United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 14, 2022
Decided November 22, 2022

Before

AMY J. ST. EVE, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-1982

PETER GAKUBA,
Petitioner-Appellant,

v.

RACHEL DODD,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 17 C 50337

Jorge L. Alonso,
Judge.

ORDER

Peter Gakuba seeks a certificate of appealability to challenge the district court's denial of his second Rule 60(b) motion in a completed postconviction action under 28 U.S.C. § 2254. We have reviewed the final order of the district court and the record on appeal and find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, we DENY the request for a certificate of appealability. All pending motions are also DENIED. As to any future filings, we draw Gakuba's attention to the fine and filing bar entered in No. 22-3039 (7th Cir. Nov. 21, 2022).

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Peter Gakuba, Petitioner, v. Michelle Neese, Respondent.	)))))))	Case No. 17 C 50337 Hon. Jorge L. Alonso

ORDER

Petitioner's Fed. R. Civ. P. 60(b) motion [107] is denied. His motion for expedited review [105], and his motions seeking to have this case and his civil rights action (Case No. 22 C 50092) decided by the same judge [106, 127, 130], are denied. This Court declines to issue a certificate of appealability, to the extent one is needed to appeal this order.

STATEMENT

Petitioner Peter Gakuba, formerly an Illinois prisoner who is now on parole in Maryland, brings another Fed. R. Civ. P. 60(b) motion challenging this Court's October 24, 2018, denial of his 28 U.S.C. § 2254 petition. He also seeks to have this case and his civil rights case (*Gakuba v. Judge Brandon Maher, et al.*, No. 22 C 50092 (N.D. Ill.)) decided by the same judge. For the reasons stated below, his motions are denied.

Background:

In 2015, in Winnebago County, Illinois, Gakuba was convicted of three counts of aggravated sexual assault of a 14-year old boy, and was sentenced to a total of 12 years' imprisonment. *See People v. Gakuba*, 2017 IL App (2d) 150744-U, ¶ 2. After the state appellate court affirmed his conviction, *id.*, and the Illinois Supreme Court denied his petition for leave to appeal, *see People v. Gakuba*, 89 N.E.3d 758 (Ill. 2017), Gakuba filed a § 2254 petition for federal habeas relief in this Court asserting seven claims. (Dkt. 1.) This Court, with another judge presiding (the Honorable Frederick Kapala), dismissed Claims 5-7 as unexhausted on initial review, and later denied Claims 1-4 and the § 2254 petition. (Dkts. 9 and 38.)

Following this Court's and the Seventh Circuit's refusals to issue a certificate of appealability (COA), (Dkts. 38 and 48), Gakuba filed several motions, including a Rule 60(b) motion. (Dkt. 53.) That motion's main argument was that this Court erred on initial review when it dismissed unexhausted issues and proceeded with his exhausted claims. *Id.* According to Gakuba, once this Court realized that he had filed a "mixed" petition (one with exhausted and unexhausted claims), the Court should have given him the opportunity to dismiss the unexhausted claims or seek a stay of this case so that he could exhaust them. *Id.* (relying on *Sparks v. Dorethy*, No. 17-2135, Dkt. Entry 24, pg. 2 (7th Cir. Jan. 9, 2018) (the district court should have "wait[ed]

for Sparks to decide whether to amend the petition so that it contained only exhausted claims ... the choice belongs to the petitioner"). The Honorable John Lee, to whom the case was reassigned after Judge Kapala retired, denied the Rule 60(b) motion. (Dkt. 66.) Gakuba again appealed, and the Seventh Circuit again denied COA. (Dkt. 95.)

Gakuba's Current Motions:

Gakuba then filed the motions now before this Court: (1) a motion for expedited review; (2) several motions either to transfer this case to Judge Martha Pacold, who is presiding over one of Gakuba's civil rights suits (Case No. 22 C 50092), or to have her case transferred to this Court so the two cases can be decided by the same judge; and (3) another Rule 60(b) motion for relief from judgment. (Dkts. 105, 106, 107, 127, 130.)

Gakuba's second Rule 60(b) motion again argues that this Court erred with the way it treated his "mixed" petition. He also contends that this Court erroneously denied his § 2254 claim of a Sixth Amendment violation when the trial court refused his request to represent himself, which he made several weeks before trial. (Dkt. 107, pg. 6-9.) More specifically, he asserts that this Court should have found unreasonable the state court's determination that his last request to proceed *pro se* was for the purpose of delay. *Id.* at 3; *Gakuba*, 2017 IL App (2d) 150744-U, ¶¶ 86-88. According to Gakuba, any request for self-representation made weeks before trial is timely and automatically should be granted. (Dkt. 107, pg. 3) (relying on *Imani v. Pollard*, 826 F.3d 939, 947 (7th Cir. 2016) ("Imani made his request four weeks before trial and said he would not need any extra time to prepare. *Faretta* held it was a constitutional error to deny [a] request made 'weeks before trial.'") (citing *Faretta v. California*, 422 U.S. 806, 835 (1975)).

"Relief under Rule 60(b)(6) requires a showing of 'extraordinary circumstances' justifying the reopening of a final judgment and '[s]uch circumstances will rarely occur in the habeas context.'" *Arrieta v. Battaglia*, 461 F.3d 861, 865 (7th Cir. 2006) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005)). "A Rule 60(b) motion is not a substitute for appeal, and thus [a petitioner]'s attempt to use it as such [i]s appropriately rejected." *Stoller v. Pure Fishing Inc.*, 528 F.3d 478, 480 (7th Cir. 2008) (citations omitted); *see also Dickerson v. United States*, No. 07-CV-2178, 2009 WL 10737869, at *2 (C.D. Ill. Mar. 11, 2009) ("Rule 60(b) cannot be used to resurrect arguments which could have been made on appeal, to rehash arguments unsuccessfully advanced on appeal, or as the basis for a general plea for relief."). A district court "should not ... consider[ ] the merits of [a Rule 60(b)] motion ... upon determining that it presented no ground for relief that could not have been presented by way of an appeal from the final judgment." *Bell v. Eastman Kodak Co.*, 214 F.3d 798, 801 (7th Cir. 2000).

Gakuba raised his current Rule 60(b) issues on appeal when he sought COAs to challenge this Court's October 24, 2018, and January 8, 2020, orders denying his § 2254 petition and his first Rule 60(b) motion. *See Gakuba v. Neese*, No. 18-3398, Dkt. Entry 3-1, pg. 12-13, 33-36 (7th Cir.); *Gakuba v. Grissom*, No. 20-1137, Dkt. Entry 12 (7th Cir.). To the extent his current Rule 60(b) claims differ from claims he asserted in his two COA requests in the Seventh Circuit, and to the extent his current Rule 60(b) motion asserts additional claims not discussed in this motion, Gakuba

could have raised those issues in his two appellate cases. His current Rule 60(b) motion thus seeks to be a substitute for an appeal and/or to rehash arguments unsuccessfully presented on appeal. These are not the grounds for Rule 60(b) relief. His Rule 60(b) motion is thus denied.

Gakuba's other motions:

The denial of Gakuba's current Rule 60(b) motion, within weeks of its filing, renders unnecessary his motion for expedited review. (Dkt. 105.) The denial of the Rule 60(b) motion also renders moot Gakuba's motions to join this case with his civil rights action, *Gakuba v. Judge Brandon Maher, et al.*, No. 22 C 50092 (N.D. Ill.), and to have both cases before one judge. (Dkts. 106, 127, 130.) With respect to Gakuba's motions to have this case and Case No. 22 C 50092 decided by the same judge, this Court's local rules direct that cases seeking habeas corpus relief should not be assigned to the same judge presiding over a civil rights case filed by the petitioner, and vice-versa. *See* N.D. Ill. Local Rule 40.3(b)(1)(C)-(D); *Glaus v. Anderson*, 408 F.3d 382, 386-89 (7th Cir. 2005) (explaining the difference between cases seeking habeas corpus relief and civil rights cases).

Accordingly, all of Gakuba's pending motions in this case are denied. This case remains closed.

CONCLUSION

For the reasons stated above, this Court denies: Gakuba's current Rule 60(b) motion [107]; his motion for expedited review [105]; and his motions seeking to have the same judge decide the motions in this case and Gakuba's motions in Case No. 22 C 50092, [106, 127, 130]; and any other pending motion in this case. This case remains closed. If Gakuba seeks to appeal this order, this Court declines to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Dated: May 27, 2022

JORGE L. ALONSO
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Peter Gakuba, Petitioner, v. Michelle Neese, Respondent.	)))))))	Case No. 17 C 50337 Hon. Jorge L. Alonso

ORDER

Petitioner's current motion [134], which challenges this Court's recent denial of his Fed. R. Civ. P. 60(b) and other motions, as well as rulings by other members of this Court in not only this case but also Petitioner's other cases, is denied. Petitioner has not made the requisite showing for relief under either Rules 54(b) or 59(e). *See Stragapede v. City of Evanston, Illinois*, 865 F.3d 861, 868 (7th Cir. 2017), as amended (Aug. 8, 2017) (addressing Rule 59(e)'s requirements); *Selective Ins. Co. of S.C. v. City of Paris*, 769 F.3d 501, 507 (7th Cir. 2014) (addressing Rule 54(b)); *see also Stoller v. Pure Fishing Inc.*, 528 F.3d 478, 480 (7th Cir. 2008) (addressing the requirements for Rule 60(b) relief); N.D. Ill. Local Rule 40.3. This case remains closed. The notice of motion set for Friday, June 3, 2022, is terminated. No appearance should be made on that date. If Petitioner seeks to appeal this order or the May 27, 2022, order, he must file a notice of appeal in this Court within 30 days of the date this order is entered.

