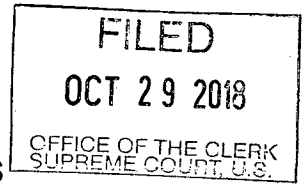


No. 18-7131 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



ANDRECO LOTT — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
Appeal from the United States District Court for the
Northern District of Texas

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(Your Name) Andreco Lott
Reg. #27068-177

Federal Correctional Complex-Medium
(Address)

P.O. Box 3000, Forrest City, Arkansas 72336
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. Whether the lower courts applied the correct legal standard at the certificate of appealability stage?
- II. Whether Lott was denied a constitutional right to be heard?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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STATUTES AND RULES

28 U.S.C. §2255
28 U.S.C. §2253(c)(2)
Fed. R. Civ. P. 60(b)

OTHER

Fifth Amendment

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 6, 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 1, 2018, and a copy of the order denying rehearing appears at Appendix C.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment Constitutional and Statutory Due Process...
requires an opportunity to be heard...

STATEMENT OF THE CASE

A jury convicted Andreco Lott of conspiracy to commit bank robbery, two counts of bank robbery, two counts of conspiracy to obstruct interstate commerce by robbery, and four counts of using and carrying a firearm during a crime of violence. The district court sentenced Lott to a total aggregate term of imprisonment of 1,111 months, to be followed by concurrent terms of three and five years of supervised release. The district court ordered Lott to pay restitution in the amount of \$87,359.85, jointly and severally with his codefendants, with payment to be immediately. The district court also ordered Lott to pay special assessments of \$900 immediately.

In 2004, Lott filed a motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence. Lott raised 16 claims, and 32 subclaims that alleged trial counsel being ineffective for failure to interview and investigate numerous of witnesses; failure to object to impermissibly suggestion identification procedures; failure to raise on appeal that the evidence was insufficient to sustain his convictions, and failure to file motions for pretrial discovery amonth others. The district court did not address any of the 32 subclaims, and concluded Lott did not demonstrate that there was a reasonable probability that the results of his case would have been different.

In March 2017, Lott moved to reopen his federal habeas corpus proceedings regarding the district court's failure to address the merits of all of his habeas claims. The district court denied the motion on the ground that "lott's motion was without merit because

the court addressed each of his claims in the order they appeared in his motions." United States v. Lott, USDC No. 4:04-cv-740 (5th Cir. Mar. 15, 2017).

Lott sought a certificate of appealability (COA). The Fifth Circuit denied his COA application after deciding that jurists of reason could not dispute that the district court's procedural ruling was correct. United States v. Lott, No. 17-10581 (5th Cir. Mar. 6, 2018).

Lott timely appeals from the lower courts denials.

REASONS FOR GRANTING THE PETITION

The lower court applied the incorrect legal standard at the certificate of appealability stage.

A certificate of appealability may issue if a petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. §2253(c)(2). To make a substantial showing, the petitioner need only show that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S.Ct. 1029, 154 L.Ed.2d 831 (2003). The Supreme Court recently emphasized that the COA inquiry "is not coextensive with merits analysis" and "should be decided without 'full consideration of the factual or legal bases adduced in support of the claims.'" *Buck*, 137 S.Ct. 773 (quoting *Miller-El*, 537 U.S. at 336). At the COA stage, "the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further."

The district court denied Lott relief based on a merits analysis, i.e., "Lott's motion was without merit because the court addressed each of his claims in the order they appeared in his motions," when in fact the Court's Memorandum Opinion and Order signed February 11, 2005, did not address each of Lott's claims and his allegations were meritorious. However, the court of appeals denied Lott's COA on the ground that "Lott failed to demonstrate that

jurists of reason could not dispute that the district court's procedural ruling was correct. See Appendix A, Order, No. 17-10581. The Fifth Circuit's denial of a COA was based on an incorrect legal standard because Lott's 60(b) motion was denied on the merits rather procedural grounds. See Appendix B, Decision of United States District Court.

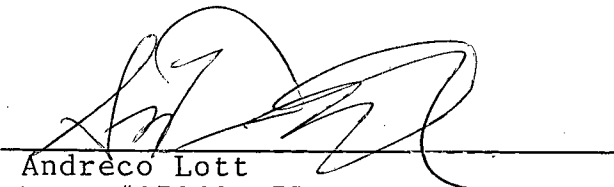
In his Fed. R. Civ. P. 60(b) motion, Lott argued that the district court denied him due process by improperly failing to rule on the merits of thirty-two habeas claims. The district court in denying the motion concluded "Lott's motion was without merit because the court addressed each of his claims in the order they appeared in his motions." The contention that the district court failed to consider his claims represented a "true" Rule 60(b) claim because it asserted a defect in the proceedings. See *Spitznas v. Boone*, 464 F.3d 213 (10th Cir. 2006). The procedural defect was debatable and Lott was entitled to a COA.

II. Whether Lott was denied a constitutional right to be heard?

Basic notions of due process underpin this requirement. The Supreme Court noted in *Mullane v. Central Hanover Bank Trust, Co.*, the fundamental requisite of due process of law is the opportunity to be heard. 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed 865 (1950)(quoting *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed 1363 (1934)). The district court in failing to address all claims raised in Lott's §2255 denied him the opportunity to be heard on constitutional claims. *Peach*, 468 F.3d at 1271.

The only question to be decided at the COA stage is whether Lott has shown that jurists of reason could disagree that the District Court's Memorandum Opinion and Order signed February 11, 2005 address each of Lott's claims presented in habeas motions. See Appendix B. At the very least, jurists of reason could debate whether Lott has shown by clear and convincing evidence that the district court's factual determination was wrong. The Fifth Circuit erred when it concluded otherwise. The court of appeals' review should not have rested on the ground that it was indisputable among reasonable jurists that Lott did not demonstrate that district court's ruling was correct.

Therefore the court should grant Lott's motion to proceed in forma pauperis, grant the petition for certiorari, vacate the judgment of the court of appeals, and remand the case for further consideration of the question whether Lott is entitled to a COA.



Andreco Lott
Reg. #27068-177
Federal Correctional Complex
Forrest City Medium
P.O. Box 3000
Forrest City, Arkansas 72336

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Andreco Lott, Reg. #27068-177
Federal Correctional Complex-Medium
P.O. Box 3000, Forrest City, Arkansas 72336
Date: OCT 27, 2016