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No. _____

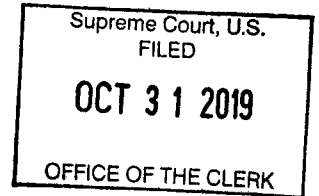
ORIGINAL

IN THE
Supreme Court of the United States

David Anson Alandt,
Petitioner

v.

State of Arkansas,
Respondent

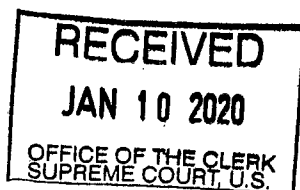


On Petition for Writ of Certiorari to the
Arkansas Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

According to Arkansas State Supreme Court Justice, Josephine L. Hart, There is no remedy in the Arkansas criminal court system which permits prisoners to make claims of actual innocence based on newly discovered evidence if-such a claim falls outside the narrow limitations of existing remedies. The federal writ of habeas corpus may or may not provide a remedy for such claims. Executive clemency is an inadequate remedy. Given the likelihood that the legislature will not act in this area, the Arkansas Supreme Court should provide prisoners or charged felons serving active sentences who are actually innocent the opportunity to establish their innocence. Otherwise, in time, Arkansas will accept a shocking injustice: innocent persons will serve sentences of imprisonment or worse be put to death despite the discovery of new evidence that could prove their innocence. And so long as the innocent are imprisoned or executed, the guilty are at large, safe in the knowledge that others are serving their sentences. The questions presented are:

1. Whether Alandt's requests for Counsel and evidence before being extradited violated his rights established by Statutes, Treaty and Act?
2. Whether a single instance of bumping or touching, but not crossing, the fog line on a Interstate Highway establishes Probable Cause?

QUESTION PRESENTED (cont'd)

3. Whether defense counsel's bias attempts in instructing a defendant to make a plea bargain of one dollar rather than cross-examining their client for the purpose of discrediting the reliability or credibility of an adverse witness who you know to be telling the truth when new evidence is to establish actual innocence?
4. Whether the State of Arkansas' significant history created an unconstitutional risk of bias under the due process clause when evidence in support of actual innocence is withheld from a defendant seeking post conviction appeal to an obtained illegal sentence or any requests for hearings on Petitions to complete the record to resolve remedy subject matter?
5. Whether the State Arkansas can withhold evidence in support of actual innocence from a Petitioner seeking post conviction appeal of an illegal sentence or request for hearings on Petitions for Writ of Certiorari to complete the records for review?
6. Whether the State Trial Judge unconstitutionally violated State and Federal Criminal Rules and Alandt's rights to petition, due process, equal protections, freedom of speech, U.S. Const. Amends: I, IV, V, VI, XIV, § 1 and § 3 and United States Constitution's Article III and VI?

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PETITION FOR A WRIT OF CERTIORARI

David Alandt respectfully petitions for a writ of certiorari to review the judgment of the Arkansas Supreme Court and access to the complete record.

OPINIONS BELOW

The order of the Arkansas Supreme Court finding the petitions for all State remedy was ordered moot by a 2-1 decision. (App. 001). The order of the Arkansas Supreme Court affirming the dismissal of the *coram nobis* petition is not reported. at 563 S.W.3d 533 (Ark. 2018). (App. 1–23). The order of the Drew County Circuit Court dismissing the petition for writ of error *coram nobis* is unreported. (App. 37–46). The order of the Drew County Circuit Court denying the motion to recuse is unreported. (App. 34).

JURISDICTION

The Arkansas Supreme Court issued its formal order on August 2, 2019. The Arkansas Supreme Court denied a timely petition by way of a 2-1 decision. This Court has jurisdiction under 28 U.S.C. § 1251.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: “nor shall any State deprive any person of life, liberty, or property, without due process of law.”

