22-6425

IN THE SUPREME COURT
OF THE UNITED STATES

MIRWAIS MOHAMADI
Petitioner

V.

UNITED STATES OF AMERICA
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
FOR THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Mirwais Mohamadi,Pro Se
73533-083
USP Thomson
PO Box 1001
Thomson Illinois 61284

QUESTION PRESENTED

Did The Court Of Appeals Err In Denying A Certificate Of Appealability?

-TABLE OF CONTENTS-

INDEX TO APPENDICES:

INTRODUCTION

From 2007 until 2010, petitioner, MIRWAIS MOHAMADI, as a pretrial detainee,experianced severely restrictive conditions of confinement which were proposed by the government, permitted by the district court; and practiced by jail authorities which resulted in the violation of petitioner's 5th and 6th amendment rights. The record demonstrates that the facts regarding these restrictive conditions are undisputed. What is in dispute,and is the question for this Court-if this Court decides to go beyond the C.O.A. - is whether the restrictive pretrial conditions violated petitioner's constitutional rights, namely: the right to counsel of choice and the right to self- representation.(But in the initial question petitioner asks if he has established entitlement to C.O.A.)

Petitioner, in his history w th the courts, has always retained counsel for representation. Notably,when the restrictions were removed ,in this case, after conviction and sentencing, petitioner immediately retained counsel on direct appeal.

After the direct appeal proceedings concluded , petitioner, in 2014, filed this 28 USC 2255 motion. While this motion was pending petitioner filed a supplemental brief in 2016(which was accepted by the district court) arguing that, in light of this Court's decision in Johnson v. United States, 576 U.S. 591,597(2015), his A.C.C.A. conviction and sentence should be vacated because the virginia common law attempted robberies no longer qualify as crimes of violence, and his 924(c) conviction in count three should be vacated because the attached predicate in count one for attempted hobbs act robbery no longer qualifies as a crime of violence.

The fourth circuit remanded this case to the district court twice and the district court has ordered several abeyances waiting on this Court's rulings in "Stoke and "Davis" but still went against stare decisis and denied relief again the third time and then the fourth circuit improperly refused to issue a C.O.A.

If the violations evident in this record is not denounced then we will all come to fear the dystopian system that shall be promoted from the clamorous injustice allowed in this case.

TABLE OF CASES AND AUTHORITIES

CASES:

STATUTES:

OPINIONS BELOW

A timely petition for rehearing sought under U.S.A. v. Mirwais Mohamadi,2022 U.S.App.LEXIS 24510(4th Cir.2022), was denied on August 30, 2022 and is reprinted as Petioner's Appendix A (Pet.App.A)to this petition.

The opinion of the Court of Appeals for the Fourth Circuit, whose judgement is herein sought to be reviewed,is a published opinion U.S.A. v. Mirwais Mohamadi, 2022 U.S.App.LEXIS17620(4th Cir.2022) is dated June 27,2022 and is reprinted as Petitioner's Appendix B1-2 (Pet.App.B1-2)to this petition.

The decision of the United States District Court for the Eastern District of Virginia on petitioner's timely filed Rule 59(e) motion for Reconsideration is not reported,but is reprinted as Petitioner's Appendix C(Pet.App.C1-3)to this petition.

The decision of the United States District Court for the Eastern District of Virginia, whose judgement is herein sought to be reviewed,denying ,for the third time, petitioner's section 2255 motion is not reported but is reprinted as Petitioner's Appendix D(Pet.App.D1-8) to this petition.

The opinion of th Court of Appeals for the Fourth, which remanded for the second time,denial of 2255 by District Court,is reported at U.S.A. v. Mirwais Mohamadi,822 Fed.Appx. 193(2020) is dated September 21, 2020 and is reprinted as Petitioner's Appendix E(Pet.App.E1-3)to this petition.

The decision of the United States District for the Eastern District of Virginia, whose judgement is herein sought to be reviewed, denying for the second time, petitioner's section 2255 motion,is not reported but is reprinted as Petitioner's Appendix F(Pet.App.F1-7)to this petition.

The opinion of the Court of Appeals for the Fourth Circuit,remanded ,for the first time, the District Court's denial of petitioner's section 2255 motion is reported at U.S.A. v. Mirwais Mohamadi,733 Fed.Appx. 703(2018) is dated May 16, 2018, and reprinted as Petitioner's Appendix G(Pet.App.G1-3)to this petition.

The decision of the United States District Court for the Eastern District of Virginia, whose judgement is herein sought to be reviewed, denying for thew first time petitioner's section 2255 motion, is not reported but is reprinted as Petitioner's Appendix H(Pet.App.H1-16)to this petition.

