

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CLEVELAND BELL

— PETITIONER

(Your Name)

vs.

STATE OF LOUISIANA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEAL FOR THE FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CLEVELAND BELL

(Your Name)

LOUISIANA STATE PENITENTIARY, ANGOLA, LA.

(Address)

ANGOLA, LOUISIANA, 70712

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the federal district court abused its discretion denying the Rule 60(b)(6) Motion , and then denying a Certificate of appealability ?

Whether the U.S. Court of Appeal for the Fifth Circuit erred denying a request for COA finding that Bell had not made a requisite showing ?

Whether there is a defect in Bells prior federal habeas corpus under docket number 02-259, and whether Bell is entitled to Rule 60(b)(6) relief ?

List of Parties

The parties to the proceeding are:

- () All parties appear in the caption of the case on the cover page.
- () All parties do not appear in the caption 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:

State of Louisiana, through the 24th Judicial District Attorney's Office

Cleveland Bell, an individual incarcerated in the State of Louisiana.

CORPORATE DISCLOSURE

The State of Louisiana is a body politic. The Jefferson Parish District Attorney's Office is a subdivision of the State of Louisiana.

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State v. Cordero, 993 So.2d 203 (La. 2008)
Bell v. Cain # 02-0259
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Slack v. McDaniel, 529 U.S. 473, 484 (2002)

STATUTES AND RULES

Fed. Rule Crim. Proc. Rule 60(b)
Louisiana Const. Art. V
Rule 60(b) (5) and (6)
Certificate of Appealability Statute

OTHER

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 No. 17-30035; 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☐ is unpublished.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**:

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 Nov. 14, 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**:

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Louisiana Constitution Article V

Fed. Rules of Civil Procedure Rule 60 (b) (5) and (6)

Federal Habeas Corpus Statute 2254

STATEMENT OF THE CASE

This criminal matter gained its inception when Cleveland Bell was indicted by a Jefferson Parish Grand Jury for Second Degree Murder. After trial by jury Bell was convicted as charged on May 16, 1997 and sentenced to a term of life imprisonment without benefit of parole, probation or suspension of sentence. Petitioner's conviction was affirmed by the Louisiana Fifth Circuit Court of Appeal, and his application for writs and review were denied by the Louisiana Supreme Court.

On January 13, 2002, after exhausting his state court remedies, Petitioner filed an application for federal habeas corpus relief in U.S. District Court for the Eastern District of Louisiana. That application was denied.

On August 1, 2016, Petitioner filed a Rule 60(b) Motion in Federal District Court, alleging that his 2002 fed. writ judgment should be re-opened because the judgment was based on a state court judgment that had been vacated and re-considered. On January 9, 2017, U.S. District Court Judge Jane Triche Milano denied the Rule 60(b) Motion and denied a certificate of appealability. The Court did grant permission to proceed in forma pauperis.

On November 14, 2017 under docket number 17-30035 the U.S. Court of Appeal denied Petitioner's Application for a Certificate of Appealability. Now petitioner timely presents this application for writ of certiorari into this court.

REASONS FOR GRANTING THE PETITION

This application should be granted because the lower federal courts judgments are in error. The defect in Bell's first and only federal writ application remains. Bell's Rule 60(b)(6) Motion is a true 60 (b) Motion, his allegations are identical to Schexnayder v. Cain, # 13-30981 where the U.S. Fifth Circuit Court of Appeals granted him a certificate of appealability, yet denied Bell a certificate even though the issue are the same, they both concerned State v. Cordero, 993 So.2d 203, 204 (La. 2008) and Bell's case was transferred back to the Louisiana Fifth Circuit Court of Appeal for reconsideration, they both filed Rule 60 (b) Motions with identical issues, yet Schexnayder was treated differently from Bell. The Fifth Circuit Court of Appeals granted Schexnayder a COA as to whether his Rule 60(b) motion alleged defects in the integrity of his prior federal habeas proceedings and as such was a true Rule 60(b) motion; and (2) whether Schexnayder's motion under Rule 60(b), subsections (5) and (6), has merits. For this reason Cleveland Bell argues that the Fifth Circuit Court of Appeals erred denying his COA.

