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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-31161

United States Court of Appeals
Fifth Circuit

FILED

October 11, 2017

Lyle W. Cayce
Clerk

CHARLES LEE,

Petitioner-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:12-CV-1185

Before HIGGINBOTHAM, JONES, and COSTA, Circuit Judges.

PER CURIAM:*

Charles Lee, Louisiana prisoner # 386633, is serving concurrent sentences of 49½ years of imprisonment, which were imposed following his 1998 convictions on two counts of armed robbery. His previous conviction of possession of a stolen vehicle, a crime he committed while he was 17 years old, was used to enhance his sentences in the armed robbery cases. Lee's 28 U.S.C. § 2254 petition was dismissed in May 2013.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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In January 2016, Lee filed a motion under Federal Rule of Civil Procedure 60(b) seeking relief from the judgment dismissing his § 2254 petition. The district court denied the Rule 60(b) motion as untimely, and it denied Lee's motion for reconsideration. Lee now seeks a certificate of appealability (COA) to appeal the district court's denial of his Rule 60(b) motion and the related motion for reconsideration.

Before he can appeal the denial of these motions, Lee must obtain a COA. *See Ochoa Canales v. Quarterman*, 507 F.3d 884, 888 (5th Cir. 2007). The district court did not determine whether Lee was entitled to a COA. Because the district court has not issued a COA ruling, we assume without deciding that we lack jurisdiction over the appeal. *See* Rule 11(a), RULES GOVERNING § 2254 PROCEEDINGS; *Cardenas v. Thaler*, 651 F.3d 442, 444 & nn.1-2 (5th Cir. 2011). Nevertheless, we decline to remand this case to the district court for a COA ruling because the appeal is frivolous, and a remand would be futile. *See United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000).

In the alternative, even if we have jurisdiction over the appeal absent a COA ruling in the district court, we would deny a COA. To obtain a COA, Lee must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Lee must establish that reasonable jurists would debate that the district court abused its discretion in denying the motions. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Hernandez v. Thaler*, 630 F.3d 420, 427-28 (5th Cir. 2011). Lee has failed to make the required showing.

Accordingly, the appeal is DISMISSED for lack of jurisdiction, and Lee's motion for a COA is DENIED AS MOOT.

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IN THE
UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 16-31161
USDC No. 2:12-CV-1185

CHARLES LEE,
Petitioner-Appellant

VERSUS

DARREL VANNOY, WARDEN,
LOUISIANA STATE PENITENTIARY
Respondent-Appellee

ENTERING PETITION FOR PANEL REHEARING EN BANC

MAY IT PLEASE THE COURT

NOW INTO THIS HONORABLE COURT, comes petitioner-appellant Charles H. Lee, Jr., pro-se. I respectfully move this court to review this request for en banc with the equal administration of justice as the law provides. Please be advised that the ruling was received 10-17-17. See enclosure.

STATEMENT TO THE COURT

The decision by the panel is in conflict with the U.S. Constitution and the 14th Amendment. This decision is not supported by any circuit law or legal principles.

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An En Banc determination is needed to ensure that the instant civil action will be conducted in a fair and impartial manner.

QUESTIONS PRESENTED

1. Is this court permitted to draw a negative implication from a grant to proceed IFP on appeal?
2. How is this court permitted to cite case law that is non-pertinent?
3. How is this court permitted to cite case law where this court is not conducting the same standard of review?
4. How are members of this court able to deviate from their oaths to uphold the Constitution?
5. Am I afforded the equal force of the Constitution as other litigants whom have entered this court?
6. Why have I been shown extreme biasness from this court?
7. Will this court abide by the Constitution and the code of judicial conduct in the instant proceeding?

UNDISPUTED FACTS

1. The district Judge granted leave to appeal IFP.
2. In a December 2016 letter from this court, the court placed me on notice of its awareness of the district Judge's grant of IFP status and the COA filing requirements.
3. This court has implied a negative implication from the district Judge's grant to appeal IFP.
4. At no time has this court proven that the instant legal matter is frivolous.

