22-5600 ORIGINAL

SUPREME COURT of the UNITED STATES
WASHINGTON, DC.

FILED
AUG 09 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUINCETTA Y. CARGILL
Petitioner-Appellant

UNITED STATES COURT of APPEALS
for the ElEVENTH CIRCUIT, and
UNITED STATES DISTRICT COURT
for the NORTHERN DISTRICT of ALABAMA
SOUTHERN DIVISION

In re: APPEAL NUMBER: 22-10269-E
Case Style: QUINCETTA Y. CARGILL v. STATE of ALABAMA et. Al
District Court No.: 2:19-CV-01339-RDP-JHE

28 U.S.C. § 2254
Final Judgment/Order Entered 06-28-2022

TABLE of CONTENTS.

QUESTIONS PRESENTED for REVIEW:

1. Where the petitioner-appellant had filed a timely and sufficient Affidavit of Personal Bias and Prejudice under 28 U.S.C. § 144 and 455 against the U.S. District Court Judge before he certified that appeal was not taken in good faith, yet where he failed to mention or acknowlege the existence of the Affidavit of Personal Bias and Prejudice before making such 'opinion', should not the issue / order denying in forma pauperis be reviewed?

2. Where after an Affidavit of Personal Bias and Prejudice under 28 U.S.C. § 144 and 455 was filed against the U.S. District Court Judge, and where the appeal filed was calling into account the actions of the judge against whom the Affidavit was filed, should not his decision to Certify Appeal 'not taken in good faith', but after failure to neither respond to the Affidavit nor notify the U.S. Court of Appeals of it's existence be reviewed under Abuse of Discretion standards?

3. Where the petitioner-appellant has been permitted to proceed in forma pauperis by the United States District on previous occassions, where under Criminal Justice Act the petitioner-appellant has been appointed CJA legal representation based upon financial need, and where Affidavit of Poverty has been filed in United States District Court, does not the judge's decision to invoke restrictions / prohibitions against in forma pauperis status constitute Judicial Misconduct or create the appearance of bias or malice?

4. Should a district court judge knowingly and willingly obstruct a defendant's efforts to appeal, solely because the appeal was filed based upon the judge's actions? (Judicial Misconduct)

5. Where the petitioner-Appellant reported to the U.S. Court of Appeals that an Affidavit of Personal Bias and Prejudice had been submitted against the district court judge before the district court judge had entered his final decision, should not any subsequent order as was entered by the U.S. Court of Appeals, be remanded and reviewed?

6. The petitioner-Appellant declared Poverty upon record in the U.S. Court of Appeals and the United States District Court, and can not financially afford to pay a docket fee. Should she be denied the opportunity to be heard on Appeal based upon her inability to pay fees?

7. Should the district court judge have disclosed to the U.S. Court of Appeals that an Affidavit of Personal Bias and Prejudice was filed against him before proceeding to enter judgment?

8. Where the district court judge failed to recuse himself and denied the petitioner-appellant's motion for Recusal, should he have been allowed to continue to enter judgment?

9. Affidavit of Personal Bias and Prejudice was accompanied by Letter by counsel certifying that the affidavit was filed based upon facts, does it matter that counsel-who certified as to the truth of the affidavit was in fact the petitioner-appellant? (self-representation)

10. Where the U.S. District Court denied the petitioner-Appellant's request for Counsel, and her request to provide evidence in the form of expert witness testimony,
but where no rational basis for such denial
as in denial of counsel to indigent party and
in denial of expert witness testimony (Psychological / Psychiatrist) to party esp. where the issue of Competence is primary basis of claim,
should such denial of provisions be reviewed for Due Process Violation?

11. Does not a denial of motion Requesting Admission of Discovery (Lay witness Testimony and Expert witness Testimony) violate Due Process, particularly where petitioner-appellant (defendant) is deprived of testimony that would have been relevant and material, as to the question of Actual Innocence or guilt?

12. Where evidence was Discovered since conviction and after the initial ruling, a motion to Amend and Make Additional Factual Findings under Rule 52(b) would allow Newly Discovered evidence to be presented;
thereby denial of such motion would be procedurally unfair; Correct? (or not correct?)

13. Where 28 U.S.C. § 2254 was filed to challenge State Conviction and Sentence, and where petitioner-appellant has Completed serving the sentence imposed,
yet the § 2254 has not been reviewed without bias or properly heard on the merits,
does the petitioner-appellant's custody (5 year supervised or 5 year probationary period) constitute "in custody" which permits

the challenge of 'unlawful detention' or conviction / sentence "while in custody?"

14. Does not the claim of Involuntary Plea of Guilt and Competency issues warrant an Evidentiary Hearing?

15. What say ye in regards to "Actual Innocence" (Legal Innocence) and 'Manifest Injustice' where psychological evidence exist to support claims of actual innocence, and where denial of admission of such psychological evidence has resulted in manifest injustice after an innocent party has not only been convicted, but denied proper review of conviction even after the sentence has been served?