JURISDICTION

The Judgement of the court of appeals denying rehearing was entered on August 20, 2022. This Court has jurisdiction under 28 USC 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Sixth Amendment, 28 USC 2255, 2253(c), 2253(c)(2), 18 USC 1951, 18 USC 924(c), 18 USC 924(e)(2)(b) are set forth in the Appendix L

STATEMENT OF THE CASE

JOHNSON (2015) CLAIMS

1.On April 9,2009 a Federal Grand Jury in Alexandria charges petitioner in a 10 count indictment.(DCD.1;Page Id#116) Pet.App.I

2.In Count One of the indictment it charges an offense under Title 18 USC,Section 1951,where the statute alone on its face charges inchoate and substantive forms of violating said statute.

3.This indictment in Count One,after reciting the statute this charge becomes specific in section 2 in line 7 where it states:"in that he(petitioner)did unlawfully attempt to take and obtain personal property consistiong of United States currency"(DCD.1;Page Id#6)Pet.App.I

4.In Count Three the indictment charges that petitioner "used" and "carried" a firearm during a "crime of violence", and then describes the crime of violence attached to this offense (this offense requires a predicate) is the one "as set forth in Count One of this indictment."(DCD.1;Page Id#8)Pet .App.I

5.In Count 5 of the indictment the indictment charges that petitioner was a felon in possession of a firearm for "having been convicted on September 15,1998 in the Circuit Court of Fairfax County, Virginia of one count of robbery,three counts of attempted robbery, and one count grand larceny(offenses petitioner committed at age 16 during a two week period in June of 1998 when petitioner had rebelled against his father's authority and ran away from home in defiance of said authority)These State offenses are what the gov. utilized to qualify petitioner as an Armed Career Criminal.(DCD.199;Trial Transcript page 39)

6.During a pretrial motions hearing on February 26,2010 petitioner expresses confusion and asks the Court to please identify what type of Hobbs Act"-inchoate or substantive- was being charged in Count One .The Court just stated that the "evidence must conform with the indictment " without clarifying the type of Hobbs Act being charged.(DCD.218;Trial Transcript page 83 line 21)

7.March 16, 2010 during the Rule 29 motion,counsel,Mr,Corey, addressed in court what he believed was charged in Count One saying:"First of all,with respect to Count One, the allegation here,Your Honor, is that of an attempt crime" (DCD.223; Trial Transcript page 962 line 8-13)Pet.App.K-1

8. During the jury instruction conference,counsel,Mr Nachmanoff(now a sitting District Court Judge) objected to the government's attempt to provide a supposititious indictment to the jury thru their jury instructions quoting Count One where Counsel stated: "I agree entirely, that Count One, as was noted in the Rule 29, is charged as an attempt,as we think it is, the instructions need to conform to that so that everything is consistent."(DCD.223;Trial Tranascript page 1048 line 3-10)Pet App.K-2

9. On the morning after said discussion the court resolved the jury instruction dispute ,regarding Count One, in ruling that: "I am conforming them[instructions] to the Hobbs Act as pled in the indictment.There was an attempt in [count] one." (DCD.224;Trial Transcript page 1060 line 12-15)Pet.App.K-3

10. While this Section 2255 motion was pending this Court decided Johnson v. United States,576 U.S. 591(2015) and made it retroactive in "Welch",petitioner immediately made a timely filing in a supplemental brief arguing that, in light of Johnson, his sentence under the Armed Career Criminal Act should be vacated because his Virginia common law robberies no loger qualified as a crime of violence,(DCD.257;Page Id# 3838-3839)and that his conviction and sentence for the 924(c) in Count Three should be vacated because the attached predicate offense in Count One no longer qualifies as a crime of violence for 924(c) purposes.(DCD.258;Page Id.3840-3860)

11.In denying relief the district court first addressed the 924(c) issue ,changing course from his previous finding of fact(section 9 above)that:"Here,petitioner's 924(c) convictions were predicated upon substantive Hobbs Act robberies...Petitioner's convictions are valid"(DCD.309;Page Id#4196)Pet.App.F
Then the district court denied the A.C.C.A. claim taking the position that: "if Virginia common law robbery is inherently violent,then an attempt to commit it must qualify as a predicate offense under the A.C.C.A."(DCD.329;PageId#4253) Pet.App.C

RIGHT TO COUNSEL OF CHOICE

12. After being indicted in the federal courthouse in Alexandria,Virginia petitioner was then immediately transported 3 hours away and placed in custody at Northern Neck Regional Jail(NNRJ) in Warsaw, Virginia where he was held from 4-9-09 until 7-24-10.

13.From 4-9-09(date of indictment) until 7-24-10(after conviction and sentencing)petitioner was kept under 24 hour lockdown,in a windowless cell,and without access to the phone,mail,or visitation.(with the exception of a handful of visits and phone calls by appointed counsel)

14.In a motion styled as "EMERGENCY Motion to Modify Conditions" filed on 4-29-09, counsel Mr.Brehm vehemently opposed these pretrial conditions (DCD.6) and then during the hearing for said motion proffered a spirited diatribe against these conditions (DCD.26)

15.The district court said these restrictions were initiated by the jail claiming the institution has a "right to prevent future crimes"(DCD.26;Pretrial Transcript page 4 line 15-16)and finally ruled that:"Your motion is denied,I find that the government has not acted arbitrarily and capriciously,nor has the jail in limiting severely,I agree with you,the contact that Mr.Mohamadi can have with the outside world."

