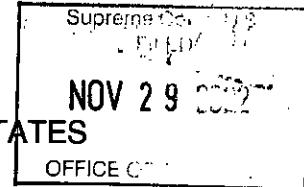


No. 22-6254

IN THE
SUPREME COURT OF THE UNITED STATES



AARON MURRAY — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

AARON MURRAY

(Your Name)

Reg. # 58878-018, Unit B-4
Federal Correction Complex - Coleman Low

(Address)

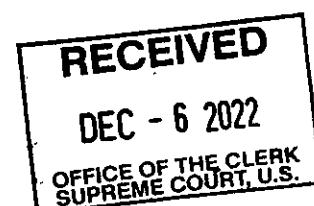
P.O. Box 1031
Coleman, FL 33521-1031

(City, State, Zip Code)

Pro Se Petitioner

(Phone Number)

November 30th, 2022



QUESTION(S) PRESENTED

Section §455 of Title 28 U.S.C. is one of two statutory sections that govern the recusal of federal district judges. While §455(b) enumerates specific circumstances that would require a judge's recusal, §455(a) requires a judge to recuse him/herself in "any proceeding in which [his/her] impartiality might reasonably be questioned."

In Liteky v. United States, this Court discussed the proper interpretation, application, and exceptions to the recusal statutes. 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed 474 (1994); Lilieberg v. Health Svcs. Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988). When determining whether a court should recuse itself in a given matter, this Court explained that the §455(a) standard was an objective one, thus requiring recusal whenever "impartiality might reasonably be questioned."

The question presented is:

Whether numerous local and national media reports, which brought facts to light that have caused the public to question the district court's impartiality in favor of the government, would objectively cause a criminal defendant to have a well-founded fear that he will not receive fair adjudication of his case at the hands of that judge in the future?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v. Aaron Murray, 22-10465
(11th Cir. September 8, 2022)(reconsideration denial)

United States v. Aaron Murray, 22-10465
(11th Cir. June 28, 2022)(in forma pauperis denial)

United States v. Aaron Murray, No. 5:13-cr-49-ACC-PRL
(M.D. Fla. Jan. 28, 2022)(denying reconsideration)
(M.D. Fla. Nov. 29, 2021)(denying Motion for Recusal)
(M.D. Fla. June 2, 2015)(sentencing)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A&B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix C&E to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 28, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 8, 2022, and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 U.S.C. § 455(a)

Under 28 U.S.C. § 455(a), "[a]ny justice, judge, or magistrate judge of the United States shall disqualify [herself] in any proceeding in which [her] impartiality might reasonably be questioned." Id.

INTRODUCTION

Enacted with bipartisan support, Title 28 U.S.C. §455 sought to make the federal criminal justice system a bit more just. Congress designated subsection (a) of §455 as a "general or catch-all provision" designed to enhance public confidence in the impartiality of the judicial system by requiring a federal judge to disqualify him/herself in any proceeding when "[his/her] impartiality might reasonably be questioned." House Report, 1974 USCCAN at 6355.

Most circuits have interpreted subsection (a) to mean that a judge should recuse him/herself where a reasonable person knowing all the circumstances would harbor doubts concerning the judge's impartiality. This general Standard is designed to promote public confidence in the impartiality of the judicial process by saying, in effect, if there is a reasonable factual basis for doubting the judge's impartiality, he/she should disqualify him/herself and let another judge preside over the case.

In Liteky v. United States, this Court determined that recusal of a district judge is required whenever "impartiality might reasonably be questioned". This Court went on to explain, however, that section §455(a) is a "high threshold" and that "a judge should be disqualified only if it appears that he or she harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute". Id. at 558. While the recusal statute itself does not address potential disqualifying sources, this Court provided clarification, stating that the only common basis for "bias or prejudice recusal" would most naturally stem from an "extrajudicial source rather than the district court's own judicial proceedings". Thus, bias alone, whether it emanates from an extrajudicial

source or from the district court's proceedings, is only improper when it is "wrongful or inappropriate". Id.

