No.: 21-5215

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

CAMERON DEAN BATES,

Petitioner, Pro Se,

v.

THE UNITED STATES OF AMERICA,,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT.

(Southern Dist. of Florida Case No. 2:17-CV-14365-KMM.)

PETITION FOR CERTIORARI.

Cameron Dean Bates
Petitioner, Pro Se
C/O Federal Correctional Complex - LOW
Reg. No. 00407-104
PO Box 1031
Coleman, Florida 33521

QUESTIONS PRESENDED FOR REVIEW.

(**NOTE**: This appeal to the Supreme Court centers on the denial of a Certificate of Appealability ("COA"), and not the underlying denial of relief for the Petitioner's §2255 by the Trial Court, therefore the question(s) and issues presented are limited to just the question of if a COA should have been issued or denied, and not the underlying merits of the §2255, which are not specifically relevant.)

1. Given that this Court held in Slack v. McDaniel, 529 US 473 (2000) that a Certificate of Appealability ("COA") shall not be granted if "no reasonable jurist" could find the court's decisions "debatable or wrong" (id at 484), was it an improper abuse of discretion for the District Court and the Court of Appeals to deny the Petitioner a COA without explanation or opinion (but for the boilerplate assertion that no reasonable jurist could find the Court's decision wrong or debatable, a'la Slack), despite the fact that the record of the case and the pleadings to the Court of Appeals contained two (2) seperate affidavits from a "reasonable jurist"[1] who specifically testified under oath that the lower court's rulings in the case were "wrong or debatable"?

2. Did the Trial and Appellate Courts err by supplanting thier own, subjective opinion of what a "reasonable jurist" would find debatable or wrong under Slack, instead of applying the Slack standard objectively and given the fact that there were two (2) affidavits from a reasonable jurist who

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[1] Specifically, an attorney who is currently practicing in federal and state law with over 40 years of trial experience. (See both affidavits included in the attached appendix.)

found the Trial Court's decisions "erong or debatable", or, in other words, is the "reasonable jurist" standard in Slack a **subjective** one wherein the Court solely decides what a reasonable jurist would think (or even who qualifies as a reasonable jurist), or was the Supreme Court's holding in Slack that a reasonable jurist is (or can be) an **objective** standardthat can be met by a petitioner presenting sworn testimony or a verified affidavit from a reasonable jurist stating that the decision(s) of the lower court(s) were wrong or debatable?

3. Given the fact that many of the assertions and claims by Mr. Bates in his §2255 were based on facts either not reflected in the record, or so minimally so that the record can cast no real light, did the Court err by failing to grant Mr. Bates evidentary hearings (which he moved for repeatedly without opposition from the Government) to expand the record as required by previous Supreme Court and Eleventh Circuit precedent, and then make a ruling on these matters despite there being nothing on the record to reflect these issues? Or, more specifically, did the Court's denial of evidentary hearings leave the record so berift of evidence on matters occurring outside the record (ie: incidents that happened outside the courtroom, post-trial, or newly discovered evidence or facts) allow the Court to deny Mr. Bates a C.O.A. without sufficient evidence or facts on the record to make a sound decision?

LIST OF PARTIES IN COURT.

The Caption of this case, set out above, contains the names of all parties involved in this matter.

CORPORATE DISCLOSURE STATEMENT.

There are no corporate entities or other individual, business, or governmental interests or parties involved in this case, to the Petitioner's knowledge, beyond those listed in the caption of this case.

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TABLE OF AUTHORITIES CITED.

Federal Cases.

State Cases.

** Due to the Petitioner's inability to access Florida's law library database in Federal prison, the case number to this state case in unavailable to the Petitioner.

Federal Statutes

CITATIONS OF OPINIONS AND ORDERS IN THIS CASE.

This case centers upon the denial of a Certificate of Appealability, and not on the actual denial of §2255 relief, per se. However, the Report and Reccomendation of the magistrate judge can be found at BATES v. U.S., 2020 U.S. Dist. LEXIS 1135 (So. Dist. of Fla., Jan 2, 2020), and the Trial Court's order (and its included reply to the Petitioner's objection to said report) can be found at BATES v. U.S., 2020 U.S. Dist. LEXIS 23970 (So. Dist. of Fla., Feb. 10, 2020). (The opinion of the Trial Court stood silent on the matter of a Certificate of Appealability.)

