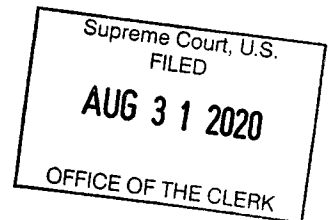


No. 20-5855

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



RUBEN ORLANDO BENITEZ—PETITIONER

VS.

U.S. CT. OF APPEALS 5TH CIRCUIT—RESPONDENT(S)

ON PETITION FOR AN EXTRAORDINARY WRIT

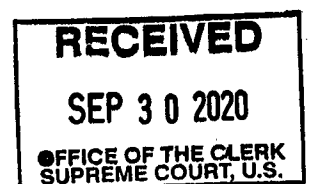
MANDAMUS/PROHIBITION

RUBEN ORLANDO BENITEZ

SMCI P.O. BOX 1419

LEAKESVILLE, MS 39451

NO PHONE AVAILABLE



QUESTION(S) PRESENTED

Question No. 1

Whether the Court committed errors therein arising from oversight

Question No. 2

Whether new evidence serves as precedence

Question No. 3

Whether the deciding Judges acted with malice by not issuing an order of recusal

Question No. 4

Whether a court, which acknowledges a clear "Lack of Jurisdiction" abuses its authority in not remanding to the Jurisdictional Court

Question No. 5

Whether the Court committed error in not accepting the Defendant's original defense of "Lack of Jurisdiction" made under oath

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APPENDIX B----- US COA 5TH CIRCUIT APPEAL ORDER

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APPENDIX D----- US DIST. CT. SO. MS. FINAL JUDGMENT

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APPENDIX F----- SUMMONS

APPENDIX G----- ANSWER TO COMPLAINT

APPENDIX H----- LETTER

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APPENDIX J----- EMAIL (EX-PARTE COMMUNICATION)

EXHIBITS

1--AFFIDAVITS [KRYSTALYN BENITEZ, JAZMIN ROSA, & MARIANNE BENITEZ]

2—OBJECTION TO DENIAL OF ENTRY OF DEFAULT

3—PREDISPOSITION STATEMENT BY REVIEWING JUDGES

4—DEFENDANT'S ORIGINAL ANSWER TO COMPLAINT SUBMITTED IN DEFAULT

5—PLAINTIFF'S SUBMITTED RESPONSE TO ANSWER TO COMPLAINT

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:

Stephen R. Graben Assistant U.S. Attorney

Jeffrey Atkins, Deputy Clerk of U.S. Supreme Court

U.S. Court of Appeals Fifth (5th) Circuit Court

STATEMENT OF THE CASE

On May 24, 2017 Indigent Pro Se Petitioner Ruben Orlando Benitez filed a Civil suit, **Cause No. 2017-063 (2)**, against one Jeffrey Atkins in the Greene County Circuit Court of Mississippi to which Jeffrey Atkins [attorney thereof] **admits receiving such on August 1, 2017 and refused to sign or return the acknowledgment included by its required date.** Jeffrey Atkins also admits that he possesses the knowledge, skills, and ability to **understand the clear directions of the summons:**

"Request for Admission No.1: Did Defendant receive/possess the summons and complaint on August 1, 2017 through U.S. Mail?

Supplemental Response: Yes

Request of Admission No. 2: Did Defendant sign or return the acknowledgment included in the mailing by its required date of August 8, 2017?

Supplemental Response: No

Request for Admission No. 4: Did Defendant possess the knowledge, skills, and ability to understand the clear directions of the summons and all processes thereof?

Supplemental Response: Defendant admits he understood the directions contained in the summons"

Jeffrey Atkins [attorney thereof] requested to move the Civil case to a Federal Court. Pursuant to Federal Rules of Civil Procedures 81 (c)(2) the requested removal extended Jeffrey Atkins only until **September 05, 2017** to file a defense to the specific Civil suit which illustrated the following definitive obligation:

"You are required to mail or hand deliver a copy of a written response to the complaint to Ruben Orlando Benitez, the plaintiff, whose address is P.O. Box 1419 Leakesville, MS 39451. Your response must be mailed or delivered within (30) days from the date of delivery of this summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the complaint."