16. These restrictive conditions first started to affect petitioner's ,already shaky mental state(where he was held in pretrial detention for 2 years befo re the federal pretrial detention)where counsel filed a request to the district court requesting that petitioner be evaluated by a mental health expert because he "didnt feel at this point he[petitioner] is really able to rationally assist me in this case"(DCD.216;Pretrial Transcript pages 2-3)
Subsequently ,these restrictive conditions of confinement started to affect petitioner's relationship with counsel where at the hearing to modify said conditions ,on 1-5-10 ,defense counsel notifies the district court that,"I can tell the court that Mr.Mohamadi is having some concerns about me continuing to represent him ... At this point , however,I believe, and Mr.Mohamadi can speak for himself , but I believe he no longer wishes myself to represent him in this matter"(DCD.71;Pretrial transcript page 2 line 13-21)where the district court then addresses petitioner saying,"And it appears to me that you are sitting in solitary confinement,and you are tremendously frustrated .thats not Mr.Salvato's problem,its your problem up to today's date because your conditions of confinement are a result of the allegations." (DCD.71;Pretrial Transcripts page 3;line 4-25)
Where Petitioner responds saying,"My issue is not personally with Mr.Salvato (counsel)..My issue basically stems from the conditions.And its not the mere fact that i'm frustrated, its the fact that i'm very hindered in my communication with Mr.Salvato.When we speak there's a security officer in the room."
Then petitioner asks the district court,"under what rule are these sanctions being applied to me,under what criminal rule?Like isn't there some type of code section that i'm falling under?"(DCD. 71;Pretrial Transcript page 15 line 19-21)
The district court affirmatively states again these restrictions are "based on ..potential threat to witnesses in the case" and claims that these restrictions are "administrative matters which the correctional facility is in charge of."(DCD.71; Trial Transcript page 15;Line 22-25) and then justifies these restrictions,from what the court insists is a decision made by the jail authorities saying: "all they know is your prior record and the charges against you.and thats enough for them to make decisions based on the conditions of your confinement while you are there for t he safety of the correctional facility and its guards,and also considering potential witnesses who may be threatened."(DCD.71;Pretrial Transcripts;Page 17 line 14-21)

17.In the proceedings on 1-13-10 Retained Counsel Mr.Salvato was allowed to withdraw and the Federal Public Defenders were appointed with the assurance by the district court that petitioner would be allowed reasonable oppurtunity to retain counsel of choice.(DCD.82;Pretrial Transcripts)

18. Petitioner was still denied reasonable oppurtunity to retain counsel where the jail maintaned that petitioner was only permitted to speak with appointed counsel. On 1-22-10 petitioner was afforded a phone call to appointed counsel where petitioner informed Mr.Nachmanoff the jail is still only allowing him to only call appointed counsel,which was confirmed by counsel's conversation with jail staff.And consequently during an "emergency hearing "in the district court counsel notified the court that the government's restrictions on petitioner were severely hindering him from retaining counsel.(DCD.229;Page Id#3535,3540,3550-3552)

19.Contrary to the courts position that it was the jail ,on its own authority,causing these restrictions, the Jail Superintendent of the jail unequivocally and consistently has maintaned, in documents during the grievance process, that:
"This jail is not denying you access.The U.S.M.C. has placed restrictions on you with the approval of the courts." (DCD.240-2;Page Id#3261)and also clarified that:
"the restriction placed upon you are at the direction of the United States Marshall Service,United States Attorney's Office, and the federal courts for reasons I am not aware of..I strongly suggest that you get your attorney involved to have the restrictions lifted."(DCD.249;Attachment 1-Exhibit 1)

20.Petitioner sent numerous letters to the district court ,that were notarized and copied ,highlighting the duplicitious way he was being treated where he was being told one thing in court but then something altogether different back in custody at the jail."DCD.240-2;Page Id#3502)

21.On 3-10-10 counsel notifies the district court that petitioner "submitted motions yesterday which have now been given to the court.One of them is a motion to dismiss or continue the trial based on the denial of his right to retain counsel" (DCD.220;Trial Transcript page 23 line 19-22)
The district court denied the motion ruling that :
"you are not entitled to your choice of counsel but competent counsel." (DCD.220;Trial Transcript page 26 line 10-13)

RIGHT TO SELF-REPRESENTATION

22.Due to the fact of the severe restrictions that prevented petitioner from retaining counsel of choice, petitioner was compelled to decide he must represent himself. On May 8,2009, during a pretrial hearing, counsel notified the district court that petitioner,"wants to represent himself pro se from this point on." (DCD.26;Pretrial Transcript page 15;line 6-10)
The district court dismissed this request without holding a Faretta hearing and ruling that he want this request in a written motion.