Date: 6/1/2022

Jorge L. Alonso
United States District Judge

Docket No. 22-_____

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETER GAKUBA (pro se habeas petitioner / parolee)	)	Appeal from the U.S. District
	)	Court for Northern Illinois
	)	Chicago Division
Plaintiff-Petitioner,	)	
vs.	)	Case No. 3:17-cv-50337
	)	
JASON GARNETT (Chief of Parole),	)	Judge Jorge J. Alonso
ILLIONIS PRISONER REVIEW BOARD,	)	
	)	
	)	
	)	
Defendants-Respondents.	)	

PETITION FOR CERTIFICATE OF APPEALABILITY – FED. R. CIV. P. RULE 60(B)(4), ALTERNATIVELY, FED. R. CIV. P. RULE 60(B)(6)

NOW COMES *pro se* Plaintiff-Petitioner PETER GAKUBA ("Gakuba") in this Petition for Certificate of Appealability per Fed. R. Civ. P. 60(b)(4), alternatively, Fed. R. Civ. P. 60(b)(6). See *Sparks v. Dorethy,* 2018 US App. Lexis 32265 (01/09/2018 USCA7) (cites *Rhines v. Weber*, 544 US 269 (2005)).

DECLARATORY STATEMENT IN SUPPORT OF PETITION FOR CERTIFICATE OF APPEALABILITY PER FED. R. CIV. P. 60(B)(4), ALTERNATIVELY, FED. R. CIV. P. 60(B)(6)

This declaratory statement incorporated herein is in compliance with 28 U.S.C. § 1746 and is consistent with the Fed. R. Civ. Procedures.

DECLARATION UNDER PENALTY OF PERJURY

Peter Gakuba declares:

I. Procedural Background and History

A. Rule 60(b)(6) Motion – ECF 106

1. Original Proceeding

1. 04/27/2023 Gakuba's "in custody" concludes when his parole concludes.

2. Habeas relief will no longer exist once Gakuba no longer is in custody.

3. 09/18/2017 Gakuba filed his pro se handwritten habeas petition in Chicago, IL. *Gakuba v. Rains,* 17-cv-6719 (USDC-ND IL) (ECF 1).

4. The jurisdiction statement pleaded to adjudicate the habeas petition in Chicago versus Rockford, IL due to bias and prejudice Gakuba encountered by the federal district judge(s) and magistrate(s) in Rockford.

5. Over vociferous objections, Judge Blakey transferred the case to Rockford. (ECF 16)

6. Judge Kapala then dismissed the petition citing Gakuba's erroneous use of forms for federal prisoner habeas petitions. (ECF 20)

7. 11/07/2017 Gakuba re-filed his pro se handwritten habeas petition using the correct forms. *Gakuba v. Neese,* 17-cv-50337 (USDC-ND IL) (ECF 1).

8. Gakuba cited numerous structural, plain, and clear errors of both law and fact.

9. Notably, as "issue 4", Gakuba was denied his 6th Amendment right to re-invoke his self-representation, 3-6 "weeks before trial" as a "delay tactic" when there was no delay at all by Gakuba.[1] (ECF 1)

[1] Gakuba was pro se for some 19 months during the 9-year pretrial pendency of his case. An Illinois record.

10. 11/20/2017 Judge Kapala ruled that it was a "mixed" habeas petition. (ECF 9) See Attachment(s) 1.

11. Then, without allowing Gakuba to decide what to do next, proceeded to dismiss the "unexhausted" claims (issues 5-7) and decided the "exhausted" claims (issues 1-4).

12. This violated habeas due process.

13. See *Sparks v. Dorethy,* 2018 US App. Lexis 32265 (01/09/2018 USCA7) (cites *Rhines v. Weber*, 544 US 269 (2005)). See Attachment(s) 2.

14. 10/24/2018 Judge Kapala dismissed the habeas petition.

15. Specific to the 6th Amendment self-representation structural error, Judge Kapala cited to dicta in *Imani v. Pollard,* 825 F.3d 939, 947 (7th Cir. 2016). (ECF 38 Page 14 of 16 Page ID #2925-2926).

16. However, the holding of *Imani* was that the denial of self-representation "weeks before trial" is a 6th Amendment violation and structural error.

17. *Imani* at 947: And in any case, Imani made his request four weeks before trial and

> said he would not need any extra time to prepare. *Faretta* held it was a constitutional error to deny request made "weeks before trial." Id . The judge would have been entitled to hold Imani to that assurance if he had later asked for a delay, but he could not deny Imani his Sixth Amendment right to represent himself on this basis.

18. In fact, the U.S. Court of Appeals – 7th Cir. (USCA7) granted habeas relief at least four (4) times just years prior to Gakuba's own pro se handwritten habeas petition.

19. See *Washington v. Boughton,* 884 F.3d 692, 703 (7th Cir. 2018) ("In *Imani*, *Tatum*, and a third case, *Jordan v. Hepp,* 831 F.3d 837 (7th Cir. 2016), we synthesized the principles emerging from *Faretta*[.]").

2. Appellate Proceeding

20. 11/05/2018 Gakuba noticed his appeal per a petition for a certificate of appealability. (*Gakuba*, 17-cv-50337 (USDC-ND IL) (ECF 40-41))

21. 08/13/2019 the USCA7 denied the petition for a C.O.A. in a wholly conclusory order that was boilerplate: "We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. 28 USC §2253(c)(2)." (ECF 48)

22. That's it. It was objectively unreasonable having deliberately disregarded the 41-page petition for a C.O.A. (and accompanying records for support as exhibits 1-4 (26-pages)).

23. 09/03/2019 Gakuba filed his "Motion for Relief from 'Void' Judgment per Fed. R. Civ. P. Rule 60(b)(4)." (ECF 53)

24. 01/08/2020 Judge Lee denied it in a wholly conclusory order that deliberately ignored the controlling law and substantive facts. (ECF 66)

25. See accord *Milke v. Ryan,* 711 F.3d 998, 1002-03, 1005, 1007-11, 1019 (9th Cir. 2013) (COA and habeas grant: Milke wrongly convicted on fabricated confession by police with history of flagrant perjury).

26. It was neither thoughtful, fact-based, and bereft of any reasoning other than to merely state that Gakuba's habeas petition having been denied, and a petition for a C.O.A. denied too, meant that "this case is terminated." (ECF 66)

27. See also *McShane v. Cate,* 636 Fed. Appx. 410, 412 (9th Cir. 2016) (**'a state court's fact-finding process is fatally undermined when the court 'has before it, yet apparently**

ignores, evidence that is highly probative and central to petitioner's claim.' *Milke v. Ryan,* 711 F.3d 998, 1008 (9th Cir. 2013); see *Miller-El v. Cockrell,* 537 US 322, 346 (2003) (noting that the state court 'had before it, and apparently ignored,' testimony relevant to the correct inquiry).

28. 01/24/2020 Gakuba noticed an appeal. (ECF 69)

29. 02/06/2020 Judge Lee's minutes asserted that Gakuba is not entitled to habeas due process on "mixed" petitions because there is no underlying constitutional violation. (ECF 85)

30. Judge Lee's wholly conclusory ruling deliberately ignored the undisputed facts as clear error, which, in turn, resulted in an objectively unreasonable application of the law. *Milke,* 711 F.3d. at 1019 (9th Cir. 2013).

31. See also *Lee v. Kink*, 922 F.3d 772, 774-75 (7th Cir. 2019)

32. *Lee* at 775:

> "Our analysis has an additional implication: By deciding the merits without receiving the evidence that Lee sought to have considered, the state judiciary acted unreasonably. Illinois observes that *Cullen v. Pinholster*, 563 U.S. 170, 180–86, 131 S.Ct. 1388, 179 L.Ed.2d 557 (2011), holds that, when 28 U.S.C. § 2254(d)(1) requires a federal court to reject a collateral challenge, the court may not hold an evidentiary hearing and consider evidence not presented to the state judiciary. Illinois wants us to treat this as equivalent to a rule that state courts may insulate their decisions from federal review by refusing to entertain vital evidence. Yet a state court's refusal to consider evidence can render its decision unreasonable under § 2254(d)(2) even when its legal analysis satisfies § 2254(d)(1).
>
> **Section 2254(d)(2) provides that "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding" lacks the shelter of § 2254(d) as a whole.** If the affidavits were all Lee had offered to the state judiciary, then its decision may have been a reasonable application of the law to a reasonable determination of the facts. But Lee wanted to introduce more, and the state barred the door. *Pinholster* concerns the application of § 2254(d)(1) to a state court's legal reasoning; it does not prevent a federal court from finding factual aspects of a state court's decision unreasonable under § 2254(d)(2). See 563 U.S. at 184–85 & n.7, 131 S.Ct. 1388. By assuming that the language of the five affidavits would have been the totality of the witnesses' testimony had they been called at trial, the state made an unreasonable factual determination under § 2254(d)(2), which permits a federal evidentiary hearing under § 2254(e)(2)."