The Petitioner's Motion for a COA to the Trial Court, and thier order denying one (not an "opinion", but simply an order two sentences long) were not reported in any reporter, but are included as exhibits in the attached appendix.

The Petitioner's Application for a Certificate of Appealability and thier denial (again, by way of an "order", not an opinion), as well as the Petitioner's Motion for Reconsideration which included an affidavit in support of reconsideration by a "reasonable jurist" finding the Trial Court's rulings "wrong or debatable", were not reported in any reporter, but are included in the attached appendix as exhibits, including the affidavit. The Order by the Appeals Court denying reconsideration can be found at BATES v. U.S., 2021 U.S. App LEXIS 7483 (11th Cir., Mar. 15, 2021) and is also included as an exhibit in the attached appendix.

STATEMENT OF JURISDICTION.

The Petitioner was convicted in the District Court of the Southern District of Florida of six (6) counts related to child pornography.

A Section 2255 motion was timely filed in that District Court and denied. A COA was applied for in the District Court in order to appeal the denial of relief by the District Court, and that application was denied.

A verified application for a COA was filed with the United States Circuit Court of Appeals for the Eleventh Circuit. It was denied by order without an opinion for not meeting the Slack standard. A motion to reconsider, which included a second affidavit from a "reasonable jurist" in support of the Petitioner, was denied. (The Court denied reconsideration, as opposed to having reconsidered the matter and reaffirmed it's decision.)

This matter is now ripe for consideration by the United States Supreme Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

1. The statute upon which the Petitioner sought relief (post-conviction) was 28 USC §2255, which provided:

A. Federal Custody: Remedies on Motion Attacking Sentence.

A prisoner in custody under a sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence imposed was in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is othewise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United states attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vunerable to collateral attack, the court shall set aside and vacate the judgment and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

An appeal may be taken to the court of appeals from the order entered on the motion from a final judgment on an application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner

who is authorized to apply for relief by motion pursuant to this section , shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadquate or ineffective to test the the legality of his detention.

B. 28 USC §2255(c)(2) states that a federal court (district, appellate, or supreme) should grant a COA to a §2255 movant whenever he makes a "substantial showing" of the denial of a constitutional right, such as in the instant case, the constitutional rights to Due Process under the 5th and 6th Amendments, the right to be free from double jeopardy under the 5th Amendment, and to have the assistance of effective counsel under the 6th Amendment, to name a few. (All set forth in the Petitioner's Section 2255 complaint.)

The Supreme Court held that a movant makes a "substantial showing" if a reasonable jurist would find the District Court's ruling(s) "debatable or wrong". (Tennard v. Dretke, 542 US 274, 282 (2004); Slack, id. at 484.) A petitioner may also demonstrate a substantial showing simply be demonstrating that a "jurist of reason" would find the issues presented "deserve encouragement to proceed further." (See Barefoot v. Estelle, 463 US 880, 893 (1983); Miller-El v. Cockrell, 537 US 322, 335-36 (2003); and others.)

STATEMENT OF THE CASE.

The facts necessary to place in their setting the questions raised can be briefly stated:

I. COURSE OF THE PROCEEDINGS IN THE SECTION 2255 CASE NOW BEFORE THIS COURT.

In early 2012, the Petitioner was arrested by the St. Lucie County Sheriff's Office subsequent to a search warrant for Child Pornography related charges. The case was originally prosecuted by the State of Florida (State case number unavailable, but was under the style of State of Florida v. Cameron Dean Bates in the 19th Judicial Circuit of Florida.) That case progressed for several weeks until the Petitioner submitted a Notice of Alibi showing alibis for 2/3 of the asserted instances of illegal activity. Upon verification of the ailbis, the State of Florida dismissed all charges against the Petitioner.

A few weeks after the State's dismissal, the Sheriff's Office presented the case to the United States Attorney, who filed a complaint that led to a three-count indictment. This was superceeded to an eighteen-count indictment just days before trial (over denied defense motions for continuations agreed to and supported by the Government). Just ELEVEN DAYS after the issuance of the 18-count superceeding indictment, on March 9th, 2013, the Petitioner was found guilty on all counts and sentenced to the maximum -- 240 months -- despite no prior criminal conduct and the de minimus level of the offense.

