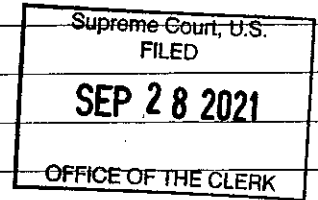


No. 21-
21-6398

ORIGINAL

In The
Supreme Court of the United States



Roy M. Belfast (Pro-se)
Plaintiff - Appellant

v.

Warren Breckon
Respondent

On Petition For Writ of Certiorari From Denial of
The Mandate From The Fourth Circuit Court of Appeals

ROY BELFAST
REG NO. 76556-004
USP LEE
U.S. PENITENTIARY
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APPEARING 'PRO SE

(i)

QUESTION PRESENTED

Did The Appellate Court Aid In The Violation Of The Separation Of Powers Suspending The Writ of Habeas Corpus And Constitutional Avoidance Doctrine; Based Upon Failure To Hold A Evidentiary Hearing Concerning "New Evidence" Released By The Department Of Justice Demonstrating 18 U.S.C. § 4001 (2) 18 U.S.C. § 3624, 18 U.S.C. § 3621, 5 U.S.C. § 702 Are Being Being Enforced Contrary To Congressional Intent.

(ii)

PARTIES TO THE PROCEEDINGS

Petitioner - Appellant Roy M. Belfast was Plaintiff
In Western District of Virginia Under Motion
28 U.S.C. § 2241 et seq. Roy M. Belfast v. Breckon,
7:18-cv-00453 The United States was The
Respondent And Only Party To The Habeas Corpus
Appeal.

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(1)

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully submits this petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit is non-published, Belfast v. Breckon, Case No. 7:18-cv-00453-JLK- (4th Cir. 2021), is attached in the Appendix at RSB

STATEMENT OF JURISDICTION

The judgment of the court was entered on September 8th, 2021. A petition for rehearing was denied on September 24th, 2021. On September 24th, 2021, the jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1), 28 U.S.C. § 2241 (2), (c)(1), (3)

(2)

CONSTITUTIONAL PROVISIONS INVOLVED

- Fifth Amendment to the Constitution of the United States provides: "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 a 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."
- Section 1 of the Fourteenth Amendment to the Constitution of the United States provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
- Section 1 of the Thirteenth Amendment to the Constitution of the United States provides: "Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

(3)

STATEMENT OF CASE

- November 2007 a eight count second superseding indictment charging Movant with: Conspiracy to commit torture, in violation of 18 U.S.C. §§ 2340A and 2340(A) (count 1); conspiracy to use and carry firearms during and in relation to a crime of violence - (count 2); five counts of torture, in violation of 18 U.S.C. § 2340(A), 2340(1) and 2 (counts 3 through 7); and using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c) (count 8). U.S. v. Belfast, criminal case 1:06-cr-20758
- January 9th, 2009 Movant was sentenced to all eight counts
- Movant filed for Direct Appeal and was denied U.S. v. Belfast, 611 F.3d 1783, 793 (11th Cir. 2010)
- Writ of Certiorari was denied U.S. v. Belfast, 562 U.S. 1236 (2011)
- Movant filed a 28 U.S.C. 2255 and was denied Belfast v. U.S. civil case no. 12-20754, no CIA issued by District Court or Appeals Court.
- Movant files a second-or-successive under In re Roy Belfast, Jr Case No. 16-13950

(4)

- Movant files another Second or Successive Petition based upon newly discovered evidence concerning Freedom of Information Act Release and is denied. In re Belfast Jr. Case No 18-12053
- September 2018 : 28 U.S.C. § 2241 et seq is filed under Belfast v. Breckon, civil case no. 7:18-cv-00453, Western District of Virginia, See D.E. 1 (W.D. Va. Sept. 13, 2018)
- September 17, 2019. The District Court dismisses petition under 28 U.S.C. § 2241
- Movant submits a Rule 59 (e) Reconsideration and is denied on August 31, 2020

(5)

REASONS FOR GRANTING PETITION

As a preliminary matter Movant, Petitioner Roy Belfast respectfully request the court observe movant's pro-se status, as pro-se litigants are entitled to liberal construction of their pleadings. *Estelle v. Gamble* 429 U.S. 97, 106 (1976). and *Haines v. Kerner*, 404 U.S. 59, 520 (1972).

The Appellate Court Aided In The District Court Violating The Separation of Powers Doctrine, Constitutional Avoidance, Suspended The Writ of Habeas Corpus Based Upon The Failure To Entertain The Release of New Evidence By Department of Justice, FOIA-section Revealing The Department of Justice Responsible For Enforcement Is Violating Congressional Intent Concerning 18 U.S.C. § 4001(a), 18 U.S.C. § 3624 et seq., 18 U.S.C. § 3585, 18 U.S.C. § 4042, 18 U.S.C. § 3621, 5 U.S.C. § 702, As Well As Executive Order 13107.

Movant sought reconsideration by the Fourth Circuit Court of Appeals based upon reaffirming the rule 59(e) motion that was denied by the district court. Four claims were raised: (Western District of Virginia, Belfast v. Breckon, civil case number 7:18-cv-00453-JLK-RSB).