CLAIM

THE FEDERAL DISTRICT COURT ABUSED ITS DISCRETION DENYING
A RULE 60(b)(6) Motion.

Bell implicates Rule 60(F)(5) and (6) . Bell is referring to the practices of the Louisiana State Fifth Circuit Court of Appeals, exposed after the suicide of Jerrold Peterson, the former Central Staff Director of the Louisiana Fifth Circuit Court of Appeal. As noted by the United States Fifth Circuit Court of Appeal in *Schexnayder v. Vannoy*, supra:

This case arose as a result of allegations which came to light after the suicide of Jerrold Peterson, the former Central Staff Director of the Fifth Circuit Court of Appeal. Before his death Peterson wrote a letter to the judges of the Louisiana Fifth Circuit where he accused them of instituting a policy to circumvent Louisiana's constitutional requirement of three judge panels with respect to pro se prisoner post conviction writs by having such filings submitted to one judge or a staff member who would issue a ruling concerning the writ application without review by a three judge panel. See La. Const. art. V (each State Court of Appeals "shall sit in panels of at least three judges selected according to rules adopted by the Court.>").

After Peterson's allegations were made public many state prisoner's claimed that their rights had been violated by the court's procedures and sought relief from the Louisiana State Supreme Court. In response, the Louisiana Fifth Circuit Court of Appeals unanimously adopted an en banc resolution where it asked the Louisiana Supreme Court to consider remanding those cases to it with direction that they be assigned to random three judge panels. *State v. Cordero*, 993 So.2d 203, 206 (La. 2008). In its decision, on a writ application filed by a prisoner affected by the alleged constitutional violations of the Louisiana Fifth Circuit Court of Appeal, the La. Supreme Court adopted the Court of Appeals resolution. *Cordero*, 993 So.2d at 205.

Petitioner's case was one of these remanded.

6.

STANDARD OF REVIEW

1. Rule 60 (b):

Rule 60 (b) of the Federal Rules of Civil Procedure provides:

(b) Grounds for Relief from a final judgment, Order or proceedings. On motion and just terms the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- 1) Mistake, inadvertence, surprise, or excusable neglect;
- 2) Newly Discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- 3) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- 4) the judgment is void;
- 5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- 6) any other reason that justifies relief.

A prisoner may, subsequent to the dismissal of his 2254 motion, file a petition pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, to reopen that claim, where the petition "attacks not the substance of the court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings." Gonzalez v. Crosby, 545 U.S. 524, 532, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005).

SUMMARY OF THE ARGUMENTS

In Schexnayder v. Vannoy, # 13-30981 (4/13/2016), the U.S. Fifth Circuit Court of Appeals said:

Because the federal court has not considered constitutional claims related to the decision of the Louisiana courts after the Louisiana Supreme Court's judgment in State v. Cordero, 993 So.2d 203 (La. 2008). The present motion is not successive, but is a true Rule 60 (b) motion entitled to be decided.

Petitioner's Rule 60(b) petition is nearly identical to Schexnayder v. Vannoy, and should be treated accordingly.

7.

Cleveland Bell argues that case number 02-0259 should now be reopened because the judgment is based upon state court judgments that have been reversed, vacated, set aside and or reconsidered. See State v. Cordero, 993 So.2d 203 (La. 2008). The series of events giving rise to Cordero, supra constitute "extraordinary circumstances" to warrant Rule 60(b) relief.

The Cordero decision invalidated all the mentioned judgments by the Fifth Circuit Court of Appeals and the Louisiana Supreme Court decisions. Because the federal courts judgment from the Eastern District under docket number 02-0259 Section "I"(3) by the Hon. Lance M. Africk on August 29, 2002 was based upon state court judgments by the Louisiana Fifth Circuit Court of Appeals that were ruled null and void, vacated, set aside and reconsidered case number 02-0259 Cleveland Bell v. Burl Cain, should now be reopened.