INTRODUCTION

Arkansas Circuit Court Judge and resident Gary Arnold has a “special animus” for Texas resident David Anson Alandt and co-defendant Sawyer Solis. Judge Arnold ruled from the bar on a jurisdictional subject matter never addressed in any State or Federal Court on any level of Circuit Appeal Court in the history of Country, without due process against Alandt. When Alandt was unlawfully awoken from sleeping from a single instance of touching the fog line while traveling at night down the highway, investigated, questioned coerced, lied to and subsequently arrested; fraudulently bailed out of jail and driven directly to a hotel and the next day to a the airport to depart the State of Arkansas under a State Licensed uninsured Bail Bond Agent. Alandt departed the country the night before his first scheduled jury trial after hearing that the level of public corruption in the Judge Arnold Court was greater than he could withstand alone and at that time. Judge Arnold actions throughout suggest he is still so upset with Alandt because he was refused the opportunity to oppose Alandt's actions after the first scheduled jury trial. Arnold's continued denial of Alandt's rights to appeal or to request any hearings on: adjudicative remedies established by Arkansas's Administration Procedures Act; complete the record on petition and appeal; add new evidence establishing actual innocence; establish insufficient assistance of counsel; bias rulings from the bench; a forced plea; fraud on the count by officers of the court; tampering or deleting evidence; withholding evidence; Brady violations; International Treaty violations in support of Alandt Extradition by influencing foreign government officials and US Agencies with false statements and Affidavits. Arnold's Orders are bias and contradict: Ark. Sup Ct. Opinions; Ark. Court of Appeals Opinions; and all Federal Court Jurisdictional Opinions by denying Alandt's Petitions for: Writ Certiorari to complete the record; Mandamus; Prohibition; and Error Coram Nobis for a illegal sentence and suspended improvised sentence.

INTRODUCTION (cont'd)

Judge Arnold, County Clerk and Court Reporters, County staff, and All Prosecutors linked to the case denied Alandt's multiple requests for the complete court record with such gravity that Alandt left the country and made every attempt in obtaining a fair and unbiased jury trial. Judge Arnold's prior dealings with Mr. Alandt, including extraordinary efforts in resisting international extradition Judge Arnold was especially familiar with Mr. Alandt's case because of Judge Arnold's unique adversarial history with Alandt, and his extraordinary efforts to return reverse charges not fairly adjudicate via Petition remedies. To the extent Judge Arnold and Alandt's history that leaves any doubt regarding the potential bias, Judge Arnold's conduct through out all trial stages showed Arnold to be "an advocate opposed to Mr. Alandt, not a neutral arbiter leveraging his power of discretion over ambiguous never argued in history. Certiorari should be granted.

STATEMENT OF THE CASE

1. Gary Arnold Perjure of David Alandt to Complete the Record

On Alandt's first notice of appeal to petition for the record (App. 049). Alandt's last request sent to Arnold was on June 21, 2019 (App. 060). An Order for Extension of time to file appellate record (App.069) was granted with out hearing or all parties present for seven months causing bias with only 40 pages to be released to complete the record on petition and appeal to the Arkansas Supreme Court after being denied administrative procedures contradicting an email from Arnold addressed to Alandt, Court Clerk Staff and the Court Reporter that the entire record will be completed as stated as the order stands but with bias .

2. First Attempt on Direct Appeal

On direct appeal, Alandt's, attorney Steven Davis, argued that the sentence needed to be corrected, but Alandt never approved Davis's argument because it lacked 12 other subjects that Davis promised to appeal before the plea hearing on Alandt's conviction pertain to the State's suppression of evidence which showed that 1) no wheel ever crossed the fog line and 2) a Judge and Officer Hunter Begoon's present gave inconsistent testimony at a pretrial hearing.

3. State Post-Conviction

In state post-conviction petitions and proceedings, Alandt alleged that his trial counsel was ineffective for failing to put on witnesses and for failing to object to Begoon's Cross examinations in-court his suppression of evidence hearing. In a state's final 2-1 Formal Order, (App. ##) on denying Alandt's numerous requests for hearings on completing the record for Petition on: post-conviction Ark. Cr Pr. Rule 37; Petition for Mandamus; Petition for Prohibition; Petition for Error Coram Nobis; Arresting Officer Hunter Begoon testified contrary to his pre-trial testimony, that fog line was in fact not crossed at all. (App. 000) Judge Arnold denied the state post-conviction petition and held, with disregard to fact that a plea was made without access to court records and is denied the record currently.

The case was upheld moot on appeal. *See Alandt v. State of Arkansas*, (Ark. 2019).