Upon appeal, the Eleventh Circuit vacated and remanded the Petitioner's case for a new trial, issuing a scathing opinion on the Court's and the Prosecution's conduct and actions towards the Petitioner. Even the dissenting justice ultimately lamenting that given the egregious actions by the Court

and Prosecution, he could only dissent "without enthusiasm". (See US v. Bates, 590 Fed. Appx 882 (11th Cir., 2014.) The dissent's comments are at 893-94.)

The Petitioner went to trial a second time in a much less advantageous position than he had in his first trial. (e.g.: no funds, no private lawyer, not allowed out on bond to assist in his own defense, held in disciplinary segregation during trial, etc.) Moreover, the Government filed yet another superceeding indictment reducing the eighteen-count indictment to a six-count one, eliminating the twelve counts that centered around activity that the Petitioner provided irrefutable alibis for.

Again, the jury returned a guilty verdict, despite the Government committing many of the same improper actions which the Appellate Court cited were improper and led to this second trial. The Petitioner was found guilty on four counts of receiving child pornography (18 USC §2252 (a)(2) & (b)(1)), one count of distribution of child pornography (18 USC §2252 (a)(2) & (b)(1)), and one count of possession of child pornography (18 USC §2252 (a)(4)(b) & (b)(2)).[1]

Mr. Bates' Public Defender filed a bare-bones appeal that merely objected to the Prosecution's repeated improper and false caharacterizations of the Petitioner and the hearsay nature of ICAC evidence. Mr. Bates advised the Public Defender repeatedly to include the other reversable errors from the trial, but failed to do so over the Petitioner's objections. In the end,

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[1] It's noteworthy that only the single possession of child pornography charge had any actual evidence -- and circumstantial at best -- against the Petitioner. The remaining five charges related to receiving and distribution were applied to the Defendant despite the Government's admitting there was absolutely no evidence that Bates received or distributed any illicit material. In fact, at no time could they place Bates at the computer for any illegal activity. But receipt/possession are automatically found if the defendant used P-2-P software giving him the mere means to receive/distribute imagery, regardless if the defendant actually did receive or distribute anything.

the Eleventh Circuit affirmed the conviction despite finding the claims made were true, just as Mr. Bates told his Public Defender would happen. (See US v. Bates, 665 Fed. Appx 810 (11th Cir., 2016.)

Mr. Bates then filed this instant motion for relief pursuant to 28 USC §2255. Mr. Bates initially filed a 288-page (hand written) petition covering five grounds and numerous sub-grounds, including, inter alia, specifically detailed, factual claims of ineffective assistance of counsel, prosecutorial misconduct, newly discovered evidence, (admitted) conflict-of-interest and/or prejudice by the presiding magistrate leading to her recusal under §455(a), witness tampering by law enforcement officials, and double jeopardy through exhaustion of resources by prosecutorially-caused re-trials pursuant to Oregon v. Kennedy, 456 US 667 (1982).

The District Court ordered Mr. Bates to ammend his complaint to just twenty (20) pages including the 14-page court form. Over objection, the court did increase the allowed pages to 35, forcing the petition to be culled by more than 60% of it's allegations and claims, and editing the remaining ones.

During the pendancy of the Section 2255, several instances of new evidence were discovered, including witness tampering not know about at the time of trial. Also, witnesses died during the three-year wait for the magistrate to rule. Numerous motions were filed to expedite the case and to hold evidentary hearings. They were all unopposed by the Government, and yet the Magistrate denied them all stating she'd rule on the record alone, despite the record not reflecting most, if not all, of the claims.

After three years if inaction by the District Court, the Petitioner filed a Motion for an Order of Mandamus with the Eleventh Circuit Court of Appeals. (In Re: Bates, Case No. 19-14218-H, (See In Re: BATES,

2019 U.S. App. LEXIS 36842 (11th Cir., Dec 12, 2019) for the 60-day order to the Trial Court to rule on the §2255.) (Dismissed upon ruling.) They found the claim non-frivilous and ordered the District Court to rule within 60 days. The Magistrate, facing imminent appellate review, abruptly and without explanation recused herself after presiding over the case for over two years and repatedly ruling against the Petitioner, citing §455(a), governing recusal of judges for conflict-of-interest and/or prejudice!

The new magistrate, having just taken over the case days earlier supposedly reviewed the thousands of pages of pleadings and transcripts covering two trials and appeals, the Section 2255 claims, and various motions spanning over 10 years in just two weeks, presenting a report and recommendation that was replete with errors and omissions of fact and law. Over objection, the District Court adopted the R&R's recommendation to deny relief, despite the District Judge, in his order, having to write a half-page of single-spaced corrections, amendments, and changes to the R&R. However, the District Court stood silent on the issue of a COA.