23.Then on 1-5-10 during a pretrial hearing petitioner again notified the district court, personally, that he "honestly would like to proceed pro se from this point forward." Again the district court does not hold a Faretta hearing and denies the oral request by insisting that he wants a written motion.(DCD.71;Pretrial Transcripts;page 15;line 3-4 and 12-14)

24.Then on 2-3-10 petitioner put in the mail a notarized motion addressed to the district court stating:
"Defendant, Mirwais Mohamadi, comes now to humbly request this Honorable Court's permission to proceed to trial Pro Se in accords with Faretta v. California,95 S.Ct. 2525(DCD.240-2; Page Id. 3636)

25.Then on 3-11-10 in the beginning of trial when counsel would not question the government witnesses properly petitioner notifies the court,"Your Honor, can I represent myself"(DCD.221;Trial Transcript page 249 line 24-25)
The court again does not hold a Faretta hearing but orders counsel to ask petitioners questions.

26.Finally in the middle of trial,petitioner notifies the district court that counsel promised to present certain recordings and witnesses but now at the close of the government's case is notifying petitioner they have now decided not to present this evidence and that petitioner has been misled and would like to excersize his right to self representation so he can present his defense to these charges.(DCD.223;Trial Transcript;page 837 line 15-17
This time counsel notifies the court that the proper response by the court is to hold a Faretta hearing(colloquy), and before doing so denies the request for timeliness saying,"Faretta is not an unlimited right, and at this stage in the proceeding that the case such U.S. v. Lawrence are controlling."(DCD. 223;Trial Transcript page 841;line 5-9)

27.Petitioner was convicted on all but Count 6 of the indictment(DCD.159,Page Id#1515-1516)and sentenced to a total of 684 months(57 years) As relevant here,the district court sentenced petitioner (concurrently with 5 counts) to 15 years for Count One attempted Hobbs Act robbery(1951),mandatory minimum and consecutive 7 years for Count 3 use of a firearm in crime of violence(924c),and 15 years for the A.C.C.A. sentence in Count 5 felon in possession of a firearm(922g)(DCD.226,Page Id#3498)Pet.App.J

28.After petitioner directed retained appellate counsel to present the Sixth Amendment Right to Counsel and Self Representation violations and sent a pro se appeal brief laying out the issue(DCD.249,Exhibits,Attachment#4,Notarized Pro Se Appeal Brief)Appellate counsel still did not raise these issues despite being told to, and despite the record ,and chose to dedicate majority of the brief to a severance issue when severance issues are almost always left to the Court's discretion. The Fourth Circuit affirmed the trial conviction in United States v. Mohamadi,461 Fed.Appx. 328(2012)

29.Petitioner subsequently filed a Section 2255 motion for relief(DCD.240,Page Id#3583-3596,DCD.240-2,pAGE iD#3598-3626,DCD.241,Page Id#3627-3673) Petitioner raised the violation of right to counsel to self representation in Ground 9 and 17. (DCD.241,Page Id#3649-3650 and 3663-3664) Petitioner raised the violation of right to counsel of choice in Ground 14 and 19. (DCD.241,Page Id#3657-3658 and 3666-3667,respectively)(two of each where one is a standalone claim and the second is a claim appellate counsel was inneffective for not raising this claim on direct appeal)

30.While the Section 2255 was pending and after this Court decided Johnson(2015)and made it retroactive in Welch(2016) petitioner filed a supplemental brief and raised the attack on his A.C.C.A. sentence and 924(c) conviction.(DCD.257, Page Id##3834-3842;DCD.258,Page Id#3840-3860)

31.In denying the Section 2255 motion, 3 years after it was filed ,the district court accepted the supplemental briefs filed in light of Johnson but made no ruling on it. The district court's ruling ,as relevant here ,resolved the right to self-representation violation in one sentence,without performing any analysis,stating:
"Because the court does not believe Mohamadi's right to sel-representation was violated Mohamadi has not shown neither deficient performance nor prejudice.(DCD.262,Page Id#3876)(notably ,the government ,in their reply, is silent on this issue) When the district court ruled on the right to counsel of choice claim ,the court again performs no analysis ,and the court again relies on its pretrial justification for the restrictions-deterrance-and concludes without recognizing any of petitioners facts and arguments that :
"because there is no evidence that the security restrictions imposed on Mohamadi in jail prevented him from retaining a lawyer,the court finds there was no ineffective assistance of appellate counsel.(DCD.262,Page Id#3875)Pet.App.H

32.On June 13, 2017,petitioner filed a Rule 59(e) motion based on the Rule 54(b) final judgement rule where district courts must address all claims along with other reasons.(DCD.265,Page Id#3908-3909) Which was denied by the district court. (DCD266,Page Id#3932)

