ORIGINAL

No. 25-5719

IN THE

SUPREME COURT OF THE UNITED STATES

In re Flenoid Greer - PETITIONER

PETITION FOR WRIT OF HABEAS CORPUS

FLENOID GREER #210718
PETITIONER IN PRO SE
LAKELAND CORRECTIONAL FACILITY
141 FIRST STREET
COLDWATER, MI 49036

QUESTIONS PRESENTED

Where a State Prisoner is unconstitutionally detained and the State's post-conviction rules foreclose relief, and no other adequate relief is available in any form or from any other court. The question presented is:

I. Does Petitioner's unlawful restraint based upon an unconstitutional sentence qualify as an "exceptional circumstance" to warrant the exercise of the Supreme Court's discretionary powers to grant habeas corpus relief?

After Petitioner's first habeas corpus proceeding, he discovered new facts which showed he is in custody in violation of the Constitution. Petitioner's new facts satisfied Supreme Court precedent and his petition required no authorization to overcome 28 U.S.C. § 2244(b) requirements. The question presented is:

II. Where the lower federal courts failed to uphold Supreme Court precedent in determining whether Petitioner was required to get authorization to file a "second" or "successive" application; should the Supreme Court transfer his case to the district court pursuant to 28 U.S.C. § 2241(b) for a hearing and proper determination for habeas corpus relief?

III. Did Congress foreclose a person from challenging a State sentence as unconstitutional under the "gateway screening" standards in 28 U.S.C. § 2244(b)?

LIST OF PARTIES

[V] All parties do not appear in the caption of the case on the cover page.

Petitioner is being detained by Warden Bryan Morrison at Lakeland Correctional Facility, located at 141 First Street, Coldwater, Michigan 49036.

In re Flenoid Greer, Case No. 24-1893, United States Court of Appeals for the Sixth Circuit. Order entered on June 9, 2025.

Flenoid Greer, Petitioner v. Bryan Morrison, Warden, Respondent, Case No. 24-12260, United States District Court, Eastern District of Michigan, Southern Division. Opinion and Order Transferring Habeas Petition to the Court of Appeals on October 15, 2024.

People v. Greer, No. 89-012514-02-FC, Third Judicial Circuit Court for the County of Wayne. Judgment entered November 3, 2022.

People v. Greer, No. 364632, Court of Appeals, State of Michigan. Judgment entered on May 30, 2023.

People v. Greer, No. 165834, Michigan Supreme Court. Judgment entered October 3, 2023.

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PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Flenoid Greer, respectfully ask for the Court to issue a writ of habeas corpus and grant the relief requested herein.

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit order issued on June 9, 2025 is attached as Appendix A. The United States District Court for the Eastern District of Michigan, Southern Division opinion and order transferring habeas petition to the court of appeals is attached as Appendix B. The Michigan Court of Appeals order is attached as Appendix C. The Third Circuit Court for Wayne County opinion and order is attached as Appendix D. The Michigan Supreme Court order denying discretionary review is attached as Appendix E.

JURISDICTION

The Supreme Court of the United States has clearly established that the Antiterrorism and Effective Death Penalty Act of 1996 did not repeal the authority of this Court to entertain a habeas petition. Felker v. Turpin, 528 U.S. 651 (1996). This Court's jurisdiction is invoked under Title 28 U.S.C. section 2241(a); Title 28 U.S.C. section 2254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State 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

Title 28 U.S.C. section 2241(b) states in relevant part:

The Supreme Court, a justice thereof"..."may transfer the application for hearing and determination to the district court having jurisdiction to entertain it"

Title 28 U.S.C. section 2244 provides in relevant part:

(b) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless -

(B)(i): The factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) The facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense

Statement of the Case

Petitioner Flenoid Greer (hereinafter "Petitioner"), filed a pro se Motion for Relief from Judgment in the Third Judicial Circuit Court for Wayne County, Michigan. Petitioner pleaded in the motion that his sentence is invalid and requested a resentencing hearing. The circuit court summarily dismissed the motion finding it did not meet the requirements for filing a successive motion under Michigan Court Rule ("MCR") 6.502(G). The circuit court discussed only "one" piece of the new evidence Petitioner did submit with his pleadings. Contrary to the circuit court determinations, Petitioner did provide three separate pieces of new scientific consensus evidence to overcome the procedural bar requirements. Petitioner did timely appeal the circuit court's erroneous ruling to the Michigan Court of Appeals who affirmed the circuit court's decision. The Michigan Supreme Court denied discretionary review. This Supreme Court denied certiorari review. Case No. 23-6249.