However, in view of the powerful and independent interest in fair adjudicative procedure embodied in the Due Process Clause of the Federal Constitution's Fifth Amendment, justice is required to satisfy the appearance of justice. This Court has held that judges who have no actual bias and who have done their very best to weigh the scales of justice equally between contending parties must recuse themselves to satisfy the appearance of justice. See Marshall v. Jerrico, Inc., 446 U.S. 238, 64 L.Ed.2d 182, 100 S.Ct. 1610 (1980).

A motion for judicial disqualification or recusal is legally sufficient if "the facts alleged, which must be assumed to be true, would cause the movant to have a well-founded fear that he...will not receive a fair trial at the hands of that judge". Hippen v. Sec'y, Fla. Dept. of Corrections, 2018 U.S. Dist. LEXIS 85238 (11th Cir. 2018) (quoting Parker v. State, 3 So. 3d 924, 928 (Fla. 2009)). In addition, actual prejudice need not be shown, as §455 was intended to "promote public confidence in the impartiality of the courts by eliminating even the appearance of impropriety". United States v. Alabama, 828 F.2d 1532, 1541 (11th Cir. 1987).

This is an ideal vehicle to intervene. Petitioner fully preserved his "well-founded fear" arguments in the district court and on appeal. Both the district court and the Eleventh Circuit refused to follow §455(a)'s objective standard and denied relief on sole ground that Petitioner's arguments are "frivolous". This Petition for Writ of Certiorari should be granted for several compelling reasons. The district court and the Court of Appeals for the Eleventh Circuit have so far departed from the accepted and usual course of judicial proceedings and have decided an important federal question in a

way that conflicts with relevant decisions of this Court. This Court should grant review, correct the district court and the Eleventh Circuit, and hold that a party that has an objective and fact based "well-founded fear" that he will not receive fair adjudication of his case at the hands of that judge in the future is entitled to recusal under §455(a).

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

1. In 2015, despite the fact that he lacked a criminal history and committed a non-violent offense while he was 17 and 18 years of age, Petitioner was sentenced by Judge Anne C. Conway in the Middle District of Florida to a 200 month sentence in prison and to 20 years of supervised release. Dist. Ct. Dkt. Entry 87, 141.

2. In 2018, Judge Conway denied Petitioner's Title 28 U.S.C. §2255 Motion, which alleged ineffective assistance of counsel. Dist. Ct. Dkt. Entry 155. Specifically, Judge Conway disregarded inconvenient facts and stated that she "gives no evidentiary weight or value to either of [Petitioner's] affidavits, or his verified motion..." Id. Instead of investigating the truthfulness of Petitioner's ineffective assistance claims, Judge Conway dismissed his §2255 motion by assuming that he was lying.

3. On August 24, 2018, the United States Court of Appeals for the Eleventh Circuit denied Petitioner a Certificate of Appealability, stating that his appeal was "frivolous". Aaron Murray v. United States, 2018 U.S. Dist. LEXIS 234009 (11th Cir. Fla., Aug. 24, 2018).

4. In 2020, after serving over 55% of his prison sentence, Petitioner filed a Motion for Compassionate Release under Title 18 U.S.C. §3582(c)(1)(A), citing the COVID-19 pandemic and his medical needs that were confirmed to increase his risk of serious illness and/or death. Dist. Ct. Dkt. Entry 157. On January 22, 2021, Judge Conway denied his §3582 motion stating, "Given [Petitioner's] history of using lies and subterfuge...and his clear disregard for the truth during his legal proceedings, this Court is not convinced that he would no longer be a threat to others if released". Dist. Ct. Dkt. Entry

162. Most notably, however, is the fact that Judge Conway did not point out a single instance where Petitioner presented false information to the Court.

5. On August 12, 2021, Petitioner's appeal on whether Judge Conway abused her discretion by denying him compassionate release despite establishing "extraordinary and compelling" was denied by the Court of Appeals for the Eleventh Circuit, as there were "no nonfrivolous issues on appeal". United States v. Aaron Murray, 2021 U.S. App. LEXIS 24107 (11th Cir. Aug, 12, 2021).

