

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Balentine v. Thaler

692 F.3d 357 (5th Cir. 2012) · Decided August 21, 2012

SUMMARY

The Fifth Circuit denied rehearing en banc and denied as moot Balentine's motion for a stay of execution. The court reaffirmed that, under circuit precedent, the Supreme Court's decision in *Martinez v. Ryan* did not constitute an extraordinary circumstance warranting relief under Federal Rule of Civil Procedure 60(b)(6).

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Owen; Southwick; Stewart
JURISDICTION	Federal
DECIDED	August 21, 2012
DISPOSITION	other
PROCEDURAL POSTURE	After the panel determined that the district court properly applied Fifth Circuit precedent to deny Balentine's Rule 60(b) motion, Balentine petitioned for rehearing by the panel and rehearing en banc and moved for a stay of execution pending consideration of the en banc petition.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	John Lezell Balentine v. Thaler

TOPICS

appellate procedure

federal habeas corpus

post-conviction relief

successive petitions

PRACTICE AREAS

Federal habeas corpus

Post-conviction relief

Appellate procedure

QUESTIONS PRESENTED

1. Whether rehearing should be granted to reconsider the panel's application of *Ibarra v. Thaler* to Balentine's Rule 60(b) motion in light of *Martinez v. Ryan*.

2. Whether *Martinez v. Ryan* constitutes an extraordinary circumstance warranting relief under Federal Rule of Civil Procedure 60(b)(6).
3. Whether Balentine was entitled to a stay of execution pending consideration of rehearing en banc.

HOLDINGS

1. *Martinez v. Ryan* does not constitute an extraordinary circumstance sufficient to warrant relief under Rule 60(b)(6).
2. Rehearing en banc was denied because the petition received insufficient votes, and rehearing by the panel was also denied.

KEY QUOTATIONS

“decision in Martinez, which creates a narrow exception to Coleman’s holding regarding cause to excuse procedural default, does not constitute an ‘extraordinary circumstance’ under Supreme .Court and our precedent to warrant Rule 60(b)(6) relief.” (692 F.3d at 357)

FACTUAL BACKGROUND

The opinion concerns John Lezell Balentine's federal post-conviction proceedings and his Rule 60(b) motion. He argued that the Supreme Court's decision in *Martinez v. Ryan* warranted reconsideration of the Fifth Circuit's interpretation of *Martinez* in *Ibarra v. Thaler* and supported relief under Rule 60(b)(6).

PROCEDURAL HISTORY

The panel had previously concluded that the district court properly applied *Ibarra v. Thaler* in denying Balentine's Rule 60(b) motion. Balentine sought rehearing, arguing that *Martinez v. Ryan* required reconsideration of *Ibarra*'s interpretation. The en banc court received insufficient votes for rehearing, the panel denied rehearing, and the stay motion was denied as moot.

DISPOSITION

other

CASES CITED

- *Ibarra v. Thaler*, 691 F.3d 677, 685 (5th Cir. 2012)
- *Ibarra v. Thaler*, 687 F.3d 222 (5th Cir. 2012)
- *Martinez v. Ryan*, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012)
- *Adams v. Thaler*, 679 F.3d 312, 320 (5th Cir. 2012)
- *Gonzalez v. Crosby*, 545 U.S. 524, 536, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005)
- *Coleman*

OPINION

PER CURIAM.

PER CURIAM: The court having been polled and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED.RApp. P. and 5TH Cir. R. 35), the Rehearing En Banc has been DENIED by separate order on this day. John Lezell Balentine's motion for a stay of execution pending consideration of petition for rehearing en banc is DENIED as MOOT.

On August 17, 2012, this panel determined that the district court had properly applied one of our precedents to require denial of Balentine's Rule 60(b) motion. See *Ibarra v. Thaler*, 691 F.3d 677, at 685, 2012 WL 3537826, at *6 n. 1 (5th Cir.2012); *Ibarra v. Thaler*, 687 F.3d 222 (5th Cir.2012). Balentine's petition urged reconsideration of the interpretation of the Supreme Court's *Martinez v. Ryan*, — U.S. —, 132 S.Ct.

1309, 182 L.Ed.2d 272 (2012), decision expressed in *Ibarra*. As a supplement to our earlier analysis of these issues we also note an additional difficulty with Balentine's arguments. This circuit has held that the Supreme Court's "decision in *Martinez*, which creates a narrow exception to *Coleman*'s holding regarding cause to excuse procedural default, does not constitute an 'extraordinary circumstance' under Supreme Court and our precedent to warrant Rule 60(b)(6) relief." *Adams v. Thaler*, 679 F.3d 312, 320 (5th Cir.2012) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 536, 125 S.Ct.

2641, 162 L.Ed.2d 480 (2005)). The petition for rehearing en banc having received insufficient votes from the en banc court, this order also DENIES rehearing by the panel.