

20-6893

ORIGINAL

No. _____

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

PATRICK B. WALLACE 09819026 — PETITIONER

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES SEVENTH CIRCUIT COURT /

PETITION FOR WRIT OF CERTIORARI

PATRICK B. WALLACE 09819026
FCI Greenville
P.O. Box 5000
Greenville, IL 62246
PRO SE REPRESENTATION

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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

28 U.S.C.S. Section 2255	
28 U.S.C.S. Section 2253(c)	
28 U.S.C.S. Section 2253(c)(2)	
28 U.S.C.S. Section 1254	
28 U.S.C.S. Section 2253(c)(1)(A)	
21 U.S.C. Section 841(a)(1).	
Rule 11	
Rule 9(b)	
Fed Rule. App. Proc. 22(b)	
Fed Rule Civ. Proc. 41(A)	
Fed Rule Civ. Proc. 8(f)	

QUESTION(S) PRESENTED

The United States District Court for the Central District of Illinois and the Seventh Circuit Court should have issued a COA to review the denials of the Petitioner's Federal Writ of Habeas Corpus Section 2255.

Did the Courts commit reversible error denying Petitioner's COA, to resolve the factual disputes.

The United States District Court for the Central District of Illinois and the Seventh Circuit Court should have issued a COA to review the denial of Petitioner's Motion for Recuse. Case No. 19-2810 which was consolidate with Case No. 19-2971.

Did the Courts commit reversible error denying Petitioner's COA, in violation of the 5th and 6th Amendments " right to be present." at every stage of the judicial process, under RODGES -v- UNITED STATES, 422-U.S. 35, 39 (1975)

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

United States District Court for the Central District of Illinois
Criminal Case No. 12-cr-30003

United States District Court for the Central District of Illinois
Civil Case No. 15-cv-03356-RM

United States Court of Appeals for the Seventh Circuit
Case Nos. 19-2810-19-2971

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 C 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 JUNE 25, 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: JULY 24, 2020, and a copy of the order denying rehearing appears at Appendix A.

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

28 U.S.C.S. Section 2255
28 U.S.C.S. Section 2253(c)
28 U.S.C.S. Section 2253(c)(2)
28 U.S.C.S. Section 1254
28 U.S.C.S. Section 2253(c)(1)(A)

21 U.S.C. Section 841(a)(1).

Antiterrorism and Effective Death Penalty Act of 1996 (A.E.D.P.A.) (PL 104-132)

STATEMENT OF THE CASE

On December 16, 2011, the government filed a criminal complaint against the Petitioner Wallace in the United States District Court for the Central District of Illinois. The complaint alleged that Wallace knowingly possessed with intent to distribute a mixture containing cocaine base in violation of 21 U.S.C. Section 841(a)(1).

On January 10, 2012, a grand jury indicted Wallace for knowingly possessed of a controlled substance with intent to distribute.

On October 16, 2012, the jury found Wallace guilty of possession with intent to distribute cocaine base.

On May 24, 2013, the District court sentenced Wallace to 288 months imprisonment to be followed by ten (10) years of supervised release. In a separate revocation proceeding the same day, the District Court sentenced Wallace to a consecutive 60-month sentence for committing a crime while on supervised release.

On November 26, 2013, Wallace moved to dismiss the revocation appeal concerning his criminal conviction. Wallace filed appeals related to this conviction without any relief.

REASONS FOR GRANTING THE PETITION

Under the Antiterrorism and Effective Death Penalty Act (AEDPA), a Petitioner must obtain a " Certificate of Appealability " (COA) before he/she can appeal the District Court's decision. 28 U.S.C. Section 2253 (c)(1). A COA will be granted only if the Petitioner makes " a substantial showing of the denial of a Constitutional Right ". 28 U.S.C. Section 2253 (c)(2).

The Constitutional Right in the case at hand, was the right to effective assistance of counsel, thus the premised of this Petition is to ask this Court to remand this matter to the Court of Appeals, and issue an order allowing the Petitioner's COA.

