CASE NO. 25-5965

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,
Plaintiff/Respondent,

v.

SAMSON KANLA ORUSA,
Defendant/Petitioner,

UNITED STATES COURT OF APPEAL FOR
THE SIXTH CIRCUIT CASE NO. 23-5822

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
CASE NO. 3:18-CR-00342-1

PETITION FOR REHEARING OF AN ORDER DENYING CERTIORARI

SAMSON KANLA ORUSA
Defendant/Petitioner
Reg No. 16933-075
Allenwoon FCI Low Security
P. O. Box 1000
White Deer,PA 17887
Pennsylvania.

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JUDGE'S MISCONDUCT

Petitioner,Samson Kanla Orusa,makes this petition for rehearing of an Order denying a writ of Certiorari pursua- to Rule 44 of Rules of The Supreme Court.

Petitioner alleges that the trial Judge's misconduct at trial and beyond,and affirmed by the three Court of Appeals (COA) Judges at the Sixth Circuit was at play. This is a substantial ground not previously articulated.

The due process clause of the Fifth Amendment requires a "fair trial in a fair tribunal before a judge with no actual bias against the defendant." Bracy v. Gramley,520 U.S. 899,904-05, 117 S. Ct. 1793,138 L. Ed. 2d 97 (1997);See In re Murchison, 349 U.S. 133,136,75 S. Ct. 623, 99 L. Ed. 942 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process.") Under the Due Process Clause,"recusal is required when,objectivel-y speaking,"the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerab-le." Rippo v. Baker,580 U.S. 285,287,137 S. Ct. 905,197 L. Ed. 2d 167 (2017) (per curiam) (quoting Withrow v. Larkin,421 U.S. 35,47,95 S. Ct. 1456,43 L. Ed.2d 712 (1975)). We ask "not whether a judge habors an actual,subjective bias,but instead whether,as an objective matter,the average judge in his position is likely to be neutral,or whether there is an unconstitutional potential for bias." Williams v. Pennsylvania,579 U.S. 1,8, 136 S. Ct. 1899 195 L. Ed 2d 132 (2016) (quoting Caperton v. A. T. Massey Coal Co., 556 U.S. 868,881,129 S. Ct. 2252,173 L. Ed. 2d 1208 (2009)). Because "[b]oth the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself," an unconstitutional failure

to recuse is structural errorand thus not amenable to harmless-error review. Id at 16.

Please review these few examples:

i. The Judge gave a pretrial Order barring the prosecutor's star witness from using a set of damaging prejudicial state-ments at trial. Before this witness took the stand,the Judge reminded again and confirmed with the prosecutors and witness about this Order. The Judge in his bias,ordered the Defense not to object during the testimony of this witness and also allowed the prosecutors to ask leading questions. This was the only witness accorded this special status in the entire trial. The Prosecutor and this witness violated this Judge's Order five times. The Judges denied a mistrial request because Defense did not object contempraneously even though this was in obedience to the Judge's Order .

ii. One Judge considered statements to be so prejudicial to the Defense that he placed a pretial Order barring the Prosecutors from eliciting them and the witness from saying them. After this was violated,the other Judges now say that it was only a small part of the evidence against the Defendant and does not amount to a mistrial.

iii. The Judge,in open Court,addressed the Prosecutor that he did "not listen" to him,was "totally inappropriate,incredibly unprofessional","very unprofessional and very rude to the Court", only for the other Judges to deny a mistrial arguing that "the Prosecutor did not act in bad faith".

iv. Billing and Coding Experts for both the Prosecutors and Defense testified that medical billing codes have an element

of subjectivity to the process and the 2 coding Experts disagreed 23% of the time. They also stated that medical billing can be done based on Complexity or based on Time spent with the patient. The Judge however allowed into evidence at trial,charts that assu -med all office visits were based on time spent and that the time-chart total did not synchronize with the total time the doct eor was in the clinic,where most of the billing were done accor-ding to Complexity,thereby misleading the jury into convicting on healthcare fraud.

v. The Judge says,Count 1(maintaining a drug premises) is linked to unlawful distribution of drugs,healthcare fraud and money laundering,but healthcare fraud is not linked to unlawfull distribution,hence a new trial is not granted for healthcare frau -d. This premise and conclusion is wrong,illegal and shows bias. Once the unlawful distribution conviction was vacated as unlaw-ful,since it was the thread linking all the convictions,then all the convictions are supposed to be vacated and retried legally.

vi. Defense simply asked for a new trial based on ille-gal jury instruction contigent upon Ruan. But the Judge granted a new trial for drug involved premises,unlawful distribution of drugs,and money laundering even though none of these was specifi-cally mentioned in the request fornew trial. But the Judge said he is denying a new trial for healthcare fraud because it was not mentioned in the request.

vii. The judge says"The problem is,with the way the Indictment was drafted" .."I don't have the power..to change your Indictment. The Indictment is what it is.." "Nothing but conjectu -resupports the conclusion that a properly instructed jury would have returned the same verdicts of guilt" (Crenshaw's memoran-

dum). The Judge was duty-bound to apply this to all convictions because the problem described as infecting the Indictment,applies to all the charges and the subsequent convictions.

viii The Judge says that a mixed verdict(where the same patient prescription led to a conviction but an acquittal on healthcare fraud versus unlawful distribution of drugs) is a reason to allow the healthcare fraud convictions to remain becaus-e it is proof the jury separated the charges. How can this be, since the mixed verdict resulted from convictions already vacated due to illegal jury instructions.

ix. The Defense moved and asked for anew trial. Following this,the Judge then asked the prosecutors to include in thei-r response how Ruan applies to healthcare fraud. When the Defense now discussed healthcare fraud in their response to the prosecutor's response,the Judge now says the Defense forfeited this request because it did not mention it in the initial motion. He made this decision not according to law.

