

NO. _____ - _____

IN THE SUPREME COURT OF THE UNITED STATES

ALEX RODGER, III,
PETITIONER,

V.

UNITED STATES OF AMERICA,
RESPONDENT.

ON PETITIONER FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURTS OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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PREFACE TO THE WRIT

Alex Rodger, III, hereby petitions the Supreme Court of the United States for writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case No. 17-10083-G on May 23, 2017 in the matter of Alex Rodger, III v. United States. See ATTACHMENT A. In the judgment the Eleventh Circuit DENIED Petitioner's Application for Certificate of Appealability (COA) of the District Court's judgment that Petitioner's 28 U.S.C. § 2255 motion.

Thus, if the Supreme Court GRANT certiorari for the reasons briefly discussed below, Petitioner specifically request that this Court exercise its supervisory powers to direct the Eleventh Circuit Court of Appeals to GRANT Petitioner's COA for the limited purposes as stated in the two questions presented herein above.

QUESTIONS PRESENTED

Question 1: Did the Eleventh Circuit Court of Appeals improperly deny the Certificate of Appealability (COA) pertaining to the District Court's denial of Petitioner's 28 U.S.C. § 2255 motion when the Eleventh Circuit did not grant a COA limited to the questions of whether the District Court erred by not granting evidentiary hearings on (1) Petitioner's Brady/Giglio constitutional claims; and (2) on Petitioner's claim that Standby Counsel deliberately infringed on Petitioner's Sixth Amendment pro se right to prepare and present his own case at trial because Standby Counsel was burdened with a personal conflict of interest stemming from his long term loyalty and professional relationship with the female prosecutor assigned to Petitioner's criminal case.

Question 2: Did the Eleventh Circuit Court of Appeals improperly deny the Certificated of Appealability (COA) on the question of whether Petitioner was denied due process on direct appeal when the Eleventh Circuit clearly erred in how it adversely decided one of Petitioner's constitutional claims that current federal law precluded the District Court from later reviewing in Petitioner's 28 U.S.C § 2255 motion.

LIST OF PARTIES

All parties appear in the caption of the case on the cover.

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STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the Court of Appeals was entered on May 23, 2017. See Attachment A. On June 8, 2017 Petitioner filed a motion to reconsider its ORDER. The motion for reconsideration was denied on July 17, 2017. On October 16, 2017, Justice Thomas extended the time within which to file this petition for writ of certiorari to and including December 14, 2017. This petition is timely filed pursuant to SUP. CT. R. 13.1. The District Court in the Southern District of Georgia had jurisdiction over the federal criminal/civil case pursuant to 18 U.S.C. § 3231

FEDERAL CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional provisions:

The Fifth Amendment to the United States Constitution provides in relevant part:

"No person shall...be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment to the United States Constitution provides in Relevant part:

"In all criminal prosecution, the accused shall enjoy the right to... be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor..."

STATEMENT OF PRIOR PROCEEDINGS IN FEDERAL COURTS

On April 9, 2009, a federal grand jury sitting in the Southern District of Georgia indicted Petitioner on two counts: Armed robbery of a federally insured bank, in violation of 18 U.S.C. § 2113(a) & (d) (COUNT ONE), and carrying, using, and brandishing a firearm during and in relation to the armed bank robbery, in violation of 18 U.S.C. § 924(c) (COUNT TWO). (Crim. Doc. 1). Following the indictment and arraignment, the District Court granted

Petitioner's oral motion to waive his right to counsel and proceed pro se. (Crim. Docs. 9, 11). The Court also appointed a CJA Standby counsel. Id.

After a three day trial ended on August 18, 2010, the jury found Petitioner guilty of violating both Counts 1 and 2. On January 7, 2011, Petitioner was sentenced to 300 months of confinement in a federal prison on the bank robbery conviction and was sentenced to a life of confinement in a federal prison on the firearm conviction, to be served consecutive to the bank robbery conviction. (Crim. Doc. 218).

On January, 11, 2011, Petitioner filed motions with the District Court for leave to appeal in forma pauperis and to proceed pro se on appeal. (Crim. Docs. 220, 222). The District Court GRANTED the motions on June 22, 2011. (Crim. Doc. 239 at 13-14).

On March 12, 2012, the Eleventh Circuit, sua sponte, appointed a CJA appellate attorney against the OBJECTIONS of Petitioner. On Aprils 20, 2012, the Eleventh Circuit DENIED Petitioner's motion for reconsideration, which included Petitioner's objection to appointment of counsel. However, the Eleventh Circuit did allow Petitioner to file his own appellate briefs so that the Court will have both his attorney's brief for Petitioner, and have Petitioner's brief. See the Eleventh Circuit ORDER dated March 12, 2012 in case No. 11-10170-FF.