In order to make a substantial showing, a Petitioner must demonstrate that a " reasonable jurists " would find the District's Court's assessment of the Constitutional claim debatable or wrong. SLACK -v- McDANIEL, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d. 542 (2000)

Without going outside the scope of this petitions issues, which focuses on the Court of Appeals denial of the Petitioners COA. The Petitioner brings to this Honorable Court attention and places on the record, the Seventh Circuit Court of Appeals decision of June 25, 2020 denying his COA. In a " one page " order, the Court of Appeals based its denial of the Petitioner's COA as stated: " this Court has reviewed the orders of the District Court and the record of appeal. We find no substantial showing of the denial of a constitutional right ".

The Petitioner states, any District Court, any Court of Appeals or this Honorable United States Supreme Court, before issuing an order and or opinion must review the " totality " of the record in order to preserve Due Process Rights and Constitutional rights of both parties. Without reviewing submissions by both parties, clearly are Due Process violations.

As the Supreme Court made clear in its decision in MILLER-EL -v- COCKRELL, 537 U.S. 322, 123 S. Ct. 1029, 1039, 154 L. Ed 2d. 931 (2003), a COA is " jurisdictional prerequisite ", and until a COA has been issued, the Federal Courts of Appeals lacks jurisdiction to rule on the merits of appeal from Habeas Petitioner's. When considering a request for a COA, the question is the debatability of the underlying Constitutional claim, not the resolution of that debate. Id. at 1042.

While an appeal is a " continuation " of the litigation started in the trial court, it is a " distinct step ". See, HOHN -v- UNITED STATES, 524 U.S. 236, 241, 141 L. Ed. 2d. 242, 118 S. Ct. (1969) And under AEDPA, an appellate case is " commenced " when the application for a COA is filed. When Congress instructs that application of a

statute is " triggered " by the commencement of a case, the relevant case for a statute directed to appeals is the one in the appellate Court as Petitioner Wallace commenced when filing his application for a COA.

Petitioner Wallace rejects the Court of Appeals contentions, because Section 2253(c) provides that a COA may issue upon the " substantial showing of the denial of a Constitutional right ", and only " Constitutional rulings " may be appealed, as in the case at hand. The COA statute established procedural rules and requires a " threshold inquiry " into whether the circuit Court may entertain an appeal. HOHN, Supra, at 248, 141 L. Ed. 2d. 242, 118 S. Ct. (1969), cf. LINDH -v- MURPHY, 521 U.S. 320 (1997) also see LINDH Supra at 327, 138, L. Ed. 2d. 481.

Post-AEDPA law govern's " the right to appeal " in cases such as the one now presented to this Honorable Court in Wallace.

The Writ of Habeas Corpus plays a vital role in protecting Constitutional Rights to proceed to further litigate and Constitutional issues presented to any Court of the United States, and not to impede them.

The BAREFOOT -v- ESTELLE case speaks loudly regarding the Petitioner claims presented. Under AEDPA, a COA may not issue unless " the applicant has made a substantial showing of the denial of a Constitutional Right. 28 U.S.C. Section 2253(c) (1994 Ed., Supp III) (28 U.S.C.S. Section 2253(c)).

" Except " for substituting the word " Constitutional " for the word " Federal ", Section 2253 is a codification of the CPC (certificate of probable cause) standard announced in BAREFOOT -v- ESTELLE, 463 U.S. at 894, 77 L. Ed. 2d. 1090, 103 S. Ct. 3383) Congress had before it the meaning BAREFOOT had given to the words it selected; and we give the language found in Section 2253(c) the meaning ascribed it in BAREFOOT, with due note for the substitution of the word " Constitutional ".

COA - ROGERS -v- UNITED STATES

Petitioner Wallace states in light of ROGERS -v- UNITED STATES, 422 U.S. 35, 39 (1975), any discussions between the Court and counsel regarding " jury inquires " must take place on the record in the presence of the Defendant, and not only between " both counsel ", who the District Court highlighter in (2R.74) were present when [it] accurately informed the jury (without Wallace's presence or consent).

