NO. ~~ORIGINAL~~ 24-5895

IN THE

SUPREME COURT OF THE UNITED STATES

JONATHAN GODWIN – Petitioner

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS ET AL. – Respondent

ON PETITION FOR 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 a District Court abuse its discretion by dismissing a Rule 60(b)(4) Motion for Relief from Judgment alleging a due process violation?

LIST OF PARTIES

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

[X] All parties **do not** appear in the option 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. 24-10971-D, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered July 22nd, 2024.

Godwin v. Sec'y, Fla. Dept of Corr., No. 22-13113-J, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered June 13th, 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 16th, 2022.

Godwin v. Inch, No. 21-5741, U.S. Supreme Court. Judgment entered November 22nd, 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 30th, 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 23rd, 2020.

Godwin v. Florida, No. 16-6689, U.S. Supreme Court. Judgment entered September 15th, 2016

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

State v. Godwin, No. 06-CF-13197, Thirteenth Judicial Circuit Court for Hillsborough County, Florida. Judgment entered November 22nd, 2008.

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

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TABLE OF AUTHORITIES CITED

Cases

Constitutional Provisions

United States Constitution Amendment Five:

> No person shall be deprived of life, liberty, or property, without due process of law.

United States Constitution Amendment Fourteen:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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,
[X] 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 _____ 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

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

The date on which the United States Court of Appeals decided my case was July 22, 2024.

[X] 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: _____, 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. § 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).

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]

In Ground One of his 2254 complaint, petitioner alleged, inter alia, that his Fourth and Fourteenth Amendment Right against an unreasonable search and seizure as articulated by Terry v. Ohio, 392 U.S. 1 (1967) were violated. (see Exhibit C, at 4-5). The basis for his challenge was that " the information relied upon by the stopping officer was not sufficient to justify the stop, and/or where the stopping officer's testimony requiring what he knew and when he knew it was proven to be false and/or misleading."(Id.)

The Respondent's Answer to the district court's order to show cause why the petition should not be granted, argued that Petitioner's claim(s) were either foreclosed by Stone v. Powell, 428 U.S. 465 (1976) or that the stop was valid. (See Exhibit D, at 8-10)

In his Reply to Respondent's answer, Petitioner asserted that " no full and fair hearing was afforded [him] in the state courts concerning his Fourth Amendment claims, i.e., that there was no objective well-founded articulate

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

suspicion to support the stop, and any consent given was not freely and voluntarily given". (Citing Tukes v. Dugger, 911 F.2d at 514) (See Exhibit E, at 4)

The district court determined the following as to the claim(s) presented in Ground One:

"Although as phrased above Godwin's ground might contest the lawfulness of the stop, Godwin conceded during the hearing on the motion to suppress that the officer had probable cause to stop his car... Godwin stipulates in his application that he conceded the stop based on the officer's testimony in a strategic move to strengthen his argument that the search exceeded the bounds of Terry... Consequently, in ground one Godwin challenges only the scope of the search, not the lawfulness of the stop". (See Exhibit F, at 12)

Despite Petitioner's allegations that "the State amended the discovery subsequent to the suppression hearing" and he "renewed his motion at trial" and "[through counsel] reasserted that Officer Trick did not have a well-founded articulate suspicion to support the stop" (Exhibit E, at 5), and the parties argument thereto, the district court limited Petitioner's claim(s) "to the trial court's pretrial denial of [his] motion to suppress the fruits of a search". [2](Ibid.)

On December 7, 2023, Petitioner filed a Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b)(4). (See Exhibit G) [3] Claim two asserted that his

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[2] The district court acknowledged that Petitioner's Brady v. Maryland, 373 U.S. 83 (1963), claim intertwined with the Fourth Amendment claim. (See Exhibit F, At 21-26)

[3] Two things must be noted; (1) the district court previously dismissed petitioner's asserted entitlement to relief under Rule 60 (b)(4), concluding that it lack subject

"due process right to fair notice and an opportunity to be heard was violated when the [district] court sua sponte waived his Terry stop claim asserted in his 28 U.S.C. 2254 habeas petition". (Id. At 5.) Without requiring a response from the respondent, the district court determined that Petitioner's second issue "reargues the substance of the arguments in both of the earlier post-conviction motions. (Doc. 31 and 41) Godwin's disagreement with the earlier determinations is not a basis for relief under Rule 60". (See Exhibit B)

A timely Rule 59(e) motion to alter or amend the judgment and notice of appeal was filed. Therein Petitioner asserted that "the Court's order does not determine whether petitioner is (or not) entitled to a certificate of appealability pursuant to Rule 11(a),of Rules Governing Habeas Corpus and, Rule 22(b), of Rules of Appellate Procedure". (See Exhibit H)

On March 3, 2024, the district court denied Petitioner's Rule 59(e) motion to alter or amend the judgment but it appears that the court granted the requested relief. (See Exhibit I, at 2)

