SUPREME COURT OF THE UNITED STATES

Robert L. Tatum, Petitioner-Applicant,

25A396

-v-

SCOTUS Case no.

Atty. General Josh Kahl, State of Wisconsin, Respondent.

-Application to the Circuit Justice of the 7th Circuit, Hon. Amy Coney Barrett-

-For a Certificate of Appealability for EDWI Case #21-CV-804, Tatum v. [Stevens]

Pursuant to 28 USC 2253(c)(1-2), Tatum hereby seeks the grant of a certificate of appealability ("COA") from the circuit justice of the 7th Circuit, Hon. Amy Coney Barrett, upon the reasoning + grounds stated herein proving such a grant is justified.

-Facts + Case Statement-[Excerpted for brevity. For full facts, see St. v. Tatum, 346 Wis2d 279 (2013), [¶2-8] + 396 Wis2d 194 (2021). [¶2-22]]

COA is sought here after habeas petition + COA was denied in the EDWI by Magistrate Nancy Joseph, #21-CV-804, essentially affirming the state conviction + Life WOP sentence in the underlying case, and the 7th Circuit denied COA without reasoning on 5-21-25.

In May 2010, Tatum was charged with 2 counts of int. homicide, + in June he was arrested on the charges. Tatum promptly requested a speedy trial pursuant to WI Stats. 971.10, which was entered as of 7-20-10. Trust issues led to the assignment + later (granted) withdraw of 2 attorneys, + as a result the state court vacated - as opposed to granting continuance or tolling - the ST requests. The 3rd attorney re-filed ST as of 11-5-10. Conflicts of interest arose in this representation as well, wherein Tatum had to investigate the facts of his case himself from behind bars, and just weeks prior to the 90-day limit on his 971.10 ST demand expiring (mandating his release), 3rd counsel challenged competency to stand trial without warning, prompting Tatum to seek to proceed pro se. The state court denied all requests to proceed pro se, 2 with

no colloquy + 1 after colloquy in which Tatum answered the legal qu's correctly that were posed + affirmatively stated he was studying a book on self-representation to competently carry out the task. On 4-7-11, Tatum was convicted after a jury trial: The state largely relied on "jail-house snitch" testimony of Jesse White + Jeffrey McCord, claiming Tatum had "confessed" he committed the alleged crimes -- During pretrial process + hearings, Tatum tried to bring up the fact that the alleged "confessions" were fabrications in court so they could be suppressed, but the court ignored the matter, + later produced transcripts appeared to cover-up those instances, with the statements being incoherent or missing entirely. (Note: the colloquy statements tending to conclusively prove error in denial of pro se leave were also made incoherent or taken out / missing.)

On 6-10-11, Tatum was sentenced to Life WOP. Tatum appealed on denial of pro se leave, ST (state + Constitution) grounds, which both the WI Ct. of Appeals + Supreme Court affirmed. Habeas was sought in the Fed. courts; EDWI affirmed, '13-CV-1348, but on 1-31-17 the 7th Circuit reversed + ordered a remand/grant of habeas corpus -- The state had denied pro se leave on the basis that I somehow didn't prove the knowing the dangers of self-representation, when SCOTUS + all circuits (virtually) hold that is info the court must "rigorously convey", not that I must prove; So the state court's denial under Faretta v. Cali was "unreasonable" per 2254(d)(1). Tatum v. Foster, 847 F3d 459 (7th Cir. 2017)

Instead of accepting the decision, the State filed a frivolous SCOTUS certiorari petition, seeking to overturn the 7th Circuit with no stated rationale proving the 7th Circuit misinterpreted SCOTUS precedent or explaining why that precedent should be over-ruled; Petition was denied October 2017.

ST was requested per 971.10 promptly after the 131-17 decision, but wasn't entered until 11-17-17. Trial (2nd) was set for 1-28-18.

Tatum sought to prove a dual theory of defense: Outrageous gov. conduct ("OGC") + alibi. (An alibi defense was to be advanced in the 1st trial,

but despite filing a notice of alibi 3rd counsel surprised Tatum at trial by calling no witnesses + presented no defense other than closing argument.)

Tatum sought to prove he was elsewhere at the time of the deaths at issue, + the state planted + fabricated evidence after a myopic investigation focused solely on him, violated several rights to ensure conviction, then falsified the case records to cover it up. The state court denied verbally all of the DGC evidence, even the transcript records themselves, save Tatum's own testimony, alleging the weight of the evidence was "infintesimally small" since it doesn't directly prove events occurring on 5-20-80 -- the day of the deaths at issue. Trial began, + on the 3rd day of deliberations Tatum was found guilty, + later given Life w/o. At sentencing, Tatum made his ST claims as state caselaw requires (post-trial); The state court ruled all delay prior to 11-17-17 was "waived", + the time from trial to 11-17-17 was not sufficient to trigger ST inquiry as "presumptively prejudicial." Tatum appealed on denial of 6th Am. ST, state-created liberty interest (SCLI), + right to present a complete defense grounds; The WI Ct of Appeals affirmed (+ so did WI Supreme Court, no review), on grounds that Betterman v. MT applied to justify not counting pre-11-17-17 delays, and not all proof was denied + DGC proof's value was 'infintesimally small' so no denial of defense occurred.

