

NO.

IN THE SUPREME COURT OF THE UNITED STATES

FLOYD ANDREW BROWN

Appellant / Defendant

-Vs.-

UNITED STATES OF AMERICA

Appellee / Plaintiff

ON WRIT OF CERTIORARI TO THE

WESTERN DISTRICT OF MICHIGAN; SOUTHERN DIVISION;

UNITED STATES DISTRICT COURT

Hon. Robert Homes Bell, U.S. District Judge, presiding

PETITION FOR CERTIORARI

Submitted By;

signed & initialed
Mr. Floyd A. Brown ... Fed. No. 16834040 ...

P.O. Box 24550 ... United States Penitentiary

Tucson, Arizona ... 85734-4550 ...

Asst.by; Brian L. Brown, JHL,

Member National Lawyers Guild

I. (Questions Presented For Review)

i. QUESTIONS PRESENTED FOR REVIEW

QUESTION(S)

Should the judgment be vacated, and mabe remanded, in light of [Buck v. Davis, 580 US. __; 137 S.Ct. 759, 197 L.Ed2d 107 (2017)-]. Where the Court Of Appeals, in a § 2255, required that a high[er], requirement of merit proof, must first occur, before it would permit a COA to be be granted, but ignored the constitutional issues, and the arguments of reasonable jurists. ?

II. (List Of Parties)

II. LIST OF PARTIES

The Caption set out above contains the names of all parties. As repeated below.

1. Floyd Andrew Brown, as the Petitioner, Appellant

Vs.

2. The United States Of America, as the Respndent, Appellee.

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[Other Cited]

Sixth Circuit Case No. 13-2692xi.

[Statues Cited]

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VI. (Citation Of Opinions And Orders, Rule 14.1) (1)

VI. CITATION OF OPINIONS AND ORDERS (d.)

The Original conviction of the Petitioner in the United States District Court for the Western District Of Michigan, Grand Rapids, was not reported, but can be found at [United States v. Brown, 2013 U.S. Dist. LEXIS 118057 (W.D. Mich 2013)-]; and accepted in [United States v. Brown, 2013 U.S. Dist. LEXIS 118674 (W.D. Mich 2013)-].

Followed by an Appeal to the United States Court Of Appeals For the Sixth Circuit, -see- [No. 13-2692 (6th Cir. 2014)-], Opinion was ot published.

Following the Petitioner filed a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2255, on the 9th date of July 2015, The U.S. Magistrate issued a Report and Recommendation, -see- [Doc. 1, 1:15 Cv 716)- see also - Brown v. United States, 2016 U.S. Dist. LEXIS 112010 (W.D. Mich. 2016-], the United States District Judge affirmed the Denial.

VI. (Citation Of Opinions And Orders, Rule 14.1) (2)

The Petitioner then moves the Court of Appeals for permission to proceed In Forma Pauperis, for a C.O.A., but the request initially was denied by the Clerk, not a Appeals Judge, -see- [Brown v. United States, 2016 U.S. Dist. LEXIS 118057 (W.D. Mich 2016)-].

The Panel of Justices, refused to agree to a vote on the ability to decide if the issues amounted to a vote, and the opinion was issued, the Opinion was issued on the 17th date of August 2017.

VII. (Jurisdictional Statement, Rule 14.1(e)) (1)

VII. JURISDICTIONAL STATEMENT

The Judgement of the United States Court of Appeals for the Sixth Circuit was entered on the 11th date of May, 2017. Rehearing was sought as the Clerk of the Court appears to have decided the issues rather than a Circuit Justice. And was entered on the 11th date of May 2017. The decision was final and denied on the 17th date of August 2017. -see- [Brown v. United States, 2017 U.S. App. LEXIS 15607 (6th Cir. 2017)-], Appeal in this Court was due on the 17th date of November 2017.

Extension of time was Granted, extended to the 18th date of January, 2018. And was mailed using the "Prison Mail Box Rule", of [Houston v. Lack 487 US. 266 (1988)-].

