

No. 22-7414

IN THE
SUPREME COURT OF THE UNITED STATES

John Henry Moore — PETITIONER
(Your Name)

Supreme Court, U.S.
FILED
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United States Court vs.
of Appeals for Fourth Cir. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

John Henry Moore Jr. #059480
(Your Name)

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QUESTION(S) PRESENTED

Whether the Fourth Circuit Court of Appeals erred when it denied my Pro Se Motion to Stay District Court Proceedings, Petition for Writ of Mandamus and Petition for Rehearing and Rehearing En Banc, directing a District Court Judge to Recuse himself from presiding over the proceedings, in my case, including pretrial, trial, appellate review, or other stages of litigation, where he has personal knowledge of disputed evidentiary facts concerning the proceeding, and where he was a advocate for the government who prosecuted a case against me in 1989.

LIST OF PARTIES

District Court Judge Hon. Robert J. Conrad, Jr., and United States Court of Appeals For the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix I to the petition and is reported at, *In re Moore*, 955 F.3d 384 (4th Cir. 2020)

The opinion of the United States court of appeals appears at Appendix N to the petition and is reported at, *In re Moore*, 2022 U.S. App. LEXIS 34840 (4th Cir. 2022)

The opinion of the United States court of appeals appears at Appendix P to the petition and is reported at, *In re Moore*, 2023 U.S. App. LEXIS 1819 (4th Cir. 2023)

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on December 15, 2022. An order denying a petition for rehearing was entered January 24, 2023, and a copy of that order is attached as Appendix D to this petition. Jurisdiction is conferred by 28 U.S.C. 1254.

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STATUTES AND RULES

Fifth Amendment

Due Process Clause

18 U.S.C. 1951

18 U.S.C. 924(c)(1)(A)(ii)

18 U.S.C. 922(g)

21 U.S.C. 851

18 U.S.C. 3559(c)(4)

18 U.S.C. 3559(c)(3)(A)

28 U.S.C. 455(b)(1)

28 U.S.C. 455(b)(3)

28 U.S.C. 455(d)(1)

28 U.S.C. 455

28 U.S.C. 1651

28 U.S.C. 1254

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendments V to the United States Constitution, which provides and Due Process:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

The Petitioner MySelf allege that on March 20, 2019 i was arraigned on a four-count Bill of Indictment, charging me with two counts of Hobbs Act Robbery pursuant to 18 U.S.C. 1951 (Counts One and Three); one count of brandishing a firearm during a crime of violence pursuant to 18 U.S.C. 924(c)(1)(A)(ii) (Count Two); and one count of possession of a firearm by a convicted felon pursuant to 18 U.S.C. 922(g) (Count Four). A copy is attached as Appendix A to this petition.

On July 30, 2019, the government filed an Information pursuant to Title 21 U.S.C. 851 and 18 U.S.C. 3559 (c)(4) (the "Three-Strikes Notice") a copy of the document is attached as Appendix B to this petition. In that notice, the government cited to three predicate convictions which it claims subject me to a mandatory life sentence if convicted.

18 U.S.C. 3559(c)(3)(A) provides that robberies such as bank robbery cannot serve as qualifying predicate offenses if the defendant establishes that certain factual conditions were met, including that no firearm or other dangerous weapon or threat thereof was involved in the offense. Thus, should I be convicted of the current offense, the nature and circumstances of my prior offenses listed in the Three Strikes Notice will be highly relevant parts of the matter in controversy.

The first of the three predicates alleged in the Three Strikes Notice is a 1989 conviction for Bank Robbery occurring in this district, The Western District Of North Carolina, Case No. 3:89-CR-91 (the "1989 case"). On September 24, 2019, the government alerted the undersigned and the Court that newly-pulled court documents indicate that the presiding judge in this case, the Hon. Robert J. Conrad, Jr., had

previously been Assistant United States Attorney who prosecuted me in the 3:89-CR-91 case. His Honor appeared and advocated in person on behalf of the government in the initial detention proceedings and at the plea and sentencing. A copy of the Criminal docket in the 1989 case is attached as Appendix C to this petition.

Under 28 U.S.C. 455(b)(1) and (b)(3), a presiding judge is required to disqualify himself from hearing a matter where "he has ... personal knowledge of disputed evidentiary facts concerning the proceeding" or where "he has served in governmental employment and in such capacity participated as counsel ... concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy."

On September 26, 2019, through appointed counsel, a Motion for Recusal was filed. A copy of the motion is attached as Appendix D to this petition.

On September 30, 2019, during a Status Conference Hearing before the Hon. Robert J. Conrad, Jr., his Honor refuse to recuse himself from my case. A copy of the transcript of Status conference hearing is attached as Appendix E to this petition.

On October 3, 2019, an emergency Motion to Stay District Court Proceedings was filed with the Fourth Circuit Court of Appeals due to the fact I was to start trial on October 7, 2019. A copy of the Motion to Stay is attached as Appendix F to this petition.

A day prior to the Motion to Stay was filed, a Petition For Writ of Mandamus was filed. A copy of the Petition is attached as Appendix G to this petition.

On October 4, 2019, the Motion to Stay was granted pending disposition for writ of Mandamus. A copy of the order is attached as Appendix H to this petition.

On April 9, 2020, the Appeals Court for the Fourth Circuit denied my petition. A copy of the opinion is attached as Appendix I to this petition.

On September 30, 2022, I again filed a Motion for Recusal, this time as Pro Se. The Court granted my request to proceed Pro Se on January 21, 2021. A copy of the Motion For Recusal is attached as Appendix J to this petition.

