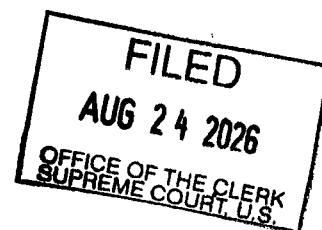


No. 26-5603



IN THE
SUPREME COURT OF THE UNITED STATES

BRYAN O. THOMAS — PETITIONER

VS.

U.S. FIFTH CIRCUIT COURT OF APPEALS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Bryan O. Thomas

FMC Fort Worth, PO BOX 15330

Fort Worth, Tx 76119

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QUESTION(S) PRESENTED

Whether the court of appeals erred in denying a certificate of appealability by failing to apply the standard required by 28 U.S.C. 2253(c)(a) and Slack V. McDaniel, 529 U.S. 473 (200), when reasonable jurists' could debate the district court's resolution of petitioner's 2255 claims....

Whether the district court and appeals court misapplied governing Supreme Court precedent by rejecting petitioner's claims of ineffective counsel under Strickland V. Washington, 466 U.S. 668 (1984), when counsel fails to investigate or challenge government expert witness findings, despite the defendant raising specific factual disputes regarding those findings at sentencing, on direct appeal, and again during 2255 proceedings....

Whether the fifth and fourteenth Amendments, together with equal protection and due process principles, guarantee a criminal defendant meaningful access to the evidence used against him before and after a summary denial of violated 28 U.S.C. 2255(b) where the motion alleged specific, non-conclusory facts that, if true, would entitle the petitioner relief....

LIST OF PARTIES

BRYAN O. THOMAS #18757-510, PETITIONER.

FMC FORT WORTH
PO BOX 15330
FORT WORTH, TX 76119

PRO SE REPRESENTATION FOR PETITIONER

Attorney for Respondant,
United States,

District Court for the Northern District of Texas, Abilene Division
U.S. Court of Appeals for the Fifth Circuit

RELATED CASES

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U.S. District Court for the Northern District of Texas
Abilene Division. Judgement entered 11/13/23

Thomas V. U.S. 1:24-cv-00192-H
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Judgement entered 12/30/25

FIFTH CIRCUIT COURT OF APPEALS
CASE NO. 23-10203
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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 1:24-CV-00192-M; 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 1:22-CR-0062-M-BU-2; 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 01/14/26.

☐ 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: 07/14/2026, and a copy of the order denying rehearing appears at Appendix D.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The fifth amendment of the U.S constitution provides: "No person shall be.... deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation".

2. The fourteenth amendment of the U.S constitution provides:
" A requirement of guarantee that the rights of all persons must rest upon the same rules under the same circumstances. Equal protection of the laws to anyone within their jurisdiction".

3. The sixth amendment of the U.S constitution provides:
"Guarantees a criminal defendant the right to effective counsel, and the right to confront and subpoena witnesses".

4. The statute under which petitioner sought habeas corpus relief was 28 U.S.C. 2255 which in part states: "A prisoner in federal custody may seek to vacate, set-aside, correct or collaterally attack a sentence".

5. The statutes involved and are under review are; Title 28 U.S.C 2255 (b) which provides: "The court shall grant a hearing (evidentiary hearing) thereon, determine the issues and make findings of fact and conclusions of law, when a motion alleged specific, non-conclusory facts, that if true, would entitle the petitioner relief".; Title 28 U.S.C 2253 (c)(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

6. The Federal Court Rules Involved ARE:

Supreme Court Rule 10.

"The considerations of governing review on writ of certiorari, resolving conflicting decisions between state, district courts and clarification of federal law."

Federal Rule of criminal procedure 16(a)(1)(E)

"This is the main rule that allows a defendant to inspect, copy photograph, and test evidence, and requires the government upon request to allow the defendant to see items that are: material to preparing the defense that includes documents, data, physical objects, photos, recordings, etc."

Federal Rule of appellate procedure 10

"Allows defendant to review evidence on appeal this includes all trial transcripts, exhibits, and filings."