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5. This court has developed a history of biasly applying laws and not applying any law at all to the instant legal matter.
6. The rulings in the instant proceedings and direct proof that this court has repetitiously violated the code of judicial conduct.
7. The civil action is meritorious and requires adjudication on the merits.
8. This court as shown no regard to its oath to uphold the Constitution.

ARGUMENT

This court has ruled that the COA is moot due to lack of subject-matter jurisdiction.

This court has intentionally ruled that this civil action lacks subject-matter jurisdiction because the district Judge did not file a COA. In which, is no fault of my own.

In order to pull this scam, this court has illogically applied the non-pertinent cases of *U.S. v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000), and *Hernandez v. Thaler*, 630 F.3d 420, 427-28 (5th Cir. 2011). At no time has this court held the instant proceeding under the same standard of review as *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

In this pleading, I will disprove the basis of the court's ruling, and prove this court's show of prejudice and biasness towards this civil action.

In *Hernandez*, this court dealt with *Hernandez's* misinterpretation of a new method of calculating the limitation period under AEDPA in regards to a Rule 60(b)(6)-Extraordinary Circumstances. *Hernandez* is not similar and is non-pertinent to the instant civil action.

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In both cases, *Alvarez* and *Hernandez*, this court's per curiam evaluated the legal matter and applied the legal matter and applied the adequate law to the circumstances of those cases. I have not been afforded the same level of adequacy from this court.

Specifically, in *Hernandez*, the district court denied COA, and this c t addressed the merits of *Hernandez's* motion for COA irregardless. Contrastingly, in the instant civil action, the district court granted permission to appeal IFP. This court applied a negative implication to rule that the COA lacks jurisdiction because the district Judge did not file a COA. This court cannot produce any circuit law coinciding with this legal theory.

On the flip side, a denial of a COA did not stoop this court from making the enclosed ill-gotten ruling on the enclosed COA dated November 19, 2013. See COA from district court. Now, this court won't address a COA when the District Judge granted IFP status appeal.

In making judicial sense, it would only be logical to imply that the District Judge would issue a COA when he granted permission to appeal IFP. This court sent me a letter, in December of 2016, placing me on notice of its acknowledgment of the district court's grant of the IFP status on appeal, and the COA filing requirements.

When this court inferred a negative implication from the grant to appeal IFP, which even sounds absurd, the court has totally disregarded the objective standard that is to be met which supersedes the substantial standard that is to be met in regards to a COA, as

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expressed by the U.S. Supreme Court in *U.S. v. Coppedge* at [369 U.S. 445].

Surprisingly, this court, in *Hernandez*, at F3d 425 has expressly stated, "The federal rules of appellate procedure have for their primary purpose the securing of speedy and inexpensive justice in a uniform and well ordered manner; they were not adopted to set traps and pitfalls by way of technicalities for unwary litigants." The *Hernandez's* U.S. Fifth Circuit is the needed court in the instant legal action. . not the present U.S. Fifth Circuit.

By way of technicality from the District Judge, while being in conflict with the previously cited *Hernandez*, this court has developed a trap to produce a pitfall. The previously dated ruling and the instant ruling are no more than judicial hog wash - and a direct violation of my 1st Amendment right to access of the court.

This *Rule 60(b)* motion was filed due to the District Judge's deliberate misrepresentation of circuit law, as cited in the motion.

In the *Rule 60(b)* motion, I presented that the District Judge deliberately refused to apply circuit law by utilizing my statement as a component to deny subject-matter jurisdiction *Rule 60(b)(6)*.

In *Young v. Lynaugh*, 821 F2d 1133, 1136 & 1137, one of the two cases that the District Judge has stated that I have correctly applied in the challenged ruling (See-5-30-13 ruling enclosure) Pg. 4, do stand for the principles espound by petitioner, *Young's* counsel

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made the same statement as I have by indicating that *Young* was challenging only the 1963 conviction, not its use for enhancement.

