ORIGINAL

No. 18-9376



IN THE

SUPREME COURT OF THE UNITED STATES

IN RE: CHARLES A. DAVIS

(Your Name) PETITIONER

vs.

UNITED STATES OF AMERICA

RESPONDENT(S)

ON PETITION FOR A WRIT OF PROHIBITION PURSUANT TO THE ALL WRITS ACT 28 U.S.C. 1651(a) DIRECTED TO JOHN ROBERTS C.J, WITH SUPERVISORY CONTROL OVER THE FOURTH CIRCUIT UNDER SUPREME COURT RULE 22-1

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

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

PETITIONER FOR A WRIT OF PROHIBITION

CHARLES A. DAVIS

⇔36558-069⇔
Charles Davis
203 W Sunny LN
Incare of RVCP
Janesville, WI 53546
United States

C.F.M. 7018 2290 0002 0439 5615

(City, State, Zip Code)
N/A

(Phone Number)

## QUESTIONS PRESENTED FOR REVIEW

WHETHER THE LOWER COURTS ABUSED THEIR DISCRETION BY THEIR FAILURE TO ADDRESS THE JURISDICTIONAL DEFECTS THAT DEPRIVE THEM OF SUBJECT MATTER JURISDICTION

LIST OF PARTIES

IN RE: CHARLES A. DAVIS

-V-

UNITED STATES OF AMERICA

THE NAMES OF ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. THERE ARE NO ADDITIONAL PARTIES.

TABLE OF CONTENTS

STATUTORY AND CONSTITUTIONAL PROVISIONS

RELEVANT LAW IN SUPPORT OF THE ABOVE ALLEGATIONS BY PETITIONER

The Sixth Amendment right to counsel is the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970). The benchmark for judging any claim of ineffective assistance of counsel, however, is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Strickland v. Washington, 466 U.S. 668, 688 (1984); also Boykin v., Wainwright, 737 F.2d 1539, 1542 (11th Cir. 1984).

Because a lawyer is presumed to be competent to assist a defendant, the burden is not on the accused to demonstrate the denial of the effective assistance of counsel. United States v. Cronic, 466 U.S. 648, 658 (1984). Ineffectiveness of counsel may be grounds for vacating conviction if;

(1) counsel's performance fell below an objective standard of reasonable assistance and;

(2) the defendant was prejudiced by the deficient performance. Strickland, 466 U.S. at 687, 694. "There is no reason for a court deciding an ineffective assistance claim...to address both components of the inquiry of the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697.

Thus, if the defendant fails t show that his is prejudiced by the alleged error of counsel, this court may reject the defendant's claim without determining the counsel's performance w deficient. See Coulter v. Herring, 60 F.3d 1499, 1504 n.8 (11th Cir.1995). For p[performance to be deficient, it must be established that, in light of all t he circumstances, counsel's performance was outside the wide range of professional competence. "Strickland, 466 U.S. at 690.

In other words, when reviewing counsel's decisions, "the issue is not what is possible or "what is prudent or appropriate, but only what is constitutionally compelled." Chandler v. United States, 218 F.3d 1305, 131 (11th Cir. 2000)(en banc)(quoting Burger v. Kemp, 483 U.S. 776 (1987), cert denied, 531 U.S. 1204 (2001).

Furthermore, "(t)he burden of persuasion is on a petitioner to prove, by a preponderance of the evidence, that counsel's performance was unreasonable." Id. (citing Strickland, 466 U.S. at 688). The burden of persuasion, though not insurmountable, is a heavy one. See Id. at 1314 (citing Kimmelman v. Morrison, 477 U.S. 365 (1986)).

"Judicial scrutiny of counsel's performance must be highly deferential," and courts "must indulge (the ) strong presumption "that counsel's performance was reasonable and the counsel made all significant decisions in the exercise of reasonable professional judgment." Id. (quoting Strickland, 466 U.S. at 689-90). Therefore, "counsel cannot be adjudged incompetent for performing in a particular way in a case, as long as the approach taken "might be considered sound trial strategy." Id. (quoting Darden v. Wainwright, 477 U.S. 168 (1986).

If the record is incomplete or unclear about counsel's actions, then it is presumed that counsel exercised reasonable professional judgment. See Id. at 1314-15 n.15. Thus, the presumption afforded counsel's performance "in no ...that the particular defense lawyer in reality focused on and, then deliberately decided to do or not to do a specific act." Id. Rather, the presumption is "that what the particular defense lawyer did at trial...were acts that some reasonable lawyer might do." Id.

Moreover, "(t)he reasonableness of a counsel's performance is an objective inquiry." Id. at 1315. For a petitioner to show deficient performance, he "must establish that no competent counsel would have taken the action that his counsel did take." Id. To uphold a lawyer's strategy, a court "need not attempt to divine the lawyer's mental processes underlying the strategy." Id. at 1315 n. 1 6. Finally, "(n)o absolute rules dictate what is reasonable performance for lawyers." Id. at 1317.

Further, counsel does not provide ineffective assistance when frivolous arguments are not raided on appeal. Jones v. Barnes, 463 U.S. 745 (1983); see also United States v. Winfield, 960 F.2d 970, 974 (11th Cir. 1992)(attorney not ineffective for ailing to argue a meritless issue).

