

SUPREME COURT OF THE UNITED STATES
IN RE: JOSEPH R. DICKEY
CASE NO. 23-7911

MOTION FOR RECONSIDERATION OF THE DENIAL
TO PROCEED IN FORMA PAUPERIS

Comes now petitioner, Joseph R Dickey, to ask for reconsideration of the October 15, 2024 order which denied permission to proceed In forma Pauperis. The October 15th order referenced Rule 39.8 which states In Forma Pauperis status may be denied if it is clear the petition is "frivolous" or "malicious". I am asking for reconsideration because any such finding in this case is a clear error for the following reasons:

REASON ONE: For a claim to be frivolous it must be totally lacking in either fact or law. There must be an oversight in this case because the petition I submitted presented one legal question for this Honorable Court to consider. The question I presented was: "Whether the bar in 28 U.S.C. 2244(b)(1) applies to claims presented by federal prisoners in a second or successive motion to vacate under 28 U.S.C. 2255". This question was previously presented to this Honorable Court verbatim in Bowe (In re: Bowe No. 22-7871). In the Bowe case Justice Sotomayor joined by Justice Jackson both acknowledged there is a circuit split on this issue and the circuit split is an important issue for this court to resolve. Justice Sotomayor indicated she would welcome the invocation of this court's jurisdiction to resolve this issue in a future case. Id. Justice Kavanaugh has also acknowledged the question concerning the application of 2244(b)(1) to federal prisoners (the exact question I presented) needs to be addressed and he would vote to grant review in a future case to resolve the circuit split. [see Avery v. United States, 140 S. Ct. 1080 (2020)] In yet another case, this reoccurring legal question concerning the wide circuit split was presented. [See In re: Carter No. 23-6167] In none of these cases was the question of whether 28 U.S.C. 2244(b)(1) applies to federal prisoners deemed to be "frivolous" or "malicious". I believe in ruling that this exact same question in my case is "frivolous" is a clear error.

REASON TWO: If I was denied pauper status because I have previously submitted this question to the court before, I also believe this to be an error. The previously submitted petition was denied without comment. This court's rules state: "Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U.S.C. 2241(b) is an adjudication on the merits, and therefore does not preclude filing a new petition." (See Rule 39.8(d))

application to another court for the relief sought." [Supreme Court Rules, Rule 20(4)(b)] This court has also stated: "It is rare, but it does happen on occasion that we grant review and even decide in favor of a litigant who previously had presented multiple unsuccessful petitions on the same issue." [Justice Brennan, Marshall, Blackmun, and Stevens dissenting. In re: McDonald, 489 US 180 (1989)] Although I presented the issue back in March 2024, I never received a merits determination. I presented it again because I cut out all of the other questions I presented back in March and narrowed the presentation to ONE legal question which this Honorable Court has said needs to be resolved. If I was trying to present the issue over and over and over, then perhaps I could be deemed to be vexatious filing and my filings could be considered "Malicious". However, that is not the case here. I am only trying to present one issue to this court which has never received a merits determination and which the court says needs to be resolved.

In light of the two reasons I presented in this motion, I am asking for reconsideration of my request to proceed In Forma Pauperis. I am also asking if In Forma Pauperis status is granted, that my submitted petition be considered alongside other petitions who may be presenting this same important legal question.

Respectfully,

Joseph R Dickey 10-24-25
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* Placed in the Prison Legal mail System on 10-25-24
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Joseph R Dickey