VIII. (Constitutional, Statutory Prov., R.14.1(e)) (1)

VIII. CONSTITUTIONAL AND STATUTORY

{Sixth Amendment}

"In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and a public trial, and a impartial jury in the state 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 of and cause of the accusation, to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have Assistance Of Counsel for his defense".

{ 28 USCS § 2253 }

(c) (2)

A Certificate Of Appealability may issue under paragraph (i) only if the applicant has made a substatual showing of the denial of a constitutional right.

(VIII. Statement Of The Case)(1)

VIII. STATEMENT OF THE CASE

In this case, Petitioner was attempting to obtain a certificate of appealability, a petitioner is required to make a substantial showing of the denial of Constitutional Rights. - see- [28 USC § 2253(c)(2) -].

Brown, reads that the Certificate Of Appealability (hereinafter referred to as COA), inquiry is not coextensive with the merits analysis, so the question is whether the applicant has simply shown, that " a jurist of reason could disagree with the Court of Appeals pass on the resolution of a simple constitutional claim(s), for permission to use the COA, because he believes that a reasonable jurist could conclude the issues presented are adequate to deserve encouragement to proceed further . -see- [Miller - El v. Cockrell, 537 US. 322, 336; 123 S.Ct. 1029; 154 L.Ed2d 931 (2003)-]. This determination was to be [w]ith[o]ut "full consideration of the factual or legal basis adduced in support of the claim(s). - see- [Buck v. Davis , 580 US. __; 137 S.Ct. __; 197 L.Ed2d 1, 17 (2017)-].

(VIII. Statement Of The Case)(2)

Brown's case raised several questions for Review by the Sixth Circuit. Wether Or Not;

(1). The Plea Agreement was Null and Void, as the attorney for the Appellant, was in conflict of interests, that violated the Sixth Amendment Constitutional Rights.

(2). Whether or not the Due Process was effected when the Appellant was sentenced to a long sentence, for reasons of seeking Rehabilitation Goals, a Fifth Amendment Question.

(3). Whether or not the Double Jeopardy, Clause was effected , when Counsel permitted a plea, that was Superseded, using the [same] elements as the indictment that had previously expired, and was then multiplied, to include additional charges. Sixth Amendment of Double Jeopardy Clause.

(4) Was the Sixth Amendment effected when the plea agreement in conflict of interest with Client, when Counsel refused to proceed to move to dismiss the Indictment, that had expired, without any challenge, was this clear, abandonment.

(VIII. Statement Of The Case) (3)

The issues must involve a substantial or injurious effect or effect on the Guilty Plea. -see- [Humpries v. United States, 398 F.3d 855, 858 (6th Cir. 2005)-]. Showing that " [a] reasonable jurist [c]ould debate whether or not [one would agree], that the issue should have been raised by the defense [or] the issues were adequate to proceed, or deserve encouragement to proceed further . -see- [Barefoot v. Estelle, 463 US. 880, 893; 72 L.Ed2d 1090; 103 S.Ct. 3383 & n. 1 (1983)]-]. (" The primary means of separating meritorious from frivolous, should be the decision to grant or withhold a certificate of probable cause ... something more than frivolity ... and ... lighter than good faith, -see- [Barefoot (supra), 463 US. at 893 (1983)]-, and that a reasonable jurist would agree.

I. Issue One

[Part One Of Two Questions]

a. Whether or Not The District Court committed a Rule 11 Violation, and erred when it permitted Counsel to Disclose Attorney Client Privilege.

(VIII. Statement Of The Case)(4)

In Part One, Brown addressed in the § 2255, that the District Court committed an error when it forced the defendant, at the hands of his Counsel, to Disclose Attorney Client Privileges, when Counsel for the entire Rule 11 hearing, not just part, forced, his client by his own questioning to admit the determination of guilt, in the fact finding proceeding.

