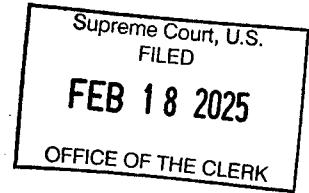


24-6896
No.

No

IN THE
SUPREME COURT OF THE UNITED STATES



In re NICHOLAS LEE BLAIR-PETITIONER

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF MANDAMUS

NICHOLAS LEE BLAIR

BUTNER FMC

PO BOX 1600

BUTNER, NORTH CAROLINA 27509

QUESTIONS PRESENTED FOR REVIEW

1. What is the proper statutory definition of the terms "lascivious exhibition", "engaging in", and "sexually explicit", as written in 18 U.S.C. § 2256?

2. Can new precedent made by another Circuit Court which validates claims made in a 28 U.S.C. § 2255 application, where the certificate of appealability was denied, provide the means for a Rule 60(b) motion under Federal Rules of Civil Procedure, to rectify the dismissal of actual innocence claims and the denial of a certificate appealability once the new precedent shows the "reasonable jurist" standard has been met as has the colorable actual innocence claim?

3. Can a meritorious actual innocence claim be "time-barred" and certificate of appealability denied when precedent in sister circuits have conceded the argument in favor of petitioner in cases with similar circumstances and in consideration of the denying Circuit to this petitioner has no "bright-line" or "per se" rule concerning the claim?

LIST OF PARTIES

1. The United States of America, represented by the United States Attorney for the Northern District of Texas, Criminal Appeals Division
2. The Solicitor General of the United States of America

LIST OF ALL PROCEEDINGS

Initial proceeding, criminal conviction UNITED STATES V. NICHOLAS LEE BLAIR, 5:13CR-00100-C, judgment date March 9, 2014.

Appeal proceeding, UNITED STATES V. Blair, No 14-10330 (5th Cir. July7, 2014). 28 U.S.C. § 2255 motion proceeding, UNITED STATES OF AMERICA V. NICHOLAS LEE BLAIR, No. 5-17-CV-280, dismissed April 24, 2018.

Certificate of Appealability proceeding, United States of America v. Nicholas Lee Blair, No. 18-10599, at 2 (5th Cir. Feb 7, 2019).

Motion Under Fed. R. of Civ. P. Rule 60(b) proceeding, No. 5-17-CV-280, denied by the district court February 15, 2022.

Cert. of App. for the Rule 60(b) denial proceeding, United States v. Nicholas Lee Blair, No. 22-10239, at 2 (5th Cir. Oct. 6, 2022).

Fifth Circuit Mandamus Proceeding, In re Blair, No. 23-10367, at 2 (5th Cir. May 25, 2023).

Case No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In re, NICHOLAS LEE BLAIR, Petitioner.

A PETITION FOR A WRIT OF MANDAMUS

TO THE HONORABLE JUSTICE, Samuel J. Alito, OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Nicholas Lee Blair, respectfully requests that Justice Alito, or if necessary, the Court en banc, issue a writ of mandamus remanding this case to the United States District Court for the Northern District of Texas, Lubbock Division, for further proceedings.

CITATIONS OF THE ORDERS ENTERED IN THIS CASE.

Petitioner was convicted of one count in violation of 18 U.S.C. § 2251(a), United States v. Nicholas Lee Blair, 5:13CR-00100-C (Nor. Dist. Tex. March 9, 2014). He appealed the conviction, United States v. Blair, No. 14-10330 (5th Cir. July 7, 2014). The appeal was dismissed by Blair for reasons to be presented. Blair later filed an application under 28 U.S.C. § 2255, United States of America v. Nicholas Lee Blair, No. 5-17-CV-280, that was dismissed April 24, 2018. A Certificate of Appealability was filed, United States of America, No-18-10599, at 2 (5th Cir. 2018) and denied February 7, 2019. After new precedent in sister circuits, Blair filed a Rule 60(b) under Federal Rules of Civil Procedure with the district court-No. 5-17CV-280 and denied February 15, 2022. Cert. of App. was timely filed-United States v. Nicholas Lee Blair, No. 22-10239, at 2 (5th Cir. 2022) denied October 6, 2022. Blair filed for a writ of mandamus with the Fifth Circuit-In re Blair, No. 23-10367, at 2 that was denied May 25, 2023. This petition now follows.

STATEMENT OF THE BASIS FOR JURISDICTION.

This petition is prompted by the denial of a writ of mandamus by the United States Court of Appeals for the Fifth Circuit on July 17, 2024, and a timely filed rehearing en banc denial on August 26, 2024. This Court is the only Court who can correct the error of the lower court and has statutory jurisdiction under 28 U.S.C. § 1651.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS.

This petition for a writ of mandamus stems from the errors by the lower courts that have prevented the privilege of the Writ of Habeas Corpus, against the Constitution. See Art. I, § 9, cl 2 "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasions the public safety may require it." When all remedies have been exhausted and the clear and indisputable rights have still been erroneously denied a petitioner by the lower courts, only this Court can provide relief. The vehicle is a writ of mandamus under 28 U.S.C. § 1651 "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." This Court may decide an alternative writ is more applicable. § 1651(b) "An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction." Blair, the petitioner, attempted to utilize a motion under Federal Rules of Civil Procedure Rule 60(b) to correct the mistakes of the court and the misconduct of the opposing party once new evidence was discovered. A rule afforded in Rule 60(b)(1),(2),(3), and (6), respectively.

