

19-8327

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

APR 09 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

(Beabuchi, KemeFula Charles) — PETITIONER
(Your Name)

vs.

AG of Arizona, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(Beabuchi, KemeFula Charles, #177007)
(Your Name)

(ASP/SMU, I., P.O. Box 4000)
(Address)

(Florence, Arizona 85132-4000)
(City, State, Zip Code)

(N/A)
(Phone Number)

Cover-Page

QUESTION(S) PRESENTED

1. Whether or not, Certificate of Appealability should have been issued by the District Court, when the Court of Appeals, Ninth Circuit, remanded this case on, September 27, 2019, for a Reversible Error encountered in the Court of Appeals, Final Order?
2. Whether or not, the Court of Appeals, abused its discretion by acting on a Request for a COA, when the District Court has not ruled first (See, Circuit Rule 22-1 (a))?
3. Whether or not, Court of Appeals, exceeded its Jurisdiction of the Procedural Requirements of Issuance of a COA?

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:

RELATED CASES

None, except that, on, February 5, 2020, the Petitioner dispatched, a "Corrected petition". In, Re: Ibeabuchi v. AG of Arizona, et al. USAP9 No. 19-16587, in accordance with the Clerk's Letter, dated, January 21, 2020, and, upto, now said, Petition has not been docketed, nor, the Petitioner, been notified of any action(s) taken by the Court, therein.

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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.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A 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☐ is unpublished.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 B 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☐ is unpublished.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 February 11, 2020.

☐ 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: March 6, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

DUE PROCESS: UNITED STATES CONSTITUTION AMENDMENT
4TH, 6TH, 8TH AND 14TH

AEDPA'S EFFECTIVE DATE OF APPEAL OF DISTRICT COURT'S
DENIAL OF HABEAS PETITION, 28 U.S.C. § 2253 (C)(1)
FOR CERTIFICATE OF APPEALABILITY.

STATEMENT OF THE CASE

On, February 11, 2020, the Court of Appeals, Ninth Circuit Unanalogously, transferred the Blame of its Ruling, to the Petitioner, stating that,

"The request for a Certificate of appealability is denied because appellant has not shown that ^ajurists of reason would find it debatable whether the petition states a valid claim of the denial of a Constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." " " "

Whose Ruling, was diabolical to the Court of Appeals, September 27, 2019, Remand, to the District Court, for the purpose of Issuing Certificate of Appealability (COA).

Rather, both Courts, assumed, the, Petitioner's, August 9, 2019, Motion For Request of Certificate of Appealability (COA) L.R. CivPro 7.2 (e)(1), as Motion to Reopen, time for Appeal, whose "error of recharacterization" was without the Consent of the Petitioner, therein, at-law.

Non obstante the Pro se, Petitioner's Motion For Request of Certificate of Appealability, was filed under a statute or rule, see, e.g., in, Local Rule, Civil Procedure 7.2 (e)(1), the District Court failed to notify the Petitioner nor give the Petitioner an opportunity to amend or otherwise, withdraw the Request, before recharacterizing same.

1
2 On, February 21, 2020, (See, Dkt Entry: 14) the Petitioner
3
4 filed a timely MOTION FOR RECONSIDERATION (FRAP 27,
5
6 CIRCUIT RULE 27-10), in an attempt to reply to the Court
7
8 of Appeals in apposite Order, which tacitly, denied the Merit
9
10 of Petition, therein.

11
12 On, March 6, 2020, the Court of Appeals, by Merit
13
14 Panel, denied the Petitioner's, Motion For Reconsideration,
15
16 (Citing, the 9th Cir. R. 27-10), therein, at-law. (See, APPEN-
17
18 DIX, C.)

19
20 The Petitioner, now, provokes the Jurisdiction of this
21
22 Court to review a lower Court's denial of an Applica-
23
24 tion for a Certificate of Appealability. Citing, Hohn v.
25
26 U.S., 524 U.S. 236, 241 (1998) (Supreme Court has jurisdic-
27
28 tion to review denial of application for Certificate of

1
2 appealability by circuit judge or appellate panel because ap
3
4 plication qualifies as "Case" under 28 U.S.C. § 1254(1).), and
5
6 in, U.S. V Apker, 174 F.3d 934, 937 (8th Cir. 1999) (reversing
7
8 denial of Certificate of appealability for petitioners Bailey
9
10 Claim in light of Hohn, which held such claim as constitu-
11
12 tional in nature.)