American Bar association standards are to be used only as "guides" in reviewing whether an attorney's performance is reasonable, reversing a finding of deficient performance where the lower court treated the ABA standards as "inexorable

## STATEMENT OF CASE AND PROCEDURAL POSTURE

Charles A. Davis was charged with Willfully filing materially false amended tax returns. He was also charged with corruptly obstructing and impeding the IRS. He was found guilty after a jury trial and committed to the custody of the United States bureau of Prisons to be imprisoned for a term of twelve months (12) months on counts 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10, to be served consecutively and a term of twelve (12) months on count 11, to be served concurrently with the terms imposed on counts 5, 6, 7, 8, 9 & 10, for a total of one hundred twenty (120) months.

He filed a petition for a Writ of Mandamus to the Fourth Circuit Court of Appeals that a panel denied procedurally. A petition for Rehearing with Suggestions for Rehearing En Banc was also denied procedurally.

## REASONS FOR GRANTING

Simply stated Charles A. Davis requests the Chief Justice John Roberts who has supervisory control over the Fourth Circuit Court of Appeals to stem the tide of Judicial Activism that is becoming rampant in the Fourth Circuit. As a threshold matter, Charles A. Davis avers that jurisdiction is the power of a court to adjudicate a case, without jurisdiction there is only one thing left for the court to do, that is to dismiss the case.

Charles A. Davis filed a petition for a Writ of Mandamus to the Fourth Circuit Court of Appeals, but the three panel of circuit judges, returned an opinion that the Clerk of the Court circulated Davis' Petition for a petition for rehearing with suggestions for rehearing en banc, but none of the judges polled voted for such a hearing. Because the panel did not leave findings of fact and conclusions of law, their decision is a thinly veiled res judicata.

## STANDARD OF REVIEW

"When aids to construction are available, there certainly can be no "rule of law" which forbids its use. However clear the words may appear on superficial examination. United States v. Culberr, 435 U.S. 371, 374 n.4, 55 L.Ed.2d 349, 98 S.Ct. 1112 (1978) (quoting United States v. American Trucking Ass'ns, Inc., 310 U.S. 534, 543-44, 84 L.Ed 1345, 60 S.Ct. 1059 (1940). A case in point to support Charles A. Davis' argument is Cox v., krueger, No. 1:17-Cv-01099-JES (CDIL) where the Seventh Circuit Court of Appeals was asked to expand the Circuit's Davenport test as not only to show that the "savings clause" in adequate or ineffective., The petitioner asked, as Charles A. Davis is asking for the Fourth to honor the long standing tradition of federalism and Comity that undergirds America's Anglo-American tradition and deference to jurisdiction.

DISCUSSION

As a preliminary matter, Charles A. Davis avers that, a federal court must presume it does not have subject matter jurisdiction on its own motion. "(T)he rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and that all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record. "Mansfield, C&L M.R. Co. v. Swan, 111 U.S. 379, 382, 4 S.Ct. 510, 511, 28 L.Ed. 462 (1884). Insurance Corp. of Ireland Ltd. v. Compaigne des Bauxite de Guinee, 456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982)(emphasis added).

The District Court's and the Court of Appeals for the Fourth Circuit's constitutional issue avoidance in Charles A. Davis' judicial proceedings, renders the latter's sentence and conviction "...an imprimatur to miscarriage of justice." The factors that should have conferred subject matter jurisdiction were conspicuously missing. Charles A. Davis contends these factors are the degree to which the district court's and the court of Appeals for the Fourth Circuit's actions can be legally questioned.

DISCUSSION

The District Court and the Court of Appeals for the Fourth Circuit were delinquent in not examining two important facets of subject matter jurisdiction. Firstly whether the allegations are sufficient to support a finding of subject matter jurisdiction (facial validity), and secondly, whether the facts supporting subject matter jurisdiction (factual validity) are present. When faced with a factual challenge (as here) over the subject matter, the district court failed to move beyond the allegations of the complaint's relevant evidence, including affidavits and testimonies.

In fact, the District Court and the Court of Appeals for the Fourth Circuit's failure to make the crucial distinction between a facial validity and a factual validity on his conviction and sentence relieves it of subject matter jurisdiction. McNutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178, 56 S.Ct. 78, 80 F.3d 1135 (1936)(must allege facts supporting subject matter jurisdiction). Vantage Trailers v. Beall, Corp., 567 F.3d 745, 748 (5th Cir. 2009)(must show subject matter jurisdiction by preponderance of the evidence).

A facial attack is a challenge to the sufficiency of the pleading itself. On such a petition, the court must take the material allegations in the petition as true, and construed in the light most favorable to the non-moving party. A factual attack, as Charles A. Davis does here, is not a challenge to the sufficiency of the pleading's allegations, but a challenge to the factual existence of subject matter jurisdiction.

"Jurisdiction to determine jurisdiction refers to the power of the court to determine whether it has jurisdiction over the parties and subject matter of a suit. If the jurisdiction of a federal court is questioned, the court has the power, subject to a review, to determine the jurisdictional issue. "Enright, law of federal courts section 16, at 50 (2d ed. 1970) Atl. Las Olas, Inc v., Joyner, 466 F.2d 496, 498( 5th Cir. 1972). Thus, upon a challenge to subject matter jurisdiction, the court has jurisdiction only to the extent of determining the issue of subject matter jurisdiction, to hold otherwise, would imbue federal courts with the power to decide any case or controversy, whether existed or not.

## CONCLUSION

WHEREFORE, Premises considered, Petitioner Charles A. Davis, respectfully moves the Associate Justice with Supervisory Control over the Fourth Circuit Court of Appeals to grant his request for relief.

Date: May 12, 2019.

Respectfully Submitted,

Charles A. Davis