28 U.S.C. §455(a) states,all "judge[s] of the united States" must "disquqlify [themselves] in any proceeding in which [their] impartiality might reasonably be questioned." 28 U.S.C. § (455(a). Subsection 455(b),in contrast to subsection 455 (a)'s general dictate,enumerates specific instances requiring recusal,the first of which is relevant here:judges must recuse themselves when they have "a personal bias or prejudice concerning a party,or personal knowlege of disputed evidentiary facts concerning the proceeding." Id. § 455(b)(1).

With the Supreme Court,under Liteky,the terms "bias

or prejudice" connote instances of partiality or opinions that are "somehow wrongful or inappropriate." 510 U.S. at 550-52. A Judge's misconduct at trial may be "characterized as bias or prejudice" if "it is so extreme as to display a clear inability to render fair judgement." Id at 551. This conduct must be so extreme,in other words,that it "display[s] a deep-seated favoritism or antagonism that would make fair judgement impossible." Id at 555. "[J]udicial remarks during the course of a trial that are critical or disapproving of,or even hostile to,counsel,the parties,or their cases ordinarily do not support a bias or partiality challenge...[But] they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgement impossible." Id. "[E]xpressions of impatience,dissatisfaction,annoyance,and even anger,that are within the bounds of what imperfect men and women...sometimes display," by contrast,do not establish such bias or partiality. Id. at 555-56;see also Offutt v. United States,348 U.S. 11,17,75 S. Ct. 11,99 L. Ed. 11 (1954). In Liteky,as an exampleof a case in which recusal was warranted because the judge's remarks made "fair judgement impossible," the Supreme Court cited Berger v. United States, 255 U.S. at 555. In Berger, a world war I espionage case involving German-American defendants,the Supreme Court concluded that a district court judge was impermissibly biased when he stated: "One must have a very judici-al mind,indeed,not to be prejudiced against the German-Americans in this country. Their hearts are reeking with disloyalty." 255 U.S. at 28. Immediately there after,the judge stated:"this defendant is the kind of a man that spreads this kind of propaganda, and it has been spread until it has affected practically all the

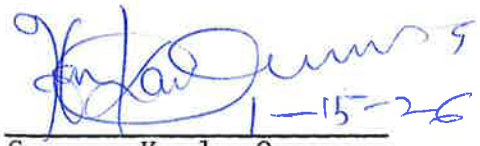
Germans in this country." Id. at 28-29. According to the Supreme Court, these comments were sufficiently extreme to establish "such a high degree of ...antagonism as to make fair judgement impossib -le. Liteky, 510 U.S. at 555.

x. In petitioner's case, four days before sentencing, a new counsel was granted permission to appear Pro Hac Vise and fil -ed a motion for a new trial and continuance of sentencing. Exten -sive briefing and arguments were then held on the subject of exc -usable neglect. Counsel for Defense was put on the witness stand and interrogated. The Judge concluded that the counsel for the De -fendant intentionally engaged in gamesmanship inorder to delay sentencing. The judge got upset and asked the Defendant to fire his two attorneys and witdraw the motion for a new trial. He then got an independent counsel, Paul Bruno, to advise Defendant to drop his two consels. The independent counsel ended up siding with the two counsels and advised the defendant and the court for the defe ndant to keep his counsels, that they are offering the defendant the best legal advise as far as he is concerned. The defendant accepted the advise of the independent counsel. The Judge was upset with this outcome. Subsequent to this, he ruled and agreed that the jury instruction was illegal, but still held on to the healthcare fraud convictions. He sentenced defendant, a first time convict, to a higher sentence guideline after he had enhanced it, and finally sentenced the defendant to 6 months above the upper end of this higher bracket. The Defendant believe this was punish -ment for not firing the 2 counsels, because when the Defendant petitioned for Bond Pending Appeal, he rejected it, stating that Orusa will do anything to stay out of prison(DC DOF 398).

CONCLUSION

For the sake of The Supreme court of The United States to exercise its supervisory power in the face of such egregious Judge's misconduct and for the sake of justice, Samson Kanla Orusa, MD, respectfully requests that the Supreme Court of The United States vacate his remaining convictions and remand for a new trial.

Respectfully submitted,



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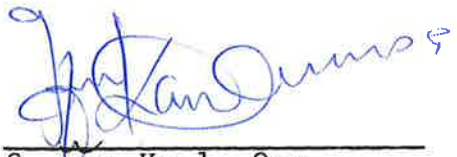
Samson Kanla Orusa
(Defendant/Petitioner)
Reg. No. 16933-075
Allenwood FCI Low Security
P. O. Box 1000,
White Deer, PA 17887
Pennsylvania.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this petition contains 964 words, exclusive of the items listed in Rule 33.1(d) and therefore complies with the limitations on length of 'petition for Rehearing of an Order Denying Certiorari' set forth at Rule 33.2(b) and 33.1(g) of the Rules of the Supreme Court of The United States.



Samson Kanla Orusa
Reg. No. 16933-075
Allenwood FCI Low Security
P. O. Box 1000
White Deer, PA 17887.
Pennsylvania.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing petition has been sent via US mail, postage prepaid to:

D. John Sauer
Solicitor General/Counsel of Record
U.S. Department of Justice
Office of Solicitor General
Room 5612
Washington, D.C. 20530

This the 15TH OF JAN. 2025.

Samson K. Orusa
Reg. No. 16933-075
Allenwood FCI Low Security
P. O. Box 1000
White Deer, PA 17887
Pennsylvania.

Pro Se.