No. 19-8631

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Claude Simpson, Petitioner,

v.

United States of America, Repsondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Claude Simpson (proceeding 'pro se')

Reg. No. 33284-171

Federal Correctional Institution

P.O. Box 725

Edgefield, SC 29824

STANDING

I, Claude Simpson, have standing to bring this action.

QUESTIONS PRESENTED

1. Is it an abuse of discretion if a Judge does not recuse himself from presiding over a hearing in which a reasonable person would have a reasonable basis for questioning the Judge's impartiality because of personal bias or prejudice concerning a party, and/or personal knowledge of disputed evidentiary facts concerning the proceeding?

2. Can a Judge accept a plea agreement regarding a defendant that the Judge harbors a personal bias or prejudice towards; and/or does the nature of the decision that the Judge presiding over the hearing is making, negate the recusal statute 28 U.S.C. 455 subsection (b)?

3. Is having Judge Coggins preside over this case consistent with the due process clause of the Fifth Amendment?

4. Did Claude Simpson receive ineffective assistance of counsel that caused him to involuntarily enter into a plea agreement and involuntarily plead guilty?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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 Agee of the United States Court of Appeals for the Fourth Circuit.

Judge Rushing of the United States Court of Appeals for the Fourth Circuit.

Senior Circuit Judge Hamilton of the United States Court of Appeals for the Fourth Circuit.

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Appendix D: Copy of Supreme Court of the United States Office of the Clerk response to Petitioner's Notice of Intent to file Petition for Certiorari.

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TABLE OF AUTHORITIES

CASES

* AETNA Life Insurance Company v. Lavoie, 475 Y,S, 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986)
* Brody v. United States, 397 U.S. 742, 756, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970)
* Chase Manhattan Bank v. Affiliated FM Ins. Co., 343 F.3d 120 (2nd Cir. 2001)
* Eagle v. Lanahan, 279 F. 3d 926, 935 (11th Cir. 2001)
* First International Bank of Ariz., W.A.V. Murphy, Weir & Butler, 210 F.3d 983 (9th Cir. 2000)
* Glover v. United States, 531 U.S. 198, 203-204, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001)
* In re BellSouth Corp., 334 F.3d 941, (11th Cir. 2003)
* In re Cargill, Inc., 66 F.3d 1256, (1st Cir. 1995)
* In re Lieb, 112 B.R. 830 (5th Cir. 1990)
* In re New Mexico Natural Gas Anti-trust Litigation, 620 F.2d 794 (10th Cir. 1980)
* In re Kansas Pub. Emples. Retirement Sys. 85 F.3d 1353, (8th Cir. 1996)
* In re Kensington Int'l Ltd., 353 F.3d 211 (3rd Cir. 2003)
* Jenkins v. Sterlance, 849 F.2d 627, (D.C. 1988)
* Kolon Indus. v. E.I. Dupont De Nemours & Co., 748 F.3d 160 (4th Cir. 2013)
* Liteky v. United States, 510 U.S. 540, 114 S. Ct. 1167, 127 L. Ed. 2d 474 (1994)
* McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 25

L. Ed. 763 (1970)

* Miller-El v. Cockrell, 537 U.S. 322, 336-37, 123 S. Ct. 1029, 154 L. Ed. 931 (2003)

* Moltke v. Gillies, 332 U.S. 708, 721, 68 S. Ct. 316, 92 L. Ed. 309 (1948)

* Rice v. McKenzie, 581 F.2d 1114, (4th Cir. 1997)

* Santobello v. New York, 30 LED 2D 427, 404-U.S. 257 (1971)

* Shell Oil Co. v. United States, 672 F.3d 1283, (Federal Cir. 2012)

* Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000)

* Strickland v. Washington, 466, 687-88, 691-92, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)

* Teague v. Scott, 60 F.3d 1167, 1171 (5th Cir. 1995)

* Union Planters Bank v. L & J Dev. Co., 115 F.3d 378, (6th Cir. 1997)

* United States v. Disch, 347 Fed. Appx. 421, (11th Cir. 2009)

* United States v. Kiss, 658 F.2d 526, 536 (7th Cir. 1981); cert. denied 455 U.S. 1016, 72 L. Ed. 2d 135, 102 S. Ct. 1712 (1982)

* United States v. Moussaoui, 591 F.3d 263, (4th Cir. 2010)

* United States v. Smith, 775 F.3d 879, (7th Cir. 2014)

* United States v. Stitz, 877 F.3d 533, 536 (4th Cir. 2017)

* United States v. Stone, 866 F.3d 219, 229 (4th Cir. 2017)

* United States v. Williams, 811 F.3d 621, 622 (4th Cir. 2016)

* Williams v. Pennsylvania, 136 S. Ct. 1899, (2016)

STATUTES

* 28 U.S.C. 455
* U.S.S.G. 4A1.2

OTHER AUTHORITIES

* 4th Amendment
* 5th Amendment
* Black's Law Dictionary (sixth edition)

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari be issued to review the judgment below:

OPINIONS BELOW

[X] 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,

[X] is unpublished.