This court has defined *Young's* counsel's statement as admittedly "hyper-technically." This court has further stated in *Young* that "the greensward of 2254(a) however, reveals no such hyper-technical pitfall." This court, at no time in the instant civil action, has given the equal application of circuit law.

In the *Rule 60(b)* motion, I have presented that the District Judge ha fraudulently misrepresented circuit law as the other component in order to deny subject-matter jurisdiction *Rule 60(b)(3)*.

In the enclosed order from the District Judge, pg 4, the Judge has expressly stated that *Willis v. Collings*, 989 F.2d 187 (5th Cir. 1993), the second case that the District Judge has stated that I have correctly applied, at F.2d 189, this court cites *Allen v. Collings*, 924 F.2d 88, 89 (5th Cir. 1991) - noting that the *Young* in custody "requirement was reaffirmed, which allows habeas pet's the right to challenge a prior conviction that was used to enhance a subsequent sentence, even if the prior unconstitutional conviction has expired.

In *Allen*, F.2d at 89, this court cites the correct holding in *Hendrix v. Lynaugh*, 888 F.2d 336, 337-38 (5th Cir. 1989), which "disallowed collateral attack on prior convictions when not used to enhance sentence."

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The District Judge deliberately misrepresented circuit law, the holding in *Hendrix*, see enclosed order date 5-30-13, pg. 4 which constitutes fraud.

These two factors are direct proof of the district court's violation of the U.S. Constitution 14th Amendment equal protection and equal administration of laws. These two factors are direct proof of the violation of the code of judicial conduct *Canon 3(A)(1)*- "Adjudicative responsibilities," which states that, "A Judge shall be faithful to the law and maintain professional competence in it." This court's ruling, as well, in the instant matter, is in complete conflict with *Canon 3(A)(1)* in every respect of the *Canon* and *Section (4)* which states, "A Judge shall perform judicial duties, without bias or prejudice."

The combination of the cited factors constitutes extraordinary circumstances -*Rule 60(b)(6)*, due to the fact that no where in the history of the Eastern District has a habeas proceeding been handled in the manner as the instant habeas proceedings. In which, consists of fraud, and the blatant refusal to abide by circuit law. The latter trait is present in the instant ruling from this court.

In the *Rule 60(b)* motion, I presented that the judgment was void *Rule 60(b)(4)*.

The cited laws in *Young*, *Willis*, and *Hendrix* disproves the basis of the District Judge's ruling. The judgment that is not supported by and equate law or principles is void and unenforceable.

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The challenged judgment from the District Judge is not only based on inadequate case law, it is tainted with facial displays of judicial misconduct.

When the District Judge granted the motion to appeal IFP, the District Judge has recognized that the presented factors are meritorious and non-frivolous. This court has not disproved this factor. Once again, this fact cannot be stressed enough, there is no case law or legal principles that will support a time limitation where the judgment is founded on judicial/misconduct. This court did not allow judicial misconduct to persist in the matter of former Eastern District Judge Thomas G. Porteous, see enclosures, article and was page.

In an article published by the Advocate, December 17, 2016, entitled Department of Connections, the article expounds on this state's massive incarceration rate which is due to politicians and district attorneys. Judges, however, are the main contributors to this state's massive incarceration rate, which leads the entire nation, in a nation that leads the world in incarceration. In the article, prisoners, such as myself, are referred to as a 'supply' a commodity. The code of judicial conduct *Canon 2(B)* speaks again Judges who allow family social, political; or other relationships to influence judicial conduct or judgment. A judgment such as the instant one, is evidence proof that members of this court have an interest of the supply/commodity of prisoners to stock the bed of prisons.

Judges have the power to right the wrongs within the judicial system. Instead of upholding an OATH as mandated by the federal rules of Judges and Judicial Procedure 28

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§ 453, I have been exposed to Judges whom have ruled on the instant proceedings with extreme prejudice, biasness, and whom have shown no impartiality or fairness towards the instant civil action.

