No: 24-5609

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE BABUBHAI PATEL,

Petitioner.

PETITION FOR ORIGINAL WRIT OF HABEAS CORPUS

Mr. Babubhai Patel

2223 Cameo Court

Canton, MI. 48187

(734) 756-1627 (BOP Custody CARES ACT Inmate)

QUESTION(S) PRESENTED

QUESTON NUMBER ONE:

Whether the Sixth Circuit abused its discretion by holding that Mr. Patel's properly filed 2255 Motion to Vacate in Light of Newly Discovered Evidence Pursuant to the U.S. Supreme Court's Ruling in McQuggin v. Perkins, 569 U.S. 383 (2013), in which relied upon "newly discovered evidence" but was transferred to the Sixth Circuit as a second-or-successive 2255 application, thus, did the district court have jurisdiction to adjudicate the merits consistent with the U.S. Supreme Court's Ruling in McQuggin v. Perkins, 569 U.S. 383 (2013) ?

LIST OF PARTIES

[x] 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:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR ORIGINAL WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus 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,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.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,

[x] is unpublished.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[ ] is unpublished.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 _____ court appears at Appendix _____ to the petition and is

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was June 18, 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:

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

The jurisdiction of the Court is invoked under 28 U.S.C. 2241 (a).

[ ] For cases from **state courts:**

The date in 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 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

PAGE NUMBER

STATEMENT OF THE CASE

On November 30, 2023, Petitioner Patel filed his Pro Se 2255 Motion to Vacate in Light of Newly Discovered Evidence Pursuant to the U.S. Supreme Court's Ruling in McQuggin v. Perkins, 569 U.S. 383 (2013) (ECF No. 1759), and on December 19, 2023, the district court transferred to the Sixth Circuit as a "second or successive 2255 application (ECF No. 1762). After full briefing as to the Second or Successive 2255 Application, thus, on June 18, 2024, the Sixth Circuit denied Patel's Second or Successive 2255 Application (Doc. # 13-1). Having no right to appeal a second or successive application to the U.S. Supreme Court, thus, Petitioner Patel has filed an original habeas petition invoking this Court's jurisdiction under 28 U.S.C. 2241 (a), in the matter herein.

Petitioner Patel, asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for Original Writ of Habeas Corpus as to entertain original habeas petition under 28 U.S.C. 2241 (a), and issue a relief as this Supreme Court deems warranted in the case herein.

REASONS FOR GRANTING THE PETITION

Petitioner Patel, states that the standard for the Supreme Court's consideration of an original habeas corpus petition is a demanding one. Mr. Patel must show both that "adequate relief cannot be obtained in

any other form or from any other court" and "exceptional circumstances warrant the exercise of the Court's discretionary powers." Rule 20.4 (a).

In the instant case, Petitioner Patel, respectfully request that this Court **GRANT** his pro se Petition for Original Writ of Habeas Corpus as to Question Number One, thus, did the Sixth Circuit abuse its discretion by failing to hold that Mr. Patel's properly filed his Pro Se 2255 Motion to Vacate in Light of Newly Discovered Evidence Pursuant to the U.S. Supreme Court's Ruling in McQuggin v. Perkins, 569 U.S. 383 (2013), was not a "second or successive 2255 application. As Mr. Patel, requested that the Sixth Circuit vacate and remand back to the district court to adjudicate the merits of his properly filed 2255 Motion to Vacate in Light of Newly Discovered Evidence as the claims relied on "newly discovered evidence" in which were withheld by the federal government, thus, a **Brady** violation occurred and other constitutional violations are implicated in which were previously unavailable when his first 2255 Motion was denied on July 7, 2017. It follows that consistent with the U.S. Supreme Court Rulings in McQuggin v. Perkins, 569 U.S. 383 (2013), that Patel's 2255 Motion to Vacate in Light of Newly Discovered Evidence was properly before the district court jurisdiction was permitted by Supreme Court precedents. The Sixth Circuit's failure to vacate and remand was a clear abuse of discretion as

