No. ______________________

____

IN THE

SUPREME COURT OF THE UNITED STATES

____

CARL ALBERT COURTRIGHT III PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Carl Albert Courtright III, #07860-025
(Your Name)

USP Tucson, P.O.Box 24550
(Address)

Tucson, AZ 85734-4550
(City, State, Zip Code)

(520)663-5000 exts. 5314,5316,5311
(Phone Number)

QUESTION(S) PRESENTED

1) Is it an abuse of discretion to hold a pro se, indigent litigant "hostage", and deny legitimate and meritorious claims against illegal monetary sentences, until such a in forma pauperis litigant pays a $500 ransom?

2) Is it a First Amendment Violation of a denial of access to the courts when the United States Court of Appeals ORDERS all the clerks of court for all courts in the Seventh Circuit to return any and all motions that are in attack of a criminal conviction which the Petitioner is currently suffering a LIFE Term of imprisonment for?

3) When this Honorable Court entered its ruling in Johnson v. United States, 135 S.Ct. 2551, where it clearly defined what "characteristics" render any statute 'void-for-vaguness', and the instant Petitioner enters a Motion (28 U.S.C. § 2244), to challenge his sentencing statute as void, and the USCA7 merely claims that because the Petitioner is not sentenced under the ACCA, that Johnson, is not applicable to the instant Petitioner without explaination as to why such a 'void-for-vaguness' argument is unavailable to the Petitioner, and then enters a Sanction against the Petitioner when he submitts follow-up motions to explain/discover why he can't use Johnson's vaguness ruling, other than a dogmatic "you are not under ACCA", is this the purpose of the Sanction authority of the USCA7, or is it an Abuse of Discretion to enter such a Sanction under said circumstances?

4) Are the courts of the Seventh Circuit acting in/with an

apparent bias/prejudice against the instant Petitioner and/ or other similiarily situated due to the nature of the crime(s) which were charged against the Petitioner, or because the Petitioner chose trial and plead innocent instead of a plea ofguilty?

5) Is the USCA7, guilty of an Abuse of Discretion, when it refused to hear the Direct Appeal of the District Court's Denial of Audita Querela until the Petitioner pays a $500 Sanction which was filed by the USCA7 against the Petitioner?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

TABLE OF CONTENTS

INDEX TO APPENDICES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[xx] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______________________ court appears at Appendix ______ to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 11, 2018.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ____________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ____________ (date) on ____________ (date) in Application No. ___A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was ____________. A copy of that decision appears at Appendix ______.

[ ] A timely petition for rehearing was thereafter denied on the following date: ____________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ____________ (date) on ____________ (date) in Application No. ___A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment-- Right to Access to Courts

28 U.S.C. § 1651-- Audita Quetela-- Federal Prisoner's Attack on Monetary Sentences when counsel is ineffective for failing to challenge at sentence/appeal

STATEMENT OF THE CASE

On July 17, 2009, the instant Petitioner was sentenced to Restitution of $3,100 and Forfeiture of $3,100, allegedly pursuant to a Guilty Verdict on Count 5, (Bank Fraud). According to the actual evidence presented at trial, the results of the Pre-Sentence Investigation, and the testimony of the Bank Teller and Security Officer, the Regions Bank® NEVER actually deposited the 4 checks that were charged in the indictment, nor did Regions Bank® surrender any funds as a result of the 4 checks (totalling $3,100), which were reported to have been presented to the bank.

Because there is no "ill-gotten gains", the Petitioner did not gain $3,100 which would be subject to forfeiture. Because the Bank's own witnesses testified that no funds were released from the bank as a result of these charged insturments, the Bank did not suffer a loss of $3,100 as a result of this offense. Wherefore, there is nothing to restitute. Any sentence of Forfeiture and/or Restitution, as a result of this Bank Fraud Count is in violation of all known statutes, rules, procedures, etc... of the United States of America, thereby rendering any such sentence illegal.

The Petitioner's attorney filed a timely Direct Appeal on the case. Appellate Attorney was blatantly ineffective for his non-strategical decision to <u>not</u> challenge these illegal sentences on Direct Appeal.

The Petitioner filed a timely Habeas pursuant to § 2255. In his motion, he clearly claimed IAC for his attornies failure to challenge the Forfeiture/Restitution sentences.

The United States District Court for the Southern District of Illinois denied this claim on the grounds that monetary sentences are not cognizable under any habeas filing as such grounds do not affect the "body", as in liberty interests of freedom or time in prison.

The Petitioner, through luck, discovered a little used writ called Audita Querela. Said writ is given power under the "All Writs Act" (28 U.S.C. § 1651). The Petitioner further discovered that such a writ can be used to "plug a gap" in the Federal post-conviction systems.

