ORIGINAL

CASE NO:

23-5848

IN THE

SUPREME COURT OF THE

UNITED STATES

In Re Naser Abdallah

PETITIONER

-V-

United States of America

RESPONDENT

PETITION FOR A WRIT OF PROHIBITION FROM THE FIFTH CIRCUIT COURT OF APPEALS, PURSUANT TO 28 U.S.C. SECTION 1651(a) AND SUPREME COURT Rule 22-3

NASER ABDALLAH

301 YUCCA STREET, SAN ANTONIO

TEXAS, 78203

QUESTION PRESENTED

WHETHER BY REASON OF AN ABUSE OF DISCRETION COMMITTED BY THE DISTRICT COURT, IN REFUSING TO GRANT RELIEF PURSUANT TO NASER ABDALLAH'S AGGRAVATED IDENTITY-THEFT CHARGE, A FURTHER ABUSE OF DISCRETION BY THE FIFTH CIRCUIT COURT OF APPEALS PURSUANT TO DUBIN V. UNITED STATES (CITATIONS OMITTED) FOR WHICH ONLY THE SUPREME COURT CAN REMEDY THIS EGREGIOUS SITUATION BY GRANTING THE WRIT OF PROHIBITION.

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WHY PETITIONER CANNOT RECEIVE ADEQUATE RELIEF FROM ANY OTHER COURT

Petitioner is not utilizing the Rule of Equitable prospective Application or the Writ of Prohibition, to attack a void judgment. Home v. Flora, 557 U.S. 433, 447, 129 S.Ct. 2379, 174 L.Ed.2d 406 (2009). Instead, he is moving this Honorable Court in addition to vacating the judgment in his case by reason of abuse of discretion by the Fifth Circuit Court of Appeals. The proceedings constitute a gross departure from the law of the land, which if rendered continued enforcement, is detrimental to the public interest "Id", (citing Rufo v. Inmates if Suffolk County Jail, 502 U.S. 367, 384, 112 S.Ct. 48, 116 L.Ed.2d 867 (1992).

Because of the gross, irregular error, manifest in petitioner's judicial proceedings, he seeks the extraordinary remedy, which the courts have often used in special circumstances to avoid a miscarriage of justice. See Henley v. Mun. Ct. 411 U.S. 345, 35, 36 L.Ed.2d 294, 93 S.Ct. 1571 (1973). Most of the discussion about the potential expansion of the grounds for the writ actually turns on how egregious the lower courts have sought to usurp judicial power, Prosecutorial misconduct and judicial usurpation of power ranks very high among the infirmities that undermine the principles of Anglo-American jurisprudence. Despite it being the only route to cure a lower court's abuse of discretion and usurpation of power, the writ is not an appeal by right, 268 U.SW. at 312.

For the above reasons, the Writ of Prohibition may not be a substitute for the writ of Certiorari. However, the application is made for the writ of prohibition primarily because Congress has bestowed the courts with brad remedial powers to grant relief." Boumediene v. Bush, 553 U.S. 723, 776, 128 S.Ct. 1119, 171 L.Ed.2d 21 (2008). It is uncontroversial...that this privilege entitles petitioner to a meaningful opportunity that he deserves relief and is being held pursuant to "the erroneous application and interpretation of the law. Id. at 779, quoting INS v. St. Cyr, 553 U.S. 289, 302, 121 S.Ct. 2271, 150.

Statement of Jurisdiction

The Supreme Court of the United States has original jurisdiction over these categories of cases. Firstly, the Supreme Court can exercise original jurisdiction over "actions proceedings to which ambassadors, other public ministers, consuls, or vice-consuls of foreign states are parties. "See, Maryland v. Louisiana, 451 U.S. 725, 737 (1981). Second, the Supreme Court also possesses original jurisdiction for "(all) controversies between the United States and a State. "28 U.S.C. Section 1251(b)(2). Finally, Section 1251 provides for original jurisdiction in the Supreme Court, for "all actions or proceedings by a state against the citizens of another state or against aliens." See, e.g., Oregon v. Mitchell, 409 U.S. 112 (1970); United States v. Louisiana, 339 U.S. 699 (1951), United States v. California, 332 U.S. 19 (1947).

The statute defining the Supreme Court's jurisdiction between "appeal" and "certiorari" vehicles for appellate review of e decisions of state and lower courts. Where the statute provides for "appeal" to the Supreme Court, the Court is obligated to take, and devise the case when appellate review is requested. Where the statute provides for review by "writ of certiorari" the Court has complete discretion to hear the matter.

The Court takes the case if there are four votes to grant certiorari. Effective September 25, 1988, the distinction between appeal and certiorari as a vehicle for Supreme Court review was virtually eliminated. Now almost all cases come to the Supreme Court by writ of certiorari. Pub. L. NO. 100-352, 102 Stat. 662 (19880.