The Appellant Brown, asks the question, Wether or not this violated the Attorney Client Privilege, -see- [Iowa, v. Tovar, 541 US. 77, 80; (2004)-], -and- [Swindler v. United States, 524 US. 399, 409 (1998)-]. And since the issue is a Sixth Amendment issue, Brown believes this makes it a Constitutional Question. Brown further believes that the issue of having a counsel, take over a plea, Rule 11, hearing when Brown, was asked by the Court, what his counsel has explained to him, concerning a plea deal, Counsel then took over the hearing to avoid the answers that would have jeopardized the plea. Brown believes that this issue would have been invited in a debate among reasonable jurists, having served as Counsel in their own capacity.

(VIII. Statement Of The Case)(5)

[Part Two Of Two Questions]

b. And in showing this (reffering to 'a'), Would it be a Sixth Amendment Violation, if the Plea Agreement was shown ' Nul And Void ', as a result of; (1) Counsel effecting conflicting interests; by acting as prosecutor, and fact finding for the Magistrate Judge and (2) that the conflicts show it had a adverse effects on performance of the Counsel in question, and (3) further being caught in the dishonest tricks of his client (verified in this case by identifiable disabilities).

At issue is that his client was not informed during the Plea Agreement process, that there were wavers that were enclosed in the agreement. Those type of waver were identified by both the American Bar Association, as well as the State of Kentucky Bar Association, in this very Federal Circuit (i.e. the 6th), were in fact unconstitutional, and "so bad", it amounts to ineffective assistance of Counsel. And Counsel was aware of both the circumstances, and if not for reasons of abandonment of his clients, welfare and well being, would not have permitted this to occur.

(VIII. Statement Of The Case,)(6)

IN CONCLUSION OF THE ISSUE

Counsel, knowing that (1) his client had just been diagnosed with serious mental issues; (2) first allowed his client to be re-indicted, for the same charges, by a superceding indictment; and (3) permitted waivers to be plead in the agreement; (4) knowing that they were ruled unconstitutional by several same circuits Courts; and (5) And agreements that were so bad that, the U.S. Attorney General directed their Attorney's not to enforce the waivers, nor raise defense to the claims.

Brown, the Petitioner believes that a reasonable Jurist would agree, that a conflict identified in [Woods v. Georgia, 450 US. 261, 271 -, L.Ed2d ; (1988)-], -see also- [Shriro v. Landrigan, 550 US. 465; 176 L.Ed2d 836; 127 S.Ct. 1933 (2007)-]., further a Sixth Amendment Violation. As well as the other issues mentioned are constitutional, and a reasonable jurist would find the issues debatable, for application on the Federal Level, and effects of debate among those Jurists.

(VIII. Statement Of The Case)(7)

II. ISSUE TWO

The question is "Whether or not the District court committed a [Plain Error], when it illegally sentenced the Petitioner, to a sentence length using, issues based on Rehabilitation Goals?

This issue, the Petitioner, Clearly argues that the 'Sixth Amendment ', sentencing error occurred when it sentenced the Petitioner, but first failing to correctly calculate, the initial sentencing guidelines range, and in doing so further incorrectly failed to consider the correct sentencing factors, in this case, and then using the impermissive factors in a § 3553 determination that being as debated specifically "for rehabilitation goals".

And that the Petitioner in the District Court case, did not have the ability to Object, as he was being directed by Counsel. And because the Counsel was acting and was aware that other information would be called into question, concerning the plea, and believed that because he was looking out for his interests, he blocked the ability of the Petitioner, preventing his ability to object.

(VIII. Statement Of The Case)(8)

First, the issue, that the incorrect guidelines act, was determined by the incorrect elements, that were not plead to. This also included following the incorrect first initial determination of the sentencing guidelines range. -see- [Molina - Martinez, 578 US. ___, 136 S.Ct. 1338; 194 L.Ed2d 444 (2016)-]. -supporting - [Hurst v. Florida, 577 US. __; 133 S.Ct. 2151; 186 L.Ed2d 314 (2016)-]. Whereas it is required that the district court correctly determine the guidelines range, which included the facts that were not plead to, during the plea hearing, a hearing that was directed and lead by his very own Appointed Counsel, which is also the very reason why his case did not have the ability to be appealed. It was for that reason there were also no Objections, because Counsel favored the Fact Finder, rather than his client, causing the errors in the plea hearing.

