18-8094

No. 18-30221

USDC No. 16-8727

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC GROS --- PETITIONER

Vs.

JASON KENT, WARDEN --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR A WRIT OF CERTIORARI

ERIC GROS # 442257
(Your Name)

P.O. BOX 788 / U-2-D-12

JACKSON, LA 70748-0788
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1.) Whether the Magistrate Judge for the U.S. Eastern District Court of Louisiana erred when he issued a Report and Recommendation recommending that the petitioner's petition be dismissed without prejudice for failure to exhaust state court remedies.

2.) Whether the U.S. Fifth Circuit Court of Appeals erred when denying petitioner's COA with the reasoning of it being a Mixed Petition.

3.) Whether the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration.

4.) Whether the continued incarceration of the petitioner would be a violation of his Rights to Due Process of Law from the errors committed.

LIST OF PARTIES

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

[X] 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:

District Attorney, 29th JDC
Joel Chaisson
P.O. Box 680
Hahnville, La. 70056-0860

Warden Jason Kent
Dixon Correctional Institute
P.O. Box 788
Jackson, La. 70748

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

The petitioner, Eric Gros respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Fifth Circuit Court rendered in these proceedings on 10-3-18.

OPINIONS BELOW

Cases from **federal** courts:

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JURISDICTIONAL STATEMENT

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on 10-3-18. Petitioner is now requesting the jurisdiction of this Court to be invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the Sate and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST., AMEND. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United Sates and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. 2254

Louisiana Constitution Art. I, 16, 17.

PROCEDURAL HISTORY OF THE CASE

In June 2016 petitioner filed his 28 U.S.C. § 2254 for Writ of Habeas Corpus with the Eastern District of Louisiana. On November 4, 2016, the Magistrate Judge for the U.S. Eastern District Court of Louisiana issued a Report and Recommendation recommending that the petitioner's petition be dismissed without prejudice for failure to

exhaust state court remedies. The Magistrate Judge then went on to state that petitioner had a choice to amend his petition to exclude this unexhausted claim or exhaust the state court remedies. Petitioner chose to amend his petition and on November 15, 2016, Petitioner sent his amended 2254 petition entitled "Memorandum in Support of Amended 2254 Petition and Objection to Report and Recommendation of Magistrate".

The District Court was in error to dismiss without prejudice the amended petition for failure to exhaust state court remedies when petitioner dropped his unexhausted ineffective assistance of counsel claim in its entirety. Petitioner no longer wished to pursue his unexhausted claim and prayed the court to rehear his amended petition and only rule on his Due Process claim that was set forth in his petition.

While pre-amendment Section 2254 did not directly address the problem of "mixed" habeas petitions, that is, those containing both exhausted and unexhausted claims, the Supreme Court adopted a rule of total exhaustion in *Rose v. Lundy*, 455 U.S. 509, 102 S. Ct. 1198, 71 L. Ed. 2d 379 (1982). The Supreme Court held:

Because a rule requiring exhaustion of all claims furthers the purposes underlying the habeas statute, we hold that a district court must dismiss such "mixed petitions," leaving the prisoner with the choice of returning to state court to exhaust his claims or of amending or resubmitting the habeas petition to present only exhausted claims to the district court. *Id.* at 510, 102 S. Ct. at 1199. The Supreme Court explained that the complete "exhaustion doctrine is principally designed to protect the state courts' role in the enforcement of federal law and prevent disruption of state judicial proceedings." *Rose v. Lundy*, 455 U.S. at 518, 102 S. Ct. at 1203. "A rigorously enforced total exhaustion rule will encourage state prisoners to seek full relief first from the state courts, thus giving those courts the first opportunity to review all claims of constitutional error." *Id.* at 518-19, 102 S. Ct. at 1203. The Supreme Court further noted that the total exhaustion rule will not impair the prisoner's interest in obtaining speedy federal relief "since he can always amend the petition to delete the unexhausted claims." *Id.* at 520, 102 S. Ct. at 1204.

Not only was petitioner only following the instructions of the U.S. Eastern District Court of Louisiana, he followed what was said in *Rose v. Lundy* as well. The United States District Judge was in error to deny petitioner's Certificate of Appealability without applying the Supreme Court's adopted a rule in *Rose v. Lundy*.

STATEMENT OF THE CASE

Petitioner's Due Process Rights were violated when multiple prejudicial errors were committed by allowing a third party, namely Errol Falcon Jr., to file a motion to have the judge recused. Errol Falcon Jr. had no standing to file a motion to recuse in Plaintiff's case. Mr. Falcon was not a party to the case. There is simply no legal authority for a "*potential*" third party witness to file a motion to recuse the judge and then the court grant this motion. Mr. Falcon filed this motion to sabotage Plaintiff's plea deal.

