

No. 17-7141

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

DEC 01 2017

OFFICE OF THE CLERK

JAMES R. YOUNG, — PETITIONER
(Your Name)

vs.

WARDEN, FCC COLEMAN-MEDIUM, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE 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

James R. Young respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case

JAMES R. YOUNG

(Your Name)

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P.O. Box 1032

(Address)

Coleman, Florida 33521-1032

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. As with [17-85 - McCarthan v. Collins], the instant case questions "Is a person in federal custody entitled to file an application for habeas corpus under 28 U.S.C. 2241 because a Section 2255 motion is "inadequate or effective" to permit him to raise a claim that his conviction or sentence is invalid under an intervening and retroactively applicable statutory-interpretation decision of this Court?"
2. Can a federal Warden detain a prisoner without legislative authorization by any statute, post that prisoner having served the maximum statutory penalty for his offense minus an ineligible enhancement?
3. Is a prisoner entitled to immediate bail/bond due to any establishment of an illegal detention?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 2241(a) of Title 28 of the United States Code provides in relevant part:

Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.

Section 2241(c) of Title 28 of the United States Code provides in relevant part:

The writ of habeas corpus shall not extend to a prisoner unless -

- (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
- (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
- (3) He is in custody in violation of the Constitution or laws or treaties of the United States.

Section 2255(e) of Title 28 of the United States Code provides as follows:

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Section 2255(h) of Title 28 of the United States Code provides as follows:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain -

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

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

☒ 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,
☒ 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,
☒ is unpublished.

☐ For cases from **state courts**: N/A

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 September 13, 2017.

☒ 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**: N/A

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).

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

STATEMENT OF THE CASE

This case presents a mature and widely recognized conflict on an exceptionally important and recurring question involving the review of federal criminal judgments. When this Court issues a retroactively applicable decision narrowing the reach of a federal criminal statute, there will be persons in custody who stand convicted of conduct that is no longer criminal or who remain in custody beyond the maximum term authorized by law. Some of those persons will be able to challenge their unlawful confinement on direct appeal or on an initial motion to vacate or set aside the sentence under 28 U.S.C. 2255. But for others who have exhausted their direct appeal and initial Section 2255 motion before this Court issued its decision rendering their confinement illegal, there will be no further avenue for relief under Section 2255, given its familiar bar on second or successive motions - even though the Court's decision applies retroactively.

This case presents the question whether the saving clause in Section 2255(e) permits such persons to pursue habeas relief under Section 2241 (and, if so, what threshold showing they must make).

The Eleventh Circuit Court of Appeals are now divided 9-2 on that question, and this case presents a striking illustration of the conflict.

In a series of cases dating back nearly two decades, the Eleventh Circuit had construed Section 2255(e)'s saving clause to permit a petitioner who was erroneously sentenced above the statutory maximum to challenge his sentence under Section 2241 if certain conditions were satisfied. However, the Eleventh Circuit, ultimately, by a 7-4 vote and with six opinions totaling over 150 pages, overruled its precedent and held that Section 2255(e) does not permit habeas relief based on a retroactively applicable statutory-interpretation decision. In so holding, the Eleventh Circuit joined the Tenth Circuit in adopting a rule that the government has repeatedly criticized as erroneous.

Thus, because Petitioner's present case is a suitable vehicle for resolving the

entrenched conflict among the courts of appeals, the petition for a writ of certiorari should be granted.

As background in this matter, in December 2016, Petitioner Young, filed the instant pro se § 2241 petition, claiming that his sentence was invalid because a Florida burglary conviction could no longer serve as a predicate crime of violence to support his armed-career-criminal sentence enhancement under Johnson v. United States, 135 S. Ct. 2551 (2015), Mathis v. United States, 136 S. Ct. 2243 (2016), and United States v. Esprit, 841 F.3d 1235 (11th Cir. 2016).

The district court dismissed Petitioner Young's § 2241 petition for lack of jurisdiction, concluding that under §2255(e) and McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017)(en banc), It stated, "Young was not permitted to bring such a challenge to his sentence under § 2241" in the district court.

Petitioner Young, then sought leave to proceed in forma pauperis ("IFP") in the Eleventh Circuit Court of Appeals. That request was denied. It was stated: "Young has failed to invoke § 2255(e)'s saving clause, as: (1) he is not challenging the execution of his sentence, (2) the sentencing court is not unavailable in the sense that it has been dissolved, and (3) practical considerations do not prevent him from filing a § 2255 motion. See McCarthan, 851 F.3d at 1092-93. Because Young has presented no non-frivolous argument on appeal, his motion to proceed on appeal IFP is DENIED."

The Eleventh Circuit denied review for Petitioner Young's habeas corpus, Yet, in an "EXACTLY" mirrored styled case, relief was granted.

In the instant case before this Court, Petitioner Young, would, thus, like to first quote the facts outlined and established in the opinion given in United States v. Aloniza J. Williams, in the United States Court of Appeals for the Eleventh Circuit [Case No. 14-10569], on March 28, 2017.

On that day of opinion the Eleventh Circuit Court stated: "ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES PER CURIAM:

After Aloniza Williams pled guilty to being a felon in possession of a firearm, the district court imposed an enhanced sentence under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e). Williams appeals the district court's decision to classify and sentence him as an armed career criminal, contending that the district court erred in finding that three of his prior criminal convictions were violent felonies under ACCA. The district court predicated Williams's ACCA enhancement on four convictions for burglary under Florida law. 1. On appeal, we affirmed Williams's sentence, concluding that Florida burglary qualified as an ACCA predicate under that statute's so-called residual clause, United States v. Williams, 603 F. App'x 919 (11th Cir. 2015)(unpublished), which the Supreme Court subsequently held violated the Constitution's guarantee of due process, see Johnson v. United States, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015). Williams petitioned the Supreme Court for certiorari, and that Court granted his petition, vacated our opinion affirming his sentence, and remanded for further proceedings.

