

25-5496

No. _____

ORIGINAL

FILED

AUG 15 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ALONZO G. DAVISON — PETITIONER
(Your Name)

vs.

STEVEN HARPE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Tenth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Alonzo G. Davison #198828
(Your Name)

P.O. Box 260
(Address)

Lexington, OK 73051
(City, State, Zip Code)

N/A
(Phone Number)

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:

RELATED CASES

United States v. Villano, 816 F.2d 1448, 1452 (10th Cir. 1987); United States v. Martinez, 812 F.3d 1200, 1203 (10th Cir. 2015); Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000); Miller-El v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029, 1039, 154 L.Ed.2d 931 (2003)

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QUESTION(S) PRESENTED

When the Oral Pronouncement of Sentence and the Written Judgment and Commitment Order are in Conflict, Should a State Prisoner Seek Relief Under a § 2241 or § 2254 Habeas Petition?

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☒ is unpublished.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☒ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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 April 29, 2025.

☐ 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: June 9, 2025, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

14th Amendment to the U.S. Constitution; 28 U.S.C. § 2241; 28 U.S.C. § 2244(b);
28 U.S.C. § 2254; 28 U.S.C. § 2253;

STATEMENT OF THE CASE

Petitioner, Alonzo G. Davison, an Oklahoma prisoner appearing pro se, petitioned the U.S. District Court for the Northern District of Oklahoma (hereinafter "District Court") for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, on December 1, 2023, claiming that his sentences have expired and he is unlawfully being held in custody in violation of the Constitution or laws of the United States, as it pertains to the District Court of Tulsa County case number CF-2002-1687.¹ On February 23, 2024, Respondent filed a Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b), urging the District Court to dismiss the petition asserting that Mr. Davison's continued state custody is lawful because his offense occurred on August 1, 2001 (as alleged by the "Amended Judgment and Sentence"), and he has not discharged his sentence. On or about July 11, 2024, Mr. Davison filed a Response, and attacked the authenticity of the alleged August 1, 2001 date of the commitment of offense, claiming that it was in conflict with the oral pronouncement of sentence by the Trial Court. On August 21, 2024, the District Court granted the Motion to Dismiss based on the Amended Judgment and Sentence's alleged August 1, 2001 date of the commitment of the offense, claiming in summary that Mr. Davison is mistaken to the extent that he urges that the ODOC is required to administer his sentences as "orally pronounced" at his sentencing hearing. On or about October 23, 2024, Mr. Davison filed a Certificate of Appealability ("COA") with the Tenth Circuit based primarily on the following grounds: 1) a reasonable jurist would agree that in granting Respondent's Motion to Dismiss, the District Court deprived Mr. Davison of his procedural due process rights by using an incorrect legal principle that was contrary to clearly established federal law for such motions; and 2) that Mr.

¹ On October 3, 2023, Mr. Davison filed a Request with the Tenth Circuit for permission to file a second or successive habeas petition under 28 U.S.C. § 2254. [See 23-510b, In re: Davison; Exhibit A, a portion of said Motion. On October 5, 2023, the Tenth Circuit ruled that Mr. Davison's claim that he has completed his sentence fall under § 2241, and doesn't need prior authorization. [See Exhibit B the Tenth Circuit's order denying as unnecessary Mr. Davison's Motion for Authorization to file another § 2254 application.]

STATEMENT OF THE CASE

cont

Davison presented enough facts in his petition to state a claim for relief (namely that he was not sentenced to serve 85 percent of his sentence in Court One), that is plausible on its face for each element of his claim. On April 29, 2025, the Tenth Circuit denied Mr. Davison's COA, claiming that reasonable jurist could not debate that he has failed to state a claim under § 2241... that his attack does not challenge the execution of the sentence and must be made in a § 2254 application... On or about May 12, 2025, Mr. Davison filed a Petition for Rehearing and/or Rehearing En Banc to the Tenth Circuit from its April 29, 2025 Order denying his request for COA, for the following reasons: 1) The panel decision conflicts with a recent decision by them pertaining to Mr. Davison in 23-5106, In re: Davison and the Full Court's consideration is therefore necessary to secure or maintain uniformity of the Court's decision (see Exhibits A + B); and 2) the panel decision conflicts with their decision in United States v. Villano, 816 F. 2d 1448, 1452 (10th Circuit 1987), ("where oral and written sentencing orders conflict, Court of Appeals look to oral pronouncement."), and the full court's consideration is therefore necessary to secure or maintain uniformity of the Court's decision (see Exhibit E, copy of Petitioner's Petition for Rehearing and/or Rehearing En Banc). On June 9, 2025, the Tenth Circuit denied Mr. Davison's Petition for Rehearing in summary claiming, "because Mr. Davison's COA application redirected his challenge about the sentence's execution to argue error in his amended judgment (and Mr. Davison's additional contention that the amended judgment conflicts with the trial court's oral pronouncement of his sentence also attacks the amended judgment rather than the execution of the sentence).