CONSTITUTIONAL AND STATUTORY PROVISIONS

In conducting harmless error analysis of constitutional violations, including direct appeals as especially habeas generally, the Supreme Court has repeatedly reaffirmed that "(some constitutional violations...by their very nature case so much doubt on the fairness of the trial process that, as a matter of law, they cannot be considered harmless. Sefferwhite v. Texas, 486 U.S., 249, 256 (1988); accord Neder v. United States, 527 U.S. 1, 7 (1999)("We have recognized a limited class of fundamental constitutional errors that defy analysis by"{Harmless Error" standards...errors of this type are so intrinsically harmful as to require automatic reversal, i.e. (affect substantial rights) without regard to their effect on the outcome." Sullivan v. Louisiana, 508 U.S. 275, 279 (1993) "Although most constitutional errors have been held to harmless error analysis, some will always invalidate the conviction" (citations omitted) Id. at 183 (Rehnquist, C.J. concurring); United States v. Olano, 507 U.S., 725, 735, (1993); Rose v. Clark, 478 U.S. 570, 577-78 (1986)("some constitutional errors require reversal without regard to the evidence in the particular case...because they render a trial fundamentally unfair,"); Vasquez v. Hillery, 474 U.S. 254, 283-264 (1986); Chapman v. California, 386 18, 23 (1967)(there are some constitutional rights so basic to a fair trial, that their infraction can never be treated as harmless error).

JUDICIAL NOTICE/STATEMENT OF ADJUDICATIVE FACTS PURSUANT TO RULE 201 OF THE FEDERAL RULES OF EVIDENCE.

The right to effective assistance of counsel. See Kyles v. Whitley, 514 U.S, at 435, 436; United States v. Cronic, 466 U.S. 648, 654-57 (1984); Hill v. Lockhart, 28 832, 839 (8th Cir. 1994)("It is unnecessary to add a separate layer of harmless-error analysis to bar evaluation of whether a petitioner has presented a constitutionally significant claim for ineffective assistance of counsel.).

LAW RELATED TO STRUCTURAL ERROR OR MANIPULATION OF EVIDENCE.

Included in the right guaranteed by the Constitution, is the protection against prosecutorial misconduct or manipulation of exculpatory evidence, and other prosecutorial and judicial failures that amount to fraud upon the court. Failure to make available to defendant's counsel, information that could well lead to the assertion of an affirmative defense is material, when "materiality" is defined as at least a "reasonable probability" that had the evidence been disclosed, the result of the judicial proceedings

would have been different. Kyles v. Whitney, 514 U.S, at 535 (quoting United States v. Bagley, 473 U.S. 667, 6821 (985) (plurality opinion), Id at 6785 *(White J. concurring in judgment).

In addition to Bagley, which addresses claims of prosecutorial suppression of evidence, the decisions listed below all arising from what might be loosely called the area of constitutionally guaranteed access of evidence, "Arizona v. Youngblood, 488 U.S. 51, 55 (1988)(quoting United States v. Valenzuela-Bernal, 458 U.S. 867 (1982) or require proof of "materiality" or prejudice.

The standard of review adopted in each case is not at all clear, but if the standard requires at least "reasonable probability of a different outcome", its satisfaction also automatically satisfies Bretch harmless error rule. See e.g., Arizona v. Youngblood, supra at 55 (recognizing due process violation based on state agency's refusal to turn over material of social services records, "information is material" if it "probably would have changed the outcome of the trial, "citing United States v. Bagley, supra at 685 (White J. concurring in judgment). Ake v. Oklahoma, 470 U.S. 83 (1985)(denial of access by indigent defendant to expert psychiatrist violates Due Process Clause when defendant's mental condition is "significant factor" at guilt-innocence or capital sentencing phase of trial), California v. Trombletta, 467 U.S. 479, 489-90)(destruction of blood samples might violate Due Process Clause, if there was more than slim chance that evidence would affect outcome and there were no alternative means of getting relief.

STATEMENT OF THE CASE

Naser Abdallah pleaded guilty to one count of acquiring a controlled substance by deception and one count of aggravated identity theft, and in December/15/ 2022, the district court sentenced him to concurrent sentences of 9 months and 24 months of imprisonment respectively. In April 2023, Abdallah filed a petition of mandamus to the Fifth Circuit Court of Appeals, challenging the validity of the convictions and the jurisdiction of the district court. Abdallah argued that his case mirrors DUBIN V. United States, S.Ct. 2023 WL 3872518 (U.S. 6/8/2023, in which the Supreme Court held that the "use" of another person's identification, "in relation to a predicate offense for the purposes of the aggravated identity theft statute must go to the heart of the criminal conduct. According to Abdallah, his actions do not qualify, because he merely obtained anonymous identification numbers in order to fill prescriptions and satisfy his drug addiction. Abdallah contends that the aggravated identity status is unconstitutionally vague, and that his plea was rendered invalid, because he was misinformed about the elements of the offense. He further argued that he was unable to pursue his claims on appeal because the defense failed to subject the government's case to strict adversarial testing.