13
14 First, this Court in, Ashcroft v. Iqbal, 556 U.S. 662 (2009)
15
16 129 S.Ct. 1937, 173 L.Ed.2d 868, at 671, opined, that on the
17
18 issue of Subject Matter Jurisdiction between the District
19
20 Court and the Court of Appeals, "We are not free to pre-
21
22 termit the question. Subject-matter jurisdiction cannot
23
24 be forfeited or waived and should be considered when
25
26 fairly in doubt."

27
28 The Court of Appeals, construed the Moot Order of the
6.

1
2 District Court, dated on, October 17, 2019 (See, Document 40)
3
4 which failed to grant nor deny, COA, as remanded, for the
5
6 inherent, burden of blame to the Petitioner, as recited of its
7
8 Opinion, qua Supra.
9

10 Because, the Federal Rules of Appellate Procedure, Rule
11
12 22, Circuit Rule 22-1, (d), Denial in Full by District Court,
13
14 provides that, "the Appellant may file a request for a COA
15
16 in the Court of Appeals within 35 days of the filing of a
17
18 Notice of Appeal..., or the district Court's denial of a COA
19
20 in full, whichever is later."
21

22 Here, the Petitioner's, Notice of Appeal and/or Request for
23
24 a Certificate of Appealability was received by, Molly C. Dwyer
25
26 Clerk of the Court of Appeals, on, August 12, 2019, (See, Dkt-
27
28 Entry: 1), and stated of the Entry, that, "A briefing sche-

1
2 dule will not be set until the Court determines whether a
3
4 Certificate of Appealability should issue."

5
6 On, September 27, 2019, and without any noted, Emergen-
7
8 cy, the Court of Appeals, surreptitiously, or in, subterfuge,
9
10 issued a Remand, to the District Court, to determine the
11
12 Petitioners, August 9, 2019, Notice of Appeal and Request
13
14 for a Certificate of Appealability or as, docket, in, No. 19-
15
16 16587, in the Appellate Court.

17
18 Though, the posited, Dogma in the Proceeding is the Dis-
19
20 trict Court's disingenuous, disobedience of the Appellate
21
22 Jurisdiction, (28 U.S.C. § 1291) to the entitled, first of the
23
24 Consideration of the noted, Request for a Certificate of
25
26 Appealability, (COA), (See, Circuit Rule 22-1 (a) General
27
28 Procedures: (Rev. 1/1/04; 12/1/09; 12/1/18)) (See, Ashcroft,

1
2 Supra, 556 U.S. 662 (2009) at 671 7/1, for, Necessity of Objection;
3
4 Power and Duty of Court, Waiver, estoppel, and Consent;) (See,
5
6 (28 U.S.C. § 2253 (C)(3)) for the "Substantial Showing Standard
7
8 or Requirement, Reyes V. Keane, 90 F.3d 676, 679-80 (2d Cir.
9
10 1996), though, overruled on other grounds,) are a fortiori, to
11
12 the Appellate Jurisdiction and Power, therein, and which this
13
14 Court, most respectfully, must accord, in the expounded,
15
16 failure to compliance by the District Court.
17

18 Second, the Four (4) Grounds, belied in the Petition, were
19
20 never reviewed by the Motion Panel, Circuit Judges LEAVY
21
22 and MILLER, because, they, were not, Real to the Proceeding.
23
24 (See, COURT STRUCTURE AND PROCEDURES FOR FEDERAL RULES
25
26 OF APPELLATE PROCEDURE NINTH CIRCUIT RULES CIRCUIT ADVI-
27
28 SORY COMMITTEE NOTES, (December 2019.) (FOREWORD, by
9,

1
2 Sidney R. Thomas, Chief Judge) there, at, C. (I) Judges;

3
4 Edward Leavy, Senior Circuit Judge, Portland, Oregon and

5
6 Eric D. Miller, Circuit Judge, Seattle, Washington, do not fall

7
8 in the regional administration unit of the "Middle Unit" in

9
10 San Francisco, to hear the Appellant's (Petitioners) purported,

11
12 Request for COA. (See, Dkt Entry 114)

13
14 And, the Merit Panel, though, Jurisdictionally, was a

15
16 Subterfuge of the Review, on Merit. (See, 9th Cir. R. 27-10)

17
18 Accordingly, the Petitioner was blamed for the Procedural

19
20 Laches, encountered in the COA. For, instance, the failure to

21
22 issue Certified Questions, Sua sponte, at the filing of the

23
24 Notice of Appeal, or, when the Court of Appeals had speci-

25
26 fically, Remanded, the Appeal for the August 9, 2019, Mo-

27
28 tion for Request of Certificate of Appealability, therein.