7. 2255 proceeding Rule 6 (b) "discovery"

"Petitioner may file a motion specifying what evidence he would like to review, the requested evidence must be related to specific allegations that show reason to believe that the petitioner may be entitled to relief. In which the court may authorize discovery for good cause. Rule 6 is commonly used to access forensic reports, recordings, or exhibits tied to a specific allegation".

STATEMENT OF THE CASE

In August of 2022, the petitioner was named in a seven count indictment in the Northern District of Texas, Abilene Division, charging he and his brother.

On October 17th, 2022 petitioner plead guilty to count five (possession with intent to distribute 50 grams or more of meth, 28 U.S.C 841(a)(1) and 841 (b)(1)(B)(viii) in agreement that the courts could no longer pursue any charges listed in the indictment

On December 30, 2024, petitioner filed a 28 U.S.C. 2255 motion to vacate, set aside or correct sentence. Petitioner challenged the constitutionality of the conviction which asserts that: (1) Petitioner's counsel was constitutionally ineffective for failure to argue the type of drugs his client was to be sentenced for, when knowing that pure or actual meth carried higher guidelines. (2) Petitioner's counsel was constitutionally ineffective for failure to conduct an independent investigation into the evidence against his client, when he raised questions about the forensic experts reports. (3) Petitioner's counsel was constitutionally ineffective for failing to adequately argue his client's drug quantity, when the courts applied a large amount of drugs through relevant conduct though his client was charged with possession with the intent to distribute methamphetamine.

On January 3, 2025, The district court issued an order directing the United States to respond to petitioner's 2255 motion within 30 days.

On March 3, 2025, The United States filed a response to petitioner's 2255 motion.

On August 20, 2025, The district court issued a denial of petitioner's 2255 motion, which is attached hereto see Appendix

On November 10, 2025, A timely notice of appeal and motion for issuance of certificate of appealability was filed, which were subsequently denied by the district court.

On July 14th, 2026, The United States Court of Appeals for the Fifth Circuit issued a final judgment affirming the district court's denial of petitioner's 2255 motion without evidentiary hearing to resolve the factual disputes.

EXISTENCE OF JURISDICTION BELOW

Petitioner was indicted and convicted in the United States District Court for the Northern District of Texas Abilene Division, for possession with the intent to distribute 50 grams or more of meth under 21 U.S.C 841(a)(1) and 841(b)(1)(B)(viii). A section 2255 motion was appropriately made in the convicting court and was subsequently denied. A timely appeal to the United States Court of Appeals for the Fifth Circuit was filed, and denied on 07/14/2026.

REASONS FOR GRANTING THE PETITION

The district court violated the defendant's constitutional and procedural rights when it left factual disputes affecting the defendant's sentence unresolved.

1. The fifth circuit court of appeals panel opinion erred when affirming the district court's denial of petitioner's ineffective assistance of counsel claims, without ensuring compliance with Federal Rules of Appellate Procedure 28, 30, and 32, which insulated the defendant's counsel actions from review and undermined the fairness guaranteed by the sixth and fifth amendments.

2. The fifth circuit court of appeals erred when affirming the denial of petitioner's 2255 motion where the district court failed to conduct an evidentiary hearing to resolve the factual disputes, which if true, warrants habeas relief and the record did not "conclusively show" that he could not establish facts warranting relief under 2255, which entitled petitioner to a hearing.

Petitioner respectfully urges that all aspects of district and circuit courts decisions are erroneous and at a variance this court's decisions as explained in the argument below.

ARGUMENTS AMPLIFYING REASONS FOR WRIT

I. The court of appeals erred affirming the denial of the certificate of appealability (COA) by failing to apply the standard required by 28 U.S.C 2253(c)(2) and *Slack V. McDaniel*, 529 U.S. 473 (2000).

In *Slack V. McDaniel* the court held that a (COA) should be issued when jurists could debate the district court's resolution of constitutional claims. Petitioner presented specific record based claims/allegations of constitutional error, rather than asking whether jurists of reason could debate the district court's conclusion the court of appeals effectively decided the merits, contrary to this court's precedent. Petitioner's claims of ineffective counsel are valid and if true shows a violation of his sixth amendment rights.

