

No. 23-430

In the
Supreme Court of the United States

RICHARD R. FINCH,
Petitioner,

v.

HARRY WAYNE CASEY AND
HARRICK MUSIC, INC.,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Petitioner's¹ characterization of the question presented (*i.e.*, the application of the “discovery accrual rule”) was not raised, discussed, or applied in any of the underlying proceedings. Contrary to the Petitioner's statement, the issue in the proceedings below was simple and straightforward: Whether Casey's statute of limitations defense was itself time-barred. The *per curiam* decision below is unexceptional and, contrary to the Petitioner's contention, does not present a question of “national significance” or contravene the purposes of Section 203 of the Copyright Act. Indeed, the Eleventh Circuit referred to the Petitioner's appeal as “push[ing] the boundary” of frivolousness. (Pet. App. A, 4a).

¹ The Petitioner, Richard Finch, will be referred to herein as the “Petitioner” or “Finch.” The Respondent, Harry Wayne Casey, will be referred to as “Casey.” The Respondent, Harrick Music, Inc., will be referred to as “Harrick.”

RULE 29.6 STATEMENT

There is no parent corporation of Respondent, Harrick Music, Inc., nor is there any publicly held corporation or entity owning 10% or more of Harrick.

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STATUTORY PROVISIONS

Casey disputes that 17 U.S.C. § 410(c) is material or relevant in any way to the issue decided below.

INTRODUCTION

This case is about the Petitioner's effort to circumvent his own choice to wait more than six years after Casey expressly, in writing, repudiated the Petitioner's assertion that he is an author of any of the 99 songs in the *KC and the Sunshine Band* music catalog. Casey was fully within his rights to *defensively* assert that Finch's lawsuit, which required a determination that the Petitioner is, in fact, an "author," was barred by the applicable three-year statute of limitations. The decisions below are based on the clear and well-established general rule of law that the statute of limitations does not apply to a defense.

In the Trial Court below, the Petitioner, Finch, brought a single claim for Declaratory Relief in which the Petitioner asserts that he is a "co-author" of the entire "KC and the Sunshine Band" music catalog. The Petitioner contends that because he is allegedly an author, he is entitled to invoke, and has in fact invoked, "termination rights" under Section 203 of the Copyright Act, which allows an author to terminate a legacy grant of copyright.

Section 203 of the Copyright Act permits an author (or an author's heirs under certain circumstances) to terminate grants of copyright

assignments that were executed by the *author* on or after January 1, 1978, and reclaim the rights that were transferred. *See* 17 U.S.C. § 203(a).² In a unanimous *per curiam* decision, the Eleventh Circuit affirmed the Trial Court’s conclusion that the Petitioner’s claim, which as a condition precedent must be predicated on his status as an author, is barred by the three-year statute of limitations set forth in 17 U.S.C. § 507(b), which was triggered more than six years prior to the filing of this lawsuit when Casey expressly repudiated the Petitioner’s claim of co-authorship to any of the 99 songs in the KC and the Sunshine Band music catalog.

Certiorari review of the Eleventh Circuit’s decision should be denied for three reasons. First, the question on which the Petitioner seeks review is not presented here because neither the Eleventh Circuit nor the District Court applied the “discovery accrual rule.” Instead, the courts below correctly determined that the Petitioners’ claim accrued upon Casey’s *express repudiation* of Finch’s assertion of authorship on May 26, 2015. Second, the decisions below involve a routine application of well-established law and do not present a question of “national significance” or “significant precedential value,” nor is there any

² More specifically, Section 203 states:

(a) Conditions for Termination.—In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination

conflict with a decision of this Court or of any Court of Appeals. As occurred below, the Petitioner provides no legal authority or argument that justifies changing the general rule that a defendant who is not seeking any affirmative relief, and who asserts a defense only to defeat a plaintiff's claim, is not barred by a statute of limitations. And third, the Petitioner is, at bottom, simply arguing that the lower courts misapplied a settled rule or case law. Supreme Court Rule 10 expressly provides that “error-correction” is rarely a proper ground for certiorari review.

