

IN THE  
SUPREME COURT OF THE UNITED STATES

IN RE CLIFFORD E. AVERY, PETITIONER

PETITION FOR REHEARING

Now comes the Petitioner Clifford E. Avery in pro se and respectfully requests the Court to rehear and/or reconsider its order of May 20, 2019 denying his motion to proceed in forma pauperis and dismissing his petition for writ of habeas corpus. According to the Clerk's letter of May 20, 2019 the reason for the Court's order is because "the petitioner has repeatedly abused this Court's process."

According to Black's Law Dictionary (Ninth edition), "abuse of process" is defined as: "The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope."

The Court has not met the mandatory definitive use of forma pauperis in the case before the Court. The process is legitimately issued and there is nothing tortious about Petitioner's use of the process. Petitioner asserts he has not ever abused this Court's

process let alone "repeatedly abused this Court's process." In support of this petition Petitioner states as follows:

1. Petitioner was illegally and unconstitutionally convicted of a murder he did not commit. The petition that was "docketed" on April 30, 2019 and then undocketed on May 20, 2019 sets forth very substantial deprivations of constitutional rights that prevented Petitioner from showing his actual innocence and causing his wrongful conviction. Since his conviction Petitioner has, without counsel, sought relief from this Court by filing several various petitions. At no time ever did Petitioner abuse this Court's process and he has never filed anything that was frivolous.
2. The current petition clearly shows inter alia, Petitioner was prosecuted under a repealed law, tried while not competent and made so by the trial court bailiffs illegally drugging him with narcotics, opiates and barbiturates throughout all stages of his trial. The petition shows that to date no corrective judicial process for the above claims has ever been afforded Petitioner.
3. The petition shows that a former sitting justice of this Court, David Souter was involved in Petitioner's prosecution during critical stages while he was New Hampshire Attorney General. Some of his acts and omissions may have been improper and/or unconstitutional depriving Petitioner of his federal constitutional rights.
4. The petition raises very serious illegal and unconstitutional acts and omissions of State trial court judge Martin F. Loughlin that caused Petitioner to be tried while not competent and wrongly convicted. Judge Loughlin became a federal district court judge after Petitioner's conviction.
5. The petition raises very serious illegal and unconstitutional actions of State court post conviction judge Walter Murphy who

colluded with Petitioner's court appointed counsel to deprive the Petitioner of any fair and impartial corrective judicial process for inter alia, the claims set forth in paragraphs 2 through 4 supra.

6. Petitioner is unaware of any prior orders from this Court apprising him that he had abused this Court's process. If indeed any such order was created he does not remember ever receiving such. Moreover, as the petition indicates, many of Petitioner's legal pleadings, documents, etc. and correspondence from courts has over the years been lost, stolen and destroyed by improper actions of the State of New Hampshire and Rhode Island prison officials. Further, some legal correspondence from the courts was never forwarded to Petitioner.

7. Petitioner requests the Court to provide him the proof and/or evidence that substantiates the Court's serious claim he has "repeatedly abused this Court's process." To not provide such proof in this particular case to give Petitioner the opportunity to rebut such a claim, Petitioner respectfully would assert would be the epitome of arbitrariness. It would also arbitrarily deprive Petitioner of his fundamental right of access to the courts and effectively deprive him of this country's most precious writ the Great Writ of Habeas Corpus. Because Petitioner does not have the money due to his poverty to pay this Court's docket fee of \$300.00 nor \$2,500.00 the cost of making 40 copies of his petition according to Rule 33.

8. "To guarantee that no citizen shall be denied an opportunity to commence, prosecute...in any court...soley because his poverty makes its impossible for him to pay or secure the costs," Adkins v E.L. Dupont de Memouis Co., 335 U.S. 331 (1948). Congress enacted 28

U.S.C. § 1915 which permits federal courts to authorize the maintenance of an action without prepayment of fees and costs. At the same time, Congress enacted a "narrow exception," see Brandon v District of Columbia Board of Parole, 236 U.S.App.D.C. 155 734 F.2d 56 (D.C.Cir.1984), cert denied, 469 U.S. 1127, 105 S.Ct. 811 (1985), to this right by authorizing a court to dismiss such an action if it is "satisfied that the action is frivolous or malicious" 28 U.S.C. § 1915(d) (1982).

9. The petition for writ of habeas corpus that the Court dismissed on May 20, 2019 is clearly not malicious nor frivolous. To require Petitioner to pay the docket fee and make 40 copies in booklet form which because of his poverty will deprive Petitioner of access to the Court, leaves the impression the Court has done this simply to avoid addressing very serious claims of wrongdoing by New Hampshire State Court judges, a former federal district court judge and a former sitting justice of this Court.

WHEREFORE, based upon the foregoing, Petitioner respectfully requests the Court to:

- A) Provide him the proof that substantiates the Court claim in its May 20, 2019 letter.
- B) Vacate its order of May 20, 2019.
- C) Permit Petitioner to proceed with his petition for writ of habeas corpus in forma pauperis.
- D) Grant such other and further relief the Court may deem just and proper.

June 13, 2019

Respectfully submitted,

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