On August 30, 2024, Petitioner filed a Motion to Reopen his habeas corpus proceeding in the United States District Court for the Eastern District of Michigan, Southern Division. Case No. 24-12260. Petitioner also submitted for filing a Petition for Writ of Habeas Corpus and Memorandum of Law in

Support. Petitioner argued inter alia, a State has no authority to continue the unconstitutional imprisonment of an illegally entered sentence.

On October 15, 2024, the United States District Court for the Eastern District of Michigan, entered an opinion and order transferring Petitioner's habeas petition to the Court of Appeals for the Sixth Circuit. Unbeknown to Petitioner, prior to the habeas petition being transferred to the Sixth Circuit, the district court did deny Petitioner's motion to reopen his habeas corpus proceeding. Petitioner was unable to file for reconsideration of the motion to reopen as he never received a copy of the order. On November 25, 2024, Petitioner spoke with a Sixth Circuit Case Manager named Ms. Brown who informed Petitioner that the motion to reopen his habeas corpus proceeding was denied by the district court in September of 2024. To this date Petitioner has never been provided a copy of the order.

On December 16, 2024, Petitioner filed a Motion to Correct Second Habeas Motion and Request for En Banc hearing in the United States Court of Appeals for the Sixth Circuit. Case No. 24-1983. Petitioner had filed his request for authorization based upon a decision reached in the case of In re Daniel, 2018 U.S. App. LEXIS 27477. The Daniel panel granted his motion for

authorization to file a second or successive petition for writ of habeas corpus to challenge his sentence. Obviously there exist a conflict with Sixth Circuit decisions. Petitioner did request an en banc hearing to resolve the legal issue as to whether 28 U.S.C. sec. 2244(b) permits the authorization by a circuit court of appeals to grant permission to file a second or successive petition in the district court involving a challenge that a sentence is unconstitutional. Fed.Rule.App.Proc. 35(a)(1).

On June 9, 2025, the United States Court of Appeals for the Sixth Circuit entered an order denying Petitioner's motion to correct second habeas motion and failed to address the en banc issue.

Petition now files this petition for habeas corpus relief.

REASONS FOR GRANTING THE PETITION

PETITIONER'S IMPRISONMENT IS UNLAWFUL BASED UPON HIS JUDGMENT OF SENTENCE WAS ILLEGALLY ENTERED. PETITIONER ASSERTS HIS CUSTODY VIOLATES THE CONSTITUTION AND THE SUPREME COURT SHOULD FIND SAID ACTION QUALIFIES AS AN "EXCEPTIONAL CIRCUMSTANCE" TO GRANT HABEAS CORPUS RELIEF.

During Petitioner's sentencing proceeding on July 27, 1990, a prior offense for a controlled substance violation in Oakland County, Michigan was used in scoring prior record variable ("PRV") 2 for twenty-five points. See Sentencing Information Report in Appendix G. For whatever reason, the case used to score PRV 2 was not set aside and dismissed until years later. The results of the arrest and dismissal was retained as a nonpublic record according to law. See Petition and Order for Discharge from Probation in Appendix F. The sentencing judge not only erroneously scored Petitioner for PRV 2, but relied on this same prior offense as a basis to justify a sentence departure and increase the sentence 35 years above the sentencing guidelines range. Petitioner is not challenging the severity or duration of his sentence. Petitioner does find the infirm prior conviction considerations relied upon by the sentencing judge rests on constitutionally impermissible considerations. See e.g. People v. Whalen, 412 Mich 166, 169 (1981).