When an attorney(s) are ineffective for failing to challenge at trial, or on appeal, challenges that are only cognizable at such times, a Defendant can "normally" raise such IAC claims on habeas action. However the definition of habeas prevents such a filing on monetary sentences, IAC or otherwise. There in lies a "gaping hole" in the post-conviction system. If an illegal sentence is adjudicated, although such sentence is monetary, a defendant, under the fairness standard, must be able to challenge this illegal sentence, even if it is monetary, when appointed counsels act as IAC for failing to make the challenges earlier. Audita Quelera can "fill the gap" in such a circumstance.

The District Court denied the Petitioner's Audita Quelera, but did not address the source of proof as needed to order any sentence of Restitution or Forfeiture. The Petitioner filed a timely Notice of Appeal. The USCA7 refused to hear the appeal and the Clerk of Court returned the Appeal as "unfiled".

The "unfiled" status is the result of a Sanction that was entered against the pro se indigent prisoner by the USCA7, and on January 11, 2018, the USCA7 DENIED the Petitioner motion to remove the sanction, (the subject of this Certorari).

The Sanction was ORDERED on July 18, 2016. The ORDER does NOT have any expiration, nor does it address how to have such a Sanction removed.

According to the USCA7, the reason for Sanction is because the Petitioner is not sentenced under the ACCA (Armed Career Criminal Act), and therebv, this Court's opinion in Johnson v. United States, 135 S.Ct. 2551, in its entirity, cannot apply to the instant Petitioner's case.

On October 20, 2015, the USCA received/rule on the Petitioner's motion pursuant to 28 U.S.C. § 2244(b)(3)./In this motion, the Petitioner relied upon the legal precedent which was fully and completely articulated by this Honorable Court, in reference to how a statute's characteristics can render it "void-for-vaguness". In Johnson, this Court set forth certain criteria that must be met for any statute to be deemed "vague" and therefore subject to a "voidness" ruling.

Relying solely upon these criteria, the Petitioner, quoting this Court's language in Johnson, presented the case that the 18 U.S.C. § 3559(e) was equaly vague. Although the argument was concise, and the Petitioner, demonstrating with evidence from sentencing/ trial that the Petitioner's Judge used the same "judicially imagined ordinary event of a crime" to determine that the Petitioner's prior Illinois Conviction was somehow "relating to" a Federal Statute in which the judge did not even reference.

The USCA7 initially denied the § 2244(b)(3) on the sole grounds that the Petitioner could NOT use Johnson, because the Petitioner was not convicted under the ACCA.

Because the Petitioner, being pro se, could not understand how the USCA7 could use cases (i.e. Strickland v. Washington) in its opinions when the Petitioner did not share even a similar type charge with Strickland, yet when the Petitioner uses Johnson, to make an argument, he is denied because he does not have the "same" case as Johnson, the Petitioner filed a follow-up motion, in the belief that he, acting pro se, did not explain his position in a clear manner on May 9, 2016.

Again the USCA7 DENIED the motion because the Petitioner was not ACCA sentenced.

Still feeling it was his fault for being pro se and somehow not properly explaining his arguments, the Petitioner submitted another motion in an attempt to break-down further what the instant Petitioner was trying to communicate, that yes the Petitioner knows he is not ACCA, however the Petitioner is sentenced under an enhancement that is equally as vague as the ACCA.

Apparently the Petitioner cannot artfully plead his case, as the USCA7 entered a Sanction of $500 against the Petitioner and further banned the Petitioner from filing "any papers he submitts attacking his current criminal conviction, including future collateral attacks, will also be returned unfiled.".

It is this Sanction that the writ of Certorari is concerning. The Petitioner is an indigent Federal Prisoner housed in a United States Penitentiary. USP Tucson does NOT have a UNICOR and he has a FBOP job making $.29 per hour. After the IFRP payments for his fines, etc..., the Petitioner could never reasonabley afford to pay $500. Therefore the Petitioner is now "hostage" to this $500 ransom demand by the USCA7.

This is worse because there are cases that the Petitioner has knowledge of, which are attacking the very statute of conviction as unconstitutional, which is the same statute the Petitioner is under, and if this case "wins" and said statute is unconstitutional, the USCA7 has effectively barred the Petitioner from filing any paper to challenge such unconstitutional statute of conviction.

The Petitioner, in a preverbial fight for his right to be free from illegal sentences, is now banned from ever making such a claim and being freed from these illegal sentences by the USCA7.

REASONS FOR GRANTING THE PETITION

The United States Supreme Court is the ONLY Court that ANY "lower" Court of Appeals is accountable to. As such, if such court abuses its discretion, it is incumbent for this Honorable Court to review such abuse, and act in the interests of Justice.

The United States Court of Appeals for the Seventh Circuit is guilty of an abuse of discretion in turning the instant Petitioner into persona non grata until he pays a ransom of $500. As is included in this Petition, this Honorable Court can judge that the instant Petitioner is in fact a pauper. By arbitrarily requiring the Petitioner to pay $500, the USCA7 has essentially placed the Petitioner in "debtors prison".