Further Petitioner did not have the ability to 'object', as he was being directed by his own counsel, he did not know, nor did he have the ability to ask if his Counsel was acting in his interest, believing his Counsel was required to do the hearing when in fact he a was not.

(VIII. Statement Of The Case) (9)

At issue is a Sixth Amendment Issue, and that has been shown that a reasonable jurist would agree that it is in line with a debatable issue, and because the Supreme Court continues to "Reverse" the cases related to this issue. Would easily find that this claim overlooked by the Lower Courts, would be reversed, which is sought by this Petitioner.

[Part Two]

In so calculating, it was further incorrect that the District Court in the Supreme Court opinion -see- [*Tapia v. United States*, 564 US. __; 180 L.Ed2d 357 (2011)]. That it is believed a violation of reasonableness, and further a Unconstitutional that they could violate the 5th amendment of the Due Process, and because Counsel refused to represent but instead rather be a Judge, then the issue would best be seen as Constitutional, and debatable among jurists.

Because it has been alleged that a reasonable jurist, would agree, that the issue of incorrectly calculating the start of the sentencing guidelines level, and in doing so is a plain error,

(VIII. Statement Of The Case)(10)

in if this is so found, based on the factors being used, that were not plead to , as directed by his own Defense Counsel, (acting on behalf of the female Justice, . There is a plain error based upon the holding of [Molina - Martinez {supra} -], it is a constitutional argument, with the inclusion of the holdings found in [Pugh { supra }-], the the elements contained at sentencing that was not included in the plea agreement did set the incorrect guidelines level , which is unconstitutional, and when the Judge used them further violated the 5th amendment of the Constitution, concerning the Due Process.

And that the lack of Counsel will be argued in the further as a 6th Amendment, and the facts any reasonable jurist including the Justices in the aforementioned cases are still seated in the Supreme Court would (should find)the issue ripe for either further debate, and or instant remand in this case issue alone.

(VIII. Statement Of The Case)(11)

III. Issue Three

[Part One Of Issue]

That Counsel was ineffective in his assistance of counsel, as he refused (because of conflicting interests), to argue that the plea Agreement as Superceded was unconstitutional, because it (1) re-indicted a expired, and without the cover of any statutory extensions, was allowed to expire , then to be re-indicted, and because of Counsel's conflicting interests , refused to argue this issue of this case.

That the Sixth Amendment requires that, in short, that all criminal defendants enjoy the right to a speedy trial. And is protected by the Sixth Amendment of the Constitution. Whether a delay violated the length of the right; reason for the delay; and prejudice to the defendant. -see- Missouri v. Frye, __ US. __; 132 L.Ed2d 379 (2012)-], -see also- [Lafler v. Cooper, __ US. __; 132 L.Ed2d 398 (2012)-].

(VIII. Statement Of The Case)(12)

In this issue Petitioner, clearly argued that Counsel, was aware that the Petitioner, was mentally impaired, as based on the test. And was well aware that had Petitioner been properly informed that this defense existed, meaning the expiration of the Indictment, he would not have taken the plea, of Guilty. The deficiency of his counsel was a decisive factor in the case. -see- [Hill v. Lockhart, 474 US. 52, 58-59; 88 L.Ed2d 203 (1985)-]. And conflict of interests effected the performance of the Counsel -see- [Culyer v. Sullivan, 466 US. 335, 350; 64 L.Ed2d 333 (1985)-].

Further the Sixth amendment provides that the Defendant was given the Right of the Sixth Amendment to have Speedy Trial within 70 days. -see- [Barker v. Wingo, 407 US. 514, 522; 33 L.Ed2d 101 (1972)-], within 70 days. (" whether the government or the criminal defendant is more to blame for the delay"), And that because the Attorney is the 'defendants agent', when acting or failing to act, the issue could be at issue.

