

19-6997
No.: _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

GARY BAILEY #119202-Petitioner

Supreme Court, U.S.
FILED
DEC 11 2019
OFFICE OF THE CLERK

vs.

Darrel Vannoy, et al-Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
U. S. WESTERN DISTRICT COURT, SHREVEPORT, LA.

PETITION FOR WRIT OF CERTIORARI

GARY BAILEY #119202
GENERAL DELIVERY, L.S.P.
ANGOLA, LOUISIANA 70712

QUESTIONS PRESENTED

1. Does the integrity of our judicial system rely on truth and justice?
2. The question is, does the record reflect an honest and just judicial system?

LIST OF PARTIES

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.

Judge Michael O. Craig
P. O. Box 310
Benton, La. 71006

Asst. D. A. John Lawrence
P. O. Box 69
Benton, La. 71006

Judges Hornsby and Walters
(Electronic Filing)
U. S. Western Dist. Court
300 Fannin St.
Shreveport, La. 71101

Deputy Clerk, D. Johnson
U. S. 5th Cir. Court of Appeals
600 S. Maestri Place
New Orleans, La. 70130

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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.

OPINION BELOW

This case comes from Federal Court.

The opinion of the United States Court of Appeals appears at Appendix "A" to the petition and it is unknown if it has been published.

The opinion of the United States District Court appears at Appendix "B" and "C" to the petition and it is unknown if it has been published.

JURISDICTION

X Case from Federal Court

The date on which the United States Court of Appeals decided my case was 9/30/19. This Honorable Court has the authority to entertain this writ application under 28 U.S.C. § 1251 and the First Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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<u>First amendment to the United States Constitution</u> , right to petition the government for redress and grievances; access to law and court.....	<u>9</u>
<u>Fourteenth Amendment to the United States Constitution</u> , right to Due Process and Equal Protection of the laws.....	<u>10</u>

STATEMENT OF THE CASE

Under 28 U.S.C. § 2254, habeas corpus was filed in the U S, Western District Court, Shreveport, La. With joint motion for production on 12/24/14. Mag. Judge Hornsby denied production on 3/24/15, habeas relief was denied on 2/15/18. Judge Walters denied C. O. A. on 3/26/18. The U.S. 5th Circuit Court of Appeals denied relief on 1/15/19.

Due to a criminal conspiracy, I filed a motion for relief under Fed. R. Civ. P. rule 60(b), and motions for recusal of both Judges (Exhibit A thru C), is evidence supporting this fact. Both federal judges conspired to cover for Carolyn Wilson, Court Reporter in the 26th Judicial District Court, Benton, La., whom falsified legal documents to hide the fact that Robert Smith, A. D. A., schooled his only two witnesses to commit perjury to convict an innocent man for refusing to take a plea deal for a crime I didn't commit.

On Direct Appeal I requested the record be supplemented with transcripts of proceedings of 5/15/12, to prove this fact. The request was granted, (Exhibit-H, pg. 1). The documents were received and filed in the record, I was sent a courtesy copy, (Exhibit-H, pg. 4). Upon receipt of the documents I quickly saw they were intentionally falsified. I notified both courts and requested a correct copy of the documents be filed in the record, (Exhibit-H, pg.'s 2 and 3).

Instead of the 2nd Circuit Court of Appeals stopping the proceeding and correcting the matter, the court pulled the known falsified document out of the record and lied about it in their judgment, see (Exhibit-A, pg.'s 14 and 15), stating: "...May 15, 2012, that there is no transcript of a hearing on that date..." I sought relief on the issue of falsified documents via state post conviction, where an evidentiary hearing could be held to fully develop the facts. A. D. A. John Lawrence lied in his objections to the issue of falsified documents, stating; the issue was raised and fully litigated on appeal, (Exhibit-D, pg.'s 4 and 5). Trial Judge Michael Owens, "played along" with the A.D.A. (Exhibit-D, pg.'s 1 and 2).