33. 11/25/2020 the USCA7 denied review. (ECF 95)

34. Once again, the language was wholly conclusory, boiler plate. Further, they threatened sanctions were Gakuba to file "further frivolous filings."

35. However, they cite *Alexander v. USA*, 121 F.3d 312, 315 (7th Cir. 1997) for support, which is readily distinguishable because Alexander had filed "for the third time" habeas petitions and "the current" fourth one "has had the same theme ... We have addressed and resolved this contention twice before." *Alexander* at 313.

36. Here, Gakuba's pro se habeas petition had two (2) structural errors; the 6th Amendment right to re-invoke self-representation 3-6 "weeks before trial" as a "delay tactic" when no record exists of Gakuba ever seeking a continuance—but asst. public defender (APD) Gustafson did on the day-of-trial which was heard and denied. Thus, assuming arguendo, a pro se trial date continuance by Gakuba would have been denied too. (ECF 1: habeas' "issue 4")

37. Secondly, Gakuba's 6th Amendment right to a public trial was violated as structural error as well; ASA Kate Kurtz was ordered by the trial judge to conduct direct examination of the state's key witness—Charles O'Brien (being sued by Gakuba)—"off the record, out of the well of the court." Structural error. Plainly documented by overwhelming records of support on file in this case. (ECF 1: habeas "issue 1")

II. Argument

A. *Sparks v. Dorethy,* 2018 US App. Lexis 32265 (01/09/2018 USCA7)

38. 05/31/2017 Sparks' petition for a certificate of appealability was docketed. *Sparks v. Dorethy,* 17-2135 (USCA7) (ECF 1).

39. 01/09/2018 it was adjudicated.

40. It preceded Gakuba's own petition for a certificate of appealability filed that year.

41. 01/09/2018 the USCA7 *sua sponte* granted the C.O.A. on the violation of Sparks' habeas due process rights on "mixed" petitions. (ECF 23)

42. Moreover, it flagged the habeas due process violation and sought briefing from Sparks who failed to do so. (ECF 15-21)

43. Nevertheless, vacatur was the just result.

44. All the while Gakuba's identical "mixed" habeas petition due process violation was before the USCA7—shortly after ruling on Sparks—the USCA7 deliberately ignores the very same "mixed" habeas due process violation that occurred with Gakuba, that had occurred to Sparks.

45. *Sparks v. Dorethy,* 2018 US App. LEXIS 32265 **1-3 (01/09/18) (cites *Rhines v. Weber,* 544 US 269 (2005)).

46. Id at **1-2: "Judge [Kapala] dismissed the unexhausted claims and proceeded to

> decide the rest. The judge did not wait for Sparks [/Gakuba] to decide whether to amend the petition so that it contained only exhausted claims. Instead, the court treated the opportunity extended by ***Rhines*** as one that can be accepted by the judge. Yet the choice belongs to the petitioner, and failing to protest the judge's decision to proceed is not an effective choice to dismiss the unexhausted claims. Giving the choice about dismissing the unexhausted claims to the judge rather than the litigant would about to overruling ***Lundy***, which ***Rhines*** did not do. Once dismissed, claims cannot be reasserted in a later collateral attack without appellate approval for a 2nd or successive petition. Sparks [/Gakuba] had never manifested his consent to having the unexhausted claims treated that way."

47. And because every preceding federal district and circuit judge presiding over this case disposed of it in wholly conclusory, boiler plate terms—notably the 6th Amendment structural error of self-representation—the conclusion that there are no "underlying constitutional violations"

when Judge Kapala ruled there to be (just he fabricated an opinion using fanciful and objectively unreasonable contrivances of the law), cannot be dismissed as mere error.

48. But calculated judicial overreach by an irrationally biased and prejudiced federal judiciary.

49. *Gakuba v. O'Brien*, 12-cv-7296 and *Gakuba v. Karner,* 12-cv-50218 (USDC-ND IL) are pending pro se civil suits which hinge on the vacatur of Gakuba's wrongful convictions.

50. It's a 1st Amendment retaliation violation for IL and federal police and court officers to conspire to deny Gakuba his rights under the U.S. Constitution.

51. And the layering of specious conclusions of law and fact—one adjudication on top of another—when Gakuba had presented detailed pleadings with records and offers of proof for support, plainly reveals IL and federal police and court officers insidiously complicit in this legal lynching.

52. No case exists—none—of a pro se criminal defendant being denied his right (to re-invoke no less) pro se status 3-6 "weeks before trial" as a "delay tactic" when no delay was ever sought by Gakuba, but by APD Gustafson on the trial date itself. Heard and denied.

53. But because the preceding presiding judges are abetting a malicious prosecution, Gakuba undoubtedly expects any subsequent federal district or circuit judge to aid in affirming these undisputed wrongful convictions.

54. Rule 60(b)(6) compels adherence to all Gakuba's federal and state constitutional and statutory rights.

55. It was not done here, necessitating Rule 60(b)(6) to correct these flagrant and egregious violations of federal constitution and statutory law.

56. Judicial notice must be made of the detailed prior litigation in the USCA7 and in other federal circuits by pro se Gakuba. All have been dismissed in wholly conclusory, boilerplate one to two sentence orders.

57. Ipse dixit.

58. This Rule 60(b) motion must be granted as a matter of law.

59. See *Spitznas v. Boone*, 464 F.3d 1213, 1215-16 *10th Cir. 2016) (under *Gonzalez v. Crosby,* 545 US 524 (2005) a 60(b) motion is truly such if it "either (1) challenges only a procedural ruling of the habeas court … or (2) challenges a defect in the integrity of the federal habeas proceeding[.]").

60. See also *Arrieta v. Battaglia*, 461 F.3d 861 (7th Cir. 2006) (*Rhines v. Weber* and *Gonzalez v. Crosby*). *Gakuba*, 20-1137 (USCA7) (ECF 9: memorandum of law, *Arrieta* cited).

61. *Arrieta* at 864: Rule 60 is available to reopen previously dismissed habeas petitions per 28 USC §2254 provided relief sought does not attack resolution of claims on the merits. *Gonzalez v. Crosby*, 125 S.Ct. 2641, 2649 (2005) ("Rule 60(b) has an unquestionably valid role to play in habeas cases.").

62. The undisputed facts are that the 6th Amendment pro se re-invocation right by Gakuba 3-6 "weeks before trial" was structural error which the USCA7 granted habeas relief at least four times before denying the identical relief to Gakuba.

63. This was due to their irrational bias and prejudice.

64. Judge Lee's wholly conclusory claim that "mixed" habeas petition due process violations are (impliedly) harmless error if there are no underlying constitutional violations, is contrary to *Sparks* which cites *Rose v. Lundy* for support.

B. Errors of Fact and Law Mandating Reversal

1. N.D. IL Local Rule 40.3(b)(1)(C)-(D) Was Flagrantly and Egregiously Violated by Judge Kapala; Disregarded by Judge Alonso

65. May 27, 2022 Judge Alonso DENIED Gakuba's Rule 60(b)(6) motion in this first habeas petition case. (ECF 133)

66. Notable in this denial was the denial to consolidate this habeas petition with a civil case. See *Gakuba v. Maher*, 22-cv-50092 (USDC-ND IL).

67. Id. at ECF 133 Page ID #10312: With respect to Gakuba's motions to have this case

> and Case No. 22 C 50092 decided by the same judge, **this Court's local rules direct that cases seeking habeas corpus relief should not be assigned to the same judge presiding over a civil rights case filed by the petitioner, and vice-versa.** See N.D. Ill. Local Rule 40.3(b)(1)(C)-(D); *Glaus v. Anderson*, 408 F.3d 382, 386-89 (7th Cir. 2005) (explaining the difference between cases seeking habeas corpus relief and civil rights cases).

68. The problem: *this* habeas petition *was* decided and denied by USDC-ND IL Judge Kapala while he *also* presided over Gakuba's "civil rights case[s]." See *Gakuba v. O'Brien*, 12-cv-7296 and *Gakuba v. Karner*, 13-cv-50337 (USDC-ND IL, W. Div.).

69. Therefore, Gakuba was undisputedly denied his rights under the 5th and 14th Amendments' due process and equal protection clauses.

70. Since 2012, Gakuba has "vociferously" and repeatedly argued that the Rockford state and federal judges were irrationally biased and prejudiced against him.

71. *Gakuba v. O'Brien* was filed in Chicago, IL for that very reason. On appeal from dismissal of that case, the USCA7 seemingly agreed. See *Gakuba v. O'Brien*, 711 F.3d 751, 753 (7th Cir. 2013) (venue is "appropriate" in either Chicago or Rockford).

72. Nonetheless, the case (upon remand) was wrongfully transferred *sua sponte* by USDC-ND IL Judge Castillo when Gakuba filed a substitution of judge motion against Judge Castillo.

73. *Gakuba v. Rains,* 17-cv-6719 (USDC-ND IL) was Gakuba's initial habeas petition.

74. It was filed in Chicago. It contained a "jurisdiction/venue" statement specifically pleading for venue to remain in Chicago due to bias and prejudice Gakuba experienced before the Rockford state and federal judges.

75. Judge Blakey disregarded this undisputed fact and *sua sponte* transferred the case anyway to the W. Division where it was assigned to Judge Kapala—who also presided over Gakuba's pending civil suits.

