

ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ABDUSH-SHAHID FAROOQ — PETITIONER
(Your Name)

vs.

HARRY RUSSELL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

ABDUSH-SHAHID FAROOQ
(Your Name)

[REDACTED] 878 Coitsville-Hubbard Rd.
(Address)

[REDACTED] Youngstown, Ohio 44505
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- (1) WHETHER A REASONABLE JURISTS COULD DEBATE THAT THE SIXTH CIRCUIT COURT OF APPEALS ERRED IN DENYING PETITIONER A CERTIFICATE OF APPEALABILITY IN VIOLATION OF PETITIONER'S 5th AND 14TH AMENDMENT RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS OF THE UNITED STATES CONSTITUTION.CAN A PETITIONER FILE A RULE 60(b) BACK TO THE SIXTH CIRCUIT COURT OF APPEALS FROM THAT JUDGMENT?

- (2) WHETHER A REASONABLE JURISTS COULD CONCLUDED THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN DECLINING TO REOPEN THE JUDGMENT PURSUANT TO FED.R.CIV.P.60(b)(4).IN THE ABSENCE OF A STATE JUDGMENT OF CONVICTION CAN THE DISTRICT COURT ADJUDICATE THE ISSUES BEFORE IT RAISED IN PETITIONER'S 1997 HABEAS CORPUS PETITION,AND IS THE ADJUDICATION OF THE ISSUES A CLEAR USURPATION OF POWER CONSTITUTING A VIOLATION OF PETITIONER'S DUE PROCESS RIGHT AND EQUAL PROTECTION OF THE LAWS UNDER THE UNITED STATES CONSTITUTION?

LIST OF PARTIES

☒ 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:

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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☒ is unpublished.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☒ is unpublished.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**:

The opinion of the highest state court to review the merits appears at Appendix E to the petition and is

☐ reported at 2013 Ohio Lexis 590; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Ohio Tenth Appellate District court appears at Appendix F 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 June 30, 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/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 March 5, 2013. A copy of that decision appears at Appendix E.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in case arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Appendix L.

14TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Section 1. All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. The text of the 14TH Amendment is attached in the appendix as appendix M.

28 U.S.C. § 2253(c). The text is attached as Appendix Q.

FEDERAL RULES CIVIL PROCEDURE 60(b)(4)(6). The text is attached as Appendix P.

Ohio Rules Criminal procedure, Rule 32(B). The text is attached as Appendix N.

Ohio Criminal Rule 55(A). The text is attached as Appendix

Article III of the United States Constitution is attached as Appendix K.

28 U.S.C. § 636 (b)(1)(c) is attached as Appendix R.

U.S.C.S Fed Rules Civ Proc R 72 appendix O

STATEMENT OF THE CASE

In March, 1994, the Scioto County Grand Jury returned a two count indictment charging petitioner with two counts of aggravated murder. On September 12, 1995, following a jury trial, petitioner was found guilty of two counts of aggravated murder. Petitioner was sentence to serve two concurrent terms of life imprisonment without parole eligibility for twenty years. Petitioner originally filed a writ of habeas corpus under 28 U.S.C. § 2254 in July 1997, in the United States District Court challenging his 1995 conviction. The habeas claims were dismissed on the merit by the United States District Court February 8, 1999. That judgment was affirmed by the United States Court of Appeals for the Sixth Circuit, Farooq v. Russell, case no. 99-3242, 2000 WL 658963 (6th Cir. 12, 2000). And the United States Supreme Court denied petitioner's petition for writ of certiorari, Farooq v. Russell, 531 U.S. 898 (2000). On October 3, 2011, petitioner returned to the trial court with a motion for resentencing and issue a correct entry of verdict and judgment of conviction that fully complies with Criminal Rule (C). The trial court denied the motion January 31, 2012. a copy of that order is attached as Appendix-G. On March 7, 2012, petitioner filed a complaint for writ of mandamus and/or procedendo in the Tenth Appellate District to compel the trial court to Resentence Petitioner and Issue a Correct Entry of Verdict and Judgment of Conviction that fully complies with Criminal Rule 32(B) currently Criminal Rule 32(C) that constitute a final appealable order. The Writ of Mandamus and/or Writ of procedendo was denied September, 11, 2012, the Tenth Appellate District decision is attached as Appendix-F. Petitioner appealed the denial of his Mandamus and/or Writ of Procedendo to the Ohio Supreme Court, that court affirmed that decision March 5, 2013. On June 20, 2016, petitioner filed in the