On October 13, 2022, at a Pretrial Conference hearing before the Hon. Robert J. Conrad, Jr. Judge

Conrad again refuse to recuse himself from the case. A Copy of Pretrial Conference transcript is attached as Appendix K to this petition.

On October 14, 2022, i Filed a Emergency Motion to Stay District Court Proceeding to the Court of Appeals For the Fourth Circuit. A copy is attached as Appendix L to this petition.

Also On October 14, 2022, i Filed the Second Petition For Writ of Mandamus to the Fourth Circuit Court of Appeals. A copy is attached as Appendix M to this Petition. Also the Courts unpublished opinion denying my Petition, decided December 15, 2022. A copy is attached as Appendix N to this petition.

On January 3, 2023, i Filed a Petition For Rehearing En banc to the Court of Appeals For the Fourth Circuit. A copy is attached as Appendix O to this petition.

On January 3, 2023, i was denied my petition for rehearing and rehearing en banc. A copy of the order is attached as Appendix P to this petition.

The United States Court of Appeals For the Fourth Circuit permitted Judge Conrad to continue presiding

Over my case on the grounds that, any "potential harm could arise only at sentencing, and then only if all the various contingencies materialize."

REASONS FOR GRANTING THE WRIT

A. Conflicts with Decisions of Other Courts

The holding of the Fourth Circuit Court of Appeals that *Mandamus* is not necessary in my situation is directly contrary to the holding of other circuits. See *In re School Asbestos Litigation*, 977 F.2d 794, 770 (3d Cir. 1992) (granting petition because judge disqualified under 455); *In re Aetna Cas. and Sur. Co.*, 919 F.2d 1136, 1146 (6th Cir. 1990); *In re Bulger*, 710 F.3d 42, 49 (1st Cir. 2013) (same); *Nichols v. Alley*, 71 F.3d 347, 350-52 (10th Cir. 2015) (same); *Matter of Hatcher*, 150 F.3d 631, 637-38 (7th Cir. 1998) (same); *In re Al-Nashiri*, 921 F.3d 224, 234-41 (D.C. Cir. 2019) (granting petition because judge disqualified under 455's analogue in Military Commissions' Rules);

B. Importance of the Question Presented

This case presents a fundamental question of this Court's decision in *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905, 1907 (2016). A former prosecutor could not, in accordance

with the lower due process disqualification standard, pass judgment on a case he personally prosecuted. The issue's importance is enhanced by the fact that the appeals court in this case have seriously misinterpreted Williams. This Court held in Williams that "the due process guarantee that 'no man can be the judge of his own case' would have little substance if it did not disqualify a former prosecutor from sitting in judgment of a prosecution in which he or she had made a critical decision."

Also the common sense understanding of 28 U.S.C. 455(b)(1) and (b)(3), a presiding judge is required to disqualify himself from hearing a matter where "he has ... personal knowledge of disputed evidentiary facts concerning the proceeding" or where "he has served in governmental employment and in such capacity participated as counsel ... concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." 455(d)(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation. The Appeals Court has also misinterpreted the 455 statute because the recusal statutes require complete recusal from a proceeding, making the judges partial recusal in my case improper. See *United States v. Feldman*, 983 F.2d 144 (9th Cir 1992)

Mandamus was the appropriate remedy in this case. See, e.g., *Corbell v. Norton*, 334 F.3d 1128, 1129 (D.C. Cir. 2003) (emphasizing that the unanimous view of the circuits is a writ of Mandamus compelling recusal of a judicial officer will issue where the party seeking the writ demonstrates a clear and indisputable right to relief); *In re Sch. Asbestos Litig.*, 977 F.2d 764, 777-78 (3d Cir. 1992) (holding that "interlocutory review of disqualification issues on petitions for mandamus is both necessary and appropriate to ensure that judges do not adjudicate cases that they have no statutory power to hear, and virtually every circuit has so held").

Thus the court of Appeals for the Fourth Circuit seriously misinterpreted Williams by failing to distinguish between a clearly disqualified judge and seriously misinterpreting 28 U.S.C. 455. The Court should correct these misinterpretations and make it clear their holding in Williams, that a former prosecutor could not, in accordance with the lower due process disqualification standard, pass judgment on a case he supervised years earlier and make clear the correct interpretation of partial and complete recusal under 28 U.S.C. 455(b)(1) and (b)(3).

"A district judge's refusal to disqualify himself can be reviewed in the Fourth Circuit by way of a

petition for writ of mandamus." In re Beard, 811 F.2d 818, 827 (4th Cir 1987). Jurisdiction to issue such a writ emanates from 28 U.S.C. 1651, which codifies the common-law writ of mandamus against a lower court." Cheney v. U.S. Dist. Court for Dist. of Columbia, 542 U.S. 367, 380 (2004). Although traditionally used "in aid of appellate jurisdiction," courts have not confined themselves to an arbitrary and technical definition of jurisdiction; rather, "invocation of this extraordinary remedy" is justified when there is "a clear abuse of discretion." (internal quotations and citations omitted).

A writ is justified if three circumstances are met: (1) the petitioner must demonstrate "that his right to issuance of the writ is clear and indisputable;" (2) the party seeking issuance must have no other adequate means to attain the relief he desires;" and (3) "the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. Id. at 380-81.

CONCLUSION:

For the foregoing reasons certiorari should be granted in this case.

Respectfully Submitted;

John Henry Moore Jr.

April 24, 2023