An application for a COA was timely filed with the District Court. (See Exhibit "B" of the appendix.) This application was denied without an opinion, except a single sentence that it did not meet the Slack standard.

The Petitioner filed an application for a COA with the Eleventh Circuit Court of Appeals, and again was denied in a single sentence order stating it failed to meet the Slack "reasonable jurist" standard, despite the affidavit of Attorney Scremin being part of the record and submitted with the application. A motion for reconsideration was filed witht the Eleventh Circuit which included a second affidavit from Mr. Scremin -- a "reasonable jurist" -- in

support of reconsideration. The Motion to Reconsider was denied because, inexplicably, the Appeals Court saidn there was "no additional information" to lead them to believe that a "reasonable jurist" would find the District Court's actions "wrong or deabtable" under Slack, **despite the new affidavit from a "reasonable jurist" being part of the Motion!** [3]

This lead the Petitioner to this instant filing for certiorari with the Supreme Court.

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[3] Upon receipt of the 11th Circuit's one-paragraph, boilerplate denial to reconsider the matter, Mr. Bates did file a motion for the Court to provide an opinion or otherwise explain how they could reconcile thier claim that: 1) No reasonable jurist would find the Trial Court's findings wrong or debatable in light of the affidavits presented, and; 2) How the Justices could state that there was no "additional information presented" to lead them to reconsider thier position when the second, sworn affidavit was presented with the reconsideration showing a reasonable jurist found the Trial Court's rulings wrong. This motion was not filed with the Court of Appeals because the Clerk of the Court of Appeals stated it constituted a second or subsequent appeal on the same issue, and refused to file it or present it to the Court for consideration.

II. RELEVANT UNDERLYING FACTS CONCERNING THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY.

In order to appeal an adverse ruling on a Section 2255, the movant must first obtain a Certificate of Appealability. ("COA".) This COA must come from a federal judge or justice. (28 USC §2255(c)(2); Fed. R. App. P. 22.)

The decision to issue a COA centers on the question of if a movant claims a denial of a substantial constitutional right. (Such as Ineffective assistance of Counsel under the Sixth Amendment, Double Jeopardy under the Fifth Amendment, etc.)(See 28 USC §2253 (c)(2); Miller-El v. Cockrell, 537 US 322 (2003); Slack v. McDaniel, 529 US 473 (2000).) A "substantial showing" is made by the movant showing that a "reasonable jurist" would find the court's ruling(s) "wrong or debatable", or conversly, that no reasonable jurist would find the Court's actions wrong or debatable. (See Tennard v. Dretke, 542 US 274, 282 (2004); Slack, id at 484.)

A movant can also make the "substantial showing" by demonstrating that a "reasonable jurist" would find that the "issues presented deserve encouragement to proceed further." (Miller-El, id. at 335-36; Barefoot v. Estelle, 463 US 880, n.4 (1983).)

Importantly, the threshold is NOT that there be a concensus of reasonable jurists, or multiple jurists, or even if the presiding judge/justice agrees or disagrees. The construct of the verbage in the "reasonable jurist" standard in EVERY circuit has been in the singular. In other words, just ONE reasonable jurist is needed to meet the Slack standard. In all cases, the various court opinions in the many districts either say "a reasonable jurist"

(in the singular), or "no reasonable jurist" (an absolute, that not a single jurist anywhere would differ in opinion). (See, inter alia, Barksdale v. Attorney General, et. al., 2020 LEXIS 20249, p.9 (11th Cir. 2020); Estelle v. McGuire, 502 US 62, 67 (1991); Quiones v. U.S., 240 Fed.Appx 876 (1st Cir); Sunnier v. Quarterman, 481 F.3d 288, 289 (5th Cir., 2002)("No reasonable jurist would find debatable or wrong" the court's findings. (Emphasis added.).); Scymanski v. Perry, 2014 US APP LEXIS, 25213, p.5 (6th Cir., 2014)(Citing Slack, id.); Sills v. U.S., 777 Fed. Appx. 117, 178 (8th Cir., 2019)(Citing Slack, id.). This includes Slack, Barefoot, Burk, etc. (id) using the singular "jurist".

