

No. 24-5476

IN THE SUPREME COURT OF THE UNITED STATES

October term 2024

WILLIAM HAROLD WRIGHT, JR.

Petitioner,

v.

United States of America

On Petition for Writ of Mandamus to the
United States Court of Appeals for the Eleventh Circuit

Petition for Rehearing

William Harold Wright, Jr.

Reg. No. 67722-018

Pro-se. litigant

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TABLE OF CONTENTS

	Page
Table of Authority	i
Petition For Rehearing	2
Jurisdiction	2
Reason For Granting the Petition	3
Conclusion	15

TABLE OF AUTHORITIES

Cases

Clisby v. Jones, 960 F.2d at 938 (11th Cir 1992) ..	9, 10
Cruz v. Gomez, 202 F.3d 592, 587 (2d Cir 2000) ..	8
Ex parte Bain, 121 U.S. 130 L'Ed 349, 7 S Ct. 781	4, 5, 6
Jackson v. Motel 6 Multipurpose Inc., 130 F.3d 999 1004 (11th Cir 1997)	14

Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir 1991) . . .	11
Simmons, 247 U.S. 231, 38 S Ct. 497 62 L Ed 1094 . . .	14
U.S. v. Figueroa, 666 F.2d 1375 (11th Cir 1992)	10
U.S. v. Peel, 637 F.2d 1375 (11th Cir 1992)	10
Pfizer Inc. v. Siles (In re Asbestos Sinc Litig, 46 F.3d 1284, 1286 (3d Cir 1994) 1d at 1294-95	13
U.S. v. Norris, 281 U.S. 619, 622, 74 L Ed 1070, 50 S Ct. 424 (1930)	5
U.S. v. Rhode, 583 F.3d at 1291 (11th Cir 2009) . . .	8
U.S. v. Rowan, 663 F.2d 1034, 1035 (11th Cir 1992) . . .	6
U.S. v. Russell, 369 U.S. at 770, 8 L Ed. 2d 240, 82 S. Ct. 1038	6

U.S. v. Stirone, 361 U.S., at 217, 41 Fed 2d 252, 80
S Ct. 270 2, 3, 4, 5, 6, 7, 10, 15

U.S. v. Tannebaum, 148 F.3d 1262, 1263 (11th Cir 1998) . . 9

U.S. v. Keller, 916 F.2d 1034, 1035 (11th Cir 1992) . . . 7

FEDERAL STATUTES

U.S. Const., Fifth Amendment 4, 10, 12

28 U.S.C. § 2255 11, 12, 13

28 U.S.C. § 2254 12

Title 28 U.S. Code 12

Petition For Rehearing

Petitioner William Wright, Jr. respectfully moves this Court for an order (1) vacating its denial of the petition for Writ of mandamus, enter August 13, 2024 (2) granting the petition, (3) vacating the conviction, and (4) remanding to the Eleventh Circuit for further proceeding. As grounds for this petition, petitioner state the following:-

Jurisdiction

This Court entered an order denying the petition for Writ of mandamus on November 4, 2024, as stated in petitioner certification pursuant to Rule 44.2 attached to the end of this petition this petition is restricted to addressing intervening circumstances of controlling effect, specifically the impact of this Court decision in Stirone v. United States, 361 U.S. at 217 19 80 S Ct. 96 273 - 74.

Reason For Granting Petition

Because this Court decision in *Stirone v. United States*, overrule the Court of Appeals decision that affirmed petitioner's conviction this Court should vacate its order denying the petition for writ of mandamus, grant the petition, vacate the conviction and remand to the Eleventh Circuit for further proceeding.

In *Stirone v. United States*, this Court decided that "a court cannot permit a defendant to be tried on charges that are not made in the indictment against him". 361 U.S. at 217, 4 L Ed 2d 252, 80 S Ct. 270. This is the precise issue that Mr. Wright raised in his petition for writ of mandamus, and the Eleventh Circuit decision to the contrary was "clearly erroneous".

The central issue in *Stirone* and in this case are identical.

The issue presented and decided in *Stirone* (and raised in Wright's petition for writ of mandamus as well) that the offense proved at trial was not fully contained in the indictment for trial evidence had amended the indictment by broadening the possible base for conviction from that which appeared in the indictment 361 U.S. 212 80 S. Ct. 270 4 L. Ed. 2d 252 (1960); See also *Ex parte Bain*, 121 U.S. 130 L. Ed. 849, 7 S. Ct. 781 (1888), governed the district court's constructive amendment claim and render the indictment "unconstitutional" in violation of the Fifth Amendment Due Process Clause. The right to be only indicted on a presentment or indictment by a Grand Jury.

Stirone (similarly relying on *Bain*) held:

In *Ex parte Bain* this Court decided that the proposition that a defendant cannot be convicted of an offense different from that which was included in the indictment was broadly decided in *Bain*:

IF it lies within the province of a Court to change the charging part of an indictment to suit its own notion of what it ought to have been, or what the grand jury would probably have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime, and without which the Constitution say 'on person shall be held to answer,' may be frittered away until its value is almost destroyed *Id.*, at 10, 30 L Ed 849, 7 S Ct. 781.

