

Nos. 05-10960, 05A1043

IN THE
SUPREME COURT OF THE UNITED STATES

SEDLEY ALLEY,
Petitioner,

v.

RICKY BELL, Warden,
Respondent.

ON APPLICATION FOR STAY OF EXECUTION AND ON PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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**CAPITAL CASE
QUESTIONS PRESENTED BY PETITIONER**

1. In habeas corpus proceedings, do allegations of fraud, misconduct, and misrepresentation by the state's attorneys constitute a prohibited second or successive petition for writ of habeas corpus?

2. When alleging a violation of *Brady v. Maryland*, 373 U.S. 83 (1963) in a first habeas corpus petition, is a habeas corpus petitioner required to specifically identify particular items of withheld evidence of which the petitioner has no knowledge, where the state has continued to withhold such items while falsely representing that no such evidence has been withheld?

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OPINIONS BELOW

The decision of the Sixth Circuit Court of Appeals affirming the judgment of the district court is unreported. (Pet.App.3) The order of the district court denying petitioner's motion for relief from judgment is also unreported (Pet.App.1), as is the order of the district court denying petitioner's motion to alter or amend. (Pet.App.2)

JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254.

STATEMENT

On July 11, 1985, Sedley Alley abducted nineteen-year-old Suzanne Marie Collins, beat her, and raped and killed her by impaling her with a thirty-one-inch long tree branch. *State v. Alley*, 776 S.W.2d 506 (Tenn. 1989). Petitioner's convictions and sentences were affirmed by the Tennessee Supreme Court on direct appeal. *State v. Alley*, 776 S.W.2d 506 (1989). Post-conviction relief was also denied in the state court. *See Alley v. State*, 882 S.W.2d 810 (Tenn.Crim.App. 1994).

Petitioner filed a petition for federal habeas corpus relief, which was denied on November 4, 1999. *Alley v. Bell*, 101 F.Supp.2d 588 (W.D.Tenn. 2000). The Sixth Circuit affirmed the judgment of the district court on October 3, 2002. *Alley v. Bell*, 307 F.3d 380 (6th Cir. 2002). On January 16, 2004, the Tennessee Supreme Court ordered that petitioner's death sentence be executed on June 3, 2004.

On May 12, 2004, petitioner filed a motion for relief from the district court's judgment denying habeas relief, and on May 19, 2004, the district court granted petitioner's request to stay his execution "pending [the court's] subsequent ruling on petitioner's Rule 60(b) motion." (R. 131, Order Granting Stay of Execution) Respondent moved in the Sixth Circuit to vacate that stay, and on December 14, 2004, a panel of that court granted the motion. *Alley v. Bell*, 392 F.3d 822 (6th Cir. 2004). On April 8, 2005, however, the en banc court granted rehearing and remanded the matter to the district court "to determine, in the first instance, whether Alley's motion can be considered a proper Rule 60(b) motion." *Alley v. Bell*, 405 F.3d 371 (6th Cir. 2005) (en banc).

On June 17, 2005, petitioner filed an amended motion for relief from judgment. On November 28, 2005, the district court denied that motion. (Pet.App.1). Petitioner filed a motion to alter or amend the district court's judgment on December 9, 2005, and on March 22, 2006, the district court denied that motion. (Pet.App. 2) Petitioner appealed to the Sixth Circuit and, on March 29, 2006, the Tennessee Supreme Court reset petitioner's execution date for May 17, 2006. On May 9, 2006, the Sixth Circuit affirmed the judgment of the district court and denied a motion for a stay of execution. (Pet.App.3) Petitioner subsequently applied to this Court for a stay of execution and petitioned for a writ of certiorari, seeking review of the Sixth Circuit decision to affirm

the judgment of the district court. But on May 16, 2006, the Governor of Tennessee granted a fifteen-day reprieve of the execution of petitioner's sentence.¹

REASONS FOR DENYING A STAY AND DENYING REVIEW

In Tennessee, when a scheduled date for execution of a death sentence has passed by reason of a stay or reprieve, a new date must be set by the Tennessee Supreme Court. *See* Tenn.Sup.Ct.R. 12.4(E). The May 17, 2006, date for execution of petitioner's sentence has now passed by virtue of the executive reprieve granted on May 16. No new date has yet been set. Consequently, petitioner's application for a stay of execution is now moot.

Nor do the questions presented by petitioner warrant this Court's review of the decision of the Sixth Circuit to affirm the judgment of the district court. In denying petitioner's Rule 60(b) motion to reopen his habeas corpus petition, the district court properly stated the rules to be derived from this Court's decision in *Gonzalez v. Crosby*, 125 S.Ct. 2641 (2005), for determining whether and to what extent petitioner's motion was a successive habeas petition, and the Sixth Circuit's review of that judgment did likewise. This Court rarely grants a certiorari petition when the asserted error consists of the misapplication of a properly stated rule of law, U.S.Sup.Ct.R. 10, and petitioner fails to demonstrate why his case is the rare instance in which it should.

¹A copy of the executive reprieve is attached to the brief in opposition filed in *Alley v. Little*, No. 05-10959.

In any event, disposition of petitioner's motion involved a rather straightforward application of *Gonzalez*, and both the district court and the Sixth Circuit properly applied *Gonzalez* to deny, and affirm the denial of, petitioner's motion.

Petitioner's motion sought to reopen several claims that had been denied by the district court on the merits; it also sought to present new claims, under the guise of an alleged fraud on the court. Under *Gonzalez*, Rule 60(b) motions that reassert claims that previously had been presented and denied on the merits qualify as successive habeas petitions. 125 S.Ct. at 2648. Motions that assert new claims "of course qualify," including motions that themselves substantively address grounds for setting aside the state conviction. *Id.*

To the extent that petitioner suggests here that the Sixth Circuit decision somehow conflicts with *Gonzalez* because his allegations of fraud cannot be a successive petition under *Gonzalez*, he misses the point. Both the district court and the Sixth Circuit recognized this Court's exception to the successive petition rule for a claim of some defect in the integrity of the proceedings, such as an allegation of fraud on the court, *see Gonzalez*, 125 S.Ct. at 2648 & n.5, but the district court went further in the analysis and determined that *there was no fraud*. (Pet.App.1, p. 12) ("The Court's judgment as to this claim was not procured through the fraud, misconduct, or misrepresentation of Respondent."). *See* Pet.App.3, p. 3. No court is in a better position to determine whether the district court's judgment was procured by fraud than the

district court itself. And stripped of its false allegations of fraud, petitioner's motion did nothing more than present brand new *Brady* claims — successive habeas claims under *Gonzalez*.

As the Sixth Circuit recognized (Pet.App.3, pp.3-4), the district court further concluded that these allegations of withheld evidence were wholly unrelated to the original *Brady* claims raised in petitioner's habeas petition, which had been dismissed on procedural default grounds. "If the worst of Petitioner's allegations were true and Respondent had purposely deceived this Court regarding the evidence now offered by Petitioner, such deception would still be irrelevant both to the claims raised in ¶35 [of the petition] and to the Court's rationale for denying that part of the habeas petition." (Pet.App.1, p. 12) The second question presented here by petitioner, thus, is likewise irrelevant.

CONCLUSION

The application for stay of execution and petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been delivered electronically and by first-class mail, postage prepaid, to Paul Bottei, Assistant Federal Public Defender, 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this the 1st day of June, 2006.

/s/ Joseph F. Whalen

JOSEPH F. WHALEN
Associate Solicitor General