Plaintiff was scheduled to go to trial on February 21, 2013. On February 9, 2013, Plaintiff's defense counsel and ADA Howat Peters reached an agreement on a possible plea bargain, subject to approval by Mr. Peter's supervisor and the court. On February 13, 2013, the court advised that it would accept the proposed plea. However, before Mr. Peters could get approval for the plea from his supervisor, the St. Charles Parish District Attorney's Office determined that their office had a potential conflict of interest as it related to a potential witness in the case.

On February 14, 2013 the District Attorney filed a motion to recuse his office from the case on the grounds that an independent determination should be made on whether or not the potential witness should be utilized in the prosecution of the case. On that same date, the court recused the District Attorney and appointed the Attorney General's Office to the case.

The very next day, on February 15, 2013, through counsel, Errol Falcon Jr. filed a motion to recuse the judge, to which he is not a party. Mr. Falcon alleged in his motion that he has been informed by the Attorney General's Office that he would be called as a witness in Plaintiff's case. Mr. Falcon further alleged that since he had been contacted by the federal authorities regarding an investigation involving the father of the judge (Harry Morel) in Plaintiff's case, the judge should recuse herself to avoid any *"appearance"* of bias.

Prior to Plaintiff's plea, former District Attorney, Harry Morel, attempted to exchange sexual favors from his witness, Falcon's girlfriend, Danielle Keim, for plea deals in the instant matter. What's more is that prior to Plaintiff's plea the State was listening to Falcon, and his then girl friend, Danielle Keim, over the monitored prison phone system, where they were attempting to arrange the plea deals in exchange for sexual favors performed by Danielle Keim. After Plaintiff's plea the investigation into the District Attorney went public and the District Attorney then resigned. Thereafter, Plaintiff filed an application for post conviction relief, in which, Plaintiff challenged various claims including due process violations. The trial court denied Plaintiff's due process claims due to Plaintiff not being able to show any third party violations. Due to the federal investigation Plaintiff didn't have accesses to any documentation regarding the investigation. In 2016 former District Attorney Harry Morel was arrested, charged, and convicted of Obstruction of Justice in connection with the instant matter.

This demonstrates a "compensatory" bias as it did in *Bracy v. Gramley,* 520 U.S. 899, (1997) and *Rippo v. Baker,* 137 S. Ct. 905; 197 L. Ed. 2d 167; (2017). A prosecutor who offer's and accepts bribes such as plea deals for sexual favors provides favorable

treatment and would seek to disguise that favorable treatment to defendant's who did not bribe him. The District Attorney is the decision maker and has entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute.

Due to the fact that the Plaintiff could not show any third party violations, and the fact that Plaintiff could not have obtained any other documents regarding this matter, wouldn't one think that due process was necessary to develop Plaintiff's claims?

Also under the Due Process Clause of the United States Constitution, a criminal defendant is entitled to an impartial prosecutor. *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, (1987). The Supreme Court has held that the participation of an interested or biased prosecutor can implicate the fundamental fairness of the trial itself. *Marshall v. Jerrico, Inc.*, 446 U.S. 238; (1980).

A COA is appropriate when "reasonable jurists could debate whether (or for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel,* supra, (internal quotation marks omitted). The question in {321 Fed. Appx. 393} considering whether to grant a COA is the "debatability of the underlying constitutional claim, not the resolution of that debate." *Miller-El v. Cockrell,* 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). Where a district court has denied claims on procedural grounds, a COA is warranted only when "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and . . . jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack,* 529 U.S. at 484 (emphasis added).

> Under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), petitioners appealing a state court capital punishment sentence in federal court must show that the state court's adjudication was either "contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States" or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. 2254(d). An adjudication is contrary to established federal law when it "applies a rule that contradicts the governing law set forth in [Supreme Court] cases," or "confronts a set of facts that are materially indistinguishable from a decision of [the Supreme Court] and nevertheless arrives at a result different from [that] precedent." *Williams v. Taylor*, 529 U.S. 362, 405-06, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). State court factual findings are entitled to a presumption of correctness under the statute. 28 U.S.C. 2254(e)(1).

Plaintiff respectfully submits that the events which transpired in the instant case with the "compensatory" bias by the District Attorney's Office constituted a denial of the Plaintiff's rights to due process of law and equal protect of the law, guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

REASONS FOR GRANTING THE WRIT

The continued incarceration of the petitioner would be a violation of his rights to Due Process of Law as the U.S. Fifth Circuit Court of Appeals and the U.S. Eastern District for the State of Louisiana erred in denying petitioner's 2254 petition without prejudice for failing to exhaust state remedies. The petitioner was denied his right to Due Process of Law as there was sufficient proof that he did in fact amend his petition and drop the unexhausted claim. The petitioner was denied his Fourteenth Amendment of the United States Constitution.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Fifth Circuit Courts.

Respectfully Submitted,

Date: October 12, 2018

Eric Gros

Eric Gros # 442257