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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RLS AR ABDUL AZIZ,
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

On Petition For A Writ Of Certiorari To
The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. WHETHER THE FIFTH CIRCUIT COURT OF APPEALS INTRODUCED AND ATTACKED A STRAWMAN ARGUMENT[ARGUMENT NOT RAISED BY APPELLANT] IN IT'S ORDER/OPINION AS A BASIS TO DENY APPELLANT A COA? IF SO, IS DUE PROCESS TO AN IMPARTIAL JUDGE VIOLATED?
- II. WHETHER THE FIFTH CIRCUIT COURT OF APPEALS HAS AN ACTUAL BIAS AGAINST AN APPELLANT WHEN THE COURT INTRODUCES A STRAWMAN ARGUMENT[ARGUMENT NOT RAISED BY APPELLANT] IN IT'S ORDER/OPINION AND ATTACKS THE ARGUMENT AS A BASIS TO DENY APPELLANT A COA?

CERTIFICATE OF INTERESTED PERSONS

The undersigned Petitioner hereby certifies, to the best of his belief and knowledge that the following listed persons have an interest in the outcome of this case:

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TABLE OF CONTENTS

Questions Presented	(i)
Certificate of Interested Persons	(ii)
Table of Contents	(iv)
Citation to Official Judicial Opinions	(v)
Statement of Basis For Jurisdiction	(vi)
Constitutional Provisions Involved	(vi)
Statment of The Case	1
Reasons for Granting The Writ	1-6
Conclusion	6
Appendix List/Contents With Cover Sheet Attached	

TABLE OF AUTHORITIES

SUPREME COURT OF THE UNITED STATES

Williams v. Pennsylvania, 136 S.Ct., 1899, 195 L. Ed. 2d 132, 141; 2016 US Lexis 3774. P. 5

Branch v. Smith, 538 U.S. 254, 123 S.Ct. 1429 L. Ed. 2d 407(2003). P. 2

Aetna Life Insurance Co. v. Lavoie, 475 U.S.813(1986). P. 4

Bell v. Maryland, 378 U.S. 226(1964). P. 2

Re Murchison, 349 U.S. 133(1955) Pgs. 3, 4, and 5

Tumey v. Ohio, 273 U.S. 510(1927). P. 3

UNITED STATES CONSTITUTION

Fifth Amendment

STATUTES

28 U.S.C. § 1254(1)

28 U.S.C. § 2255

CITATION TO OFFICIAL JUDICIAL OPINION, ORDERS, AND BRIEFS

09/20/2018

ON PETITION FOR RECONSIDERATION-Opinion USCA5 17-30683;
Document: 00514649733[DENIED] See Appendix "A".

08/16/2018

APPELLANT'S BRIEF FOR RECONSIDERATION-USCA5 17-30683 See Appendix "B".

08/03/2018

ORDER USCA5 17-30683; Granting motion to amend motion for COA; granting motion to file a supplement to the COA; denying motion for certificate of appellability; denying motion to amend IFP. See Appendix "C".

3/22/2018

APPELLANT'S SUPPLEMENTAL BRIEF FOR COA-USCA5 17-30683 See Appendix "D".

8/10/2017

RULING AND ORDER-USDC M.D.LA. 3:14-cv-812-BAJ;3:09-cr-19-BAJ-EWD, Doc. 325.[DENIED]. See Appendix "E".

04/28/2017

MOTION FOR LEAVE OF COURT TO AMEND CLAIM FOUR(2255)-USDC M.D.LA 3:14-cv-812-BAJ; 3:09-cr-19-BAJ-EWD Doc. 319. See Appendix "F".

12/27/2016

OBJECTION TO REPORT AND RECOMMENDATION-USDC M.D.LA. 3:14-cv-812-BAJ; 3:09-cr-19-BAJ-EWD Doc. 317. See Appendix "G".

12/07/2016

FINDINGS, CONCLUSIONS, AND REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE-USDC M.D.LA. 3:14-cv-812-BAJ; 3:09-cr-19-BAJ-EWD Doc. 313[Recommending DENIAL]. See Appendix "H".