Evidence that both lied to cover for the court reporter falsifying the documents is (Exhibit-A) The issue of falsifying documents arose on appeal, it could not have logically been raised or litigated, as the issue will not be found in the appeal court's judgment. An Evidentiary Hearing would have proven she falsified the documents. If not, why did they lie? It is documented fact that both judges obstructed justice and brought fraud upon the court, upon filing 2254 application in the U.S. District Court the issue of falsified documents was raised, with a joint motion for production of the audio recording of 5.12.12. The state filed answer, intentionally waiving all exhaustion rights. Judge Hornsby denied relief, for habeas corpus, regarding falsified documents, stating: (Appendix-C, pg. 7), "...the record reflects a reasonable decision," referring to (Appendix-D). Due to the aforementioned documented facts and evidence, Judge Hornsby just conspired with the state, Obstruction of Justice. Mr. Hornsby believes it is a reasonable decision to bring fraud upon the court! Reasonable enough to cover for the state's criminal conduct.

The fact of the document being falsified is not the issue at hand. The issue at hand is the documented evidence provided that proves Federal Judicial Officials lied to cover it up. This is criminal!

R.S. 14:130.1, Obstruction of Justice

R.S. 14:134, Malfeasance in Office

Further violating;

18 U.S.C. §371, Conspiracy to Commit Offense or defraud the U. S.;

18 U.S.C. §1001, Statements or entry in general;

18 U.S.C. §1505, Obstruction of Proceedings before the departments, agencies or committees;

18 U.S.C. §1506, Theft or alteration of record or process;

18 U.S.C. §3237, Offense begun in one district and completed in another.

The denial of the rule 60 (b) motion is clearly erroneous. Fed.R.Civ. 60.(b), "Mistake....," I was simply giving the court a "loophole" to escape the other sections under rule 60.(b), but now I am dropping it, there was no mistake the court's actions were intentional and malicious. Further dropping section 2 of rule 60.(b).

Fed.R.Civ.P. rule 60(b),(3), Fraud (whether previously called intrinsic or extrinsic), "misrepresentation, or conduct of an adverse party." Clearly the language does not apply in the instant matter. When Legislation enacted "Fraud" into rule 60,(b), I am quite sure it was incorporated into the rule it was intended to refer to an adverse party in a civil action, not Federal Judges bringing Fraud upon the Court.

This also is not intrinsic or extrinsic, this fraud in fact, "[Positive Fraud], actual fraud, deceit, concealing something or making a false representation with an evil intent [scienter] when it causes injury to another." In the interest of truth and justice, an honest judicial system would grant relief to ascertain truth, not make excuses for their own conduct or the lower courts.

Fed.R.Civ.P. rule 60(b),(3), "The judgment is void." (Appendix-C, pg. 5), the court denied relief stating: "...Bailey's arguments have not illustrated that the court acted in a manner as to deny due process." Clearly the courts excuse is without merit, I have shown that the court has denied due process several times over.

Examples:

1. The justice system is to be just and honest, not lie, deceive or manipulate and make excuses.
2. Federal judges violated the aforementioned state laws and United States Code.
3. Conspired with the state to cover for their criminal judicial misconduct.
4. Obstructed Justice, brought Fraud Upon the Court.
5. In reality both Federal Judges have denied me access to law and court, bu handling this proceeding as they have, violating my 1st Amendment right to do so. The system is to be honest and just, this is law and court.

I have illustrated these facts throughout the rule 60,(b) motion, (Exhibit-1). Clearly meeting Callon Petroleum Co. v. Frontier Ins. Co., 351 F.3d 204, 208 (5th Cir. 2003), "...or if otherwise acted in a manner inconsistent with due process." The court cited this case, then contradicted it. Further, Taylor v. Colvin, 616 F. Appx. 685 (C.A. 5 (La.) 2015), states the same, denial of due process. Clearly the court is making groundless excuses to avoid the truth.

Fed.R.Civ.P. rule 60(b)(6), "Any other reason that justifies relief." The requirement under this section is that extraordinary circumstances exist, Hess v. Cockrell, 281 F.3d 212, 216 (5th Cir. 2002). (Appendix-C, pg. 5), the court denied relief stating that, "I did not demonstrate extraordinary circumstances required for relief under this section." This is nothing but deception! An ungrounded excuse, due to the aforementioned documented facts. If two Federal Judges obstructing justice, covering for the states unethical criminal conduct, intentionally disregarding the facts presented and making judgments that contradicts the record does not demonstrate extraordinary circumstances, what does? Especially of an innocent man, with a natural life sentence, behind a stolen window a/c unit, what is? If I had a paid attorney, no court would be conducting such a miscarriage of justice. A criminally corrupt court system is clearly extraordinary circumstances justifying the reopening of the final judgment in my habeas proceeding. The extraordinary circumstances standard, "requirement," has been established since, Ackermann v. United States, 340 U. S. 193, 199, 71 S. Ct. 209, 95 L.Ed 207 (1950). These issues, specially of an innocent man, clearly meets this requirement.

