

NO:

25-5373

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: MARKUS O'DON MCCORMICK

(Petitioner)

FILED

JUL 22 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

PETITION FOR WRIT OF MANDAMUS TO THE FOURTH CIRCUIT COURT OF APPEALS

Petition For Writ of Mandamus

Markus Odon McCormick

Name

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Address

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City, State, Zip Code

(910) 592-2151

Phone Number

QUESTION PRESENTED

1. Did the Fourth Circuit Court of Appeals abuse its discretion in declining to allow Petitioner to proceed *pro se* on appeal?
2. Whether the Fourth Circuit abused its discretion by suspending briefing?
3. Whether this court should exercise its discretion to issue a writ of mandamus to the court of appeals?

LIST OF PARTIES

6 All parties do not appear in the caption of the case on the cover page and is listed below as follows: FOURTH CIRCUIT COURT OF APPEALS

RELATED CASES

<u>5-23-CR-276-FL</u>	<u>10-17-2023</u>	<u>9-30-2024</u>	<u>prose</u>
<u>24-4522</u>	<u>10-02-2024</u>	<u>—</u>	<u>Kearns Davis</u>
<u>24-6973</u>	<u>10-11-2024</u>	<u>—</u>	<u>prose</u>
Member	Start	End	Counsel

OPINIONS BELOW

Appendix A: Judgment and Commitment order

Appendix B: Order denying without prejudice motion to proceed pro se on appeal

Appendix C: Deferred action by court on motion to proceed pro se on appeal

Appendix D: Government motion to remand

Appendix E: ~~Petitioner motion opposing motion to remand~~ Courts motion granting suspension of briefing

Appendix F: Petitioner motion opposing motion to remand

Appendix G: Motion For Reconsideration of the order denying motion to proceed pro se on appeal

JURISDICTION

Jurisdiction to grant the writ of mandamus to the court of appeals, sought by petition, is conferred on this court by the provisions of 28 U.S.C.A. § 1651(a), and Rule 20 of the rules of this court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Court of Appeals Fourth Circuit Rule 46(f): "An individual may proceed without the aid of counsel, but should so inform the court at the earliest possible time. In any pro se appeal, the clerks shall notify the parties that they shall file informal briefs as provided by local Rule 34(b). The court will limit its review to the issues raised in the informal briefs and will consider the need for appointment of counsel when reviewing the appeal under local Rule 34(a). Cases involving pro se litigants are ordinarily not scheduled for oral argument."

STATEMENT OF THE CASE

On 10-17-2023 Petitioner was arrested on a 4 count indictment by the Government. Petitioner elected to proceed pro se at first appearance. Trial commenced on 5-17-24 and on 5-23-24 the jury returned a verdict of not guilty on counts 1 & 2 and guilty on Count 3. On 6-24-24 the government moved to voluntarily dismiss count 4, that was granted on 6-26-24. On 9-30-24 the court sentenced Petitioner to 120 months imprisonment for count 3. "see Appendix A". Notice of appeal was given in open court.

On appeal to the 4th Circuit Court of Appeals Petitioner moved to proceed pro se on appeal immediately, in which the court denied without prejudice to filing of a motion for leave to file a pro se supplemental brief accompanied by the proposed brief on 10-22-24. see Appendix B. In November when Petitioner submitted his pro se supplemental brief raises 20 issues he also included with it another motion to proceed on appeal in which the court deferred action by court order on 11-14-24. see Appendix C.

Appellate Counsel Kearns Davis submitted his Appellant brief on 3-10-25 briefing 2 issues that were issues No. 3 and No. 4 in the 20 issue pro se supplemental brief, even though Petitioner specifically asked him to brief Issue 1 which was the lead investigating officer and only witness to testify before the grand jury knowingly, testifying untruthful numerous times in violation of 18 USC A. § 1623.

On 4-10-25 the Government filed a motion to remand back to district court. see Appendix D. The court granted the Government's motion to suspend briefing pending resolution of motion to remand on 4-10-25. see Appendix E. Petitioner filed a motion opposing the government motion to remand, see Appendix F, in which the court has yet to rule on which led to Petitioner filing a "motion for reconsideration of the order denying his motion to proceed on appeal pro se", that the court denied on 6-12-2025. see Appendix G. This Petition follows

REASONS FOR GRANTING THE PETITION

I. The issues involved in the present proceeding are of an exceptional character and of great public importance being the decision of the Fourth Circuit is in conflict with its own court rules

(1) United States Fourth Circuit Court of Appeals Rule 46(f) states "An individual may proceed without the aid of counsel, but should so inform the court at the earliest possible time. In any prose appeal, the clerk shall notify the parties that they shall file informal briefs as provided by local Rule 34(b). The court will limit its review to the issues raised in the informal briefs and will consider the need for the appointment of counsel when reviewing the appeal under local Rule 34(a). Cases involving pro se litigants are ordinarily not scheduled for oral argument."

(a) In the instant case the Fourth Circuit did abuse its discretion because from the very beginning. Petitioner made it clear "he wishes to proceed prose on appeal," just like at trial in his first motion to proceed prose on appeal filed in October 2024 that the court dismissed without prejudice, on 10-22-24. see "Appendix B"

(b) The 4th Circuit allowed the following Appellants to proceed prose on direct appeal in their courts: "United States v. Earghart, 2022 WL 4285718"; "United States v. Kumar, 2024 WL 1134035, 133 A.F.T.R. 2d 2024-985"; "United States v. Grier, 2024 WL 3717057"; "United States v. Russell, 2024 WL 4403998"; and unlike Petitioner none of these individuals proceeded prose at trial

(c) In December 2024 Appellate Counsel paralegal came to visit Petitioner at the facility he's at. During this meeting the only thing that was discussed was his supplemental brief filed in early November in which Petitioner specifically told counsel to brief Issue number 2 that is "Whether the district court erred denying motion to dismiss indictment for violating 18 U.S.C. § 1623, due to the only witness (a police officer) intentionally lying numerous times to secure the indictment. Appellate counsel still failed to argue this structural error, only to brief issues number 3 and 4 from supplemental brief.

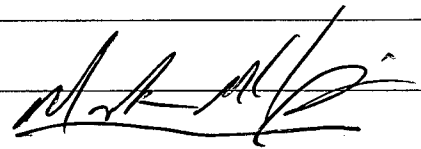
(d) In Petitioner's Supplemental brief he raised the issue "Ineffective assistance of standby counsel" due to standby counsel's incompetent representation and instead of Appellate counsel briefing this issue he does the opposite giving standby counsel "positive praise" in his brief as if standby counsel was

helping Petitioner which led to Petitioner filing a "motion for reconsideration of the order denying his motion to proceed on appeal pro se," in June that the court denied see "Appendix G"

II. In Conclusion Petitioner contends trial counsel was never appointed during any stage of the proceedings while the case was in district court, therefore the "motion to proceed pro se on appeal under Rule 46(f) should of been granted see "United States v. Dingdee, 608 F.2d 807 (9th Cir. 1979)", and the only remedy is to grant this petition and order the 4th Circuit to allow Petitioner to proceed pro se on appeal and allow briefing so that Petitioner's issues can be adjudicated on the merits and for these reasons mentioned in this Petition the writ should be granted, as there is no other adequate means to meet the relief sought see "Bauman v. US District Court, 557 F.2d 650, 654-55 (9th Cir. 1977)"

7-14-25

Dated



#0878635

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