Throughout my incarceration, since 1998, I have learned to comprehend and apply the law. As the result in regards to the instant legal action, I have defeated two (2) district attorneys, one (1) Magistrate Judge; I have caused a district Judge to apply bad law intentionally, and later recognize the infraction; and I have caused members of this court to apply non-existent law. Now, I have caused members of this court to apply non-pertinent law and illogical legal principles. Every member of this court has been professionally practicing law since I was in diapers, and/or since before I was born. This court should not have to resort to ill practices, the law is the law.

CONCLUSION

My sole request is that this civil action be given the equal scope of review as the U.S. Constitution 14th Amendment Equal protection of laws and the equal administration of laws require by those whom don the black robe.

Done this _____ day of _____, 2017.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-31161

CHARLES LEE,

Petitioner - Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent - Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

ORDER:

IT IS ORDERED that appellant's motion for leave to file petition for rehearing en banc out of time is GRANTED.

/s/Edith H. Jones
EDITH H. JONES
UNITED STATES CIRCUIT JUDGE

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-31161

CHARLES LEE,

Petitioner - Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent - Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING EN BANC

(Opinion 10/11/2017 , 5 Cir., _____ , _____ F.3d _____)

Before HIGGINBOTHAM, JONES, and COSTA, Circuit Judges.

PER CURIAM:

~~(X)~~ Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

() Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court

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having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

Edith H. Jones
UNITED STATES CIRCUIT JUDGE

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TO: Mr. Lyle W. Cayce, Clerk of Court
U.S. Fifth Circuit Court of Appeal

December 5, 2017

In re: Charles Lee v. Darrel Vannoy, Warden
USDC NO. 2:12-CV-1185
NO. 16-31161

Greetings Mr. Cayce:

I have received the Court's percurium, undated, today, December 5th, 2017.

1. On 11-15-17, in the enclosed order, a member of this court, U.S. Circuit Judge Edith Jones GRANTED the Petition for Re-hearing En Banc, Doc.00514238037. In the enclosed letter from the court dated the same, the petition was specifically accepted and docketed as a Petition for Rehearing En Banc. With respect to the Fed R. App. P. 35, and the 5th Cir. R.35 HANDLING OF PETITION BY THE JUDGES, PANEL HAS CONTROL - a Petition for rehearing En banc is treated as a petition for rehearing by the panel if NO petition is filed. The enclosed 11-15-17 documents confirms that the petition was filed and GRANTED. The court had no authority to treat the petition as petition for rehearing.
2. With respect to the Fed R. App. P. 35, and the 5th Cir. R.35 HANDLING OF PETITION BY THE JUDGES, REQUESTING A POLL.- was to be taken place within 10 days after the filing of the petition. From the time that the petition was docketed on November 1st, 2017 from the time that it was granted November 15th, 2017, the 10 day polling period expired. The petition should have been ruled on by the majority of judges as the Petition for Rehearing En Banc was docketed and GRANTED as.

With respect to the cited 5th Circuit Rules and Federal Appellate rules, consistent with the Equal administration of laws and Protection of Laws as the U. S. Constitution 14th Amendment provides and consistent with the Code of Conduct... I humbly request that the Petition for Rehearing En Banc be ruled on the majority of Judges as the petition was Granted and docketed as.

Sincerely,



Charles H. Lee, Jr.
#386633

La State Prison
Angola, LA 70712

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

December 11, 2017

#386633
Mr. Charles Lee
Louisiana State Penitentiary
General Delivery
Angola, LA 70712-0000

No. 16-31161 Charles Lee v. Darrel Vannoy, Warden
USDC No. 2:12-CV-1185

Dear Mr. Lee,

We received your Appellant's Correspondence Requesting Ruling on the Petition for Rehearing En Banc. In light of the court's order of November 28, 2017, we are taking no action on this document.

The court does not comment or give written reasons on orders it enters.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Monica R. Washington, Deputy Clerk
504-310-7705

cc: Mr. Donald Goodwin Cassels III