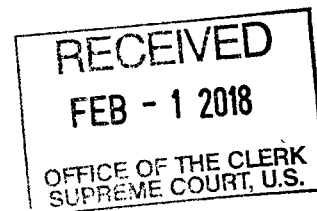


No. 17-6896

IN THE
SUPREME COURT OF THE UNITED STATES



TORRANCE BUNCH,

Petitioner,

VS.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR REHEARING

TORRANCE BUNCH

Reg. No. 41332-177

1000 Airbase Road

Pollock, Louisiana 71467

Petitioner *pro se*

PETITION FOR REHEARING
(Sup. Ct. R. 44. 2)

Appellant presents its petition for a rehearing of the above-entitled cause, and, in support of it respectfully shows:

Grounds for Rehearing

A rehearing of the decision in the matter is in the interests of justice because:
This Petition for Rehearing raises substantial grounds not previously presented.

I. Whether the District Court Violated Petitioner's Fifth Amendment
Due Process Right to Counsel of Choice.

II. Whether the Eighth Circuit Court of Appeals Erred in Not
Granting Petitioner a Certificate of Appealability.

1. On January 8, 2018, this Court denied the petition for writ of certiorari.
2. The principal ground raised in the petition was based on a Sixth Amendment violation; however, this Court did not give an opinion on the merits of this claim.

3. Petitioner maintains that, imposing counsel upon a defendant or forcing him to precede *pro se* against his will, and arbitrarily forbidding him from retaining a particular attorney unnecessarily obstructs his ability to enter a private contractual arrangement for representation and deprives him of his constitutional right to due process of law.
4. Simply put, the district court (1) was required to "recognize a presumption in favor of petitioner's counsel of choice," and (2) was required to evaluate whether "the facts and circumstances" of this particular case evinced a conflict so serious as to be unwaivable. *United States v. Wheat*, 486 U.S. 153, 160, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988).
5. Because "a possible conflict inheres in almost every instance of multiple representation," *Cuyler v. Sullivan*, 446 U.S. 335, 348, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980), this Court has said that only a *serious* potential conflict will justify overriding the defendant's choice of counsel, *Wheat*, 486 U.S. at 164, 108 S. Ct. 1962.
6. This case required an inquiry into the likelihood that the *potential* conflict would mature into an actual conflict and the degree to which it threatened the right to effective assistance of counsel.

7. Accordingly, before disqualifying counsel based on a *potential* conflict, the district court *must* evaluate (1) the likelihood that the conflict will actually occur, (2) the severity of the threat to counsel's effectiveness; and (3) whether there are alternative measures available other than disqualification that would protect the defendant's right to effective counsel while respecting his counsel of choice.
8. The district court, over defendant's objections, disqualified defense counsel, after defense counsel moved to withdraw as counsel over "an appearance of conflict."
9. In other words, the district court outweighed petitioner's interest in being represented by counsel of choice, by defense counsel's interest in not "appearing" to have a conflict.
10. As such, the district court's disqualification order was premised on a mistake of law and violated Bunch's Fifth Amendment due process right to counsel of choice.
11. This case contains a factual distinction from *Wheat* and its progeny. Whereas, in this case, defense counsel moved for disqualification based on the "appearance" of conflict.
12. As the record reflects, this case does not involve the same degree of conflicted representation that exists where the attorney has actually represented the co-

defendant or witness *and* acquired confidential information that could be used on behalf of the client he currently represents.

13. Here, defense counsel had not made the case that the *potential* conflict can only be reasonably avoided by his own disqualification.

14. A rehearing tightly and squarely focused on the distinction between defense counsel moving for disqualification as opposed to an adverse party moving for disqualification and whether this distinction merits a different rule of law, is a matter of fundamental fairness to petitioner and would not unduly burden the Court.

15. To obtain a Certificate of Appealability, a petitioner must make a substantial showing of a denial of a constitutional right. §2253(c)(2).

16. Petitioner raised a Sixth Amendment issue, claiming the district court erroneously disqualified his counsel of choice. This erroneous disqualification is plain and obvious from the record.

17. Petitioner maintains that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d

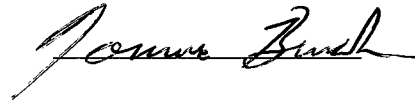
542 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983)); *see also*, *Buck v. Davis*, 137 S. Ct. 759, 773, 197 L. Ed. 2d 1 (2017).

Conclusion

For the reasons just stated, Torrance Bunch urges that this petition for a rehearing be granted, and that, on further consideration, the Petition for Certiorari be granted or the judgment of the lower court be reversed or as appropriate.

Date: 1-24-18

Respectfully submitted,



TORRANCE BUNCH
Reg. No. 41332-177
1000 Airbase Road
Pollock, Louisiana 71467
Petitioner *pro se*