(App)

4. The Petition

Reinvestiture

After his federal habeas proceedings were stayed for the exhaustion of state remedies, Alandt filed in the Arkansas Supreme Court a Petition for Writ of Certiorari to complete the record on petition Writ of *Coram Nobis for a illegal sentence that can not be appealed or petitioned for hearing due to the false statements made at the suppression hearing and bench trial*. The Application contended *inter alia* that Alandt's conviction was the result of state suppression of evidence which showed that 1) no crossing of the fog line and 2) a Judge and all attorneys gave inconsistent testimony, at a hearing and at the post-conviction hearing, regarding the animal in question that was hunted in a conversation with Solis during the traffic stop. When Solis said 'deer,' Begoon was bored and used the word 'Elk' in place of 'deer' and pressed Solis to stress him out and wake up Alandt from his sleep. (App, 109 and 120) The Arkansas Supreme Court found the claims to have apparent merit but ordered the case moot with 40 pages of the incomplete record. (App. 033)

The Petition

Alandt filed a Petition for Writ of Certiorari in the Circuit Court alleging *Brady* violations committed by law enforcement and prosecuting attorneys of Saline County. (App. 033).

Alandt contended that the police concealed the fact that Officer Begoon had no reasonable probable cause or suspicions crossing the fog line and not one of Alandt's defense counsel would Petition for rule on a law made by Arnold.

(App.120)

Alandt has made some serious allegations against the state which if true would constitute violations of the state's obligations under Brady v. Maryland. Rule 3.1 Arkansas Rules of Professional Conduct provide that a lawyer may only bring assertions on an issue if there is a factual reason to do so. Additionally by reference only, Arkansas Rule of Civil Procedure, Rule 11(b)(3) require a lawyers signature on a pleading be based on a reasonable inquiry that the factual contentions in a pleading have evidentiary support.

Alandt's reasoned that it was untenable for Arnold to preside over the Writ of Cert hearing when the hearing implicated his previous findings of fact. Arnold's actions during the pre post-conviction hearing showed his lack of impartiality. Arnold's threat of sanctions in response to the discovery request showed that he was an "advocate opposed to Mr. Alandt, not a neutral arbiter. In regard to Arnold's suggestions reasoned that "[w]hen a circuit judge, sitting as the finder of fact, takes it upon himself to rehabilitate a witness and then orders a recess that could reasonably be interpreted as giving the State a chance to wood-shed that witness, the judge's impartiality might reasonably be questioned."

As to the ultimate determination of the merits, [c]redibility determinations and the weight to be assigned conflicting evidence determined all the substantive issues in this case. Alandt contended that the "great deference to the finder of fact to resolve questions of witness credibility and the weight to be afforded conflicting pieces of evidence" "crumbles under even the most cursory scrutiny" "when this deference rests on a foundation of actual or perceived bias and lack of impartiality.

“in totality with the history between Judge Arnold and Alandt, there is at least an appearance of bias in this matter. Analysis that the merits of Alandt ultimately depended on the number of close discretionary decisions made by Judge Arnold, especially those pertaining to the officers’ testimony concerning the procedural errors , and the scope of discovery afforded Alandt.. Decisions weighed against Alandt when the witnesses’ testimony appeared to be inexplicably inconsistent. Alandt concluded from other attorneys that the “circuit court determines the credibility of witnesses, resolves conflicts and inconsistencies in testimony, and assesses the weight to be given the evidence in a coram nobis hearing. However, it is difficult to afford the circuit court the deference our law requires given the extensive history between Judge Arnold and Alandt.” (App.123).

The Arkansas Supreme Court made ordered the case moot without Petition for Cert. in completing the record. but stayed the issuance of its mandate to allow Alandt to seek review in this Court. (App. 33).

REASONS FOR GRANTING THE PETITION

This Court has previously explained that its “recusal cases” have dealt with “extreme facts that created an unconstitutional probability of bias.” *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 887 (2009). This is such a case. Alandt drew the ire of the elected Judges of Saline County when left the country on charges at trial, earning complete acquittals by two juries. Arnold had charged Alandt as a criminal and had Aronld prevailed charges before leaving the country Alandt would have faced 30 years in prison.

Alandt was coerced into a plea to later find evidence supporting his and Sawyer's actual innocence though State provide remedies.

Arnold heard and dismissed Alandt's petition for post-conviction relief. And most recently, when the Arkansas Supreme Court denied the "rare grant of permission for an inmate to pursue a writ of error coram nobis" (App. 27), Arnold dismissed that as well.

Alandt's illegal sentence and the underlying proceedings raised troubling questions regarding the propriety of his conviction. The dismissal of Alandt's petition "ultimately depended on [a] number of close discretionary decisions made by Judge Arnold and each of these decisions weighed against Alandt when the witnesses' testimony appeared to be inexplicably inconsistent" (App. 141) . Especially because the extreme facts warrant this Court's rare intervention. *Cf. Strickland v. Washington*, 466 U.S. 668, 704 (1984) (Brennan, J. concurring in part) ("we have consistently required that capital proceedings be policed at all stages by an especially vigilant concern for procedural fairness and for the accuracy of factfinding.").

