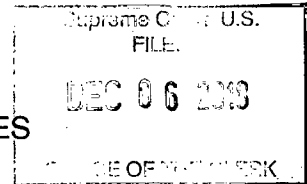


18-8240 ORIGINAL
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



HOWARD ANTHONY MONIZ — PETITIONER
(Your Name)

vs.

STATE OF MICHIGAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Howard Moniz MDOC #185778

(Your Name)

3100 Cooper Street, JCS

(Address)

Jackson, MI 49201

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

I. Should the State Circuit Court Judge be disqualified from ruling on a collateral appeal for relief from judgment where he personally opposed post-conviction relief for the exact same case while employed as the County Prosecutor?

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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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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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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 D to the petition and is

- ☒ reported at 917 NW2d 647 (Mich. 2018); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Chief Judge of the Circuit court 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☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 10-2-18.
A copy of that decision appears at Appendix D.

☐ 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

USCS Const. Amendment 14

Sec.1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any laws which shall abridge the privileges and 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 jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Circuit Court Judge Michael A. Weipert was formerly employed as the Monroe County Prosecutor.

In the year 2000 the Petitioner sought the federal enforcement of his constitutional rights against the Monroe County Circuit Court in Circuit Court Case Nos. 00-30408 and 00-30410.

In 2001, in response to Petitioner's appeal for federal relief, Prosecutor Michael A. Weipert directly, and personally opposed the federal relief, and personally opposed permitting the Petitioner an evidentiary hearing (Weipert's Pleadings filed in the United States District Court, Eastern District of Michigan, Southern Division, Civil No. 00-60399).

After acquiring new evidence, and in reliance upon the new findings of the Michigan Court of Appeals in *Duncan v. Michigan*, 774 NW2d 89 (Mich. App. 2009), the Petitioner filed his first and only Motion For Relief From Judgment to the Monroe County Circuit Court, for the same cases (Nos. 00-30408 and 00-30410).

Since the time of the federal appeal (E.D. Mich. No. 00-60399), former County Prosecutor, Michael A. Weipert, had been elected a Monroe County Circuit Court Judge. Judge Weipert took over Petitioner's case and summarily denied the Petitioner's collateral appeal.

Petitioner immediately moved to disqualify Circuit Court Judge Weipert, and after Judge Weipert denied the disqualification Motion (Appendix B), Petitioner properly requested this disqualification from the Monroe County Chief Judge, Jack Vitale. Petitioner provided Judge Vitale copies of the pleadings that Monroe County Prosecutor Weipert personally prepared, and personally signed, opposing post-conviction relief and hearing for the exact same cases in controversy.

Chief Judge Vitale decided that because the federal appeal was under a different docket number, it was "a separate action entirely from the state cases in which petitioner seeks to disqualify Judge Weipert (Appendix A, page 2).

Petitioner was then denied leave to appeal by the Michigan Court of Appeals (Appendix C, 3-21-18 Order), and denied leave to appeal by the Michigan Supreme Court (Appendix D, 10-2-18 Order).

REASONS FOR GRANTING THE PETITION

I. Judge Weipert should have been disqualified from ruling on a motion for relief from judgment, and his ruling should be vacated, where he personally opposed post-conviction habeas relief for the same case in controversy while acting as the Monroe County Prosecutor.

Petitioner, Howard Anthony Moniz, is a 58 year-old prisoner, with a current SGT/PMX release date of December 25, 2063.

At the time of the Petitioner's conviction, the Monroe County Prosecuting Attorney was Michael A. Weipert.

Prosecutor Weipert directly and personally opposed post-conviction habeas relief, and opposed an evidentiary hearing, concerning the Monroe County convictions in Case Nos. 00-30408 and 00-30410 (See Appendix A, page 2; and, Weipert's pleadings filed in E.D. Mich. Case No. 00-60399).

County Prosecutor Weipert then got elected as a Monroe County Circuit Court Judge, and when the Petitioner filed a Motion for Relief From Judgment in Case Nos. 00-30408 and 00-30410, Judge Weipert took over the case and summarily denied the collateral appeal.

Indeed, Judge Weipert essentially affirmed the same arguments he made as a County Prosecutor in the same cases while opposing a federal appeal of the same convictions.

The State of Michigan promises prisoners the "right to file a motion for relief from judgment," *People v. Ream*, 891 NW2d 229 (Mich. 2017).

While the Petitioner's appeal seeking the disqualification of former County Prosecutor Weipert was pending in the Michigan Supreme Court, that court recognized in *People v. Ward*, 904 NW2d 843 (Mich. 2018), that the United States Supreme Court had forbidden judges who had earlier significant involvement in the same cases as a prosecutor from ruling on later appeals, even if that appeal was several years later.

In *Williams v. Pennsylvania*, 136 S.Ct. 1899, 1905-1910 (2016), the Court declared that Judge-Prosecutor Weipert's dual role in these same cases violates the due process clause of the Fourteenth Amendment.

Furthermore, both the Michigan Rules of Court (MCR 2.003(c)(1)(D)), and Michigan case law, called for, and required Judge-Prosecutor Weipert's disqualification. See e.g., *Pitoniak v. Borman's Inc.*, 305 NW2d 305, 307 (Mich. App. 1981).

In this case, Monroe County Prosecuting Attorney, Michael A. Weipert, personally reviewed an Application For Writ of Habeas Corpus Under 28 U.S.C. Sec. 2254 By A Person In State Custody, with a 54-page Brief in Support, a 35-page Affidavit of Evidence, and a 4-page Affidavit of Petitioner, and then, Prosecutor Weipert personally opposed all post-conviction relief, and personally argued that Petitioner should not even receive an evidentiary hearing to expose constitutional violations in Monroe County (E.D. Mich. Case No. 00-60399; Prosecutor Weiperts 3-13-01 Motion to Dismiss Petition For Writ of Habeas Corpus, with Brief in support; and, Prosecutor Weipert's 4-30-01 Reply To Petitioner's Motion For Evidentiary Hearing).

On August 20, 2015, after being elected as a Monroe County Circuit Court Judge, Michael A. Weipert then denied the Petitioner's Motion for Relief From Judgment in the exact same cases, affirming arguments he made as a prosecutor in the case.

The Chief Judge of Monroe County fails to acknowledge that these exact same cases were the same cases in controversy in the Eastern District Court of Michigan (No 00-60399), and therefore, the State cases the Chief Judge goes on to rely upon do not apply in this matter because they all concern judges who acted as prosecuting attorneys in completely different matters (Appendix A). They were not the exact same cases.

Judge-Prosecutor Weipert was definitely predisposed to rule against the Petitioner's collateral appeal in these cases because he already had personally argued against the grant of relief. Furthermore, because of his former office's interests in discrediting issues involved in the Petitioner's Motion For Relief From Judgment, Judge-Prosecutor should not have been permitted to summarily dispose of the collateral appeal. See e.g., *Caperton v. Massey*, 556 U.S. 868, 872-876 (2009).

Petitioner should not be condemned to a prison sentence which exceeds his life-span without access to the fair and unbiased appellate review promised by law to prisoners in Michigan.

Accordingly, *Deo Volente*, the judgment of the Michigan Supreme Court should be vacated, and the case should be remanded to comply with the Due Process Clause of the United States Constitution. See e.g., *Rippo v. Baker*, 137 S Ct. 905 (2017).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Edward C. Montgomery

Date: 12-5-18