1
2 The failure or, rather, eccentric behavior of the District Court
3
4 in, not expressly, denying in full nor in-part, of the granting
5
6 of Recharacterized, Motion to Reopen Time to file Appeal, was
7
8 a Procedural Error, Correctable on Appeal. And this Court
9
10 has the Jurisdiction to review same.

11
12 Finally, because of the axiomatic review by Merit Panel,
13
14 of the Petition, quare, by Motion For Reconsideration, before
15
16 Circuit Judges, William C. Comby, Jr. Senior Circuit Judge,
17
18 Phoenix, Arizona, and Morgan Christen, Circuit Judge,
19
20 Anchorage, Alaska, the protruding question, uncertified,
21
22 at this time is, why is the Petitioner still in Custody as of
23
24 the Merit of the Sentence in Arizona, filed on May 14,
25
26 2003, as attached in, (APPENDIX.D) herein, at-law?
27
28 (See, Circuit Rule 22-1 (e) Briefing Uncertified Issues)

REASONS FOR GRANTING THE PETITION

1. This Honorable Court should grant this Petition, because, it has the Jurisdiction to do so. Citing, in, Hohn v. U.S., 524 U.S. 236, 241 (1998) Stating that, "Supreme Court has jurisdiction to review denial of application for Certificate of Appealability by Circuit judge or Appellate Panel, because, Application qualifies as "Case" under 28 U.S.C. § 1254 (1)

Accordingly, this tenet forms a reason for granting the Petition.

2. This Petition is grantable, at imprimis of the Proceeding, pursuant to the AEDPA's Effective Date, qua, Section 2253 (C), for the filing of Notice of Appeal, which was on, August 9, 2019, by attachment to the Request for a Certificate of Appealability.

In that, a Conflict exist with the Decision of the instant Court of Appeals, Ninth Circuit, and the Court of Appeals, Fifth Circuit Court on the same important matter, regarding, Notice of Appeal, not treated as Certificate of Appealability. (See, Rules of the Supreme Court of the United States, Part III. Jurisdiction on Writ of Certiorari) (Rule 10 (a)); Considerations Governing Review on Certiorari.

The Court of Appeals, Ninth Circuit, denying, Per se, the Request, by the assumption that, A Notice of Appeal was filed and granted on, August 9, 2019 and October 27, 2019, by District Court, is in Conflict with, Brewer V. Quarterman, 475 F.3d 253, 255 (5th Cir. 2006)

(Stating, that, Notice of Appeal not treated as Constructive request for COA, because, defendant specifically requested COA.)

This Conflict, is, facial plausibility, on, the requisite, non-jurisdictional granting of COA, at, 28 U.S.C. § 2253 (C)(3) for the Substantial Showing Standard, perforce of a denial of a Constitutional right.

The Petitioner's, Motion For Request of Certificate of Appealability (COA) L.R. CIVPRO 7.2 (e)(1), (Document 36) filed, August 9, 2019, was distinct and separate from the Notice of Appeal. To the extent, that, the Petitioner claimed a Constitutional Right, Deprivation, of Lack of Service of Mail, bearing the Entry of Judgment, dated on, February 15, 2019, (28 U.S.C. § 2253 (C)(2),) requiring, rather,

1
2 a granting of COA, there.

3
4 "A district or Circuit Court judge may issue a COA only
5
6 if the petitioner has made a "Substantial Showing of the denial
7
8 of a Constitutional right" 45 GEO. L.J. ANN. REV. CRIM. PROC.
9
10 1074, (2016).

11
12 The District Court's Adoption of the Magistrate's Report and
13
14 Recommendation, which recommended, dismissal of the Petition
15
16 on Procedural Grounds does not bar issuance of a COA.

