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Supreme Court, U.S.
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No.19-8684

**In The
Supreme Court Of The United States**

BRIAN DAVID HILL,
Petitioner,

vs.

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA,**

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Sup. Ct. R. 44.2, petitioner Brian David Hill ("Petitioner" or "Mr. Hill") respectfully petitions this Court for an order (1) granting rehearing, (2) vacating the Court's October 5, 2020, order denying certiorari, and (3) re-disposing of this case by granting the petition for a writ of certiorari, vacating the judgment, and remanding to the Fourth Circuit for further consideration to keep uniformity with the older Supreme Court established case law authorities such as *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943), *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991), as well as Virginia Supreme Court case law *In re Commonwealth of Virginia*, 278 Va. 1 (Va. 2009), for the purpose of determining whether the Fourth Circuit's judgment of denying Petitioner's Petition for Writ of Mandamus should be reformed to keep uniformity in the Supreme Courts including this Supreme Court and lower appellate courts' rulings that mandamus relief is appropriate to compel a Judge to follow his/her duties including granting, denying, or ordering an evidentiary hearing in regards to pending uncontested motions properly filed before the Court.

Mr. Hill submits that, his petition for writ of certiorari may be the only form of relief requested of the Constitutional Article III judicial branch of our great United States of America, to reverse a bad or erroneous decision by the Fourth Circuit inappropriately denying Mr. Hill's "Petition for Writ of Mandamus" as it was appropriately being used to compel the lower court to grant or deny or hold an evidentiary hearing on the four pending motions that

were uncontested and should have been granted in normal course according to the U.S. District Court's local rule 7.3, MOTION PRACTICE.

Mr. Hill had appropriately applied the local rule 7.3 in requesting Mandamus relief. Brian was entitled to relief as a matter of law and as a matter of right. The decision of the Fourth Circuit contradicts decades and centuries of controlling and authoritative case law precedent set by this Court and lower Courts. The issues raised in his petition for writ of certiorari are of a majorly considerable issues that cannot be resolved in the lower courts anymore without the Supreme Court remanding the case back to the Fourth Circuit to considering grant mandamus relief as a matter of law and as a matter of constitutional obligations and duties of all federal judges.

He seeks rehearing on the important issues raised in his petition for a writ of certiorari. Pertaining to whether a judge has the absolute right in modern times to sit on pending motions for months or years that he/she may disagree with and let them stay pending for months to years without ever rendering a decision on them. When a judge grants or denies a motion one document number less than the "Motion for Sanctions" but then leaves that motion forever pending is a dereliction of duty, it is a deficiency in the due process clause that needs to be addressed. Due process requires that action be taken upon a pending matter properly before the Court.

It is not of normal course for the average submitted petitions for writ of certiorari to request overturning a bad or erroneous decision in regards to

denial of a writ of mandamus request seeking justifiable relief as a matter of law, and as a matter of ministerial duty.

The consequences of denying writ of certiorari in this case disrupts the uniformity between the multiple Supreme Courts, circuits and the district courts following the controlling case law of the circuits and this Supreme Court. It was well settled by this court under *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943), that “Considerations of importance to our answer here are that the trial court, in striking the pleas in abatement, acted within its jurisdiction as a district court; that no action or omission on its part has thwarted or tends to thwart appellate review of the ruling, and that, while a function of mandamus in aid of appellate jurisdiction is to remove obstacles to appeal, it may not appropriately be used merely as a substitute for the appeal procedure prescribed by the statute. The traditional use of the writ in aid of appellate jurisdiction, both at common law and in the federal courts, has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. *Ex parte Peru*, supra, p. 318 U. S. 584, and cases cited; *Ex parte Newman*, 14 Wall. 152, 81 U. S. 165-166, 81 U. S. 169; *Ex parte Sawyer*, 21 Wall. 235, 88 U. S. 238; *Interstate Commerce Commission v. United States ex rel. Campbell*, 289 U. S. 385, 289 U. S. 394.” The Virginia Supreme Court had made a similar decision in 2009 that was set as authoritative case law in the same State/Commonwealth where the Fourth Circuit is located in which is in Richmond, Virginia. This Supreme Court and a Commonwealth Supreme Court had both argued in their

precedential opinions that judges have to make a decision on a pending motion otherwise it deprives all parties to a case of the constitutional and/or statutory legal right to appeal a decision, that a court may be acting in excess of jurisdiction if they deprive a party of due process. An appeal cannot be filed unless a decision had already been made in regards to a pending motion. The decision not to grant certiorari allowed the Fourth Circuit to wrongfully deprive Brian David Hill of his right to procedural due process in a criminal or civil case regarding the right to an appeal in regards to the four pending motions. One pending motion was asking to rule on the motion or motions to vacate the fraudulent begotten judgments, and three pending motions requesting “Sanctions” against the attorney who is an officer of the court representing the party: United States of America for defrauding the court. Leaving those motions sitting on the docket for months to years without a decision ever being made permanently deprives Mr. Hill of due process, jurisprudence, and the lawful authority and credibility of the U.S. District Court and its judicial officers. Only Certiorari can prescribe a fix to the Fourth Circuit’s disruption on the uniformity of the Supreme Courts and Appellate Courts in regards to the usage and right of requesting the exercise of mandamus and prohibition in regards to a judicial officer not fulfilling his obligations and duties of his ministerial office. Only this court can resolve the disruption made by the Fourth Circuit.

