Case No. 24-686

In the Supreme Court of the United States

Dustin Young,

Petitioner,

v.

John R. Swaney,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

A federal habeas petitioner seeking to appeal a district court's denial of habeas relief must obtain a certificate of appealability, commonly known as a COA. See 28 U.S.C. § 2253(c). The statute permits a "circuit justice or judge" to issue a COA "if the applicant has made a substantial showing of the denial of a constitutional right." Ibid. A petitioner makes such a showing when he demonstrates that "jurists of reason would find it debatable" that the district court's decision was correct. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

There is a square conflict among the courts of appeals on the following question presented:

Whether a certificate of appealability may be granted under 28 U.S.C. § 2253(c) when the issue that the petitioner wishes to present on appeal has been resolved against him by binding circuit precedent but in his favor by another federal court of appeals.

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INTRODUCTION

Young was convicted of gross sexual imposition in violation of Ohio Revised Code § 2907.05(A)(1) and abduction in violation of Ohio Revised Code § 2905.02(A)(2). He was sentenced to five-years of community control. Pursuant to Ohio Revised Code Section 2950.01(E) he is a tier I sex offender. While Young was still on community control with Butler County Court of Common Pleas he filed a habeas petition pursuant to 28 U.S.C. § 2254(a) naming Madison County Sheriff Swaney as respondent.

Swaney filed a motion to dismiss. Recognizing Young was still on community control at the time the habeas petition was filed, the district court invited Young to file a motion substituting Butler County Court of Common Pleas as respondent. Instead, Young chose to file a motion seeking to add Butler County Court of Common Pleas as a party while simultaneously maintaining Swaney as a party. The district court granted Swaney's motion to dismiss. Butler County Court of Common Pleas, now added as a party, filed an answer raising two affirmative defenses. The first defense stated the district court no longer had subject matter jurisdiction since Young's community control sentence had expired and the second defense stated the habeas petition must be dismissed since it was barred by the statute of limitations pursuant to 28 U.S.C. § 2244(d)(1). Ultimately, the district court agreed and dismissed the case.

Young filed for a certificate of appealability ("COA") pursuant to 28 U.S.C. § 2253(c) claiming that he was "in custody" pursuant to his sex offender

registration requirements. Young's argument was based on the Third Circuit decision, *Piasecki v. Ct. of Common Pleas*, *Bucks Cnty., PA*,. where the circuit court determined that a lifetime sex offender registration requirement met the "in custody" jurisdictional requirement. *Piasecki v. Ct. of Common Pleas*, *Bucks Cnty., PA*, 917 F.3d 161, 173 (3d Cir. 2019). Both the district court and the Sixth Circuit declined to issue a COA based on *Hautzenroeder v. DeWine*. *Hautzenroeder v. DeWine*, 887 F.3d 737, 740 (6th Cir. 2018). In *Hautzenroder*, the Sixth Circuit had already considered the Ohio lifetime sex offender registration requirements and decided that it did not meet the "in custody" jurisdictional requirement. *Id*.

Young's case is distinguishable from *Piasecki*. First, Young was on community control at the time he filed his habeas petition; he just named the wrong respondent. Additionally, Young is subject to tier I sex offender registration requirements while *Piasecki* was subject to lifetime sex offender registration requirements which were significantly more onerous. Six circuit courts have already considered that the sex offender registration requirement does not meet the "in custody" jurisdictional requirement. Published Sixth Circuit decisions are controlling unless the United States Supreme Court or a subsequent en banc panel overrules the decision.

STATEMENT OF THE CASE

A. Legal Background

Pursuant to 28 U.S.C. § 2254(a), "… [A] district court shall entertain an application for a writ of

habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). "This language is jurisdictional: if a petitioner is not 'in custody' when she files her petition, courts may not consider it." *Hautzenroeder v. DeWine*, 887 F.3d 737, 740 (6th Cir. 2018).

The "in custody" requirement historically meant physical restraint or imprisonment. *Corridore v. Washington*, 71 F.4th 491, 494 (6th Cir. 2023). That definition was expanded by this Supreme Court in *Jones v. Cunningham*, to consider "what matters is that [the conditions and restrictions] significantly restrain petitioner's liberty to do those things which in this country free men are entitled to do." *Jones v. Cunningham*, 371 U.S. 236, 242–43 (1963). This definition was further broadened to include sentenced individuals who are on their own recognizance waiting to serve their sentence. "The custody requirement of the habeas corpus statute is designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual liberty." *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California,* 411 U.S. 345, 351 (1973).