33.Petitioner then retained counsel for the application for the C.O.A. who filed the application on 12-22-2017(Appeal No. 17-7395,Doc. No.10)Which raised the same issue petitioner raised on the rule 59(e), that the district court denied ,but the fourth circuit remanded for that same issue.United States v. Mohamadi,733 Fed.Appx. 703(2018)Pet.App.G

34.After the district court provided the government several abeyances and 4 briefs in opposition the district court again denied relief but only addressed the 924(c) claim . (said ruling is described above)(DCD.309,Page Id#4192-4198)Pet.App.F

35.Petitioner again filed a Rule 59(e) notifying the district court that they still hadnt resolved all claims.(DCD.318,Page Id#4212-4215)

36.This time the district court didnt respond so after waiting a respectable amount of time,petitioner went ahead and filed another application for C.O.A. in the fourth circuit.(Appeal No.20-6097,Doc.6)

37.The fourth circuit dismissed the denial again and remanded it back to thedistrict court to resolve all claims.United States v. Mohamadi,822 Fed.Appx.193(2020)Pet.App.E

38.This time the dis trict court instantly denied the Section 2255 motion finally resolving the outstanding A.C.C.A. claim. (DCD.325,Page Id#4233-4240)Pet.App.D

39.When petitioner again filed the Rule 59(e) motion(DCD.327) the Government also file a motion seeking abeyance pending this Court's ruling in Taylor.(DCD.328)The district court denied both of them relying on the government's position in Taylor,despite fourth circuit precedence.(DCD.329,Page Id#4253)Pet.App.C

40.Petitioner then filed another pro se application for C.O.A. from the United States Court Of Appeals for theFourth Circuit,Which denied the request.Quoting 2253(c)(2) the court noted that a "C.O.A. will not issue absent a substantial showing of the denial of a constitutional right". The court then concluded ,citing Buck, that in order to make that showing "when the district court denies relief on the merits a prisoner satisfies the standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong", and then the fourth circuit,without performing any type of anaysis,held that they "have independently reviewed the record and conclude that Mohamadi has not made the requisite showing." and thus denied the application request. United States v. Mohamadi, 2022 U.S. App.Lexis 17620(6-27-22) Pet.App.B

41.Then on 7-9-22 petitioner filed a petition for rehearing asking the panel to consider Taylor which was decided by the Supreme Court a week before this denial.Second the petitioner asked to apply the fourth circuit's own ruling in United States v.White(decided 1-27-22) which held that Virginia common lawrobbery did not qualify for A.C.C.A. purposes.And finally petitioner provided an analogy to describe the fourth circuits rubber stamp denial.(App.No.20-7917,Doc.13) This too was denied by the fourth circuit on August 30,2022.Pet.App.A

ARGUMENT

I.THE LOWER COURT'S DECISION IS AN UNREASONABLE APPLICATION OF THE COA STANDARD

Under the Antiterrorism and Effective Death Penalty Act of 1996(AEDPA), a Certificate of Appealability(COA)"may issue... only if the applicant has made a substantial showing of the denial of a constitutional right." Section 2253(c)(2)
As this Court has explained, a habeas petitioner makes the showing by demonstrating "that reasonable jurists could debate whether..the petition should have been resolved ina different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473,at 484(2000) The court of appeals started its decision on the right track where it did in fact accurately recite this standard,but its application of that standard,unreasonably applying this standard,went in a completely different direction contravening this Court's precedent .

A. Mohamadi Has Demonstrated That Reasonable Jurists Could Find The District Court's Assessment Of The Constitutional Claims Debatable Or Wrong

1.JOHNSON (ACCA) and JOHNSON +TAYLOR(924C)

-ACCA-

When the district court denied the ACCA claim its reasoning for said denial was that:
"if Virginia common law robbery is inherently violent, then an attempt to commit it must qualify as a predicate under the Armed Career Criminal Act" (DCD.329.Page Id#4235)
Indeed, reasonable jurists can conclude that the district court's decision denying the ACCA claim is not only debatable but actually wrong in light of stare decisis. The lower court is incorrect as to both fronts of its denial. The fourth circuit court of appeals has held since 2017 that Virginia common law robbery was not a violent felony for ACCA purposes and this Court recently dismissed this novel argument about attempted robbery automatically being decided violent offenses if the substantive form is decided violent,when the government raised it in Taylor. Indeed from 2017 until 2021 the fourth circuit held in United States v. Winston,850 f.3d 677,685(4th Cir.2017)(that Virginia common law robbery was not a violent felony for ACCA purposes). This ruling was later abrogated in 2021 by the fourth circuit in United States v. White,987 f.3d 340(4th cir.2021)and then reinstated,after a certified question was sent to the Virginia Supreme Court,in 2022 with the holding in United States v. White, 2022 U.S. App.Lexis 2599(4th Cir.2022)
This claim more then satisfies the requisite showing required in 2253(c)(2) so the lower court's denial of COA was error.