Appendix F

Without a Court granted extension being issued "**on or before**" the deadline date of September 05, 2017, Jeffrey Atkins [attorney thereof] submits a defense on October 12, 2017 in "**default**" with the principle elucidated defense of:

"1. This Court lacks jurisdiction over the subject matter of this action.

2. This Court lacks jurisdiction over the person of Atkins."

Appendix G

Although Jeffrey Atkins [attorney thereof] **unequivocally and under oath** deprecates the Federal Court's jurisdiction over the Civil case, the U.S. District

Court of Southern Mississippi allows for over eighty (80) documents to be filed for the identified case of 1:17-cv-00233-HSO-RHW. It is extraordinary that a U.S. Federal Court would continue to accept and review documents for which the Defendant's primary and principle defense is that the Federal Court "**Lacks Jurisdiction.**"

Notwithstanding, Indigent Pro Se Petitioner Benitez has never withdrawn the principle argument of lack of jurisdiction and default against Jeffrey Atkins [attorney thereof].

Appendix H

Appendix I

The U.S. Court of Appeals for the Fifth (5th) Circuit also continues the prejudice in not remanding the Civil case to the Greene County Circuit Court of Mississippi notwithstanding Jeffrey Atkins, the U.S. District Court of Southern Mississippi, and Indigent Pro Se Petitioner Benitez **all stating under oath** that the Federal Court "**Lacks Jurisdiction.**"

Given the submitted documents on record, the Civil case must be remanded to the Greene County Circuit Court of Mississippi or in the alternative, Jeffrey Atkins

must be found in default for not responding to the served summons **“on or before” September 05, 2017**. The most compelling proof associated to the default is the **“e-mail”** which was sent directly to Honorable Magistrate Judge Robert H. Walker of the U.S. District Court for the Southern District of Mississippi Southern Division on September 8, 2017, **post deadline without cause shown**, illustrating the following;

“...therefore again respectfully requests this Court to enter an order Granting Defendant’s motion.”

This e-mail was sent directly to the Honorable Magistrate Judge Robert H. Walker and is considered an **“ex-parte communication”** as Pro Se Benitez does not appear on the e-mail recipient’s list nor is there a certificate of service attached.

“The violation of the principles of justice...should be dealt with by the court no matter by whom or at what stage of the proceedings the facts are brought to its attention.”

Sorrells v. U.S., 287 U.S. 435, 53 S. Ct. 210, 86 A.L.R. 249, 77 L. Ed 413, 38

Appendix J

U.S. Supreme Court Rule 20.1

This petition is being submitted to illustrate the wrongful actions of the U.S District Court of Southern Mississippi and the U.S Court of Appeals for the Fifth Circuit. The petition warrants granting to aid the Federal Court reaffirm a well-founded and justifiable appellate jurisdiction reviewing process.

This Court's discretionary powers are warranted to correct the mistakes of the two prior reviewing Court's erroneous decisions in not remanding the Civil case, removed to the Federal Court by the Defendant [attorney thereof], 1:17-cv-00233-HSO-RHW from its true jurisdictional Greene County Circuit Court of Mississippi Cause No. 2017-063 (2). Moreover, the U.S. District Court of Southern Mississippi overlooks the unembellished fact of the Defendant's [attorney thereof] pure denunciation of the Federal Court's jurisdiction in the sworn response. It is preposterous for the Defendant [attorney thereof] to remove a civil case from a State Court to a Federal Court and then decry the Federal Court's jurisdiction. It is also outrageous for the Federal Court to assume jurisdiction and then admit it has no personal jurisdiction over the case. Both occurrences are absolute forms of intimidation, coercion, and malicious disregard for the principles of justice. This Court's discretionary powers were recognized for cases such as this were a reviewing Court(s) has manifestly tarnished the established law passed by legislature and has openly disregarded the principles of

justice by denying relief in a way which is detrimental to the entire judicial system.

Pro Se Plaintiff Ruben Orlando Benitez has presented a Civil case with all the required evidence for which two Federal Courts refuse to acknowledge and take the appropriate action. There may feasibly be a cause to levy criminal charges against both courts as Assistant U.S. Attorney Stephen R Graben was assigned to defend the Defendant Jeffrey Atkins by the U.S Department of Justice. The criminal charge would be handled by the same U.S. Department of Justice which is currently investigating the State of Mississippi. Therefore, the presumptive criminal case would create the conundrum of the U.S. Department of Justice investigating the corruption of the State of Mississippi for which Assistant U.S. Attorney Stephen R. Graben is a representative of the investigating agency who is consorting with State Justice Officials of Mississippi who have at every instance openly deprived justice to Pro Se Plaintiff Ruben Orlando Benitez who filed a Civil lawsuit without the assistance or benefit of counsel against the Deputy Clerk of the U.S. Supreme Court citing, inter alia, malice, corruption, and intimidation.

