05/07/21
MO

No. 20-1563

IN THE

SUPREME COURT OF THE UNITED STATES

AMIN A. RASHID,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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Pro Se

QUESTION(S) PRESENTED

1. Whether The Court Of Appeals Denies A Petitioner Due Process By Its Recharacterization Of The Final Judgment Entered By The District Court Denying Him Permission To File A Rule 60(b)(4), Fed. R. Civ. Proc., Motion As A Final Order Denying The Rule 60(b)(4) Motion Petitioner Sought Permission To File Without Giving Petitioner Notice And An Opportunity To Object; And, If So, Whether The Fifth Amendment To The United States Constitution Requires Reversal Of The Court Of Appeals' Judgment Due To Lack Of Said Notice?

LIST OF PARTIES

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

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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

The Opinion of the United States Court of Appeals appears at Appendix "A" to the petition and is unpublished.

The Opinion of the United States District Court appears at Appendix "B" to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was December 8, 2020.

A timely petition for rehearing was denied by the United States Court of Appeals on February 9, 2021, and a copy of the Order denying rehearing appears at Appendix "C."

The jurisdiction of this Court is invoked under 28, U.S.C., § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

In May 2009, a Superseding Indictment charged Petitioner with ten counts of mail fraud, eight counts of aggravated identity theft, and one count of passing an altered postal money order.

Following a jury trial, Petitioner was convicted of nine counts of mail fraud and eight counts of aggravated identity theft. The District Court sentenced Petitioner in July, 2013 to a total term of imprisonment of 240 months, to be followed by 5 years of supervised release. He was, also, ordered to pay approximately $782,000.00 in restitution. Petitioner represented himself pretrial during trial and for sentencing.

Petitioner disputed his conviction and sentencing and filed an appeal to the Third Circuit Court of Appeals. In affirming Petitioner's conviction and sentencing, the Third Circuit explained:

> Through his entity, the Center for Constitutional and Criminal Justice, Inc. (the "Center"), Rashid received fees in exchange for agreeing to help his clients prevent or reverse sheriff's sales of their homes. Typically, Rashid's clients still lost their homes and Rashid kept the fees. Rashid also stole his clients' identities and used them to collect proceeds due to the prior owners of properties sold at sheriff's sales. City Line Abstract Company ("City Line"), a title insurance company used in connection with the various sheriff's sales, issued distribution policies that ultimately paid Rashid over $600,000.00.

United States v. Rashid 593 Fed Appx. 132, 133 (3rd Cir. 2014).

In May 2016. Petitioner moved to vacate, set aside, or correct his sentence pursuant to 28, U.S.C., § 2255. Petitioner raised four sets of claims in his § 2255 petition: (1) ineffective assistance of pretrial counsel; (2) actual innocence; (3) prosecutorial misconduct; and (4) judicial misconduct. In a Memorandum Opinion issued June 20, 2017, the District Court denied Petitioner's 2255 motion.

One year prior to denying Petitioner's § 2255 motion, June 20, 2016, the District Court granted in part the Government's motion requiring Petitioner to seek leave of the Court before filing [any] motions in this case. The Government's motion asked the District Court to also consider a prior case in which Petitioner was

convicted "in 1993" and that he has diligently pursued relief from that judgment. In granting the Government's motion to restrict Petitioner's access to the Court, the District Court explained that:

> Defendant has filed numerous motions seeking to re-litigate issues that have repeatedly been decided by this Court and by the Third Circuit. In addition to the multiple numerous motions to recuse and the thirty post trial motions filed by Defendant, he has also filed fourteen non-meritorious motions to dismiss the indictment against him as duplicitous, jurisdicionally defective, vindictive, fraudulent, or in violation of the speedy trial act, eighteen motions for reconsideration of various Court rulings; and fourteen non-meritorious appeals, as well as a number of requests for rehearing and requests to recall the mandate. In fact, with respect to a "1993 conviction," the Third Circuit found it "undeniable" that Defendant's "history of pro se challenges to his 1993 conviction is vexatious." Defendant has thus exhibited a "pattern of conduct from which [the Court] can only conclude that a litigant is intentionlly abusing the judicial process and will continue to do so unless restrained.