This aspect of *Bain* has been reaffirmed in a number of subsequent case see e.g. *United States v. Norris*, 281 U.S. 619, 622, 74 L Ed 1070, 50 S Ct. 424 (1930) (Citing *Bain* for the rule that "nothing can be added to an indictment without the concurrence of the grand jury by which the bill was found").

The most important reaffirmation, of course, was *Stirone*. See Part III, *Supra*. In *Stirone* the Court's unanimous opinion extensively relied on

Bain for the proposition that "a Court cannot permit a defendant to be tried on charges that are not made in the indictment against him," 361 U.S. at 217, 4 L Ed 2d 252 80 S Ct. 270, and therefore that "after an indictment has been returned it charges may not be broadened through amendment except by grand jury itself." Id., at 215-216, 4 L Ed 2d 252, 80 S Ct. 270. See Russell v. United States, 369 U.S. at 770, 8 L Ed 2d 240, 82 S Ct. 1038 (citing Bain for the settled rule in Federal Courts that an indictment may not be amended except by "resubmission" to the grand jury, unless the change is merely a matter of form.

"An indictment is amended when it is so altered as to charge a different offense from that found by the grand jury." *Ex parte Bain*, 121 U.S. 130 16 Ed 849, 7 S Ct. 781.

The district court held in Wright's case based entirely on *United States v. Rowan*, 663 F.2d 1034, 1035 (11th Cir 1981) ("The court is not required on § 2255 motion

to reconsider claims of error raised and disposed of on direct appeal."), rendering the constructive amendment claim inapplicable. (Civ. Doc. 58 at 9).

Because the issue that the district court as well as the government impermissibly broaden the scope of the indictment has not been, and could not be previously adjudicated, there is no legal bar to it being considered under the present petition. Nor can it properly be concluded that the Court of Appeal decision in the same manner act as an estoppel on the issue raised therein, as the trial judge seem to imply. Simply put, the appeal court have never had the opportunity to address the issue presented herein because it was never raised by petitioner's appellate counsel on direct appeal.

Similarly, the appeal court never address the issue on direct appeal because it was not presented in the record before the appeal court nor in petitioner's brief. The Court of Appeals was never asked to resolve the conflict between the precedent set forth in "Stirone" or United States v. Keller, 916 F.2d 628, 13A(11th Cir 1990). These Court's reasoning controls.

The Eleventh Circuit decision did not rely on any grounds other than the mandamus petition was Frivolous. The district court explained "Applying the procedural bar," The United States contend (Correctly), (Civ. Doc. 20 at 15), that this claim is procedurally barred because the appellate court resolved the claim against Wright. "Clearly erroneous."

Certainly a liberal construction of Wright's claim should have indicate to the habeas court that Wright was not re-arguing an issue raised on appeal, as contended by the government, and therefore the issue was not "procedurally barred." See *Cruz v. Gomez*, 202 F.3d 592, 587 (2nd Cir 2000) (stating) a pro-se litigant's pleading should be construed to raised the strongest argument it suggest). See (Civ. Doc. 5 at 12-14; 56; 33).

The denial of a § 2255 motion to vacate presents a mixed question of law and fact, and we review the district judge's factual conclusion for clear error and question of law de novo. *Rhode v. United States*,

583 F.3d 1289, 1290 (11th Cir. 2009) (per curiam), Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and, consequently, "must" be construed liberally, Tannebaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam).

District judges "must" resolve all claims for relief raised in habeas proceedings, regardless of whether relief is granted or denied, *Clisby*, 960 F.2d at 935-36 (involving a 28 U.S.C. 2254 petition filed by a state prisoner); *Rhode*, 583 F.3d at 1291 (holding *Clisby* applies to §2255 proceedings). When a district judge fails to address all of the claims presented in a motion to vacate, the Eleventh Circuit will vacate the ... judgment without prejudice and remand the case for consideration of all remaining claims." *Clisby* 960 F.2d at 938. A "claim for relief" is defined as "any allegation of a Constitutional violation." *Id.* at 936.

Allegations of distinct constitutional violations constitute separate claim for relief, "even if both allegations arise from the same alleged set of operative

Facts." Id. Constructive Amendment of the indictment constitutes a violation of a defendant's Fifth Amendment rights and is a claim of a Constitutional violation. See *Stirone v. United States*, 361 U.S. at 217-19, 80 S. Ct. at 273-74. This Court's reasoning in *Stirone* controls.

The habeas court resolved some, but not all of Wright's claims in violation of *Clisby*. In ground two of the § 2255 motion, however, the habeas court did not address Wright's claim that the district court constructively amended the indictment because it impermissibly broadened the scope of the indictment.

The district court misconstrued one of Wright's claims and violated *Clisby v. Jones*, 960 F.2d 925 (11th Cir 1992), by failing to address his claim that district court constructively amended the indictment because it impermissibly broadened the scope of the indictment. Such a violation is reversible error per *United States v. Peel*, 637 F.2d 975, 979 (11th Cir 1980); *United States v. Figueroa*, 666 F.2d 1375 (11th Cir 1982).