(VIII. Statement Of The Case) (13)

Counsel's failure to "pay attention", led the Governments expired indictment, to be re-indicted as the 2nd Count in the Superseded Indictment, and the remaining counts were 'broken up', from the same information, time, and charges, to multiply the convictions, Multipliciously, and Dupliciously.

That because the Counsel failed to move for a dismissal of the indictment, that has expired, without any Jurisdiction to re-indict, and even if found the issues, and the Count 2, of the Superseded Indictment expanded then indictment, of the exact same issue, meaning and purpose, therefore Multiplied, and Doubled the issues, and there fore because of issues of abandonment, the Petitioner was left out to dry.

At issue is a Sixth Amendment Issue, and that has been shown that a reasonable jurist would agree that it is in line with a debatable issue, and because the Supreme Court continues to "Reverse" the cases related to this issue. Would easily find that this claim overlooked by the Lower Courts, would be reversed, which is sought by this Petitioner.

(IX. Reasons For Granting Writ) (14)

IX. REASONS FOR GRANTING THE WRIT

A. THE COURT OF APPEALS AFFIRMING THE
DISTRICT COURTS JUDGEMENT OF THE ISSUE
CONFLICTS WITH THE DECISION AND RULING
PRESENTED IN THE BUCK V. DAVIS DECISION
OF THIS COURT.

A. The Court Of Appeals Affirmed Without Any Further Summary,
the District Court's Decision Refusing To Grant Certificate Of
Appeals, But Only After First. Reviewing The Facts Of The
Case.

Meaning the Court Of Appeals [R]efused [T]o [I]ssue a
COA, but based on the facts in a case, prior to the denial of
the COA. The Court Of Appeals, lacked Jurisdiction to, hear
the facts, without [f]irst [g]ranteeing the COA.

(IX. Reasons For Granting Writ)(15)

That Brown is attempting to obtain a Certificate Of Appealability. (aka C.O.A.). And reads that the Inquiry is not coextensive with a Merits Analysis of the case. The Only requirement was to be "whether or not a jurist of reasons could disagree", with the Court Of Appeals Pass. Of Simple Constitutional Claims. The Only Jurist as admitted by the Clerk, was the Clerk its self. A Sitting Judge was not identified, nor can one be found the only signature on the issue, was the clerk, and the analysis in the pre-COA issue. Which was in violation of the Supreme Court Precedent.

Based upon the finding of the Supreme Court of the United States, in [Buck { supra}-], Brown seeks a vacate, and Remand to the Court of Appeals with the direction that a Circuit Court, Justice, review the issue per the Federal Rules Of Appellate Procedure, and the Local Circuit Rules of that Circuit, and any other relief that this Court Deems just in this matter.

(X. Conclusion)(1)

X. CONCLUSION

That because the (this) Supreme Court had made it clear in [Buck v. Davis, 580 US. __; 137 S.Ct. 759; 197 L.Ed2d 1 (2017)-]. That "To obtain a certificate of appealability, a petitioner is required to make a substantial showing of a Constitutional Right, -see also- [28 U.S.C. § 2252 (c) (2). And Until the prisoner secures [that] COA, The Court Of Appeals may not rule on the merits of the case.

When the Appeals Court, sidesteps the COA process by first deciding the merits of an Appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.

The Clerk, of the Court, Not an actual panel, decided the case, -see- [Floyd Andrew Brown v. United States, 2017 US. App. LEXIS 15607 (6th Cir. 2017)-]. But the clerk decided the opinion prior to this one.

(X. Conclusion) (2)

Wherefore because the Clerk, or unannounced sitting Judge, decided the case, out side the scope of this decision , after the [Buck] case was decided, the Petitioner Prays, for the Court because the case has been decided, Vacate the Judgement, remand the case to the United States Court Of Appeals For the Sixth Circuit, in light of [Buck v. Davis, 580 US. __; 137 S.Ct. 759; 197 L.Ed2d 1 (2017)-]. And a ny other relief that this Court deem Just in this matter.

Entered this ~~14th~~ date of ~~JAN~~ 2018

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