In the above, and countless other cases, the rule is clear: If just one reasonable jurist finds the trial court's (or appellate court's) rulings wrong or debatable, or that the decision warrants further review, then the Slack standard is met, and a COA must be given.

In the instant case, the "reasonable jurist" who supported the Petitioner's claims and found the District Court's actions "wrong or debatable" and in further need of review, is ANTHONY J. SCREMIN, Esq., Mr. Scremin is a practicing attorney in both state and federal trial law with more than 40 years of experience. Moreover, his is well read in the instant case and he wrote two affidavits in support of a COA under the Slack standard. The first being part of the Section 2255 record (DE-10, Exhibit "A" of the appendix attached hereto), and in support of reconsideration by the Court of Appeals (Exhibit "G" of the appendix attached hereto).

Furthermore, the Courts must only give a cursory examination of the factual or legal basis adduced in support of the COA. (Miller-El, Id. at 336.) In other words, a movant need not demonstrate he'd be entitled to relief, or that the appeal would succeed, but only that the issues are worthy of debate.

A COA should be issued "if the questions presented are reasonably debatable." (Slack, id at 484; Engle v. Linahan, 279 F.3d 936, 936 (11th Cir., 2001).

In this case, the reasonably debatable questions are plentiful and well detailed throughout the pleadings. For example:

-- Why were no evidentary hearings held on the numerous claims raised by the Petitioner that were not part of the record, or conversly, how could the District Court reach a dispositive conclusion for or against the Petitioner without an evidentary hearing when no facts about the issues raised were part of the record? These "off-the-record" claims include:

1. The ex-parte, undisclosed meeting about the case held by members of the Sheriff's Office and the former wife of the Petitioner/Defendant, late at night in a closed park, which was not disclosed by anyone until years after the second trial.
2. The failure for the Prosecution to disclose the "secret" grand jury hearing of a witness who provided at that hearing exculpatory testimony, but was not disclosed at the first trial or until the first day of the second trial.
3. The discovery, post-trial, that the Government's key witness had terminal cancer and may have been under the influence of cancer medications and/or the disease itself at trial and before. (A affidavit as to this issue was partof the 2255 record, DE-11, affidavit of Dr. Daniel Bays, DO.)
4. The failure of the Court to consider Mr. Bates' double-jeopardy claim under the standard of Oregon v. Kennedy, id. precedent of prosecutorial-based retrial causing exhaustion of resources.
5. The prejudice from decisions made by the Magistrate (Reid) in the instant case before she recused herself for prejudice/conflict-of-interest under 28 USC 455(a).

-- Why did the Government, as is commonplace, fail to obtain a statement from Mr. Bates' public defender stating his work was not ineffective? (Perhaps because the Defender refused to do so knowing he failed Bates?)

-- If, as the law and rule of the 11th Circuit require, a movant must detail EVERY claim he has in a §2255 complaint or be barred from ever readdressing them, then why does the 11th Circuit impose a strict 20-page limit on §2255 complaints -- including the 14-page forms required by the circuit --absent a leave of the Court? Or, in other words, was it proper for the Court to deny Mr. Bates the right to present every claim he had in his case absent clear demonstration that the claims were groundless, which was not the case here?

-- Did the Trial Court err by not reviewing all the unopposed motions denied by Magistrate Reid given the fact she later recused herself under §455(a) governing the recusal of judges who are prejudiced or conflicted?

Mr. Scremin -- a reasonable jurist -- made it clear in his affidavits that these and many other issues in the §2255 complaint (both the original 288-page complaint and the amended one) were more than worthy of further review, but that justice demanded it. He found that the decisions of the District Court were wrong, and fully detailed his reasoning under oath in not one, but TWO sworn affidavits in this case.[2] Both of which were apparently ignored by both the District and Appellate Courts without explanation.

Accordingly, pursuant to this Court's rulings in Slack and its progeny, a COA must be granted to Mr. Bates.

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[2] The extent to which Mr. Scremin found the Trial Court's decisions wrong were best summed up by his statement in the attached affidavit he wrote: "I could probably go on for another 100 pages of documentation of all the error, prejudice of the judge against [Mr. Bates], prosecutorial misconduct and ineffective assistance of counsel [.] in the instant case." (Scremin Affidavit, appendix exhibit "A", affidavit page 11, ¶31.) Moreover, such a claim by Mr. Scremin SHOULD have warranted, at a minimum, an evidentary hearing into what more he could testify to in those "100 pages", and in fact, at least three (3) unopposed motions for this were made to the Magistrate, but were all denied prior to her own recusal for prejudice/conflict-of-interest (§455(a) grounds). Again, the failure to grant a COA or claim no reasonable jurist could find the Trial Court's actions wrong or debatable in light of this comment alone is not just wrong, its mind-boggling.