STATEMENT OF THE CASE

Casey is the founder, leader, and “KC” of the world-renowned musical group “KC & the Sunshine Band.” (11th Cir. App., 110). Casey got his start in the music industry in the early 1970’s while working at the then-famous TK Studios in Miami under producer Henry Stone and his business partner, Steve Alaimo. (11th Cir. App., 127 & 11th Cir. Supp. App., 90-92). A few years later, Casey was introduced to the Petitioner, Finch, a sound engineer, by Willie Clarke, a TK Studios producer and songwriter. (*Id.*).

Casey Wrote All the Music & Lyrics

By the time Casey was introduced to the Petitioner, Casey had already started what was then known as “KC and the Sunshine Junkanoo Band” (which later became “KC & the Sunshine Band”) and he had already written several hit tracks. (11th Cir. App., 127 & 11th Cir. Supp. App., 95-97). The Petitioner eventually joined primarily as a sound engineer. (11th Cir. App., 111, 127-28). At all times,

Casey was solely responsible for writing the music and lyrics for each of the 99 songs in the KC & the Sunshine Band catalog (the “Compositions”), typically at his piano at home. (*Id.*, 898).

For his part, The Petitioner did not create any of the Compositions, nor did he actually contribute any significant copyrightable material to any of the Compositions. At his deposition, the Petitioner admitted that he had nothing to do with several of the songs for which he was gifted writer credit and as for the others, he could not identify any copyrightable contribution to any of the songs, including not a single lyric or musical note. (11th Cir. App., 896-97, 920-21 & 11th Cir. Supp. App., 229-33, 236-38). In many instances, the songs were already written before the Petitioner even became involved in the sound production. (11th Cir. App., 920).

Casey Gifted The Petitioner Co-Author Status

In his deposition, Casey explained that the Petitioner was listed as a “co-author” on copyright registrations, record labels, and elsewhere, *not* because of any copyrightable contribution to the works, but because Casey “**gifted**” the Petitioner co-authorship status due to their then-personal relationship. (11th Cir. App., 898-99, 924 & 11th Cir. Supp. App., 350) (e.g., “Sir, I was in a relationship with him, and, you know, because I was in a relationship with him, I didn't object to those things”). As mentioned above, even the Petitioner conceded that Casey “gifted” him co-writer status as to at least some songs, notwithstanding the Petitioner’s effort to claim

co-authorship of songs. (11th Cir. App., 921 & 11th Cir. Supp. App., 235-36).

Neither Casey Nor The Petitioner Owned Any Copyrights

Between the mid-1970s and the early 1980s, Casey and the Petitioner executed several agreements, including Exclusive Writer's Contracts with Sherlyn Publishing Co. ("Sherlyn," now known as Sony/EMI), dozens of Single Song Agreements ("SSAs") with Sherlyn, which granted to Sherlyn all right, title and interest for each song written and recorded by KC & the Sunshine Band, and an "Amendment to the Exclusive Songwriter Agreements" with Sherlyn (hereafter, the "Amendment"), by which all new Compositions going forward from June 1, 1976, would be co-owned 50/50 by Sherlyn and Harrick, an entity formed and co-owned equally by the Petitioner and Casey. (Pet. App. B, 6a; 11th Cir. App., 18, 128-29, 921-23). Put simply, neither Casey nor the Petitioner owned any copyrights to *any* songs in their individual capacities.

The 1983 Property Division Agreement

By 1983, Casey and the Petitioner formally severed their business dealings by way of that certain Property Division Agreement (hereafter, the "1983 Property Division Agreement"). (Pet. App. B, 7a, 11th Cir. App., 18-19, 130-31). The 1983 Property Division Agreement included as an exhibit, among others, an "Intangibles Assignments" document, in which the Petitioner quitclaimed to Casey rights he *may* have had at the time, *if any*, to the Compositions. (Pet. App.

B, 7a). The Intangibles Assignment makes no representation or warranty of any kind that the Petitioner actually owned any copyrights. (11th Cir. App, 926).