-924(c)-

Reasonable jurists could decide that the district courts application of United States v. Taylor,
to the facts of Mohamadi's case was unreasonable. Both were charged with an attempted robbery that had an attached 924(c)charge. Notably, the district court at trial identified Mohamadi's charge in Count One was charged as an attempted robbery charge as prohibited by the Hobbs Act statute.(DCD.224, Trial Transcript page 1060,line 12-15)
Then Mohamadi's indictment states,"in that he did unlawfully attempt to take and obtain personal property consisting of United States currency."(DCD.1,Page Id#6)
Reasonable jurists could also conclude that Mohamad is entitled to relief when others similarly situated have been granted relief in light of Taylor. see United States v. Beale,840 Fed. Appx.747(4th cir..2021)(the indictment charges in count one,"in that the defendant did unlawfully attempt to take and obtain property of Jolly's Pawnshop");United States v. Rose,832 Fed. App.814(4th c ..2021)(the indictment charges in count one,"in that the defendant did unlawfully attempt to take and obtain personal property consisting of United States currency");United States v. Kargbo,836 Fed. Appx.181(4th cir..2021)(count three charges,"that the defendant attempted to take and obtain personal property consisting of cash")
All of these defendants were charged the same way for the same offenses that were able to receive relief from their judge in accordance with this Court's ruling in Taylor.
In denying this claim the district court's conclusion that,"petitioner's 924(c) convictions were predicated upon substantive Hobbs Act robberies" therefore ""petitioner's convictions are valid" appears to have been an unreasonable determination of the facts in light of the evidence presented in proceedings. For all these reasons the district court's decision was certainly debatable and the court of appeals improperly denied COA .

FARETTA (Right to self-represention)

Jurists of reason could find debatable the district court's resolution of petitioner's claim that his constitutional right to self representation was violated when petitioner expressly asked the district court four times to allow him to represent himself but this request was never properly resolved until the fifth request mid trial where he denied the request as untimely.Notably the other requests were well before trial as was the case in Faretta(see above Statement of the Case section 22-26)Also see Moore v. Haviland, 531 f.3d 393(6th cir.2008)(habeas petition granted when judge didnt properly resolve two requests by defendant to represent himself)

Also this Court has explained ,however, that a defendant has a constitutional right to represent himself at trial and set out a proper inquiry to be conducted by the lower courts to accomodate said right.Faretta v. California,422 U.S. 808,834(1975)

The district court failed to follow said mandate on 4 occasions. And then when petitioner raised this claim in this section 2255 proceeding, under review now, the district court's resolution of said claim lacked any type of analysis or review of the facts presented as the record shows:

"Mohamadi also argues that counsel was ineffective by failing to to raise on direct appeal that his right to self-representation was violated when the court denied Mohamadi's motion to proceed pro se.Because the court does not believe Mohamadi's right to self-representation was violated,Mohamadi has shown neither deficient performance nor prejudice."(DCD.262,Page Id#3876)

(notably the government makes no response to this claim in their opposition brief.see DCD.245)

Due to this factual dispute where the court outright rejects all of the petitioner's undisputed facts in the 2255 motion an evidentiary hearing was required.

Well considering the record before us ,the district court's objectively unreasonable misapplication of the law as established by this Court in Faretta establishes petitioner's entitlement to COA and the lower court erred in denying.

RIGHT TO COUNSEL OF CHOICE

The government imposed extremely severe pretrial conditions upon petitioner that consequently violated his constitutional right to counsel of choice.For nearly two years, petitioner was placed in solitary confinement for 24 hours a day, with no access to the phone,mail, or visits. When these conditions were challenged in the district court during pretrial earings they were dismissed by the court who claimed the restrictions were placed by the jail for their security purposes as a result of the allegations in the indictment.And the court insisted that these restrictions were justified because the jail had a right to prevent future crimes.

Reasonable jurists could conclude that pretrial detainees should not be punished for allegations that they have not been found guilty of.see Bell v. Wolfish,441 U.S. 520 at 535,539(1979) see also Sandin v. Connor, 515 U.S. 472,484(1995)(emphasizing Bell's concern that pretrial detainees could not be punished for the crime for which he was indicted via preconviction holding conditions) also see Kennedy v, Mendoza-Martinez, 372 U.S 144 at 168(1963)(retribution and deterrance are not legitimate nonpunitive governmental objectives)

When the district court denied petitioner's claim, that his constitutional right to counsel of choice was violated by severe pretrial restrictions, the district court identified 5 reasons in support of denial:

(1)"The restrictions on Mohamadi's communication were made as a matter of security rather then a means of punishment."

(2)"The Marshalls service never impeded Mohamadi's access to counsel"

(3)"The Federal Public Defender represented him at e. ery stage of the trial"

(4)There is no evidence that the restrictions imposed on Mohamadi in jail prevented him from retaining a lawyer

(DCD.262,Page Id#3876)

If the Fourth Circuit had perfcrmed the proper analysis which requires they ask whether "reasonable jurists could find the district court's assessment of the constitutional claim debatable or wrong?"See Slack v. McDaniel,529 U.S. at 484(2003)They would have come to the realization that it was debatable andthey would have issued a COA.

