
IN THE
SUPREME COURT OF THE UNITED STATES

Kevin Dewayne Moore
Petitioner

v

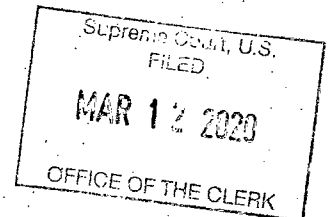
UNITED STATES OF AMERICA
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING, PRESENTED
TO JUSTICE SOTOMAYOR

Petitioner, Kevin Moore (Mr Moore), pro se, is presenting this Petition for Rehearing in good faith. It is not any type of delay tactic. The issues presented within this petition, have not been adjudicated on their merits. Mr Moore, who is not an attorney, nor has he had the assistance of a trained/schooled/licensed attorney, has presented this petition to the best of his ability and knowledge, in order to comply with Supreme Court Rule 44.

ORIGINAL



Mr Moore avers that the issues presented, to this court, are serious violations of the Constitution, the United States Code (USC)-federal law/statutes, Fed.R.Crim.P. (FRCrP) Rules. It contains violations of jurisdiction.

The violations in questions 1 and 2, of the Writ, are abuse of discretion issues. The violations in questions 3 and 4, of the Writ, are constitutional, jurisdictional, USC and FRCrP Rules, which have: i) NEVER been adjudicated on the merits; ii) NEVER had the evidence presented denied or overcome, the assistant United States Attorney (AUSA) has NEVER denied these facts, issued a statement or presented contradicting evidence-silence.

On March 9, 2020, Mr Moore received this Court's denial of his Writ of Certiorari. The denial states that Mr Moore's motion for leave to proceed in forma pauperis is denied, and his writ is dismissed, pursuant to rule 39.8. Rule 39.8 states that:

"If satisfied that a petition for a writ of certiorari, jurisdictional statement,...is frivolous or malicious, the court may deny leave to proceed in forma pauperis."

Mr Moore avers that he has thoroughly checked his writ and has been unable to find any reason or justification for this court to state that his writ or jurisdictional statement is "frivolous or malicious."

The writ complies with the requirements, listed in Rule 14, as the writ contains all parts specified in that rule. Mr Moore has been unable to locate where he has not complied with the rules of this court, to the best of his ability, knowledge and understanding.

I CASE OR CONTROVERSY

"It is very important to our treasured system of justice that our courts be open to anyone with a case or controversy presenting a justiciable claim. Ready access to our court system, including access by those who are incarcerated, is recognized as a valuable constitutional right, one to be carefully guarded. Complaints about the validity of incarceration or the treatment accorded inmates are entitled to timely and meaningful consideration." HOLLOWAY v HORNSBY, 23 F 3d 944, 946 (CA5 1994)(Opinion by Chief Judge Politz).

Mr Moore avers that he has been making good faith efforts/attempts to use this Country's "treasured system of justice," all to no avail.

He has presented a case or controversy with a justiciable claim: i) his trial judge has continually refused to adjudicate the merits of the constitutional, jurisdictional, USC and FRCrP Rules violations claim; 2) the AUSA-Ms Aisha Saleem (Saleem) was not a duly appointed or authorized attorney for the government, during the relevant time period, thereby, violating RFCrP Rules 6(d)(1) and 7(c)(1), rendering Mr Moore's indictment(s) invalid requiring dismissal with prejudice. The files and records support these facts, claims.

Although the constitution does not fully explain what is meant by "[t]he judicial Power of the United States," Art III, §1, it does specify that this power extends only to "cases" and "controversies," Art II, §2. And "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *RAINES v BYRD*, 521 US 811, 818 (1997).

This court's cases have established that the "irreducible constitutional minimum" of standing consists of three elements. *LUJAN v DEFENDERS OF WILDLIFE*, 504 US 555, 560 (1992).