However, soon after execution of the agreement, the Petitioner claimed that the 1983 Property Division Agreement was procured by fraud, collusion, or that the Petitioner was incompetent when he executed the document. (Pet. App. B, 7a, 11th Cir. App., 19, 926-27). The Petitioner did not claim that he was an “author” and the Petitioner’s lack of authorship in the Compositions was not an issue in the litigation. (11th Cir. App., 926-27). The state court rendered judgment in favor of Casey in 1986, upholding the validity and enforceability of the 1983 Property Division Agreement. (*Id.*, 131-32). The court also permanently enjoined the Petitioner from interfering in the payment of any royalties due and owing to Casey (the “1986 Injunction”). (*Id.*, 132).

In 2004, Casey was forced to seek contempt sanctions against the Petitioner for violating the 1986 Injunction. (Pet. App. B, 8a, 11th Cir. App., 19, 132). At the conclusion of the contempt proceedings, the state court entered an Order finding that the Petitioner, Finch, had a) willfully violated the 1986 Injunction, b) that the 1983 Property Division Agreement was valid and binding, and c) that “FINCH transferred 100% of the entirety of his royalty interests in the complete ‘K.C. Catalog’ . . . *prior* to the date of execution of the Property Division Agreement.” (11th Cir. App., 132-33 & 11th Cir. Supp. App., 270-75) (emphasis added). As such, the 1983

Property Division Agreement, which the Petitioner sought to terminate, did not transfer any rights at all – the Petitioner had previously assigned or granted all of his copyrights to third parties well before 1983, and therefore owned nothing to grant or transfer as part of the 1983 Property Division Agreement and its related Intangibles Assignment. The Petitioner’s entire claim rests on the demonstrable fiction (previously adjudicated against him in 2004) that the 1983 Intangibles Assignment constitutes a “grant” of his rights for purposes of Section 203 of the Copyright Act. However, this case was resolved solely on the basis that the Petitioner’s lawsuit against Casey was filed almost 7 years *after* the cause of action allegedly accrued, and almost 4 years after the applicable statute of limitations had long-since expired.

The Express Repudiation

On August 30, 2012, the Petitioner, through his then-authorized agent, Brent McBride, attempted to serve a Notice of Termination pursuant to Section 203 of the Copyright Act on Harrick (but not Casey), seeking to terminate copyright grants the Petitioner claims he made to Casey in the Intangibles Assignment as part of the larger 1983 Property Division Agreement (the “2012 Notice of Termination”). (Pet App. B, 8a, 11th Cir. App., 133). Almost three years later, on May 7, 2015, Richard Wolfe, Esq., the Petitioner’s then-counsel, sent a letter to Casey’s General Counsel concerning the 2012 Notice of Termination and included a copy of the Notice. (Pet. App. B, 8a, 11th Cir. App., 133 & 11th Cir. Supp. App., 276-88).

Casey and Harrick, through their counsel, Franklin Zemel, Esq., responded to Wolfe's correspondence on May 26, 2015, expressly repudiating the Petitioner's claim of authorship over any of the Compositions:

At no time was Finch an "author" of the music under the Copyright Act.

The U.S. Supreme Court defines 'author' as 'the party who actually created the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection. Finch did not actually create the songs Casey wrote for [K.C. & the Sunshine Band] and Finch did not contribute any significant copyrightable material to those songs. Accordingly, Finch would have the burden of proof to establish his status as an "author", not just one with whom Casey shared credit. He therefore has no termination rights under Section 203(a) . . .

(the 2015 Repudiation Letter") (emphasis added). (Pet. App. A, 2a, Pet App. B, 8a, 11th Cir. App., 134, 859-61). The Petitioner never replied to the 2015 Repudiation Letter nor did he take any action in opposition to Casey's express repudiation of Finch's claim of authorship within the applicable three-year statute of limitations. (Pet. App. B, 8a, 11th Cir. App., 20; *see also* 17 U.S.C. § 507(b) "No civil action shall be maintained under the provisions of this title unless it

is commenced within three years after the claim accrued”).