Federal District court a motion for Relief from Void Judgment pursuant to Federal Rule of civil procedure 60 (b)(4),on June 22,2016,the United States Magistrate Judge recommended that the motion be denied.See appendix-D.In August 2016,petitioner filed timely objection to the Magistrate Judge Report and Recommendation and motion to take Judicial Notice.On August 26,2016,the District court entered an opinion and order adopting and affirming the Magistrate Judge Report and Recommendation.See appendix-B.In August 2017,petitioner requested a certificate of appealability from the district court,the request for COA was denied October 20,2016.See appendix-C.On November 18,2017,petitioner requested a certificate of appealability from the Sixth Circuit of Appeals.On June 30,2017,the sixth circuit denied petitioner's request for COA.See appendix-A.

REASONS FOR GRANTING THE PETITION

- (1) WHETHER A REASONABLE JURISTS COULD DEBATE THAT THE SIXTH CIRCUIT COURT OF APPEALS ERRED IN DENYING PETITIONER A CERTIFICATE OF APPEALABILITY IN VIOLATION OF PETITIONER'S 5TH and 14TH AMENDMENT RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

Petitioner requested a certificate of appealability (COA) from the district court the request was denied(see Appendix-C).On November 18,2017,petitioner request a certificate of appealability from the Sixth Circuit Court of Appeals,the request for COA was denied,(see appendix-A).However,there is a conflict between the decision of the Supreme Court and the subsequent decision of the sixth circuit.The Sixth Circuit Court of Appeals did not apply the certificate of appealability standard and determine that petitioner claims are not debatable among jurists of reason when the court denied petitioner's (COA).The court of appeals decision conflicts with the most recent Supreme Court decision in Buck v. Davis,137 S.Ct.759 (2017).Upon requesting a certificate of appealability from the Sixth Circuit Court of Appeals petitioner raised two separate question,(1) The district court abused its discretion in denying petitioner's motion for relief from void judgment pursuant to Fed.R. Civ.P.60(b)(4),However,to correct petitioner's assertion petitioner intended to assert,Whether jurists of reason would debate that the district court abused its discretion in declining to reopen the judgment pursuant to Fed.R.Civ.P.60(b)(4);(2) The district court erred in failing to give a de novo determination to the issues to which petitioner-appellant filed

objection as required by Article III of the United States Constitution and 28 U.S.C. 636(b)(1)(C), again to correct petitioner's assertion, petitioner intended to say, Whether a reasonable jurists could debate that the district court erred in failing to give a de novo determination to the issues to which petitioner filed objections as required by 28 U.S.C. 636(b)(1)(C) and Article III of the United States Constitution. Because the petitioner is acting pro se the writ of certiorari must be "liberally construed" in favor of the petitioner and held to "less stringent standards than formal pleading drafted by lawyers". Hughes v. Rowe, 449 U.S. 5, 9, 66 L.Ed.2d 163, 101 S.Ct. 173 (1980) per curiam (citing Haines v. Kerner, 404 U.S. 519, 520, 30, L.Ed.2d 652, 92 S.Ct. 594 (1972)). The proper test is whether the complaint, viewed in this manner, states any valid ground for relief. Conley v. Gibson, 355 U.S. 41-46, 2 L.Ed.2d 80, 78 S.Ct. 99 (1957).

A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal. Federal law requires that he first obtain a certificate of appealability from a circuit justice or judge. 28 U.S.C. 2253 (c)(1). A COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C.S. § 2253(c)(2). Until the prisoner secures a COA, the court of appeals may not rule on the merit of his case. BUCK V. DAVIS, 137 S.Ct. 759 (2017). To make the required showing in the context of the denial of a RULE 60(b) motion, a petitioner must demonstrate that jurists of reason would find it debatable whether the district court properly denied the motion; and the issues raised are adequate to deserve further review.

Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In the instant case, the sixth circuit court of appeals did not apply the COA standard and determine that petitioner's claims are not debatable amongst jurists of reason as required by 28 U.S.C. § 2253 and the most recent decision in Buck v. Davis, 137 S.Ct. 759 (2017). In reading the sixth circuit June 30, 2017, Order denying petitioner's request for a certificate of appealability the court asserted the following:

Jurists of reason would agree that the district court had subject matter jurisdiction over the 1997 habeas corpus petition. Under 28 U.S.C. § 2254(a), a district court has jurisdiction to entertain and grant a writ of habeas corpus brought by a state prisoner on the ground that he is in custody in violation of the constitution or laws or treaties of the United States. Thus, the district court's jurisdiction was not dependent on whether the criminal judgment against Farooq was entered in accordance with state law. Because the jurisdiction claim does not deserve encouragement to proceed further, Farooq's related due process claim also does not deserve encouragement to proceed further. Finally, review of the district court's order denying Farooq's habeas petition reveals that it did, in fact, conduct a de novo review of the magistrate judge's report and recommendation.

Accordingly, the court Denies Farooq's COA application. The IFP motion is Denied as moot.

(The sixth circuit order denying petitioner's COA is attached as appendix-A). In Buck v. Davis, 137 S.Ct. 759 (2017), this court held that the COA inquiry is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. This threshold question should be decided without "full consideration of the factual or legal bases adduced in support of the claims." When a court of appeals sidesteps the COA

process by first 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.

This court further held that a "court of appeals should limit its examination at the COA stage to a threshold inquiry into the underlying merit of the claim," and ask "only if the District Court's decision was debatable." Buck v. Davis, 137 S.Ct. 759 (2017).

This court further held that, "A claim can be debatable even though every jurist of reason might agree, after the certificate of appealability has been granted and the case has received full consideration, that petitioner will not prevail. 28 U.S.C. § 2253 sets forth a two-step process: an initial determination whether a claim is reasonably debatable, and then, if it is, an appeal in the normal course. Judicial precedent does not mean to specify what procedures may be appropriate in every case. But whatever procedures are employed at the COA stage should be consonant with the limited nature of the inquiry." Buck v. Davis, 137 S.Ct. 759 (2017). In the present case, the Sixth Circuit Court of Appeals did not apply the COA standard and determine that petitioner's claims are not debatable. The court denied petitioner's request for COA with full consideration of the factual or legal bases adduced in support of the claims. The court of appeals sidestepped the COA process by adopting the district court merit determination as its own and then justifying its denial of petitioner's COA based on the adjudication of the District

court's merit determination. It is very clear that the claim is debatable among reasonable jurists, this issue is adequate to deserve further review. Therefore, petitioner ask this court to remand this case back to the Sixth Circuit Court of Appeals with instruction to grant petitioner a certificate of appealability.

- (2) WHETHER A REASONABLE JURISTS COULD CONCLUDED THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN DECLINING TO REOPEN THE JUDGMENT PURSUANT TO FED.R.CIV.P.60(b)(4). IN THE ABSENCE OF A STATE JUDGMENT OF CONVICTION CAN THE DISTRICT COURT ADJUDICATE THE ISSUES BEFORE IT RAISED IN PETITIONER'S 1997 habeas corpus petition, and is the adjudication of the issues a clear usurpation of power constituting a violation of petitioner's due process right and equal protection of the law under the United States constitution?

The United States Court of Appeals for the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the lower court, as to call for an exercise of this court's supervisory power. In the present case, the Judgment of Conviction that the warden is holding petitioner in custody on is void, a complete nullity and without legal effect. Petitioner has never been validly convicted of a criminal offense and Respondent's has never had any authority to hold petitioner under the sentence because the state trial court never entered the Judgment of Conviction into the journal as required by Ohio Criminal Rule 32(B) NOW Criminal RULE 32(C) modified. (certified copy of the criminal appearance docket is attached as appendix-H) In Ohio, a state court journal entry constitutes a judgment of

conviction. In Ohio, a judgment is effective only when entered on the journal by the clerk, an Ohio court of record speaks only through its journal entries..