Mr Moore avers that for him to qualify for a "case or controversy," he must establish that: 1) he suffered an injury in fact. He has established that requirement by the undenied fact that his indictment(s) are invalid; he is, therefore, unconstitutionally and illegally incarcerated, due to Saleem not being an attorney for the government. 2) That is fairly traceable to the challenged conduct of the defendant. He has established this requirement, also due to the unconstitutional and illegal actions of the Department of Justice (DOJ) and/or Saleem. 3) That is likely to be redressed by a favorable judicial decision. *Id.*, at 560-561; *FRIENDS OF THE EARTH INC.*, 528 US at 180-181. He has established this requirement, as all any court, judge or justice thereof has to do is adjudicate the merits of the facts and evidence presented, and his indictment(s) will be dismissed with prejudice.

Mr Moore avers that he has established standing (case or controversy), as this "injury" is affecting him in a personal and individual way. *LUJAN*, *supra*, at 560, n 1.

II PAUPERIS STATUS

In 1892, Congress enacted the in forma pauperis (IFP) statute, now codified at 28 USC §1915, "to ensure that indigent litigants have meaningful access to the federal courts." NEITZKE v WILLIAMS, 490 US 319, 324 (1989). In 1996, Congress enacted the PLRA, which installed a variety of measures "designed to filter out bad claims [filed by prisoners] and facilitate consideration of the good." COLEMAN v TOLLEFSON, 135 S Ct 1759 (2015)(quoting JONES v BOCK, 549 US 199, 204 (2007)).

28 USC §1915 provides for sua sponte dismissal of a complaint if the court finds that it (1) is frivolous or malicious, (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief.

Mr Moore avers that this court's denial only states that his writ is "frivolous or malicious," pursuant to rule 39.8. Therefore, it has been established, by this court, that his claim is one in which relief may be granted; that he is not seeking monetary damages.

Mr Moore avers that he will only address the "frivolous or malicious" statement, by this court.

III MR MOORE'S CLAIMS ARE NOT TO BE CONSIDERED FRIVOLOUS

QUESTION PRESENTED: How can a claim be frivolous when it is supported with undenied facts and irrefuted documented evidence-provided by government departments/agencies?

FRIVOLOUS- "Lacking a legal basis or legal merit; not serious; not reasonably purposeful." Black's Law Dictionary, 10th Edition.

A complaint is frivolous when it "lacks an arguable basis in law or in fact." NEITZKE v WILLIAMS, 490 US 319, 325 (1989). A court may dismiss a complaint as frivolous when it is based on an indisputable meritless legal theory or when the factual contentions are "clearly 'baseless.'" DENTON v HERNANDEZ, 504 US 25, 32 (1992). The latter category encompasses allegations that describe "fanciful, fantastical, and delusional" scenarios, or that "rise to the level of the irrational or wholly incredible." Id, at 33.

Mr Moore avers that this court must always liberally construe

pleadings filed by pro se litigants. ERICKSON v PARDUS, 551 US 89, 94 (2007)(noting pro se pleadings "must be held to less stringent standards than formal pleadings drafted by lawyers.").

Mr Moore avers that the claim(s) presented, under the most differential view this court decides to use, clearly shows that his claim-regarding Saleem, is legally and factually sound, valid and meritorious, as he has presented undenied facts, with supporting legal authority for his claim, as well as documented evidence. Thus, showing that his claim is not "fanciful, fantastical, and delusional," nor is it "irrational or wholly incerdible." Furthermore, his factual contentions are clearly adequate to support his cognizable claim; that the factual allegations are supported by more than just conclusory statements, and he has demonstrated the existance of a reasoned, non-frivolous argument and the facts and evidence support the claim presented.

Mr Moore avers that this claim-regarding Saleem, does not meet the definition of "frivolous" and this court's denial cannot stand. Mr Moore avers that the above applies to the recusal of O'Connor, as the record clearly supports the facts presented, requiring recusal of O'Connor.

IV MR MOORE'S CLAIMS ARE NOT TO BE CONSIDERED MALICIOUS

QUESTION PRESENTED: How can a claim be malicious when the individual(s) being presented in the complaint have placed himself/herself into the position to be "injured," due to his/her unconstitutional and illegal actions, when all Mr Moore is doing is bringing these actions into the light of justice?

MALICIOUS- "Substantially certain to cause injury;" "Without just cause or excuse." Black's Law Dictionary, 10th Edition.

Mr Moore avers that had O'Connor performed his judicial duty or obligation, he would not have had to file the recusal motion for O'Connor's continued refusal to adjudicate the merits of his claim.