The 2019 Notice of Termination and the Proceedings Below

Well after the expiration of the applicable three-year statute of limitations, on September 30, 2019, the Petitioner served yet another Notice of Termination (the “2019 Notice of Termination”) upon EMI, Casey, and Harrick seeking to once again terminate the Petitioner’s alleged grants or transfers in the 1983 Property Division Agreement. (Pet. App. B, 9a, 11th Cir. App. 94, 135).

Thereafter, on or about October 8, 2021, and notwithstanding the two State Court permanent injunctions, the Petitioner sued Sony/EMI Music, *but not Casey*, in Federal Court in California in order to force Sony/EMI Music to pay 50% of Casey’s royalties to the Petitioner. *See Richard R. Finch v. EMI Consortium Songs, Inc., at al.*, United States District Court for the Central District of California Case No.: 2:21-cv-09032. Some months later, the Petitioner voluntarily dismissed the California lawsuit, re-filing his case in the Southern District of Florida on January 11, 2022, seeking a declaration that he validly exercised his termination rights under Section 203 of the Copyright Act.³ (Pet. App. A, 2a, Pet App. B, 6a). The action was filed almost ***seven years after*** the 2015 Repudiation Letter.

³ EMI/Sony was shortly thereafter voluntarily dismissed, leaving Casey and Harrick as sole defendants.

On May 9, 2022, the Respondents, Casey and Harrick, filed their Answer and Affirmative Defenses, asserting multiple defenses including that Petitioner's claim was barred by the applicable three-year statute of limitations set forth in 17 U.S.C. § 507(b). (Pet App. A., 2a).

Both the Petitioner and the Respondents filed competing Motions for Summary Judgment. (11th Cir. App., 109-26, 138-62). In their Motion for Summary Judgment, Casey and Harrick argued, among other things, that the statute of limitations for the Petitioner's Declaratory Judgment lawsuit accrued in May 2015 when Casey's lawyer sent the 2015 Repudiation Letter to the Petitioner's attorney expressly repudiating the Petitioner's claim of authorship of the Compositions. (Pet. App. B, 11a). The Petitioner, on the other hand, opposed summary judgment on the ground that Casey's statute of limitations defense was *itself* time-barred. (*Id.*, 8b). In other words, the Petitioner argued that Casey and Harrick should be precluded from defending the Petitioner's lawsuit.

The District Court granted summary judgment in favor of Casey and Harrick and against the Petitioner, Finch, concluding, as a matter of law, that the Petitioner's lawsuit was barred by the statute of limitations and dismissing the case *with prejudice*. (Pet. App. A, 2a, Pet App. B, 24a). In granting summary judgment, the District Court found that "it is evident that Finch's claim for termination under § 203 accrued in May 2015, when Casey sent a response letter to Finch's lawyer expressly

challenging Finch’s claim of authorship over all ninety-nine songs, as well as his corollary rights to termination.” (Pet. App. B, 24a).

On appeal, the Eleventh Circuit described the issue to be decided as follows: “Finch raises one narrow issue on appeal: whether Casey could raise the statute of limitations as a defense.” (Pet. App. A, 3a). In an unanimous per curiam decision, the Eleventh Circuit affirmed the lower court, holding that “[a]n ***express assertion*** of sole authorship or ownership – like Casey’s letter – triggers the accrual of an ownership claim.” (*Id.*) (emphasis added). In other words, the Eleventh Circuit’s decision was not based in anyway on the “discovery accrual rule” nor was the discovery accrual rule at issue. The Eleventh Circuit also rejected the Petitioner’s effort to portray Casey’s affirmative defense as a “disguised counterclaim” in which Casey seeks a declaration that he is the sole author of the *KC and the Sunshine Band* catalog: “Finch attempts to paint Casey’s statute-of-limitations defense as a time-barred authorship counterclaim – limited by the same three-year statute of limitations that hinders Finch. * * * Casey does not seek any affirmative relief, nor does he attempt to dodge a statute of limitations. If anything – ironically – Finch is the one ‘packag[ing]’ claims and defenses to get around a statute of limitations. Casey raised an affirmative defense distinct from any authorship claim.” (*Id.*).