1. Ruling from the bench to prevent judicial review can create an appearance of bias.

The Due Process Clause requires a judge with “the impersonal authority of the law” hear a case. *Mayberry v. Pennsylvania*, 400 U.S. 455, 466 (1971).

Impartiality is crucial to public confidence in the judiciary. The question is “not whether the judge is actually, subjectively biased, but whether the average judge in his position is ‘likely’ to be neutral, or whether there is an unconstitutional ‘potential for bias.’” *Caperton*, 556 U.S. at 881. In determining whether there is a potential for bias, “[t]he judge’s prior relationship with the defendant” is of “critical import.” *Caperton*, 556 U.S. at 881. Recusal may be warranted when, as the result of prior proceedings, a judge becomes “embroiled in a running, bitter controversy” that makes it unlikely for him to “maintain that calm detachment necessary for fair adjudication.” *Mayberry*, 400 U.S. at 465.

If a prosecutor-turned-judge had a significant adversarial history with a defendant, there is at least a possibility that under certain facts he cannot appear “wholly disinterested” in the outcome of a new criminal matter. *In re Murchison*, 349 U.S. 133, 137 (1955). And “[w]hile he would not likely have all the zeal of a prosecutor, it can certainly not be said that he would have none of that zeal.” *Id.* The due process clause protects against situations in which there is a “temptation” to “forget the burden of proof required to convict the defendant” or “not to hold the balance nice, clear, and true between the state and the accused.” *Tumey v. Ohio*, 273 U.S. 510, 532, (1927).

The Arkansas Supreme Court failed to take into account these principles when it found no appearance of bias. It rejected Alandt's claim, holding the case moot because of unknown reasons. Arnold's efforts were ordinary stretch the meaning of the word. While it may be ordinary for a Judge to give his input before the parole board makes its decision, there is no precedent, either in statute or practice, for a Judge to seek to annul parole after the fact. Indeed, the email to Alandt from Arnold is evidence of the impossibility.

But even if Arnold was perfectly within the scope of his ordinary duties in seeking to rescind hearing on Alandt's indigence, he was nevertheless impaired to later sit in detached judgment of Alandt. The Court's bias inquiry has not focused on whether the judge's prior acts themselves were extraordinary or improper. For example, in *Caperton*, a case with an appearance of bias based on campaign contributions to a judicial election, there was no suggestion that the judge wrongly accepted or benefited from the company's financial contribution. 556 U.S. at 882. Certainly, in *Mayberry v. Pennsylvania*, 400 U.S. 455, 465 (1971), the judge was the target of rank verbal abuse.

And in *Williams v. Pennsylvania*, the disqualifying conduct was certainly an “ordinary” aspect of then-prosecutor Castille’s job—he reviewed a memo from a deputy prosecuting attorney and approved the pursuit of the death penalty. 136 S.Ct. at 1903. Even if it is ordinary for a Judge to meet with gubernatorial staff in hopes of reversing a proper grant of parole, the effort can still establish sufficient hostility between prosecutor and defendant to later create an appearance of bias. Certiorari should be granted to establish that a prosecutor who through his ordinary duties develops a special animus for a defendant cannot later sit in judgment of that defendant.

2. Judge Arnold’s prior Judicial discription created an intolerable appearance of bias.

In *Williams v. Pennsylvania*, 136 S.Ct. 1899, 1903 (2016), the Court held that the likelihood of bias is too high to be constitutionally tolerable when a judge had a “significant, personal involvement” in a “critical trial decision” in the same case. *Williams* did not, however, find that the same risk of bias could not be demonstrated from a judge’s involvement with an unrelated prosecution.

The instant case demonstrates that a prosecutor-turned-judge may develop a disqualifying disdain for a defendant from unrelated prosecution. Indeed, there was a greater risk of bias between Judge Arnold and Alandt than between Judge Philliups and Officer Begoon. Under the “circumstances and relationships,” (*Murchison*, 349 U.S. at 136) Arnold was keenly familiar with Alandt and openly opposed to his

freedoms. The following comparisons make clear that the facts of Arnold's unrelated prosecution of Alandt are more troubling than the personal involvement in *Williams*.