However, a petitioner is no longer "in custody" for the purposes of a habeas petition when the sentence has fully expired because, "once the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual 'in custody' for the purposes of a habeas attack upon it." *Maleng v. Cook,* 490 U.S. 488, 492 (1989).

The Rules Governing Section 2254 Cases in the United States District Courts, in Rule 2(a), states, "If the petitioner is currently in custody under the state-court judgment, the petitioner must name as respondent the state officer who has custody." Rule 2(a) of *Rules Governing Section 2254 Cases in the United States District Courts*. In this case, Young was subject to community control sanctions at the time he filed his habeas petition and was thus in the custody of the Butler County Court of Common Pleas. Instead, Young chose to name Sheriff Swaney as Respondent, because his collateral consequences required that he register as a sex offender.

If a habeas petition is dismissed on procedural grounds the petitioner must seek a certificate of appealability or COA in order to appeal. Pursuant to 28 U.S.C. § 2253(c)(1)(A), "Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court." 28 U.S.C. § 2253(c)(1) and (A).

In *Slack v. McDaniel*, this Court held, "a COA should issue when the prisoner shows, …that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

This Court further stated that, "[w]here a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court

erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

In *Hautzenroder*, the Sixth Circuit had already considered the Ohio lifetime sex offender registration requirements and decided that it did not meet the "in custody" jurisdictional requirement. *Hautzenroeder v. DeWine*, 887 F.3d 737, 744 (6th Cir. 2018). The Sixth Circuit has made clear that only an en banc panel of the Sixth Circuit or a Supreme Court decision will change circuit precedent. *U.S. v. Elbe*, 774 F.3d 885, 891 (6th Circ. 2014).

B. Factual Background

Petitioner Young was convicted of gross sexual imposition in violation of Ohio Revised Code § 2907.05(A)(1) and abduction in violation of Ohio Revised Code § 2905.02(A)(2). Pet. App. 1a. Young was sentenced to five years' community control and was required to register as a Tier 1 sex offender. *Id.* at 2a.

Pursuant to Ohio Revised Code § 2950.07(B)(3), "…if the person is an offender who is a tier I sex offender… the offender's duty to comply with those sections continues for fifteen years." O.R.C. § 2950.07(B)(3). Although Young was still subject to his community control sanctions at the time, Young filed his habeas petition pursuant to 28 U.S.C. § 2254 against Swaney, the Madison County Sheriff, in January 2023. Pet. App. 2a.

Swaney filed a motion to dismiss challenging that Young was "in custody" under 28 U.S.C. §

2254(a) due to his tier I sex offender registration requirements. *Id*. Swaney's motion to dismiss was granted. *Id*. at 3a.

Young was invited to substitute the Butler County Court of Common Pleas as respondent in place of Swaney since Young had been subject to community control sanctions at the time he filed his habeas petition. *Id*. at 2a. Young instead filed a motion to add the Butler County Court of Common Pleas while he attempted to maintain his action against Swaney. *Id*.

The Butler County Court of Common Pleas filed a motion to dismiss which the district court granted since "Young's motion to add the court as a respondent was filed after he had completed his community control and was no longer in custody and after the one-year statute of limitations had expired." *Id*. at 3a. Young's attempts to obtain a Certificate of Appealability under 28 U.S.C. § 2253(c) were denied both by the district court. *Id*.

The Sixth Circuit also denied Young a COA because "reasonable jurists could not debate that Young's custody argument was foreclosed by *Hautzenroeder*." *Id*. at 3a-4a.

REASONS FOR DENYING PETITION

There are four reasons that review is unwarranted. First, the Sixth Circuit has already determined that no COA will issue where the claim is foreclosed by binding circuit precedent since reasonable jurists will follow controlling law. Secondly, the other federal court of appeals case that Petitioner suggests has been resolved in his favor is

distinguishable from Young. Third, there is not so much a split in the circuit courts as there is an outlier circuit that does not follow the vast majority of the other circuits. Lastly, the decision was not wrongly decided. For these reasons, review is unwarranted.

1. District Courts Sitting in the Sixth Circuit Follow Binding Circuit Precedent

District Courts sitting in the Sixth Circuit are required to follow binding precedent when considering the "in custody" jurisdictional requirement of 28 U.S.C. § 2254 habeas petitions. The Sixth Circuit has made clear that only an en banc panel of the Sixth Circuit or a Supreme Court decision will change circuit precedent. *U.S. v. Elbe*, 774 F.3d 885, 891 (6th Cir. 2014).