REASONS FOR DENYING THE PETITION

As explained in greater detail below, the decision of the Eleventh Circuit does not conflict with a decision of this Court or any Court of Appeals, and does not implicate a federal question that has not been decided by this Court. The Eleventh Circuit's decision is supported by a well-established principle of law and case precedent. Moreover, this is surely not a case appropriate for this Court's review and accordingly, the Petitioners have not carried their burden of demonstrating any "compelling reasons" for the Petition to be granted. *See* Sup. Ct. R. 10.

A. THE PETITIONER SEEKS REVIEW ON A QUESTION NOT PRESENTED BY THIS CASE.

The Petitioner seeks review on an entirely hypothetical question of whether an "assertion of sole authorship status by one co-author may, under the discovery accrual rule, form the basis for a statute of limitations defense" to a claim for declaratory relief under 17 U.S.C. § 203, arguing, *inter alia*, that the discovery accrual rule was "misapplied" and that the "discovery accrual rule should not be applied under the circumstances." (Pet., i, 12, 14).

But neither the District Court nor the Eleventh Circuit invoked the "discovery accrual rule" or considered it as part of their respective rulings. To the contrary, this case involves the straight-forward application of the statute of limitations as an affirmative defense based on Casey's express repudiation of the Petitioner's assertion that he is an

“author” (a condition precedent to a valid termination under Section 203 of the Copyright Act) in Casey’s May 26, 2015 letter to the Petitioner’s counsel, which plainly stated “[a]t no time was Finch an ‘author’ of the music under the Copyright Act.” As the Eleventh Circuit explained, the sole question decided by the appellate court was “whether Casey could raise the statute of limitations as a ***defense***.” (Pet. App. A, 3a (emphasis added)).

Rather than apply the “discovery accrual rule” as the Petitioner contends, the Eleventh Circuit correctly held that the Petitioner’s claim accrued upon Casey’s ***express repudiation***: “[a]n ***express assertion*** of sole authorship – like Casey’s letter – triggers the accrual of an ownership claim . . . the clock began to run on Finch’s § 203 claim when Casey expressly repudiated Finch’s authorship in May 2015.” (Pet. App., 3a (emphasis added)). Similarly, the District Court found that “Finch’s claim for termination under § 203 accrued in May 2015 when Casey sent a response letter to Finch’s lawyer ***expressly*** challenging Finch’s claim of authorship over all ninety-nine songs, as well as his corollary right to termination.” (Pet. App., 24a (emphasis added)).

The Petitioner’s attempt to manufacture a “cert-worthy” legal issue by referencing this Court’s recent decision to grant a petition for writ of certiorari in *Nealy v. Warner Chappel Music, Inc.*, 60 F.4th 1325 (11th Cir. 2023), *cert. granted*, -- S. Ct. --, 2023 WL 6319656 (Mem) (September 29, 2023), is grossly misplaced. *Nealy* involves the discovery accrual rule, which, as discussed above, is not at issue here.

Moreover, the limited question on review before this Court in *Nealy* is whether a copyright plaintiff can recover infringement *damages* for acts that allegedly occurred more than three years before the filing of the lawsuit, which is entirely unrelated to any issue in this case.

Furthermore, the Eleventh Circuit's decision in *Nealy* conflicts with a decision of the Second Circuit, a fact conceded by the respondents in their opposition briefing, making certiorari review appropriate in that case. No such conflict has been identified by the Petitioner here. Nor has the Petitioner explained why this case is exceptionally important and warrants review by this Court – a failure we will address in greater detail below. In short, the Petitioner's argument that certiorari review is appropriate for this case in light of *Nealy* is based on nothing more than each case touches generally on the statute of limitations as a principle of law regardless of the specific question involved. That is not a “compelling reason” for his Petition to be granted.