JURISDICTION

[X] For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was, December 6, 2019.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 14, 2020, and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a Writ of Certiorari was granted to and including_____(date) on_____(date) in Application N._____A._____.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

* Fifth Amendment

* 28 U.S.C. 455

STATEMENT OF THE CASE

ARGUMENT 1

In regards to United States v. Claude Simpson, the United States Court of Appeals for the Fourth Circuit has entered a decision in conflict with the decision of all other United States Courts of Appeals on the same important matter; has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power; and has decided an important question for federal law that has not been, but should be, settled by this Court.

The unpublished opinions decided December 6, 2019 before AGEE and RUSHING, Circuit Judges, and HAMILTON, Senior Circuit Judge, states on page 4 of 5 "Simpson next challenges the district Judge's decision not to recuse himself, arguing that he should have done so to avoid the appearance of impropriety. We review a Judge's recusal decision for abuse of discretion. United States v. Stone, 866 F.3d 219, 229 (4th Cir. 2017) (citations omitted). We have reviewed the record and find no abuse of discretion. The district court properly accepted Simpson's waiver after making a full disclosure on the record of the basis for disqualification. See 28 U.S.C. 455(e)(2012)."

Because the Judge's impartiality is a result of personal bias or prejudice concerning a party, and/or personal knowledge of disputed evidentiary facts concerning the proceeding, this

decision is in conflict with all other United States Courts of Appeals. See In re Cargill, Inc., 66 F.3d 1256, (1st Cir. 1995) which held "Congress expressly allows a judge to accept a waiver of his disqualification under 455(a) (appearance of lack of impartiality) although not under 455(b) (bias, personal knowledge of facts, financial interest, etc.). See 28 U.S.C. 455(e)".; Chase Manhattan Bank v. Affiliated FM Ins. Co., 343 F.3d 120, (2nd Cir. 2001), which held "...the parties may, if fully informed, waive grounds for disqualification under Section 455(a), but not under Section 455 U.S.S.(b). See U.S.C. 455(e)"; In re Kensington Int'l Ltd. 353 F.3d 211, (3rd Cir. 2003), which held "unlike disqualification under 455(a), however, which may be waived by the parties, the grounds for disqualification under 455(b)(1) generally cannot be waived. See U.S.C. 455(e)."; In re Lieb, 112 B.R. 830 (5th Cir. 1990), footnote 7: "...it should be noted, however, that 28 U.S.C. 455(e) prohibits a waiver of 28 U.S.C. 455(b)(1)."; Union Planters Bank v. L&J Dev. Co., 115 F.3d 378, (6th Cir. 1997), which held "Disqualification arising under 28 U.S.C. 455(b) cannot be waived by the parties."; United States v. Smith, 775 F.3d 879, (7th Cir. 2014) which held "However a ground for disqualification that is specified in 28 U.S.C. 455(b)...cannot be waived. 28 U.S.C. 455(e)"; In re Kansas pub. Emples. Retirement Sys., 85 F.3d 1353, (8th Cir. 1996) which held "subsection 455(e) provides that a 455(b) conflict cannot be waived."; First International Bank of Arizona, W.A.V. Murphy, Weir & Butler, 210 F.3d 983, (9th Cir. 2000) which held "28 U.S.C.S. 455(a) disqualification is one that might be waived under 28 U.S.C.S. 455(e) if preceded by full

disclosure on the record of the basis for disqualification."; In re New Mexico Natural Gas Intitrust Litigation, 620 F.2d 794, (10th Cir. 1980) which held "The parties cannot waive 455(b) grounds for disqualification. 28 U.S.C.S. 455(e)."; United States v. Disch, 347 Fed.Appx. 421, (11th Cir. 2009) which held, "A party may waive recusal under 455(a), provided the waiver is preceded by full disclosure on the record of the basis of disqualification. 28 U.S.C. 455(e). A judge, however, shall not accept a party's waiver of recusal for any grounds arising under 455(b)."; Jenkins v. Sterlace 849 F.2d 627, (D.C. 1988) which held, "See code of Judicial Conduct, Supra, Canon 3.D (one disqualification by reason of appearance only may instead of withdrawing, disclose on record basis of disqualification which parties and lawyers may waive), 28 U.S.C. 455(e)."; And Shell Oil Co. v. United States, 672 F.3d 1283, (Federal Cir. 2012) which held, "Recusal under 455(b) cannot be waived."