A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal. Federal law requires that he first obtain a COA from a circuit justice or judge. 28 U.S.C. § 2253(c)(1). A COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. § 2253(c)(2). Until the prison secures a COA, the court of appeals may not rule on the merit of his case Buck v. Davis, 137 S.Ct. 759 (2017)..

To make the required showing in the context of the denial of a Fed.R.Civ.P. 60(b) motion, a petitioner must demonstrate that jurists of reason would find it debatable whether the district court properly denied the motion, and the issues raised are adequate to deserve further review. Slack v. McDaniel, 529 U.S. 473, 484 (2001)..

Fed.R.Civ.P. 60(b) has a valid role to play in federal habeas corpus cases. Rule 60(b) provides in relevant part: On motion and upon such terms as are just, the court may relieve a party from a final judgment, order or proceeding for the following reason: (4)...the judgment is void. The motion shall be made within a reasonable time unlike its counterpart, Rule 60(b)(4) which provides relief from void judgment is not subject to any time limitation. V.T.A., Inc v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979); Espinosa, 559 U.S. 266. If a judgment is void, it is a nullity from the outset and any 60(b)(4) motion for relief is therefore filed within a

reasonable time. See Venable v. Haislip, 721 F.2d 297, 299-300 (10th Cir. 1983). Furthermore, when Rule 60(b)(4) is applicable, "relief is not a discretionary matter; it is mandatory." V.T.A., Inc 597 F.2d at 224 n.8; see also Venable, 721 F.2d at 300. Under rule 60(b)(4), a judgment is void only if the court has no power to adjudicate the issues before it.

In June 2016, petitioner filed a motion for relief from void judgment pursuant to Fed.R.Civ.P. 60(b)(4) seeking to reopen his case. The magistrate judge recommended that the motion be denied. Upon objections, petitioner raised the following issue:

THE DISTRICT COURT'S MERIT DETERMINATION AMOUNTS TO A PLAIN USURPATION OF POWER CONSTITUTING A VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS.

If the underlying judgment is void, the order based on it is void. Austin v. Smith, 114 U.S. App.D.C. 97, 103, 312 F.2d 337, 343 (1962).

In Ohio, a state court journal entry constitutes a judgment of conviction. See Ohio Crim.R. 32(B) NOW CRIM.R. 32(C) modified ("A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk. See also State ex rel. Geauga Cty. Bd. of Commrs. v. Milligan, 100 Ohio St.3d 366, 370, 2003 Ohio 6608, 800 N.E.2d 361, 365 (2003) ("[An Ohio] court of record speaks only through its journal entries"). See also Schenley v. Kauth, 160 Ohio St. 109, 111, 113 N.E. 2d 625, 626 568 (1953) ("A court of record speaks only through its journal and not by oral pronouncement").

or mere written minute or memorandum") State ex rel. Hanley v. Roberts (1985), 17 Ohio St.3d 1,4, 17 OBR 1,3, 476 N.E.2d 1019, 1022, quoting "Were the rule otherwise it would provide a wide field for controversy as to what the court actually decided." Indus. Comm'n of Ohio v. Musselli, 102 Ohio St.10, 15, 130 N.E.3d 18 Ohio L.Rep.457 (1921). United States v. Adkins, 729 F.3d 559. (6th Cir.)

In the instant case, the district court had no power to adjudicate issues raised in petitioner 1997 habeas corpus because the district court failure to follow relevant law or procedure in securing a judgment of conviction from the state trial court. The judgment of conviction from its inception was a complete nullity and without legal effect because the trial court never entered the judgment of conviction into the journal as required by Ohio Crim.R.32(B) NOW Crim.R.32(C) modified. See the certified copy of the criminal appearance docket attached as appendix-H. The district court adjudication of the issues raised in petitioner 1997 habeas corpus petition amounts to a plain usurpation of power constituting a violation of petitioner's due process rights. V.T.A., Inc v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979); United States v. Zima, 766 F.2d 1153 (7th Cir. 1985); Carter v. Ferrer, 136 F.3d 1000; In re Nielsen, 131 U.S. 176.