17
18 See, Slack v. McDaniel, 529 U.S. 473, 484-85 (2000) as,
19
20 incorporated by reference with, 45 GEO. L.J. ANN. REV. CRIM. PROC.
21
22 1076 (2016).

23
24 Accordingly, a jurists of reasons, as this Honorable Court,
25
26 now, should grant this Petition, for the denial of Constitu-
27
28 tional right to Legal Mail, expositied in the Motion For Re

1
2 request for a Certificate of Appealability, (Document 36), and
3
4 for the incorrect procedural ruling of the district Court, upon
5
6 Remand, on October 27, 2019, (Document 40), in, deferential, to
7
8 the granting by the District Court of the Recharacterization,
9
10 to-wit: Motion to Reopen Time to File, (Document 40).
11

12 Because, Said Constitutional Right, denied, therein, was
13
14 Sufficient to Vacate and remand the District Court's Dis-
15
16 missal or Denial of Petition, citing, Fed. R. App. P. 4(a)(5)
17
18 affecting, in, e.g., Sanders v. U.S., 113 F.3d 184, 187 (11th Cir.
19
20 1997) (per curiam) (dismissal vacated and remanded when
21
22 prisoner Contended he had not received Court order deny-
23
24 ing § 2255 relief until after appeals period expired).
25

26 3. Another essential reason this Court Should grant
27
28 this Petition is that COA is grantable, pursuant to the
15

(APPENDIX, D) the state Court's Decision, or Summary.

The Petitioner continues to be illegally restrained of his freedom, since, March 25, 2020 for an additional, Community Supervision, which was originally, waived in the Plea Bargain, signed on, May 9, 2003 and filed, May 14, 2003, respectively, which is a Constitutional Right, denied, following the Merit Panel, Decision of March 6, 2020.

Accordingly, a jurist of reason would find it debatable whether the Petition states a valid claim of the denial of a Constitutional right, in continued imprisonment after the completion of Sentence, imposed on the Petitioner

See, U.S. CONST. Amend. 8th, The prohibition against cruel and unusual punishment is applicable to the states through the Fourteenth Amendment. See, Robinson v Cal., 370 U.S. 660,

666-67 (1962)

The substantial showing of the denial of a Constitutional right, by, force Imprisonment, may warrant the issuance of COA. As, evinced on Page 2, of the SENTENCE-IMPRISONMENT AND PROBATION, (APPENDIX, D) FILED MAY 14 2003, to-wit: Community Supervision: Waived pursuant to A.R.S. § 13-603(K), due to the terms of probation in CR 1999-095310 Count 1."

The Imprisonment imposed on, February 12, 2018, for Probation Violation is a Presumptive term of 3.5 years, Flat-time, and an Error of Law, occurred, when the Petitioner was not released on the Expiration of Term of Sentence imposed for Probation, as stipulated to be on, March 25, 2020.

Accordingly, the Ment Panel was delect, in its predisposal, of the Motion for Reconsideration for a Denial of COA, on

1
2 Merit. Ergo, this Court should grant the Petition, herein-

3
4 A district or circuit Court judge may issue a COA only if
5
6 the petitioner has made a "substantial showing of the denial
7
8 of a Constitutional right." 28 U.S.C. § 2253 (C)(2); see e.g.,
9

10 Reyes V. Keane, 90 F.3d 676, 680 (2d Cir. 1996) (COA granted

11
12 when claim concerned deficiency in jury charge on reasonable do-

13
14 ubt), overruled on other grounds by Lindh V. Murphy, 521 U.S.

15
16 320 (1997); Pabon V. Mahanoy, 654 F.3d 385, 398 (3d Cir. 2011)

17
18 (COA properly granted because Confrontation Clause claim "deser-
19
20 ves developing")

21
22 This Court should therefore, declare the Petitioner's excess-
23
24 ive Imprisonment, at-this-time, a denial of a Constitutional

25
26 right and Sua sponte, issue a COA, at-law. Citing, in, e.g.,

27
28 Hohn V. U.S., 524 U.S. 236, 241 (1998), 28 U.S.C. § 1254 (1).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cecilia Cbeabuchi

Date: April 8, 2020