The habeas Court misconstrued Ground two as asserting Wright argued that, by denying his motion to dismiss the indictment for insufficiently informing him of the conspiracy charged against him, the district Court Constructively Amended the indictment. "Patently absurd and Clearly erroneous." See (Civ. Dec. ¶ at 12-14; 56; 33).

Therefore because the habeas Court did not conduct an constructive amendment claim that the district Court impermissibly broadened the scope of the indictment analysis and because the habeas Court did not address this issue in the final judgment, Lisby was violated.

Also, Wright's Amended § 2255 motion Ground two should have been properly construed and directly address under the well-established standard of liberal construction, see e.g.; Hall v. Bellmon, 735 F.2d 1106, 1110 (10th Cir 1981) (stating the liberal construction rule means, when a court can reasonably read pro-se pleading to state a valid claim it should do so notwithstanding a failure to cite legal theory, use of poor syntax or sentence

Construction or not being familiar with specific requirement when pleading). See (Civ. Doc. 5 at 12-14).

This Call for application of familiar principles governing the issuance of the writ of mandamus. For an understanding of the contention of the circumstances which the litigation arose should be stated. The district Court Order procedurally barring Wright's Amended § 2255 motion Ground two claim was in contravention of his rights provided by the Fifth Amendment of the Constitution of the United States. There is no statutory or other method of appeal available to Wright to obtain judgment vacating the habeas court order ("procedurally barring") Wright's Ground two claim, and remanding back to the Eleventh Circuit for further proceeding. There is no adequate remedy other than the writ of mandamus which is necessary for the protection of the appellate jurisdiction and aid thereof.

Wright claim the right to the mandamus petition herein applied for under Section 1651(a), Title 28 U.S. Code, usually referred to as the All Writ Statute.

It provide: The Supreme Court and all Courts established by the Act of Congress may issue all writ necessary or appropriate in aid of their respective jurisdictions on agreeable to the Usage and principles of law.

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 Wright's Fifth Amendment rights. "Pfizer Inc. v. Giles (In re Asbestos Shr. Litig.)", 46 F.3d 1284, 1286 (3d Cir 1994), 1d at 1294-95 (holding that petitioner 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's order.).

The question presented in the present case is accordingly, whether the order of the habeas Court denying the petitioner's Amended § 2255 motion Ground two Claim without adjudication on the merits / or addressing the Claim present an exceptional situation

as to call for the issuance of a mandamus to review the ruling.

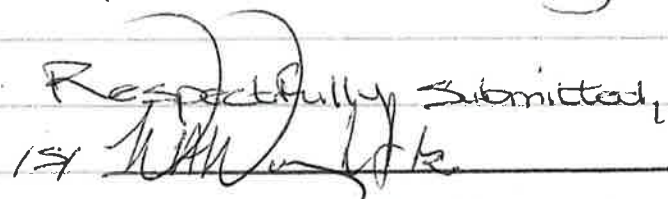
When ever a constitutional right has been denied, or a judge has acted clearly beyond his jurisdiction, and there is no immediate remedy by writ of error or appeal, the extraordinary writ of mandamus will issue to correct an error which, if left uncorrected will cause confusion and complication so great that serious inconvenience to the courts and to the litigant will result. See *Ex parte Simmons*, 247 U.S. 231, 38 S. Ct. 497 62 L Ed. 1094.

In the instant case, the mandamus petition is drafted, identifies "ministerial clearly defined, and peremptory" duty owed to Wright to justify granting a petition for writ of mandamus relief. Moreover, mandamus relief would be available "only . . . when no other adequate means are available to remedy a clear usurpation of power or "abuse" of discretion. *Jackson v. Motel 6 Multipurpose Inc.*, 130 F.3d 999, 1004 (11th Cir 1997).

Stirone provide precise judgment in the law that that Eleventh Circuit "must" follow. That decision in fact overruled the Eleventh Circuit Wright decision. Stirone act as circumstances of a controlling effect.

CONCLUSION

This Court decision in Stirone v. United States, overruled Eleventh Circuit decision that had affirmed the petitioner's conviction. The legal arguments presented in the petition for a writ of mandamus in this case and those decided in Stirone are identical. The petitioner therefore respectfully asks this Court to reconsider its order denying his petition and instead, grant the petition. Vacate his conviction, and remand his case to the Eleventh Circuit for further proceeding in light of Stirone; and petitioner prays the judgment of this Court, direct a rule to be served upon the Solicitor General of the United States to show cause why the writ should not be issue, and the prayer of the petition be granted.

Respectfully Submitted,
157 
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.

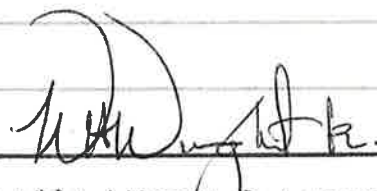
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WILLIAM HAROLD WRIGHT, JR.

Filed: 11/19/2024

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2021
a true and correct copy of the foregoing
were sent by United States mail to the
following participant:

Solicitor General of the United States
Room 5616, Department of Justice,
950 Pennsylvania Ave N.W., Washington
D.C. 20530-0001

15/ 
WILLIAM HAROLD WRIGHT, JR.