STATEMENT OF THE CASE ^{cont}

BACKGROUND

Petitioner was tried and convicted of Count 1, Lewd Molestation in violation of 21 O.S. § 1123 and Count 2, Sexually Abusing a child in violation of 10 O.S. § 7115²; after former conviction of two or more felony convictions. The said crimes occurred on January 1, 2000. Petitioner plead not guilty to this information. On January 1, 2000 - October 31, 2000, the above-mentioned crimes dictated: for a crime committed on or after July 1, 1998, any person in the custody of the Department of Corrections shall be eligible for consideration for parole (and earned credits) who has completed serving one-third ($\frac{1}{3}$) of the sentence... (See 57 O.S. § 332.7 (B)). In accordance with Oklahoma law, each earned credit is equivalent to one (1) day of incarceration. If a maximum and minimum term of imprisonment is imposed the provision of this subsection shall apply only to the maximum term. (See 57 O.S. § 138 (A)).

During sentencing deliberations, the jury sent the Trial Court a note asking the following question: How much of the sentence will be served prior to parole hearings? The Trial Court's response was: That's not a matter for your consideration. You are only to consider the range of punishment set within the instructions. (See Exhibit D, Trial Transcripts ("TT") at lines 16-25). On November 15, 2002, the jury recommended punishment at 50 years imprisonment on Count 1 and 75 years on Count 2. Mr. Davison was sentenced in accordance with the jury's

² In or around September 2023, Mr. Davison was successful in his challenge that his sentence was complete in Count 2 and the ODOC has discharged him from that sentence.

STATEMENT OF THE CASE ^{cont}

BACKGROUND

recommendations; the Trial Court ordered that the sentences be served consecutively, but otherwise stood silent as to the date of the commitment of the offenses and the percentage petitioner was required to serve before becoming eligible for parole consideration, earned credits, etc. (See Exhibit E, Sentencing Hearing Transcripts ("ST") at lines 12-21)).

Mr. Davison's Original Judgment and Sentences in Counts One and Two dated November 18, 2002 did not state the percentage of his sentences that he was required to serve before becoming eligible for parole consideration and earned credits, nor did it state the date of the commitment of the offenses (see Exhibit F+G, Petitioner's Original Judgment and Sentence ("OJ+S") dated November 18, 2002)).

On Direct Appeal the Oklahoma Court of Criminal Appeals ("OCCA") modified Mr. Davison's sentences to 45-years on each count to be served concurrently, and ordered the Tulsa Court to file Amended Judgment and Sentences with the above modifications (see Exhibit H, OCCA's April 28, 2004 Order, and Exhibit I, OCCA's Mandate to the Tulsa Court dated July 23, 2004).

The Trial Court went beyond the OCCA's instructions, changing Count One's conviction from Lewd Molestation to Sexual Abuse of a Minor, and adding dates of the commitment of the offenses (specifically as to Count One) that were not on the Original Judgment and Sentences (see Exhibits J+K, Amended J+Ss dated

- cont'

STATEMENT OF THE CASE

BACKGROUND

September 18, 2004). Compare to Exhibits ~~1F+G~~, OJIS dated November 18, 2002.

There is no dispute as to the fact that the Trial Court did not orally pronounce to Mr. Davison that he was required to serve 85% of his sentences before being eligible for parole consideration and earned credits. Furthermore, all parties are in agreement that the Trial Court did not verbally indicate the alleged dates of the commitment of offenses, and that said dates were added to the Amended Judgment and Sentences.

The question that Mr. Davison presents to this Court is: When the Oral Pronouncement of Sentence and the Written Judgment and Commitment order are in conflict, should a State Prisoner seek Relief Under a § 2241 or § 2254 Habeas Petition?

REASONS FOR GRANTING THE PETITION

This petition should be granted because when this Court answers the above-mentioned question it will secure or maintain uniformity between Federal District Courts and U.S. Courts of Appeals, where there is currently no homogeneity for the matter at hand.

In the instant case, Mr. Davison is not challenging his convictions, nor is he disputing his 45-year sentence in Court One; which if he was, said complaint would clearly fall under § 2254. His claim is that his 45-year sentence was completed in July of 2022. The District Court and Tenth Circuit agreed that this argument was proper under § 2241.