However, this Court can provide adequate relief by reversing the rulings of the U.S. Court of Appeals Fifth Circuit and the U.S. District Court of Southern Mississippi and remand the Civil case, **Ruben Orlando Benitez v. Jeffrey Atkins Cause No. 2017-063 (2)**, to the Greene County Circuit Court of the State of Mississippi with directions to award monetary damages to Pro Se Plaintiff Ruben Orlando Benitez as the damage created

by the indecorous denials by the prior reviewing courts were atrocious and carried out against the peace and dignity of justice. In the most desirable alternative, this Court can determine the actual malice, corruption, intimidation, and coercion, exhibited by the two prior reviewing Courts were inexcusable and the irreversible default of Defendant Jeffrey Atkins is manifestly obvious thus demanding Defendant Jeffrey Atkins pay the monetary award of damages sought to include all related court cost and filing fees which Pro Se Plaintiff Ruben Orlando Benitez endured. In the most minimalist alternative, this Court can remand the Civil case to the exclusive jurisdictional Greene County Circuit Court of the State of Mississippi with instructions to grant Pro Se Plaintiff Ruben Orlando Benitez the sought after relief including court and filing fees and to determine if there are any aggregate elements.

SUPREME COURT OF THE UNITED STATES

RUBEN ORLANDO BENITEZ PLAINTIFF
VERSUS
JEFFREY ATKINS DEFENDANT

PETITION FOR AN EXTRAORDINARY WRIT

Comes now, Indigent Pro Se Plaintiff Ruben Orlando Benitez, without the benefit or assistance of counsel, filing this Petition for an Extraordinary Writ pursuant to the Supreme Court of the United States Rule 20.

Clerical mistakes in judgments, orders or other parts of
the record and errors therein arising from oversight

It is unfathomable that a clerk of a court cannot be accountable for an action which is, 1) a legal duty owed by one to another; 2) a breach of that duty; 3) damages proximately resulting from the breach. Greater Hous. Transp. Co. v. Phillips, 801 S.W. 2d 523 (Tex. 1990); El

Chico Corp. v Poole, 732 S.W. 2d 306, 311 (Tex. 1987);
Otis Eng'g Corp. v. Clark, 668 S.W. 2d 307, 312 (Tex.
1983) Pro Se Benitez will unequivocally demonstrate that
Mr. Atkins “personally” sought to ensure Benitez would
not be afforded a correct process due. Ashcroft v. Iqbal,
556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868
(2009); Bell Atl. Corp. v. Twombly, 550 U. S. 544, 570, 127
S. Ct. 1955, 167 L. Ed. 2d 929 (2007) The very fact Mr.
Atkins [attorney thereof] does not deny or contradict the
submitted affidavits by three different people, who were
present for a personal phone conversation held between
Mr. Atkins and Benitez on or about September 26, 2017,
is unequivocally the most relevant evidence. EXHIBIT 1
Ferguson v. Nat'l Broad Co. Inc., 584 F 2d 111, 114 (5th
Cir. 1978) Especially when the United States Court of
Appeals 5th Circuit issues an order of denial which clearly
stipulates that Mr. Atkin’s failure to discuss or contradict
the affidavits establishes a waiver. Yohey v. Collins, 985 F
2d 222, 225 (5th Cir. 1993); Ferguson v. Nat'l Broad Co.
Inc., 584 F 2d 111, 114 (5th Cir. 1978) Therefore, the
affidavits must be viewed as undeniable proof as admitted
which on its own entitle Pro Se Benitez to relief as a