In regard to the first point reasonable jurists could conclude that solitary confinement qualifies as "punishment"see Martinez,977 f,2d at 423(8th Cir.1992) also see Covino v. Vt. Dept. of Corr.,933 f.2d 128,130(2d Cir. 1991)(9 months in solitary confinement considered "punishment") This Court has explained ,"that pretrial detainees possess a constitutional right to be free from punishment before conviction"see Bell v. Wolfish, 441 U.S. 520,at 535(1979)

What's troubling is that the district court has repeatedly justified the unconstitutional restrictive pretrial conditions as being "administrative matters which the correctional facility is in charge of."(DCD.71,Hearing Transcript,Page 15 line 22-25) But ironically ,the Superintendent of the jail petitioner was held at stated in the grievance proceedings that ,"the jail is not denying you access"(DCD.240-2;Page Id#3261) and then clarified that "the restriction placed upon you are at the direction of the United States Marshall Service,United States Attorney"s Office,and the federal court. For reasons I am not aware of."(DCD.249,Attachment 1-Exhibit 1)

In regards to the third point,reasonable jurists could conclude ,that the right to counsel of choice and the right to effective counsel are two different rights. see United States v. Gonzalez-Lopez, 548 U.S. 140,147-148(2006)(right to counsel of choice is " complete when the defendant is erroneously prevented from being represented by the lawyer he wants,regardless of the quality of the representation he received") Indeed, the district court dismissed petitioner's pretrial motion seeking relief from violation of right to counsel of choice on the basis that petitioner is "not entitled to choice of counsel but competent counsel". (DCD.220, Trial Transcript page 26 line 10-13)

Then as to the district court's final reason for denial that"there is no evidence that security restrictions imposed on Mohamadi prevented him from retaining a lawyer" just shows that the district court's ruling resulted in a decision that was not only contrary to this Court's precedent but also based on an unreasonable determination of the facts in light of the evidence presented in proceedings. The record actually shows an abundance of evidence supporting the claim petitioner's right to counsel of choice was violated due to the unconstitutional pretrial restrictive conditions. Three times in three different court proceedings appointed defense counsel notified the district court that the pretrial restrictions were hindering petitioner's ability to retain counsel. (DCD.26,DCD.71,DCD.229) There are documents from jail grievance proceedings that have memorialized all the effects of the restrictions that blocked petitioner's access to resources to retain counsel.(DCD. 240-2 , DCD. 249)

A reasonable jurist can conclude that a total communication ban is not a" fair opportunity to retain counsel" as prescribed by Sixth Amendment and explained by this Court in Powell. Reasonable jurists would rightly wonder why if the pretrial restraint of assets needed to retain counsel of choice violated the Sixth Amendment in Luis v. United States, 378 U.S. 5(2015), a pretrial restraint on petitioner's ability to communicate needed to access resources to retain counsel of choice would not do the same. Or reasonable jurist would rightly wonder why if the failure to allow defendants a chance to speak with family to "endeavor" to retain counsel of choice violated the constitution in Powell v. Alabama, 287 U.S. 45,53(1932), the restrictive pretrial conditions that banned petitioner from communicating with family would not do the same.

This case demonstrates that , "the issues presented are adequate to deserve encouragement to proceed further" Miller-El v. Cockrell, 537 U.S. 322,327(2003)

An accused right to counsel of choice is among the most fundamental rights our Constitution secures. In view of the importance of the right involved and the obvious error here -at a minimum COA should've been granted .

B. The Court Of Appeals Erred By Not Conducting A Threshold Inquiry As Required By 2253(c)

This Court explained that this "threshold inquiry is more limited and forgiving than adjudication of the actual merits," Buck v. Davis, 580 U.S. at 100(2017)(quoting Miller-El,537 U.S. at 337(2003)
So before this Court admonished the lower courts with its decision in Miller-El , the lower courts were going beyond the threshold inquiry and conducting a full appeal review to get to their conclusion..Indeed ,now on the other end of that problem, instead of a full review ,they are jumping straight to the conclusion without showing how they got there. They are probably conducting some type of analysis but its hidden behind this veil of boilerplate decisions where they pay lip-service to the correct legal standard in a quick citing and then jump right to their conclusion without conducting an assessment. Before experiancing this new style of judicial decisions petitioner assumed these type of" decisions without discussions" were for the severely "frivolous filings" as "punishment".see United States v. Akers,807 Fed.Appx. 861(10th Cir.4-3-2020).But after following every rule and procedure to the best of his ability during this remarably extended post-conviction proceeding(this first 2255 motion was filed in 2014),and presenting violations of fundamental constitutional rights,in the way demanded by law, and affording the courts the utmost respect,and considering what is at stake-a human being's right to liberty taken for 57 years, petitioner is confounded to how this type of review can be warranted in this case, much less,any case.This is a broadside against fundamental fairness principles and due process and fair notice. Without a discussion it deprives a petitioner the oppurtunity to defend against an improper or illegal ruling.Notably,when they were going too far at least we had the benefit of seeing where they went wrong in their decision but now there is nothing there but a conclusion.These type of decisions totally contravene this Court's precedent which instructs that "the COA determination under 2253 requires an overview of the claims in the habeas petition and a general assessment of their merits".Miller-El v. Cockrell,537 U.S. 322,336(2003)The lower court's deviation from established standards should ring all type of alarms in the halls of Justice.

