PROVIDED TO CROSS CITY C.I. ON MAY 08 2024 FOR MAILING

24-5153

PROVIDED TO CROSS CITY C.I. ON JUL 15 2024 FOR MAILING

IN THE

FILED FEB 05 2024 OFFICE OF THE CLERK SUPREME COURT, U.S.

ORIGINAL

SUPREME COURT OF THE UNITED STATES

PROVIDED TO CROSS CITY C.I. ON FEB 05 2024 FOR MAILING

JONATHAN GODWIN – Petitioner

vs.

FILED FEB 05 2024 OFFICE OF THE CLERK SUPREME COURT, U.S.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS ET.AL.. – Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

JONATHAN GODWIN, DC# M07545
Cross City Correctional Inst.
568 N.E. 255th Street
Cross City, Florida 32628

Petitioner, *pro se*

QUESTIONS PRESENTED

1. Whether Petitioner's Rule 60(b) Motion for Relief from judgment filed within a year of the denial of his Habeas Petition timely?
2. Whether the Court of Appeals for the Eleventh Circuit should have issued a certificate of Appealability, where jurist of reason could find both a valid claim of the denial of a constitutional right and the district court's procedural ruling debate?
3. Whether the holding in Buck v. Davis, 580 U.S. 100 (2017), delineated an abuse of discretion standard in evaluating a COA application from denial of a Rule 60(b) Motion, and if so, was that standard met here?
4. Whether a Rule 59 (e) order constitutes a "Final Order" under Rule 11 requiring a COA determination by the District Court?

LIST OF PARTIES

[ ] All parties in the caption of the case on the cover page.

[X] 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:

Ashley Moody, Attorney General, State of Florida.

RELATED CASES

Godwin v. Sec'y, Fla. Dept of Corr., No.22-13113-J, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered June 13, 2023.

Godwin v. Sec'y, Fla. Dept of Corr., No. 8:16-CV-02253-SDM-SPF, U.S. District Court for the middle District (Tampa) of Florida. Judgment entered August 16, 2022.

Godwin v. Inch, No.21-5741, U.S. Supreme Court. Judgment entered November 22, 2021.

Godwin v. Sec'y, Fla. Dept of Corr., No. 20-14409-E, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered March 30, 2021.

Godwin v. Sec'y, Fla. Dept of Corr., No.8:16-cv-02253-SDM-SPF, U.S. District Court for the Middle District (Tampa) of Florida. Judgment entered October 23, 2020.

Godwin v. Florida, No. 16-6689, U.S. Supreme Court. Judgment entered March 15, 2023.

Godwin v. State, 2D13-2117 Second District Court of Appeals. Judgment entered March 13, 2015.

State v. Godwin, No. 06-CF-13197, Thirteenth Judicial Circuit Court for Hillsborough County, Florida. Judgment entered April 26, 2013.

Godwin v. State, No. 2D07-394, second District Court of Appeals for the State of Florida. Judgment entered November 22, 2008.

State v. Godwin, No. 06-CF-13197, Thirteenth Judicial Circuit Court for Hillsborough County, Florida. Judgment entered January 4, 2007.

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Appendix

TABLE OF AUTHORITIES CITED

Cases

Statutes And Rules

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

[X] 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,
[X] 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 _____ 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 highest state court to review the merits appears at Appendix _____ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was June 13, 2023.

[ ] No petition for rehearing was timely in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 9, 2023, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of the 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 _____. A copy of that decision appears at Appendix_____.

[ ] A timely petition for rehearing was thereafter denied in 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

28 U.S.C. § 2253-

(a) In a habeas corpus proceeding under section 2255 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.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c) (1) Unless a circuit justice or judge issues a certificate if appealability, an appeal may not be taken to the court of appeals from-

(A) The final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State Court; or

(B) The final order in a proceeding under section 2255.

(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.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by Paragraph (2).

STATEMENT OF CASE AND FACTS

On October 23, 2020, the Middle District Court (Tampa, Florida Division) entered judgment against the Petitioner in a Habeas proceeding per 28 U.S.C. § 2254. A timely appeal ensued and a request for a Certificate of Appealability (COA), was filed. The Eleventh Circuit Court of Appeals denied both a COA and a Motion for reconsideration. Petitioner promptly petitioned this Honorable Court for a Writ of Certiorari.[1]

On October 12, 2021, while the Petition for Certiorari was still pending, Petitioner filed a Motion for Relief from judgment pursuant to Rule 60 (b)(1) and (4). (Exhibit D) He argued that "the Court's failure to make a merits determination to three Constitutional claims presented by [him] resulted in a defect in the integrity of the Habeas proceedings." (Id. at 3) Nevertheless, without requiring a response from the Respondent, the District Court determined that Petitioner "should have filed his Rule 60(b)(1) Motion before he appealed nearly two years ago." (Citing Kemp v. United States, 142 S. Ct. 1856, 1864 (2022)(Exhibit B, at 4-5)[2]

Thereafter, Petitioner filed both a timely Rule 59(e) Motion to alter or amend the judgment, and a Notice of Appeal. (Exhibit E) His rule 59(e) Motion asserted three separate grounds for Relief. First, that the "Court's misinterpretation of substantive facts has resulted in an erroneous application of a dispositive legal principle." (Id. at 4-7) Next, that the "Court committed substantive mistake of fact."