6. On September 30, 2021, the Department of Justice Office of the Inspector General issued a final report about the United States' factual accuracy review procedures for Foreign Intelligence Surveillance Act applications to the Foreign Intelligence Surveillance Court. Petitioner was immediately informed by concerned members of the public that numerous local and national media reports began to question Judge Conway's impartiality in favor of the government, as she has remained silent on the government's misconduct and has failed to enforce the rules of the Court while she was sitting on the Foreign Intelligence Surveillance Court. This left Petitioner with an objective and well-founded fear that he will not receive fair adjudication of his case at the hands of Judge Conway in the future.

7. On November 15, 2021, Petitioner filed a Motion for Recusal of Judge Conway. Dist. Ct. Dkt. Entry 172, Appendix "F". Petitioner specifically stated that the relevant issue was that Judge Conway's extrajudicial actions have created an appearance of impropriety or bias by giving her a motive to favor the interests of the government. On November 29, 2021, Judge Conway denied Petitioner's motion to recuse, stating that her "service on the Foreign Intelligence Surveillance Court...[did not] support[] recusal in [Petitioner's]...case". Dist. Ct. Dkt. Entry 173, Appendix "E". Petitioner

filed for reconsideration, which was also denied. Dist. Ct. Dkt. Entry 174 and 176, Appendix "D" and "C".

8. On June 28, 2022, the Court of Appeals for the Eleventh Circuit denied Petitioner's motion for leave to proceed in forma pauperis on his appeal challenging Judge Conway's recusal refusal because his "appeal [was] frivolous". United States v. Aaron Murray, 22-10465 (11th Cir. June 28, 2022), Appendix "B". On September 8, 2022, the Eleventh Circuit denied Petitioner's motion for reconsideration. Id. (11th Cir. September 8, 2022), Appendix "A".

REASONS FOR GRANTING THE PETITION

The district court and the Eleventh Circuit have so far departed from the accepted and usual course of judicial proceedings and have decided an important question in a way that conflicts with relevant decisions of this Court to warrant review. The question presented has "significant implications for many federal prisoners". United States v. Birt, 966 F.3d 257 (3rd Cir. 2020). Indeed, it affects whether there is public confidence in the judicial system and whether there is impartiality within the judiciary. This Court has consistently held that due process of law dictates the recusal or disqualification of a judge because of bias or the appearance of bias. Recusal of a judge based on bias or the appearance of partiality is as much for the protection of the citizenry as it is for the complaining defendant, because integrity of the judiciary is of paramount concern. Liteky v. United States, 510 U.S. 540, 548, 114 S.Ct. 1147, 1154, 127 L.Ed.2d 474 (1994). Thus, avoiding the appearance of impropriety is as important in developing public confidence in the judicial system as avoiding impropriety itself.

It is clear from the record of the proceedings that truthfulness is extremely important to Judge Conway, as it should be given her position in our judiciary. Time and time again, the record of her orders indicate that the truth matters. See, generally, Freedom Watch, Inc. v. United States, 179 F.Supp.3d 121; 2016 U.S. Dist. LEXIS 50770 (D.C. Cir. April 15, 2016)(This "may explain the response of Judge Anne C. Conway of the Middle District of Florida from whom the case was received on venue transfer, who expressed her displeasure with Plaintiff, which had resulted in 'Plaintiff's representations to the Court carry[ing] little, if any water.'"). However, it has now come to light that Judge Conway's truthfulness requirement does not extend to the federal government.