REASON FOR GRANTING THE WRIT

Puruant to Supreme Court Rule 10, this Court will review a decision of a United States court of appeals for compelling reasons. The reasons that apply in the instant case are:

"a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercize of this Court's supervisery power"

And

"a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court."

The "Statement Of The Case" and "Argument" sections fully support this Court"s reasons that are required and explained above in Rule 10(a) and (c)..

But on another note, I would like to take this oppurtunity to share my personal thoughts on why I pray this Court grants this Writ.

It is my understanding that written above the entrance to the United States Supreme Court is a promise that says:

"EQUAL JUSTICE UNDER LAW"

After being denied this promise at every stage of the proceedings ,thus far, by the lower courts, I now. humbly pray, that this Supreme Court will allow me the honor of recieving this sacred promise. It is Justice I seek.It is Justice I am entitled to as a citizen of this great nation.

After diligently pursuing Justice during a very long and complicated process I believe it is only right that, after essentially being sentenced to die in prison with a draconian sentence of 57 years, that at such an important stage , at the COA after the denial by the district court that was actually the same court that allowed the violations complained of, I should at a minimum, recieve ,in accordance with due process and fundamental fairness principles,a decision by the court of appeal explaining how they performed the COA standard of review,in relation to my claims, and how I failed to meet the requisite standard for review so that I may then "try to bear lightly what needs must be done".(what the jailer said to Socrates as he hands him the poison cup)
The boilerplate, one page denial of COA, is not an isolated incident and can't be just ignored as being a glitch in the machine.As i utilized the search engine in LEXIS NEXIS I found 9,427 of the same boilerplated denials of COA,just in the Fourth Circuit,that started appearing consequently right after this Court's decision in Miller-El v. Cockrell in 2003. Surely, that wasnt this Court's intention as Justice Sotomayor has pointed out in several dissents recently. Actually, this case provides this Court with a perfect vehicle to set things back on the right road. Because the lower Court have lost its way.
It would be harder to finfd a case more entitled to a COA then this case,which involves such important principles. I urge this Court to curtail the transformation of the , already limiting, COA standard of review into a rubberstamp. These type of boilerplate decisions will slowly wear away at our Justice System until there is nothing left for anyone. As Saint Thomas More once said,
"Yes, I'd give the devil benefit of law, for my own safety's sake."
With that in mind I conclude this petition with the prayer that this Supreme Court, whose "authority is given you by the Lord" judges this case rightly. see The Book of Wisdom Chapter 6 verses 1-3.

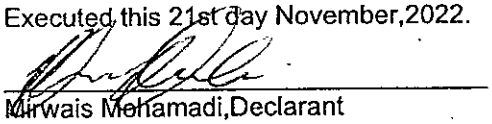
CONCLUSION

In the end, regardless of how the Fourth Circuit would resolve Mohamadi's appeal on the merits, it is beyond question that the lower court's decision denying section 2255 relief,presenting violation of fundamental constitutional rights is ,at minimum, "reasonably debatable" among jurists of reason. Buck, 580 U.S. at 100(2017) The Fourth Circuit erred in denying Mohamadi a COA, and petitioner now prays this Court will not allow this error to go uncorrected.

DECLARATION

Petitioner, Mirwais Mohamadi, hereby states that all of the foregoing claims, allegations and contentions are true and correct to the best of his knowledge,information and belief. This Declaration is made under the pains and penalties of perjury.

Executed this 21st day November,2022.



Mirwais Mohamadi,Declarant

*Haines v. Kerner,404 U.S 519,30 L.Ed.2d 652,92 S.Ct.594(1972)

CERTIFICATE OF SERVICE

Petitioner, Mirwais Mohamadi, hereby certifies, pursuant to Rule 29 of this Court's Rules, that he has served his Petition for Writ of Certiorari on the parties below:

Office of the Solicitor General
United States Department of Justice
950 Pennsylvania avenue, Northwest, Room 5614
Washington, DC 20530-0001

Mr.Joseph Attias,A.U.S.A.
2100 Jamieson Avenue
Alexandria, Virginia 22314-5194

Each envelope prepared for service was placed in the hands of mailroom personnel at the United States Penitentiary, Thomson with appropriate first class postage affixed,for prompt mailing via the United States Postal Service.

I Declare under penalty of perjury that the foregoing is true and correct.

Mirwais Mohamadi,Petitioner

Executed and mailed this 21st day of November,2022