A criminal defendant's presence at every " critical stage " of trial is a right deep rooted in the 5th and 6th Amendment to the United States Constitution, see UNITED STATES -v- GAGNAN, 470 U.S. 522, 526 (1985) and therefore is one of the " core rights " that must be made personally, and cannot be waived by defense counsel without a client's consent. UNITED STATES -v- RODRIGUEZ, 67 F. 3d. 1312, 1316 (th. Cir. 1995), a purported waiver by counsel [of the right to be present] is not adequate to effect a waiver. The District Court failed to follow procedure

and should have followed when presented with a communication from a " deliberating jury ", which were set forth in ROGERS.

Here, Petitioner Wallace was " prejudiced by the ROGERS violation in this case only because of the manner in which the District Court entered into an impermissible meeting of the minds with Petitioner's counsel Alvarez and AUSA Bass to resolve the jury note issue without Petitioner Wallace's presence and consent; but also, in light of the fact, had Wallace been present during the reading of the jury note, he would have emphatically objected to the jury being misled into believing that his fingerprints were on a baggie that had residue in it - an issue that counsel Alvarez raised in his opening statements (Tr. 181) i.e., that Wallace's fingerprints " were not " on any baggie that had residue in it cocaine, crack or otherwise; and, an issue that AUSA Bass erroneously led the jury to believe was true in closing arguments (Tr. 962), without any objection from counsel Alvarez, although Alvarez knew, without any shadow of a doubt, that the government had " no " evidence of Petitioner Wallace's fingerprint being on a baggie with cocaine residue in it. Petitioner Wallace was " consequently prejudiced " by the reading of the jury note, outside the presence, and without his consent. This Court should, consequently, issue a COA on this issue, clearly based that the Court of Appeals consolidated both cases and entered its order, rather than addressing each motion presented to the Court. (Case No. 19-2810 recues case) (Case No. COA Motion, 19-2971)

To obtain a COA under Section 2253(c), a Habeas prisoner must make a substantial showing of the denial of a Constitutional Right a demonstration that, under BAREFOOT, includes showing that a reasonable jurists could debate whether (of, for that matter, agree that) the Petition should have been resolved in a different manner or that the issues presented were ' adequate to deserve encouragement to proceed further " as in Petitioner Wallace's Case: BAREFOOT, Supra, at 893, and n4, 77 L. Ed. 2d. 1090, 103 S. Ct. 3383. ("summing up the substantial showing standard)

This construction gives meaning to Congress requirement that a prisoner demonstrate substantial underlying constitutional claims and is in " conformity " with the meaning of the " substantial showing " standard provided in BAREFOOT, Supra, at 893, and n4, 77 L. Ed. 2d. 1090, 103 S. Ct. 3383, and adopted by Congress in AEDPA.

AEDPA's purpose is to further the principles of COMITY, FINALITY, AND FEDERALISM. (Quoting WILLIAMS -v- TAYLOR, 529 U.S. 420, 436, 146 L. Ed. 2d. 435, 120 S. Ct. 1479 (2000) The Petitioner states the Appellate Court did not give full consideration to the " substantial evidence " Petitioner Wallace put forth in support of his Constitutional claims under STRICKLAND, in stead, it accepted without question the District Court's evaluation. This

was too demanding a standard because it incorrectly merged the clear and convincing evidence standard of Section 2254(e)(1).

The question for this Honorable Court is the " debatability " of the underlying constitutional claim, not the " resolution of that debate ".

The Petitioner states he has met the standards AEDPA imposes on the Court of Appeals and asks this Honorable Court to conclude that the Court of Appeals abuse of the " writ " holding was wrong. Thus, this Court should REVERSE AND REMAND.....

Patrick Wallace
Mr. Patrick Wallace # 09819-026

FCI Greenville
P.O. Box 5000
Greenville, IL 62246
PRO SE REPRESENTATION

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Patrick Wallace

PATRICK B WALLACE 09819026

Date: Dec 14th 2020