The government now concedes, and we agree, that Williams's ACCA-enhanced sentence must be vacated because Williams has no predicate convictions that support the enhancement. In United States v. Esprit, 841 F.3d 1235, 1240-41 (11th Cir. 2016), decided after Johnson, this Court held that Florida burglary is not a violent felony under ACCA. Williams's only potential predicate offenses were Florida burglary convictions. In light of Esprit, these convictions can no longer serve to enhance his sentence.

Accordingly, Williams's ACCA sentence is vacated, and his case is remanded to the district court for resentencing without the ACCA enhancement.

VACATED AND REMANDED."

That opinion in Williams's case, was written as a result of a timely appeal being filed in Williams's case and there being no need for the filing of a timely/belated habeas petition.

However, directly to the contrary of that result, Petitioner Young is in the "EXACT" same position as Defendant Williams was [having had the district court

predicate his ACCA enhancement [in 1994] on four of his prior convictions **for burglary under the same Florida law**]. But because Petitioner Young now needs a successive habeas Petition [under § 2241], to be eligible for the same relief/review as Williams, the present Eleventh Circuit precedent closes the door on Petitioner Young now receiving even a hearing for redress.

There is now also no other remedy, judge, or court available to grant Petitioner his right of due process review in this matter.

According to the present Eleventh Circuit Court of Appeals from the en banc McCarthan hearing, an initial Section 2255 motion is an adequate and effective remedy to "test" a sentence, even when circuit precedent foreclosed the movant's claim at the time of the motion, because the movant could have asked the court of appeals to overrule its precedent, sought Supreme Court review, or both. App., *infra*, 14a-21a. The court asserted that the saving clause in Section 2255(e) is concerned only with ensuring that a person in custody has a "theoretical" "opportunity" to pursue a claim - even if, at the time of the initial Section 2255 motion, the claim was virtually certain to fail in the face of adverse precedent. *Id.* at 16a-17a.

Based on that reasoning, the court of appeals narrowed the applicability of the saving clause in Section 2255(e) to the "limited circumstances" in which a prisoner challenges "aspects of his detention in ways that do not challenge the validity of his sentence," or in which the sentencing court has been dissolved. App., *infra*, 22a, 29a (citation omitted). The Eleventh Circuit Court of Appeals thus **closed the door for collateral relief to any person whose conviction or sentence was rendered unlawful by Supreme Court precedent postdating an initial Section 2255 motion.**

Further, a district court wrongly denies its own authorized jurisdiction "when it fails to allow for consideration of any claims authorized by § 2255(a)" that the Suspension Clause of the constitution "demands" be considered. *Id.* at 112a. The Suspension Clause, requires that a prisoner have a "meaningful opportunity" to

bring a claim. Id. at 114a-127a.

Finally, Judge Martin, joined by Judge Jill Pryor, [both from the Eleventh Circuit Court of Appeals], dissented in the McCarthan en banc decision. They both agreed with the other dissenters but stated they would have gone further by, directing the district court to grant relief on the merits of petitioner's claim. Id. at 88a.

On the construction of the saving clause, Judge Martin agreed with Judge Jordan that the saving clause permits claims based on an intervening decision that "reveals a fundamental defect in [a] prisoner's conviction or sentence," on the ground that the Section 2255 remedy "is" inadequate and ineffective to test the legality of the detention in such a case. Id. at 77a-78a.

Petitioner Young's facts and conditions in his case clearly establish that his case is a suitable vehicle for resolving this question.

Finally, as a form of requested relief in this matter [with leave to not be limited to], Petitioner Young, at the least, requests that this Court grant "**Stay**" in this case pending the decision made in [McCarthan v. Collins].

REASONS FOR GRANTING THE PETITION

This case presents a mature and widely recognized conflict on an exceptionally important and recurring question involving the availability of federal habeas review. In the decision below, the Eleventh Circuit, sitting en banc, expressly recognized that it was switching sides in a long-running debate and deepening an existing conflict. See, e.g., App., 7a-14a; at 81a n.7 (Martin, J., dissenting).

In fact, at least twice in the last several months, the government has pointed to the decision below as evidence of a circuit conflict on the availability of habeas review. See U.S. Br. in Opp. at 17-18, Cortes-Morales v. Hastings, No. 16-773 (Apr. 19, 2017)(observing that the Eleventh Circuit "has now" joined the Tenth Circuit in reaching a conclusion "opposite" to "[S]everal courts of appeals"); U.S. Br. in Opp. at 11-12, Montana v. Werlich, No. 16-775 (Mar. 20, 2017)(stating that Section 2255(e) never permits resort to habeas corpus based on intervening statutory interpretation decisions" but that "[s]ome courts of appeals" disagree).

The conflict on the question presented cries out for this Court's intervention. The question presented is undeniably important and a recurring question of federal law. Given the unlikelihood of congressional intervention, only this Court can provide a clear answer to that question.

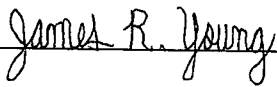
The arguments on both sides of the conflict are well developed, with the benefit of numerous opinions across nearly every regional circuit over the last two decades.

There is little room for the law to develop further. And this case is an apt vehicle for resolving the conflict, because the relevant arguments have been exhaustively presented in six separate opinions from an en banc court whose members embraced the full spectrum of positions on the question. This case satisfies all of the criteria for the Court's review, and the petition for a writ of certiorari should therefore be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

JAMES R. YOUNG

Date: December 1, 2017

APPENDIX A