As the Supreme Court made clear in its decision in *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct 1029, 1039 154 L. Ed. 2d 931 (2003), "a (COA) is jurisdictional prerequisite, and until a (COA) has been issued, the federal court of appeals lacks jurisdiction to rule on the merits of appeals from habeas petitioner's". When considering a request for a (COA), "the question is the debatability of the underlying constitutional claim not the resolution of that 'debate'". *id.* at 1042. See *Buck v. Davis*, 580 U.S. 100 (2017).

II. The court of appeals erred by determining that the petitioner's ineffective assistance of counsel claims did not meet the standards set forth by this court in *Strickland and Hill*. Petitioner asserted in his 2255 motion grounds for relief that his counsel was constitutionally ineffective because counsel failed to object to additional drug quantities not found in petitioner's possession. Advise his client that he could be sentenced under the "pure meth" guidelines which carried a significantly harsher punishment. File a motion to suppress evidence and relevant conduct outside the scope of his client's knowledge. Most importantly petitioner's counsel failed to investigate the government's findings, these alleged claims all suggest and show deficient performance which in the end prejudiced the petitioner from receiving a just sentence, which satisfies the two prong test of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed 2d 674 (1984).

The sixth amendment guarantees effective assistance of counsel at sentencing. Petitioner argues that effective counsel whom is assigned to drug related cases should at the bare minimum independently review, investigate and challenge the drug type and quantity, when those elements of the case if stated wrong or incorrectly can and will dramatically increase a defendant's guidelines range, particularly after the defendant raised questions about the drug type/quantity and where the government expert witnesses findings and testimonies about the evidence is internally inconsistent. See Doc 42 pgs 1-2 pg ID #78-79 in Appendix G titled Designation of expert witness.

The government's explanation to why the expert witnesses findings and testimonies are inconsistent, found on Doc #17 pg's 21-22 pgs ID # 181-182 or pg's 16-17 of the government response to petitioner's 2255 is insufficient and does not answer the questions to which drugs are represented by or identified by which exhibit numbers listed in the Designation of expert witness document.

ACCORDING TO CRIMINAL PROCEDURE RULE 702

RULE 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

This standard should be upheld rather than a case is believed to go to trial or not and the petitioner's counsel should have conducted an investigation. The unclear and conflicting testimonies by the expert witnesses should have been viewed as a harmful precedent that if not addressed will cause prejudice and affect the fairness of judicial proceedings. See *Griffith v. United States*, 871 F.3d 1321 (2017) U.S. App. Lexis 18570. In his 2255 motion, Mr. Griffith claimed ineffective counsel after previously telling his attorney that the forensics were inaccurate before he was sentenced. But his attorney failed to investigate and stated in an affidavit that although he was aware of possible problems with the government toxicology reports, an independent investigation was not warranted because he was satisfied that the prosecutor had reconciled any differences. Mr. Griffith in his 2255 challenged the forensic expert's findings and in the end the district court judgment was reversed and the case was remanded for an evidentiary hearing based on the ineffective counsel claims surrounding the failure to challenge the drug quantity through an independent investigation. Just like Mr. Griffith, the petitioner's attorney failed to investigate the forensics. And just as Mr. Griffith, the petitioner should have received a (COA) based on his ineffective counsel claims. Mr. Thomas was deprived of procedural rights when the government and his counsel failed to present lab reports and logs to all evidence submitted to the courts during both his direct appeal and 2255 process, even though the petitioner had requested by motion under Rule 6 governing 28 U.S.C. 2255 proceedings and Rule 16 (a)(1)E of Federal Rules of Criminal Procedure. See Appendix F

The motion for discovery found in appendix was structured correctly and complied with the standard when a court should authorize a discovery. It brought forward specific allegations, and asked for access to forensic reports, and exhibits in question. The requested evidence, records and logs to the exhibits could have proved a constitutional violation (e.g. ineffective assistance, false testimony, Brady violation). Under *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L. Ed. 2d 215 (1963), the prosecution must disclose evidence favorable to the accused that is material to the defendant's guilt or innocence. To establish a Brady violation, a defendant must demonstrate that (1) the evidence at issue is favorable to him; (2) the state suppressed the evidence, whether willfully or inadvertently; and (3) prejudice resulted. *O'Hara v. Brigano*, 499 F.3d 492, 502 (6th Cir. 2007). A petitioner shows prejudice by demonstrating [2024 U.S. App. LEXIS 6] a reasonable probability that the outcome of his trial would have been different had the state disclosed the evidence in question. See *Strickler v. Greene*, 527 U.S. 263, 280, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).