10/25/2012

ORDER-USCA5 05-12-90160[DENIED]. See Appendix "I".

08/17/2012

ORDER-USCA5 05-12-90160[DENIED]. See Appendix "J".

11/30/2011

ORDER-USCA5 05-12-90001[DENIED]. See Appendix "K"

PETITION FOR WRIT OF CERTIORARI

v

STATEMENT OF BASIS FOR JURISDICTION

On August 3, 2018, the United States Court of Appeals for the Fifth Circuit entered it's order granting motion to amend motion for COA; granting motion to file a supplemental to the COA motion; denying motion for certificate of appeallability; denying motion to proceed IFP; denying motion to amend IFP. On September 20, 2018, the United States Court of Appeals for the Fifth Circuit denied the for reconsideration, without comment. Review is sought pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment-No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger: nor shall any person be subjected for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself nor be deprived of liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF CASE

ABDUL AZIZ moved for a COA from the Fifth Circuit Court of Appeals after the denial of his motion under 28 U.S.C. § 2255, in which ABDUL AZIZ raised four(4) Issues of abuse of discretion by the district court. ABDUL AZIZ's appeal is a challenge to the district courts finding of fact and conclusions of law.

A Fifth Circuit Judge denied ABDUL AZIZ's COA based on a straw-man argument that the Judge introduced in it's order.(See Appendix B).

ABDUL AZIZ moved for reconsideration which was denied without comment from a panel of the Fifth Circuit.(See Appendix A).

REASON FOR GRANTING THE WRIT

I. WHETHER THE FIFTH CIRCUIT COURT OF APPEALS INTRODUCED AND ATTACKED A STRAWMAN ARGUMENT[ARGUMENT NOT RAISED BY APPELLANT] IN IT'S ORDER/OPINION AS A BASIS TO DENY APPELLANT A COA? IF SO, IS DUE PROCESS TO AN IMPARTIAL JUDGE VIOLATED?

The Fifth Circuit Court of Appeals did not address any Issue or argument raised by Petitioner in his COA brief, the Court instead introduced a strawman argument in it's order, that the Court attacked, and used as a basis to deny Petitioner a COA. Petitioner raised four Issues of argument in his amended COA brief, all arguing abuse of discretion by the district court.(See Appendix D pgs. 9, 30, 31 and 34). Rather than ruling on the actual merits of Petitioner's COA brief, the appeals Court instead ruled on it's own strawman argument.(See Appendix B p. 2).

Petitioner takse guidance from the U.S. Supreme Court

in defining a strawman argument, as this Court held in its opinion that Chief Justice "Douglas convincingly demonstrates that the dissent has constructed a strawman by suggesting that the case involves "a property owner's right to choose his social or business associates."[]It should be recognized that the claim asserted by the negro petitioners concerns such public establishments and does not infringe upon the rights of property owners or personal associates interest." Bell v. Maryland, 378 U.S. 226, 312, 12 L. Ed. 2d 822(1964).

This Court also found that "[a]nother strawman erected by the dissent is to be found in its insistence--as though in response to an argument of our--that "since § 2a(c) was enacted decades before Baker line of cases, this subsequent developement can not change the interpretation of § 2a(c)." Post, at 16. But we have never said that those cases changed the meaning of § 2a(c); we have said that they help to explain the meaning of § 2c, which was enacted after they were decided." Branch v. Smith, 538 U.S. 254, 280-281, 123 S.Ct. 1429 L. Ed. 2d 407(2003).

Petitioner who takes guidance from this Court, asserts that the Fifth Circuit's order to deny him a COA contains arguments that were not raised by Petitioner in his original or amended brief.

Petitioner now asks this Court to determine if due process is violated to an impartial judge when the appeals Court introduces

and attacks a strawman argument in it's order as a basis to deny an appellant a COA?

Although Petitioner has found no precedent from this Court related to the question presented, Petitioner has sought guidance from previous precedent from this Court relative to due process violations.

