18-6943 BANISTER V. DAVIS

DECISION BELOW: 5/8/2018 CTA 5 ORDER

LOWER COURT CASE NUMBER: 17-10826

QUESTION PRESENTED:

Question One: In Gonzalez V. Crosby this Court held that a Rule 60(b) motion that either adds new habeas claim or attacks the court's previous resolution of the habeas claims, should be treated as a successive habeas petition under AEDPA's §2244. Does Gonzalez extend to post-judgment motions filed under Rule 59(e) of the Federal Rules of Civil Procedure?

a. If so, should a timely filed Rule 59(e) motion toll the the time to file a notice of appeal under Federal Rules of Appellate Procedure, Rule 4(a)(4)(A)(iv)?

Question Two: Whether a pro se petitioner must be warned and given an opportunity to withdraw a post-judgment motion which has been recharacterized as a successive habeas petition if that recharacterization will effect his ability to file a timely notice of appeal?

GRANTED LIMITED TO THE FOLLOWING QUESTION: WHETHER AND UNDER WHAT CIRCUMSTANCES A TIMELY RULE 59 (e) MOTION SHOULD BE RECHARACTERIZED AS A SECOND OR SUCCESSIVE HABEAS PETITION UNDER *GONZALEZ v. CROSBY,* 545 U.S. 524 (2005).

CERT. GRANTED 6/24/2019