In other words, Petitioner does not seek rehearing over case law precedential matters that had already been resolved by this Court, not

intending to disturb well-grounded case law in the Supreme Court, but to prevent disruptive case decisions by the appellate court or even the District Court that contradict well established and well-grounded case law by this Court.

GROUNDNS FOR RELIEF

As grounds for this petition for rehearing, petitioner states the following:

1. Mr. Hill filed four pending motions, uncontested motions that were never responded to in the District Court where the very motions were filed properly.
2. Those four pending uncontested motions were based on the legal basis of the Court's inherit or implied powers that was cited in the case of *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991) as well as other compelling, persuasive, and controlling case law in regards to the issues of sanctions against attorneys who offend by defrauding and deceiving the judicial machinery of the Courts. The penalties can be as far as recommending disbarment of an attorneys' license, vacating an earlier decision favorable to that attorney of that party who had later been caught defrauding the court, and even as far as default judgment in the other parties' favor. See 501 U.S. at 56–57; see also *Synanon Found., Inc. v. Bernstein*, 517 A.2d 28, 43(D.C. 1986) (once a party embarks on a “pattern of fraud,” and “[r]egardless of the relevance of these [fraudulent] materials to the substantive legal issue in the case,” this is enough to “completely taint [the party's]entire litigation strategy from the date on which the abuse actually

began”) and Synanon Found., Inc. v. Bernstein, 503 A.2d 1254, 1263 (D.C. 1986).

3. Petitioner had appropriately filed the allegations in the motions for sanctions asking the District Court to vacate earlier judgments favorable to the United States as they were later documented to have been grounded upon fraud and deception. When there is evidence of multiple judgments favorable to the attorneys for the “United States of America” were later proven to have been grounded on fraud in a given case, the judgments can and should be vacated. Not even the statute of limitations of the 2255 motions apply to this as the issues of “fraud” are not pursuant to statute but pursuant to the inherent powers given to Courts to manage their own affairs and making sure that the Court maintain their integrity, credibility and fairness under impartiality. A statute does not have to be invoked to deter fraud and does not have to be invoked to vacate a judgment when the judge determines that the victory was wrongfully given to a party who had deceived the court in an attempt to win the prosecution.
4. The four pending motions were not acted upon after no response was filed by a certain due date that was set by an officer of the Court, in this case the Clerk of the Court. After no response was filed to a pending motion and the judge did not yet render a decision after the response due date ended without a response from one or more parties, then the motion is considered uncontested and can normally be granted without notice. Citing Middle District of North Carolina Local Civil Rule 7.3 “MOTION PRACTICE” paragraphs (f) and (k).

5. Days and weeks go by without a decision being made on the pending motions. Petitioner files a petition for writ of mandamus under case no. 19-2338 asking for a decision to be made by asking the higher court, the Fourth Circuit to order the inferior court to make a decision on the pending motions. Usually “fraud upon the court” and challenges to a Court’s jurisdiction are not subject to any statute of limitations when it is the Court’s inherit or implied powers. Congress has not made any laws restricting the Court’s so-called “inherit” or “implied” powers. Usually the Congress makes laws to place restrictions onto laws for challenging a conviction under a 2255 motion pertaining to writ of habeas corpus relief and the suspension clause of the Constitution regarding suspension of habeas corpus. However, the inherit powers are still valid and are routinely being used by courts across the country. Courts have the power to punish contempt and fraud regardless of whether there is a statute of limitations.
6. The Fourth Circuit held that Petitioner was not entitled to relief because it is not a substitute for direct appeal in regards to the supervised release revocation, however they overlooked that the four pending uncontested motions cannot be directly appealed unless they are acted upon.
7. On February 10, 2020, The Fourth Circuit inappropriately gives an opinion [USCA4 Appeal: 19-2338, DE #19] justifying the denial of the writ of mandamus by arguing that “Hill can seek the requested relief in an appeal of the district court’s judgment, and indeed, such an appeal is currently pending before this court. See *United States v. Hill*, No. 19-4758.* Accordingly, we deny

