S.C. Copy

Supreme Court Of The United States

NO. 17-5930

Carlos L. Woodson,
Petitioner,
Vs.
Julie L. Jones, Sec't
Of Dep't Of Corrections,
Respondent.

Petition For Rehearing

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SUPREME COURT, U.S.

Petitioner, Carlos L. Woodson, pro se, pursuant to Rule 44.2 of the Rules of the Supreme Court of the United States respectfully petitions this Honorable Court for an order granting rehearing. In support of the instant petition the Petitioner submits the following:

1) In the instant case the petitioner filed a petition for a writ of certiorari in this Court seeking review of the Eleventh Circuit Court of Appeals March 16, 2017 order, Appendix A, that denied his application for a certificate of appealability.

2) On November 13, 2017 this Court entered an order denying the application without giving a written opinion. Appendix B.

3) Subsequently, petitioner's petition for rehearing was returned for failure to comply with Rule 44. Petitioner was given 15 days from 1/9/18 to make the required corrections. Appendix C.

4) Based upon other substantial grounds not previously presented to this Court the petitioner contends that the Eleventh Circuit Court of Appeals erred violative of his fourteenth Amendment guarantee of equal protection, and due process of law, when that Court determined the merits of the issues in the (COA) previously denied by the federal district Court instead of following the essential requirements of the law which requires the Circuit Court to only determine whether the petitioner had showed

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that jurists of reason could disagree with the district court's resolution of his constitutional claims or whether jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further. Miller El v. Cockrell, 537 U.S. 322, 336 123 S.Ct. 1029, 154 L.Ed. 2d 931 (2003); accord, Buck v. Davis, 580 U.S. —, 137 S.ct. —, 197 L.Ed. 2d 1 (2017) (cert. granted).

5) In Buck supra, citing Miller El supra, this Court held that "the threshold queston should be decided without full consideration of the factual or legal basis adduced in support of the claims. Id at 336. Furthermore," when a court of appeals side steps the (COA) process by deciding the merits of an appeal and then justifying its denial of a (COA) based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction. Id at 336-337, 123 S.Ct. 1029, 154 L.Ed.2d 931.

6) It is apparent from the face of its March 16, 2017 order that the Circuit court had decided the merits of the issues raised in the Rule 60 (b)(4) motion and presented in the (COA) where the Court wrote that "in this case, the documents Woodson sought to expand the record with were not necessary to the resolution of his case as the district court already had all the information necessary in order to resolve his Rule 60 (b) motion." (Emphasis added), Appendix A.

7) The petitioner points out that jurists of reason could debate whether the May 7, 1996 pretrial Writ of habeas Corpus, Appendix D, filed by the petitioner to dismiss the State's charging information, and the May 17, 1996 order, Appendix E, entered by the trial Court denying the pretrial habeas corpus are necessary to the resolution of this case. Specifically, those documents are necessary to provide proof that the state ap-

pellate court in Woodson v. State, 739 So. 2d id at 1211-12 (Fla. 3rd DCA 1999), Appendix F, had erroneously found that the petitioner did not preserve his invalid information issue for appellate review by filing a pretrial motion to dismiss or objection. As a result of the Court's erroneous findings that Court entered an unappealable non-final partial judgment because that court had only adjudicated the merits of two of the three issues that were ripe for appellate review. Jurists of reason could debate that such an allegation pursuant to Rule 7 of Section 28 U.S.C 2254 would require a mandatory evidentiary hearing under Rule 8 of Section 28 U.S.C 2254. to further develop the facts and evidence that are necessary for the resolution of this case.

8) The existance of both the pretrial Writ of Habeas Corpus and the trial court's order of denied are proof that the State appellate court failed to afford the petitioner a full and fair opportunity to litigate his invalid information issue in direct appeal proceedings and are proof that the State appellate Court had entered an unappealable non-final partial judgment which pursuant to Florida law is unappealable. McGurn v. Scott, 596 So. 2d. 1042 (Fla. 1992) (rescinded in part). Appendix G.

9) Jurists of reason could debate whether pursuant to Section 28 U.S.C 2254 the federal district Court had had even an arguable basis to exercise subject matter jurisdiction over this case to enter its November 15, 2004 order adjudicating the merits of the State appellate Court's unappealable non-final partial judgment. See e.g., Steel Co. v. Citizens for Better Environment 523 U.S. 83, 94, 101, 140 L.Ed.2d 210, 118 S.Ct. 1003 (1998).

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for Writ of certiorari, petitioner prays that this Honorable Court grant re-hearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully Submitted

Carlos L. Woodson, pro se.

CERTIFICATE OF COUNSEL

Petitioner Carlos L. Woodson, pro se, hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

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CERTIFICATE OF SERVICE

Under the penalty of perjury, I declare that the facts set forth and alleged in the instant petition for rehearing are true and correct and that I have placed this petition in the hands of Mailroom Personnel at Holmes Corr. Inst. for mailing via U.S. Postal Service to: The Attorney General Office, Suntrust International Center, One S.E. Third Ave., Suite 900, Miami, Fl. 33131 on this 19th day of January 2018.

Carlos L. Woodson, pro se.

Additional material from this filing is available in the Clerk's Office.