Habeas was sought in EDWI; The state failed to rebut the facts stated in the Petition which should have resulted in them being deemed admitted under FRCivP 8, 8(c)(6), but the district refused to recognize the admissions. 4 grounds were raised: 1. 2254(d)(1) "unreasonable application" language is unconstitutional; 2. 6th Am. ST rights were denied; 3. SCLI rights were denied under 14th Am., 4. 6th+14th Am. right to present a complete defense denial. On 2-10-23, the EDWI affirmed the state conviction, agreeing that Betterman applies to my 6th Am. ST claim, ruling (based on a 2007 7th Cir. case) that SCLI claims aren't cognizable on habeas, + ruling that since all proof wasn't denied, etc. no complete defense denial occurred (as the state said). 2254(d)(1) unconstitutionality wasn't addressed at all.

Notice of appeal was deemed timely filed as of 6-9-23, seeking COA -- EDWI denied COA upon habeas relief denial. On 5-21-25, COA was denied, no

reasoning, stating simply: "This Court has reviewed the final order of the district court & the record on appeal. We find no substantial showing of the denial of a constitutional right. Accordingly, the request for a certificate of appealability is DENIED." see 25 WL 1489548.

-Reasons for Granting this Application for COA-

Under Buck v. Davis, 580 US 100, 115-6 (2017), the standard requiring the grant of a COA is a low bar: "At the COA stage, the only question is whether the applicant has shown that 'jurists of reason' could disagree with the district court's resolution of his constitutional claims, or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." id. This threshold question "is not coextensive with a merits analysis", and should be decided without "full consideration of the factual or legal bases adduced in support of claims." id. This standard was clearly disregarded by both the CA7 & EOWI upon examination of their resolve of claims:

1. The CA7 & district wholly did not address the claim of 2254(d)(1) unconstitutionality re: "unreasonable application" language at all, dispite the 2 grounds (a. Congress has no authority to pass statutes allowing violation of citizens rights under the Bill of Rights on grounds that there's a reasonable explanation as to why the state violated the right, ie. it's not "unreasonable"; b. if a Fed. court, who has an independent obligation to state "what the law is", see Williams v. Taylor, 529 US 362, 378-9 (2000), would declare a state conviction violates the Constitution, Congress violated Separate Powers doctrine / Art. III by its 2254(d)(1) intrusion to require the opposite conclusion) having substantial merit & case support -- How can it be said that "no reasonable jurist could disagree with that resolve, or / not be encouraged to proceed further" when I got no decision on a major claim? This 2254(d)(1) standard was relied on -- If it was declared unconstitutional, my case results would've been different & likely favorable.

2. The district's resolve of 6th Am. ST claims contradicts 3-4 SCOTUS cases, including Betterman, with no explanation or rationale to justify it.

My case involves reversal of a conviction after appeal; Not only is this materially similar to facts in US v. Loud Hawk, 474 US 302 (1986) (re: rev. after dismissal) so as to require the same results in calculating ST appeal delays, see Wiggins v. Smith, 539 US 510, 520 (2003), Betterman itself SPECIFICALLY EXCLUDES cases with my facts from its holding @ 578 US 437, 442 fn 2 (2016), yet it was applied. The logic that ST rights still attached after dismissal in Loud Hawk but detached in mine contradicts SCOTUS' holding in US v. MacDonald, 456 US 1, 9 (1982), stating dismissal detaches ST rights, and under Nelson v. Colo, 581 US 128 (2017) a reversed conviction is invalid or counted as "no conviction at all", id at 136 fn 10 -- So the entire time from arrest to 2nd trial must be counted towards "length of delay" ST calculation, since reversal is treated as if it never occurred. The district's resolve doesn't address its disharmony with these several cases, which support finding my 6th Am. ST rights were violated; So how can it be this issue doesn't meet Buck requisites for a COA? No reasonable jurist could disagree with this?

3. The district ruled SCLI claims are not cognizable on habeas based a 2009 CA7 case. Houska v. Jenkins, 556 F3d 633, 637 (7th Cir. 2009). In Houska -- NOT a SCLI case -- ineffective counsel was claimed based on application of WI lawyer ethics rules, & CA7 decided misapplying state ethics re: former lawyer's ability to testify could not support a Fed. IEC claim. But SCLI claims are distinguishable, as a several SCOTUS cases hold these are independently protected by the 14th Am., & SCOTUS specifically held SCLI claims cognizable on habeas in Swarthout v. Cooke, 562 US 216, 220-21 (2011) under the 14th Am. So how can it be that Buck's standard was not met for this claim? No reasonable jurist could disagree with the district directly contradicting a SCOTUS case based on an older lower court case?