III. THE LOWER COURTS (DISTRICT AND APPELLATE) HAVE DECIDED A FEDERAL QUESTION IN A WAY THAT DIRECTLY CONFLICTS WITH PREVIOUS APPLICABLE DECISIONS OF THIS COURT.

The Supreme Court has repeatedly heldthat a movant must be granted a COA when "a reasonable jurist" would either find the District Court's rulings "wrong or debatable", or that said "reasonable jurist" would encourage further review by the Court. (See, inter alia, Slack v. McDaniel, 529 US 473 (2000); Tennard v. Dretke, 542 US 274 (2000); Miller-El v. Cockrell, 537 US 322 (2003); Barefoot v. Estelle, 463 US 880, n.4 (1983).)

The "reasonable jurist" standard is the ONLY standard by which a COA should be granted or denied. The merits of potential of a successful appeal or possible relief are irrelevant. (Miller-El, it at 338; Slack, id at 484; Engle, id at 936.) Moreover, if a judge uses any other standard to deny a COA, he does so without jurisdiction. (Buck v. Davis, 137 S.Ct 759 (2017).) Irrespective of any other fact or claim by Mr. Bates, both the District Court and Court of Appeals were presented with TWO sworn affidavits from a Florida and Federal trial attorney who is still in practice, has forty years of experience, and is well read on the case. These affidavits irrefutably demonstrate that a "reasonable jurist" found the District Court's rulings "wrong or debatable" and worthy of appeal, meeting the Slack standard for a COA. **Even the Government did not try to oppose or challenge this fact!**

The Courts -- both District and Appellate -- failed to even try to reconcile the proffered affidavits with thier rulings to deny a COA because the Slack standard was not supposedly met. (All evidence to the contrary.)

The fact is that the Slack standard for a COA was met by the Petitioner

on all fours through the presentation of not one, but TWO sworn affidavits from a reasonable jurist, neither of which were objected to or opposed by the Government, nor did the Courts (appellate or district) opine that the affidavits were wanting, improper, or that Mr. Scremin was in some way not a reasonable jurist. The affidavits were simply ignored, and the judges and magistrates involved simply superimposed thier own views in thier rulings.

Moreover, if lower courts are allowed to simply quote one sentence from Slack, then arbitrarily state a "reasonable jurist" wouldn't find their opinions wrong, irrespective of contrary opinions of reasonable jurists, and thereby deny cases worthy of a COA for selfsubserviant reasons, then Due Process is denied. This matter transcends the instant case: It affects hundreds, perhaps thousands, of other simillarily situated litigants whose judges believe that thier opinions exactly match every other "reasonable jurist", or worse, they have the conciet that any jurist that does not share thier opinion is not "reasonable".

Due to the potentially wide reach of this matter beyond just Mr. Bates' case, the Supreme Court should grant certiorari to this case.

REASONS FOR GRANTING OF THE WRIT.

I respectfully urge that all aspects of the Trial and Appellate Courts' decisions were erroneous and at varience with the decisions of the Supreme Court's decisions as explained in the argument below:

ARGUMENT FOR ALLOWANCE OF A WRIT.

I. BOTH THE COURT OF APPEALS AND TRIAL COURT ERRED IN FINDING NO REASONABLE ATTORNEY OR JURIST COULD FIND THE TRIAL COURT'S RULINGS WRONG, DEBATABLE, OR WORTHY OF FURTHER REVIEW UNDER THE STANDARD OF REVIEW SET FORTH BY THE SUPREME COURT IN SLACK V. MCDANIEL, id.

In the previous portions of this motion, much of what is germane had been discussed at length. But for procedural reasons and emphasis, we review the issues.

The issues raised in the Section 2255 claim by the Petitioner had survived a Rule 4 review, were all well reasoned, factual, non-conclusory claims that, if true, would emtitle the Petitioner to relief. However, most, if not all of the claims made in the Section 2255 were either not part of the record, or so minimally so that the record could cast no real light. The Petitioner's Section 2255 claims ranged from procedural matters to, if true, issues that constitute criminal witness tampering by deputies and members of the Government's trial team. Some of these claims were not responded to by the Government, and therfore should have automatically been granted relief. Other claims were only given minimal response by the Government.