B. THE DECISION BELOW IS A ROUTINE APPLICATION OF WELL-SETTLED LAW.

This case does not present a question of “national significance” as the Petitioner claims. To the contrary, the decision of the Eleventh Circuit (and the District Court before it) is an unexceptional, case-specific application of the well-settled general rule that the statute of limitations cannot be used to cut off consideration of a *defense*. See *United States v. W. Pac. R. Co.*, 352 U.S. 59, 72 (1956). This general

rule applies equally in the copyright context, including a Section 203 termination claim, as well as claims involving copyright ownership or authorship. See 17 U.S.C. § 507(b) (providing that a copyright claim must be “commenced within three years after the claim accrued”); *Estate of Hogarth v. Edgar Rice Burroughs, Inc.*, 342 F.3d 149, 163 (2d Cir. 2003) (“A defendant who is not seeking any affirmative relief and who asserts a defense only to defeat a plaintiff’s claim is not barred by a statute of limitations”).

Here, the Petitioner repeats the same misdirection he attempted in the lower courts of falsely portraying Casey’s *defense* that the Petitioner is time-barred from asserting he is an “author” as, instead, an *affirmative* claim for relief in which Casey is seeking a declaration that he is the sole author of the KC & the Sunshine Band catalog. (See, e.g., Pet., at i, setting forth the question presented as “[w]hether a time-barred assertion of sole authorship status . . .”). But this argument – as highlighted below – was rightfully rejected by the Eleventh Circuit and the District Court, both of whom reached the unremarkable conclusion that a defendant who is not seeking any affirmative relief and who asserts a defense only to defeat a plaintiff’s claim is not barred by a statute of limitations.

As the District Court correctly found, the Petitioner “proceeds to portray Casey’s defense as a claim or counterclaim that this [District] Court should subject to the Act’s three-year statute of limitations . . . [w]e find no basis to accept [Petitioner’s] self-serving description of Casey’s

limitations defense as a ‘claim.’ *** This is not a case in which Casey can be deemed to be a defendant in an aggressor’s posture, trying to use an affirmative defense as a sword rather than a shield to disturb some long-lasting status quo between the parties . . . Casey had not pled counterclaims, nor is he seeking any affirmative relief from [Petitioner].” (Pet. App. B, 13a, 14a). On appeal, the Eleventh Circuit affirmed, holding that the “[Petitioner] attempts to paint Casey’s statute-of-limitations defense as a time-barred authorship counterclaim . . . [but] Casey does not seek any affirmative relief, nor does he attempt to dodge a statute of limitations. If anything – ironically – [Petitioner] is the one ‘packag[ing] claims and defenses to get around the statute of limitations.” (Pet. App. A, 3a, 4a).

The Petitioner’s contention that the Eleventh Circuit’s decision “nullifies” the effectiveness of a Section 203 termination is based on a mischaracterization of that court’s decision, in which he incorrectly maintains that the Eleventh Circuit held that the three-year limitations period on a Section 203 lawsuit begins to run *from the date of the written response* to the Section 203 termination letter (which such written response Petitioner claims is not authorized anywhere in the Copyright Act). (Pet., 11). But, that was not the Eleventh Circuit’s holding at all. The Eleventh Circuit simply held that an express assertion of sole authorship triggers the accrual of an authorship or ownership claim. (Pet. App. A, 2a). That express repudiation occurred in 2015 when Casey sent the Petitioner a letter asserting that Petitioner was never an “author.” The court’s holding is not explicitly

based on a written “response” to the Section 203 letter, but on the express repudiation itself.

Put short, the decisions below are unexceptional, fact-specific applications of the well-settled rule that the statute of limitations does not apply to a defense. The decisions below do not depart from established law, create any new precedent, and do not merit this Court’s review.

C. THE PETITION DOES NOT RAISE ANY ISSUES THAT WARRANT THIS COURT’S REVIEW.

1. The Petitioner’s Claim of Alleged “Error” in the Holdings Below is Not a Compelling Reason to Grant Certiorari Review.

To the extent the Petitioner maintains that the courts below “*misapplied*” the statute of limitations under the facts of this case [Pet., 12] or explicitly argues that “*The Holdings Below Were Incorrect*” (his own words) [*Id.*, 13], the Petition does not present a “compelling reason” to grant certiorari review. Rule 10 of the Supreme Court provides that “[a] petition for a writ of certiorari will be granted only for *compelling reasons*.” (emphasis added). And, as Rule 10 further makes clear, “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *See also* S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, *Supreme Court Practice* § 5.12(c)(3), p. 352 (10th ed.

