

19-5186

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUL 02 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Mauricio Daniell Warner — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mauricio Daniell Warner
(Your Name)

P.O. Box 14500/Federal Medical Center
(Address)

Lexington Ky 40512
(City, State, Zip Code)

(Phone Number)

(g)

QUESTION(S) PRESENTED

(1) Did the Appeal Court err in making a merits ruling on Warner's Application for a Certificate of Appealability and for failure to even consider the application for COA that Warner placed before the Court.

(h)

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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CASES	PAGE NUMBER
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STATUTES AND RULES

OTHER

(k)

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 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 is unpublished.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 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 is unpublished.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 is unpublished.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 is unpublished.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 3/13/2019.

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: 4/25/2019, and a copy of the order denying rehearing appears at Appendix A.

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

28 USC Sec. 2253

STATEMENT OF THE CASE

Mauricio Warner is a federal prisoner serving a 240 month total sentence after a jury convicted him of 50 counts of fraud. He moved the Appeal Court for Certificate of appealability (COA) and leave to proceed in Forma Pauperis ("IFP") in his appeal of the District Court's denial of his 28 USC Sec. 2255 motion to vacate, raising 19 total claims for relief, and the denial of his subsequent motion for Reconsideration under Fed. R. Civ. P. 59(e). To obtain a COA a movant must make "a substantial showing of the denial of a Constitutional right." The Appeal court denied Movant's Application For Certificate of Appealability on March 13, 2019, upon which the Appellant filed a timely motion for reconsideration. This motion was denied on April 25, 2019. The Appellant is still incarcerated and now moves this Court for a Writ of Certiorari.

REASON FOR GRANTING THE PETITION

Miller-El V. Cockrell, 537 U.S. at 327, made clear: "This threshold inquiry does not require full consideration of the factual or legal basis adduced in support of the claims. In fact the statute forbids it. Accordingly, a Court of Appeals should not decline an application for a COA merely because the Court of Appeals believes that applicant will not demonstrate an entitlement to relief, for (1) it is consistent with Sec. 2253 that a COA will issue in some instances where there is no certainty of ultimate relief, and (2) when a COA is sought, 'the whole premise is that the prisoner has already failed in that endeavor."

The appeal court here basically rehashed Warner's claims in his Sec. 2255 motion making its own merits determination as it went and did not even consider Warner's application for COA of why the District Court's ruling were debatable. See page 2 Where the appeals Court dealing with claims 1-2 and 3-4 of Warner's 2255 motion and his reply brief, stating: "Each of these claims was conclusory in nature and did not merit relief. Moreover, 'even if counsel was deficient' in not taking these actions, Warner did not allege how counsel's action would have changed the outcome of the proceeding. See Order denying COA at page 2.

At page 3 of this same order "claim 1 was properly denied, as Warner failed to provide any evidence of what Frye would have testified about. Claim 10 correctly was denied, as the testimony of the bank witnesses would have been duplicative.

The fact of the matter is that Warner did provide evidence of what Frye would have testified to in his affidavit that was never even mentioned in the District Court's denial.

In claim 2 Warner alleged that his counsel was ineffective for failing to investigate and bring to the Court's attention issues with the Internal Revenue Service ("IRS") that tainted evidence from its investigation. Reasonable jurist would not debate the denial of this claim, 'as counsel did in fact attempt to

present this evidence at trial, but the court did not allow him to do so.' The fact of the matter is counsel never attempted to raise this argument in the Fourth Amendment context as presented at issue II of Warner's amended pleadings to his 2255 motion and his Application for a COA, citing United States V. Piper, 681 F. Supp. 883 (M.D. Ga. 1988)(citing United States V. Tweel, 550 F.2d 297, 299 (5th Cir. 1977)).(Tweel, holds that "a consent search is unreasonable under the Fourth Amendment if the consent was induced by deceit, trickery, or misrepresentations of the Internal Revenue agent."). Tweel, F.2d at 299. See Mr. Warner's Application for COA at pages 2,3,4,5. This issue was never ruled on by the District Court, but it finessed its way around this issue and the holding in Tweel, which is binding precedent in the Eleventh Circuit under Bonner v. city of Pritchard, 661 F.2d 1206 (11th Cir. 1981(en banc), the Eleventh Circuit adopted as precedent the decisions of the former Fifth Circuit issued before October 1, 1981. See also page 10 of Warner's amended pleadings and memorandum of Law. The Eleventh Circuit also conveniently sidestepped this issue by not addressing Warner's Application for Certificate of Appealability. There can be no doubt Warner is entitled to relief under this issue alone in that it is debatable among jurist of reason, and deserves encouragement to proceed further.

At page 3 of Order denying COA: "In claim 5, Warner argued that his counsel was ineffective for failing to investigate and argue that there was 'no nexus on wire fraud convictions.' Reasonable jurist would not debate the District Court's denial of this claim, as the record reflected that the government presented evidence at trial that

REASON FOR GRANTING THE PETITION-3

the wire fraud transactions crossed state lines." The government's proof at trial that these transactions crossed state lines was conclusory, based on conjecture, surmise, and assumption not proof beyond a reasonable doubt. See Warner's Application for COA at pages 7, 8, and 9.

At page 5 of Warner's Application for a COA Mr. Warner offers undisputed facts that the District court erred in not granting an evidentiary hearing on his 2255 motion. The Eleventh Circuit's order denying a COA is void of any reference to this issue. See Application for COA at 5, 6, and 7. See also Buck V. Davis, 137 S. Ct. 759 (2017): "The Certificate of appealability (COA) inquiry, we have emphasized is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that that "Jurist of reason could disagree with the District court's resolution of his constitutional claims or that jurist could conclude the issues are adequate to deserve encouragement to proceed further." Id. at 327, 123 S. Ct. 1029, 154 L.Ed. 2d 931. This threshold question should be decided without "full consideration of the factual or legal basis adduced in support of the claims." ID., at 336, 123 S. Ct. 1029, 154 L.Ed. 2d 931. "When a court of Appeals sidesteps [the COA] process by first deciding the merits of an appeal, and then justifying its denial of the COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction." Id., at 336-337, 123 S. Ct. 1029, 154 L.Ed. 2d 931.

Should not the same rationale apply when the appeal court sidesteps reviewing the Application for Certificate of Appealability at all.

REASON FOR GRANTING THE PETITION-4

It is Warner's contention that a GVR is in order in the case at bar with instruction to grant the COA and deal with Warner's arguments he presented in his Application for a COA.

Due to the fact that the Appeal Court did not even address Mr. Warner's Application for Certificate of Appealability a grant vacate and remand is in order in this case and instruction for the Eleventh Circuit to grant the COA and allow Warner an appeal on his 2255 motion.

Respectfully Submitted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mauricio Warner

Date: 6-28-19