76. That *sua sponte* transferred habeas petition occurred over Gakuba's "vociferous" objections plainly pleading a "jurisdiction / venue" statement. See *Gakuba*, 17-cv-50337, ECF 1 Page 21 of 92 Page ID #21.. **See Attachment(s) 3!**

77. Id. at Page ID #21:

III. Jurisdiction / Venue

The USDC-ND IL, E. Div. (Chicago)

See *Gakuba v. O'Brien,* 711 F.3d 751, 753 (7th Cir. 2013) ("we note that although the district court could have transferred the case to the western division, see 28 USC §1404(a), venue would be proper in either division, see id §1391(b)(2); *Graham v. UPS,* 519 F.Supp.2d 801, 809 (USDC-ND IL 2007) (Rockford, IL resident's Chicago venue choice was proper).

Note: On remand, and in response to Gakuba's "Motion to Substitute Judge" for cause, that case's presiding Judge Castillo sua sponte ordered that case to be transferred to the W. Division—Rockford citing the mandate of the U.S. Court of Appeals—7th ("USCA7"). Wrong. A vindictive and retaliatory act by a biased and prejudiced federal district judge who denied every single one of Gakuba's motions in that case resulting in appellate review vacating the final judgment.

Rather than ruling on the merits of the substitution of judge motion, Judge Castillo evaded doing so—in violation of the "mandate" rule—by perversely citing the mandate of the USCA7 as its basis. A mandamus writ will be filed in the future to restore justice, law and order.

Worse still, the Rockford, IL federal magistrates and judges had at the inception of this state criminal case rubber-stamped warrants and presided over grand juries (in a concomitant FBI dragnet) that plainly illegally obtained, and, illegally were in receipt of Gakuba's identity evidence. See 18 USC §§2710 (b)(2)(C), (d); *Gakuba v. Karner,* 3:13-cv-50218-FJK (USDC-ND IL, W. Div.); Gakuba's opening brief p.1 n.1.

Gakuba would object vociferously to any jurisdiction/venue change, consequently.

78. Gakuba complained about this per se conflict: Judge Kapala's irrational bias and prejudice in his subsequent pleading before the USCA7: "Petition for Rehearing / Hearing En Banc for Certificate of Appealability." See *Gakuba v. Neese,* 18-3398 (USCA7) (ECF 31-1 Page 37 ((21-24) of 304)). **See Attachment(s) 4.**

79. Id. at 21-24 of 304:

IV. NEW ISSUE: Structural Error—Federal District Judge Kapala's Irrational Bias and Prejudice

A. Background

In 2012 Gakuba sued 39 Illinois state and federal law enforcement agents, officers by bringing suit in Chicago versus Rockford. (The majority of these defendants are Rockford-based.) See *Gakuba v. O'Brien,* 12-cv-7296 (USDC-ND IL); 711 F.3d. 751, 753 (7th Cir. 2013). Then USDC-ND IL Judge Castillo denied every pro se motion by Gakuba then dismissed without prejudice the 42 USC §1983 claims ignoring altogether the 18 USC §2710, §2721 claims. Judge Castillo then responded to Gakuba's pro se motion to substitute judge for cause by sua sponte transferring the case to Rockford citing the USCA7's mandate, and, over Gakuba's ad hoc objections.

In 2017 Gakuba filed his 28 USC §2254 pro se habeas in Chicago. *Gakuba v. Rains,* 17-cv-6719 (USDC-ND IL). The 60-page habeas contained a "jurisdictional statement" that Gakuba would vociferously object to a sua sponte venue change citing to *Gakuba,* 711 F.3d at 753.

Six weeks later, the assigned Chicago judge sua sponte transferred the case to Rockford. Habeas cases being ostensibly time critical, Gakuba forwent an appeal that would have let to delay and may have proven fruitless.

Commendably, Judge Kapala found merit in short order: a couple weeks, November 2017. Briefing concluded in February 2018. *Gakuba v. Brannon,* 17-cv-50337 (USDC-ND IL). Then the wait began for a decision. Every 60-days Gakuba requested a decision, status report per Local Rule 78.5. All were ignored. Yet, in *Gakuba v. O'Brien,* status reports had been required every 90-days.

After six months of waiting yielding nothing, Gakuba's August 2018 "Motion to Lift Stay" in *Gakuba v. O'Brien* was granted. An aggressive litigation schedule was set. In a September 2018 ruling on Gakuba's August 2018 motions, Magistrate Johnston's "Report and Recommendation" ("R&R") denied Gakuba's "Motion for Equitable Relief—TRO, preliminary and permanent injunction, declaratory judgment"—then denied Gakuba's "Motion for Change of Venue from Rockford to Chicago" in the opposite order Gakuba requested in a letter to the court clerk to file first the venue change motion such that Gakuba could immediately appeal the denial. While Gakuba was denied any say in the sua sponte Chicago to Rockford transfers, Judge Kapala sua sponte ordered the defendants to respond to Gakuba's venue transfer motion. Heck was invoked by Magistrate Johnson to deny all equitable relief. Only Rockford federal prosecutors and a Rockford state judge (Schafer) responded. Largely, they parroted the R&R's Heck rubric which IL state defendants invoked in 2015 to get the case dismissed. *O'Brien,* 12-cv-7296 (USDC-ND IL) (ECF #279, ID 1476—"*Heck*" defense dismissal argument).

October 2018 Judge Kapala issued a 16-page habeas ruling that scissor pasted wholesale the state's 16-page habeas answer/response. No independent review of the state appeal's record was made, and it ignored completely Gakuba's 6th Amendment public trial right addressed by the IL App. Court and Gakuba's habeas. *Gakuba-2017* at ¶56. Habeas petition pp. 24-25. This was no mere error but calculated judicial overreach by irrationally biased and prejudiced judges.

B. Discussion

It is well established that *Heck* bars civil suits against government malfeasors and tortfeasors as proof of such in a civil suit necessarily impinges upon the integrity of the criminal conviction which the wrongly convicted challenge. Also, it is well established that magistrates serve as proxies for judges. In Rockford, there is only one magistrate answering to one judge. They do not work independently. Rather, they are interdependent. So much so that Gakuba finds that it rarely happens that magistrate and judge fail to see eye-to-eye on pending cases.

As Gakuba complained in pro se filings in August thru October 201 in *O'Brien,* 12-cv-729 that the magistrate's R&R invoking *Heck* foreshadowed prejudgment in the then ostensibly pending habeas petition, *Brannon,* 17-cv-50337,

those fears and suspicions became reality as the habeas was denied, and, so too a certificate of appealability ("COA").

Simply stated, the totality-of-the-circumstances of both these interrelated cases reveals rank bias and prejudice. By concluding, prejudging Gakuba's guilt in Gakuba's pending civil suit—*O'Brien,* 12-cv-7296—it rendered the habeas denial and denial of a COA a mere formality. And as history played out, indeed it was. Structural error. See accord *Franklin v. McCaughtry,* 398 F.3d 955, 961 (7th Cir. 2005) (habeas grant—judge bias) (at 961: despite using "alleged" exemplifying Franklin's case for recidivism, trial judge "prejudged Franklin's case" and presumed guilt).

Here, the "alleged" is the magistrate's R&R. But because Judge Kapala knew of and approved of its findings by ordering defendants' response, it was merely the fig leaf of cover for the formality of denying habeas/COA and concurrence in all respects with the magistrate's R&R.

Gakuba finds no case law precedence of a federal judge presiding over a civil suit holding liable numerous small town government actors—the judge's hometown which he resides in retirement—then being the same judge over a federal habeas writ, which if granted, would result in substantial monetary damages (already a $52 million default judgment awaits) against many many government agents whom Judge Kapala presumptively regards highly through his working relationships as a former IL App. Court – 2nd District appellate judge (where Gakuba's direct appeal failed); and former Rockford circuit and associate judge, and preceding that, a former Rockford prosecutor. These relationships span a lifetime and were Gakuba's wrongful convictions vacated—as they should by law, 14th Amendment fabrications—then this "not from our community" aggrieved party prevailing in a malicious prosecution puts at risk the jobs and law careers of said Rockford tort- and malfeasors according to the (retired) trial judge—as advocated—when vouching for police and prosecutors. See Issue #6—habeas petition.

THE COURT: "Why is everyone out to get you? **Why you as opposed to me** or anyone else on the face of earth? What's your theory that [] **Ms. Kurtz has targeted you as the one who she is willing to risk her law license and her entire career over?** I just have a hard time wrapping my head around that? And every, **why every police officer would be willing to risk their career to get you[?]**" (emphasis)

July 19, 2013 pretrial hearing, pp. 57-58.[2]

Should the USCA7 deny Gakuba justice by denying a COA then it should transparently do so in a thoughtful, fact-based, well-reasoned ruling, citing every

[2] *Gakuba v. Neese,* 18-3398 (USCA7) (ECF 31-2 Pages: 267 (139 of 304)

case whereby the presiding federal district judge in a habeas writ was one-and-the-same judge presiding over a pending civil suit which wholly depended on that habeas being granted.

Moreover, to remove even the slightest appearances of judge bias and prejudice, remand the case for a thorough and independent review of the state direct appeal's record consistent with *Nasby v. McDaniel,* 853 F.3d 1049, 1052 (9th Cir. 2017) with reassignment to a judge not presiding over the civil case. Circuit Rule 36. Accord *USA v. El-Bey,* 873 F.3d 1015 (7th Cir. 2017) (judge bias is structural error for no matter the degree of guilt, due process dictates fairness).

