

No. 17-8564

In the Supreme Court of the United States

WALTER LEROY MOODY, JR.,
Petitioner,
v.
STATE OF ALABAMA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED (REPHRASED)

Whether a prisoner possesses standing, in any form, to contest the way two independent sovereigns exercise their discretion under the rule of comity to decide on the enforcement of a valid criminal judgment?

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STATEMENT

Petitioner Walter Leroy Moody was convicted of the murder of United States District Judge Robert Vance in federal and state court. After he received the death penalty at his state-court trial, the United States consented to Moody's remaining in the custody of the State of Alabama. Thus, Moody has been incarcerated on Alabama's death-row unit since 1997. In January of this year, Moody questioned the Alabama Department of Corrections as to why he was not returned to custody. Moody was informed that the United States had consented to the State of Alabama's maintenance of custody and execution of Moody's state-court sentence. The fact that the United States has consented in this manner is undisputed.

The proceedings leading to Moody's petition for writ of certiorari have established two things: either Moody lacks constitutional standing to assert the claim he brings against Warden Stewart, or Moody is not entitled to relief on prudential-standing or merits grounds. Resolving the split of authority alleged by Moody will not serve any purpose worthy of certiorari, and does not support further proceedings.

This Court should deny Moody's petition for a writ of certiorari.

REASONS FOR DENYING THE WRIT

The fact that Petitioner Moody has filed a “consolidated” habeas petition is evidence that his claim is unworthy of certiorari review, especially as it concerns is petition against Warden Cynthia Stewart. The State of Alabama accepted the United States’ consent to its maintenance of Moody’s person following his state court trial for purposes of executing Moody’s state court sentence. Moody’s present attack on the authority of the United States Attorney General – whether Janet Reno (when the United States filed its detainer with the Alabama Department of Corrections in 1998) or Jefferson B. Sessions – has nothing to do with the State of Alabama’s right to accept the United States’ appropriate exercise of its discretion under the rule of comity.

As pertains to Warden Stewart and the State of Alabama, this Court should deny Moody’s petition for the following reasons.

I. Moody’s claims regarding the ability of the federal government to interrupt a federal sentence fall outside of scope of the habeas petition filed in the district court.

Moody elected to file a habeas petition in the United States District Court naming Warden Cynthia Stewart as respondent.¹ Moody did not seek to sue or attack the United States or its attorney general. Further, Moody did not attack the legality of his death sentence. Thus, the lawsuit that brings Warden Stewart to this Court does not involve the legitimacy of the penalty Alabama will inflict on Moody this

¹ Moody actually named Jefferson S. Dunn, Commissioner of the Alabama Department of Corrections, in his habeas petition. Warden Stewart was substituted by the district court as the proper respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

evening, though it did envision questions of law pertaining to the independent actions of the United States, a third party not before the district court, which led to Moody being placed in the Warden's custody. This means either that Moody's petition failed to confer Article III standing on the district court and/or that the issue he presents to this Court does not implicate Warden Stewart.

A. Article III standing

The district court dismissed Moody's habeas petition – naming Warden Stewart as the sole respondent – on Article III standing grounds. She did so because of the manner the term “standing” has been employed in decades of precedent, uniformly adverse to the position taken by Moody. *See, e.g., Weekes v. Fleming*, 301 F.3d 1175, 1180 n.4 (10th Cir. 2002); *United States v. McCrary*, 220 F.3d 868, 870-71 (8th Cir. 2000); *Bowman*, 672 F.2d at 1154; *Weathers v. Henderson*, 480 F.2d 559, 559-60 (5th Cir. 1973) (per curiam); *Delong v. United States*, 474 F.2d 719, 720 (5th Cir. 1973); *In re Nix*, 465 F.2d 377, 377-78 (5th Cir. 1972); *Chunn v. Clark*, 451 F.2d 1005, 1006 (5th Cir. 1971); *Derengowski v. U.S. Marshal*, 377 F.2d 223, 223-24 (8th Cir. 1967). And though the Eleventh Circuit disagreed with an interpretation of standing in these cases as referencing Article III standing, it noted that the holdings of these decisions, and others, warranted the denial of relief, with prejudice.

Moody acts as though the Eleventh Circuit's contrary decision resolves the constitutional-standing issue. But the district court's decision, and the way the Eleventh Circuit resolved the standing question, would have to be revisited by this Court before any consideration of the merits of Moody's petition. Because

constitutional standing represents a constitutional limit on a federal court's authority to hear only true cases and controversies, this Court must be convinced that it exists. *See Susan B. Anthony List v. Dirhams*, 134 S. Ct. 2334, 2341 (2014); *Hein v. Freedom from Religion Foundation, Inc.*, 551 U.S. 587, 597-98 (2007); *Raines v. Byrd*, 521 U.S. 811, 818 (1997). This obstacle, alone, warrants, denial of certiorari review, as Moody has the burden of proving to the district court (and this Court) that such standing exists.