the petition for writs of mandamus and prohibition and Hill's motions for a stay of the district court's judgment pending adjudication of these petitions." The issue was brought up in "petition for rehearing" that the writ of mandamus was not merely a substitute for appeal and even if it partially was, the portions of the requested relief were to compel a Judge to fulfil his duty by making a decision on four pending motions on the docket sheet before his court, and that the judge should not create a barrier to Mr. Hill's constitutional due process right and statutory right to appeal an unfavorable to the higher courts. Mr. Hill's original mandamus petition was appropriately seeking that pending motions be acted upon. That is why Petitioner had filed the petition for writ of certiorari to correct the misunderstanding that Petitioner's entire mandamus relief request was merely an attempt to circumvent the appeal process as set by law. Appellate courts can make mistakes as human beings. As that decision may not be revisited in the Fourth Circuit due to exhausting all remedies in case no. 19-2338, the Supreme Court is the only Court that could remedy a correction to the errors and mistakes made by the Fourth Circuit in regards to the denial of mandamus relief requested by Mr. Hill. Yes, Petitioner did file an emergency motion to request stay of judgment during the pendency of the writ of mandamus appeal, but had done so because the appeal under United States v. Hill, No. 19-4758, did not address any frauds upon the court because frauds can only be discovered after an unfavorable judgment. Frauds cannot be discovered until after a judge makes a ruling. Proven frauds upon the court cannot usually be resolved on appeal because appeal is not discovering new

evidence but only to make a decision on what was in regards to a judgment on the record at the time. When fraud is discovered, the Movant has the right to file a motion asking the Court to undo an earlier judgment as it was not a sound judgment when the court was misled or deceived by an officer of the court. When a judge does nothing to act upon the motion, it forms a basis for a lack of credibility when a court does not do anything to correct frauds perpetuated upon its record and upon its officers and upon its judicial machinery. Sanctions against fraud is meant to protect the Court's integrity as outlined by the Sixth Circuit. As defined by the Sixth Circuit, fraud on the court is: [C]onduct: (1) On the part of an officer of the court; (2) That is directed to the "judicial machinery" itself; (3) That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; (4) That is a positive averment or is concealment when one is under a duty to disclose; (5) That deceives the court. *Workman v. Bell*, 245 F.3d 849, 852 (6th Cir. 2001) (quoting *Demjanjuk v. Petrovsky*, 10 F.3d 338,348 (6th Cir. 1993)).

8. The granting of the petition for writ of certiorari in this case will maintain the uniformity between the U.S. Supreme Court, Virginia Supreme Court, and other courts that had made similar rulings in regards to usage of mandamus to compel a judge to act on pending motions and follow his/her duties as required of his/her respective office. It would prevent a rift between the lower courts and the Supreme Court when case law is usually created by this Supreme Court to put an end to a conflict between the State Supreme Courts and the U.S. Supreme Court and prevent a conflict between the circuits, making sure that

there is a uniform decisions made by that single decision by the ultimate Supreme Court. The Supreme Court normally grants certiorari for any decisions that may create a conflict/split between the Circuits, and any decisions that disrupt the sound judgments of this Court in the past. Like if the District Court or an Appellate Court made a decision that contradicts a past Supreme Court decision which creates an activism or rebellion against this Court and causes a Court to act independently creating an adverse legal jurisprudence to this court. It creates a rebellion or confederacy against this Supreme Court where its case law is no longer respected when it favors making decisions that conflict with the decisions of this court.

9. The compelling issues brought up in paragraphs 1-7 constitutes "intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented" sufficient to warrant rehearing of the order denying certiorari in Mr. Hill's case. Sup. Ct. R. 44.2. The granting of the petition in this case maintains the uniformity between the Supreme Courts of the states and this U.S. Supreme Court as well as uniformity between the Circuits. Mandamus petition should not have been denied by the Fourth Circuit to compel a judge to act where he/she had refused to act or ought to act. Mr. Hill's petition raised substantial and compelling issues requiring intervention by this court to prevent a rift and rebellion against this Supreme Court by lower contradicting case law decisions. Mr. Hill, therefore, requests that the Court grant rehearing of his petition and grant his petition because he had raised a challenge to the inappropriate denial of the writ of mandamus relief meant to

compel a judge to act upon pending motions which were uncontested and would normally be granted as a matter of law under the Local Rules of that Court and the inherent powers pertaining all Courts in the United States.

10. The proper granting of Mr. Hill's mandamus petition by the Fourth Circuit only for the issues of not taking action on pending motions has important continuing consequences, so that the Court will have to address the frauds brought to its attention and the appropriate discretionary action a Judge must take to maintain the Court's integrity and credibility of its judicial machinery.

CONCLUSION

For the foregoing reasons, petitioner Brian David Hill prays that this Court (1) grant rehearing of the order denying his petition for writ of certiorari in this case, (2) vacate the Court's October 5, 2020, order denying certiorari, and (3) grant the petition for a writ of certiorari, vacate the judgment and remand to the Fourth Circuit for further consideration in uniformity withy *Roche v. Evaporated Milk Assn.*, 319 U.S. 21 (1943) and *In re Commonwealth of Virginia*, 278 Va. 1 (Va. 2009) for the purpose of determining whether the Fourth Circuit should have entirely denied and dismissed the petition for writ of mandamus, or whether it should have been denied or granted in part or if at all.

Date: October 27, 2020

Respectfully submitted,

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Signed

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