80. Yet, despite the self-evident per se conflict of interest and violation of local rules barring federal district judges from presiding over Gakuba's pro se civil suits (extant)--all the while determining Gakuba's pro se habeas petition (which those civil suits' standing hinged upon)—none of the preceding federal district nor circuit judges acknowledged it.

81. See *McShane v. Cate,* 636 Fed. Appx. 410, 412 (9th Cir. 2016) ('a state court's fact-finding process is fatally undermined when the court 'has before it, yet apparently ignores, evidence that is highly probative and central to petitioner's claim.' *Milke v. Ryan,* 711 F.3d 998, 1008 (9th Cir. 2013); see *Miller-El v. Cockrell,* 537 US 322, 346 (2003) (noting that the state court 'had before it, and apparently ignored,' testimony relevant to the correct inquiry).

82. Here, Judge Alonso—like all the preceding federal district and circuit judges before him—"has before [him], yet apparently ignores, evidence that is highly probative and central to [Gakuba's] claim." See *Milke,* 711 F.3d at 1008.

83. This deliberate ignorance of the facts has continually led now to an objectively unreasonable application of the law. Once again. 5th and 14th Amendments violations.

84. And, despite citing to the correct and controlling case law authorities, Judge Alonso's denial is wholly conclusory and contrary to those cited laws' mandates.

85. Mandates which were flagrantly and egregiously violated.

86. Violations which were no mere error, but calculated judicial overreach by irrationally biased and prejudiced state and federal trial and appeals court judges. 5th and 14th Amendments violations. Structural error.

87. Consequently, as a matter of law, having malfunctional preceding courts cite the correct laws, misstate the facts—when they're not deliberately ignoring them—to then deny justice in wholly conclusory legal conclusions which are contrary to the controlling laws' mandates', is truly "extraordinary."

2. Structural Error—Irrationally Biased and Prejudiced Federal Judges; Deliberate Ignorance of the Facts—Objectively Unreasonable, Contrary Applications of the Law

88. Were Judge Alonso, or any other federal judge, to continually deny Gakuba justice in objectively unreasonable assessments of facts and applications of laws—or contrarily so—then they should cite to other cases in the USDC-ND IL whereby a federal district judge presiding over extant pro se civil suits by a pro se wrongfully convicted person, had also ruled on that pro se person's habeas petition too? A "mixed" habeas petition at that.

89. Note: subsequent to Judge Alonso's denial, Rockford, IL Judge Kapala's successor (former Magistrate) Judge Johnston and semi-retired Judge Reinhard had both recused themselves from Gakuba's 2022 pro se civil suits and this Rule 60(b) motion when it was transferred from Chicago back to Rockford; hence, how it came before Judge Alonso for disposition.

90. FRE 201: see *Gakuba v. Maher,* 22-cv-50092 (USDC-ND IL) (ECF 22) (Judge Johnston's recusal) **See Attachment(s) 5-1**

91. FRE 201: see *Gakuba v. Neese,* 17-cv-50337 (USDC-ND IL) (ECF 129) (Judge Reinhard's recusal) **See Attachment(s) 5-2**

92. Consequently, Judge Alonso's denial's citation relies on dictum. See ECF 133 Page 2 of 3 Page ID #10311, ¶4.

93. Id. at Page ID #10311, ¶4: "Relief under Rule 60(b)(6) requires a showing of

> 'extraordinary circumstances' justifying the reopening of a final judgment and '[s]uch circumstances will rarely occur in the habeas context.'" *Arrieta v. Battaglia*, 461 F.3d 861, 865 (7th Cir. 2006).

94. It deliberately ignores the cited decisions' *gravitas*.

95. Gravitas cited by Gakuba in his Rule 60(b) motion. See ECF 107 Page 9 of 14 Page ID #3552, ¶¶60-61.

96. Id. at ¶¶60-61:

> ¶60. See also *Arrieta v. Battaglia,* 461 F.3d 861 (7th Cir. 2006) (*Rhines v. Weber* and *Gonzalez v. Crosby*). *Gakuba,* 20-1137 (USCA7) (ECF 9: memorandum of law, *Arrieta* cited).
>
> ¶61. *Arrieta* at 864: **Rule 60 is available to reopen previously dismissed habeas petitions per 28 USC §2254 provided relief sought does not attack resolution of claims on the merits.** *Gonzalez v. Crosby,* 125 S.Ct. 2641, 2649 (2005) ("Rule 60(b) has an unquestionably valid role to play in habeas cases.").

97. And be it Rule 60(b)(6) or, more generally, any of the other subsections of this controlling authority, Gakuba's pro se pleading is to be liberally construed.

98. Gakuba raised his 5th and 14th Amendments violations to be free from an irrationally biased and prejudiced federal district judge repeatedly. Rockford federal district judges.

99. First, in his "jurisdiction/venue" statement of the original petition. See supra ¶12.

100. Then, in his appeal's pleading: "Petition for Rehearing / Hearing En Banc for Certificate of Appealability." See *Gakuba v. Neese,* 18-3398 (USCA7) (ECF 31-1 Page 37 ((21-24) of 304)). See supra ¶13.

101. Now, undisputedly, the Rockford federal district judges implicitly concede their bias and prejudice (at a minimum per se conflict) pursuant to "local rules [which] direct that cases

seeking habeas corpus relief should not be assigned to the same judge presiding over a civil rights case filed by the petitioner, and vice-versa. *See* N.D. Ill. Local Rule 40.3(b)(1)(C)-(D); *Glaus v. Anderson*, 408 F.3d 382, 386-89 (7th Cir. 2005) (explaining the difference between cases seeking habeas corpus relief and civil rights cases)." **See Attachment(s) 5-1, 5-2.**

III. Conclusion

102. In conclusion, all Gakuba's state and federal statutory and constitutional rights were violated throughout this malicious prosecution. Structural, plain, and clear errors. 28 USC §2254(d)(1)-(2).

103. Structural error by USDC-ND IL Judge Kapala when he wrongly and unlawfully decided Gakuba's habeas while he presided over Gakuba's extant pro se civil suits—in violation of local rules.

104. Judge Kapala was undisputedly biased and prejudiced as the plain record reveals he upheld another structural error: Gakuba's 6th Amendment violation to proceed pro se 3-6 "weeks before trial" as a "delay tactic"; a baseless allegation rebutted by the undisputed record that the only "delay" ever sought was the asst. public defender's day-of-trial continuance motion which was heard and denied. Thus, so too would have been pro se Gakuba's.[3]

105. The affirmance of these structural, plain, and clear errors by the USCA7 when, in identical habeas cases, they reversed—is no mere error, but, calculated judicial overreach by an irrationally biased and prejudiced federal circuit court.

[3] Note: Gakuba re-invoked pro se status after seeking the county public defender's office to aid in witness subpoena issuances; which they flatly refused. Worse still, at the 1-day jury trial for witness testimony, they called no defense witnesses of their own. 6th Amendment ineffective assistance of counsel violation.

106. As the 2020 elections in America revealed, false conclusions about election fraud, without any basis in fact, is flatly wrong.

107. See *Trump v. Sec'y Pennsylvania,* No. 20-3371 (3d Cir. Nov. 27, 2020)

108. Id. at *2: Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. **But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.**

109. See AP News, *"In blistering ruling, judge throws out Trump suit in Pa."* (visited 05/28/22 as with all cited sites in this pleading) https://apnews.com/article/judge-throws-out-trump-suit-pennsylvania-87eaf4df86d5f6ccc343c3385c9ba86c

110. This case illustrates when federal judges' rulings are say-so denials without "specific[s]"; and worse, contrary to the overwhelming undisputed facts plainly found in the voluminous records in this case.

111. Judge Alonso's denial fails to specify how Gakuba's flagrant and egregious due process rights' and equal protection rights' by irrationally biased and prejudiced preceding federal district and circuit judges who deliberately ignored the undisputed facts plainly contained in the record, does not constitute the very "extraordinary" circumstance that 5th and 14th Amendments' mandates to fair, impartial judges applying with equal protection the rights of Gakuba under numerous state and federal statutory and constitutional law? Is not "extraordinary"? Given that it is flagrant and egregious structural errors? Gakuba has diligently—and timely—petitioned and argued for 10+ years now?

112. WHEREFORE, Gakuba's right to be free from biased and prejudiced federal district and circuit judges who have recklessly disregarded all his rights—under Rule 60(b) the right to habeas due process on "mixed" habeas petitions by federal district Judge Kapala whose undisputed per se conflict violated local rules—mandates that this original, first-in-time pro se

habeas petition denial be reversed; and the merits decided by an objectively reasonable federal district judge. Thus, far, denied to Gakuba. See accord *USA v. El-Bey,* 873 F.3d 1015 (7th Cir. 2017) (judge's bias is structural error for no matter the degree of guilt, due process dictates fairness).

113. 04/27/2023 Gakuba's parole ends, and with it ends any habeas relief.