To add insult to injury, this $500 is written in perpituity. Although there is Merit to the Petitioner's claims, the Petitioner is FACTUALLY suffering from an ILLEGAL sentence (monetary), in his criminal conviction, the lower courts HAVE subject matter jurisdiction under Audita Querela (28 U.S.C. § 1651), and the USCA7 has numerous times recognized In Forma Pauper status for the instant Petitioner, the USCA7 is holding the Petitioner hostage to an unconstitutional sentence out of apparent spite.

The instaant Petitioner acknowledges that the nature of the crimes, as charged against the Petitioner, are most unpopular. It is also known that the public as a whole dispises any person who is accused, let alone convicted of such charges. However, this Honorable Court, above ALL others, must judge on the merits and NOT on public or personal sentiment. Just because the courts as a whole reflect badly upon persons under such charges, (read the U. S. District Court for the Southern District of Illinois closing at sentencing), does not mean that such persons are less protected by the Constitution, or other laws of the United States. The open prejudice against persons by the courts cannot serve the ends of justice, if such prejudice prevents fair hearings and equal protection under the law.

The pro se status of the Petitioner, also, cannot be the only reason the courts appear to ignore motions filed, or dismiss the motions because of a "communication error" on behalf of the filing litigant, or a misunderstanding of the courts cryptic one sentence denials of such motions. This Court has long recognized that when a litigant in an action is pro se, that such filings are to be given a wide berth, in that if such motions can be read to show that the petitioner, no matter how unartfully written, has made an otherwise valid argument, such arguments MUST be treated liberally, and relief cannot be DENIED merely on the grounds of language or non-specificity in legal language, as a fully trained attorney is more likely to do.

Justice CANNOT survive when ILLEGAL sentences are ordered and a defendant has no recourse to argue such a sentence. Justice cannot survive when such justice is only granted after a cost has been met to a USCA, and until such cost is met, no documents are able to be filed until such cost is met. Justice cannot survive when persons are denied even access to the courts until they pay monies that they cannot pay due to their financial positions. Unless the old axiom is true that "the United States has the Best Justice System that money can buy", this Court must act in mandating the USCA withdraw the sanction order, and allow the Petitioner to file his obviously meritorious argument against the ILLEGAL sentences of both Forfeiture and Restitution of $3,100, respectively, because there was no evidence presented of any loss as a result of the Bank Fraud, nor was any evidence presented that the Petitioner gained any monies as a result of the Bank Fraud. In FACT, the transcripts are conclusive that the "attempted deposit" of $3,100 in checks was an incompleted action. The Bank NEVER deposited the checks, nor gave any funds based upon these checks. The checks were held and not processed. This is beyond contestation.

It is a FACT that the Petitioner's Appellate Attorney was an ineffective counsel as he FAILED to raise the monetary issue on Direct Appeal, as is required. It is a FACT that the Petitioner, on his initial, timely, 28 U.S.C. § 2255 Motion, raised this issue. It is a FACT that the Petitioner's IAC claim was DENIED SOLELY on the grounds that monetary issues are unavailable to be raised on any Habeas type motion, and such claim was not denied on its merits. It is FACT that, based upon the law in 2007, that the District Court for the Southern District of Illinois, abused its discretion when it ordered a sentence of Forfeiture and Restitution, in a direct violation of such laws. When no evidence of loss/gain is ever presented in a case, no orders can be issued to restitute or forfeit such non-existant loss/gain.

To place the Petitioner's situation in a reasonable perspective, Count Five (Bank Fraud), was charged for the evidenced and testified to about by the Bank itself, the Petitioner was alleged to have presented to the Bank 4 checks totalling $3,100. As evidenced, the 4 checks were NEVER deposited. The PSIR written by Probation clearly reffered to the crime as an "attempted deposit of $3,100. The PSIR further calculated a 34 MONTH recomended sentence for such attempt.

The Trial Judge dismissed this approximate 3 year sentence, and he instead ordered a 30 year sentence for this attempted crime. If a ten times the recomended guideline sentence is not unreasonable, or is not the sign of a prejudicial judge, then nothing is. However, the instant Petitioner, at this time, is NOT challenging the prison sentence.

United States v. Morgan, 302 U.S. 305 states that Federal Courts should act in doing justice when the record makes plain the right to relief. Wherefore, it is clear that justice is being held hostage by the USCA7 for a ransom of $500. It is clear that the Petitioner is suffering from 2 illegal sentences. It is clear that the ransom is ordered in the form of a sanction merely on the grounds that the Petitioner is pro se, and that either the USCA7 did not understand the Petitioner's argument, or the USCA7 did not articulate their reasons for denial of the Petitioner's argument pursuant to the "void for vaguness" standards set forth in Johnson v. United States, 135 S.Ct. 2551. If pro se status is not the cause of prejudice, then it can only be the nature of the charges in which the Petitioner is convicted.

Either way, this Court, to protect litigants from the arbitrary and myopic abuse of the lower courts, must rule in this case to level the playing field for justice.

CONCLUSION

The petition for a writ of certiorari should be granted. The USCA7 should be Mandated to remove the SANCTION and hear the pro se filing on merit.

Respectfully submitted,

Date: February 12, 2018