Thereafter, Petitioner renewed his application for a certificate of appealability. (See Exhibit J). Proposing to the Eleventh Circuit Court of Appeals "whether reasonable jurists could find the district court's procedural ruling denying [his] Rule 60(b)(4) motion for relief from the habeas judgment per 28 U.S.C. 2254

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matter jurisdiction (see petition for Writ of Certiorari, Case No. 24-5153, At 4) and; (2) on December 21, 2023 Petitioner resubmitted the instant Rule 60 (b)(4) motion to the district court because of a "return to sender" error.

debatable or wrong?" (Id. at 7) (citing United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 130 S. Ct. 1367, 167 L.Ed.2d 156 (2010)

On July 22, 2024, the Eleventh Circuit Court of Appeals determined that Petitioner "failed to make a substantial showing of the denial of a constitutional right". (Citing Slack v. McDaniel, 529 U.S. 473, 489 (2000) (See Exhibit A) this timely petition for certiorari follows.

REASONS FOR GRANTING THE PETITION

Petitioner, Jonathan Godwin, on behalf of himself and others similarly situated, in good faith believed that he had been denied procedural due process-contrary to the Fourteenth Amendment-during his habeas proceedings pursuant to 28 U.S.C. 2254. Therefore, he moved to reopen his Federal habeas proceedings under Federal Rule of Civil Procedure 60(b) (4).

Rule 60(b)(4) allows a federal district court to vacate a judgment if "the judgment is void". See Fed. R. Civ. P. 60(b)(4). According to this Honorable Court's decision in Espinosa, a judgment is void if it is "so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final". See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 270, 130 S. Ct. 1367, 167 L.Ed.2d 158 (2010). However, a judgment will not be deemed void "simply because it is or may have been erroneous." Id. (citations omitted). Rather, it "applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or a violation of due process that deprives a party of notice or the opportunity to be heard". Id. At 271. In other words, "due process requires notice reasonably calculated, under all circumstance, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections". Ibid. At 272.

Here, Petitioner invoked a federal district court's jurisdiction to entertain his 2254 petition, given that he sought federal habeas relief on the ground that his state custody violated the United States Constitution. (See Exhibit C). He listed six

grounds for relief. Among them was Ground One, the subject of his Rule 60(b)(4) motion. In Ground One, Petitioner contended that his Fourth and Fourteenth Amendment Rights against an unreasonable search and seizure as articulated by Terry v. Ohio, 392 U.S. 1(1967) were violated. (See Exhibit C, At 4-5)

The District Court ordered the Respondent to "respond to the application and show cause why the court should not grant the application". (See Exhibit K). Also in this order, the court instructed the Respondent to, among other things;

1. If the respondent contends that the application is time-barred he should move to dismiss the application;

....

3. The response must state whether Godwin has exhausted his state remedies, including post-conviction remedies and appeals. If the respondent contends that Godwin has not exhausted his state remedies, the response must contain a detailed explanation of which state remedies are still available. (Id. at 1-2)

In its response to Ground One, the Respondent invoked the Stone v. Powell, 428 U.S. 465 (1976) bar, and alternatively, argued that the stop was valid. (See Exhibit D, at 8-10) Indeed, the Respondent expressly acknowledged that Petitioner "challenged the stop of the vehicle as being based on insufficient facts" on direct appeal. (Id. at 3) and it likewise did not assert that Petitioner waived, abandoned, nor forfeited his challenge of the stop. Instead of relying on any affirmative defenses other than the Stone bar, Respondent argued that on the merits of Petitioner's application, he was not entitled to relief under 28 U.S.C. 2254. (Ibid.)

After considering the Respondent's response and Petitioner's reply, the district court denied Petitioner's 2254 application.[4] In reaching this conclusion, the court determined that Petitioner's claims either lack merit or were procedurally barred. But it dismissed the challenge of the stop in Ground One based solely on the pretrial concession by Petitioner and did not consider the merits of the claim. (See Exhibit F, at 12) The court did not give the parties notice that it was considering dismissing the challenge of the stop based on the pretrial concession by Petitioner, and it did not ask the Respondent whether the Respondent wished to invoke that concession.[5]

Whether the district court has the authority on its own initiative, to invoke a constitutional waiver defense from the 2254 Movant's pretrial concession and dismiss the movant's 2254 claim on that basis raises a question of law. See Day v. McDonough, 547 U.S. 198, 126 S.Ct. 1675, 164 L. Ed. 2d 376 (2006) (deciding whether, as a matter of law, a district court has the authority to sua sponte deny a state prisoner's 28 U.S.C. 2254 petition as untimely).

