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FOR THE FOURTH CIRCUIT

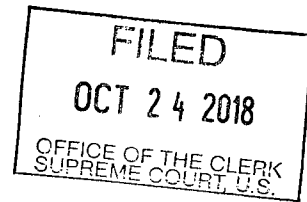
PETITION FOR REHEARING

JOSAND FARMER

#54617-056

FCI WILLIAMSBURG

SALTERS, SC 29590



PETITION FOR REHEARING
(Sup. Ct.R.44.1)

(No. 17-9540)

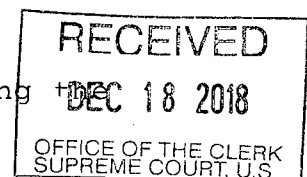
Appellant presents its petition for a rehearing of the above-entitled cause, and, in support of it, respectfully follows:

Grounds for Rehearing

A rehearing of the decision in the matter is in the interests of justice because:

(1) The petitioner constitutional rights were infringed upon when the court ignored the petitioner's request to proceed in pro-se capacity during his second or successive \$2255 proceedings, violating the petitioner's Fifth and Sixth Amendment rights;

(2) The petitioner's Rule 60(b) motion challenging the



court's jurisdiction of the subject matter was erroneously recharacterized as an §2255, and erroneously denied as being a second or successive §2255 motion depriving the district court jurisdiction to entertain said motion, violating the petitioner's Fifth and Sixth Amendment rights

1. ~~On~~, this court determined to affirm the decision of the lower court and deny the petition for writ of certiorari.

2. The principle ground cited in the Court's per curiam opinion was that the crucial issue, had been fully and completely determined by the ruling of the Court In U.S.v. Farmer 2018, a case decided a mere 2 days before the decision in this case.

3. The grounds for the ruling in This Case came as a surprise to petitioner. Petitioner had briefed the crucial issue in his case carefully, and was aware that similar issues were determined/decided in Adams v. United States, ex rel .McCann, 317 U.S. 269 275 279 63 S.Ct. 240 242 87 L.Ed. and, Gonzalez vs Crosby 545 U.S. 531 125 S.Ct. 2641 162 L.Ed 2d 480(2005); Maine v. Thiboutot, 100 S.ct. 250; Hagans v. Lavine 415 U.S. 553.

but the petitioner was not granted the same ruling or determination as was rendered in favor of the beforementioned citations/cases.

4). The petitioner was not granted the same determination/ruling violating his equal protection rights.

(a)-The petitioner contends that his Fifth and Sixth Amendment rights were infringed upon when the court improperly ignored his motion to proceed pro-se on his post conviction proceedings. The petitioner was appointed counsel after being granted permission to file a second or successive petition based on the a potential JOHNSON claim and Hubbard claim, were the vagueness challenge was at issue.

Upon being granted, said counsel, the appointed counsel withdrew the 2255 application forwarded to the district court pursuant to Rule 22 of Appellate Procedure(which was prepared by the appellant), and submitted a ill prepared, irrelevant supplemental motion, where the petitioner's name was misspelled; the petitioners location was incorrect, and the allege predicate offense he presented was not employed by the court to designate the petitioner as a career offender under section 4B1.1 of the United States Sentencing

Guidelines, failing to address the actual predicate offense being employed to designate the petitioner as a career offender. The petitioner submitted two motions petitioning the court to proceed in pro-se capacity and the courts ignored the petitioner's request.

As was stated in the petitioner's motion to proceed in pro-se capacity and in the previously filed writ for certiorari, the petitioner expressed that Pursuant to 28 U.S.C. §1654, a Defendant has a constitutional and statutory right to proceed pro-se. In all courts of the United States a party may plead and conduct their own cases personally or by counsel as by the rules of such courts, respectively, are permitted to manage and conduct cases there in. Adams v. United States ex rel. McCann, 317 U.S. 269, 275 279 63 S.Ct. 236 240 242 87 L.Ed. 268(1942); Rule 44, Federal Rules Criminal Procedures.

(b)-As to the petitioner's second ground, The petitioner previously submitted a 60(b)(4) motion for void judgment, contending that the court lacked territorial/legislative jurisdiction over the subject matter or controversy. The district court ignored the petitioner's challenge to jurisdiction and improperly recharacterized the petitioner's motion as a second or successive, §2255 motion to vacate set aside or correct

sentence.

On appeal the petitioner stated that the district court abused its discretion when it improperly recharacterized his 60(b)(4) motion Challenging the court's jurisdiction as being a second or successive 2255 motion.

The petitioner further informed the court that not all Rule 60(b)(4) motions should be treated as a successive applications; instead the proper treatment of the motion depends on the nature of the claims presented.

U.S. V. GONZALEZ, 570 fed Appx 330(4th cir 2014);
Gonzalez v. Crosby 545 U.S. 531 125 S.Ct. 2641 162 L Ed
2d 480(2005); IN RE ABU-ALI ADUR*RAHMAN(6th cir Appeals
Decided 13, 2004)

Under Rule 60(b)(4), a court can allow a collateral attack when the jurisdictional error was egregious. The error must involve a clear usurpation of judicial power, whe the court wrongfully extends its jurisdiction beyond the scope of its authority.

The petitioner contend that when jurisdiction is challenged, the court has no discretion to ignore such a challenge. MAINE V. THIBOUTOT 100 S.Ct. 250; Hagans v. Lavine 415 U.S. 553; (jurisdiction cannot be assumed but must be decided.

(5). In Adams v. U.S ex rel McCann, supra
determined that an individual was intitled to proceed
pro se; In Gonzalez v. Crosby ,supra; Maine v. Thiboutot supra;

Hagan v. Lavinessurpa. the court has determined

that once jurisdiction is challenge a court must not assume that it has jurisdiction it must prove that they have jurisdiction.

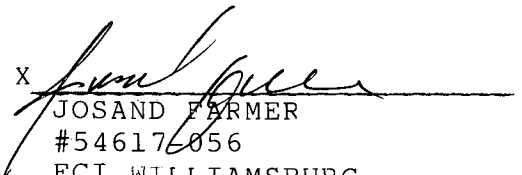
(6)- A rehearing tightly and squarely focused on the two claims being presented and the similar cases, and determine if this matter is of fundamental fairness to the petitioner and would not duly burden the Court.

CONCLUSION

For the reasons justed stated Josand Farmer urges that this petition for a rehearing be granted, and that, on further consideration, the petition for Certiorari be granted or the judgment of the lower court be reversed or as appropriate.

Date: 12-10-18

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