

RE In Re Ramone Wright

Date 19, 2023

Rehearing pursuant to Rule 44

No 22-7116

certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented

Ground I Violation of fifth and sixth Amendment trial - conflict of interest: counsel for appellant failed numerous motion to withdraw from case which was denied by trial court

Ground II Violation of 488(g) Appellant counsel never received discovery - Appellant trial court ignored his request to view exculpatory evidence before accepting constitutional invalid plea

Ground III Violation of Due process

Appellant's assistant of counsel refuse to file a direct appeal since the issue was centered around client - Attorney privilege

certificate of counsel

pro se

Romone Wright
Bennettsville FCI
PO Box 52020
Bennettsville SC 29512

case No 22-7116

Date May 26, 2023

RE Motion For Rehearing - pursuant to Rule 44

Syllabus Any petition for rehearing of any judgment or decision of the court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the court or a justice shortens or extends the time

Issue I Untimely appeal NO 17-3642

Appellant's assistant of counsel refuse to file a direct appeal since the issue referred to structural error - where the district court error in failing to inform the Appellant of the nature of the charge against him - which resulted in flagrant misconduct under the sixth circuit fair-factor test under United States v. Carter 236 F.3d 777 (6th Cir) which is used to determine whether 236 misconduct was exceptionally flagrant that it constitutes plain error, and was grounds for reversal. - counsel for Appellant refuse to file timely direct Appeal, citing an conflict of interest in his motion to withdraw from case (see Exhibit A)

First the risk of injustice to the parties in the current case - is clear and the Record reflects (1)

Appellant's claim

Second the risk of undermining public confidence in the judicial process 486 U.S 847 (1988) is present in Appellant's extraordinary writ Docket No 22-7116

citation The federal recusal statute requires a judge to recuse himself from "any proceeding in which his impartiality might reasonably be questioned"

To determine if violation of 455(a) was harmless error looked to the factors of *U.S. v. Jeberg* v. Health Service Acquisition Corp

The open-endedness of the 3653(A) factors leave ample room for the court's discretion *United States v. Warner* 792 F.3d 847 (7th Cir 2015)

citation That discretion invites the risk that a judge's personal biases will influence or appear to influence the sentence he imposes *United States v. Smith* 775 F.3d 879 (7th Cir 2015) the court determined that upholding sentence created a real risk of unfairness to the defendant

The court then should turn to the second *U.S. v. Jeberg* factor and opined that by enforcing 455(A) in by encouraging judges to exercise caution in their communication

Exhibit B shows merit - which was denied by the court of appeal, Risk of harm to the public's confidence in the impartiality of the (2)

Judiciary and determined that in sentencing, the most significant restriction on a Judge's ample discretion is the Judge's own sense of equity and good judgment. When those qualities appear to be compromised, the public has little reason to trust the integrity of the resulting sentence.

SHALOM

Conclusion

My question to All parties involve is this Justice - The Supreme court wrote this opinion prosecutorial misconduct - The United States attorney is the representation not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that Justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilty shall not escape or innocent suffer. He may prosecute with earnestness and vigor - Indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one Berger v United States, 295 U.S. 78, 88, 79 L. Ed 1314, 55 S. Ct. 629

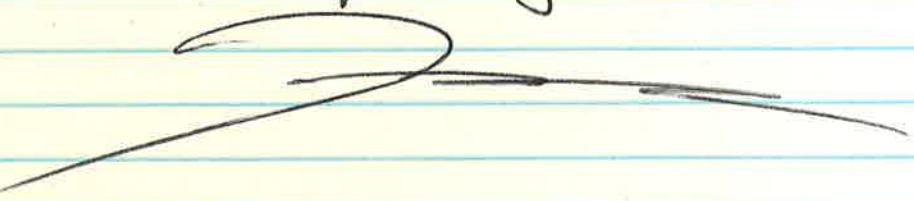
citation But the court need not accept bare
(3)

assertions of legal conclusion

The Government failed to expect the Record and documents pertaining within - the Appellant is Actual innocent Souter v. Jones 395 F.3d 55, 599 (6th Cir 2006)

Legal standard two Federal Statutes 28 U.S.C 455 and 1441, govern recusal and courts must construe them in pari materia Ray v. Equifax Information Servs, LLC, 327 Fed Appx. 819, 2008 WL 9773133 (11th Cir 2009)

Respectfully submitted

A handwritten signature in black ink, appearing to read "J. Smith".