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[1] On November 22, 2021, the Court declined to exercise discretionary review. See Godwin v. Inch, 2021 U.S. LEXIS 5852 (2021)

[2] The District Court determined that no argument or basis existed for finding the judgment void under Rule 60(b)(4). (Id. at 1-2)

(Id. at 7-9) And finally, that the "Court [had] committed a mistake of law." (Ibid at 9-13)

Meanwhile, the Clerk for the Eleventh Circuit Court of Appeals, suspended all appeal deadlines pending the District Court's entry of an Order disposing of the Rule 59(e) Motion. Ultimately, the District Court summarily denied the Motion without a merits or COA determination. (Exhibit F)

Eventually, the Court of Appeals for the Eleventh Circuit construed Petitioner's Notice of Appeal as a Certificate of Appealability, and denied the same. (Exhibit A). Petitioner promptly petitioned for rehearing and a suggestion for rehearing *en banc*, apprising the Appellate Court to several opinions by prior panels of the Court.* On November 9, 2023, the Eleventh Circuit determined that Petitioner had "offered no new evidence or arguments of merit to warrant Relief." (Exhibit C) This petition for certiorari follows.

* (Exhibit G)

REASONS FOR GRANTING THE PETITION

Petitioner, Jonathan Godwin, in good faith believed that he had been deprived – contrary to congressional intent – of his valuable Right to one full round of Federal Habeas review. Therefore, he moved to reopen his Federal Habeas proceedings under Federal rule of Civil Procedure 60(b). He contended that the District Court's Rulings to three Constitutional claims resulted in a defect in the integrity of his Habeas proceedings. (Exhibit D). The District Court (among other things) determined that "[e]ven if he is correct that the earlier Order misconstrued his [Giglio] claim, Godwin is entitled to no Relief." (Exhibit B, at 3-4) Ultimately, concluding that Petitioner "should have filed his rule 60(b)(1) Motion before he appealed nearly two years ago." (Citing Kemp v. United States, 142 S. Ct. 1856, 1864 (2022))(Id. at 4-5)

In Kemp, this Honorable Court held that a "judge's errors of Law were indeed mistakes under Rule 60(b)(1)." The District Court, reviewing Petitioner's rule 60(b) Motion, determined that the following passage from Kemp to be dispositive:

> **Rule 60(b)(1) Motions, like all Rule 60(b) Motions, must be made "within a reasonable time." Fed. Rule Civ. Proc. 60(c)(1). And while we have no cause to define the "reasonable time" standard here, we note that Courts of Appeals have used it to forestall abusive litigation by denying rule 60(b)(1) Motions alleging errors that should have been raised sooner (e.g. in a timely appeal) See e.g. Mendez v. Republic Bank, 725 f. 3d 651, 660 (7CA 2013) (Ibid at 5)**

Highlighting the Court's citation of Mendez in a footnote, the District Court concluded that Petitioner's Rule 60(b)(1) Motion was untimely filed. Id. However, a

fair reading of the entire paragraph from the Mendez decision would require a different outcome.

Upon acknowledging it's use of "broad language that may be read to foreclose Rule 60(b) Relief for any error that could be corrected on appeal," the Seventh Circuit stated:

> **Given Federal Rule of Appellate Procedure 12.1 and our Circuit Rule 57 procedure that permit us to remand an appeal to the district court for purposes of granting Relief from judgment under Rule 60(b), *relief may also be timely sought after an Appeal has been docketed without fear that a deadline to appeal is being circumvented.* On the other hand, a Rule 60(b) Motion filed after the time to appeal has run that seeks to remedy errors that are correctable on appeal will typically not be filed within a reasonable time. 725 F. 3d at 660 (bold emphasis added)**

The legal posture of Petitioner's case is materially indistinguishable from Mendez, where Republic Bank's Rule 60(b)(1) Motion "filed more than 30 days after the District Court entered judgment" was timely. Id. at 661. That's because "neither Republic Bank nor the District court was trying an end run around the deadline for filing an appeal." Ibid. Petitioner presented this same argument (with record support) to the District Court in his Rule 59(e) Motion. (Exhibit E, at 9-13)[3]