Arnold was much more involved in Alandt's prosecutions than Castille ever was in *Williams*'. In *Williams*, the Court resisted the notion that Castille's role in the case was "ministerial" but the facts show fairly minimal involvement. *Id.* Castille supervised, but did not personally handle, *Williams*' prosecution. His deputy prepared a one and a half page memorandum setting forth the facts of the case and the reasons she wanted to seek the death penalty. *Id.* at 1903, 1907. Castille reviewed the memorandum and wrote seven words on the bottom of the document: "Approved to proceed on the death penalty." *Id.* at 1903. Even if, as the Court held, Castille took "personal responsibility for the death sentences obtained during his tenure" and he "considered his involvement to be an important duty of his office," his role was peripheral to the prosecutor who actually took the case to trial. *Id.* at 1909.

Seven words versus 180 miles

In contrast, Arnold personally ruled from the bench against Alandt in three separate pretrial hearings within a 240 day period. And though most criminal prosecutions resolve with a guilty plea (*see Padilla v. Kentucky*, 559 U.S. 356, 372–73 (2010)) (“pleas account for 95% of all criminal convictions”), Alandt took his charges to a bench trial and disclosed new evidence before his plea of guilt and now is denied Petition to be heard. Even if it wasn’t a “preexisting animus” that caused Arnold to take Alandt to trial twice without sufficient evidence or defense counsel, there should be no doubt that Arnold was especially familiar with Alandt.

When Alandt was unlawfully changed and extradited, Arnold took notice of objection but that record is being withheld from Alandt as indicated by the Formal Order by the Arkansas State Supreme court decision 2-1. (App.001) It appears Arnold wanted Alandt's sentence “rescind[ed]” after emailing Alandt to schedule a hearing after his notice to appeal in determining financial information on Alandt, but later never truly wanted a hearing and never pursued a hearing. Even if Arnold's entreaty of Alandt was part of his “ordinary” duties, as the Arkansas court found, it demonstrated a magnitude of interest and involvement far and above that shown in *Williams*.

Multi-judge panel versus a fact-finder

Just as Arnold had deeper involvement with Alandt as a post trial adjudicative functions, his judicial role should never diminish throughout. Whereas Justice Hart sat on a multi-judge panel deciding an appeal in favor of granting petition and IFP, Arnold sat as the finder-of-fact in all Alandt's hearings. As Arnold made a "number of close discretionary decisions" and "each of these decisions weighed against Alandt when the witnesses' testimony appeared to be inexplicably inconsistent." (App. 103). Because of the nature of appellate review, Alandt's factual findings were never reviewed only for clear error. Indeed, the Arkansas Supreme Court's lack of opinion gave tepid acceptance to Judge Arnold's factual findings, without acknowledging inconsistent testimony and conflicting evidence. The Court should grant review because of the heightened need for reliability where the bias public trust is a concerned.

3. Any doubt regarding Arnold's disdain for Alandt is dissolved by his

Though Alandt is not required to show actual bias, any doubt left by the previous prosecution is settled by Judge treatment of the Post Conviction petition or appeal case. As set forth in the withheld record, when Alandt sought discovery at the heart of the reinvestiture, "Judge Arnold acted as an advocate opposed to Mr. Alandt, not a neutral arbiter" by "threaten[ing] Mr. Alandt with having to return to Arkansas to prove his wealth to the court first contrary to his final plea hearing court transcripts. (App. 028). When one of the State Supreme Court Clerk officers told Alandt to file a partial record to appeal Arnold's Order on a seven month extension to complete the record that favorable to Alandt on the same issue,

As Justice Hart explained once that “[w]hen a circuit judge, sitting as the finder of fact, takes it upon himself to rehabilitate a witness and then orders a recess that could reasonably be interpreted as giving the State a chance to woodshed that witness, the judge’s impartiality might reasonably be questioned.”

All the “close ‘discretionary’ calls” and “credibility determinations” in the case went against Alandt. Most egregiously, Judge Arnold credited testimony from a pre-trial hearing that was from fabricated statements of Officer Begoon's poor memory. Judge Arnold strained convention to find facts adverse to Alandt. Such contortions with the evidence show a failure to “hold the balance nice, clear, and true between the state and the accused.” *Tumey*, 273 U.S. at 532.

CONCLUSION

WHEREFORE, for all the reasons set forth above, Alandt respectfully requests that the Court issue a Writ of Certiorari to the Supreme Court of Arkansas.

Respectfully submitted,

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