

No. 23-7816

IN THE

SUPREME COURT OF THE UNITED STATES

In Re William Wright, Jr. - PETITIONER

ON PETITION FOR WRIT OF MANDAMUS

PETITION FOR REHEARING

William Wright, Jr. Pro se litigant

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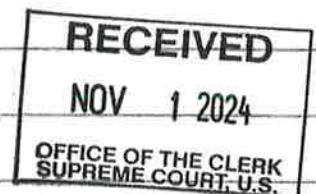


TABLE OF CONTENT

TABLE OF CONTENT	i
TABLE OF AUTHORITY	ii
PETITION FOR REHEARING	5
CERTIFICATE OF AN UNREPRESENTED PARTY	16

TABLE OF AUTHORITY

Cases	Page(s)
ABBE V. NEWYORK, N.H & H.R Co. V UNITED States, 171 F.2d 387 (2d Cir 1948)	13
Ex parte Bradley, 7 Wall 364, 19 L. Ed 214 18	13
Ex parte Simmons, 247 U.S. 231 38 S. Ct 497 62 L. ed 104	12
Ching V. United States, 298 F.3d 174 (2001)	7, 10
Clare V. United States, 2018 U.S. Dist LEXIS 4452 (2d Cir 2018) Citing Clisby v Jones	10
Clisby v Jones, 760 F.2d 925 (11th Cir 1982)	10, 11
Cecil V United States, 608 F.2d 1294 (9th Cir 1997)	2, 3

Evaporate Milk Assn, 319 U.S. 21, 24 87 L. ed
1185, 13 Ct. 938 (1943) 12, 1A

Hamling v. United States, 418 at 117-118 9A S. Ct
2887 2, 3

Simunian v. Nash, 245 F.3d 144, 146-147 (2d
Cir 2001) A

Russell v. United States, 369 U.S. 749, 761
82 S. Ct. 1038 1045 8 L. ed 2d 240 (1962)
. 2

Marmolejos v. United States, 789 F.3d 66, 69
(2d Cir 2001) A

Statute and Rules

28 U.S.C. § 2241 2, 4, 5, 6, 7, 8, 9, 11, 12

28 U.S.C. § 1631 A

28 U.S.C. § 2255 A, 6, 7, 8, 9, 10, 12

28 U.S.C.S. 2254 8, 11

3. C.E. 44 (b) 14

AEDPA 6, 7, 8

INTRODUCTION

Appellant William Wright, JR. ("appellant") filed a petition for writ of Habeas Corpus ("petition") in the United States District Court challenging the "Constitutionality" of his detention § 2241 petition because the indictment failed to state an offense. The indictment failed to allege sufficient facts to facilitate the proper preparation of a defense and to ensure that defendant was "prosecuted" on facts presented to the Grand Jury. *Cecil v. United States*, 408 F.2d 1294 (9th Cir 1979). And to protect him to Double jeopardy.

Specifically, the indictment clearly lacked a statement of the facts and circumstances that would inform the accused of the specific offense with which he was charged. See *Hamling v. United States*, 418 U.S. at 117-18 94 S.Ct. 2587; see also *Russell v. U.S.*, 369 U.S. 749.

The purpose of notice under the Due Process Clause is to apprise the effected

individual, and permit adequate preparation for a defense. See *Cecil v. United States*, 605 F.2d 1294 (9th Cir 1979).

Here Petitioner did not have the chance to properly prepare for a defense, which written notice allows one to do. Instead, he was blindsided and knowingly deprived of the most sacred things he enjoys - his liberty. Under the *Mathew v. Eldridge* due process test Wright's private interest in personal liberty was of the highest interest one can have. *Youngberg v. Romeo*, 457 U.S. 307, 316, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982). "Liberty from bodily restraint has always been recognized as the core of the liberty protected by the Due Process Clause from arbitrary government action. Accordingly, Wright's detention is unconstitutional."

The District Court denied Wright's habeas without any explanation, making an erroneous finding of fact and conclusion of law.

The New York Court of Appeals has determined *Sua Sponte* that it lacks jurisdiction over the appeal because a final order has not been issued by the district court as contemplated by 28 U.S.C. § 1291. With citation to *In re Marmolejos v. United States*, 789 F.3d 66, 69 (2d Cir 2015) (holding that a transfer order under 28 U.S.C. § 1631 is "neither a final decision appealable doctrine"). Clearly erroneous.

The record reflects that the habeas court construed Wright's § 2241 petition as a second or successive § 2255 motion. *Id* at 23-CV-1570 (LTS). Citing *In re Diminian v. Nash*, 245 F.3d 144, 146-147 (2 Cir 2001) stating, ("Section 2255 "is generally the proper vehicle for a Federal prisoner's challenge to his conviction and sentence"). And presumed that Wright § 2241 was a second or successive § 2255 motion and transferred it back to the United States District Court for the Middle District of Florida for certification. Clearly erroneous and a abuse of discretion. *Id* at 23-CV-1570 (LTS).

