization"). 1 In the instant case, the district Court incorrectly determined that Wright challenge the constitutionality of the imposition of his sentence rather than the execution of his sentence. Clearly erroneous and patently absurd.

In the instant case the record is "irrefutable" that there was no adjudication on the merits of the initial § 2255 motion. The Court of Appeals ruling that it lack jurisdiction was in "clear error." Because adjudication of the initial habeas petition was not complete and, therefore, the district Court "erred" when it did not treat later petition as motion to amend.

It was incumbent upon the district Court as well as the Court of Appeals to determine, first, was Wright § 2241 petition in actuality was a second, that it constituted a second or successive motion within the meaning of the Antiterrorism and Effective Death Penalty Act ("AEDPA"). *Ching v. United States*, 298 F.3d 174 (2d Cir 2002). Which these Courts failed to do.

The Lack of any other Adequate Remedy

The district Court has taken no action on Wright's 2241 petition and therefore is no decision to appeal. 1291 only allows appeals of final decision. A writ of mandamus is the traditional writ designed to compel government officers to perform nondiscretionary duties require by statute. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 168-69, 2 L. Ed. 60

(1903). The Court of Appeals has failed to perform a ministerial duty required by statute.

The Court of appeals does not have discretion whether or not to issue a Certificate of appealability. The statute requires under 28 U.S.C. § 2253, a certificate of appealability shall issue upon an applicant's substantial showing of the denial of a Constitutional Right. See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880 893 (1983)).

Upon receipt of a written request from applicant, the Court of Appeals "shall" issue written confirmation that the applicant made a substantial showing of a denial of a Constitutional Right pursuant to 28 U.S.C. § 2253(c) (emphasis of the word shall added). Where the written confirmation of the certificate of

appealability is a ministerial act, a writ of mandamus is appropriate.

Finally, Wright is irreparably prejudiced by the Court of Appeals failure to timely issue a Certificate of appealability. In the Courts the right to a Certificate of appealability has long been recognized as a substantive right. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The court of appeals' refusal to comply with the statutory timeframe and issue Wright a certificate of appealability has prejudiced him by denying him his protected Constitutional Right, to Challenge the constitutionality of his detention. See § 2241.

Unfortunately, there is no other Courts for Wright to obtain a written confirmation that the Court of Appeals decision that it lack jurisdiction and refuse to issue a Certificate of appealability was in "clear error."

STATEMENT OF THE CASE

Appellant ("Wright") after being denied the motion to dismiss Wright was convicted of charges arising from an alleged conspiracy to possess heroin with intent to distribute it and six counts of possessing heroin and aiding and abetting another in possessing it with intent to distribute. The entire foundation for his conviction rest on evidence that went beyond what was contained in the indictment Wright move for a new trial and judgment of acquittal, which was denied January 29, 2018.

Wright timely filed a notice of appeal on June 22, 2018, and filed his appeal brief on June 28, 2019, on August 26, 2019, prosecution filed its opposition to Wright's appeal. In its brief the prosecution made several arguments, as well as the Court of Appeals in its opinion that stated, "And we have

held that absent a discovery order [the government] has no general obligation to disclose the names of "Unindicted" Co-Conspirators who will not be called as witnesses." *Id.* at. Case: 18-12678, Filed 09/02/2020 Pg. 4.

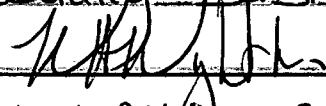
The record clearly shows in the instant case that his request did not concern "unindicted" Co-conspirators but those the district court noted the government identifies as co-conspirators who it intend to call as witnesses. The record clearly reflects that it was inevitable that the Government as well as the district court in effect impermissibly broaden the scope of the indictment. And convicted Wright of a charge the grand jury never made against him, in violation of the Due Process Clause of the Federal Constitution. For the foregoing reason Wright's Fifth Amendment Right to be only indicted by a grand jury has been "violated". *United States v. Keller*, 916 F.2d 628, 634 (11th Cir 1990). See also *Ex parte Bain*, 121 U.S. 1, 30 Fed 849, 7 S. Ct. 781 (1888).

REASON FOR GRANTING THE PETITION

Reason for allowance of the writ the constitutionality denying issuance of certificate of appealability base solely on Judicial Factfinding is an important question that should be directly address by this court.

CONCLUSION

For the foregoing reason Wright respectfully asks this Honorable Court to order the Court of Appeals to grant a certificate of appealability, and remand the case back to the district court with instruction ordering the government to show cause why Wright's § 2241 habeas Corpus petition should not be granted. Within 45 days or what this Honorable Court deem proper. In the interest of Fairness and Justice.

Respectfully Submitted,
By: /s/ 
WILLIAM HAROLD WRIGHT, JR.

Dated: June 3, 2024