APPENDIX A

United States Court of Appeals

FIFTH CIRCUIT
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June 13, 2018

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 17-20573 USA v. Tommy Alexander, Sr.
USDC No. 4:89-CR-331-1

Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
June 13, 2018
Lyle W. Cayce
Clerk

No. 17-20573
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

TOMMY ALEXANDER, SR.,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:89-CR-331-1

Before JONES, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Tommy Alexander, Sr., federal prisoner # 07193-035 and proceeding *pro se*, challenges the denial of his motion to recuse the district judge who denied his motions under 18 U.S.C. § 3582(c)(2) (reduction of sentence). Alexander asserts the denials were contrary to the law and facts and, therefore, the rulings must be the result of bias.

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

The denial of a recusal motion is reviewed for abuse of discretion. *United States v. Bremers*, 195 F.3d 221, 226 (5th Cir. 1999). Recusal should occur if a reasonable person, aware of "the relevant circumstances surrounding the judge's failure to recuse, would harbor legitimate doubts about that judge's impartiality". *Andrade v. Chojnacki*, 338 F.3d 448, 454 (5th Cir. 2003) (cleaned up).

Two statutes govern the recusal of district judges: 28 U.S.C. § 144 and 28 U.S.C. § 455. Although Alexander did not specify under which statute he seeks relief, his contention of general bias implicates both statutes. In any event, he has not shown he is entitled to relief under either.

Section 144 requires a judge to reassign a case in the event of actual bias. *Henderson v. Dep't of Pub. Safety & Corr.*, 901 F.2d 1288, 1296 (5th Cir. 1990). But, Alexander did not meet the pleading requirements to obtain relief under § 144 because he did not submit the required affidavit delineating facts and reasons that would convince a reasonable person of the existence of bias. *See* § 144; *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 483 (5th Cir. 2003).

Section 455 requires a judge to disqualify himself in any proceeding where "his impartiality might reasonably be questioned", or where he "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding". 28 U.S.C. § 455(a) & (b)(1). Aside from conclusory assertions that the judge was prejudiced, Alexander did not offer facts suggesting the judge's impartiality might reasonably be questioned or that the judge had an actual personal extrajudicial bias against him. 28 U.S.C. § 455(a) & (b); *Patterson*, 335 F.3d at 484; *United States v. Mizell*, 88 F.3d 288, 299 (5th Cir. 1996).

In that regard, his assertion the judge ignored the law and facts in denying his § 3582(c)(2) motions, thereby suggesting bias, is unavailing

because it is based solely on the unfavorability of the rulings. These rulings, which did not reflect a high degree of antagonism as to make fair judgment impossible, do not support a claim of bias. *Liteky v. United States*, 510 U.S. 540, 555 (1994) (adverse rulings alone do not support a claim of bias). Further, to the extent the judge articulated negative opinions of Alexander in earlier proceedings, the opinions, while critical, were based on facts that had been presented during the proceedings and, therefore, do not reflect bias or prejudice. *See id.*

AFFIRMED.

LYNN HUGHES -> SOUTHERN DISTRICT OF TEXAS
HOUSTON DIV.

Additional material from this filing is available in the Clerk's Office.