The Honorable Donald C. Coggins, while presiding over the April 25, 2019 sentencing hearing in the United States District Court for the District of South Carolina, Spartanburg Division, regarding United States v. Claude Simpson stated, "Now, I have discussed with the U.S. Attorney's Office and your attorneys the fact that I realized that I was familiar with some members of this young lady's family. And if this were a case where I was going to be reaching a subjective decision about a sentence, I would disqualify myself." These statements prove the personal bias and prejudice that demands recusal under 28 U.S.C. 455(b). Judge Coggins failure to do so

is an abuse of discretion. Not only contradicting 28 U.S.C. 455(b), but also the Defendant's right to due process.

The decision by the United States Court of Appeals for the Fourth Circuit is in conflict with all other United States Courts of Appeals and its own precedent as well. See Kolon Indus. v. E.L. Dupont De Nemours & Co., 748 F.3d 160, (4th Cir. 2013) which held "Unlike 455(a), 455(b) may not be waived by the parties. See 28 U.S.C. 455(e) ("No [judge] shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted...)". Because the Judge's impartiality might reasonably be questioned in this proceeding (455(a)) because of his personal knowledge, bias, or prejudice (455(b)) he cannot accept a defendant's waiver, and must recuse himself.

In part because this case is indeed unique, and in part because recusal cases tend to be extremely fact intensive and fact bound, precedents addressing the instant situation are rare. But the absence of direct precedent is also attributable to the fact that recusal is so clearly required in circumstances like those presented here that Judges ordinarily voluntarily recuse themselves without any need to file an opinion discussing the legal merits. We can however compare to cases like in re Bellsouth Corp., 334 F.3d 941, (11th Cir. 2003), which held "A Federal Judge must disqualify himself from consideration of a case if a person within the third

degree of relationship is acting as a lawyer in the proceeding. 28 U.S.C.S. 455(b)(5)(ii). Further, a Judge must recuse if such a family member is known by the Judge to have an interest that could be substantially affected by the outcome of the proceeding. 28 U.S.C.S. 455(b)(5)(iii). If a relative within the prescribed proximity stands to benefit financially as a partner in a participating firm-even if the relative is not himself involved-is sufficient to require recusal."

In any event, whether voluntary or mandated by a reviewing court, the reasons for self-recusal when a Judge has knowledge of the family that has been impacted by the alleged crime prior to preceding over the hearing to the point he acknowledges he would feel it necessary to disqualify himself if he was making a subjective decision are abundantly clear: The possibility of unconscious bias regardless of the good faith and intentions of the Judge, and the appearance of impartiality. Unsurprisingly, this falls squarely within the reach of 28 U.S.C. 455, as well as the Due Process clause of the Fifth Amendment. The hoary principle that "no man can be a Judge in his own case and no man is permitted to try cases where he has an interest in the outcome", (Williams v. Pennsylvania, 136 S. Ct. 1899, 2016) is broad enough to cover and justify imputing "personal bias or prejudice" to the Judge as a matter of law.

The conclusion by the United States Court of Appeals for the Fourth Circuit that there is no abuse of discretion is

unsupported by the evidence on the record. Given the specific, careful, and uncontradicted factual allegations set forth, the Court of Appeals misses the entire thrust of Petitioner's claim. The specifics that the Court of Appeals find lacking are amply supplied in Judge Coggins' statements. Contrary to the Court of Appeals surprising and unsupported conclusion, the record shows specific facts and circumstances that give fair support to the charge of "personal bias or prejudice resulting in impartiality". The conclusion that the facts set out on the record do now show a bias specifically directed towards the petitioner is beyond comprehension. The facts set out on the record show "bias and prejudice" are, in fact, very much geared to the "personal" effect the alleged crime had on the Judge. The Court of Appeals ruling is insufficient.

