

No. 24-5860

FILED
OCT 15 2024

OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

ELLIOT RIVERA — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ELLIOT RIVERA (98112-004)
(Your Name)

P.O. BOX 779800
(Address)

MIAMI, FLORIDA 33177
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1) As to whether the United States Court of Appeals 11th Circuit (USCA11) abused it's discretion, in it's opinion, that a Federal Rule of Civil Procedure (F.R.C.P.) Rule 60(d)(3) can only grant relief in Civil matters not criminal and as such violates 5th Amendment due process rights.

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

United States District Court for the Southern District of Florida
Criminal Case Number: 1:12-cr-20339-JJC-2

United States District Court for the Southern District of Florida
Civil Case Number: 16-cv-21173-JJC

United States Court of Appeals for the Eleventh Circuit Case
Number: 20-11628

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APPENDIX A USCA11 CASE NO. 20-11628 [DE:89-1]

APPENDIX B USCA11 CASE NO. 20-11628 [DE:79]

APPENDIX C USCA11 CASE NO. 20-11628 [DE:96]

APPENDIX D U.S. DIST COURT CASE NO. 1:12-CR-20339
-JJC [DE:191]

TABLE OF AUTHORITIES CITED

Citations	Pages
Brady v. Maryland, 373 U.S. 83 (1963)	3,5
Bryant v. United States, 2017 U.S. Dist Lexis 232615 at *2 (N.D. Ala)	5
California v. Trombetta, 467 U.S. 479 (1984)	4
Mooney v. Holohan, 19 U.S. 103 (1935)	4
Napul v. Illinois, 360 U.S. 264, 269-272 (1959)	4
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Fed R. Civ. P. 60(d)	1,2,3,4,5
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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 2024 U.S. App. Lexis 5524; 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 D 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

[] 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 August 09, 2024

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

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 09, 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 _____. 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

Elliot Rivera's "Due Process" rights of the "Fifth Amendment" and the "Fourteenth" Amendment were violated due to [Fraud] and [Fabricated] evidence that AUSA Michael B. Nadler would [admit] to in March of 2017. Elliot Rivera was denied his rights to [fair] trial under the "Fifth" amendment "Due Process" rights.

STATEMENT OF THE CASE

As to whether the United States Court of Appeals for the Eleventh Circuit (USCA11) abused its discretion, in it's opinion that a Federal Rule of Civil Procedure (F.R.C.P.) Rule 60(d)(3) can only grant relief in Civil matter not Criminal and as such violates the Fifth Amendment's "Due Process" rights.

The Eleventh Circuit denied Rivera's 60(d)(3) appeal. See USCA11 Case No. 20-11628, on March 07, 2024/August 09, 2024. In the Court's opinion it stated that the "District Court lacked subject matter jurisdiction because F.R.C.P. 60(d) does not apply to Criminal proceedings and thus, does not authorize a District Court to vacate a criminal conviction"). The relief Rivera seeks would arise if all under 28 U.S.C. §2255. See USCA11 Case No. 20-11628, DE: 89-1, Pg. 2], Exhibit A. Rivera has already filed a §2255 in 2016.

Rivera argues a 60(d)(3) motion is not exclusive to Civil matters based on the USCA's own wording in it's opinion and federal Rule; "Federal Rule 60 provides for relief from a final civil judgment or order under certain circumstances."

From my understanding the Federal Court only deals with Civil and Criminal proceedings, the facts that the wording "or order," follows Civil, is clear to allow for Criminal Proceedings, "under certain circumstances." See [DE:89-1, Pg. 12] Exhibit A

Rivera believes his Appeal to the USCA11 fell under "certain circumstances". Rivera argues a federal prosecutor A.U.S.A. Michael B. Nadler, with the governments witnesses engaged in a unconscionable plan to act or scheme and committed Fraud/Fabricated evidence upon the Court that's both material and relevant. Rivera believes he has proven this in his 60(d)(3). See [USCA11 Case No. 20-11628 DE:79] on June 15, 2023. Exhibit B.

The USCA11 by stating a Rule 60(d) can not vacate a criminal conviction, feels it need not make a finding of facts, even though Rivera's 60(d) shows Multiple Constitutional violations, by classifying Rivera's 60(d) as a Successive §2255. thereby avoiding analysis, by stripping the District Court's ruling on the merits and jurisdiction to have ruled on the motion in the first place/ See [USCA11, DE: 89-1, Pg. 2,16]. Exhibit A.

What's problematic in the USCA11 ruling, is in Rivera's 28 U.S.C §2255 of 2016, two Grounds 1 and 4 argued Fraud and Fabricated evidence and a missing May 21st, 2012 cell phone call, that is the main argument of Rivera's Rule 60(d) motion on appeal. The District Court defaulted those claims, stating they should have been argued on Direct Appeal that ended in April/2015. See [USCA11 Case No. 20-11628, DE: 89-1, Page 6] Exhibit A. Rivera filed for a certificate of Appealability (C.O.A.) to the USCA11, but it was denied.

