

No. 25-6948

IN THE SUPREME COURT OF THE UNITED STATES

KURNICUS HAYES

Petitioner

V.

PATRICK ARNOLD

Respondent

Petition for Writ of Certiorari

To the United States Court of Appeals for the Fifth Circuit

PETITION FOR REHEARING

KURNICUS HAYES

828 LUXOR COURT

GRAND PRAIRIE, TX. 75052

PRO-SE, LITIGANT

(214) 412 - 6793

Kurnicus Hayes

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INTRODUCTION

Pursuant to 44.2, Petitioner suggest that there are “other substantial grounds not previously presented at the certiorari stage that militate in favor of granting rehearing (and certiorari) with respect to *Buck v. Davis*, 580 U.S. 100 (2017), vacating the decision in Petitioner’s case and remanding the matter to the Court of Appeals.

ARGUMENT

The Fifth Circuit Court determined the merits of Hayes’ appeal during the COA inquiry and then denied COA based on its determination just as in *Buck v. Davis*, 580 U.S. 100 (2017), in which this Court held; the Fifth Circuit exceeded the limited scope of the COA analysis. The COA statute sets forth a two-step process: an initial determination whether a claim is reasonably debatable, and if so, an appeal in the normal course. 28 U.S.C. § 2253.

At the first stage, the only question is whether the applicant has shown that a “jurist of reason could disagree with the district court’s resolution of his constitutional claims or could conclude the issues presented are adequate to deserve encouragement to proceed further. “*Miller-El v. Cockrell*, 537 U.S. 322, 327.

The Fifth Circuit phrased its determination of Hayes' COA in proper terms, but it reached its conclusion only after essentially deciding the case on the merits, just as in *Buck v. Davis*, 580 U.S. The questions presented to the Court of Appeals was not whether Rule 60(b)(6) applied to Hayes' case; it was whether a jurist of reason could debate that issue.

The COA inquiry, this Court has emphasized, is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that “jurist 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.” *Miller-El v. Cockrell*, 537 U.S. 327 (2003). This threshold question should be decided without the “full consideration of the factual or legal bases adduced in support of the claims.” *Miller-El* at 336. “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.” *Miller-El* at 336-337.

Hayes' case falls within this Court's long standing GVR practice, as codified in statute and applied in precedent. The authority for this practice stems from 28 U.S.C. § 2106, which provides that “the Supreme Court... may... vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for

review, and may remand the cause and require such further proceedings to be had as may be just under the circumstances.”

This Court has historically exercised this broad grant of authority to issue GVR orders in many circumstances, including, as relevant here. In *Youngblood v. West Virginia*, 547 U.S. 867 (2006), this Court granted GVR, and provided a short per curiam opinion explaining the reason for the remand was to allow the court below to address the defendants facially plausible claim, adequately presented to the lower court yet not discussed in its opinion, that the prosecutor had withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), a case decided over forty years prior. Thus if the lower court’s decision in *Youngblood* was doubtful, it was not because of any intervening event as in the typical GVR.

Just as in Hayes’ case, this Court issued its opinion in *Buck v. Davis*, 580 U.S. in 2017 dealing with the Fifth Circuit deciding appeals on the merits during the COA stage and then denying COA based on that finding. “Until the prisoner secures a COA, the court of appeals may not rule on the merits of his case.” *Miller-El v. Cockrell*, 537 U.S. 322, 336.

CONCLUSION

Because of the precedent set forth in *Buck v. Davis*, 580 U.S. 100 (2017), and *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); holding “when a reviewing court (like the Fifth Circuit here) inverts the statutory order of operations and first

decides the merits of an appeal, then justifies its denial of a COA based on its adjudication of the actual merits, it has placed too heavy a burden on the prisoner at the COA stage. *Miller-El* flatly prohibits such a departure from the procedure prescribed by § 2253.” This Court should allow Petitioner Hayes to pursue any entitlement to relief under *Buck v. Davis*, on direct appeal—and should therefore grant the petition for rehearing, grant the petition for certiorari as to Petitioner Hayes, vacate the decision below in his case, and remand for further proceedings in light of *Buck*, and *Miller-El*.

CERTIFICATE OF PETITIONER

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the specified grounds in Rule 44.2.

Kurnicus Hayes
Kurnicus Hayes

Respectfully submitted,

Kurnicus Hayes

Pro-Se

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PROOF OF SERVICE

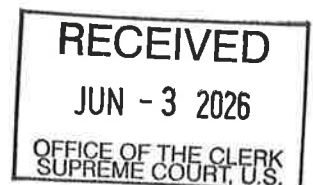
I, Kurnicus Hayes, do certify that on this date, May 28, 2026, Pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached Petition for Rehearing on the party above proceeding, or that party's counsel, and on every other person required to be served. I have served the Supreme Court of the United States via USPS Ground. The Texas Attorney General was served by USPS First Class Mail in an envelope containing the documents properly addressed to them.

The names and addresses of those served are as follows:

Clerk	Ken Paxton
Supreme Court of the United States	Texas Attorney General
1 First Street, N.E.	P.O. Box 12548
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Respectfully Submitted,

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