

No. 20-7603

IN THE
UNITED STATES SUPREME COURT

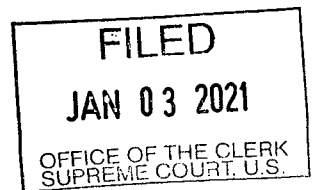
In re Bruce Allen Rutherford

vs.

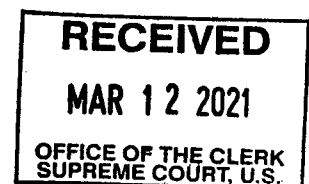
ORIGINAL

Marcia A. Crone

ON PETITION FOR A WRIT OF MANDAMUS TO
UNITED STATES district court
for the Eastern District of Texas
PETITION FOR WRIT OF MANDAMUS



Bruce Allen Rutherford - 27006-078
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QUESTIONS PRESENTED

The district court Judge A. Marcia Crone, has unreasonably delayed the ruling on my 28 U.S.C. §2255 Motion for over Seventeen (17) months after the last substantive filing in September 2019.

LIST OF PARTIES

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

RELATED CASES

Fay vs. Nola, 372 US 391, 400, 9 L.Rd.2d 387,83 S.Ct. 822 (1963).

Johnson vs. Avery, 393 US 483, 485, 21 L.Ed.2d 718, 89 S.Ct. 747 (1969).

Johnson vs. Rogers, 117 F.2d 1283 (10th Cir. 1990).

McClellan vs. Young, 421 F.2d 690 (6th Cir. 1970).

Ruby vs. United States, 341 F.2d 585, 587 (9th Cir. 1965).

United States vs. Perez, at III. LEGAL STATDARD, LEXIS 75086, No. CR-
no. CR-
06-0001-MAG (MEJ)(N.D. 2008).

STATEMENT OF THE CASE

My §2255 clearly shows 24 violations of my constitutionally protected rights and is fully supported by the court records.

My 28 U.S.C. §2255 clearly shows that relief is warranted.

The government was unable to provide any genuine disputes to my request for relief in their response to my §2255.

Pursuant to 28 U. S.C. §2243, "a court justice or judge presiding over an application for habeas corpus warranting relief should be addressed forthwith by the judge".

Writs of habeas corpus are intended to afford: "Swift and imperative remedy in all cases of illegal restraint or confinement". *Fay v. Noia*, 372 US 391, 400, 11 L. Ed. 2d 387, 83 S.Ct. 822 (1963).

"If a fourteen month delay (absent good reason) were routinely permissible, the function of the great writ would be eviscerated". *Johnson v. Avery*, 393 US 483, 485, 21 L Ed. 2d 718, 89 S.Ct. 747 (1969).

Judge Crone stated on 11/30/2020, that "...the Eastern District of Texas shows that there are eight-nine pending cases that were filed prior to Movant's case." Its been ruled that:

"The application for the writ usurps the intention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application. The ordinary rules of civil procedure are not intended to apply thereto." *Ruby v. United States*, 341 F .2d 585, 587 (9th Cir. 1965).

I contend that a delay of over Seventeen (17) months cannot be considered "**forthwith**". *McClellan v. Young*, 421 F.2d 690 (6th Cir. 1970), *Johnson v. Rogers*, 917 F.2d 1283 (10th Cir. 1990).

This unwarranted delay is clearly in violation of my constitutionally protected rights under the Fifth and Fourteenth Amendments as well as an abuse of discretion by the judge.

I have made multiple requests to the district court to make a ruling on my \$2255 motion and have not received a response to any of them.

My \$2255 motion clearly shows, and is confirmed by the court records, That I not only received ineffective assistance of counsel, I received no defense counsel at all.

My attorney filed no pretrial motions, no requests for discovery, performed no investigation, interviewed no witnesses, made no inspection or verification of the government's evidence.

He took the government's word for everything.

He never met with me to explain to me what was going on, discuss the case or what his plan was for my defense.

When I was able to reach him, he just kept telling not to worry and that everything was good.

At the time, I believed this was normal and he had everything under control.

He had actually done nothing. I literally received no defense at all.

This is why my attorney had to threaten me into changing my plea on the morning of my trial.

He told me that if I went through with the trial, I would lose and would get 20 years in prison, and that if I pleaded guilty, I would only get 5 years.

I did not understand any of it but, I felt that I had no choice but to do what he says.

I found out later that the reason he did this was because he had not prepared any defense.

He could not go into trial having no defense prepared, so he lied to me. I ended up getting 12 1/2 years, not 5.

I have never been in any kind of trouble before in my whole life, I was very ignorant of the law and believed my attorney was doing everything to defend me.

My §2255 also shows several instances of misconduct of the prosecuting attorney (Assistant U.S. Attorney Marisa Miller), including the suborn of false evidence/testimony to the Grand Jury in order to get an indictment against me that they otherwise could not have been able to get.