Our "adversary system... rel[ies] on the parties to frame the issues for decision and assigns the Courts the role of neutral arbiter of matters the parties present." Day v. McDonough, 547 U.S. 198, 210, 216 S.Ct. 1675, 164 L.Ed.2d 376 (2006). The rules and laws regarding a judge's impartiality were established to provide a fair and impartial system of justice. This Court has held that judicial rulings and the opinions formed by judges on the basis of facts introduced in the course of proceedings "almost never constitute a valid basis for a bias or partiality motion...unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." Liteky, 510 U.S. at 55. Likewise, judicial remarks during litigation that are "critical or disapproving of, or even hostile to, counsel, the parties, or their cases" does not generally form a valid basis for bias or partiality challenge. Id. An exception to the general rule that the bias must stem from an extrajudicial source exists where "such pervasive bias and prejudice is shown by otherwise judicial conduct as would constitute bias against a party." Meester, 762 F.2d at 885 (11th Cir. 1985)(citation and internal quotation marks omitted).

This Court's precedents set forth an objective standard that requires recusal when the likelihood of bias on the part of the judge "is too high to be constitutionally tolerable." Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 872, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009)(quoting Withrow v. Larkin, 421 U.S. at 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)). Applying this standard, the circumstances in this case and the probability of actual bias on the part of Judge Conway, as well as the general public's reaction to even the appearance of partiality, should compel Judge Conway's recusal.

Due process entitled Petitioner to "a proceeding in which he presents his case with assurance" that no member of the court is "predisposed to find

against him." Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980). Due process also guarantees "an absence of actual bias" on the part of a judge. In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed 942 (1955). While bias is easy to attribute to others and difficult to discern in oneself, this Court established an enforceable and workable framework to apply an objective standard. This Court's precedents apply this objective standard that, in the usual case, avoids having to determine whether actual bias is present. The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, "the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'". Caperton, 556 U.S., at 881, 129 S.Ct. 2252, 173 L.Ed.2d 1208.

A judge is required to "disqualify [her]self in any proceeding in which [the judge's] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). In order to succeed on a recusal argument to 28 U.S.C. § 455(a), a movant must prove that "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." Parker v. Connor Steel Co., 855 F.2d 1510, 1524 (11th Cir. 1988). Of particular relevance to the instant case is that a "review of a recusal order under § 455(a) is 'extremely fact intensive and fact bound,' thus a close recitation of the factual basis for the [party's] recusal motion is necessary." Republic of Panama v. Am. Tobacco Co., 217 F.3d 343, 346 (5th Cir. 2000)(citation omitted). Petitioner raised a specific argument about why recusal was appropriate, but the district court failed to address the actual issue or even contradict the factual basis raised in the recusal motion. In addition, the Eleventh Circuit refused to review the district court's abuse of discretion

by denying Petitioner leave to proceed in forma pauperis and stating his appeal was "frivolous".

Petitioner specifically stated that the relevant issue was that the district court's extrajudicial actions created an appearance of impropriety or bias by giving her a motive to favor the interests of the government. Outside of her role as a district court judge, while she sat on the U.S. Foreign Intelligence Surveillance Court ("FISC"), the government filed erroneous information with the FISC to secure FISA warrants. Not only was Judge Conway on the FISC, but she signed multiple FISA warrants. In December of 2019, the Department of Justice Office of the Inspector General ("OIG") issued a report which, among other issues, identified significant errors or omissions in multiple FISA applications. On September 30, 2021, the OIG issued its final report about the government's factual accuracy in its FISA applications to the FISC. The OIG confirmed its initial findings that there were widespread problems with the government's accuracy in its FISA applications, several of which were approved by Judge Conway.

The OIG found that 100% of the reviewed FISA applications presented to the FISC were defective. Rule 13 of the FISC requires the government to immediately correct any mistakes, errors, or omissions when they come to light. However, the government has failed to follow Rule 13 and Judge Conway has failed to enforce the FISC rules and has failed to hold the government accountable for lying to the FISC to secure secret warrants. Despite the government's wrongdoing becoming public knowledge, Judge Conway has simply continued to approve the government's FISA applications, has accepted the government's lies as true, and has remained silent on the government's misconduct. These facts caused numerous members of the public to reach out to Petitioner after being reported by several national media outlets.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daron Murray

Date: November 30, 2022