TABLE of CITATIONS (CITED AUTHORITIES).

Citations of the Official and Unofficial Reports of the Opinions and Orders Entered by Courts

11th Cir. R. 42-1 (b)

28 USC § 1915

Fed R. App. P. 24 (a) and 11 th Cir. R 24-2

11 th Cir. R 42-2

28 USC § 2253 (C)(1)(A)

Napier v. Preslicka, 314 F 3d 528, 531 (11th Cir. 2002)

Fed R. App. P. 22 (b)

Basis for Jurisdiction in Supreme Court.

(i)

1. 28 U.S.C. § 2254 Appeal Number 22-10269-E
CASE STYLE : QUINCETTA Y. CARGILL v. STATE of ALABAMA et. al
District Court No. : 2:19-cv-01339-RDP-JHE
Final Judgment / Order entered 06-28-2022

(ii) The United States Court of Appeals adopted / Affirmed the decision / opinion of the United States District Court judge - who certified that appeal was not taken in Good faith, and thereby denied in forma pauperis petition due to such decision / opinion of the district judge.

However, where the district court judge FAILED to report that an Affidavit of Personal Bias and Prejudice had been timely filed against him, but he proceeded to enter decision / order - and before he had passed upon the legal sufficiency of facts alleged,

the United States Court of Appeals' decision to adopt / Affirmed the decision / opinion of the United States District Court judge against whom the Affidavit of Personal Bias and Prejudice was filed denying an indigent inmate in forma pauperis on appeal warrants review by the Supreme Court. (Rule 10 (a))

(iii) Notification has been forwarded to all parties.

Statement of the case.

Rule 10 (a) a United States court of appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; or has so far departed from the accepted and usual course of judicial proceedings.

ON WRIT of CERTIORARI to the UNITED STATES SUPREME COURT Washington, D.C. to review a judgment affirming a judgment of the District Court of the United States, Northern District of Alabama, Southern Division, denying indigent prisoner in forma pauperis on appeal - but based solely upon the certifying of U.S. District Court judge that appeal was not taken in good faith, and against whom an Affidavit of Personal Bias and Prejudice had previously been filed. The United States Court of Appeals' for the Eleventh Circuit entered such judgment on 06-28-2022 and upon it does the petitioner-appellant assert her claims.

The appeal that was sought for review included claims of Judicial Misconduct and the appearance of corruption on the part of the district court judge who was accused of misconduct (the judge originally assigned the 28 U.S.C. § 2254). However, where the judge against whom an Affidavit of Personal Bias and Prejudice was filed, vindictively moved to enter a judgment, order or opinion ("Appeal not taken in good faith") that would prohibit the appeal from being heard particularly where in forma pauperis was automatically denied upon certification of the district court judge that appeal was not taken in good faith, and where petitioner-appellant is indigent.

Affidavit of Poverty exists on file in U.S. District Court.

The U.S. District Court judge's failure to recuse himself and decision to proceed in judgment of the case after the Affidavit of Personal Bias and Prejudice under 28 USCS § 144 and § 455 was filed without neither acknowledging the existence of the affidavit nor disclosing to the U.S. Court of Appeals that an affidavit had been filed, constitutes review and reversal of all subsequent actions including the final judgment of the U.S. Court of Appeals.

28 U.S.C. § 2254

The United States District Court had jurisdiction over the 28 U.S.C. § 2254 filed by the petitioner challenging the state court criminal conviction imposed by the State of Alabama.

The original grounds raised were Legal Innocence, Prosecutorial Withholding of Exculpatory Evidence, Involuntary Plea, Competence to Plea Guilty and Ineffective Assistance of Counsel

The petitioner-appellant sought permission to amend the claims adding Judicial Misconduct (Brady Violations) and Personal Bias against the judge to whom the 28 U.S.C. § 2254 was assigned, but such requests were denied.

Although the petitioner-Appellant filed Affidavits of Personal Bias and Prejudice, to prohibit further rulings made by the judge whose appearance of bias and corruption prompted an unjust decision, and to request recusal of judge; not only in regards to 28 U.S.C. § 2254 2:19-CV-01339-RDP-JHE QUINCETTA Y. CARGILL v. STATE of ALABAMA et al, but in regards to United States v. QUINCETTA Y. CARGILL 2:17-cr-00356-RDP-JHE, and QUINCETTA Y. CARGILL v. United States 2:21-cv-8024-RDP,

the judge failed to acknowledge the Affidavit of Personal Bias and Prejudice. The judge neither responded to the Affidavit nor disclosed to the U.S. Court of Appeals the existence of such Affidavit(s) under 28 USCS § 144 and 455, yet he continued to enter judgments, rulings and/or opinions in regards to the cases.