Regardless, the undisputed claims made by the Respondent in his Section 2255 claim are, inter alia;

1. There were incidents that, if true, did, or potentially could have affected the outcome of the case.
2. The record is incomplete, as it contains no record of the facts alleged, or so little therof that the record casts no real light. Therefore, the record must be enlarged through evidentary hearings to fill in the "gaps" of the record in order for the Court to make an intelligent ruling based on the record, and not simply "guess".
3. At no time did the Government oppose or object to evidentary hearings to complete the record,and in fact, the law requires the court to hold such hearings to complete the record, which the Court refused to do.(4)
4. Jurists (Mr. Scremin's two affidavits) have opined under oath that the rulings by the District Court were wrong and/or debatable and warrant further review. And at no time did the Government or the Courts object to or invalidate the affidavits in question.

The Petitioner does not argue in this pleading the merits or potential success of an appeal on this matter, as they are not relevant here. The Petitioner is only seeking his right to appeal under the law as defined by the Supreme Court in Slack and its progeny. Specifically, the Petitioner asserts that the burden to obtain a COA is low: To have a claim that the court's ruling was, at minimum, debatable by a reasonable jurist. (Slack, id at 473; Barefoot, id at 893, n.4.)

If for some reason the first affidavit by Mr. Scremin (Exhibit "A" of the appendix) did not meet the Slack standard, in arguendo, then the second

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(4) See, inter alia, SEC v. Torchia, No. 17-13651 @ 15-16, 22-23 (11th Cir. Apr. 30, 2019); Williams v. Chatman, 510 F.3d 1290, 1295 (11th Cir, 2007); Lynn v. US, 365 F.3d 1225, 1232 n.14 (11th Cir. 2004); 28 USC 2255(b) (Evidentary hearing are required unless "patently frivolous".); Schiro v. Landrigen, 550 US 465, 473-75 (2007); Aron v. US, 291 F.3d 708, 715-15, n.6 (11th Cir, 2002)

affidavt (Exhibit "G" of the appendix) should have, as it was specifically written by Mr. Scremin to meet the Slack standard for a COA.

In arguendo, if either court had found, or even suspected, Mr. Scremin was not a "reasonable jurist", or that his affidavits were wanting in some way, the the courts should have held an evidentary hearing or oral argument to determine the issue, or at least, opined in thier rulings why they discounted these affidavits.[5] But the lower courts did neither. When faced with an absolute and irrefutable demonstration that Mr. Bates met the Slack standard for a COA -- not once, but TWICE -- instead of opining on it, they ignored it. Both the District and Appellate Courts put thier collective heads in the sand and ruled as if the affidavts never existed. This selective, "picking-and-choosing" of what to consider and what to ignore by judges/justices without any due process is the epitomy of "abuse of discretion" by the courts.

The Petitioner clearly met the Slack burden for a COA, and one must be granted to him.

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[5] Mr. Bates filed several motions in this §2255 that specifically or indirectly sought to have the Court take notice of the affidavits from Mr. Scremin and/or have evidentary hearings specifically to obtain additional testimony from Mr. Scremin as well as "flesh out" his assertions through hearings and testimony from others. The affidavits were not some small document lost in the massive sea of records and pleadings in this case, but rather Mr. Bates repeatedly put the Scremin affidavits -- 25 and 22 pages long, respectively -- front-and-center in multiple pleadings before the Trial and Appellate Courts. There is no reason why the affidavits were essentially ignored except by intentional, calculated, and willful refusal to consider or even acknowledge the existance of the affidavits by the Courts. In short, the Courts' failure to refer to them was not an oversight, it was impermissable abuse of discretion by ignoring relevent testimentary evidence.

II. THE QUESTIONS RAISED IN THIS PETITION ARE IMPORTANT AND UNRESOLVED.

The Eleventh Circuit has decided a important question of federal law which has not been, but should be, settled by the Supreme Court, and has a firm basis for granting certiorari in this case:

1. The Eleventh Circuit erred by ignoring affidavits by "reasonable jurists" in deciding if a COA is warranted in this case.