The "link" connecting Claude Simpson's alleged crime to Judge Coggins, that resulted in "bias and prejudice" is obvious. The petitioner was charged with a crime that personally impacted associates of the Judge. Furthermore, a Grand Jury concluded there is probable cause to believe that petitioner is responsible for the crime, and thus responsible for the damages and injuries. It is difficult to see how much stronger a "link" to the petitioner there could be at this stage of the proceedings. A Judge is personally biased if he or she has an attitude toward a party that is significantly different from and more particularized than the normal general feelings of society at large, a condition that is plainly met by the "attitude" of a person who is "familiar with some members of

this young lady's family", that died from a drug overdose on the drugs allegedly sold by the petitioner to her, and has been formally charged with the crime.

The fact that the Judge states he is "familiar with some members of this young lady's family", and "if this were a case where I was going to be reaching a subjective decision about a sentence, I would disqualify myself," is alone sufficient to give fair support to the claim of actual bias or prejudice. When a Judge presiding over a hearing is familiar with family members of a potential victim it is one of those (admittedly rare) circumstances in which actual bias is implied by law. Courts have been willing to impute bias as a matter of law to a juror whose answers on voir dire would otherwise make them immune from "for cause" dismissal when the juror is familiar with members of the family of a potential victims of the crime on trial. In these circumstances the court is required to dismiss the juror for cause on the theory that, regardless of the good faith behind her statements of impartiality may be, the risk of bias is too great. The terms of "bias and prejudice" in the judicial recusal statutes are to be understood by analogy to "biased or prejudiced" jurors. The words ("bias" or "prejudice") connote a favorable or unfavorable disposition or opinion that is undeserved, or because it rests on knowledge that the subject ought not to possess, or because it is excessive in degree. Compare with Liteky v. United States, 127 Led. 2d 474, 510 U.S. 540. Accordingly, given the close connection between judicial "bias and prejudice" and a juror's "bias and prejudice", judicial

bias should be implied under 455(b)(1).

Judge Coggins statement of being "familiar with some members of this young lady's family" is an acknowledgement of extra-judicial knowledge. The Court of Appeals undervalues the scope and extent of the knowledge Judge Coggins possesses. The Judge is in contact with the family members who have direct, persona l knowledge at the disputed facts. They do and will continue to associate with Judge Coggins. The crimes that Simpson has been charged with, there effects, and what should happen to the Defendant are matters of discussion between Judge Coggins and the members of the family of one of the young lady's who may have died from drugs the government has alleged Simpson sold to her. The Judge's relationship with said family members closely parallels the relationship found disqualifying under 455(b)(1).

The Judge will, as a practical matter, be called on to make many sorts of rulings in the hearing that will be directly affected by the extent of his personal knowledge. Including: (1) rulings about how much and what type of statements and who can present them; (2) rulings regarding the weight of said statements; (3) rulings determining the depravation of a man's life, liberty, or property and the length of time, amount of fines and other fees, classes and programming, probation stipulations, and any other possibility within the Court's authority. (It is clear that the injury suffered by members of the family Judge Coggins is familiar with, constitutes information that was introduced against Simpson. In the

sentencing proceeding Judge Coggins considered the significance and weight of this information as it relates to the weighing of aggravated and mitigating factors in deciding the sentence. Even if the basic facts of the young woman's death
and the damage resulting to the family members that Judge Coggins is familiar with were undisputed at sentencing, their significance is still contestable. Any reasonable person would have a reasonable basis for questioning the Judge's impartiality when determining the weight this information should be given when determining a proper sentence.) (4) rulings on other routine (but critical) decisions in which prior knowledge and direct experience could unconsciously enter into the calculation.

It is not expected of a Judge to live as a recluse. The significance of this relationship with the family members can be found in his statements, "If this were a case where I was going to be reaching a subjective decision about a sentence, I would disqualify myself." Thus, a District Judge who has admitted he is familiar with members of the young lady's family who died as a result of drugs the government claims the Defendant sold to her, may not be considered an impartial decision-maker of legal, technical and procedural issues, particularly when it proceeds to the sentencing phase. The Court of Appeals failed to accurately address the merits of this important legal and factual matter, resulting in Petitioner's depravation of his Fifth Amendment right to due process. Thus, the United States Court of Appeals has entered

a decision in conflict with the decision of another (all other) United States Courts of Appeals on the same important matter; and has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

ARGUMENT II

On February 23, 2019, Petitioner mailed a letter to Judge Coggins. Among other things, in the letter Simpson asked that Count Four of the Indictment be dismissed. He said that his lawyer told him different things all along. He said his pre-sentence report provides for a shorter sentence for count four then the negotiated sentence of 10 years. He said his attorneys had his family beg him to plead guilty to the 10 year sentence. so he did. Since then, neither he nor his family have been able to talk with his attorneys.