In Townsend v. Burke, 334 U.S. 736 (1948) an uncounseled defendant was sentenced following a proceeding in which the trial judge explicitly and repeatedly relied upon the incorrect assumption that the defendant had been convicted of several crimes. The Court observed that "[it] is not the duration or severity of this sentence that renders it constitutionally invalid; it is the careless or designed pronouncement of sentence on a foundation so extensively and materially false, which the prisoner had no opportunity to correct by the services which counsel would provide, that renders the proceedings lacking in due process." id. at 741.

Townsend and its progeny are generally viewed as having established a due process requirement that where the sentencing court relies on information of contested accuracy the defendant must have meaningful opportunity to rebut the information. Arnett v. Jackson, 393 F.3d 681, 686 (6th Cir.)(citing "the general rule that a violation of due process exists when a sentencing judge relies upon erroneous information") (internal quotation marks and citations omitted)), cert denied, 546 U.S. 886 (2005); United States ex rel. Welch v. Lane, 738 F.2d 863, 865 n. 3 (7th Cir 1984); see also McAffee v. Procunier, 761 F.2d 1124, 1128 (5th Cir.), cert denied, 474 U.S. 907 (1985);

United States v. Williams, 668 F.2d 1064, 1072 (9th Cir. 1981); Collins v. Buchkoe, 493 F.2d 343, 345-346 (6th Cir. 1974). Petitioner has never been given the opportunity to rebut the sentencing court's reliance on the drug offense for PRV 2 scoring and its specific considerations prior to pronouncing the sentence. This based upon the discharge and dismissal occurred years after the sentencing proceeding.

In United States v. Tucker, 404 U.S. 443 (1972), the Court observed that his sentence was based on assumptions concerning his criminal record making it evident that the sentencing judge gave specific considerations to Tucker's previous convictions before imposing sentence upon him. The Court agreed with the judgment of the court of appeals who remanded the case to the trial court for reconsideration of Tucker's sentence. Michigan long ago recognized the Tucker decision. See People v. Lee, 391 Mich 618, 637 (1974).

If the sentencing judge by law in 1990 had not been aware of the expunged drug conviction, the circumstances of Petitioner's background would have appeared in a dramatically different light at the sentencing proceeding. Although the arrest & dismissal order came many years after Petitioner's sentencing proceeding, he is now able to convincingly show the

sentencing judge relied on an infirm prior conviction and it did have a "dramatic" impact on the sentencing authority. Cf. Zant v. Stephens, 462 U.S. 862, 903 (1983) (concurring opinion, JUSTICE REHNQUIST).

Petitioner's sentence was pronounced on a foundation that could never legally be upheld. No exception in Michigan law allowed the nonpublic record to be opened for the circuit court to score Petitioner for a prior felony. Michigan Compiled Laws sec. 333.7411(1) provides in relevant part:

"Discharge and dismissal under this section shall be without adjudication of guilt and, except as otherwise provided by law, is not a conviction for purposes of this section or for purposes of disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7411. There may be only 1 discharge and dismissal under this section as to an individual." The probation officer should not have placed Petitioner's expunged conviction in the presentence investigation report.

In Carr v. Cty. Concealed Weapons Licensing Bd., 259 Mich App 428 (2003), the court explained that "once an individual fulfills the terms and conditions of probation imposed under MCL 333.7411, the court shall discharge the individual and dismiss the proceedings." 259 Mich App at 434. The Carr court went on to say "the only purpose for which a case dismissed under section 7411 may be used to establish a disqualification or disability imposed by law

upon conviction of a case is to preclude employment by the Michigan Department of Corrections or the law enforcement agency." 259 Mich App at 437. Petitioner did not disclose to the probation agent or trial court his 7411 plea. The prosecuting attorney sat silent while the sentencing judge did "explicitly" state for the record Petitioner's prior convictions. Contrary to the principles established in Berger v. United States, 295 U.S. 78 (1935).

As shown during Petitioner's sentencing proceeding, it is a reasonable probability that the defective prior conviction led the sentencing judge to depart from the sentencing guidelines range and impose a heavier sentence than it otherwise would have imposed. The sentencing judge expressed how it showed Petitioner's blatant disregard for the laws of our society. See Appendix H. Petitioner should not have been scored for the controlled substance violation, nor any considerations by the sentencing judge in relation to the expunged offense. Which violated the principles of the due process clause of the Fourteenth Amendment. Townsend, supra; Tucker, supra.