Published prior decisions remain "controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision." *Id*. For this reason, district courts sitting in the Sixth Circuit do not need to "look [to other circuits] when binding precedent from our own Circuit answers the question." *United States v. Cavazos*, 950 F.3d 329, 336 (6th Cir. 2020). In fact, the Sixth Circuit recently stated that, "any persuasive authority from other Circuits is irrelevant." *Freeman v. Wainwright*, 959 F.3d 226, 232 (6th Cir. 2020).

The Sixth Circuit has determined when binding precedent exists, reasonable jurists will follow controlling law. *Mitchell v. United States*, 43 F.4th 608, 616 (6th Cir. 2022) quoting *Hamilton v. Sec'y, Fla. Dep't of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015). Therefore, because *Hautzenroeder* is binding

Sixth Circuit precedent, there was no need to consider persuasive authority prior to the courts denying the request for a COA.

2. The Federal Court of Appeals Case cited by Petitioner is distinguishable from Young's Circumstances

Piasecki v. Ct. of Common Pleas is distinguishable from Petitioner Young's case in two important ways. *Piasecki v. Ct. of Common Pleas, Bucks Cnty., PA*, 917 F.3d 161 (3d Cir. 2019). To begin with, Young named the wrong respondent at the time he filed his habeas petition. Furthermore, the lifetime sex offender registration requirements reviewed by the Third Circuit are different from Young's 15-year reporting requirements.

Young named the wrong respondent. At the time Young filed his habeas petition he was still serving his five-year community control sentence. In contrast, the defendant in *Piasecki* was subject only to the provisions of Pennsylvania's Sex Offender Registration and Notification Act ("SORNA"). "The parties do not dispute that Piasecki was subject to these restrictions—and only these restrictions—when he filed his § 2254 petition on December 4, 2014. His probation and its attendant conditions of supervision had expired…" *Id.* at 163-165. In other words, Piasecki could only be "in custody" if his lifetime SORNA registration requirements rendered him "in custody".

Conversely, had Young named Butler County Court of Common Pleas as the Respondent, then the district court would not have dismissed the petition

on procedural grounds for failing to meet the "in custody" requirement. In other words, Young could have avoided the issue entirely, and the district court could have focused on his underlying claim. Now, Young mistakenly relies on a Third Circuit decision to argue that he was "in custody".

The second reason Young and Piasecki are distinguishable is that Young is tier I sex offender with a 15-year reporting requirement while Piasecki is a tier III sex offender with a lifetime reporting requirement. In other words, the Third Circuit in *Piasecki* analyzed a more rigorous registration requirement.

> Given this precedent, the question of whether Piasecki's registration requirements were sufficiently restrictive to constitute custody is easily answered. They were. At a minimum, Piasecki was required "to be in a certain place" or "one of several places"—a State Police barracks—at least four times a year for the rest of his life. The state's ability to compel a petitioner's attendance weighs heavily in favor of concluding that the petitioner was in custody. Further, Piasecki was not free to "come and go as he please[d]." Any change of address, including any temporary stay at a different residence, required an accompanying trip to the State Police barracks within three business days. He was even required to regularly report to police if he had no address and

> became homeless. In addition, Piasecki could have no "computer internet use." The SORNA statute also compelled Piasecki to personally report to the State Police if he operated a car, began storing his car in a different location, changed his phone number, or created a new email address. These are compulsory, physical "restraints 'not shared by the public generally.' " Unlike the special assessment considered in *Ross,* these restraints compelled Piasecki's physical presence at a specific location and severely conditioned his freedom of movement. *Piasecki v. Ct. of Common Pleas*, *Bucks Cnty., PA*, 917 F.3d 161, 170–71 (3d Cir. 2019).

Young, is subject to a tier I sex offender registration requirement under Ohio Revised Code § 2950.07(B)(3). Therefore, Young is required to verify his address in person on each anniversary of the initial registration date. Ohio Revised Code § 2950.06(B). Young must also provide in writing, on a form designated by statute, advance notice of any change of address, employment or school. Ohio Revised Code § 2950.05(B). Although these requirements are similar to those that apply to the defendant in *Piasecki*, the requirements are clearly less onerous.