In re Osborne, 397 F. 3d 277, 283 (5th Cir. 2004), noting that the "unique circumstances" required to obtain relief from judgment under Rule 60(b) "must necessarily be evaluated on a case by case basis". There are several unusual circumstances that give rise to this case, including the 2007 revelation that the State Fifth Circuit Court of Appeals had violated petitioner's constitutional rights to due process by failing to comply with Article V of the Louisiana Constitution and the Louisiana Supreme Court's 2007 and 2008 order in Cordero remanding Cleveland Bells case to the Fifth Circuit for reconsideration and the United States Court of Appeals for the Fifth Circuit's judgment in Louis M. Schexnayder v. Darrell Vanney No. 13-30981 decided 4/13/2016 finding that the issue constitutes a true Rule 60(b) Motion and because Cleveland Bell's petition contains nearly identical issues this Hon. Court should vacate the lower court judgments.

It is respectfully argued that Bell satisfied the standard set forth under Rule 60(b)(6) 5 and 6. Bell's petition does not attack the substance of the Court's resolution of a claim on the merits. Bell's Rule 60(b) Motion alleges a defect in the integrity of the federal habeas proceedings. Bell has shown the required extraordinary circumstances justifying relief from the district court judgment. The Court recognized in Kelly v. Cain No. 06-2333, 2015 WL 5714615, at *1 (E.D. La. Aug. 29, 2015) that the judgments transferred under Cordero to the La. Fifth Circuit may be defective and worthy of reconsideration under Rule 60(b). The facts leading up to Cordero reveal the unusual nature of

the Louisiana Supreme Court's order. Bell's case was one of the one's transferred. Like the petitioner in Klapprott v. United States, 335 U.S. at 613-14 whose ability to participate in his litigation was taken from him, Bell had no control over how the Louisiana Fifth Circuit Court of Appeal chose to review his case. In light of this fact, the Cordero order to transfer cases qualifies an extraordinary circumstance under Rule 60(b)(6). The federal district court erred and abused its discretion denying Bell Rule 60(b)(6) relief.

Denial of a Certificate of Appealability
by the U.S. Fifth Circuit Court of Appeal
was erroneous

To obtain a certificate of Appealability Bell must show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). As for the procedural ruling, the Fifth Circuit said Bell failed to show that reasonable jurists could debate whether the district court's denial of his Rule 60(b) motion was an abuse of discretion and denied Bell a COA.

The Fifth Circuit erred. The COA statute sets forth a two step process: An initial determination whether a claim is reasonably debatable, and if so, an appeal in the normal course. At the first stage, the only question is whether the applicant has shown that jurists of reason could disagree with the district courts resolution of his constitutional claims or,...could conclude the issues presented are adequate to deserve encouragement to proceed further.

A defendant satisfies---

this standard by demonstrating that "jurists of reason could conclude the district court's resolution of the constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further". Slack v. McDaniel 529 U.S. 473, 481, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). Applying these principles to Petitioner's application, it is argued that a COA should issue. Bell has demonstrated that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong.

There is no precedent for the district court's conclusion, if fact Rule 60 (b) (5) provides...it is based upon an earlier judgment that has been reversed or vacated. We know the Louisiana Supreme Court had to reverse or vacate because it ordered that it be reconsidered under a properly constituted panel of three judges. Cleveland Bell has been unable to find any precedent or case law under Rule 60(b) which would support the district court's conclusion, regardless of the findings on reconsideration. Thus reasonable jurists could find the district court's assessment of the issue debatable or wrong. This court's attention is directed to Schexnayder v. Vannoy, supra which is identical to Cleveland Bell's case and should provide guidance. This Hon. Court sent Schexnayder back to the District Court and significant to note here also is that the results of the reconsideration in Schexnayder did not change and was the same as in Bell. Schexnayder has not been dismissed and Bell's case should not be dismissed and should be allowed to proceed.

Conclusion

For all the above and foregoing reasons, this Hon. Court should issue a Certificate of Appealability and find the district court's resolution on the issue wrong and/or debatable.

Respectfully submitted,

Cleveland Bell

Cleveland Bell (Pro Se)

90566 *Det-3*

La. State Prison

Angola, La. 70712

Certificate of Service

I hereby state that I have served a true and correct copy of the foregoing application upon the district attorney's office by placing a copy of the same in the U.S. Mail, to the Jefferson Parish District Attorney's Office on this 5th day of Feb. 2018.

Cleveland Bell

Cleveland Bell