PETITION FOR REHEARING

William Wright, JR., Petitioner present its petition for a rehearing of the above-entitled Cause, and in support of it, respectfully shows:

Ground for Rehearing

A rehearing of the decision in the matter is in the interest of justice because:

1. First and foremost this Honorable Court as well as the SDNY Court of Appeals, and, Habeas Court has overlooked blinding, and controlling law in the matter,
2. These Courts publish opinion warrants review because they have misrepresented the facts to describes a finding of fact of rechar-acterization of Wright § 2241 petition. Clearly erroneous, and a deliberate abuse of discretion.

3. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 (1996), does not define what constitutes a "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 reach final decision counts for this purpose. Before a motion or petition can be regarded as successive, there must be some prior "adjudication" on the merits or a dismissal with prejudice. The AEDPA's gate-keeping provision are trigger only if the prisoner has had a prior 28 U.S.C. § 2255 motion dismissed on the merits. Which the Courts has overlooked,

4. This Court has overlooked the fact that the SDNY Court of Appeals and the Habeas Court overlooked are misapprehended the law. Because Wright's § 2241 petition was filed before adjudication of his previous § 2255 motion was complete. See King v. United States,

5. This Court has overlooked that the habeas Court overlooked before applying the AEDPA's gatekeeping provision, however, an appellate Court "must" determine whether a petitioner's motion or petition was in fact second or successive within the meaning of the statute, or if instead, the district court should construe it as a motion to amend an original 28 U.S.C. § 2255 motion. See *Ching v. United States*, 298 F.3d 174.

6. This Court has overlooked that the habeas Court "implied" that Wright's § 2241 petition was a second or successive § 2255 motion, knowing that it was fully aware that the § 2241 petition was not a second or successive § 2255 motion within the meaning of AEDPA of 1996 statute.

7. In its Order 1d at, 23-CV-1570 (LTS) which clearly states, in its footnote pg. 1 "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 that time

Petitioner Filed this petition by placing it into prison mail system of February 13, 2023, his section 2255 motion was pending. On February 15, 2023, the Middle District of Florida denied Petitioner's section 2255 motion". see Id. It can hardly be doubted that the habeas Court was not fully aware that Wright's § 2241 was not a "Second or successive within the meaning of AEDPA of 1996 Statute. The habeas Court deliberately abused its discretion, and transferred Wright's § 2241 petition under 1631, which was clearly erroneous.

8. This Court has overlooked that the habeas court is in clear violation of its own Circuit case law. Which states, "The United States Court of Appeals for the second Circuit holds that that a motion to amend a 28 U.S.C.S 2254 petition while an initial 28 U.S.C.S 2254 petition is still pending before a district court cannot be construed as second or successive. Therefore, Fed. R. Civ. P. 15, 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), govern such motion to amend. The record clearly shows because adjudication of the initial habeas petition was not complete the district court erred when it did not treat later petition as a motion to amend. 271 F.3d at 62 see also Fama v. Comm'r of Corr. Servs., 235 F.3d 804, 815 (2d Cir 2000).

9. This Court has overlooked that the habeas court consideration of Wright's § 2241 petition was unlawful. Transferring Wright's § 2241 under 1631 and recharacterizing it as a § 2255 motion render such "transfer" in respect to the Great Writ follow by arbitrary denial "constitutionally suspect". The record clearly reflects that the habeas court had acted with flagrant impropriety.

10. This Court again has overlooked that the habeas court is in violation of its own case law. 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.S. § 2255 motion is complete, a district court should construe the second 28 U.S.C.S. § 2255 motion as a motion to amend the pending § 2255 motion. See *Ching v. United States*, 298 F.3d 174 (2d Cir 2021).

11. This Court has clearly overlooked the havoc of the habeas court's failure to address all claims in a habeas petition may wreak upon the Federal and State court system compels this Court to require the habeas court to address all such claims. See *Clisby v. Jones*, 960 F.2d 925 (11th Cir 1992).

12. In the instant cause Wright has been denied a constitutional protected right requiring the habeas court to resolve the habeas claim. *Clare v. United States*, 2018 U.S. Dist LEXIS 4452 (2d Cir 2018), petitioner citing *Clisby v. Jones*, (11th Cir 1992), *Rhode v. United States*, 583 F.3d 1289 (11th Cir 2009), for the proposition that the District Court are instructed to resolve

all claims for relief raised in a petition for writ of habeas Corpus pursuant to 28 U.S.C.S. § 2254 regardless whether habeas relief is granted or denied. See *Clisby v. Jones*, 960 F.2d 925 (11th Cir 1992).

13. This cause call for the application of familiar principles governing the issuance of the writ of mandamus. For an understanding of the contention of the circumstances out of which the litigation arose should be stated.

14. The habeas court denial of entertaining Wright's § 2241 petition was in contravention of his rights provided by the Fifth Amendment of the constitution of the United States. That there is no statutory or other method of appeal available to the petitioner to obtain a hearing on his § 2241 petition to which he is entitled, and that there is no adequate remedy other than the writ of mandamus which is necessary for the "protection of the appellate jurisdiction" and aid thereof.