On June 6, 2013, the Eleventh Circuit Court of Appeals affirmed Petitioner's criminal convictions in the District Court for the Southern District of Georgia. The opinion of the Eleventh Circuit Court of Appeals in Petitioner's direct appeal is unpublished and is cited in United States v. Rodger, III, 521 Fed. Appx. 824 (11th Cir. 2013). Petitioner filed a petition for rehearing in the appeal and was denied on September 16, 2013.

On February 10, 2014, Petitioner filed a timely petition for writ of certiorari with the United States Supreme Court. The petition was DENIED on March 24, 2014. Thus pursuant to the one year statute of limitation as contained in 28 U.S.C. § 2255, Petitioner filed a timely § 2255 motion with the District Court for the Southern District of Georgia on March 19, 2015. (Civ. Doc.1). On November 7, 2016, the District Court adopted the Magistrate Judge's Report and Recommendation (R&R). (Civ. Doc. 29) and **DENIED without an evidentiary hearing Petitioner's motion filed pursuant to 28 U.S.C. § 2255.** See (Civ. Doc. 39). The ORDER denying the motion and entering JUDGMENT were entered by the District Court on November 7, 2016. (Civ Doc. 39).

On February 8, 2017, Petitioner filed with the Eleventh Circuit Court of Appeals an Application for a Certificate of Appealability (COA) for leave to appeal the DENIAL of his 28 U.S.C. § 2255 motion pursuant to 28 U.S.C. §2255 (a)&(c)(1)(B). On May 23, 2017, the Eleventh Circuit DENIED Petitioner's application for a COA and DENIED his motion to proceed in forma pauperis as moot. See Attachment A. On June 8, 2017, Petitioner filed a motion to reconsider and/or modify the Court's ORDER pertaining to the COA. On July 17, 2017, the Eleventh Circuit DENIED Petitioner's motion for reconsideration. See Attachment B.

REASONS FOR GRANTING THIS WRIT OF CERTIORARI

Contrary to the Eleventh Circuit Court of Appeals ORDER that DENIED Petitioner's COA, Petitioner did demonstrate a substantial showing in the COA of a denial of his constitutional right to a fair trial. Said particular showing was made in the COA by Rodger making a substantial showing that he was denied his constitutional rights under Brady v. Maryland, 373 U.S. 83, 10 L.ED 2d 215, 83 S.Ct 1194 and Giglio v. United States, 405 U.S. 150, 31 L.Ed 2d 104

92 S. Ct 763. In support of the above stated constitutional claims, 3 FBI documents-that were received by Petitioner via FOIA-were appended to the COA as Exhibits A2, C1-1, and C1-2. Said FBI documents are attached this writ of certiorari as said exhibits. Also attached are ~~exhibits D-1, 2, D-2, and D-3~~ which is Petitioner's detailed interpretation of the FBI documents that was also attached to the COA.

The FBI documents could've been used by Petitioner to expose false testimony that was introduced in the Government's case by the Prosecution. Petitioner has consistently claimed in his pleading throughout the \$ 2255 proceedings in the District Court that the teller, who was robbed-had falsely testified about the actual dollar amount that she had given to the robber, which she stated was "a little over \$6300." The FBI documents together show that \$12,604 was taken by the robber. The significance of these facts-if Petitioner's interpretation of the FBI documents is correct-established the first prong of a Brady/Giglio claim: "that the prosecution knowingly used perjured testimony or failed to correct what she subsequently learned was false testimony." **In short, according to the Eleventh Circuit Order in Attachment A, the Eleventh Circuit DENIED Petitioner motion to reconsider pertaining to the COA because Petitioner offered no new evidence or arguments of merit to warrant relief.** In this regard the Eleventh Circuit clearly DENIED Petitioner's COA on the Brady/Giglio claim because the Court agreed with the Magistrate's denial of the first prong, but rejected assessment of the Brady/Giglio 2nd prong because Petitioner thoroughly demonstrated that the Magistrate incorrectly applied the law to the 2nd prong (the prejudice prong). Also thoroughly demonstrated in COA is the indirect support from the Eleventh Circuit on the Brady/Giglio claim. In this regard see Attachments XIV and XV. While Petitioner contends that

the Eleventh Circuit's interpretation of Kline's (the bank manager) testimony is factually incorrect, the Court's interpretation implicitly states that the Teller, who was robbed, gave false testimony in light of the fact that the record clearly shows that the teller testified that "she gave the robber a little over \$6,300 during the robbery." The Court's interpretation of Kline's testimony clearly and mathematically demonstrates-in light of the record-that \$12,604 was stolen by the robber during the robbery instead of \$6,300.