AUSA Nadler's Fraud/Fabricated Evidence was proven by Rivera's submission of a F.R.C.P. Rule 33 filed in Dec/2016. On reconsideration Nadler's reply to [CR-DE:172. Pg.4-6, A-2] Exhibit B. Nadler's response letter at [CR-DE:174. Pg.3-4, A-3] Exhibit B. in March/2017, is when Rivera was finally able to prove AUSA Nadler's Scheme and blatant Brady violation of a missing May 21st, 2012 call that Nadler's response, stated, is what implicates Rivera, but does not exist. Which Rivera clearly shows in his 60(d)(3) appeal.

So it's by the government's own admission Rivera proves the Fraud/Fabricated evidence. Nadler's admission letter was written in March of 2017, which was "Post," Trial 2013. Direct Appeal, April 2015. Government's reply to Rivera's §2255, November, 2016.

What the USCA11 wants Rivera to do is request a C.O.A. for a successive §2255. of what was already defaulted by the District Court, and denied a C.O.A to Rivera already. The Rule 60(d) is Rivera's remedy of last resort. The USCA11 should at least have made a finding of facts, to see how this Fraud/Fabricated evidence that's both material and relevant has affected Rivera's Post conviction remedies sought, especially Rivera's §2255 of 2016.

As to Rivera's Rule 60(d) Appeal, that was denied for lack of jurisdiction. Rivera filed a reconsideration of the USCA11

showing that the government conceded, that two of Rivera's 60(d) arguments of ineffective assistance of counsel are relevant to 60(d) motion.

That relate to Rivera's Civil matter §2255, that Rivera showed are directly intertwined in Rivera's Rule 60(d) argument before the USCA11. That would prove the District Court has subject matter jurisdiction. See [USCA11] Reconsideration DE:96 May 31, 2024], Exhibit C, as the district court would be reviewing Fraud/Fabricated evidence that affected Rivera's Civil §2255, in which the USCA11 should have made a finding of facts as to the merits of Rivera's 60(d) appeal.

"As to Fraud/Fabricated Evidence." of which most was based on the Governments witness testimony, could only be proven in March/2017, by AUSA Nadler's admission as argued in Rivera's rule 60(d) (3) Appeal in USCA11. This very Supreme Court has held on many occasions that the prosecution has a rudimentary Constitutional obligation to report to the defendant and the trial Court when a government witness lies under oath. California v. Trombetta, 476 U.S. 479, 484, 485 (1984) (Citing Mooney v. Holohan, 29 U.S. 103 (1935); Napul v. Illinois, 360 U.S. 264, 269-272 (1959). In Giglio v. United States, 405 U.S. 150 (1979), the Supreme Court went further to say that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair.

In United States v. Agurs, 427 U.S. 97, 103 (1976), in fact the Supreme Court has consistently held that the use of false testimony is a violation of Constitutional Rights.

Rivera's 60(d) Appeal shows how all the Fraud/Fabricated evidence played out in Rivera's criminal proceeding and post conviction relief sought. How AUSA Nadler was cunning in his reply to Rivera's request for a May 21st, 2012 call, that Nadler stated is what implicates Rivera's but does not exist, with his admission coming after he replied to Rivera's only Civil remedy afforded to him post Direct Appeal and only one shot at it. Nadler never made an admission that the May 21st, 2012 call is what implicated Rivera during his §2255 proceeding, that Rivera showed the USCA11 in his 60(d) appeal. Nor did Nadler ever make an effort to correct the record, or admit to his Brady violation for not turning over the only piece of evidence he claimed implicated Rivera, post §2255. a May 21st 2012 call that was never mentioned at trial. Leaving Rivera's Rule 60(d) motion as a last resort.

The USCA11, claimed Rule 60(d)(3), can not be used or ruled on in criminal matters, yet the 11th Cir. has done just that. In Bryant v. United States, 2017 U.S. Dist. Lexis 232615 *2 (N.D. Ala), the Courts opinion stated: "a party seeking relief under Rule 60(d)(3) must prove the Fraud by clear and convincing evidence. In which the USCA11, refuses to make a finding of clear and convincing evidence that Rivera's 60(d) Appeals shows.

REASONS FOR GRANTING THE PETITION

Rivera believes he has proven in his 60(d)(3) motion Fraud/Fabricated evidence affected the outcome of his trial, Direct Appeal and §2255. all done in an unconscionable plan, act or scheme by an attorney for the government AUSA Nadler, which he also violated his Giglo obligation, Brady obligation, Implicated the 14th Amendment by allowing Fraud/Fabricated evidence to infest Rivera's legal proceedings and post conviction relief sought, by reason violates Rivera's 5th Amendment Due Process Rights.

Rivera respectfully request that the Supreme Court Grant Certiorari, to then Order and Direct the United States Court of Appeals for the 11th Circuit to make a finding in Rivera's 60(d)(3) Appeal. As the Court is not restricted just to Civil matters, and does have jurisdiction to rule on the Merits in a F.R.C.P. Rule 60(d)(3).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 (Elliott Rivera)

Date: October 11, 2024