it is contrary to U.S. Supreme Court precedents in the case at bar. Babubhai Patel, asserts that adequate relief cannot be obtained in any other form or from any other court as he originally filed his Pro Se 2255 Motion to Vacate in Light of Newly Discovered Evidence Pursuant to the U.S. Supreme Court's Ruling in McQuggin v. Perkins, 569 U.S. 383 (2013), in the U.S. District Court in the Eastern District of Michigan in which transferred it under 28 U.S.C. 1631, to the Sixth Circuit Court of Appeals in which they held it to be a "second or successive 2255," thus, Mr. Patel was not permitted to file a Panel Rehearing or Rehearing En Banc to the Sixth Circuit and as the result of the U.S. Supreme Court Ruling in Jones v. Hendrix, 599 U.S. 465 (2023), he is permitted from raising the "newly discovered evidence" claims within a 2241 Writ of Habeas Corpus Petition under the saving clause of 28 U.S.C. 2255 (e), and adequate relief may not be obtained in any other form or from any other court. Because this case deals with "newly discovered evidence" based upon a **Brady** violation and other constitutional violations, thus, this Court held long ago in Marbury v. Madison, 1 Cranch 137, 2 L. Ed. 60 (1803) ("it is a settled and invariable principle, that every right, withheld, must have a remedy, and every injury, its proper redress." "There must, then, be a jurisdiction somewhere competent to issue that kind of process."), therefore, it follows that exceptional circumstances warrant the exercise of the Court's discretionary powers

as a favorable ruling would impact thousands of federal prisoners (emphasis added).

QUESTION NUMBER ONE:

Whether the Sixth Circuit abused its discretion by holding that Mr. Patel's properly filed 2255 Motion to Vacate in Light of Newly Discovered Evidence Pursuant to the U.S. Supreme Court's Ruling in McQuggin v. Perkins, 569 U.S. 383 (2013), in which relied upon "newly discovered evidence" but was transferred to the Sixth Circuit as a second-or-successive 2255 application, thus, did the district court have jurisdiction to adjudicate the merits consistent with the U.S. Supreme Court's Ruling in McQuggin v. Perkins, 569 U.S. 383 (2013) ?

Discussion

Petitioner Patel, states that there is a spilt in the federal circuit court of appeals as to whether a second-in-time motion requires certification from the court of appeals if the motion is based on a **Brady v. Maryland,** 373 U.S. 83 (1963), claim that was not known to the criminal defendant or federal inmate at the time of the last initial habeas motion. The majority of federal Circuit Court of Appeals have held that a **Brady** claim may not be raised within a second-in-time 2255 Motion, however, requires approval from the Court of Appeals but multiple federal Circuit Court of Appeals have held that such Decisions were wrongly decided, thus, this Honorable U.S. Supreme

Court should resolve the split in the federal Circuit Court of Appeals in the case herein.

However, Petitioner Patel, asserts that after conducted extensive legal research he has discovered the federal Circuit precedent as to each federal Circuit Court of Appeals in the country in which reveals that a split in the federal Circuit Court of Appeals exist and more troubling than that almost every federal Circuit Court of Appeals in which have held that a **Brady** claim may not be raised within a second-in-time 2255 or 2254 Motion, however, other federal Circuit panels have held that such Decisions were wrongly decided as outlined below herein.

First Circuit- the First District Court transferred Rasheed's second-in-time 2254 habeas petition in which he raised a **Brady** claim, thus, the First Circuit held it was a "second or successive 2254 application," see Rasheed v. Thompson, No. 14-02343 (1st Cir. 2015).

Second Circuit- the Second Circuit held that a **Brady** claim may not be raised within a second-in-time habeas petition and the appellate court held it was a "second or successive 2254 application, see Quezada v. Smith, 624 F.3d 514 (2d Cir. 2010).

Third Circuit- a Third District Court held that Schwartz Motion arguing a **Brady** claim the court denied second-in-time 2255 Motion holding it requires permission from the Third Circuit Court of Appeals, see

United States v. Schwartz, Case No. 2:03-cr-00035-1 (E.D. Pa., Apr. 22, 2014).

