

22A1054

Supreme Court, U.S.
FILED
MAY - 9 2023
OFFICE OF THE CLERK

The United States Supreme Court

Edward McCain
Pro-Se,

v.

United States of America
Respondent,

Motion for Release Pending Appeal
Pursuant to 18 U.S.C. § 3146

To The Honorable Justice Sotomayor

MAY 7, 2023

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SUPREME COURT, U.S.

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Statement of In Forma Pauperis

Movant, now before this Court was granted leave in the Fourth Circuit Court of Appeals and in the District Court of South Carolina to proceed In Forma Pauperis.

Brief Introduction To Motion For Release Pending Appeal...

The Indigent Pro-Se Petitioner now before this Court requests to be Released Pending Appeal. The instant request is supported and substantiated by The Record and The United States Congresses Intent.

The Petitioner now moves this Court for release Pending Appeal after having had two previous requests denied. The first request was denied in the district Court after having been opposed by The United States Assistant District Attorney. (See 2:09-CR-00296-DCN)
The second request was thereafter denied by The Fourth Circuit Court of Appeals after having been unopposed by The United States Assistant District Attorney. (See 22-7466)

This Motion For Release Pending Appeal in Accordance with The Bail Reform Act, (18 U.S.C.S. §§ 3146) Raises Several Constitutional and Federal Questions. It also raises questions that are likely to be reviewed on a writ of Certiorari by The Full Supreme Court.

The Movant will show to this Court that if released he will not flee or pose a danger to other persons or the community if released.

Movant will present in the petition now before this Court that both compelling and extraordinary circumstances are present that necessarily warrant this Court's intervention.

Movant will show that the Fourth Circuit Court of Appeals committed an error of law by denying movant's motion for release pending appeal.

Movant also requests to be excused for not providing the necessary copies in accordance with the Court Rules. A group demonstration involving five individuals with knives have led to an institution wide lockdown and Movant does not have access to a copy machine.

Pending Before The District Court is A Habeas Corpus Petition that involves AN invalid guilty Plea, Claims of Ineffective Assistance of Counsel, AND AN Allegation of AN insufficient indictment.

MOVANT HAS RAISED QUESTIONS TO THE DISTRICT COURT THAT INCLUDES OVERT ACTS OF JUDICIAL LEGISLATION BY THE FOURTH CIRCUIT COURT OF APPEALS.

TO BEGIN, MOVANT PLED GUILTY IN 2009 TO A STATUTORY MANDATORY MINIMUM LIFE SENTENCE FOR 18 U.S.C. § 924(j). IN 2011, ON DIRECT APPEAL THE FOURTH CIRCUIT COURT OF APPEALS AFFIRMED THE DISTRICT COURT'S DECISION, EXPLICITLY STATING THAT BOTH LIFE SENTENCES WERE MANDATED BY STATUTE, INCLUDING THE LIFE SENTENCE IMPOSED UNDER 18 U.S.C.S. § 924(j). IN 2020, THE FOURTH CIRCUIT COURT OF APPEALS RULED THAT MY ARGUMENT IN CONCERT WITH U.S. V. DAVIS, WAS NEITHER HERE NOR THERE BECAUSE I WOULD HAVE RECEIVED A NON-MANDATORY LIFE SENTENCE. ANYWAY IN ACCORDANCE WITH 18 U.S.C. § 924(j).

THE FEDERAL AND CONSTITUTIONAL QUESTIONS THAT ARE PRESENT ARE AS FOLLOWS: ARE FEDERAL

Court of Appeals Judges Appointed by The President AND Confirmed by The Congress AND The Senate Allowed To make mandatory provisions of A Statute that The United States Congress did not intend To be Mandatory?

I have moved for an attorney several times but the Presiding Judge ruled that I did not need an attorney because the issues were not overly complex and that Congress did not allocate funds to help prisoners file and prepare 2255 motions, so I humbly ask this court to not hold me to the standards of a licensed attorney and liberally construe this pleading.

The United States Assistant District Attorney in its motion to Dismiss Movant's 2255, conceded that "neither the District Court nor the District Attorney correctly informed the Petitioner that Count Five (18 U.S.C. § 924(j)) carried an up to life sentence, instead Petitioner was incorrectly informed that Count Five carried a mandatory minimum life without parole sentence."

The MOVANT now Before This Honorable Court is The Only Juvenile in The History of The State of South Carolina To ever be sentenced To A federal Life without Parole Sentence. MOVANT'S attorney, The District Court, The Assistant United States District Attorney, And The Fourth Circuit Court of Appeals, all misinformed me As To The United States Congresses' Intent, Telling me That Congress had authorized and intended a Punishment that it clearly had not.

The wrongful conviction was secured through AN invalid guilty plea that was rendered invalid through The erroneous penalty provision. There is A strong likelihood That MOVANT'S conviction will be reversed on appeal As MOVANT'S 5th and 6th Amendment right to be fully informed and given fair notice under The Due Process of Law and The right to The effective assistance of Counsel were equally infringed upon. MOVANT'S attorney filed AN Ander's brief asserting only frivolous issues for appeal after he had advised Petitioner to enter into The Plea of guilt.

The Petition before The Court is neither frivolous or for The Purpose of Delay.

IN CARBO v. United States, 7 L.Ed. 2d. 769 (1962) MR. Justice Douglas pointed out That the Right To bail is AN important PART of The Federal CRIMINAL procedure AND is not denied merely because of The community's sentiment Against The Accused or because of AN evil Reputation, And that Bail Should be granted Pending Review where Appeal is neither frivolous or for delay."

PURSUANT To HUDSON v. PARKER, 156 U.S. 27 (1895), ANY Justice has The Authority To GRANT bail pending review of The writ of ERROR. IN ACCORDANCE With This Rule, This motion is intended To be Ruled on by Justice Sotomayor.

The Fourth Circuit denied Movant's Motion for Release Pending Review due To A C.O.A. not being Applied for And granted, but The CASE They cited clearly stated That A Timely filed notice of appeal is To be construed As A C.O.A.

See Jones v. BRAYTON, 392 F.3d 683, (4th Cir. 2000)
This is A clear error of LAW by The
Fourth Circuit Court of Appeal.

Petitioner Asks This Court To independently
Examine The bail Application AND The surrounding
Circumstances.

Petitioner will not flee As The law makes
clear that Juveniles CANNOT be Transferred, prosecuted
AND convicted of federal murder As The only Two
Available punishments ARE UNCONSTITUTIONAL. So There
is NO impetus for MOVANT To NOT appear in court.

Movant Also does not pose A danger To
The community AND or witnesses. Movant has complete
First Step Act Psychological Cognitive Skills courses
AND maintained long stretches of clear disciplinary
free conduct AND will continue To make strides
To effective rehabilitation.

Respectfully Submitted,

Edward McCain
MAY 7, 2022

- Foot-Note -

Again, The Government did NOT
oppose The Motion For Release Pending
Appeal that was denied by the
Fourth Circuit Court of Appeals.