REASONS FOR GRANTING

As a threshold matter, petitioner Naser Abdallah avers that the Writ of prohibition which he is applying for, is an extraordinary Writ under the All Writs Act, 28 U.S.C. Section 1651(a) which in pertinent part states that..."all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions, and agreeable to the usages and principles of law." Speaking within the context of the writ of prohibition or mandamus, the Supreme Court in Ex Parte Republic of Peru (1943) 318 U.S. 578, 87 L.Ed 1014, 63 S.Ct,. 793, emphasized that the writ, in so far as its purpose is to exert the supervisory power of appellate courts over inferior courts, affords an expeditious and effective means of compelling a lower court to exercise its inherent authority, when it is its duty to do so. See, also Roche v. Evaporated Milk Assoc. 319 U.S. 21, 26, 87 L.Ed 1185. Abdallah's judicial proceedings implicates an abuse of discretion by the district court.

Petitioner Abdallah is asking leave of the Supreme Court to exercise its appellate jurisdiction both at common law and in the federal courts i.e., for the Court of Appeals for the Fifth Circuit and the district Court in San Antonio, to confine them to a lawful exercise of their prescribed jurisdiction for which only the Supreme Court of the United States can so decree. Thus, there is no other means for Abdallah to seek relief, except through this extraordinary writ of prohibition.

Abdallah is not utilizing the Rule of Equitable Prospective Application or Application for the Writ of prohibition to only attack a judgment. Horne v. Flora, 557 U.S. 433, 447, 129 S.Ct, 2579, 174 L.Ed.2d 406 (2009). Instead, he is moving the Honorable Court in addition to vacating his judgment in this case by reason of abuse of discretion and the gross departure from the law of the land, which if rendered continued enforcement, is detrimental to the public interest. "Id". (Citing Rufo v. Inmates of Suffolk County Jail, 502 U.S, 367, 384, 112 S.Ct,. 748, 116 L.Ed.2 867 (1992).

Whether the cumulative effects of errors committed by public defenders David Kimmelman and Jennifer Nisbet. Errors that include failure to hire a private investigator to investigate the facts of the case, including the law enforcement officers involved in Abdallah's case, if they have a history of breaking the law during their investigations. When reviewing counsel(s) performance, "the issue is not what is possible or "what is prudent or appropriate, but only what is constitutionally compelled. "Chandler v. United states, 218 F.3d 1305, 131 (11th Cir. 2000) (en banc) (quoting Burger v. Kemp, 483 U.S. 776 (1987), cert. denied 531 U.S. 1204 (2001).

Failure of Counsel Nesbit to file for a dismissal on all charges, following the defective indictment, and filing a Notice of Appeal after sentencing in the district court constitutes ineffective assistance of counsel.

CONCLUSION

The issue of the issuance of a writ of prohibition is well settled. It is patently clear from two Supreme Court cases in Dairy Queen Inc. v. Wood, 469 U.S. L.Ed.2d 44, 825 S.Ct,. 894 (1962), and Beacon Theaters v. Wood, 359 U.S, L.Ed.2d 988, 79 S.Ct. 948 (1959) support the use of the writ of prohibition to correct an abuse of discretion by the lower courts, especially the district court. Peersonette v. Kennedy, and in re Midgard Corp, 204 B.R, 764, 768 (10th Cir. 1997).

In the case at bar, if the lower courts displayed a persistent disregard of the criminal and civil rules of procedure. "Moothart v. Bell, 21 F.3d 499, 1504 (10th Cir, 1994)(quoting McEwan v. City of Norman, 926 F.2d 1539, 1553-54 (10th Cir., 1991); Jennings v. Rivers, 394 F.3d 850, 854 (10th Cir. 2008)(appellate review of trial court's decision on post-judgment set side voluntary dismissal with prejudice, if it was not "free, calculated and deliberate choice"); Hackett v. Barnhart, 475 F.3d 1166, 1172 (10th Cir. 2010)(quoting Kiowas Indian Tribe of Oklahoma v,. Hoover, 150 F.3d 1163, 1165 (10th Cir. 1998), In re Graves, 609 F.3 1153, 1156 (10th Cir. 2010); See, Braunstein v. McCabe, 571 F.3d 108, 120 (1st Cir. 2009) (giving courts broad discretion in preventing a miscarriage of justice or unfairness).

In conducting harmless error analysis of constitutional violations, such as petitioner alleges, the Supreme Court has repeatedly reaffirmed that "(s)ome constitutional violations, by their nature, cast so much doubt on the fairness of the trial process that, as a matter of law, can never be considered harmless. Safferwhite v. Texas, 486 U.S. 249, 256 (1988), accord Neder. United States, 527 U.S. 1, 7 (1999) ("{W)e have recognized a limited class of fundamental constitutional rights that defy "harmless error" analysis. Errors of this type are intrinsically harmful as to require automatic reversal (i.e., "affect substantial rights") without regard to their effect on the outcome.")

DATE: OCTOBER /4/2023

NASER ABDALLAH