The U.S. Court of Appeals had jurisdiction over 28 USC § 2254 Appeal (Appeal No. 22-10269) where after the petitioner-appellant sought review of the U.S. District Courts rulings;

however where after the Affidavit of Personal Bias and Prejudice under 28 USCS § 144 and 455 was filed,

the judge then certified to the U.S. Court of Appeals that appeal was not taken in good faith which automatically prompted denial of in forma pauperis status.

ARGUMENT.

A petition for a writ of certiorari shall be granted only for compelling reasons. Where a United states Court of Appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; or has so far departed from the accepted and usual course of judicial proceedings, it has come to the petitioner-appellant seeking review on writ of Certiorari.

The basis of the argument lies upon the question whether a district court judge against whom a timely and sufficient Affidavit of Personal Bias and Prejudice under 28 USCS § 144 should be allowed to completely disregard such filing - not acknowledging the existence of it or responding - as by passing upon the legal sufficiency of facts alleged, but proceed to rule, judge and enter opinions in the case - contrary to the requirements of 28 USCS § 144 ?

The petitioner-appellant had in fact filed several different Affidavits of Personal Bias and Prejudice, although alleging the same facts having to attach several different case numbers to the filing. The same judge presided over the BENCH TRIAL conducted in federal court against the petitioner-appellant, as well as 28 USC. § 2254 challenging a state conviction and 28 USC § 2255 challenging the federal conviction, thereby an Affidavit of Personal Bias and Prejudice was attached to each case.

What makes an Affidavit timely is that it is submitted at least 10 days before a future proceeding or before the trial ends. Where most of the facts complained about were discovered after the trial ended or near the end, the petitioner submitted Affidavits for review in hopes of Disqualifying the judge from future proceedings.

The petitioner-appellant also filed § 455 Disqualify the presiding judge and a Motion to Recuse. The judge refused to recuse himself but continued to preside (Bias) in favor of the opposition.

On 7-13-2022, the district court judge decided to respond to a Motion to Disqualify the Judge but where the Affidavits had been submitted nearly six months prior to the date, the damage had already been done.

He had moved to Certify to the United States Court of Appeals that the appeals were not taken in good faith BLOCKING the prose indigent petitioner from review but without neither mentioning that Affidavit of Personal Bias and Prejudice had been filed against him, nor

disclosing the fact that both appeals included allegations of Judicial Misconduct and Judicial Bias.

It is understood that the mere filing of Affidavit under 28 USCS § 144 does not automatically disqualify judge, but where by rule it specifically states:

a. 28 USCS § 144 requires that where Affidavit of personal bias or prejudice is filed, judge must cease to act in case and proceed to determine legal sufficiency of Affidavit, but judge is not allowed to pass upon the truth of it's statements.

Bell v. Chandler (1978, CA10 Okla) 569 F.2d 556

b. Judge must not proceed any further, where, under 28 USCS § 144, disqualifying affidavit is filed. Turner v. American Bar Ass'n (1975, DC Tex) 407 F Supp 451

c. If Affidavit and certificate filed under 28 USCS § 144 meet tests of timeliness and legal sufficiency of facts alleged then factual allegations contained in affidavit must be taken as true and Court has no power or authority to contest in any way whatsoever necessary acceptance of truthfulness of facts alleged, even though Court may be aware of facts which would indicate clearly falsity of any such allegations.

California v. Kleppe (1977, CD Cal) 431 F Supp 1344

In November 2021, petitioner-appellant filed an affidavit in the district court seeking disqualification of the trial judge, but to disqualify him from future proceedings. A month later she filed a supplemental affidavit. Both documents alleged the trial judge to be biased and prejudiced against the petitioner-appellant. No response came

A third was filed with an attached Certificate of Truth as by the attorney representing the petitioner-appellant.

The petitioner-appellant submitted a Motion to Recuse. The judge refused.

In Berger v. United States, 255 U.S. 22, 41 S. Ct. 230, 65 L. Ed. 481 (1921), the Court said that the filing of an affidavit of personal bias or prejuduce of the judge who is to preside at the trial, conformably to 28 USCA. § 144, leaves the judge no duty other than to pass upon the legal sufficiency of the affidavit to show his objectionable inclination or disposition, and if legally sufficient, compels his retirement from the case without passing upon the truth or falsity of the facts affirmed.

Where the judge failed to comply with the 28 USCS § 144 requirements, but chose to Certify that the appeals were not taken in good faith without mentioning the affidavit under 28 USC § 144 or the fact that the appeals included complaints of Judicia Misconduct and Judicial Bias,

his failure to be honest or transparent implies Dishonest or questionable motives.

Thereby, the entire case should be reviewed denovo.

United States v. Reyes-Alvarado, 963 F.2d 1184, 1188 (9th Cir. 1992) (Abuse of Discretion)

To make matters worse, to impose a sanction or initiate a proceeding that BLOCKS or prohibits an indigent prisoner from review in forma pauperis esp. where Affidavit of Poverty is on record, appears to undermine the integrity of the court and warrants review.

[In laymen's terms]

[redacted]

Submitted this 1st day of Sept., 2022