A reasonable reading of Moody's petition reveals that he is attacking the authority of the United States to surrender custody to the State of Alabama under federal law. Thus, Moody's contention is that the action of the United States in surrendering custody in 1998 was unlawful and should not have occurred. In other words, Moody's habeas petition sued a state warden, but challenged the independent action of a third party not before the district court. This cannot be. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quoting *Allen v. Wright*, 468 U.S. 737, 756 (1992), *abrogated by Lexmark Intern., Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014); *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26 (1976)) ("[T]he irreducible constitutional minimum of standing" requires an injury, and that the injury be "fairly. . . trace[able] to the challenged conduct of the defendant, and not. . . th[e] result [of] the independent action of some third party not before the court.").

As a separate sovereign, the State of Alabama had the authority and right to accept the United States' consent on the custody issue. This is how the rule of comity

operates. The State of Alabama could not require that the United States provide such consent under different circumstances, revealing how irrelevant the Warden was to the injury actually alleged by Moody and the complete absence of hope that a favorable decision would provide redressability. *See Lujan*, at 568-70 (finding the redressability component of Article III standing lacking because the Secretary of the Interior's ability to influence funding agencies was speculative and doubtful, particularly in the light of the position taken by the United States Solicitor General);² *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, (2006) (finding the redressability component of Article III standing lacking because the district court could not afford the relief sought by ordering a state legislature to allocate additional tax revenues (that themselves were speculative) in a manner favorable to the plaintiffs).

B. The issues presented by Moody do not implicate Warden Stewart's custody

Moody argues that (1) the Attorney General of the United States does not have authority to interrupt a federal sentence, (2) that permitting the Attorney General of the United States to do so would violate the separation of powers, and (3) that the authority of the Attorney General of the United States in this instance should be considered in the light of *Ohio Adult Parole Auth. V. Woodard*, 523 U.S. 272 (1998).

² Additionally, this Court found that later participation in the lawsuit by the USAID and Department of State did not retroactively create redressability and jurisdiction that did not exist at the outset. *Lujan*, 504 U.S. at 569 n.4. Thus, the United States' appearance as *amicus* in the Eleventh Circuit did not cure the constitutional-standing deficiency posed by Moody's decision to pursue habeas relief against a state warden, when the relief he sought was an order requiring the United States to appear, seek Moody's return, and to accept Moody's return to custody.

The Attorney General of the United States was never a party in the district court proceedings. Nor did his appearance in the Eleventh Circuit as *amicus* operate to amend Moody's habeas petition to add him as respondent. *Cf. Lujan*, 504 U.S. at 569 n.4. Thus, even if this Court determined that Moody's complaint acted to provide Article III jurisdiction to the district court, at this point he seeks relief – and the defense of legal positions – that can only come from the United States. To the extent Moody has an unresolved legal dispute with the United States that could have been litigated two decades ago, that dispute does not involve or implicate the Warden's custody pursuant to the State of Alabama's authority to accept primary physical custody of Moody from the United States for the purpose of executing his state court judgment. Not only does Moody's petition not touch on these issues, Warden Stewart is not the proper party to defend the United States' interest.

Accordingly, whether this Court views Moody's claims under an Article III standing analysis or a straightforward analysis of whether he stated a claim against Warden Stewart, there is no ground for certiorari review of the State's actions. For this reason, Moody's petition for writ of certiorari should be denied.

II. Moody's sole legal argument implicating Warden Stewart does not warrant certiorari review.

In a two-paragraph argument, Moody suggests an "important question" exists as to whether *Ponzi v. Fessenden*, 258 U.S. 254 (1922), *Morse v. United States*, 267 U.S. 80, 82 (1925), and *Kelly v. Oregon*, 273 U.S. 589 (1927), forecloses the relief he seeks. Respectfully, Moody overstates the position taken by the Eleventh Circuit in this

regard. That court recognized two controlling issues: that “primary jurisdiction in the criminal realm is a matter of comity that can be waived by the first sovereign in favor of the second sovereign, and [] that a prisoner does not have a cognizable right in habeas corpus to complain about the order of his prosecutions or sentences.” *Moody v. Warden, Holman Corr. Fac.*, __ F.3d __, 2018 WL 1835319, at *6 (11th Cir. 2018). That court did not conclude this Court would decide his claim differently under *Ponzi*.

Instead, that court determined that to the extent *Ponzi* did not directly controlled, overwhelming federal and state authority were against Moody’s position. *See Moody*, 2018 WL 1835319, at *7 (and the cases cited therein). And that persuasive precedent did not include *Remeta v. Singletary*, 85 F.3d 513 (11th Cir. 1996), which brought the Eleventh Circuit into harmony with the other jurisdictions.

There is no “important question” requiring this Court’s certiorari review. The states and circuits are in harmony on this issue. The question is important only to Moody, who seeks to postpone imposition of justice for his direct attack on the rule of law, by claiming to champion the federal government’s interest in how his sentence is executed. But whether Moody is entitled to credit for time served on his federal sentence at the time he is executed tonight does not alter the fact that the State of Alabama is entitled to execute him pursuant to a valid state court judgment.

For these reasons, this Court’s certiorari review is not warranted.

CONCLUSION

For the above-mentioned reasons, this Court should deny the petition.

Respectfully submitted,

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