2013) (“[E]rror correction ... is outside the mainstream of the Court's functions and ... not among the ‘compelling reasons’ ... that govern the grant of certiorari”).

Here, the Petitioner all but concedes that he is merely seeking to correct perceived “error,” arguing that the holdings below were “incorrect” and relying as he did in the court below on the Sixth Circuit’s decision in *Garza v. Everly*, 59 F.4th 876 (6th Cir 2023), which he contends the Eleventh Circuit misapplied to the facts of our case. In other words, the Petitioner merely disagrees with the Eleventh Circuit’s decision, which is not a proper basis for certiorari review.

2. *The Eleventh Circuit (and the District Court) Properly Applied Settled Law.*

Moreover, the lower courts got it right. The Petitioner not only mischaracterizes the holding of *Garza* and its application to the facts of this case (as he did in the courts below), but applying the holding of *Garza* to the facts of our case actually supports Casey’s statute of limitations affirmative defense and the Eleventh Circuit’s decision.

In *Garza*, the Sixth Circuit reiterated the general rule – applied by the lower courts here – that the statute of limitations does not apply to defenses: “[a] defendant who is not seeking any affirmative relief and who asserts a defense only to defeat a plaintiff’s claim is not barred by a statute of

limitations.” *Garza*, 59 F.4th at 883 (citation omitted). The Sixth Circuit also identified a narrow “exception” to this general rule, explaining that the statute of limitations *may* apply in the “limited situation where a defendant is seeking affirmative relief packaged within a defense and is attempting to dodge a statute of limitations that is an important part of the statutory framework.” *Id.* at 883-84 (emphasis added). Applying this “exception” to the facts in *Garza*, the Sixth Circuit held that the co-authorship defense was barred by the statute of limitations because the defendant was seeking affirmative relief, attempting to secure the financial benefits of co-authorship that he did not legally possess, which he originally attempted to raise co-authorship as a counterclaim but repackaged as a defense when plaintiff raised the statute of limitations defense against the counterclaim. *See id.* at 884.

In our case, the District Court correctly distinguished the facts of *Garza* (at the time only a decision of the Middle District of Tennessee as the Sixth Circuit had not yet affirmed) and the “exception” to the general rule, concluding that “[t]his is not a case in which Casey can be deemed to be a defendant in an aggressor’s posture, trying to use an affirmative defense as a sword rather than a shield to disturb some long-lasting status quo between the parties. * * * Casey has not pled counterclaims, nor is he seeking any damages or affirmative relief from [Petitioner]. Moreover, the underlying facts of this case indicate that it is [Petitioner] who has engaged in repeated efforts, some of which date back to the 1980s, to

disturb or attack the existing state of affairs” (Pet. App. B, 15a).

The Eleventh Circuit affirmed, holding that “[t]he Sixth Circuit case on which [the Petitioner] so heavily relies ... *Garza v. Everly*, concerned ‘a defendant ... seeking affirmative relief packaged with a defense and .. attempting to dodge a statute of limitations. *** This case is different. Casey does not seek any affirmative relief, nor does he attempt to dodge a statute of limitations. If anything – ironically – [Petitioner] is the one ‘packag[ing] claims and defense to get around the statute of limitations.’” (Pet. App. A, 4a).

In his Petition, Finch continues to mischaracterize *Garza* and conflate Casey’s affirmative defense of statute of limitations into a “disguised counterclaim” seeking to establish sole authorship. In the end, the Petitioner is simply unhappy with the outcome below, but nothing about this case compels this Court’s attention, valuable time and resources.

CONCLUSION

The Petitioner has not fairly framed the issue to be decided on the one hand, and has also failed to provide this Court with any reason, let alone a compelling reason, to grant the Petition. Supreme Court Rule 10 makes express that “[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion.” Accordingly, Casey respectfully requests that the Petition be denied.

Respectfully submitted,

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