Appendix "B," at pages 1-2. In light of its explanation, the District Court held that "Defendant should not be permitted to file any motions that attempt to relitigate issues that have been decided" except "as to Defendant's pending § 2255 Motion and as to [his] § 2241 action, which [was] ... pending on appeal." Before filing any motions in this case, Petitioner must now certify under penalty of perjury that: 1) the motion is brought in "good faith," (2) it raises issues not previously decided on the merits by any federal court, and (3) upon fair adjudication entitles petitioner to the relief requested. In denying Petitioner's § 2255 Motion, the District Court did so without giving him a hearing.

On July 18, 2017, Petitioner filed a Motion for Reconsideration challenging the District Court's decision not to hold an evidentiary hearing and repeating the arguments that the District Court rejected when denying his § 2255 Motion without reaching the "merits." The District Court denied the motion. Petitioner then filed a "Motion for Relief from Void Judgment Pursuant to Rule 60(b)(4), F.R. Civ. Proc. and Request for an Evidentiary Hearing" that again raised two issues related to a Grand Jury Subpoena used to obtain evidence used by the Government in Petitioner's trial. On March 13, 2018, the District Court denied the motion explaining that "the arguments raised in his current motion have plainly been rejected by this Court and the Court of Appeals" and that "[e]ven if the Court were

to reach the merits of Defendant's Motion, Defendant has plainly failed to state any grounds for relief cognizable under Rule 60(b)(4)." On June 19, 2018, the Court of Appeals denied Petitioner's request for a certificate of appealability.

On March 11, 2020, Petitioner filed a **Motion for Permission to File a Motion for Relief from Judgment Pursuant to Rule 60(b)(4).** Therein, Petitioner **"swore under penalty of perjury"** and presented **"documentary evidence"** that the **Government** used "perjury, subornation of perjury, and obstruction of the administration of justice" to avoid suppression of "material evidence" used in his trial. Further, he alleged that the perpetrators were the United States Postal Service Inspector, Mary C. Fitzpatrick, and the Assistant United States Attorney, Vineet Gauri, Esq., both of who prosecuted his case on behalf of the Government. The Government responded to Petitioner's Motion without denying his claims. The Government instead argued that Petitioner was simply re-litigating arguments which the District Court and the Third Circuit had already rejected. The District Court adopted the Government's argument and denied Petitioner relief despite the fact that the "record" in this case does not evidence that the District Court, nor the Third Circuit, has ever condoned the Government's use of **"perjury, subornation of perjury, and obstruction of the administration of justice"** to avoid suppression of "material evidence" used by the Government in Petitioner's trial. Petitioner presented "documentary evidence" to the District Court in support of his claims, to wit:

> 1) perjury - Inspector Mary Fitzpatrick appeared as a witness for the Government in a suppression hearing held by the District Court on June 2 2011, and testified "untruthfully, under oath," that she served a grand jury suboena on Maurice Mander or his Attorney, Isaac Green, Esq., for documents from Maurice Mander. (An investigation conducted by Kerry Tucker, Court Appointed Investigator, discovered that neither Mander, nor his Attorney was served with a subpoena). The District Court denied Rashid's motion (Doc. #389) to call Mander and/or his attorney to testify as to their receipt or knowledge of the grand jury subpoena for Documents from Mander:
>
> 2) subornation of perjury - On June 2. 2011, after Inspector Fitzpatrick testified that she met with Maurice Mander and served him with a grand jury subpoena for documents, the Government Attorney, Vineet Gauri, Esq., coached her to change her testimony to state that she served the subpoena on Mander's Attorney, Isaac Green, Esq. See, Hearing Tr., 6/2/2011, pp. 73-75. On May 21, 2013, during another hearing held by the District Court, Mr. Gauri "admitted" to the District Court that the grand jury

subpoena was not "served" on either Mander, or his Attorney. He stated that the "subpoena" was "faxed" to a number given him by Attorney Green, but he is not sure if Attorney Green received the fax. See, Hearing Tr., 5/21/2013, p. 31. After Mr. Gauri "admitted" that the alleged grand jury subpoena was "faxed" and that he was not sure if Attorney Green received the "fax," the District Court still denied Petitioner's motion (Doc. # 389) to subpoena Mander and Green to testify that neither of them had been served with a grand jury subpoena: and

3) obstruction of the administration of justice - The Grand Jury Subpoena "story" was Mr. Gauri's pretext to having the District Court "admit" the Mander Documents for use as evidence in Petitioner's trial. The Government "knowingly and intentionally" misled the District Court that a Grand Jury Subpoena was properly obtained, used, and served to get "material evidence" from Maurice Mander for use in Petitioner's trial. Had the District Court known of the Government's "criminal conspiracy" to have the Mander Documents "admitted," it is reasonable to assume that a federal judge would have Granted Petitioner's Motion to suppress.