I declare under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

Executed on: June 2, 2022

Respectfully Submitted,

Peter Gakuba, Plaintiff - *Pro Se*
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PROOF OF FILING and SERVICE

June 2, 2022 Gakuba certifies having emailed to the Clerk of the Court for the 7th Circuit Court of Appeals at USCA7_Clerk@ca7.uscourts.gov this:

PETITION FOR CERTIFICATE OF APPEALABILITY – FED. R. CIV. P. RULE 60(B)(4), ALTERNATIVELY, FED. R. CIV. P. RULE 60(B)(6)

and the Clerk of the Court using the CM/ECF system will send notification of such filing to those parties whose appearance have been entered in these proceedings.

s/ Peter Gakuba
PETER GAKUBA, *Pro se*

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Peter Gakuba,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No: 17 C 50337
	)	
Christine Brannon,	)	
	)	
Respondent.	)	Judge Frederick J. Kapala

ORDER

Petitioner's motion to proceed in forma pauperis [3] is granted. Grounds five through seven are dismissed without prejudice. Respondent is directed to answer or otherwise respond to the remaining claims within 30 days. Petitioner's reply, if any, to be filed within 30 days of the response.

"Mixed" petition contrary to Sparks v. Dorethy, 2018 US App Lexis 32265 **1-3 (01/09/2018 USCA7) (cites Rose v. Lundy, 455 US 509 (1982); Rhines v. Weber, 544 US 269 (2005))

STATEMENT

Following a jury trial in the Seventeenth Judicial Circuit, Winnebago County, Illinois, petitioner, Peter Gakuba, was convicted of three counts of aggravated criminal sexual abuse and was sentenced to four years' imprisonment on each count with the sentences to run consecutively. On direct appeal, the Illinois Appellate Court, Second District, rejected the following seven arguments and affirmed petitioner's conviction and sentence: (1) the trial court erred in allowing Sergeant O'Brien to testify regarding petitioner's name and birth date; (2) the trial court erred in granting the State's motion to take a buccal sample of petitioner; (3) the evidence was insufficient to sustain his convictions; (4) that his Sixth Amendment right to self-representation was violated when his request to proceed to trial pro se was denied; (5) the trial court erred in denying his motions to disqualify the assistant state's attorney; (6) the trial court erred in denying his motions to disqualify two judges; and (7) the trial court erred in sentencing him to a term of imprisonment rather than probation and in imposing consecutive sentences. People v. Gakuba, 2017 IL App (2d) 150744-U, ¶ 47. Petitioner's petition for leave to appeal was denied. People v. Gakuba, No. 122289, 2017 WL 4386407 (Ill. Sept. 27, 2017).

Petitioner presents the same seven contentions as his grounds for relief under § 2254. Petitioner also states in his petition that he has pending before the Illinois Appellate Court an appeal of the trial court's dismissal of his post-conviction petition in which he has raised the ineffective assistance of trial counsel. See People v. Gakuba, No. 2-17–0744.

Rule 4 of the Rules Governing § 2254 Cases requires prompt examination by the court and provides, "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify

the petitioner." A claim must be presented as a federal constitutional claim in the state court proceedings in order to be exhausted. See Duncan v. Henry, 513 U.S. 364, 365-66 (1995). It is clear from the record that petitioner's § 2254 grounds five through seven were not presented to the Illinois courts as federal constitutional claims and, therefore, are not exhausted. See People v. Gakuba, 2017 IL App (2d) 150744-U.

In particular, with regard to ground five, the Illinois Appellate Court rejected petitioner's contention that the trial court erred in denying his motions to disqualify the assistant state's attorney because it abused its discretion under the standard delineated in Marshall v. County of Cook, 2016 IL App (1st) 142864, ¶ 22, and violated the Illinois Counties Code, 55 ILCS 5/4-2003. Gakuba, 2017 IL App (2d) 150744-U, ¶¶ 91-99. As for ground six, the Illinois Appellate Court rejected petitioner's contention that the trial court erred in denying his motions to substitute two judges pursuant to 725 ILCS 5/114-5. The Court held that the trial court's finding that there was no indicia of judicial prejudice against petitioner was not against the manifest weight of the evidence as that standard has been articulated by the Illinois Supreme Court in People ex rel. Baricevic v. Wharton, 136 Ill. 2d 423, 439 (1990), and People v. Patterson, 192 Ill. 2d 93, 131 (2000). Id. ¶ 102. With respect to ground seven, in rejecting petitioner's sentencing arguments, the Illinois Appellate Court held that the trial court did not abuse its discretion under Illinois law in choosing incarceration over probation, id. ¶ 115, or in imposing consecutive sentences under 730 ILCS 5/5-8-4(b), id. ¶ 117.

Thus, the record is clear that grounds five through seven were not presented as federal constitutional claims nor decided as such. Those grounds are dismissed without prejudice for failure to exhaust. Consequently, petitioner will be permitted to proceed on only grounds one through four.

Date: 11/20/2017

ENTER:

FREDERICK J. KAPALA
District Judge

"Mixed" petition contrary to Sparks v. Dorethy, 2018 US App Lexis 32265 **1-3 (01/09/2018 USCA7) (cites Rose v. Lundy, 455 US 509 (1982); Rhines v. Weber, 544 US 269 (2005))

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 9, 2018

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

No. 17-2135

MICHAEL L. SPARKS,
Petitioner-Appellant,

v.

STEPHANIE DORETHY,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Illinois.

No. 14-cv-1044-MJR-CJP
Michael J. Reagan,
Chief Judge.

Order

The district court's opinion in this collateral attack under 28 U.S.C. §2254 states that petitioner Michael Sparks presented twelve claims, five of which are exhausted and seven not. The judge resolved the exhausted claims and entered judgment against Sparks, who has appealed.

The district court's procedure is not compatible with *Rose v. Lundy*, 455 U.S. 509 (1982), which requires mixed petitions to be dismissed. The Supreme Court added in *Rhines v. Weber*, 544 U.S. 269 (2005), that a district judge may allow the petitioner to dismiss the unexhausted claims, and the warden contends that the judge followed that procedure, but this is not what occurred. Instead the judge

dismissed the unexhausted claims and proceeded to decide the rest. The judge did not wait for Sparks to decide whether to amend the petition so that it contained only exhausted claims. Instead the court treated the opportunity extended by *Rhines* as one that could be accepted by the judge. Yet the choice belongs to the petitioner, and failing to protest the judge's decision to proceed is not an effective choice to dismiss the unexhausted claims. Giving the choice about dismissing the unexhausted claims to the judge rather than the litigant would amount to overruling *Lundy*, which *Rhines* did not do. Once dismissed, claims cannot be reasserted in a later collateral attack without appellate approval for a second or successive petition. Sparks has never manifested his consent to having the unexhausted claims treated that way.

Rhines gives a district judge two options that can be exercised without the petitioner's affirmative consent. First, the judge can dismiss the whole petition under *Lundy* and leave it up to the petitioner whether to delete the unexhausted claims and refile. Second, the judge can stay the proceeding while the petitioner exhausts his remaining state remedies. *Rhines* adds that the district judge should use the second option "if the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics." 544 U.S. at 278.

We issue a certificate of appealability, vacate the district court's decision, and remand so that the judge may dismiss the mixed petition, allow Sparks to decide whether to dismiss the unexhausted claims, or stay proceedings if *Rhines*'s criteria are met.

MALICIOUS PROSECUTION AMTO A NOW 12 YEAR FALSE IMPRISONMENT OF "DISCRETIONARY" CONSECUTIVE SENTENCES (730 ILCS §5-8-4(b)(WESTLAW 2006)) WHEN PROBATION WAS THE GUIDELINE SENTENCE PER THE "PRESENTENCE REPORT" FOR FIRST (1ST) OFFENDERS WITH NO CRIMINAL HISTORY AND WHO WAS FUNCTIONALLY COMPLIANT WITH ALL PRETRIAL BAIL CONDITIONS TANTAMOUNT TO HOUSE ARREST FOR THOSE NEAR NINE (9) YEARS.

JURISDICTION/VENUE: THE N.D. ILL., E. DIV. SEE GAKUBA v. O'BRIEN 711 F.3d 751, 753 (7TH CIR. 2013) ("WE NOTE THAT ALTHOUGH THE D.CT. COULD HAVE TRANSFERRED THE CASE TO THE W. DIV. SEE 28 USC § 1404(a) VENUE WOULD BE PROPER IN EITHER DIVISION, SEE ID § 1391(b)(2); GRAHAM v. UPS 519 F.SUPP.2d 801, 809 (N.D. ILL. 2007)[1] (ROCKFORD RESIDENT'S CHICAGO VENUE CHOICE WAS PROPER))

(NOTE: ON REMAND, AND IN RESPONSE TO GAKUBA'S MOT. TO SUB. JUDGE FOR CAUSE, JUDGE CASTILLO 'SUA SPONTE' ORDERED THE CASE BE TRANSFERRED TO THE W. DIV. CITING THE MANDATE OF THE 7TH CIRCUIT. WRONG -- A VINDICTIVE AND RETALIATORY ACT BY A BIASED AND PREJUDICED DISTRICT JUDGE WHO DENIED EVERY SINGLE ONE OF GAKUBA'S MOTIONS IN THAT CASE RESULTING IN APPELLATE REVIEW VACATING THE FINAL JUDGMENT. RATHER THAN RULING ON THE MERITS OF THE SUB. OF JUDGE MOTION, JUDGE CASTILLO EVADED DOING SO -- IN VIOLATION OF THE "MANDATE" RULE -- BY PERVERSELY CITING THE MANDATE OF THE 7TH CIRCUIT AS ITS BASIS. A MANDAMUS WRIT WILL BE FILED IN THE FUTURE TO RESTORE JUSTICE, LAW, AND ORDER. WORSE STILL, THE ROCKFORD FEDERAL MAGISTRATES AND JUDGES HAD AT THE INCEPTION OF THIS STATE CRIMINAL CASE RUBBER-STAMPED WARRANTS AND PRESIDED OVER GRAND JURIES (IN A CONCOMITANT FBI DRAGNET) THAT PLAINLY, ILLEGALLY OBTAINED, AND, ILLEGALLY WERE IN RECEIPT OF GAKUBA'S IDENTITY EVIDENCE. SEE 18 USC § 2710(b)(2)(F), 3(d) GAKUBA v. KARNER ET AL 13CV5248 (N.D. ILL., W. DIV.); GAKUBA'S OPENING BR. p. 1 FN#1.)