Title 28 U.S.C. section 2254(a) states this Supreme Court "shall entertain

an application for a writ of habeas corpus in behalf of a person in custody pursuant to a State court judgment only on the ground that he is in custody in violation of the Constitution or laws"..."of the United States."

Since the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom, Petitioner asserts his case has satisfied Supreme Court Rule 20.4(a) requirements that "exceptional circumstances" be shown. Petitioner has demonstrated his continued imprisonment violates the Constitution and warrants the Court to exercise its discretionary powers and issue the writ of habeas corpus and order Petitioner's release.

II. WHERE THE LOWER FEDERAL COURTS FAILED TO UPHOLD SUPREME COURT PRECEDENT IN DETERMINING WHETHER PETITIONER WAS REQUIRED TO GET AUTHORIZATION TO FILE A "SECOND" OR "SUCCESSIVE" APPLICATION. THE SUPREME COURT SHOULD TRANSFER PETITIONER'S CASE TO THE DISTRICT COURT FOR A HEARING AND PROPER DETERMINATION FOR HABEAS CORPUS RELIEF.

During the months of August through October of 2021 Petitioner received information from attorney Christopher J. Nesi (P62477). These new facts consisted of many different reports regarding sentencing practices throughout America and specifically the State of Michigan. Armed with the new scientific consensus evidence, Petitioner filed a motion for relief from judgment pursuant to Michigan Court Rule ("MCR") 6.502. Petitioner sought relief from judgment based on his arguments that his sentence was based on inaccurate information, improper scoring of the judicial sentencing guidelines, his sentencing judge had a local philosophical practice, new evidence which demonstrated disparity in sentencing practices, and an order showing a prior felony had been discharged and dismissed. In addition, Petitioner did make a written request pursuant to MCR 6.433(C)(1) for additional documentation to support his arguments.

While awaiting the aforementioned documents from the clerk's office, Petitioner discovered in the prison law library a publication by Safe & Just Michigan entitled "Do Michigan's Sentencing Guidelines Meet the Legislature's Goals?" The report found inter alia, that defendants with similar backgrounds and offenses received significantly different sentences depending on the county in which they are convicted. Petitioner filed a pro se motion to supplement his motion for relief from judgment pursuant to MCR 6.502(F). The trial court refused to issue any statement in regards to this report and the legal arguments in the supplemental motion.

Black's Law Dictionary, 11th Edition at page 697 defines "Evidence" as: something (including testimony, documents, and tangible objects) that tend to prove or disprove the existence of an alleged fact. Black's Law Dictionary also defines "scientific evidence" as: fact or opinion evidence that purports to draw on specialized knowledge of a science or to rely on scientific principles for its evidentiary value. id. at 702. The Michigan courts failed to recognize the "scientific evidence" that tended to prove the existence of "sentencing disparity" in the State. Cf. Old Chief. v. United

States, 519 U.S. 172, 178-179 (1997).

After exhausting all state court remedies, Petitioner did file a Motion to Reopen his habeas corpus proceeding in the federal district court. See Statement of the Case. After the district court transferred Petitioner's habeas petition to the Court of Appeals for the Sixth Circuit, Petitioner filed a Motion to Correct Second Habeas Motion and Request for En Banc Hearing.

Petitioner found guidance in the decision reached in the case of In re Dixon, 2024 U.S.App. LEXIS 32619, where the panel determined Dixon's proposed section 2254 petition is not second or successive because the legislative changes giving rise to his claim did not become effective until 2023, after the denial of his first habeas petition and later requests for authorization to file a second or successive petition. citing to In re Jones, 54 F.4th 947, 949-950 (6th Cir. 2022). The Dixon panel denied his motion for authorization as unnecessary and remanded to the district court for further proceedings.

Petitioner's new facts in support of his challenge that his sentence rests

on unconstitutional grounds, was discovered after his state appeal and first habeas corpus proceeding. Which means Petitioner's claim was not "ripe" to be raised in his "first" petition. In re Bowen, 436 F.3d 639 (6th Cir. 2006). The Bowen court determined that under the abuse of the writ doctrine "a numerically second petition is 'second' when it raises a claim that could have been raised in the first petition but was not so raised, either due to deliberate abandonment or inexcusable neglect." id. at 704, citing to McCleskey v. Zant, 499 U.S. 467, 489 (1991).