(6)

" Ground One: Petition Raises A 18 U.S.C. § 4001(a) Claim In Relation To Count 1 "Arbitrary Detention" ... "

" Ground Two: FOIA-2016-02166 Findings (See Ex. "D") Office of Information Policy Appeal Response DOJ-AP-2017-005286 (See Ex. "E") Demonstrate A Grave Due Process Error In A Critical Non-Discretionary Function Carried Out By The BOP In Determination Of Release (18 U.S.C. § 3624 (2)).... "

" Ground Three: Department of Justice Findings (See Ex. "D" and "E") Show F.B.O.P. Used Erroneous Standards To Satisfy 18 U.S.C. § 3621 (b)(1)(2)(3), 18 U.S.C. § 4042 et seq. F.B.O.P. Program Statement 5880.23. Substantially Affecting Petitioners Rights Going Forward In Violation of 5th, 14th Amendment. "

" Ground Four: Bureau of Prisons "Fails To Act" Regarding A Non-Discretionary Function Under 18 U.S.C. § 4001(a) Constituting A "Legal Wrong" Under 5 U.S.C. § 702 Violating The Administrative Procedures Act And Due Process of The United States Constitution. "

New Evidence supports all four claims, underscoring, illegal detention, execution of sentence, conditions of confinement, as well as a "Legal Wrong".

The Freedom of Information Act release demonstrated the DOJ and Trial record is devoid of any evidence to support a violation of count 1 Conspiracy to Commit Torture, in violation of Thompson v. Louisville, 80 S.Ct 624, 4 LED2D 654, 362 US 199. "It is a violation of due process to convict and punish a man without evidence of guilt."

(7)

placing movant in a one man conspiracy in violation of Morrison v. California, 291 U.S. 82, 78 Led 664, 54 S. Ct 281

"It is impossible in the nature of things for a man to conspire with himself."

Movant satisfied 2255(e) criteria in two ways:

1. Movant was denied by court of conviction. Movant applied the "new evidence" previously unavailable along with 18 U.S.C. § 4001(a) claim under the second-in-time § 2255 (Panetti exception), See Belfast v. United States, Lexis 77504, Case No. 18-21143-CIV AFT; Second or Successive, under § 2255 (h)(1), both instances the district court, and Eleventh Circuit Court of Appeals determined the "new evidence" previously unavailable did not meet the standards under said vehicles. See In re: Belfast, Case No 18-12053

2. All claims raised concerned the violation of post conviction statutes that the DOJ is mandated to enforce, which only become discretionary upon a person being duly convicted (i.e. 18 U.S.C. § 4042 et seq., 18 U.S.C. § 3624 et seq [Good Time], 18 U.S.C. § 3621 et seq.); as well as 18 U.S.C. § 4001 (a) and E.O. 13107.

As a prudential requirement movant exhausted all administrative remedies prior to 28 U.S.C. § 2241

"Hence a § 2241 attack on detention lodged through 2255(e) should entail a challenge to (1) the right and authority of executive to keep the individual in custody; or (2) the manner in which the executive executes the detention. That serves the historic purpose of the Writ as well. Boumediene, 553 U.S. at 745 (the duty and ...

(8)

authority of the judiciary to call the jailer to account.)"
U.S. v. Surratt 797, F.3d 240 (4th Cir. 2015)

"In clear and unambiguous language, the non-detention act, 18 U.S.C. § 4001 (a) forbids any kind of detention of any U.S. citizen, except that which is specifically allowed by Congress." Padilla v. Hanft, 389 F. Supp. 2d 678 (4th Cir Feb 25th, 2005)

"The meritorious claims are few, but our procedures must ensure that those few claims are not stifled by indiscriminating generalities." 344 U.S. 498

"Our recent decisions have reasoned from the premise that habeas corpus is not 'a static narrow, formalistic remedy. Jones v. Cunningham, [311 U.S. 236] 243 [22 L. Ed. 2d 281, 89 S. Ct. 1082] [1963], but one which must retain the ability to cut through barriers of form and procedural mazes. Harris v. Nelson, 394 US 286, 291 [22 L. Ed. 281, 89 S. Ct. 1082] (1969). See Frank v. Magnum, 237 U.S. 309, 346 [59 L. Ed 969, 35 S. Ct. 582] (1915) (Holmes J. dissenting). The very nature of the writ demands it be administered with the initiative and flexibility essential to insure that miscarriage of justice within its reach are surfaced and corrected." Harris v. Nelson, Supra, at 29 [22 L. Ed. 2d 281, 89 Ct. 1082], 477 U.S. 501

(9)

"Unquestionably, if the trial court had exceeded its jurisdiction a prisoner held under its judgment might be discharged from custody upon a writ of habeas corpus by another court having authority to entertain the writ (Ex parte Lange, 18 Wall, 163, 21 L.Ed. 872; Ex parte Siebold, 100 U.S. 371, 25 L.Ed. 717; Ex parte Yarbrough, 110 U.S. 651, 28 L.Ed. 274, 4 Sup. Ct. Rep. 152; Ex parte Wilson, 114 U.S. 417, 29 L.Ed. 5 Sup. Ct. Rep. 935)

The failure by the District Court to have held a evidentiary and entertain merits, led to the suspension of the writ of Habeas Corpus outside the given parameters of the Constitution, as well as violating the Separation of Powers, and Constitutional Avoidance Doctrine.

(10)

Belfast submits the Fourth Circuit Court of Appeals decision not to reconsider its initial decision on what constitutes a cognizable claim under § 2255(e) represents a split in the circuit with the Fourth Circuit Court of Appeals breaking with Supreme Court precedent and other Appeals Courts concerning grounds one through four.

Movant contends the district court erred in not entertaining merits and not holding a evidentiary. Movant requests the case be remanded with the district court instructed to entertain merits and hold mandatory evidentiary hearing concerning "new evidence" previously unavailable in prior habeas proceedings

CONCLUSION

For The Above And Foregoing Reason Belfast's Petition For A Writ of Certiorari should be heard And Granted.

Respectfully Submitted

Dated: 9/24/21

Roy Belfast

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APPENDIX 1

United States Court of Appeals For The Fourth Circuit

No. 20-7375 (7:18-cv-00453-MFU-RSB)

Mandate, Filed: September 8, 2021