The right to a fair and impartial judge is an axiomatic right under due process of the United States Constitutions Fifth Amendment. This right mandates that a judge should not have an interest in a case, likewise this Court has held that "[t]o this end no man can be a judge in shis own case and no man is permitted to try cases where he has an interest in the outcome." Re Murchison, 349 U.S. 133, 136, 99 L. Ed. 942, 75 S.Ct. 623(1955).

Petitioner avers that based on the opinion in Murchison, that the Fifth Circuit Court of Appeals had an interest in the outcome of his case because the appeals Court introduced it's own arguments to attack and deny him a COA.

This Court also held that "every procedure which would offer a possible temptation to the average man as a judge[]not to hold the balance nice, clear and true between the state and the accused, denies the later due process of law." Tumey v. Ohio, 273 U.S. 510, 532, 71 L. Ed. 749, 758, 47 S.Ct. 437(1927).

Petitioner avers that based on the opinion in Tumey, that the Fifth Circuit Court of Appeals did not hold the balance between

Petitioner and the Government because the Court of appeals introduced and ruled on an argument[strawman argument] of it's own making.

Petitioner argues that because the Court of appeals introduced and ruled on it's own argument, the Court became a part of the process and "having been a part of that process a judge can not be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused." Id. at 136, 75 S.Ct. 623, 99 L. Ed. 942.

Petitioner takes further guidance from this Court and argues that the Court's "participation in this case violated appellant's due process rights as explicated in Tumey, Murchison, and Ward." Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813, 824, 89 L. Ed. 2d 823, 106 S.Ct. 1580(1986).

The Fifth Circuit's introduction and ruling on a strawman argument of it's own making is prima facie proof that it's decision was prejudged and "[a] tribunal which has prejudged a case and has made a predisposition can not be said within the meaning of the constitutional gaurantees to be fair and impartial tribunal." Id. at 349 U.S. 133, 99 L.Ed. 942, 944, 75 S.Ct. 623.

II. WHETHER THE FIFTH CIRCUIT COURT OF APPEALS HAS AN ACTUAL BIAS AGAINST AN APPELLANT WHEN THE COURT INTRODUCES A STRAWMAN ARGUMENT[ARGUMENT NOT RAISED BY APPELLANT] IN IT'S ORDER/OPINION AND ATTACKS THE ARGUMENT AS A BASIS TO DENY APPELLANT A COA?

Petitioner was denied a COA by the Fifth Circuit Court of

Appeals based on a strawman argument that the Court introduced and ruled on in it's order to deny Petitioner a COA. Looking to this Court for guidance, Petitioner asserts that "[d]ue process guarantees "an absence of actual bias" on the part of a judge. In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L. Ed. 942(1955)." Williams v. Pennsylvania, 136 S.Ct. 1899, 1905; 195 L. Ed. 2d 132, 141; 2016 U.S. Lexis 3774.

This Courts precedent is that proof of an actual bias is not mandated, the Court instead asks "whether as an objective matter the average judge in his position, is likely to be neutral, or whether there is an unconstitutional potential for bias."Id. at 195 L. Ed. 2d 134, 133.

Petitioner avers that because the Fifth Circuit ruled on a strawman argument that it introduced and ruled on in it's order to deny Petitioner a COA, a constitutional possibility for bias was manifested. This Court has held that "[a] constitutionally intolerable probability of bias exists when the same person serves as both accuser and adjudicator in a case." Id. at 349 U.S. 133, 136-137.

Petitioner also finds it noteworthy to inform this Court that he has previously been denied relief by the Fifth Circuit Court of Appeals on a bias claim that was not supported by record evidence. The Fifth Circuit Court of Appeals and the Judicial Council for the Fifth Circuit found and affirmed without record evi-

PETITION FOR WRIT OF CERTIORARI

dence that Petitioner had given a statement to the Department of Homeland Security of where he "refused to assist the agency investigate radical Muslims." (See Appendix D pgs. i-iii; I, J, and K).

CONCLUSION

ABDUL AZIZ respectfully requests that the Writ of Certiorari be granted in the interest of Justice based on the arguments and questions presented supra. Petitioner requests any other relief consistent with this Court's rules and precedent and that is supported by this petition.

December 12, 2018

Respectfully Submitted,

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