matter of law. Gen. Tel. Corp. v. Gen. Tel. Answering Serv., 277 F. 2d 919, 921 (5th Cir. 1960); Celotex Corp. v. Catrett, 477 U. S. 317, 106 S. Ct. 2548, 91 L. Ed 2d 265, 54 USLW 4775, 4 Fed. R. Serv. 3d 1024 (1986); United States v. Olano, 507 U.S. 725, 733, 113 S. Ct. 1770, 123 L. Ed 2d 508 (1993) In this phone conversation Mr. Atkins made it clear that “he” would ensure the submissions of Benitez would not be approved. Speed v. Scott, 787 So. 2d 626, 630 (Miss. 2001); Davis v. City of Clarksdale, 18 So. 3d 246, 249 (Miss. 2009) The record is clear, Mr. Atkins personally changed the meaning of the submissions therefore causing additional prejudice: thereby adhering to “his” personal undertaking. Terry v. Hubert, 609 F. 3d 757, 761 (5th Cir. 2010); Morrison v. Miss. Enter. for Tech., Inc., 798 So. 2d 567, 574 (Miss. Ct. App. 2001); McDonald v. Steward, 132 F. 3d 225, 230-31 (5th Cir. 1998)

Newly discovered evidence which was not available

Benitez contends it is impossible for the Clerk, of the United States Supreme Court, to have absolute immunity in a civil case when a Federal Court has determined that even the President of the United States has no such immunity in a civil case. 1:19-CV-02379-KBJ U.S. District Court of Columbia; Muhammad v. Muhammad, 622 So. 2d 1239, 1242 (Miss. 1993) The error exhibited by the United States Court of Appeals of the 5th Circuit Court must be corrected as the affirmation of the order issued on October 12, 2019 places Jeffrey Atkins, Clerk of the U.S. Supreme Court, in a higher position then the President of the United States of America and by interpretation "A KING." United States v. Fernandez, 797 F. 3d 315, 318 (5th Cir. 2015)

Judgment must be voided

Pro Se Benitez also contends the two Judges who filed the current denial order, in the Fifth Circuit Court, on the civil case, must recuse themselves as they ruled in the appeal of Benitez's criminal case in the State Court of Mississippi. Neither Judge issued an opinion for the denial notwithstanding the written request by Pro Se Benitez in the State Court procedure to be afforded one. More egregiously, neither Judge issued an opinion on the basic denial of a constitutional right of life and liberty which was clearly demonstrated by Pro Se Benitez. Kelly LLC v. Corinth Pub. Utils. Comm'n, 200 So. 3d 1107, 1112-13 (Miss. Ct. App. 2016) Therefore the Judges have violated 28 U.S.C. section 455 as both played an active role in the State Court process which clearly formulated their current prejudicial "per curiam" order. Manquino v. Prudential Prop. & Cas. Ins. Co., 276 F. 3d 720, 725 (5th Cir. 2002) The evidence of the Judge's predisposition towards Benitez is demonstrated in the order of denial which ignores the need to recant a U.S. Supreme Court case, Lujan v. National Wildlife Federation, 497 U.S. 871, 110 S. Ct. 3177, 31 ERC 1553, 111 L. Ed 2d 695, 20

ENVIL. L. REP. 20 962 (1990), which wholly condemns a party for not responding to a summons within the prescribed time frame. EXHIBIT 2 Their malicious actions display unconstrained contempt for the Judicial System and their egregious conduct rescinds the very concept of justice. No Federal Court is to be agnostic with respect to the entry of default judgment as the standard of review is abuse of discretion and the slightest abuse of discretion may justify relief. *United States v. One Parcel of Real Property*, 763 F. 2d p181, 183 (5th Cir. 1985)

The second display of predisposition is the fact the order illustrates information about the conviction of Benitez which was never presented in the civil case. EXHIBIT 3 Thus the Judges harbor malice towards the ability for Pro Se Benitez not only to be granted relief but to the exposure of the wrongful State Court ruling. Third, the order illustrates that it was “per curiam.” However, since the order erred in not withdrawing the established U.S. Supreme Court case [*Lujan*] no such “per curiam” could be had. The Judges must either adhere to the case of antecedence or withdraw it and it must be done by

review of the entire court with the two Judges submitting an order of recusal.

