

On petition for Extraordinary Writ

In the Supreme Court of the United States

Frank F Ashley

V.

Darin Young

Motion to Proceed

as Veterans, Including
brief for Rule 20.1

Petitioner, Frank F Ashley, moves the Court for an order permitting him to proceed in the Court as a Veteran

Petitioner should be permitted to prepare papers under Supreme Court Rule 33.2 because:

Petitioner's veteran status is established in the accompanying declaration set out below, as required by Supreme Court Rule 40.1.

Petitioner's petition for Extraordinary Writ is being filed with this motion & declaration.

The nature of the question to be presented by such a petition for extraordinary ~~writ~~ writ is as follows

Definition of Right to a Fair Trial:

Central to the right to a fair trial, guaranteed by the Sixth & Fourteenth Amendments, is the principle that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on the grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial.

Personal Bias - Three guidelines have been established for courts to follow when applying 28 USC § 455.

First courts must use an objective standard for evaluating bias. Second, a court's review should entail a careful consideration of context, that is, the entire course of judicial proceedings, rather than isolated incidents. Third, courts must consider the origin of a judge's alleged bias, a consideration that is also known as the extrajudicial source rule. That rule more or less divides events occurring or opinions expressed in the course of judicial proceedings from those that take place outside of the litigation context. ~~of~~

Did Ashley receive a fair trial, based on the South Dakota Supreme Court decision - *In Re Formal Inquiry Concerning Fuller*, 2011 SD 22?

Ashley contends he has come to this Court for its aid to exercise its discretionary powers & appellate jurisdiction, as he has exhausted all remedies he can think of. As this Court will see he has filed extensively & has been diligent in his pursuit of relief in both state & Federal Courts, only to come to the conclusion that only an extraordinary writ can remedy the situation he is currently in...

Background

Ashley's direct appeal was denied by the SDSC on 1 JUNE 2010. He obtained a new attorney in Jan 2011 as his first attorney was ineffective in his defense. His new attorney John Murphy had approximately 180 days to file his state habeas so he would not be time barred for a federal habeas if needed later. Through several phone conversations about time, Murphy did not file Ashley's habeas until Nov 2011. After 3 requests by the state for a continuance & obtaining an order for an evidentiary hearing by the SDSC, Ashley finally received an evidentiary hearing on 19 NOV 2013 & consequently denied on 25 FEB 2014, but was not notified of the decision until May 2014, by judge Mandel. Murphy filed for Ashley's Fed habeas in late 2014 (14-5080) which was denied as untimely & equitable tolling did not apply, according to Magistrate Duffy.

Ashley argued in his state & federal habeas petitions (Grand II Federal) about the information he had about Fuller's misconduct as a judge during his trial (ex parte contact with 2 state witnesses & the dragging of his thumb across his throat stating, "Don't worry, we gonna hang him."). Mandel stated Ashley could not substantiate his allegations against Fuller & as history shows, denied! When Magistrate Duffy wrote her Report & Recommendations for Ashley's Fed habeas, his attorney Murphy never responded on Ashley's behalf to argue against it.

Here is the point Ashley has been trying to make since he requested a COA from the 8th Cir of Appeals (16-1278) which was also denied. During research as a Pro Se ~~litigant~~ litigant for that case, Ashley found for the first time In Re Formal Inquiry Concerning Fuller 2011 SD 22! Almost 5 years after the South Dakota Supreme Court's decision was made, and he was not relying on a paid attorney to look out for his interests.

If Ashley had known about its existence, I'm sure he would have made it known to the habeas courts in his arguments as it clearly, concisely, substantiates his claims against Fuller. It is inconceivable for Ashley to believe that the state, trial court & even his own attorney could feign ignorance to its existence & not make

any reference to its existence & not make any reference to the ruling in either his state or federal habeas motions / brief etc!... In all his subsequent filings in the federal courts, the state attorney general's office argued his (Fuller's) conduct was "so-called."

Due diligence is what brought us here today! It is clear there was no fair & impartial trial & any reasonable fact finder would support this to be true after reading In Re Formal Complaint Concerning Fuller. The state has argued that Ashley has brought up Fuller from the beginning; this is true - except Ashley never brought up In Re Fuller until he was made aware of its existence after researching for his COA Probe; Is that not new evidence?

Ultimately, quoting the South Dakota Supreme Court's decision "This is the first time in its 121 year history that this Court has been called upon to render judicial discipline of this severity upon one of the judges of this state." Fuller's willful misconduct was not an isolated incident, but continued throughout his tenure on the bench.

In conclusion, we come to the architect of this mockery of justice; A.P. "Pete" Fuller...

Ashley contends whether by malicious intent or anger issues paired by impertinence, Fullers proclivities are clear throughout his tenure as a 7th Circuit judge. The question to answer is would the outcome of Ashleys trial been different? Impossible to know since we are here because of Fullers actions, and we know now was replete from the beginning of Ashleys case & countless others he presided over.

The state & federal courts have had ample opportunity to fix this issue & have failed miserably.

In the end Ashley can only come to one conclusion that he is aware of; A vacate of his conviction, as the statute of limitations has already passed for his alleged crimes.

Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true & correct. A copy of this has also been sent to the attorney generals office (SD).

Submitted respectfully on this 25th day of Nov 2019.

Frank J. Ashley

Declaration of Frank T Ashley

Pursuant to ²⁸ USC 1746, I declare under penalty of perjury that the following is correct:

My name is Frank T Ashley. I am over the age of 18. I reside @ the South Dakota State Penitentiary, PO Box 5911, in Sioux Falls, South Dakota, 57117-5911. I am fully competent to make this declaration and I have personal ~~kn~~ knowledge of the facts stated in this declaration & they are true & correct.

I am a veteran within the meaning of Supreme Court Rule 40.1 as established by the certified copy of the Dept of Veterans Affairs dated 13 OCT, 17 establishing veteran status, eg Honorable Discharge dated 30 JUN-2007, a true & correct copy which follows as exhibit 1.

Submitted on 25 mar 19, Frank T Ashley

**Additional material
from this filing is
available in the
Clerk's Office.**