On April 25, 2019, Judge Coggins held a sentencing hearing. At the outset of the hearing, the Judge informed Simpson that he knows some of the members of the family of one of the ladies who died in his case. The Judge was referring to the counts in the Superseding Indictment which alleged that persons died from the use of drugs distributed by Simpson. The government agreed to dismiss these counts in the plea agreement. The Judge said that if this were a case where he was making a subjective decision about a sentence, he would disqualify himself. However, this was a case with a negotiated sentence. The Judge said that he had reviewed the pre-sentence report

and had decided to accept the plea agreement and therefore accept the negotiated sentence.

The nature of the decision (subjective, negotiated, etc...) is irrelevant. The "side-stepping" of the mandatory recusal designated by 28 U.S.C. 455(b) that resulted in the appearance of impartiality (455(a)) is an abuse of discretion. The Court of Appeals for the Fourth Circuit's decision on this important matter of fact and law is in conflict with the decision of another United States Court of Appeals on the same important matter (see argument I, case law hereby included by reference); has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power; and the question (question #2) is an important question of federal law that has not been, but should be, settled by this Court.

Judge Coggins statement in regard to his "subjective decisions" in the context used refers to his obligation to act at his discretion or according to his judgment and will. Judge Coggins statements in regard to his "negotiated decisions" in the context used refers to his obligation to act at the discretion or according to the judgment and will of others. His decision to accept the plea agreement is the "fruit" of an act at his discretion or according to his judgment and will, and therefore subjective.

For clarity purposes: Black's Law Dictionary, Sixth Edition defines Fruit as, "The produce of a tree or plant which

contains the seed or is used for food. The edible reproductive body of a seed plant. The effect or consequence of an act or operation." Judge Coggins presiding over the sentencing hearing is an "act or operation" comparable to his "discretion or his judgment and will", that produces the "effect or consequence" comparable to the acceptance of the plea agreement (fruit). Black's Law Dictionary also contains other legal definitions while not identical to the situation, they are comparable, that can be used to clarify the abuse of discretion by Judge Coggins. Fruit and tree doctrine, "The Courts have held that an individual who earns income from his property or services cannot assign that income to another to avoid taxation. For example, a father cannot assign his earnings from commissions to son and escape income tax on such amount." And, fruit of the poisonous tree doctrine, "evidence which is spawned by or directly derived from an illegal search interrogation is generally inadmissible against the Defendant because of its original taint, though knowledge of facts gained independently of the original and tainted search is admissible. Wong Sun v. U.S., 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441. This doctrine is to the effect that an unlawful search taints not only evidence obtained at the search, but facts discovered by process initiated by the unlawful search. This doctrine is generally applied to cases involving searches in violation of the Fourth Amendment to the Constitution against unlawful searches in violation of a statutory right. Duncan v. State, 278 Ala. 145, 176 So.2d 840,865. See exclusionary rule."

The acceptance of a plea agreement which is spawned by or directly derived from a Judge presiding over a hearing in which he holds a personal bias or prejudice towards a party, and has extra-judicial knowledge in regards to is tainted "fruit". The Judge's assignment of his "fruit" to another in order to escape his duty to recuse himself is an abuse of discretion. His statements regarding the nature of the decision he is making (subjective, negotiated, etc...) allowing him to preside over the hearing instead of disqualifying himself, only makes him appear more biased and prejudiced. He does not clarify if he is only vaguely familiar with the family members and therefore cannot be biased or prejudiced.

Any reasonable person would have a reasonable basis for questioning the Judge's impartiality because of the bias or prejudice and extra-judicial knowledge he harbors. Because his impartiality is the "fruit" of his bias or prejudice, he must uphold his mandatory duty to recuse himself under 28 U.S.C. 455(b), which cannot be waived by subsection 455(e), as the Court of Appeals for the Fourth Circuit has decided. See Rice v. McKenzie, 581 F.2d 1114, (4th Cir. 1997) which held, "Disqualification is required if a reasonable factual basis exists for doubting the Judge's impartiality...The inquiry is whether a reasonable person would have a reasonable basis for questioning the Judge's impartiality, not whether the Judge is in fact impartial...The proper test to be applied is whether another with knowledge of all the circumstances might reasonably question the Judge's impartiality." Judge Coggins'

acceptance of a plea, sentencing a man to 10 years (120 months), after being made aware of the information in Petitioner's letter mailed February 23, 2019, and the information contained in the P.S.I. (particularly the 30-37 month recommendation) radiates bias and prejudice when it is the "fruit" of a Judge who knows some of the members of the family of one of the young lady's who died in the case.

