

ORIGINAL

24-5057

No. _____

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Washington, D.C. 20543

Isaiah L. Dunbar — PETITIONER
(Your Name)

vs.

Sec'y, Fla. Dep't of Corr. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Isaiah L. Dunbar
(Your Name)

Desoto Annex 13617 S.E. Hwy 70
(Address)

PROVIDED TO DESOTO C.I. ACCADIA, Florida 34266-7800
ON 7/1/24 FOR MAILING (City, State, Zip Code)

INMATE INITIALS I.D.

OFFICER INITIALS AD

~14
(Phone Number)

QUESTION(S) PRESENTED

whether an application for state postconviction relief containing claims that are procedurally barred is "properly filed" within the meaning of Antiterrorism and Effective Death Penalty Act provision (28 U.S.C. 2244 (d)(2).

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Actuz v. BENNETT, 531 U.S. 4, 121 S. Ct. 361, 148 L. Ed. 2d 213 (2000)

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APPENDIX C	United States Court of Appeals 11 th Circuit: Denial of motion for reconsideration on <u>6.13.2024</u>
APPENDIX D	Circuit Court of the 12 th Judicial Circuit for Manatee County FLA: Denial of <u>Jan. 10, 2016</u> motion in state court
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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix F to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the 12TH Judicial Circuit Court Manatee County, FL court appears at Appendix D to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 4-9-2024

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 6-13-2024, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 3-4-2020. A copy of that decision appears at Appendix E.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 14

Antiterrorism and Effective Death Penalty
Act provision (28 U.S.C.S. 2244(d)(2))

Fed. R. Civ. P. 60(b)(6)

STATEMENT OF THE CASE

ON MARCH 20, 2020, Petitioner filed a pro se 28 U.S.C. 2254 petition, arguing that he was convicted of a charge not made in his information. The district court dismissed the petition as untimely. Subsequently, Petitioner filed four Fed. R. Civ. P. 60(b)(6) motions, which the district court denied. Petitioner appealed the district court's denial of fourth Rule 60(b)(6) motion. Petitioner moved the United States Court of Appeals for a Certificate of Appealability and Leave to proceed in forma paupers. The United States Court of Appeals denied the petition stating: Here, reasonable jurists would not debate whether the district court abused its discretion by denying the instant fourth Rule 60(b) motion, as Dunbar did not identify any mistake, newly discovered evidence, fraud, or other valid circumstance that would authorize relief. See Fed. R. Civ. P. 60(b). Petitioner filed a motion for reconsideration pursuant to 52(b). The United States Court of Appeals denied the motion ON 6-13-2024.

REASONS FOR GRANTING THE PETITION

According to the United States Supreme Court in *Arthur v. BENNETT*, 531 U.S. 4, 121 S. Ct. 361, 148 L. Ed. 2d 213 (2000), it was held that (1) for purposes of 2244(d)(2), an application for state postconviction relief is "properly filed" where the application complies with the rules governing whether the application is recognized as such under state law, notwithstanding that the application contains claims that are procedurally barred from review on the merits, for (A) an application is "filed," as that term is commonly understood, when the file is delivered to and accepted by the appropriate court office for placement into the official record, (b) an application is "properly filed" when the file's delivery and acceptance are in compliance with the applicable laws and rules governing filings, and (c) in common usage, the question whether an application has been "properly filed" is separate from the question whether the claims contained in the application are meritorious and free of procedural bar; and (2) in the case at hand, the application in question was not rendered improperly filed by the application's inclusion of claims that were allegedly barred from review on the merits under the two New York statutory provisions, as neither of those provisions purported to set forth a condition to filing, as opposed to a condition

to obtaining relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Isaac L. Dunbar

Date: June 30, 2024