If found to be true the petitioner's allegations would stand as a classic Brady violation. Appointed counsel has a duty to investigate critical evidence before sentencing, not just trial. *Rompilla v. Beard*, 545 U.S. 374(2005) states that defense counsel must investigate evidence the prosecution will likely use at sentencing, the supreme court held that failing to obtain and review mitigating evidence known to the defense constitutes a constitutional violation of petitioner's sixth amendment rights.

Prejudice Standard

Had petitioner's counsel investigated the forensics and reviewed the expert witnesses testimonies, he could have argued the found discrepancy and possibly had the inconclusive exhibit removed from the defendants drug quantity, which in the end could have changed the petitioner's sentence.

A insufficient investigation into sentencing facts that raise a guideline range can trigger relief, and prejudice can be shown where counsel's failure effects sentencing. In *Glover v. United States*, 531 U.S. 198 (2001) the Supreme Court held that a significant increase in a sentence due to counsel's error is enough to show prejudice under *Strickland*; there is no minimum threshold for "how much" longer a sentence must be. In drug cases, drug type, purity and quantity are central sentencing facts. Errors or inconclusive findings can move a defendant into a higher guideline range or statutory penalty. This court has repeatedly held that facts increasing sentence exposure must be accurate and reliable. See *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Alleyne v. United States*, 570 U.S. 99 (2013).

III. The court of appeals erred affirming the denial of petitioner's 2255 motion, where the district court failed to conduct an evidentiary hearing to resolve the factual disputes.

Section 2255 provides that "unless the motion and the files and records of the case conclusively show that prisoner is entitled to no relief, the court shall.... grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto" 28 U.S.C. 2255 (2000). See *Fontaine V. United States*, 411 U.S. 213, 215 (1973). (reversing summary dismissal and remanding for hearing because "motion and the files and records of the case did not conclusively show that the petitioner is entitled to no relief") *Sander V. United States*, 373 U.S. 1, 19-1 (1963).

Factual Dispute

Petitioner's offense level computation found on Doc 62 p6 9-10 list three drugs. The petitioner's offense level was to be based on (1) Cocaine-10.8 gms (2) Marijuana 61.7 gms and (3) Meth (Actual)-503.2 gms.

The designation of expert witness Doc 42 pgs 1-2 pg ID#78-79 states testimony from three expert witnesses about three exhibits listed as exhibits 21,22,23. Expert witness Brigid M. King testified that

exhibits "21,22,23" were in fact cocaine and meth, while expert witness Aaron Tesfai, and Paul Galat testified that the same exhibits "21,22,23" were in fact methamphetamine not mentioning cocaine at all. Thus, making the results of one if not all of the three exhibits testified to inconclusive. Up to this exact moment the district court has not been transparent and shown the petitioner which drug amounts/type is represented by which exhibit number. Even after the petitioner had previously requested the identity of the exhibits by motion. What's more confusing is that the only lab reports the petitioner received from the courts is found in a report from the south central laboratory, Dallas Tx, Case #MB-22-0021 Lims #2022-SFL6-07472, which list 152.2 grams of Actual meth as Exhibit #9. See Appendix "6".

Due process requires that a defendant be allowed meaningful access to the evidence used to convict and sentence him. Petitioner was denied full access to the lab reports, expert data and supporting documentation used by the government, which deprived petitioner of liberty and violates basic fairness and equal justice under law.

Had the district court reviewed the petitioner's claim's it would have noted that the alleged facts are plausible and could stand as a violation of the petitioner's rights, and could have ordered a evidentiary hearing to reconcile all disputed facts.

CONCLUSION

For these reasons, and those stated in the Petition, certiorari should be granted, the judgement below vacated, and the case remanded for further proceedings consistent with this Court's precedent.

Respectfully submitted,

Bryan O. Thomas #18757-510

Date: August 24th 2020