Young is only subject to these requirements for 15 years while the defendant in *Piasecki* is subject to these requirements for life. Further, Young is only obligated to verify his address in person once a year

on the anniversary of original registration date. Ohio Revised Code § 2950.06(B). *Piasecki*, on the other hand, is required to register every 90 days in person at the state police barracks for life. *Piasecki v. Ct. of Common Pleas*, *Bucks Cnty., PA*, 917 F.3d 161, 170–71 (3d Cir. 2019).

Young must provide notice in writing on a form proscribed by statute of any change of address, employment or school. Ohio Revised Code § 2950.05(B). Although *Piasecki* is required to provide the same notice of change in address, employment or school, his "require[s] an accompanying trip to the State Police barracks…" *Piasecki v. Ct. of Common Pleas*, *Bucks Cnty., PA*, 917 F.3d 161, 170–71 (3d Cir. 2019).

Lastly, Young is required to provide written notice of any change in vehicle information, email addresses, internet identifiers, or telephone numbers to the sheriff. Ohio Revised Code § 2950.05(D). Again, Piasecki must provide notice of operating cars, changing a phone number or creating a new email address, but he is compelled to "personally report to the State Police" that information. *Piasecki v. Ct. of Common Pleas*, *Bucks Cnty., PA*, 917 F.3d 161, 170–71 (3d Cir. 2019). Therefore, due to the myriad differences between the Ohio tier I and the Pennsylvania tier III reporting requirements, the cases are distinguishable.

3. The Third Circuit is an outlier, not a split among the circuits

In comparing the circuit court opinions, there is not so much a split in the circuit courts as there is an

outlier circuit that does not follow the decisions that the vast majority of the circuits follow. "[T]he great majority of the circuits have held that persons subject to sexual offender registration and reporting statutes are not "in custody" for purposes of habeas corpus relief." *Clements v. Fla.*, 59 F.4th 1204, 1212 (11th Cir.), cert. denied, 144 S. Ct. 488 (2023). Six circuit courts are in agreement.

The Eleventh Circuit cites to the five other circuit court opinions that have held sex offender registration and reporting statutes do not meet the jurisdictional requirement of "in custody." These cases include the following:

The Fifth Circuit, in *Sullivan v. Stephens* where the circuit court determined "His obligations to register as a sex offender does not render him 'in custody' for purposes of a § 2254 challenge." *Sullivan v. Stephens*, 582 F. App'x 375, 375 (5th Cir. 2014).

In the Sixth Circuit, the habeas custody inquiry asks whether the petitioner is subject to a 'severe restraint[ ] on individual liberty'… We are concerned only with whether her statutorily mandated obligations are custodial. And as we have explained, they are not." *Hautzenroeder v. Dewine*, 887 F.3d 737, 744 (6th Cir. 2018).

Further, in the Seventh Circuit, "Mr. Virsnieks' Apprendi argument does not satisfy the habeas statute's 'in custody' requirement, and therefore we do not address its merits." *Virsnieks v. Smith*, 521 F.3d 707, 719-20 (7th Cir. 2008).

Also in the Ninth Circuit, "On this record, Munoz has not demonstrated that the three conditions that make up his lifetime supervision are "custodial"

within the meaning of § 2254." *Munoz v. Smith*, 17 F.4th 1237, 1244 (9th Cir. 2021).

Furthermore, in the Tenth Circuit, in *Calhoun v. Att'y Gen. of Colo.*, "Therefore, we join the circuits uniformly holding that the requirement to register under state sex-offender registration statutes does not satisfy § 2254's condition that the petitioner be 'in custody' at the time he files a habeas petition." *Calhoun v. Att'y Gen. of Colo.*, 745 F.3d 1070, 1073-74 (10th Cir. 2014).

And finally, with the decision in *Clements v. Florida*, the Eleventh Circuit, "Florida's lifetime registration and reporting requirements for sex offenders did not place Mr. Clements 'in custody' under § 2254(a)." *Clements v. Fla.*, 59 F.4th 1204, 1217 (11th Cir.), cert. denied, 144 S. Ct. 488 (2023).

The only circuit court to reach a contrary conclusion is the Third Circuit. *Id*. The Third Circuit, discussing in part their deviation from other circuits, state they, "have explicitly departed from the courts that have held that registration requirements are not custodial because they do not require pre-approval from the government before a registrant travels." *Piasecki v. Ct. of Common Pleas, Bucks Cnty., PA*, 917 F.3d 161, 172 (3d Cir. 2019). The Ninth Circuit considered *Piasecki*, and concluded the "analysis was consistent with our own precedent, but simply confronted far more severe restrictions than those we have addressed in our past cases." *Munoz v. Smith*, 17 F.4th 1237, 1244 (9th Cir. 2021). Because the Fifth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuit Courts are in agreement that sex offender registration requirements do not render a person "in

custody" for 28 U.S.C. §2254 purposes, it is clear that the Third Circuit is an outlier and not a split.