Fourth Circuit- The Fourth Circuit held after the district court transferred a **Brady** claim filed within a second-in-time 2255 Motion and the Fourth Circuit held his **Brady** claim was a successive and required prior approval from the Appellate court, see United States v. Fiorani, 112 Fed. Appx. 942 (4th Cir. 2004); and United States v. Smith, 220 F.3d 306 (4th Cir. 2000) (the Fourth Circuit held that Smith's **Brady** claim is a second or successive petition). But see, Long v. Hooks, 972 F.3d 442, 487 (4th Cir. 2020) (Wynn, J., concurring) (expressing doubt that **Brady** claims should be subjecting to Section 2244 (b)'s gatekeeping mechanism, but ultimately following circuit precedent that held Section 2244 (b) applies).

Fifth Circuit- the Fifth Circuit held that **Brady** claims raised in second-in-time habeas petitions are successive regardless of whether the petitioner knew about the alleged suppression when he filed his first habeas petition, see In re Will, 970 F.3d 536, 540 (5th Cir. 2020).

Sixth Circuit- the Sixth Circuit held that a **Brady** claim raised in second-in-time habeas petition are successive even when Wogenstahl was unaware of these facts as at the time he filed his initial petition because the purported **Brady** violations...had already occurred when he filed his petition, see In re Wogenstahl, 902 F.3d 621, 627 (6th Cir. 2018). But

see, Baugh v. Nagy, 2022 U.S. App. LEXIS 27469, at *15 (6th Cir. 2022) (Upon further consideration, we respectfully believe that **Wogenstahl** was incorrectly decided. We find it "illogical" to hold that the abuse of the writ doctrine is abused when a petitioner seeks vindication for a previously unknown **Brady** violation. Storey v. Lumpkin, 142 S. Ct. 2576, 2578, 213 L. Ed. 2d 1136 (2022) (Mem) (Sotomayor, J.). Rather, "where a prisoner can show that the state purposefully withheld exculpatory evidence, that prisoner should not be forced to bear the burden of section 2244, which is meant to protect against the prisoner himself withholding such information or intentionally prolonging the litigation." Workman v. Bell, 227 F.3d 331, 335 (6th Cir. 2000) (en banc) (Merritt, J., dissenting). In fact, **Brady** claims seem to fall perfectly within the realm of claims that should not be considered "second or successive.").

Seventh Circuit- The Seventh Circuit held that **Brady** claim may not be raised in a second-in-time 2255 or 2241 petition, however, the Seventh Circuit suggested it may be raised within a 2255 (f) (4) motion, see Mandacina v. Entzel, 991 F.3d 758, 761-63 (7th Cir. 2021).

Eighth Circuit- The Eighth Circuit held that Mandacina's **Brady** claim may not be raised without pre-approval from the Appellate court, see Mandacina v. United States, No. 05-2186 (8th Cir. 2005).

Ninth Circuit- The Ninth Circuit held that: "[W]e need not, and do

not, resolve the more difficult question whether **all** second-in-time **Brady** claims must satisfy AEDPA's gatekeeping requirements....," see United States v. Lopez, 577 F.3d 1053, 1066-67 (9th Cir. 2009). But see, Gage v. Chappell, 793 F.3d 1159, 1165 (9th Cir. 2015) ("We acknowledge that Gage's argument for exempting his **Brady** claim from the Section 2244 (b) (2) requirements has some merit... But as a three-judge panel, we are bound to follow [circuit precedent].").

Tenth Circuit- The Tenth Circuit has held that: "a prisoner's **Brady** claim is not subject to Section 2244 (b) when the prosecutor purposefully withholds exculpatory evidence," see Douglas v. Workman, 560 F.3d 1156, 1193 (10th Cir. 2009).

Eleventh Circuit- The Eleventh Circuit has held that: "**Brady** claims raised in second-in-time habeas petitions are successive regardless of whether the petitioner knew about the alleged suppression when he filed his first habeas petition," see Tompkins v. Sec'y Dept. of Corr., 557 F.3d 1257, 1260 (11th Cir. 2009). But see, Scott v. United States, 890 F.3d 1239, 1243 (11th Cir. 2018) ("Though we have great respect for our colleagues, we think **Tompkins** got it wrong: Tompkin's rule eliminates the sole fair opportunity for these petitioners to obtain relief.").

D.C. Circuit- The D.C. Circuit held that the district court lacks jurisdiction over petitioner's claim that the prosecution suppressed exculpatory

evidence in violation of Brady v. Maryland, 373 U.S. 83, 87 (1963), see In re Hiligh, 2021 U.S. App. LEXIS 32154 (D.C. Cir. 2021).