Had the Appellate Court compelled O'Connor to recuse himself or to adjudicate the merits of his claim, then Mr Moore would not have had to file this Writ to this Court. Mr Moore has done nothing

more than make good faith efforts/attempts to get O'Connor to perform his judicial duty. All to no avail. Mr Moore did NOT force or compell O'Connor not to do his job.

Mr Moore avers that had Saleem complied with the Constitutional and USC-federal law/statutes, in 2003- the first case he could locate on Saleem, when she started going into the grand jury room- while the grand jury was in session, in violation of FRCrP Rule 6(d)(1); or before she started signing indictments, in violation of FRCrP Rule 7(c)(1), Mr Moore would not be filing motions in the courts, in his continued good faith efforts/attempts to have his invalid indictment(s) dismissed with prejudice, so as to stop his continued unconstitutional and illegal incarceration.

Mr Moore avers that there is nothing "malicious" about attempting to get justice. There is no other reason for him to file these motions- he is unconstitutionally and illegally incarcerated on invalid indictment(s). This is not an improper purpose, nor is it without probalble cause to present these violations by Saleem and/or O'Connor to the courts.

"The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect." Black's Law Dictionary, 10th Ed.

Mr Moore avers that he has been and still is attempting to employ the "legal process" for its original and daily purpose- to get the court to acknowledge that: i) O'Connor has continually refused to adjudicate the merits of the facts and evidence- regarding Saleem, that has been placed before him, just as it has been placed in front of this court; ii) due to Saleem's unconstitutional and illegal actions, his indictment(s) are invalid requiring dismissal with prejudice. The record fully supports these facts. Therefore, Mr Moore is not purposely or intentionally wishing to cause injury to these individuals, it is just a result of THEIR OWN ACTIONS that are being brought into the light of justice, that may cause their injury.

V
DISMISSAL OF INVALID INDICTMENT(S)

Mr Moore avers that he has been able to acquire the Appointment Affidavits and Oath of Offices for the following government employees and for the trial judge, in his case: 1) Richard Roper; 2) Suzanna Sanchez; 3) Erin Nealy Cox; 4) John Parker; 5) James Wesley Hendrix; 6) Reed Charles O'Connor. (See Attachment A).

ALL of the above work/worked in the SAME building/courtroom/office, as Saleem. However, Mr Moore has NEVER been able to obtain ANY documentation on Saleem. Because of this fact, the record shows that she was NOT a duly appointed or authorized attorney for the government, during the relevant time period. Saleem has NEVER denied these facts or presented any evidence to show that she was/is an attorney for the government.

Because no evidence exists showing that Saleem is an attorney for the government, Mr Moore's indictment(s) are invalid requiring dismissal with prejudice.

Mr Moore avers that this is a valid, meritorious claim in which relief may be granted and cannot be called/labeled "frivolous" by any stretch of the imagination.

ALL officers of the United States are to be appointed in accordance with Appointment Clause of Art II, §2, Cl 2 of the Federal Constitution; NO class or type of officer is excused because of its special function. BUCKLEY v VALEO, 424 US 1 (1976); WEISS v US, 510 US 163 (1994). THIS INCLUDES SALEEM.

This court [Supreme Court] held that "one who makes a timely challenge to the constitutional validity of the appointment of an officer who adjudicates his case" is entitled to relief. RYDER v US, 515 US 177, 182-183 (1995). LUCIA v SEC, 201 L Ed 2d 464 (2018). Mr Moore has made just such a challenge, however, "this court" [Supreme Court] is not granting any relief to him.

LUCIA contested the validity of judge Elliot's appointment before the commission, and continued pressing that claim in the Court of Appeals and this court. "So what relief follows?" This court [Supreme Court] has also held that the 'appropriate' remedy for an adjudication tainted with an appointments violation is a new 'hearing before a properly appointed official. Id, at 183, 188."

Mr Moore avers that since 2012 he has presented the undenied fact that Saleem was not appointed in compliance with Art II, §2, Cl 2-Appointment Clause, of the Constitution. He has continued "pressing that claim" to the Appellate Court and into this court. HOWEVER, unlike LUCIA, Mr Moore has not been granted any relief.