None of this false evidence/testimony to the grand jury that they swore under oath that they had the evidence to prove each and every item in their sworn testimony has ever been produced.

My attorney never even mentioned this.

When confronted with this in my §2255, the only response from Marisa Miller, in the response to my §2255 stated on page 14 "A motion alleging an error in grand jury proceedings must be filed in advance of trial" also "Likewise, a motion regarding a defect in discovery must be filed pretrial". (Appendix A.)

If I had even a reasonably competent attorney, it would have been filed pretrial and the case would have been dismissed.

Miller further states that the grand jury testimony is "largely reflected in the Factual Basis... as well as in the PSR". (Appendix A.)

I do not see a connection between the false evidence/testimony to the grand jury and the factual basics and PSR.

This is just an attempt to cover up the false evidence/testimony to the grand jury.

These statements in Miller's response, clearly shows that Miller does not even attempt to deny the false evidence/testimony to the grand jury, in the last statement, she actually admits it.

My §2255 shows other instances of prosecutorial misconduct as well. I believe that this delay in ruling is a deliberate misuse of discretion by the court and a violation of my due process because of the nature of the charge.

The fact that I am actually innocent dose not seem to matter.

This is just a couple of the 24 constitutional violations in my §2255.

On January 31, 2020, I filed a request for a writ of mandamus in the appellate court.

On August 20, 2020, the appellate court denied my request for writ of mandamus after a 11 month delay in ruling on my §2255.

The reason stated was that my §2255 had been referred to a magistrate judge and the magistrate judge reports only to the district court judge who acts subsidiary and only in aid of the district court and that the appellate court neither monitors nor supervises the work of magistrate judges. (Appendix B).

I do not see how this would in any way relieve the district judge from the responsibility for an unreasonable delay in ruling on my §2255 as the responsibility still remains with the district court judge.

This ruling from the Appellate court does not make any sense unless it is just a way to delay.

WHY A WRIT OF MANDAMUS SHOULD ISSUE

It is plain to see that Judge Marcia Crone is intentionally delaying a ruling on my on my \$2255 Motion, possibly as a punishment for challenging her authority and fighting for my constitutional rights and my innocents. Maybe it is because of the nature of the alleged crime. Whatever the reason, it's being done deliberately.

And now, Judge Crone has bared me from filing anything with the court unless I pay for it. (Appendix C).

Judge Crone knows that I am in prison and do not have any money.

She has effectively denied me access to the courts and the ability to defend myself against this massive injustice. I am supposed to just lay down and take it. I am not built that way. I have been caught up in this injustice trap and I will fight for my constitutional rights to the bitter end and I get my illegally taken freedoms back.

This should never be allowed to happen.

I have spent 4 years in prison, away from my family because of a crime that I did not commit, a prosecutor (Marisa Miller) that has no regard for the law or her oath of office and is willing to do anything, destroy peoples lives, suborn false evidence/testimony in order to win, a defense attorney who has no ethics and is subservient to the court and does nothing at all, and a judge that ignores her oath of office, doesn't seem to know the meaning of truth and justice, and refuses to do her sworn duty to uphold the constitution.

I have solid proof of everything, and Judge Crone refuses to even consider it.

My §2255 motion clearly shows that relief is warranted and should have been ruled on months ago pursuant to the rules laid out in 28 U.S.C. §2243.

I believe these rules were meant for everyone, even judges.

This case should have never been tried in the first place. The United States had no Subject-matter nor territorial jurisdiction to try this case.

United States v. Perez, at III. LEGAL STANDARD, LEXIS 75086, No. CR-06-0001-MAG(MEJ)(N.D. Ca. 2008).

The Supreme Court needs to step up and fix this injustice as our Constitution demands it.

It is hard enough to defend yourself from this kind of injustice when you have to first learn how the law works, and all you have to work with is a sparse and outdated law library that you have very limited access to, forced to use old IBM typewriters from the 1980's that break down all the time and use very expensive typing ribbons.

Even getting access to this is very difficult at best, just as the courts like it.

When its made extremely difficult to fight this kind of injustice by limiting your access to a reasonable law library, and forcing you to use old broken down typewriters to create your motions, all in the name of "expediency of the court", the judges and prosecutors have free reign to do whatever they want to people and they take full advantage of it, and make it almost impossible to fight back.

The district court blocks everything you try to do, mostly on form or function, almost never on the merits, and the appellate court pretty much rubber stamps everything the district courts does as the denial of my writ of mandamus by the appellate court shows. No real oversights and no

where to go for help but the public and try and get some public support and interest on the issues.

I will never be able to get a fair and honest ruling on anything from Judge Crone.

Before all this happened, I was an IT consultant with a successful business. Now its all gone, and for what.

I am asking this court to give me an honest ruling on my \$2255, or at least, order the district court to rule honestly on my \$2255 and put an to this travesty of justice and let me get back to my family that desperately need my help

Respectfully submitted on 3 day of March, 2021.

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