In the Sixth Circuit Court of Appeals June 30, 2017, order denying petitioner's request for COA, the court asserted that "Jurists of reason would agree that the district court had subject matter jurisdiction over the 1997 habeas corpus petition. Under 28 U.S.C. § 2254(a), a district court has jurisdiction to entertain and grant a writ of habeas corpus brought by a state prisoner on the ground that he is in custody in violation of the constitution or law or treaties of the United States. Thus, the district

court's jurisdiction was not dependent on whether the criminal judgment against Farooq was entered in accordance with state law. Because the jurisdiction claim does not deserve encouragement to proceed further, Farooq's relate due process claim also does not deserve encouragement to proceed further. The Respondent's assert in there June 30, 2017, order denying petitioner's request for COA that the district court's jurisdiction was not dependent on whether the criminal judgment against Farooq was entered in accordance with state law. Petitioner submits that in the absence of a judgment of conviction, jurists of reason would find it debatable whether the district court properly denied the Rule 60(b)(4) motion, this issue raise is adequate to deserve further review. Furthermore, Respondent's assert that "because the jurisdiction claim does not deserve encouragement to proceed further, Farooq related due process claim also does not deserve encouragement to proceed further. Petitioner submit that the due process claim raised in petitioner's objection is a separate claim and not related to the jurisdiction claim as the respondent assert, upon objection petitioner raised the following claim:

The district court's merit determination amounts to a plain usurpation of power constituting a violation of petitioner's due process right.

This claim is a separate claim and not related to the jurisdiction claim that the respondent asserts. Jurists of reason would find it debatable whether the jurisdiction claim is related to the due process claim raised in petitioner's objections, also jurists of reason would find it debatable whether the district court properly denied the Rule 60(b)(4) motion, this issue raised is adequate to deserve further review.

Respondent's further assert in there June 30, 2017, order denying

petitioner's request for COA that "The court observed that Farooq's motion to take judicial notice raised the same arguments as in his objections and likewise was without merit. The due process claim, which derived from the jurisdiction claim, was implicitly denied, the respondent's citing A.O. Smith Corp. v. United States, 774 F.3d 359, 371 (6th Cir. 2014), as the authority to support their reasoning. However, in reading A.O. Smith Corp v. United States, it does not say anything about the due process claim which derived from the jurisdiction claim was implicitly denied, in a separate order, the district court declined to issue a COA, reasonable jurists would find this debatable. Further, as mention above, the respondent's assert in there June 30, 2017, order denying petitioner's request for COA, "that the court observed that Farooq's motion to take judicial notice raised the same arguments as in his objections likewise was without merit. Petitioner submit that the arguments raised in his motion to take judicial notice are not the same arguments as in his objections. Petitioner argued in his motion to take judicial notice the following: The magistrate judge fail to comply with the habeas corpus rules mandating that the magistrate Judge consider the entire record, the district court did not secure a final judgment from the state court and there is no final

judgment in the record for the magistrate judge to consider;(2)The magistrate judge did not consider the due process claim raised in the said motion nor enter finding of facts on the said claim,therefore,the district court should reject the magistrate judge Report and Recommendation and take judicial notice.In petitioner's objections he asserted the following:The district court merit determination amounts to a plain usurpation of power constituting a violation of petitioner's due process rights.That claim that petitioner argued in his motion to take judicial notice is not the same claim raised in petitioner's objections.Jurists of reason would find it debatable whether the district court properly denied the Rule 60(b)(4)motion.

Further,respondent assert in there June 30,2017,order denying petitioner's request for COA that"review of the district court's order denying farooq's habeas petition reveals that it did,in fact,conduct a de novo review of the magistrate judge's report and recommendation.Petitioner submits that the district court did not conduct a de novo review of the claim in petitioner's objections related to his motion for relief from void judgment as required by 28 U.S.C.S.§ 636(b)(1)(c) and Fed.R.Civ.P.Rule 72(b)(3) and Article III OF The United States Constitution.Jurists of reason would find it debatable whether the district court properly denied the motion,this issue raised is adequate to deserve further review.

The respondent have no constitutional authority or power to hold petitioner under the sentence,petitioner ask this court to vacate the judgment of conviction and order petitioner discharge from prison or in the alternative remand this case back to the district court with instruction to grant petitioner a certificate of appealability.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Abdush-Shahid Farooq

Date: September 10, 2017