(4)

Exhibit A

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RAMONE L. WRIGHT, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
2017 U.S. App. LEXIS 27477
No. 17-3642
September 1, 2017, Filed

Editorial Information: Subsequent History

Post-conviction proceeding at, Magistrate's recommendation at, Stay granted by, Motion granted by Wright v. United States, 2018 U.S. Dist. LEXIS 66907, 2018 WL 1899293 (S.D. Ohio, Apr. 20, 2018)Magistrate's recommendation at, Post-conviction proceeding at United States v. Wright, 2019 U.S. Dist. LEXIS 78554, 2019 WL 2058681 (S.D. Ohio, May 9, 2019)Habeas corpus proceeding at, Magistrate's recommendation at Wright v. United States, 2021 U.S. Dist. LEXIS 38395, 2021 WL 1795315 (S.D. Ohio, Mar. 2, 2021)Motion granted by Thornton v. Forshey, 2021 U.S. App. LEXIS 30954 (6th Cir., Oct. 14, 2021)Post-conviction proceeding at, Motion denied by In re Wright, 2022 U.S. App. LEXIS 15123 (6th Cir., June 1, 2022)Post-conviction proceeding at, Motion denied by In re Wright, 2022 U.S. App. LEXIS 21254 (6th Cir., Aug. 1, 2022)Writ of habeas corpus dismissed, Without prejudice Wright v. Henry, 2022 U.S. Dist. LEXIS 144859 (N.D. Ohio, Aug. 12, 2022)

Counsel {2017 U.S. App. LEXIS 1}For United States of America, Plaintiff -
Appellee: David Joseph Bosley, Office of the U.S. Attorney, Columbus, OH.
Ramone L. Wright, Defendant - Appellant, Pro se, Inez, KY.

Judges: Before: GIBBONS, SUTTON, and THAPAR, Circuit Judges.

Opinion

ORDER

Defendant Ramone L. Wright appeals the sentence imposed by the district court pursuant to his guilty plea to charges of interstate robbery and brandishing a firearm during the commission of an offense of violence. On June 23, 2017, an order was entered directing him to show cause why his appeal should not be dismissed as untimely. In his pro se response, Wright claims that he instructed his trial counsel to file a timely notice of appeal, but that counsel ignored his request.

In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after entry of the judgment or the order being appealed. Fed. R. App. P. 4(b)(1)(A)(i). "Final judgment in a criminal case means sentence. The sentence is the judgment." *Berman v. United States*, 302 U.S. 211, 212, 58 S. Ct. 164, 82 L. Ed. 204 (1937). Wright was sentenced on February 13, 2017, to a total term of 180 months' imprisonment. His pro se notice of appeal was filed on June 14, 2017, after the 14-day criminal appeal deadline had expired.

Rule 4(b), which is the source of the 14-day filing deadline, {2017 U.S. App. LEXIS 2} is not established by statute. Therefore, it is not jurisdictional in nature but is rather a claim-processing rule. *United States v. Gaytan-Garza*, 652 F.3d 680, 681 (6th Cir. 2011). We nevertheless have the authority to dismiss untimely appeals *sua sponte* if "the important judicial interests of finality of convictions and efficient administration of claim processing" are implicated. *Id.* These interests are implicated in this case: Wright's appeal is approximately four months late, and he has not met any of the Appellate Rule 4(b) requirements for filing a late notice of appeal. See e.g., Fed. R. App. P.

4(b)(3), (4); *United States v. Brown*, 817 F.3d 486, 489 (6th Cir. 2016).

Accordingly, this appeal is **DISMISSED** *sua sponte* without prejudice to any remedy Wright may have under 28 U.S.C. § 2255.

Exhibit B

**RAMONE L. WRIGHT, Petitioner-Appellant, v. UNITED STATES OF AMERICA,
Respondent-Appellee.**
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
2020 U.S. App. LEXIS 15982
No. 20-3012
May 18, 2020, Filed

Editorial Information: Subsequent History

US Supreme Court certiorari denied by Wright v. United States, 2020 U.S. LEXIS 3858 (U.S., Oct. 5, 2020)

Editorial Information: Prior History

Wright v. United States, 2019 U.S. Dist. LEXIS 210793, 2019 WL 6649113 (S.D. Ohio, Dec. 6, 2019)

Counsel {2020 U.S. App. LEXIS 1} Ramone L. Wright, Petitioner - Appellant, Pro se, Bruceton Mills, WV.

For United States of America, Respondent - Appellee: David Joseph Bosley, Office of the U.S. Attorney, Columbus, OH.

Judges: Before: MURPHY, Circuit Judge.

Opinion

ORDER

Ramone L. Wright, a federal prisoner proceeding pro se, appeals a district court judgment denying his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. The court construes the notice of appeal as a request for a certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b)(2). Wright has filed a motion to proceed in forma pauperis.

The district court sentenced Wright to 180 months of imprisonment after pleading guilty pursuant to a Federal Rule of Criminal Procedure 11(c)(1)(C) plea agreement to two counts of interstate robbery, in violation of 18 U.S.C. § 1951; and two counts of brandishing a firearm during the commission of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). Wright appealed, and this court dismissed the appeal as untimely. *United States v. Wright*, No. 17-3642, 2017 U.S. App. LEXIS 27477 (6th Cir. Sept. 1, 2017) (order). Wright then filed a § 2255 motion, arguing that he received ineffective assistance of counsel when counsel allowed him to enter a guilty plea while under the influence of the prescription drug Remeron, when counsel failed to review his presentence report with him, {2020 U.S. App. LEXIS 2} and when counsel failed to raise any objections at sentencing. Subsequently, Wright filed a motion to amend, which the district court denied as untimely and because the proposed amendment was frivolous. The district court then denied the § 2255 motion and declined to issue a certificate of appealability. *Wright v. United States*, No. 2:16-cr-00059, 2019 U.S. Dist. LEXIS 210793 (S.D. Ohio Dec. 6, 2019).