STATEMENT OF THE CASE.

Blair contends that his application under 28 U.S.C. § 2255 was improperly dismissed and the subsequent certificate of appealability was improperly denied.

He further contends that newly discovered evidence and new precedent for both his Circuit, the 5th Circuit, and precedent from other circuits, point to proof of misconduct by the prosecution and investigators of his case while new precedents show a colorable claim of actual innocence, respectively.

The Court of Appeals for the Fifth Circuit (Court of App., herein) denied Blair the ability to be heard at any stage of his proceedings and a writ of mandamus from this Court is the only means to compel the lawful and legal right for Blair to be heard. Without intervention by this Court Blair will be unable to exercise his rights and privileges under the Constitution and federal law in violation of those laws and the precedents of this Court.

ARGUMENT.

Blair was convicted of one count in violation of 18 U.S.C. § 2251(a), aiding and abetting. From the beginning Blair made the contention that he did not believe the language of the statute applied to the circumstances of his case. The language of the statute is clear when it describes the scienter requirement and what the images must display. The images are to be transmitted, or would be transmitted with the knowledge of the producer. Also, the images must contain "sexually explicit" depictions of a minor "engaging in" the "lascivious exhibition" of the genitals. Blair was not allowed to argue his point with his attorney because his attorney simply kept saying the circumstances fit. Blair was unable to check the legalities because he was in administrative segregation prior to conviction in Lubbock County Detention Center, where there was a policy which denied law library access when represented by an attorney.

When Blair was finally allowed to study the law in relation to his case he discovered that there was numerous points of misconduct by police and the prosecutor, that his counsel was ineffective and he is actually innocent. Being denied access to a law library and the misconduct being so deceptive it

took the better part of three years to discover the depth of the misconduct but once fully discovered, Blair filed his § 2255 within three months. The explanation for the delay was overlooked by the district court and a dismissal resulted. The claim of actual innocence was never reasoned or acknowledged by the district court. Once the cert. of app. was filed, it was denied by the court of app. for not meeting the "jurist of reason" standard set out in 28 U.S.C. § 2243. The actual innocence claim was disregarded by the court of app.

Since, Blair discovered new evidence of misconduct by state police while also discovering the ruling in United States v. Hillie, 38 F.4th 235 (D.C. Cir. 2022) proved Blair's initial claims were colorable, at the very least, and should have allowed a cert. of app. The new evidence proving misconduct should have been considered. Blair filed a Fed. R. of Civ. P. Rule 60(b) to introduce the new evidence and show the new precedent warranted further proceedings. The Rule 60(b) was construed by the district court as a subsequent § 2255 and denied for lack of subject matter jurisdiction, initially. Blair filed an appeal. The appeal was construed as a cert. of app. request. During the wait for resolution this Court decided Kemp v. United States, 142 S. Ct. 1856 (2022), showing a Rule 60(b) could be used to correct legal mistakes. The district court changed its earlier decision and denied the Rule 60(b) motion outright and the court of app. denied the cert. of app. within days of on another. Depriving Blair the ability to adequately argue his claim and without a justifiable reason by the district court to new evidence or actual innocence

Blair later filed a writ of mandamus requesting the court of app. hear the argument set out in the original § 2255 and the Rule 60(b), now that precedent shows the standard of "jurist of reason" had been met. Blair was granted his application for IFP but denied the mandamus request as the court of app. saw it as an attempt at a new appeal. The court of app. reasoned that Blair cannot

be granted mandamus when an appeal would have vindicated his claims. That is a merit examination to issues which never reached the merit determination. The court of app. has never determined the statutory definition of 18 U.S.C. § 2256 nor the circumstances of Blair's case in accordance with that definition. In United States v. McCall, 883 F. 3d 560 (2016), the circumstances of the case warranted a 5 year downward variance for a man who was a repeat offender, who edited and stored images at numerous locations and used the videos to masturbate. None of which correlated to Blair's circumstances. And the reasoning in McCall by the court was that those facts, pointed out, took the case out of the realm of the United States v. Steen, 634 F.3d 822 (2011), the closest the Fifth Cir. has come to the statutory definition of § 2256. It may be that this Court needs to resolve the circuit conflict. But Blair has proved the claims he presented warranted further proceedings and was prevented despite the precedents of this Court, i.e. McQuiggin v. Perkins, 569 U.S. 383 (2013); McClesky v. Zant, 499 U.S. 467 (1991); Kolender v. Lawson, 461 U.S. 352 (1983); Gonzalez v. Crosby, 545 U.S. 524 (2005); and Kemp, *supra*.

The court of app. for the 5th Cir. has decided contrary to the opinion of this Court to prevent Blair an avenue for relief. and thus denied the privilege of habeas corpus in the process. The court of app. has also made decisions contrary to its own precedent and the precedent of sister circuits that can only be resolved by the Supreme Court.

CONCLUSION.

For the reasons above, the writ of mandamus should be granted and the claims of Blair, with his arguments should be heard by the district court on a merit determination.

Respectfully submitted,