In concluding this discussion on the Brady/Giglio claims, since the Eleventh Circuit accepted the Magistrate's interpretation of the FBI documents that this Petitioner strongly disputes with his initial interpretation, Petitioner should have been provided with an evidentiary hearing on his Brady/Giglio claims. Therefore, since the Magistrate incorrectly applied the law to the Brady/Giglio prejudice prong (the 2nd prong), **the record does not conclusively show that Petitioner is entitled to no relief. See 28 U.S.C. § 2255(b). In brief, Petitioner is entitled to an evidentiary to hearing(s) per Supreme Court precedent as stated in Harris v. Nelson, 394 U.S. 286, 291, 292, 300 (1969).** An evidentiary hearing would fairly allow Petitioner an opportunity to develop the evidence needed to support in necessary detail the facts alleged in his Brady, Giglio constitutional claims. The same can be said for the need of an evidentiary on Petitioner's Sixth Amendment constitutional claim, which is the second part of the 1st question presented to this court.

With regard to the second part in the first question, Petitioner will simply say that he is entitled to an evidentiary hearing ~~proton~~ ~~prove~~ ~~again~~ necessary detail that

"Standby Counsel in Petitioner's criminal case in the District Court had deliberately and materially compromised Petitioner's Sixth Amendment right to Self representation (pro se) by infringing on

on Petitioner's Sixth Amendment right to prepare for trial and present **his** OWN defense at trial. And that Standby Counsel did so in Petitioner's criminal case because of his loyalty to the female prosecutor, who is also the Respondent for the government in this Civil case; and said loyalty, an inherent component of fidelity (the personal conflict of interest), was cemented in their close, personal, friendship, and in their professional relationship as State of Georgia Prosecutors, that all began several years ago."

In concluding this second part in the first question, this question may be an issue of first impression which the Supreme Court should address inasmuch as the Supreme Court was not afforded an opportunity in Mickens v. Taylor, 535 US 162, 152 L Ed 2d 219, 122 S CT 1237, to address a unique case, such as Petitioner's, where a defendant is representing himself throughout the criminal proceedings with an appointed Standby Counsel who was a prosecutor with the State of Georgia, and who was trained by the female prosecutor who happens to now be the federal prosecutor assigned to prosecute Petitioner's federal criminal case.

With regard to the 2nd question presented to the Supreme Court, Petitioner was denied his Sixth Amendment right to compulsory process by the District Court to require the bank manager, Sharon Kline, to bring to trial the proof work of the teller who was robbed. See the last paragraph in an excerpt of the Eleventh Circuit's opinion in United States v. Rodger, III (Attachments XIV and XV). Instead of the Eleventh Circuit properly concluding that the District Court erred by not requiring Kline to bring to trial the proof work, The Eleventh Circuit goes on to misstate Kline's testimony and then state in its opinion that **"the District Court did not abuse its discretion in denying Rodger's (Petitioner) request."** See Sharon Kline's trial testimony in Attachments XII and XIII.

In Petitioner's § 2255 motion, Petitioner raised a due process claim because the Eleventh Circuit clearly misstated Kline's trial testimony

to decide Petitioner's Sixth Amendment Compulsory Process issue in his direct appeal. In turn the Magistrate goes on to say in the R&R that

"This Court has no authority to review Eleventh Circuit decisions and overturn them. Eleventh Circuit Precedent "clearly forecloses a habeas court from granting collateral relief on a matter raised on direct appeal." Gilbert v. United States, 640 F.3d 1293, 1331 (11th Cir. 2011).

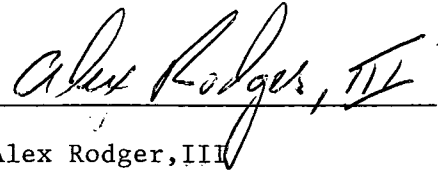
(Civ. Doc. 29 at 45)

In concluding this 2nd question, it must be said by this Petitioner that it is categorically unfair to this Petitioner that the Eleventh Circuit Court of Appeals made a serious misstatement as it did in Petitioner's direct appeal and thus, leaving Petitioner with no legal recourse to right the Fifth and Sixth Amendment wrongs made to him by the lower Courts. This statement is particularly so since the Supreme Court's review of lower ~~Courts~~ decisions is discretionary, which is why Petitioner prays that this Court grant this Writ of Certiorari and remand this case to the Eleventh Circuit with instructions to grant the COA on Petitioner's Due Process Constitutional Claim.

IN CONCLUDING the discussion above Petitioner has demonstrated in his COA that jurists of reason "could" disagree with the District Court's resolution of his Brady, Giglio, and conflict of interest, constitutional claims or that **jurist could conclude that said constitutional claims presented are adequate to deserve encouragement to proceed further.**" Slack v. McDaniel, 529 US 573, 484, 146 L.Ed 2d 542, 120 S Ct. 1595 (2000) (quoting Barefoot v. Estelle, 463 US 880, 893 n.4, 103 S Ct. 3383, 77 L.Ed 2d 1090 (1983)(some internal quotation marks omitted).

This Petition for writ of certiorari is hereby filed with the Court on this 14th day of December 2017 by mailing said certiorari via Coleman-1 prison mailbox.

Respectfully By

A handwritten signature in cursive script that reads "Alex Rodger, III". The signature is written in dark ink and is positioned above a horizontal line.

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