Petitioner asks that when the Courts are ruling on this important decision of federal law that has not been, but should be, settled by this Court, they factor in the following quotes: Joe Miller, "What do you love about the law, Andrew?" Andrew Becket, "I...so many things...uh...uh...what I love the most about the law?" Joe Miller, "Yeah." Andrew Becket, "It's that every now and again-not often-but occasionally, you get to be a part of justice being done. That really is quite a thrill when that happens."

ARGUMENT III

Participation by Judge Coggins in this case violates the due process clause as well as recusal statutes. The precise relationship between the due process clause and the federal recusal statutes is unsettled, and as a general matter, a court should decide cases under the recusal statutes when the apply before reaching the Constitutional issue. Nevertheless, because it is clear that the due process clause prescribes a Judge from sitting in the present circumstances, consideration of Constitutional matters is required if the court declines to

decide this matter on the basis of statutes. Like the recusal statutes, the due process clause forbids both partiality in fact and the appearance of partiality by a Judge.

A fair trial in a fair tribunal is a basic requirement of due process. This requirement covers possible depravation of life, liberty, and property. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness...this Court has said, however, that "Every procedure which would offer a possible temptation to the average man as a judge...not to hold the balance nice, clean and true between the state and the accused denies the latter due process of law." Such a stringent rule may sometimes bar proceedings by Judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, "Just must satisfy the appearance of justice."

Admittedly, the Supreme Court has also suggested that only in "the most extreme cases would disqualification [for appearance of bias] be Constitutionally required" by the due process clause. (AETNA Life Insurance Co. v. Lavoie, 89 Led.2d. 823, 475 813). There are, however, extreme cases in which the appearance of bias is sufficient to require disqualification. This exceptional circumstance, as in the case presented in the Writ of Certiorari, involves situations in which the Judge is familiar with members of the family of one of the young lady's who died from drugs the government alleges were sold to her by

the Defendant in the case the Judge had presided over.

ARGUMENT IV

The attorney representing the Defendant failed to advocate the Defendant's position and take the necessary actions required to insure a fair and just ruling by the District Court. This evidence is established on the record. The plea of guilty is invalid. The sentence contains an improper enhancement and could be considered fraud on the Court as well as plain error. Had the attorney upheld the preamble set forth by the American Bar Association, this sentence would never have been issued. These failures resulted in Petitioner's Constitutional rights being violated and restricted him from a fair and non-bias court proceeding. The Court of Appeals for the Fourth Circuit has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's Supervisory power.

The Court of Appeals correctly stated "in order for a guilty plea to be valid, the Constitution imposes the minimum requirement that [the] plea be to voluntary expression of [the Defendant's] own choice.' United States v. Mossaoui, 591 F.3d 263, 278 (4th Cir. 2010). (citation omitted.)' It must reflect a voluntary and intelligent choice among the alternative courses of action open to the Defendant. In evaluating the Constitutional validity of a guilty plea, Courts look to the totality of the circumstances surrounding [it], granting the Defendant's solemn declaration of guilt a presumption of

truthfulness.' Id. (internal quotation marks and citations omitted).' The Court must also determine that the plea' is voluntary and that there is a factual basis for the plea. United States v. Williams, 811 F.3d 621, 622 (4th Cir. 2016)(citing Fed. R. Crim. P. 11(b)). 'Generally, we review the acceptance of a guilty plea under the harmless error standard.' Id. (citation omitted).' But when, as here, a Defendant fails to move in the District to withdraw his or her guilty plea, any error in the Rule 11 hearing is reviewed only for plain error.' Id. (citation omitted). Simpson must show plain error affecting his substantial rights. See United States v. Stitz, 877 F.3d 533, 536 (4th Cir. 2017).