Due to the aforementioned facts, at the time the rule 60,(b) motion was filed. I filed a motion for recusal of Judges Hornsby and Walters, Exhibits 1 and 2 standing on 28 U.S.C. §144 and 445(a), citing: Liteky v. U. S., 510 U.S. 540, 548 (1994).

Clearly, the facts and evidence previously presented, the bias and prejudicial conduct required recusal of both Judges meeting 28 U.S.C. §445 (a). (Appendix-C, pg. 5), the court stated, "that section 144 does not apply because I am not represented by counsel." Clearly, a deceptive tactic, any schooled judicial official, to a layman knows counsel has nothing to do with it.

The language of 28 U.S.C. §144, is clear, "whenever any party to a proceeding in a district court... that Judges shall proceed no further." The language is clear, "any party to a proceeding," I am a party, I filed the motions, clearly showing a personal bias and I have been shown substantial prejudice.

As stated, the issue of whether the documents were falsified is irrelevant in this instance. What is

relevant is the fact that both federal judges lied to cover it up.

Judge Walters addressed a motion for recusal against himself, with documented evidence, proving criminal conduct. If I am wrong, what does he have to hide? the court further stated, (Appendix-C, pg.3), "that I did not meet the set standard for recusal of the Judges under section 455." Due to the aforementioned facts, I did.

Upon denial of all motions, I requested a C.O.A. and filed objections (Exhibit-4) Judge Walters abused his discretion by addressing the issue and the logic in his denial, Appendix-B). I filed a petition for C.O.A. in the United States 5th Circuit Court of Appeals in accordance with F.R.A.P. rule 5, "appeal by Permission," Connie Brown informing me that if I don't file a motion and separate brief the appeal will be dismissed under rule 42, (Attached to Exhibit-6).

I filed a motion to proceed on original petition; (Exhibit-6); informing me that if I don't file the motion and separate brief the appeal will be dismissed and she is not filing the motion she's addressing it as a letter, (Exhibit-7). Clearly, both Clerks are abusing their authority, conspiring with the lower courts to keep the documented evidence of a criminally corrupt court proceeding out of the U.S. 5th Circuit Court of Appeals.

On 10/4/19 received a letter and her judgment, (Appendix-A), stating: "Under 5th Circuit Rule 42.3, the appeal is dismissed as of September 30, 2019 for want of prosecution. The appellant failed to timely comply with the Certificate of Appealability (C.O.A.) requirements." The judgment/order is clearly deceptive on its face.

FACTS:

1. The appeal was filed in accordance with F.R.A.P. rule 5, "Appeal by Permission." This is the requirement for a state prisoner. Therefore, the requirement is met, 5th Circuit rule 42.3 cannot be applied.
2. The appeal was dismissed for not filing a document barred by the court under F.R.A.P. RULE 27, (a),(c), "Motion and Separate Brief." Under local rule 27, the Clerk can grant or deny a "motion" for C.O.A. which is contrary to 28 U.S.C. 2253, only a Judge or Justice can grant or deny C.O.A. 5th Cir. R. 42.3 cannot apply.

3. 5th Cir.R. 42.3 is voluntary dismissal, (Exhibit-6), is evidence the appeal was not a voluntary dismissal. Due to the documented evidence herein, both Ms. Brown and Ms. Johnson are simply keeping the evidence of a criminally corrupt court proceeding out of the court, clearly a conspiracy. This documented fact, abuse of discretion.

4. 5th Cir.R. 42.3, "voluntary dismissal," pertains to a party to the proceeding, the Clerk of Court is not a party. Further, the rule does not authorize a Clerk to dismiss an appeal for not violating F.R.A.P..

5. Another fact is that in the absence of a C.O.A. request, a notice of intent in itself must be demanded as a request for a C.O.A., F.R.A.P. rule 22(b); U. S. v. Kimler, 150 F.3d 429, 430 (5th Cir. 1998).