A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the petitioner must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve

encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). When the district court's denial is on the merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. And the Supreme Court has held that this right to the assistance{2020 U.S. App. LEXIS 3} of counsel includes "the right to the effective assistance of counsel" during "critical stages" of a prosecution, including the entry of a guilty plea. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Turner v. United States*, 885 F.3d 949, 952-53 (6th Cir. 2018) (en banc) (citing *Missouri v. Frye*, 566 U.S. 134, 140, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012)). To prove constitutionally ineffective assistance of counsel, a petitioner must show that his attorney's performance was objectively unreasonable and that he was prejudiced as a result. *Strickland*, 466 U.S. at 687. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S. Ct. 158, 100 L. Ed. 83 (1955)). Generally, prejudice means "a reasonable probability" that "but for such conduct the outcome of the proceedings would have been different." *Williams v. Anderson*, 460 F.3d 789, 800 (6th Cir. 2006). In the plea-entry context, prejudice means "a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would [instead] have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985). "Surmounting *Strickland*'s high bar is never an easy task." *Harrington v. Richter*, 562 U.S. 86, 105, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011) (quoting *Padilla v. Kentucky*, 559 U.S. 356, 371, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2011)).

Wright argues that he received ineffective assistance of counsel when counsel allowed him to enter a guilty plea while under{2020 U.S. App. LEXIS 4} the influence of the antidepressant drug Remeron. Specifically, **Wright** asserts that because Remeron can cause disorientation and hallucinations, his guilty plea was not knowing, intelligent, and voluntary. However, **Wright** has failed to make a substantial showing that counsel acted unreasonably by letting him enter a guilty plea because he identifies no evidence in support of his assertion that Remeron affected his ability to understand the nature of the plea proceedings. Indeed, at the change of plea hearing, **Wright** told the district court that Remeron did not affect his ability to understand the nature of the plea proceedings. Based on its observations during the hearing, the district court found that Wright's guilty plea was knowing, intelligent, and voluntary. And **Wright** has presented no evidence that the drug had ever caused him to feel disoriented or to hallucinate. **Wright** thus has not shown either that his counsel was constitutionally deficient in allowing him to enter a guilty plea while on his antidepressant medication or that there is a reasonable probability that, but for any error, he would have rejected the favorable plea deal and insisted on going to trial. Accordingly,{2020 U.S. App. LEXIS 5} reasonable jurists would not debate the district court's rejection of this claim.

Wright also argues that he received ineffective assistance of counsel when counsel failed to review his presentence report with him and raise objections at sentencing. **Wright** does not identify any objection his counsel should have raised at sentencing. And Wright's counsel averred that he spent nearly two hours reviewing the report with **Wright** beforehand and that **Wright** had no objections to the report. But even assuming **Wright** made a substantial showing that his counsel provided deficient assistance, **Wright** has not made a substantial showing of prejudice because the binding plea agreement provided for a 180-month sentence and no objection by counsel to the presentence

report or at sentencing could have affected the agreed-upon sentence. Accordingly, reasonable jurists would not debate the district court's rejection of this claim.

Finally, reasonable jurists would not debate the district court's decision to deny the motion to amend to add Wright's claim that he received ineffective assistance of counsel when counsel failed to object to a defect in the indictment. **Wright** argues that his indictment was defective{2020 U.S. App. LEXIS 6} because it failed to specify whether he was being charged with violating 18 U.S.C. § 1951(a) or (b). But § 1951's single criminal prohibition appears only in subsection (a); subsection (b) merely contains the statutory definitions of a few terms in subsection (a). The indictment's citation of § 1951 thus satisfied Federal Rule of Criminal Procedure 7(c)(1)'s requirements, so Wright's indictment was not defective and Wright's claim to the contrary was meritless. Accordingly, reasonable jurists would not debate the district court's denial of Wright's motion to amend.

Accordingly, the court **DENIES** the application for a certificate of appealability and **DENIES** the motion to proceed in forma pauperis as moot.

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

**Scott S. Harris
Clerk of the Court
(202) 479-3011**

May 22, 2023

Mr. Ramone Wright
Prisoner ID #75703061
FCI Bennettsville
P.O. Box 52020
Bennettsville, SC 29512

Re: In Re Ramone L. Wright
No. 22-7116

Dear Mr. Wright:

The Court today entered the following order in the above-entitled case:

The petition for a writ of mandamus is denied.

Sincerely,



Scott S. Harris, Clerk