4. Young's Case Was Appropriately Dismissed Pursuant to the Federal Rules

This Petition was properly dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because this Court lacked jurisdiction. Petitioner filed his habeas action against Madison Sheriff Swaney while Petitioner was still subject to community control sanctions with the Butler County Court of Common Pleas. However, Petitioner's five-year community control sanction ended February 28, 2023. Therefore, since Petitioner was not "in custody" at the time Petitioner filed his motion to add Butler County Court of Common Pleas as a party, the case was properly dismissed.

"The Supreme Court holds that a petitioner is 'in custody' when she is subject to conditions that 'significantly restrain [his] liberty to do those things which in this country free men are entitled to do." *Hautzenroeder v. DeWine*, 887 F.3d 737 at 740 (6th Cir. 2018). The Sixth Circuit in *Hautzenroeder v. DeWine* concluded that a sex offender with a tier III lifetime registration requirement was not "in custody" for federal habeas purposes. *Id*. at744. Significantly, at the time Petitioner filed its Motion To Add Respondent And To Maintain The Habeas Action Against Respondent Swaney, Petitioner's sentence had been served and his five year community control sanction had expired. Therefore, due to his sentence expiring, it is clear at the time of filing Petitioner was only subject to the collateral consequence of the sex offender registration. However, a petitioner is no

longer "in custody" for the purposes of a habeas petition when the sentence has fully expired because, "once the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual 'in custody' for the purposes of a habeas attack upon it." *Maleng v. Cook,* 490 U.S. 488, 492 (1989).

Further, Petitioner could not rely on Fed. Civ. R. P. 15(c)(1)(C) to relate back. Fed. Civ. R. P. 15(c) governs when an amendment relates back to the original filing of an action. The language in subsection (C) is clear that it only applies if the "amendment changes the party or the naming of the party against whom a claim is asserted". Fed. R. Civ. P. 15(c)(1)(C). In this case, Petitioner sought to add the Butler County Court of Common Pleas as a respondent while maintaining his habeas action against Madison Sheriff Swaney. Since the motion did not seek to either change the party or how the party was named, but sought instead to add a party, Petitioner cannot rely on Fed. R. Civ. P. 15(c)(1)(C). It is clear the decision was correct, since Petitioner was not "in custody" at the time Butler County Court of Common Pleas was named a party, and Petitioner could not rely on Fed. R. Civ. P. 15(c)(1)(C) to relate back.

Also, the Petition was properly dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted since it was barred by the statute of limitations. Petitioner was barred from bringing his claim since, at the time Petitioner filed his motion to add Butler County Court of Common Pleas as a party, the statute of limitations had already run. The statute of limitations for a

habeas corpus petition is one year. 28 U.S.C. §2244(d)(1). The limitations period began to run on the date which the judgment became final by the conclusion of direct review. 28 U.S.C. §2244(d)(1)(A). Petitioner's appeal to the Ohio Supreme Court was denied in an entry filed January 18, 2022. Petitioner filed his habeas corpus petition on January 17, 2023 and named the Madison County Sheriff as the Respondent. On October 25, 2023, Petitioner filed his Motion To Add Respondent and To Maintain The Habeas Action Against Respondent Swaney. Pursuant to *Ham v. Sterling Emergency Services of the Midwest, Inc.*, the Sixth Circuit, "has held that claims against additional parties do not relate back." *Ham v. Sterling Emergency Services of the Midwest, Inc.*, 575 Fed.Appx. 610, 615 (6th Cir. 2014). Since Petitioner's motion to "add the Butler County Common Pleas Court as a respondent…" while Petitioner "persists in maintaining this action against the Madison Sheriff as a Respondent" it is clear Petitioner's motion is an amendment which adds a new party. In *Asher v Unarco Material Handling, Inc.*, the Sixth Circuit stated, "an amendment which adds a new party creates a new cause of action and there is no relation back to the original filing for purposes of limitations. *Asher v. Unarco Material Handling, Inc.*, 596 F.3d 313, 318 (6th Cir. 2010). Therefore, since the statute of limitations had run prior to Petitioner filing his motion, the habeas petition against Butler County Court of Common Pleas is barred.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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