The decision made by the Defendant to plead guilty was not voluntary. He was coerced, compelled, and felt as if he had no other option, because his sister told him investigators were threatening to arrest her and Defendant's girlfriend for conspiracy if he did not sign the plea. (See Appendix E) In his state of duress he could not have made an intelligent choice among the alternative courses of action. Looking at the totality of the circumstances surrounding the plea displays a man in fear for his sister and his girlfriend's freedom and well-being admitting to a crime that holds a 30-37 month sentence and receiving 120 months. Santobella v. New York, 30 Led 2d 427, 404-U.S. 257, held "when a defendant is deceived, misled or tricked into pleading guilty, such a plea is invalid." United States v. Kiss, 658 F.2d 526, 536 (7th Cir. 1981); Cert. denied 455 U.S. 1018, 72 L.Ed.2d 135, 102 S.Ct. 1712 (1982), held, "No more than affidavits is necessary to

make a prima facia case."

As the Court of Appeals was made aware in the opening brief of Appellant, on February 23, 2019, Simpson mailed a letter to Judge Coggins. Among other things, in the letter Simpson asked that Count Four of the Indictment be dismissed. He said that his lawyer had told him different things all along. He said his pre-sentence report provides for a shorter sentence for count four than the negotiated sentence of 10 years. He said his attorneys had his family beg him to plead guilty to the 10 year sentence, so he did. Since then, neither he nor his family have been able to talk with his attorneys.

The attorney abandoned his client after letting him be "tricked" into signing a plea deal that gave him roughly 3 times the amount of time the charge required of him based off the United States Sentencing Guidelines. Had he had proper representation he could have filed to withdraw his plea, instead he wrote the Judge asking to have the charge dropped. The Defendant is not a professional in legal matters and did now know how to go about correcting the error. Had his attorney provided effective assistance he would not be in prison today, let alone held to the standard of plain error. However, the error is plain and the United States Court of Appeals decision is far departed from the accepted and usual course of judicial proceedings.

The Courts in Glover v. United States, 531 U.S. 198, 203-04, 121 S. Ct. 696, 148 L.Ed.2d 604 (2001), held, "counsel's error

at sentencing resulting in a 6 to 21 month sentence increase could establish ineffective assistance of counsel." McMann v. Richardson 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L.Ed.2d 763 (1970), held, "Before deciding whether to plead guilty, a Defendant is entitled to effective assistance of competent counsel." Brady v. United States, 397 U.S. 742, 756, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970), held "Attorney has a duty to advise a Defendant, who is considering a guilty plea, of the available options and possible sentencing consequences." When a Defendant "lacks a full understanding of the risk of going to trial, he is unable to make an intelligent choice of whether to [plead] or take his chances in court." Id. (Brady) (quoting Teague v. Scott, 60 F.3d 1167, 1171 (5th Cir. 1995). The Courts in Von Moltke v. Gillies, 332, U.S. 708, 721, 68 S. Ct. 316, 92 L. Ed. 309 (1948), held, "prior to trial an accuses is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered. Determining whether an accused is guilty or innocent of the charges in a complex indictment is seldom a simple and easy taks for a layman..." Petitioner must demonstrate that "reasonable jurists could debate whether (or, for that matter agree that) the petition should have been resolved in a different manner or that the issues presented were inadequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336-37, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).(citations and quotation marks omitted); See also Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000); Eagle v.

Lanahan, 279 F.3d 926, 935 (11th Cir. 2001).

In regards to Petitioner's challenge to his sentence, the Court of Appeals responds "[A] sentence imposed pursuant to the terms of a Rule 11(c)(1)(c) plea agreement may only be reviewed if it is unlawful or expressly based on the United States Sentencing Guidelines.' Williams, 811 F.3d at 622. Simpson's stipulated sentence did not exceed his statutory maximum and was not otherwise imposed in violation of law under 18 U.S.C. 3742(a)(1)(2012). Moreover, his Rule 11(c)(1)(c) plea agreement did not expressly use a guidelines sentencing range to establish the term of imprisonment. We therefore lack jurisdiction to review his sentence." The sentence is unlawful, it contains an illegal enhancement.

Claude Simpson's sentence was enhanced pursuant to Title 21, United States Code, Section 851, based on an April 22, 1997 conviction of "possession with the intent to distribute crack cocaine in general sessions court in Spartanburg County, South Carolina, Indictment No. 1997-GS-42-00978. The Defendant received a sentence of three years." (See Appendix F). Sentencing for his current conviction was held April 25, 2019. A sentence imposed more than 15 years prior to the Defendant's commencement of the instant offense is not counted unless the Defendant's incarceration extended into the fifteen-year period. (See U.S.S.G. 4A1.2(e): APPLICABLE TIME PERIOD (1) Any prior sentence of imprisonment exceeding one year and one month that was imposed within 15 years of the Defendant's commencement of the instant offense is counted. Also count any

prior sentence of imprisonment exceeding one year and one month whenever imposed that resulted in the Defendant being incarcerated during any part of such 15 year period. (2) Any other prior sentence that was imposed within ten years of the Defendant's commencement of the instant offenses is counted. (3) Any prior sentence not within the time periods specified above is not counted. (4) The application time period for certain sentences resulting from offenses committed prior to age eighteen is governed by 4A 12 (d)(2)."") This makes it clear that the enhancement for a 1997 conviction that resulted in the Defendant being incarcerated until 2002 is illegal.

