

Supreme Court, U.S.
FILED

MAR 28 2019

OFFICE OF THE CLERK

No. 18-9682

IN THE
SUPREME COURT OF THE UNITED STATES

ANDRE ALLAN FORBES — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS for the SEVENTH CIRCUIT, CHI., IL
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDRE ALLAN FORBES
(Your Name)

USP TERRE HAUTE, P.O. BOX 33
(Address)

Terre Haute, IN 47808
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1) Whether "rubber stamping" defendant's motion with a order of "Denied" by an Court of Appeals are unconstitutional when Appeals Courts have not reviewed the merit(s) violates the Fifth Amendment of the United States Constitution of the Due Process doctrine ?
- 2) Whether defendants have a constitutional right under the Fifth Amendment of the United States Constitution of Due Process have the right to a safeguard doctrine that guarantees every defendant's motion submitted to the Appeals Court are reviewed of its merit(s) by an actual judge and not rubber stamped?

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	4

INDEX TO APPENDICES

APPENDIX A : United States Court of Appeals, page 1

APPENDIX B : United States Courts of Appeals, page 2

APPENDIX C : United States district Court, page 3 ~~2~~ (2 of

APPENDIX D : United States district Court, page 4 (2 of 2 pages)

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES: Buck v. Davis 137 S.Ct. 759 (2017).

PAGE NUMBER 4

STATUTES AND RULES :

United States Constitution
Fifth Amendment

United States Code
28 U.S.C. § 2255
28 U.S.C. § 2253

OTHER

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 A, B 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 C, D 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 _____ 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 _____ 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.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JANUARY 25, 2019.

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 _____. A copy of that decision appears at Appendix _____.

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

United States Constitution, Amendment Fifth

Statutes: 28 U.S.C. § 2255

The Fifth Amendment to the United States Constitution provides in relevant part: " In all criminal prosecutions the accused shall.. have " No person shall be held to answer for capital offense or other infamous crimes inless on a presentment or indictment of a grand jury, except in cases arising in the land or navel forces, or in the milita, when in actual service, in time of war or public danger; nor shall any person be subject to the same offense tobe a witness against himself, nor be deprive of life, libert, or property, without due process of law, nor shall property be taken for public use without just compensation."

STATEMENT OF THE CASE

On February 9, 2017, the Court denied Defendant Andre Forbes' petition pursuant to 28 U.S.C. § 2255 [DE 151]. The Court also denied the issuance of a certificate of appealability ("COA"). [DE 151 at 11].

On July 31, 2017, Defendant Andre Forbes filed a notice of appeal from the denial of his motion under 28 U.S.C. § 2255 and an appeal for COA. The Court of Appeals Denied Forbes's request for a COA August 9, 2017.

On May 7, 2018, Defendant Andre Forbes filed a Motion with the District Court for reconsideration of the order denying the issuance of COA, based on Supreme Court recent ruled in Buck v. Davis 137 S.Ct. 759 (2017). [DE 172]. On May 29, 2018, the district Court denied Forbes's motion for reconsideration. [DE 178].

On January 15, 2018, Forbes filed a notice of appeal from the denial of his COA and the Court of Appeals Misconstrued the notice as a motion under 28 U.S.C. § 2255, not review under a new Supreme Court ruling of handling COA. Defendant Andre Forbes's motion for COA was "rubber stamped" "Denied" without reviewing the merit of erroneous standard misapplied. Decided January 25, 2019, Denied.

REASONS FOR GRANTING THE PETITION

There is a conflict among the Circuits and the Defendants on the exact point involved in this case. The Circuits has a long line of cases that have been "rubber stamped" (mostly unreported and many may have brought in *propria persona*). In this case, This Court have pointed out that the standard the district court is called upon to issue certificate of appealability is flaw and incorrect. In *Buck*, the Supreme Court corrected this problem and clarified the standard for granted COA. The Supreme Court held that the COA is not coextensive with a merits analysis, "the only question is whether the applicant has shown that jurist of reason could disagree with the district court's resolution of his constitutional claims or that jurist could conclude the issue presented are adequate to deserve encouragement to proceed futher. *** when a court of appeals sidesteps the COA process by first deciding the merits, it is in essence deciding an appeal without jurisdiction."

Judical precedent flatly prohibits such a depature from the procedure prescribed by USC § 2253.

A remand for COA granted in this case of the "rubber stamped" denial would promote such defendants-wide vigilance, not to mention the insistence of fairness which undergirds the Due Process doctrine.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andre Forbes

Date: 3-28-19