Petitioner Patel, states that he filed his second-in-time 2255 motion in the Eastern District of Michigan in which is part of the Sixth Circuit raising a **Brady** claim and other constitutional violation under the U.S. Supreme Court authority of McQuggin v. Perkins, 569 U.S. 383 (2013), thus, in light of "newly discovered evidence" Babubhai Patel's second-in-time 2255 was not a second or successive 2255 Application. Moreover, it follows that if Mr. Patel was convicted and sentenced in Colorado; Kansas; New Mexico; Oklahoma; Utah; and Wyoming he would have likely been able to proceed in the district court with his second-in-time 2255 Motion consistent with Tenth Circuit precedents, see Douglas v. Workman, 560 F.3d 1156, 1193 (10th Cir. 2009) (emphasis added). This split in the federal Circuit Court of Appeals as to if **Brady** claims may in fact, be raised within a second-in-time 2255 or 2254 Motion and the Sixth Circuit's Ruling conflicts with the U.S. Supreme Court's Ruling in McQuggin v. Perkins, 569 U.S. 383 (2013), in which should compel this Court to **GRANT** Patel's Original Writ of Habeas Corpus to settle the dispute among federal Circuit Court of Appeals and to create national uniformity in the matter herein. See Menominee Indian Tribe v. United States, 577 U.S. 250, 255-56 (2016) (The Court of Appeals' decision created a split with the Federal Circuit

and the Supreme Court granted certiorari to resolve the conflict); Axon Enter v. FTC, 598 U.S. 175, 184-85 (2023) (the U.S. Supreme Court granted certiorari to resolve a split from decisions from the Fifth and Ninth Circuits); and BP p.l.c. v. Mayor of Baltimore, 593 U.S. 230, 236-37 (2021) (the U.S. Supreme court granted certiorari to resolve circuit split) (emphasis added).

For the record Petitioner Patel, states that the Sixth Circuit's June 18, 2024, Order stated in relevant part as follows:

The motion attacks the same judgment as Patel's initial 2255 motion, and the factual "predicates underlying [Patel's] current claims... had already occurred when he filed his" first motion-the grand-jury transcripts existed and were allegedly withheld at the time of trial. In re Wogenstahl, 902 F.3d 621, 627-28 (6th Cir. 2018). Because Patel is "attacking the same... judgment of conviction" and "his claims were not unripe at the time he filed his initial [motion]" his current motion is second or successive. Id.

It is true that Babubhai Patel is in fact attacking the same... judgment of conviction, **however his claims were not unripe at the time he filed his initial [motion]"**. In fact, on September 11, 2015, Movant Patel filed his 2255 Motion to Vacate (Doc. # 1475), and the only issue that relates to a **Brady** violation that was raised by Mr. Patel was within his Ground Seven (Doc. # 1475, PageID.20459-20465), but

it deals with a mistrial should have been requested due to the Government withholding the McKesson Pharmaceutical Corporation Administrative Investigation Report and McKesson records. See Appendix C (Patel's 2255 Motion to Vacate filed 09/11/15). Furthermore, Petitioner Patel, states that the district court's denial opinion also accurately reflects that Ground Seven claim only related to McKesson records being withheld, see Appendix D (The Denial Opinion of Patel's 2255 Motion to Vacate dated July 7, 2017). However, Petitioner Patel, contends that he **never** received a copy of his Grand Jury Transcripts until **February 2019,** see Exhibit E (Verified Declaration of Vinod Patel dated March 30, 2020), thus, the Grand Jury Transcripts were newly discovered evidence and his claim were unripe at the time he filed his initial 2255 Motion to Vacate on September 11, 2015. The Sixth Circuit abused their discretion as their Decision was based upon an erroneous application of the facts and circumstances surrounding Mr. Patel's prior procedural history and evidence presented to the Sixth Circuit in which should compel this Honorable U.S. Supreme Court to **GRANT** Original Writ of Habeas Corpus Petition in the matter herein.

CONCLUSION

The petition for an original writ of habeas corpus should be granted.

Respectfully submitted,

* Babubhai Patel

Date: 09/09/2024