Mistakes, Inadvertence, Fraud, & Misrepresentation

The U.S. Court of Appeals of the Fifth Circuit also ignored the valid argument of “Lack of Jurisdiction.” *Franklin v. State of Oregon*, 662 F. 2d 1337, 1342 (9th Cir. 1981) Mr. Atkins [attorney thereof] openly states the U.S. District Court of Southern Mississippi had “no jurisdiction” over the civil case in the original response submitted after the deadline. EXHIBIT 4 & 5 Pro Se Benitez also stated the same fact in numerous submissions which were corroborated by multiple Federal cases. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *U.S. v. Tisdale*, 195 F. 3d (1999); *U.S. v. Weaver*, 99 F. 3d 1372 (1996); *Backe v. LeBlanc*, 691 F. 3d 645, 648 (5th Cir. 2012) Even the U.S. District Court of Southern Mississippi stated they had “no personal jurisdiction” in their issued order. Therefore, the U.S Court of Appeals of the Fifth Circuit commits yet another error and has issued an order which is clearly prejudice and has no

merits to its own conclusion. Lewis v. Lynn, 236 F. 3d 766, 767 (5th Cir. 2001) The U.S. Court of Appeals of the Fifth Circuit was bound by law to view the facts presented by Pro Se Benitez and had an obligation to either refute the facts by demonstrating law to support its conclusions or issue an order to proceed to a trial of the facts to be judged by a jury and not by Judges who have repeatedly demonstrated prejudice, malice, and lawlessness. Mancini v. Lester, 630 F. 2d 990 (1980); Hampton v. Chicago, 484 F. 2d 602 (7th Cir. 1973); Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed 331 (1978) It is undeniable that the rulings of summary judgment must be guided by the clear and convincing evidentiary standard in determining whether genuine issues of actual malice exist. This requires a jury to weigh the evidence, as the drawing of legitimate inferences from the facts is a jury function, not those of a Judge. Curley v. United States, 160 F. 2d 229, 232-233 (D.C. Cir. 1947); Harbin v. Burlington N.R. Co., 921 F. 2d 129, 131 (7th Cir. 1990)

Mistakes, fraud, all other rules and procedures which
were created by error

Finally, the case of Williams v. Wood, 612 F.2d 982, 984-85 (5th Cir. 1980) is irrelevant as the record is replete in demonstrating the U.S. District Court of Southern Mississippi, Defendant Jeffrey Atkins [attorney thereof], and Pro Se Plaintiff Ruben Orlando Benitez “all agree” the Federal Court “does not hold jurisdiction over the submitted civil action.” 1:17-cv-00233-HSO-RHW

Unless this court holds that a case in which “all” parties, including the reviewing court, who have indisputably stated “under oath,” that the Federal Court holds “no jurisdiction,” can still review and decide a case by ignoring court antecedence and established law, the civil case of Ruben Orlando Benitez v. Jeffrey Atkins must be remanded to the Greene County Circuit Court of Mississippi. Cavallini v. State Farm Mut. Ins. Co., 44 F. 3d 256, 264 (5th Cir. 1995) In the alternative, the Defendant Jeffrey Atkins can elect to plead providing Ruben Orlando Benitez the full monetary damages as

relief to include all associated filing and court cost.

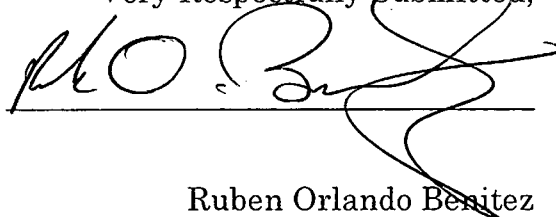
Sorrells v. U.S., 287 U.S. 435, 53 S. Ct. 210, 86 A.L.R.

249, 77 L. Ed 413, 38

Conclusion

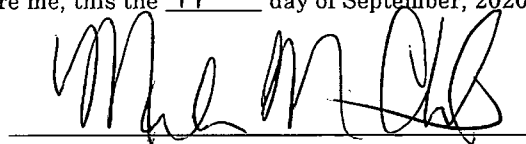
Wherefore premises considered, the multiple errors demonstrated by the U.S. District Court of Mississippi, U.S. Court of Appeals of the Fifth Circuit, Judge Graves, and Judge King warrant the granting of this extraordinary writ submitted by Plaintiff Ruben Orlando Benitez filing Pro Se.

Very Respectfully Submitted,


Ruben Orlando Benitez

MDOC # 182157

Sworn to and subscribed before me, this the 17TH day of September, 2020



Notary