The District Court entered its Order Denying Petitioner's Motion For Permission to File a Rule 60(b)(4) Motion on August 3rd, 2020; the District Court denied Petitioner's Reconsideration Motion on August 28, 2020. On September 28th, 2020, Petitioner filed a timely Notice of Appeal to the United States Court of Appeals for the Third Circuit. In his Notice of Appeal, Petitioner specifically noted that he was appealing the District Court's Orders denying him permission to file a Rule 60(b)(4) Motion.

On October 5th, 2020, the Court of Appeals issued a directive stating, in part, as follows:

"A notice of appeal has been filed from the final order of the District Court denying a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. Section 2255, or a related motion filed pursuant to Fed. R. Civ. P. 60(b). An appeal from such an order may not proceed to consideration of the merits unless a 'circuit justice or judge' grants a certificate of appealability. 28 U.S.C. Section 2253."

Thus, the Court of Appeals "recharacterized" the District Court's "final judgment" denying Petitioner permission to file a Rule 60(b)(4) Motion as the District Court having denied Petitioner's Rule 60(b)(4) Motion; a motion that he was denied permission to file. The Court then denied him a certificate of appealability. Petitioner sought a rehearing on grounds that the panel lacked jurisdiction to adjudicate Petitioner's matter under 28, U.S.C., § 2253(c)(1)(B), the certificate of appealability standard. The Court of Appeals denied rehearing.

REASONS FOR GRANTING THE WRIT

This is a classic case where hearing a criminal defendant's case on the merits will result in giving a citizen one of the most fundamental rights guaranteed by the United States Constitution - a fair trial. Here, the Government Attorney, Vineet Gauri, Esq., knew Inspector Fitzpatrick's suppression hearing testimony that she served a grand jury subpoena for evidence on Mander or his Attorney was false because according to his averments to the District Court on May 21, 2013, he, in fact, faxed the alleged grand jury subpoena to Mander's Attorney, Isaac Green, Esq. It is a fundamental error which must be heard on the "merits" if justice is to prevail. The Supreme Court has long held that, "If a prosecutor uses testimony it knows or should know is perjury, it is fundamentally unfair to an accused." United States v. Agurs, 427 U.S. 97, 103, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976). In his Section 2255 motion, one of the grounds set forth for relief is "prosecutorial misconduct." The District Court denied Petitioner's Section 2255 Motion "without an evidentiary hearing." Given the plethora of "documentary evidence" in the "record" of the case supporting a finding of prosecutorial misconduct, there is a fundamental defect in this Section 2255 proceeding which can be remedied by the District Court's Grant of the hearing required by Section 2255(b) on the issue of "prosecutorial misconduct." If the Petitioner properly filed a motion for permission to file a Rule 60(b)(4) Motion. The District Court "erred" by denying him permission to file a Rule 60(b)(4) Motion. Petitioner is entitled to a ruling on the issue of whether the District Court "erred" by denying him permission to file a Rule 60(b)(4) Motion. The Court of Appeals exceeded its authority and denied Petitioner due process by its sua sponte recharacterization of the District Court's final judgment. There was no Rule 60(b)(4) Motion Judgment entered by the District Court in this case. The Court of Appeals' jurisdiction in this case was pursuant to 28, U.S.C., § 1291, not 28, U.S.C., § 2253(c)(1)(B). The final judgment entered here was that of a motion denying permission to file a Rule 60(b)(4) Motion.