However, the State argued that Mr. Davison was required to serve 85% of his sentence because of the alleged date of the commitment of the offenses.³ This is where the water became murky. Is the percentage of a sentence to be served part of the administration of the sentence or is it a part of the judgment and conviction? The answer to that question lies in the Trial Court's oral pronouncement of sentence. For example, if the Trial Court had informed Mr. Davison that he had to serve 85% of his sentence, that would be a part of the judgment and conviction, thus § 2254 would apply. But, if the Trial Court did not tell Mr. Davison the percentage of the sentence that he was required to serve, and

³ It is important to note that Oklahoma's 85% Law went into effect on March 1, 2000, and the particular crimes that Mr. Davison was convicted of became 85% crimes on November 1, 2000. (See Exhibit M, 21 O.S. Supp. 1999 § 12.1 and Exhibit M, 2000 OKLA. Sess. Law Serv. Ch. 291 (H.B. 2037), OK ST T. 21 § 13.1). Therefore, the alleged date of the committed offense is a substantial cause for Mr. Davison's continued confinement.

cont.

REASON FOR GRANTING THE PETITION

the ODOC is administering the sentence under the 85% law, § 2241 would apply.

The instant situation is much more complicated, because here we have the ODOC relying on a written judgment and commitment order that conflicts with the oral pronouncement of sentence, the former giving the pretense that Mr. Davison is required to serve 85% of his sentence, while the latter does not. We had one Tenth Circuit panel inform Mr. Davison that his claim fell under § 2241, while another denied him relief ruling that the same claim was proper under § 2254.

Mr. Davison has searched endlessly to find a precedent for state prisoners in his situation, but has found none. The closest cases to Mr. Davison's have all dealt with federal prisoners: *Joost v. Apker*, 476 F. Supp. 2d 284 (2007); *Cephas*, 328 F.3d at 103; *Triestman*, 124 F.3d at 373-74; *Payne v. Madigan*, 274 F.2d 702; *Odie v. Knight*, 2023 WL 4759547, D.N.J.; *Jones v. Hendrix*, 143 S.Ct. 1857.

The common characteristic that these cases share with Mr. Davison's is that the oral pronouncement of their sentences conflicted with their written judgment and commitment orders. The distinction is that in all of these cases the federal prisoners were attempting to circumvent the requirement that they had to file a § 2255 Motion to challenge their sentence unless said Motion is inadequate. These petitioners filed § 2241 petitions because they had already filed a § 2255 Motion and could not file a second or successive motion without permission from their respective Court of Appeals.

REASON FOR GRANTING THE PETITION

cont

In *Teast at Id.*, the court held that the petitioner should have filed a § 2255 Motion because 1) that claim was properly construed as a challenge to his sentence, and 2) motion to vacate (§ 2255) was not inadequate or ineffective remedy.

The Tancil court did provide some guidance for Mr. Davison's case, where the Seventh Circuit held that Tancil's appeal did not fall under the waiver because the defendant was "not appealing the components of his sentence or the manner in which his sentence was determined or imposed. Rather, he merely seeks the imposition of his actual sentence." Further, in the case of a discrepancy between a written judgment and an unambiguous oral pronouncement, the oral pronouncement is the real sentence and a defendant who seeks to impose that sentence is not "challenging" the district court's sentence. *United States v. Tancil*, 817 F. App'x 234 (7th Cir. 2020).

In *Payne v. Madigan* (2007) *at Id* and *Butterfield v. Wilkinson*, 215 F.2d. 320 (9th Cir. 1954), the courts indicated § 2241 rather than § 2255 proceeding is proper remedy if appellant is correct in his view of the law, he is entitled to release since, if the terms are to be considered concurrent rather than consecutive, he has already served the longest term imposed.

Mr. Davison's claim falls in line with the above-mentioned cases because he maintains that his 45 year sentence ended in July of 2022. The state claimed that the Amended Judgment and Sentence's alleged date

REASON FOR GRANTING THE PETITION

of the commitment of the offense made the crime fall under the 85% law and the sentence is not complete until 2040. Mr. Davison complained that there is a conflict between the oral pronouncement of sentence and written judgment and commitment order. One Tenth Circuit panel ruled that Mr. Davison's claim falls under § 2241 while a different panel denied the § 2241 Petition, deciding that Mr. Davison should have brought the claim under § 2254.

Mr. Davison prays that this Court will set a precedent for the question: When the Oral Pronouncement of Sentence and the Written Judgment and Commitment Order are in conflict, Should a State Prisoner Seek Relief under a § 2241 or § 2254 Habeas Petition?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Alonzo G. Davison

Date: August 15, 2025