In Day, the Court considered "whether a federal court lacks authority, on its own initiative, to dismiss a habeas petition as untimely, once the State has answered the petition without contesting its timeliness". Id. at 201-02. The Court

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[4] Petitioner's reply asserted that no full and fair hearing was afforded him in the state court's concerning his Fourth Amendment claim(s). (See Exhibit E, At 4)

[5] Both the district court and the Eleventh Circuit Court of appeals denied a certificate of appealability. See Godwin v. Sec'y, Fla. dept. of Corr. 2021 U.S. App Lexis 9297 (11th Cir. 2021) and this Honorable court declined to exercise discretionary review. See Godwin v. Inch, 2021 U.S. Lexis 5852 (2021)

concluded that under the circumstances in Day's case, "the federal court had discretion to correct the state's error and, accordingly, to dismiss the petition as untimely under AEDPA's one-year limitation". Yet the Court was careful to note that a district court would abuse its discretion if it "overrode a State's deliberate waiver of a limitations defense". Id.

This Court rested its ruling on primarily two interrelated rationales. First, the Court stated a preference for treating defenses identified in the same 2254 Rule similarly. In this respect, it observed that although 2254 Rule 5(b) requires the state in its answer to a habeas petition to "state whether any claim in the petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statue of limitations", 2254 R.5(b), this Court has held that federal courts may consider the defenses of exhaustion and non-retroactivity, even if the state has failed to raise those defenses. Day, 547 U.S. at 206. And it continued, noting that the United States Circuit Courts "have unanimously held that, in appropriate circumstances, courts, on their own initiative, may raise a petitioner's procedural default....") Id. Since courts may on their own raise all other defenses set forth in Rule 5(b), 2254 Rules, the Court reasoned, it makes sense to treat the only remaining defense in that rule timeliness the same way.

Second, and more significantly, the Court opined that like the doctrines of exhaustion, procedural bar, and non-retroactivity, AEDPA's statute of limitations is predicated on "values beyond the concerns of the parties". Day, 547 U.S. at 205 (citation and quotation marks omitted). Specifically, the Court explained, "The

AEDPA statute of limitation promotes judicial efficiency and conservation of judicial resources, safeguards the accuracy of constitutional questions while the record is fresh, and lends finality to state court judgments within a reasonable time". Id.

Nevertheless, the Day Court concluded that a court's ability to revive a forfeited defense identified in 2254 Rule 5(b) is not without limits. Id. at 202, 210-11. First, if a court contemplates exercising its authority to invoke a forfeited 2254 Rule 5(b) defense that court must first give the parties "fair notice and an opportunity to present their positions" concerning whether the court should apply the defense. Day, 547 U.S. at 210.

Second, a court may not "override a state's deliberate waiver" of 2254 Rule 5(b) defenses. Wood v. Milyard, 566 U.S. 463, 464, 132 s. ct. 1826, 1833-34, 182 l. Ed. 2d 733 (2012) (quoting Day, 547 U.S. at 202); See also id. at 1833 n. 5 (clarifying that Day "made clear in that a federal court has the authority to resurrect only forfeited defenses", not waived ones). Otherwise, the court would violate "the principle of party presentation basic to our adversary system". Id. at 1833 (citation omitted)

Third, a court may not rely on a forfeited 2254 Rule 5(b) defense where the state has "strategically withheld the defense", as opposed to having inadvertently overlooked it. Day, 547 U.S. at 211 (quotation marks omitted). And finally, in deciding whether to exercise its authority to apply a forfeited 2254 Rule 5(b) defense, the court must ensure that "the petitioner is not significantly prejudice by

the delayed focus on the [forfeited defense], and determine whether the interests of justice would be better served by addressing the merits or by dismissing the petition [on the forfeited defense]". Id. At 210 (citation and quotation marks omitted)

Here, unlike the situation that occurred in Day, the parties were not given fair notice by the district court that it was considering the pretrial concession by Petitioner as a waiver of his challenge of the stop. As such, no opportunity to present their position before disposing of the challenged stop was afforded. Furthermore, and most troubling, the district court either ignored, overlooked, or disregarded critical allegations set forth in support of Ground One. Specifically, that "the state amended the discovery "subsequent to the suppression hearing, disclosing "an audio tape containing the Bolo transmissions"[6]. And that petitioner "renewed [his] motion to suppress at trial". (See Exhibit C, At 5) Finally, through trial counsel, "petitioner reasserted that officer Trick did not have a well founded articulate suspicion to support the stop". Hence, Respondent could not forfeit or waive a defense that never existed.

Ultimately, prejudice ensued because his unlawful stop claim was deemed waived due to a pretrial concession that neither party argued. In short, had Petitioner been given fair notice and an opportunity to address said waiver, he would have asserted that the waiver applied only to the officers' suppression hearing testimony. That the waiver did not extend to the new evidence disclosed by the prosecution subsequent to the pretrial suppression hearing, i.e., the audio

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[6] Bolo is an acronym for "Be on the lookout".

recording of the Bolo, and the officers' testimony presented at trial. In other words, the waiver was not absolute, and in fact, was receded from by Petitioner at trial.

Based upon these facts, Petitioner properly asserted a due process violation via Rule 60(b)(4), Espinosa, supra at 271-72, and the district court abused its discretion when it ruled otherwise.

CONCLUSION

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

Respectfully submitted,

Date: October 21, 2024.

/s/ Jonathan Godwin, pro se

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