Federal Courts are courts of limited jurisdiction. As a court of limited jurisdiction, federal courts are obligated to consider sua sponte whether it has jurisdiction to hear an appeal. See, Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998)("the requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception.")(internal quotation marks and alteration omitted): Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541, 106 S.Ct. 1326, 89 L.Eds.2d 501 (1986)("[E]very federal appellate court has a special obligation to satisfy itself ... of its own jurisdiction . . . even [if] the parties are prepared to concede it.")(internal quotation marks omitted). Here, the Petitioner did not appeal "the final order in a proceeding under section 2255," or a related Rule 60(b) action. Section 2255 authorizes district courts to take one of four(4) distinct courses in remdying a successful § 2255 petitioner's unlawful sentence: (1) discharge the prisoner, (2) grant the prisoner a new trial, (3) resentence the perisoner: or (4) correct the prisoner's sentence. It is respectfully submitted that a motion seeking permission to file a Rule 60(b)(4) Motion can result in none of the relief permitted by a Section 2255 motion; therefore, at best, it is none more than a plea to file a motion which seeks habeas relief. The District Court curtailed Petitioner's habeas corpus rights as embodied in the United States Constitution in violation of **Art. I, Sec. 9, cl. 2.**

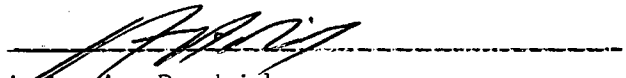
Ordinarily, a prisoner who seeks to appeal "the final order in a proceeding under section 2255 must obtain a Certificate of Appealability("COA") as a "jurisdictional prerequisite" to an appeal. Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029, 1545 L.Ed.2d 931 (2003). Appellate Courts are guided by law, 28, U.S.C., § 2253(c)(1)(B), in requiring that a COA be obtained to appeal denial of a section 2255 action. Federal Courts have no authority to apply § 2253(c)(1)(B) requirements in none § 2255 actions. Furthermore, there is no statute which permits a Court of Appeals to sua sponte "recharacterize" a District Court's final

judgment(decision). The applicable law, 28, U.S.C., § 1291, giving courts of appeals authority to review District Court decisions, states, in relevant part, as follows: "The courts of appeals ... shall have jurisdiction of appeals from all final decisions of the district courts of the United States ..." Arizona v. Manypenny, 451 U.S. 232, 244, 101 S.Ct. 1657, 68 L.Ed.2d 58 (1981). A final decision "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Ray Haluch Gravel Co. v. Central Pension Fund of Operating Engineers and Participating Employers, 571 U.S. 177, 183, 134 S.Ct. 773, 187 L.Ed.2d 669 (2014). Appeal from such a final decision is a "matter of right." Ellen Gelboim v. Bank of Amercia Corporation, et. al., 574 U.S. 405, 135 S.Ct. 897, 190 L.Ed.2d 989 (2014). Since Petitioner's Appeal from the District Court's final decision denying his Motion for Permission to File A Rule 60(b)(4) Motion was a "matter of right," the Court of Appeals' sua sponte "recharacterization" of the District Court's final decision unfairly infringed on Petitioner's Fifth Amendment Due Process right to be heard on the "final decision" entered by the District Court. In Castro v. United States, 540 U.S. 375, 157 L.Ed.2d 778, 124 S.Ct. 786 (2003), this Court held that a federal district court cannot sua sponte recharacterize a pro se litigant's motion as a first § 2255 motion unless it informs the litigant of the consequences of the recharacterization, thereby giving the litigant the opportunity to contest the recharacterization, or to withdraw, or to amend the motion. Id., at 377, 157 L.Ed.2d 778, 124 S.Ct. 786. Castro dealt with a District Court, of its own volition, taking away a petitioner's desired route-namely, a Federal Rule of Criminal Procedure 33 motion - and transforming it, against his will, into a § 2255 motion. The Court of Appeals' sua sponte transformation of the final decision of the District Court in this case is far more egregious than the actions of the District Court in Castro. Here, the Court of Appeals' action permitted it to avoid ruling on the "merits" of Petitioner's Appeal simply by invoking COA standards. This was an egregious violation of Petitioner's Constitutional Right to Due Process and the Court should rule that such sua sponte actions by the Court of Appeals is forbidden.

CONCLUSION

For all of the abovementioned reasons this Honorable Court is respectfully requested to issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Third Circuit.

Respectfully submitted.



Amin A. Rashid

Date: May 3rd, 2021