Knowing these facts, how is it lawfully, logically possible for a Clerk of Court to dismiss my appeal? For not violating Federal Rule? Even a notice of intent must be taken as a request for Certificate of Appealability. There is no judicial justification for the Clerk's actions.

The U. S. 5th Cir. Court of Appeals, Clerk of Court's Office is clearly conspiring with the lower courts to cover up, not only the states misconduct, but their own. Why is every judicial official this has been raised to done everything they can to avoid the facts and evidence presented? What are they hiding, if there is nothing to hide?

As record reflects every judicial official this issue has been raised to has done everything they can do to avoid the truth, the facts and evidence presented. Judicial Officials have disregarded Federal Rules and intentionally misapplied Federal Rules. What happened to the "Code of Ethics," and their sworn duty to uphold the law?

No Clerk of Court has any judicial justification for dismissing an appeal based on such grounds. What honest and just Court would condone such conduct?

Judicial Officials themselves are depriving me my 1st Amendment to the U. S. Const., to petition the government for redress of grievances/ access to law and court. The right clearly stands on an honest and just judicial system, where officials ensure a full and fair hearing. This situation is on par with what the court stated in, Reed v. Farlry, 512 U. S. 339, 348 (1994), in that this is a "Fundamental

Defect which inherently resulted in a complete miscarriage of justice," and is "inconsistent with the rudimentary demands of procedure."

Further, I have shown substantial violations of constitutional rights, and that this court has seen that the lower courts have abused there discretion. Clearly this court has seen the lower courts decision is debatable and wrong, Slack v. McDaniel, 529 U. S. 473 at 484 (2000), violating the 14th Amendment to the U. S. Const., right to Due Process And Equal Protection.

The aforementioned constitutional violations pertain to this entire proceeding. The lower courts have destroyed the integrity of our judicial system. When a man enters federal court screaming innocence, that the state schooled witnesses to commit perjury to convict an innocent man, providing legal documents in the record to support the factual allegations an evidentiary hearing was and is mandatory to ascertain truth and justice, with production of the audio recording of 5/15/12. There cannot even be a semblance of a full and fair hearing if the federal or state court has actually reached and decided the issues of fact tendered by petitioner, Townsend v. Sain, 372 U. S. 314, 83 S. Ct. 745, (U.S. Ill.1963). Documented fact. How can these courts so openly bluntly disregard the record and evidence provided?

Petitioner has clearly presented evidence that proves the lower courts decision is debatable and wrong, Slack, supra: Barefoot v. Estelle, 436, U. S. 880, 893, 103 S. Ct. 3383, 3394 n,4 77 L.Ed. 2D 1090 (1993).

REASON FOR GRANTING THE PETITION

Petitioner's specific relief is to grant this petition, order the record up for review under Docket No.: 15-CV-00439, from the Western District Court, Shreveport, La., review the proceedings, and order petitioner's cause reinstated, with a full and fair hearing, in that being an evidentiary hearing with audio recordings of 5/15/12, to ascertain truth. As stated herein, the issue is whether or not Federal Judicial Officials lied to cover for the state criminal conduct, and there own.

The lower court has sanctioned such a departure of honest judicial proceedings of themselves and the lower courts, as to exercise of this courts supervisory power, Supreme Court rule-10(a). That the Court of Appeals has decided an important question of law that has not been, but should be, settled by this court, Supreme Court rule-10(c).

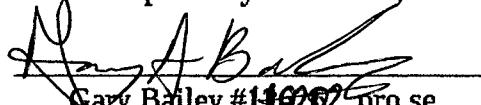
Clearly the instant matter is the importance of the public of the issue. Did Federal Officials lie to cover for the lower court criminal misconduct? Does the record reflect it? These are extraordinary circumstances. If such conduct is allowed and/or condoned then the integrity of our judicial system has been destroyed. Further, that if production of the audio recordings of 5/15/12 cannot be produced, within thirty (30) days to obtain truth, release me with prejudice.

This issue is grounded in the integrity of, not only the lower courts, but this court as well. Is it common practice to target the poor, who cannot afford paid counsel? Are pro se litigants being targeted? Would the lower courts handle this case in such a manner of I had paid counsel?

CONCLUSION

The Petition for Writ of Habeas Corpus be Granted.

Respectfully Submitted,


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Date: 11/24/19