Art VI, Cl 3 -Oath of Office, mandates that "ALL executive and judicial officers,...of the United States..., shall be bound by oath or affirmation..."

Constituion of the United States, with all Powers conferred by it on general government,...was voluntarily act of people of several states, deliberately done,...provisions of Art VI, Cl 3, which REQUIRES..., ALL executives and judicial officers,...of the general government, SHALL be bound by oath or affirmation. ABLEMAN v BOOTH, 62 US 506 (1859).

Mr Moore avers that the record clearly shows that Saleem has NOT taken any Oath. Without the oath and/or Appointment Affidavit, Saleem is NOT authorized to be an attorney for the government. Thus, she CANNOT be present while the grand jury is in session- or she violates FRCrP Rule 6(d)(1); she is forbidden from signing Mr Moore's indictment(s)- FRCrP Rule 7(c)(1). These violations render his indictment(s) invalid requiring dismissal with prejudice. See: QUIEL v US, CV-16-01535-PHX-JAT (9th Cir 2017); DOT v ASS'N of AM RR, 135 S Ct 1225 (2015); AGENCY FOR INT'L DEV v ALLIANCE FOR OPEN SOC'Y INT'L INC, 570 US 205 (2013); GAMBLE v US, 204 L ED 2d 322, 349 (2019); US v PROVIDENCE JOURNAL CO, 485 US 693 (1998)(in an opinion by Blackman, J., joined by Brennan, White, Marshall, O'Connor, and Scalia, JJ., the Supreme Court subsequently dismissed the writ of certiorari for lack of jurisdiction). Just like the special prosecutor, in PROVIDENCE JOURNAL, Saleem was not a "party" authorized to: 1) submit charges to the grand jury; 2) be in the grand jury room while they were in session; 3) sign Mr Moore's indictment(s). These facts have never been adjudicated, or denied.

VI

OBJECTIONS AND MOTION TO COMPEL A RESPONSE

Mr Moore is reinterating or resubmitting his objections to the Solicitor general's "waiver" and his Motion for this Court to compel

the Solicitor General to file a response to Mr Moore's Writ. By not filing a response, it is just another continuation, of another government officer/agency, that is allowing these violations to continue and Mr Moore to remain incarcerated.

RELIEF REQUESTED

Mr Moore avers that he has shown a "reasonable likelihood of this court's reversing its previous decision and granting certiorari." RICHMOND v ARIZONA, 434 US 1323 (1977); Cf FEC v NRA POLITICAL VICTORY FUND, 513 US 88 (1994), dismissed for lack of jurisdiction because the FEC was not authorized to conduct litigation in the Supreme Court.

Mr Moore is respectfully requesting that you - Supreme Court Justice Sonya Sotomayor, consider the facts and evidence presented to you, and sua sponte dismiss his indictment(s) with prejudice; remand to the lower courts to do so; recuse O'Connor and remand to the lower court to adjudicate the merits of this claim-regarding Saleem; or in the alternative, allow the relief requested in this Writ to be granted.

CONCLUSION

For any or all of the foregoing, Mr Moore prays that this Honorable Court will grant the relief requested, or any and all other relief this Court deems needed or necessary.

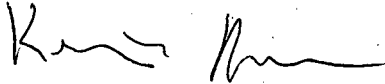
Respectfully submitted



Kevin Moore - 36285-177
P.O. Box 9000
Seagoville, TX [75159]

VERIFICATION

I, Kevin Moore, declare under the penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.



Kevin Moore

CERTIFICATE OF MAILING

I, Kevin Moore, hereby declare that a true and correct copy of this Petition for Rehearing to Justice Sotomayor, was provided to the Clerk of the Court on this 12th day of March, 2020, by placing such in the inmate outgoing legal mail system and mailed to the address listed below with first class postage affixed to it and mailed Certified mail.



Kevin Moore

RE: USDC Nos: 3:07-CR-0125-0;
3:11-CV-2540-0;
USCA no: 18-10325;
S Ct no: 19-7189

CERTIFIED MAIL RECEIPT NUMBER:

7016 2140 0000 6731 9641

U.S. Supreme Court
Clerk of the Court
Attention: J. Sotomayor
1 First Street
Washington, DC 20543

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