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[3] Nevertheless, the District Court's procedural ruling is not without support. See Cashner v. Freedom Stores, 98 F. 3d 572, 578 (10th Cir. 1996)(A Rule 60(b)(1) Motion challenging a substantive judicial mistake must be filed within the time frame required for filing a notice of appeal); International Controls corp. v. Vesco, 556 F. 2d 665, 670 (2nd Cir. 1977) (Rule 60(b)(1) Motion may not be made after the time for appeal has elapsed) Pierce v. United Mine Workers, 770 f. 2d 449, 451 (6th Cir. 1985)(same); But see Taylor v. Johnson,257 f. 3d 470, 474 (5th Cir. 2001)(A party may file a Rule 60(b) Motion at any time within one year after judgment, even if an appeal is pending, and the denial of that motion is appealable separately from the underlining judgment.); Mendez, supra.

The district court denied the Rule 59 Motion without any stated reasons or a certificate of appealability determination. (Exhibit F)[4]

Furthermore, at least two opinions by this Honorable Court suggest that Petitioner's Rule 60(b)(1) Motion was timely filed. See Gonzalez v. Crosby, 545 U.S. at 545 n. 2 (2005)("The motion shall be made within a reasonable time, and for reasons, (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken.")(citing Fed. R. Civ. P. 60(c)(1)); and Kemp, supra, at 1865 ("we affirm the Eleventh Circuit's judgment that the Motion was cognizable under Rule 60(b)(1), subject to a 1-year limitations period") Moreover, Petitioner's reliance on Peterson v. Sec'y, Fla. Dep't of Corr., 676 Fed. Appx. 827 (11th Cir. 2017), was legally correct. As such, reasonable jurist could conclude that both a valid claim of the denial of the constitutional right and the District Court's procedural ruling is debatable or wrong. Hence, Petitioner's request for certificate of Appealability deserves encouragement to proceed further.[5]

Ultimately, in the context of a Rule 60 Motion, several circuits have interpreted this Honorable Court's decision in Buck v. Davis, 580 U.S. 100 (2017), as requiring a showing of an abuse of discretion by the District Court to obtain a COA. See Taylor v. United States, 2022 U.S. App. LEXIS 28539 (6th Cir. 2022) (In the context of a Rule 60 Motion, "the COA question is . . . whether a reasonable

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[4] Several Circuits require District Courts to make COA determinations upon denial of rule 59(e) Motions in the first instance – including the Eleventh. See Perez v. Sec'y, Fla. Dep't of Corr., 711 F. 3d 1263, 1264 (11th Cir. 2013) (Collecting cases)

[5] This Honorable Court has held that it has "jurisdiction to review, on petition for Writ of Certiorari, a denial of application for certificate of Appealability under AEDPA by a Circuit Judge or panel of the Court of Appeals." See Hohn v. United States, 524 U.S. 236, 118 S. Ct. 1969, 141 L. Ed. 2d 242 (1998).

jurist could conclude that the District court abused it's discretion in declining to reopen the judgment.") (Citing Buck v. Davis, 580 U.S. 100, 137 (2017); Guzman v. Lumpkin, 2021 U.S. App. LEXIS 39635 (5th Cir. 2021)(Same); and Reed v. Warden, 2023 U.S. App. 11405 (3rd Cir. 2023)(Same). Therefore, where jurist of reason could find a District Court's procedural Ruling, declining to reopen a judgment debatable (such as Petitioner's) a certificate of Appealability should is;sue. See 28 U.S.C. § 2253(c).

In sum, a litigant that's not attempting to circumvent the filing of a timely appeal (such as Petitioner), whom ask relief from a judgment within a year thereof pursuant to Rule 60(b)(1) should be considered timely. See Klapprott v. United States, 335 U.S. 601, 613 (1949)(Amended 60(b) provides for setting aside a judgment for any one of five specified reasons or for "any other reason justifying Relief from the operation of the judgment." The first of the five specified reasons is "mistake, inadvertence, surprise, or excusable neglect." To take advantage of this reason the rule requires a litigant to ask Relief "not more than one year after the judgment, order, or proceeding was entered or taken.") (Quotation marks in original)[6]

[6] The errors of law and fact alleged by Petitioner's rule 60(b) Motion were not raised on appeal from denial of his Habeas Petition because he was denied a certificate of Appealability. See Godwin v. Sec'y, Fla. Dept. of com., 2021 U.S. app. LEXIS 9297 (11TH Cir. 2021)

CONCLUSION

Petitioner prays this Court grant this petition for writ of certiorari.

Respectfully submitted,

Date: July 15, 2024.

Jonathan Godwin

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