GAKUBA WOULD OBJECT VOCIFEROUSLY TO ANY JURISDICTION/VENUE CHANGE, CONSEQUENTLY.

PROCEDURAL HISTORY: PETER GAKUBA ("GAKUBA") WAS CHARGED BY CRIMINAL COMPLAINT/INFORMATION WITH TWO (2) COUNTS OF AGGRAVATED CRIMINAL SEXUAL ABUSE ON SATURDAY, NOV. 4, 2006, FILED MONDAY, NOV. 6, 2006. (720 ILCS 5/12-16(d))(C3-5). GAKUBA WAS ISSUED BAIL ON NOV. 4, 2006, FILED NOV. 6, 2006. (C 6-7) A SUPERSEDING INDICTMENT WAS FILED DEC. 20, 2006 CHARGING GAKUBA WITH THREE (3) COUNTS, 720 ILCS 5/12-16(d) (C48-49)[1]

GAKUBA WAS CONVICTED ON APRIL 29, 2015 BY JURY OF THREE (3) COUNTS OF AGG. CRIM. SEX. ABUSE,

CONCERNS ABOUT THE REPRESENTATION OF THE 4 ATTORNEYS PROVIDED.")

(AT 792: "THE NECESSARY CONSEQUENCE OF A DISTRICT COURT'S DENIAL OF A REQUEST TO SUBSTITUTE COUNSEL IS THAT THE DEFT. MUST CHOOSE WHETHER TO (1) CONTINUE W/ APPT'D COUNSEL, (2) RETAIN COUNSEL, OR (3) PROCEED 'PRO SE'.")

LIKE THOMAS, HERE, THE UNDISPUTED PLAIN RECORD SHOWS THE TRIAL JUDGE "SAW THIS MOTION COMING. IN FACT [I] EVEN MADE A RECORD ON DECEMBER 9, [2014]." (R1705-1707) (ATTACH. #7 A181-183). HOWEVER, UNLIKE THOMAS, HERE, THE TRIAL JUDGE PERPETRATED FRAUD UPON GAKUBA BY RENEGING ON THAT "RECORD" THAT GAKUBA WOULD HAVE "THE OPTION" TO GO 'PRO SE' "IF THE PUBLIC DEFENDER WERE REMOVED AT YOUR REQUEST CLOSE TO THE TRIAL DATE [BECAUSE THE COURT WOULD FIND IT A] TRIAL DELAY TECHNIQUE." (R1633) (ATTACH. #7 A167)

* * * *

**** NEW ISSUE: STRUCTURAL ERROR -- JUDGE KAPALA'S IRRATIONAL BIAS & PREJUDICE

(A) BACKGROUND: IN 2012 GAKUBA SUED SOME +30 ROCKFORD-BASED ILLINOIS STATE AND FEDERAL LAW ENFORCEMENT AGENTS, OFFICERS BY BRINGING SUIT IN CHICAGO VERSUS ROCKFORD. SEE GAKUBA v. O'BRIEN 12CV7296 (N.D.IL.); 711 F.3d 751 (7th 2013). JUDGE CASTILLO DENIED EVERY 'PRO SE' MOTION BY GAKUBA THEN DISMISSED W/O PREJUDICE THE 42 USC §1983 CLAIMS LEAVING ALTOGETHER THE 18 USC §§2710, 2721 CLAIMS. JUDGE CASTILLO THEN RESPONDED TO GAKUBA'S 'PRO SE' MOTION TO SUBSTITUTE JUDGE FOR CAUSE BY 'SUA SPONTE' TRANSFERRING THE CASE TO ROCKFORD CITING THE 7th CIRCUIT'S MANDATE, AND, OVER GAKUBA'S AD HOC OBJECTIONS.

IN 2017 GAKUBA FILED HIS 28 USC §2254 'PRO SE' HABEAS IN CHICAGO. GAKUBA v. RAINS 17CV 6719 (N.D.IL.). THE 60-PAGE HABEAS CONTAINED A "JURISDICTIONAL STATEMENT" THAT GAKUBA WOULD VOCIFEROUSLY OBJECT TO A 'SUA SPONTE' VENUE CHANGE CITING TO GAKUBA 711 F.3d AT 753.

SIX WEEKS LATER, THE ASSIGNED CHICAGO JUDGE 'SUA SPONTE' TRANSFERRED THE CASE TO ROCKFORD. HABEAS CASES BEING OSTENSIBLY TIME CRITICAL, GAKUBA FORGOED AN APPEAL THAT WOULD HAVE LED TO DELAY AND MAY HAVE PROVEN FRUITLESS.

COMMENDABLY, JUDGE KAPALA FOUND MERIT IN SHORT ORDER: A COUPLE WEEKS, NOV. 2017. BRIEFING CONCLUDED FEB. 2018. GAKUBA v. BRANNON 17CV50337 (N.D.IL.). THEN THE WAIT

BEGAN FOR A DECISION. EVERY 60 DAYS GAKUBA REQUESTED A DECISION, STATUS REPORT PER LOCAL RULE 78.5. ALL WERE IGNORED. YET, IN GAKUBA v. O'BRIEN STATUS REPORTS HAD BEEN REQUIRED EVERY 90 DAYS.

AFTER 6 MONTHS OF WAITING YIELDING NOTHING, GAKUBA'S AUGUST 2018 MOTION TO LIFT STAY IN GAKUBA v. O'BRIEN WAS GRANTED. AN AGGRESSIVE LITIGATION SCHEDULE WAS SET. IN A SEPTEMBER 2018 RULING ON GAKUBA'S AUGUST 2018 MOTIONS, MAGISTRATE JOHNSTON'S "REPORT & RECOMMENDATION" (R+R) DENIED GAKUBA'S MOTION FOR EQUITABLE RELIEF — TRO, PRELIM. & PERM. INJUNCTION, DECLARATORY JUDGMENT — THEN DENIED GAKUBA'S MOTION FOR CHANGE OF VENUE FROM ROCKFORD → CHICAGO IN THE OPPOSITE ORDER GAKUBA REQUESTED IN A LETTER TO THE COURT CLERK TO FILE FIRST THE VENUE CHANGE MOTION, SUCH THAT GAKUBA COULD IMMEDIATELY APPEAL THE DENIAL. WHILE GAKUBA WAS DENIED ANY SAY IN THE SUA SPONTE CHICAGO → ROCKFORD TRANSFERS, JUDGE KAPALA ORDERED THE DEFTS. TO RESPOND TO GAKUBA MOTION. HECK WAS INVOKED BY MAGISTRATE JOHNSTON TO DENY ALL EQUITABLE RELIEF. ONLY ROCKFORD FED'L PROSECUTORS AND A ROCKFORD STATE JUDGE SCHAFER RESPONDED. LARGELY, THEY PARROTED THE R+R'S HECK RUBRIC WHICH IL STATE DEFTS. INVOKED IN 2015 TO GET THE CASE DISMISSED. O'BRIEN 12CV7296 (N.D.IL.) (ECF #239, ID 1476 - "HECK")

OCTOBER 2018 JUDGE KAPALA ISSUED A 16-PAGE HABEAS RULING THAT SCISSOR-PASTED WHOLESALE THE STATE'S 16 PAGE HABEAS ANSWER. NO INDEPENDENT REVIEW OF THE STATE APPEAL'S RECORD WAS MADE, AND IT IGNORED COMPLETELY GAKUBA'S 6TH AMEND. PUBLIC TRIAL RIGHT ADDRESSED BY THE IL. APP. CT. AND GAKUBA'S HABEAS. GAKUBA 2017 AT R56. HABEAS PP. 24-25. THIS WAS NO MERE ERROR BUT CALCULATED JUDICIAL OVERREACH BY IRRATIONALLY BIASED AND PREJUDICED JUDGES.

(8) DISCUSSION: IT IS WELL ESTABLISHED THAT HECK BARS CIVIL SUITS AGAINST GOVERNMENT MALFEASORS AND TORT FEASORS AS PROOF OF SUCH IN A CIVIL SUIT NECESSARILY IMPINGES UPON THE INTEGRITY OF THE CRIMINAL CONVICTION WHICH THE WRONGFULLY CONVICTED CHALLENGE. ALSO, IT IS WELL ESTABLISHED THAT MAGISTRATES SERVE AS PROXIES FOR JUDGES. IN ROCKFORD, THERE IS ONLY 1 MAGISTRATE ANSWERING TO 1 JUDGE. THEY DO NOT WORK INDEPENDENTLY,

RATHER THEY ARE INTER-DEPENDENT. SO MUCH SO THAT GAMUBA FINDS THAT IT RARELY HAPPENS THAT MAGISTRATE AND JUDGE FAIL TO SEE EYE-TO-EYE ON PENDING CASES.