Counsel was aware of all of the issues with the plea deal. Counsel's failure to advise Petitioner before he signed the plea was ineffective assistance of counsel. Counsel then abandons Petitioner and he could not withdraw his plea, this is also ineffective assistance of counsel. The cumulation of these errors resulted in the ineffective counsel petition asserts lead to him being sentenced under their errors and illegal sentence he is serving today. This plain error meets the Strickland prong set forth in Strickland v. Washington, 466 U.S. 668, 687-88; 691-92, 184 S. Ct. 2052, 80 L. Ed. 2d. 674 (1986).

REASONS FOR GRANTING THE PETITION

The compelling reasons that exist for the exercise of the Court's discretionary jurisdiction can be found in rule 10. The United States Court of Appeals for the Fourth Circuit has

entered a decision in conflict with the decision of another (all other) United States Courts of Appeals; and has so far departed from the accepted and usual course of judicial proceedings (see arguments 1 & 2, case law hereby included by reference). Question 3 is an important question of federal law that has not been, but should be, settled by this Court, and is also a decision that has so far departed from the accepted and usual course of judicial proceedings. Question 4 is a result of a decision that has so far departed from the accepted and usual course of judicial proceedings as well. To understand the national importance of having the Supreme Court decide the question regarding a fair Judge and effective assistance of counsel is to understand the foundation of the nation itself. The Revolutionary War was fought in part to secure that a King could not impute his will on the people but the people could impute there will on the King. The Judge presiding over the hearing acted as a King imputing his will, not the people's. The government also provided a representative to ensure fair trial yet that representative failed to act effectively. If this decision is not important to you, you are not an American.

As every American knows, the first part of the Declaration of Independence established the right to life, liberty, and the pursuit of happiness. Nothing, it seems, could be more fundamental to Americans than the protection of these rights. We are well aware of them, and these days not shy about asserting them.

Let us also remember the last line of the Declaration of Independence. The Jefferson wrote, "we mutually pledge to each other our lives, our fortunes, and our sacred honor." The foundation of the law is built on justice being done, and "to establish justice" is, according to the preamble to the Constitution, one fo the first priorities of forming these United States. No American, having pledged to another American his life, fortunes and sacred honor, we see justice in a proceeding in which the Judge is biased and prejudiced, accepting a plea deal, that is a result of ineffective assistance of counsel, that deprives a man of his right to life, liberty, and pursuit of happiness in this great country as a free man for 120 months when the charge carries only 30-37 months.

As our founding father Benjamin Rush wrote to John Adams on September 4, 1811, "I think I have observed that integrity in the conduct of both the living and the dead takes a stronger hold of human heart than any other virtue. It is placed before mercy by the name of justice in the scriptures, and just men are in many parts of the inspired writings placed upon very high ground. It is right, it should be so. The world stands in more need of justice than charity, and indeed it is the want of justice that renders charity everywhere so necessary."

The erroneous decisions by the United States Courts of Appeals for the Fourth Circuit regarding the District Court Judge's failure to recuse himself under 28 U.S.C. 455(b), (which is in conflict with all other Courts of Appeals) and the ineffective

assistance of counsel that lead to the illegal plea, need justice. Granting this petition will give that justice, therefore giving the Nation justice.

CONCLUSION

Ideals of substantial justice and fairplay require that this Court afford this Petitioner the opportunity for fair decision to advance the "Greater Ends of Justice". The Petitioner can make a full and substantial showing of a denial of his Constitutional rights. The cause of justice shall be served by allowing this Petitioner to file this Writ of Certiorari, consistent with his request including appropriate grounds for relief, because to do so otherwise will prejudice the Petitioner and deprive him of meaningful access to the Court.

Based on the aforementioned, the Petitioner urges this Honorable Court to enter an order granting the relief requested and for such other relief as this Court deems necessary and proper. Petitioner assures that no dilatory motives exist for this request.

Respectfully submitted,

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Date: ~~April~~ May 5TH, 2020