2. The Eleventh Circuit's denial of a COA, without proper explanation or grounds, in light of multiple affidavits by a reasonable jurist stating that the District Court's rulings were debatable or wrong, and an appeal was warranted, runs in direct contravention to numerous decisions by the Supreme Court (e.g.: Slack, id.; Miller-El, id.), setting a new, but wrong and dangerous precedent in the Eleventh Circuit contrary to the holdings in the Supreme Court, as well as every other circuit in the nation. This can, if left unchecked, adversly affect hundreds or thousands of like cases in the Eleventh Circuit.

3. The Courts -- Trial and Appellate -- denied a Certificate of Appealability to Mr. Bates for reasons beyond the standard set by Slack and its progeny: The reasonable jurist standard of finding the ruling(s) wrong or debatable, or worthy of further review, regardless of the merits of the case or its potential for successful appeal. Pursuant to the Supreme Court's holding in Buck v. Davis, id., whatever reasons or grounds the Courts used to deny Mr. Bates a COA were clearly outside of the four-corners of the Slack standard, and, therefore, they ruled and acted "without jurisdiction".

CONCLUSION.

This matter is shockingly simple: Did a reasonable jurist find the District Court's rulings "wrong or debatable", thereby requiring a COA to be issued pursuant to Slack? The two affidavits by attorney Anthony Scremin submitted to the courts (both District and Appellate) answer that question in the afirmative. And a COA's issuance to the Petitioner should have been a "no-brainer".

.....And yet, the Petitioner appears before this Supreme Court, with hat in one hand and a pair of affidavits from a reasonable jurist in the other. The Petitioner did everything correct -- and he's a Pro Se litigant. He followed the law. He demonstrated that a reasonable jurist agreed with him that the district court's rulings were wrong or debatable. Even the Government did not object or respond to the affidavits or motions asking that the Court take notice of them. So why was the COA not granted? Was the Court trying to reduce its overburdened docket? After two trials, was the Court trying to "get rid" of this case? More ominously, many jurists reviewing the current status of the case arrived at a chilling conclusion: If the Petitioner did get relief in the form of a new trial, he'd now have access to SIX (6) new exculpatory witnesses unavailable to him at the first trials, the government's key witness (Det. Valentien) is dead, and there is now evidence of witness tampering by the Government that was not available at the time of trial. As to the defense side, all of the defenses' key witnesses are either dead or alienated to the Petitioner. All of the proof of his alibis -- the bank records -- are no longer available as they are destroyed after seven years. And double (triple?) jeopardy may now be in play. Simply, is the Court -- Judge Moore in particular who found the Petitioner to be "dispicable" and a

"liar", -- now facing the inconvenient truth that if given a new trial, the Petitioner may be acquitted automatically due to spoilage and/or prosecutorial misconduct, or simply win a new trial due to the overwhelming exculpatory evidence now available to him?[5]

Whatever the reason, the lower Courts were wrong. The affidavits clearly show the Petitioner met the Slack standard for a COA. And the Courts ignoring them is a complete miscarriage of justice that must not stand.

Accordingly, the Petitioner prays that this Court will grant certiorari in this case.

Dated _____

Signed, _____

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[5] As Mr. Scremin detailed in his affidavits, and can be inferred by the the opinion of the Eleventh Circuit Court of Appeals in thier vacating and remanding of Mr. Bates' conviction in 2014, the animosity shown towards Mr. Bates by the Trial Court judge -- K. Michael Moore -- in both trials and pretrial hearings was plainly obvious. A motion to seek recusal of Judge Moore in the first trial also further detailed this animosity. He allowed, over objections, the Government to repeatedly refer to Mr. Bates (falsely) as a "big fish" and "worst of worst" despite Moore having tried dozens -- if not hundreds -- of defendants with significantly greater child porn offenses, but as far as the Defense could find, not a single defendant with less. Even the 11th Circuit pointed out that the Government's actions were clearly intended to bias the jury and act improperly. A fact obvious to any jurist, and yet allowed by Moore. For one to suppose that Judge Moore intentionally denied Mr. Bates relief improperly, then "covered his tracks" by denying a COA in violation of Slack may be distastful or one the higher courts may want to avoid considering, but consider it they must. Although he is a judge, he is also a human and subject to faults. (And a judge with a high rate of reversals, as well as one of the lowest reviews by the judicial website The Robing Room (therobingroom.com) which also repeatedly cited his allowing his personal feelings to become obvious towards defendants and lawyers. (As reported in 2011.)