AS GAMUBA COMPLAINED IN' PROSE' FILINGS IN AUG.- OCT. 2018 -- O'BRIEN 17CV7296 -- THE MAGISTRATE'S R+R INVOKING HECK FORESHADOWED PREJUDGMENT IN THE THEN OSTENSIBLY PENDING HABEAS WRIT. BRANNON 17CV50339 (N.D.IL.). THESE FEARS AND SUSPICIONS BECAME REAL AS THE HABEAS WAS DENIED, AND, SO TOO A CERT. OF APPEAL.

SIMPLY STATED, THE TOTALITY-OF-THE-CIRCUMSTANCES OF BOTH THESE INTER-RELATED CASES REVEALS RANK BIAS AND PREJUDICE. BY CONCLUDING, PRE-JUDGING GAMUBA'S GUILT IN GAMUBA'S PENDING CIVIL SUIT -- O'BRIEN 17CV7296 (N.D.IL.) -- IT RENDERED THE HABEAS DENIAL/ DENIAL OF C.O.A. A MERE FORMALITY. AND AS HISTORY PLAYED OUT, INDEED IT WAS. STRUCTURAL ERROR. SEE ACCORD FRANKLIN v. McLAUGHTRY 398 F.3d 955, 961 (7TH 2005) (HABEAS GRANT- JUDGE BIAS) (DESPITE USING "ALLEGED" EXEMPLIFYING FRANKLIN'S CASE FOR RECIDIVISM, TRIAL JUDGE "PRE-JUDGED FRANKLIN'S CASE" AND PRESUMED GUILT.)

HERE, THE "ALLEGED" IS MAGISTRATE'S R+R, BUT BECAUSE JUDGE KAPALA KNEW OF AND APPROVED OF ITS FINDINGS BY ORDERING DEFTS.' RESPONSE, IT WAS MERELY THE FIG LEAF OF COVER FOR THE FORMALITY OF DENYING HABEAS/C.O.A. AND CONCURRENCE IN ALL RESPECTS W/ THE MAGISTRATE'S R+R.

GAMUBA FINDS NO CASE LAW PRECEDENCE OF A U.S. DISTRICT JUDGE PRESIDING OVER A CIVIL SUIT HOLDING LIABLE NUMEROUS SMALL TOWN GOV'T ACTORS -- THE JUDGE'S HOMETOWN WHICH HE RESIDES IN RETIREMENT -- THEN BEING THE SAME JUDGE OVER A FED'L HABEAS WRIT, WHICH IF GRANTED, WOULD RESULT IN SUBSTANTIAL MONETARY DAMAGES (ALREADY A $52 MILLION DEFAULT JUDGMENT AWARDS) AGAINST MANY MANY GOV'T AGENTS WHOM JUDGE KAPALA PRESUMPTUOUSLY REGARDS HIGHLY THROUGH HIS WORKING RELATIONSHIPS AS A FORMER 2ND DISTRICT IL. APPELLATE JUDGE (WHERE GAMUBA'S DIRECT APPEAL FAILED); AND FORMER ROCKFORD CIRCUIT AND ASSOC. JUDGE AND PRECEDING ROCKFORD PROSECUTOR. THESE RELATIONSHIPS SPAN A LIFETIME AND WERE GAMUBA'S WRONGFUL CONVICTIONS VACATED -- AS THEY SHOULD BY LAW, 14TH AMEND. FABRICATIONS -- THEN THIS "NOT FROM OUR COMMUNITY" AGGRIEVED PARTY PREVAILING IN A MALICIOUS PROSECUTION

PUTS AT RISK THE JOBS AND LAW CAREERS OF SAID ROCKFORD TORT- & MALFEASORS ACCORDING TO THE NOW-RETIRED TRIAL JUDGE (AS ADVOCATED) WHEN VOUCHING FOR POLICE AND PROSECUTORS. SEE ISSUE (C) HABEAS.

SHOULD THE 7TH CIRCUIT DENY GAKUBA JUSTICE BY DENYING A C.O.A. THEN IT SHOULD TRANSPARENTLY DO SO IN A THOUGHTFUL, FACT-BASED, WELL REASONED RULING, CITING EVERY CASE WHEREBY THE PRESIDING DISTRICT JUDGE IN A HABEAS WRIT WAS ONE-AND-THE-SAME JUDGE PRESIDING OVER A PENDING CIVIL SUIT WHICH WHOLLY DEPENDED ON THAT HABEAS BEING GRANTED.

MOREOVER, TO REMOVE EVEN THE SLIGHTEST APPEARANCES OF JUDGE BIAS AND PREJUDICE, REMAND THE CASE FOR A THOROUGH AND INDEPENDENT REVIEW OF THE APPEAL'S RECORD CONSISTENT W/ NASBY v. MCDANIEL 853 F.3d 1049, 1052 (9TH 2017) WITH RE-ASSIGNMENT TO A JUDGE NOT PRESIDING OVER THE CIVIL CASE. CIRCUIT RULE 36. ACCORD US v. EL-BEY 873 F.3d 1015 (7TH 2017) (JUDGE BIAS = STRUCTURAL ERROR FOR NO MATTER THE DEGREE OF GUILT, DUE PROCESS DICTATES FAIRNESS).

(IV) CONCLUSION -

PRE-CRIMINAL DIRECT APPEAL, THE 2ND DISTRICT IL APPELLATE COURT ADMONISHED GAKUBA NOT TO FILE ANY MORE APPEALS THEN PROCEEDED TO SANCTION GAKUBA PER A PAST APPEAL. GAKUBA v. KURTZ 2015 IL APP(2d) 140252. ITS SUBSEQUENT REJECTION OF NUMEROUS PLAIN AND STRUCTURAL ERRORS -- INCL. 6TH AMEND. "PRO SE" RIGHT DENIAL "WEEKS" BEFORE TRIAL THAT IT REVERSED IN EVERY SINGLE CASE BUT THIS ONE IS EGREGIOUS VINDICTIVENESS. RANK BIAS AND PREJUDICE.

HERE TOO THE 7TH CIRCUIT THREATENED SANCTIONS AGAINST GAKUBA AS HE VAINLY SOUGHT A LEGAL MECHANISM THAT WOULD SPARE HIM A MALICIOUS PROSECUTION, AND, HOW, FALSE IMPRISONMENT OF 12 YEARS WHEN THE PSIR AND PLEA DEFER WERE "PROBATION". ALL TO OBSTRUCT GAKUBA v. O'BRIEN 12CV7296 (N.D.IL.) WHICH IS IMPOSSIBLE TO LITIGATE IN PRISON.

AS STATED IN THE "LEGAL STANDARDS", SINCE 2015 THE 7TH CIRCUIT HAS GRANTED A C.O.A F/OR

United States District Court
Northern District of Illinois

In the matter of

Peter Gakuba

Case No. 22-CV-50092

v.

District Judge Iain D. Johnston

Maher et al

TRANSFER OF A CASE TO THE EXECUTIVE COMMITTEE FOR A REASSIGNMENT

I recommend to the Executive Committee that the reference above captioned case be reassigned to another district judge by lot in the Eastern Division. The reason for my recommendation is indicated below.

Date: April 4, 2022

By: _____
Iain D. Johnston
United States District Judge

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned by lot to the calendar of an individual judge in the Eastern Division.

ENTER

FOR THE EXECUTIVE COMMITTEE

_____
Chief Judge Rebecca R. Pallmeyer

Date: April 5, 2022

Reason(s) For Recommendation:

- In accordance with 28 U.S.C. § 455(a) I recuse myself from this case assigned to my calendar for the reasons specifically set forth below: recusal is warranted pursuant to 28 U.S.C. § 455(a). Judge Reinhard is assigned to the habeas corpus case 3:21-cv-50383, pursuant to Local Rule 40.3(1)(c) this case should be assigned by lot to the next available judge in the Eastern Division.

United States District Court
Northern District of Illinois

In the matter of

Peter Gakuba

v.

Michelle Neese

Case No. 17-CV-50337

Designated Magistrate Judge: Lisa A. Jensen

TRANSFER OF A CASE TO THE EXECUTIVE COMMITTEE FOR A REASSIGNMENT

I recommend to the Executive Committee that the above captioned case be reassigned to another district judge by lot in the Eastern Division. The reason for my recommendation is indicated below.

Date: May 11, 2022

By: Philip G. Reinhard
Philip G. Reinhard
United States District Judge

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned by lot to the calendar of an individual judge in the Eastern Division.

ENTER

FOR THE EXECUTIVE COMMITTEE

Rebecca R. Pallmeyer
Chief Judge Rebecca R. Pallmeyer

Date: May 12, 2022

Reason(s) For Recommendation:

Judge Reinhard exercises his authority not to take this case pursuant to 28 U.S.C. 294(b). Judge Johnston is currently assigned to 3:13-cv-50218 and pursuant to Local Rule 40.3(1)(c) this case must be assigned by lot to the next available District Judge in the Eastern Division.