This Supreme Court has clearly established that certain section 2254 petitions, although filed after a prior habeas petition, are construed as an initial petition for purposes of section 2244(b). Panetti v. Quarterman, 551 U.S. 930 (2007) and Slack v. McDaniel, 529 U.S. 473, 478 (2000).

Petitioner could not have raised the arguments showing his sentence is unconstitutional in his 2007 habeas proceeding. As stated in the Panetti case, the terms "second or successive" takes its full meaning from our caselaw, including decisions predating the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 551 U.S. at 943-944. The

Panetti court stated "The Court has declined to interpret "second or successive" as referring to all section 2254 applications filed second or successive in time, even when the later filings address a state-court judgment already challenged in a prior section 2254 application." id. The Panetti court also rejected the state's challenge that the prisoner had one "fully-litigated habeas petition and section 2244(b) requires his new petition to be treated as successive." 551 U.S. at 944, citing to Stewart v. Martinez-Villareal, 523 U.S. 637, 643 (1998). The Panetti court went on to say "We are hesitant to construe a statute, implemented to further the principles of comity, finality, and federalism, in a manner that would require unripe (and often, factually unsupported) claims to be raised as a mere formality, to the benefit of no party. The statutory bar on 'second or successive' does not apply to a Ford claim brought in an application filed when the claim is first ripe." 551 U.S. at 947. The Panetti court concluded the district court had jurisdiction to adjudicate his claim. In the Stewart case the court did state "The court of appeals was therefore correct in holding that Respondent was not required to get authorization to file a

"second or successive' application." 523 U.S. at 643-644. Petitioner did present this Supreme Court precedent and argued in his motion to reopen habeas corpus proceeding that the federal district court had jurisdiction to entertain his petition. Petitioner asserts the lower federal courts abused their discretion as a matter of law by failing to uphold this Court's precedent and no authorization under section 2244(b) was required.

Petitioner respectively request of the Supreme Court to transfer his case to the United States District Court for the Eastern District of Michigan, Southern Division, for a hearing and proper determination for habeas corpus relief pursuant to 28 U.S.C. section 2241(b). Accord In re Davis, 557 U.S. 952 (2009) (where the Court transferred the petition for writ of habeas corpus to the United States District Court for the Southern District of Georgia for hearing and determination).

The Court may also allow for Oral Argument to be made in regards to whether Congress intended for section 2244(b) to bar a challenge that a State prisoner's sentence is unconstitutional. Petitioner contends where section 2244(b) does not expressly say it is foreclosed, the Court of Appeals

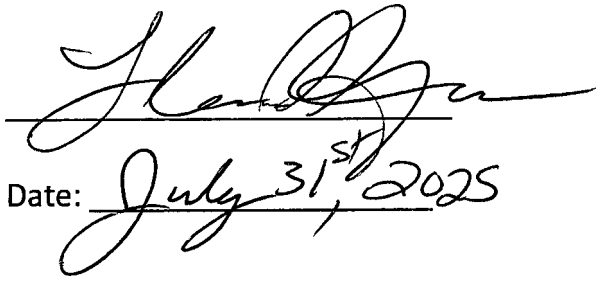
for the Sixth Circuit erred by finding otherwise. By analogy, this Court has rejected the suggestion that a congressional act had repealed the Court's habeas power by implication. The Felker court stated "Repeals by implication are not favored, we said, and the continued exercise of original habeas jurisdiction was not 'repugnant' to a prohibition on review by appeal of circuit court habeas judgments." Felker v Turpin 528 U.S. 651,660 (1996).

In addition, Petitioner was unable to locate a decision from the Court defining what constitutes "exceptional circumstances." See Supreme Court Rule 20.4(a). Oral Argument would benefit future cases that seek to meet said standard. Petitioner respectively request of the Court to appoint him counsel and schedule and conduct oral arguments to decide the federal questions raised in this petition.

CONCLUSION

The petition for writ of habeas corpus should be granted.

Respectfully submitted,



Date: July 31st, 2025