15. The question presented in the present case is accordingly, whether the order of the District Judge refusing to properly adjudicate the case and making a "deliberate mischaracterization" of Wright § 2241 petition as a § 2255 motion, and transferring it under 1631, which was a clear abuse of discretion, present an exceptional situation as to call for the issuance of a mandamus to review the ruling. This question has been decided by this Court in favor of the use of the writ. In *Ex parte Simmons*, 247 U.S. 231, 38 S. Ct. 497 62 L. Ed. 1094; see also *Evaporated Milk Assn.*, 319 U.S. 21, 26 S.W.2d 1185, 63 S.Ct. 938 (1943).

16. However, although expression to the contrary can be found, this Court has said a number of times, and in some case has decided, that the writ of mandamus may be used to determine whether the lower court has "abused its discretion." See *Mallard v. United States, District Court of Iowa*, 490 U.S. 296, 104 L. ed. 2d 318, 109 S. Ct. 1814.

17. In this case, mandamus is the only adequate remedy because the habeas court's order has cause and is continuing to cause irreparable harm to petitioner's Fifth Amendment Due Process rights. "Pfizer v. Giles (In re Asbestos Sch. Litig.) 46 F.3d 1284, 1286 (3d Cir 1994) 1d at 1294-95 (holding that the petition lacked any "other adequate means to obtain relief" because "failure to issue a writ of mandamus would subject the petitioner to a continuing impairment of its First Amendment Freedoms" as a result of the district court order).

18.

18. In this case, mandamus is the proper remedy when the case is outside the exercise of the discretion of the inferior court, and is one of irregularity or "against law", or of flagrant injustice, or without jurisdiction. Ex parte Bradley, 7 Wall 364, 19 L. Ed 214; see also ABBE v. New York, N. H. & H. R. Co., v. U.S., 171 F.2d 387 (2d Cir 1948).

19. Wright petition to this Court followed the Court of Appeals denial of his application for certificate of appealability, stating it lacked jurisdiction. Clearly erroneous.

20. The writ will aid this Court in its Appellate jurisdiction both at common law, and in Federal Court to confine an inferior court to a lawful exercise of its prescribed jurisdiction or compel it to exercise its authority when it is its "duty" to do so. *Rochan v. Evaporated Milk Assn.* 319 U.S. 21, 26 87 L. Ed 1185, 63 S. Ct. 938 (1943); see also *Ex parte Peru*, 318 U.S. 578 87 L. Ed 1014, 63 S. Ct. 793 (1943).

CONCLUSION

For the reason just stated, William Wright, Jr. has demonstrated sufficient grounds pursuant to 5. Ct. 44(b) that should grant a rehearing, on further consideration the Petition for writ of habeas Corpus be granted, or alternatively, that the Court should transfer the petition to the appropriate Court assigned to a different District Judge. In the interest of fairness and justice.

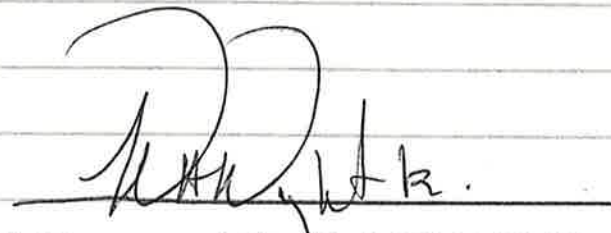
Additionally, due to the deliberate misapplication of the law, which prejudice Wright and resulted in a "Unreasonable delay" in the matter, Wright respectfully asks this Honorable Court to remand the case back to the habeas court with instruction to resolve the matter within ninety days or release the prisoner.

Respectfully Submitted,

WILLIAM HAROLD WRIGHT, JR.

CERTIFICATE OF AN UNREPRESENTED PARTY

I, William Wright, JR. Pro se, certify that this Petition for Rehearing is presented in good Faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44 of the of this Court.


WILLIAM HAROLD WRIGHT, JR.

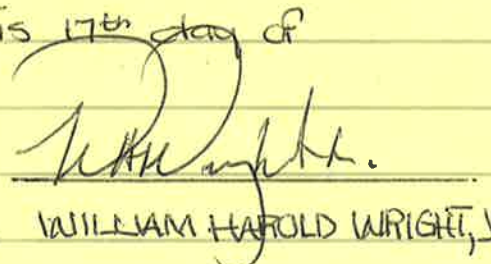
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Petitioner

PROOF OF SERVICE

I William Wright SR., do swear or declare that on this date, October 17th 2024, as required by Supreme Court Rule 29, I have served the enclosed copy for Rehearing on each party's to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above document in the United States mail properly addressed to each of them and with first-class postage pre-paid, by depositing the above document in the institutional legal mailbox on this 17th day of October, 2024.


WILLIAM HAROLD WRIGHT, JR.

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