4. The district's resolve of denial of complete defense presentment claims disregards the Chambers v. Miss. line of cases + engaged/applied no on-record analysis balancing the the importance of denied evidence to the [OGC] defense vs. the evidentiary rules, nor considered the effect of the denial on the ability to present the [OGC] defense, or Kubsch v. Neal factors. In "gleancing] a number of lessons from the Chambers line of cases", CA7 listed 5 factors to be weighed in determining if the right to present a complete defense has been denied: 1. if evidence was excluded, + not just to prove an affirmative defense, 2. if a serious crime is involved, 3. if evidence is essential to the defense, 4. if the evidence is reliable + trustworthy, 5. if evidence rules were applied arbitrarily. Kubsch v. Neal, 838 F3d 845, 858-60(7th Cir. 2016) I met all of these factors, but the district didn't cite Kubsch or weigh these factors; WI required "strict scrutiny" analysis apply to evidence denials, see St. v. Pulliccano, 155 Wis2d 633, 654-5(1990), which wasn't considered, nor any balancing analysis - which is considered a symptom of arbitrary denial of complete defense presentment, eg. Feldman v. Brennan, 969 F3d 792, 806-7(7th Cir. 2020) And the "we didn't deny ALL your evidence, so no complete defense violation" reasoning has been consistently rejected by competent jurists: Feldman, id at 805-6. "In response, the state argues that Feldman was not deprived of his right to... present a defense because just a "portion" of [his evidence] was excluded... We disagree."; also Harris v. Thompson, 698 F3d 609, 627-30(7th Cir. 2012) (denial of a single key witness denied right to a complete defense) Yet, no COA. How is this issue not appealable under Buck's low bar standard?

5. The district failed to apply FRCivP 8 pleading standards under FRCivP 81(a), when the state failed to rebut the petitions facts as stated to be requisite per rules. SCOTUS has applied FRCivP 8 pleading standards on habeas; eg. Mayle v. Felix, 545 US 644, 663(2005), Wood v. Milyard, 566 US 463, 475-7(2012) Yet the district refused to do so when the state admitted my case facts by failing to rebut them under FRCivP 8(b)(6).

My case resolve, esp. fact-extensive claims (such as 6th Am. ST), would be different + likely favorable if this was properly addressed, so how is this not appealable under Buck? No reasonable jurist could disagree, when I cite 2 SCOTUS cases applying FRCivP 8 on habeas?

All of these claims are appealable with Buck v. Davis standards properly applied, so COA should issue upon this application.

If COA should happen to be denied contrary to the weight of proof cited herein, a Certiorari petition on these grounds will be timely filed:

A. SCOTUS has not revisited nor clarified the "deep-seated bias" standard for rulings constituting proof of bias in the 30+yrs since Liteky v. US, 510 US 540, 555-6 (1994), resulting in an ideological split in the circuits wherein some recognize the exception announced, "rulings alone almost never constitute a valid basis for a bias or partiality motion...unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." id. eg. US v. Ransom, 428 Fed Appx 587, 588-90 (6th Cir. 2011); and some saying rulings can NEVER be proof of bias. eg. Singh v. Garland, 20 F4th 1049, 1054-5 (5th Cir. 2021) ("Our precedent [] forecloses any reliance on incorrect legal conclusions as evidence of partiality.") But commonsense, judges act largely by rulings + its more than possible to effect bias by rulings alone, so what is the evidentiary standard for making a valid "deep-seated" claim?

B. Judicial bias is "structural", affecting a case overall, and rooted in the "limitation of the exercise of judicial power", similarly to jurisdiction claims/issues, which are "threshold" matters that must be resolved prior to merit issues; So based on the similar natures of bias claims to jurisdiction issues, + the nature of bias claims + harms making resolve at its earliest juncture requisite, see eg. Berger v. US, 255 US 22, 36 (1921), US v. Baliotticri, 779 F2d 1191, 1205-7 (7th Cir. 1985), must judicial bias be declared to be a "threshold" matter which must be resolved prior to reaching merits?

C. SCOTUS has long prior declared that quasi-judicial body decision-makers must minimally state the facts relied on + the rationale + reasoning for

their decisions. eg. Wolff v. McDonnell, 418 US 539, 563 (1974) But no minimum due process standards for judicial decision-making exists has been declared, resulting in courts issuing arbitrary-appearing "no reason" decisions resolving even paramount rights such as life itself -- ie. the COA orders in this case. But under the Mathews v. Eldridge [424 US 319, 335 (1976)] factoring analysis, considering that life is in the balance, doesn't this violate due process to issue a "no reason" decision? Is reasoning requisite to ensure that the right to life isn't arbitrarily denied by decision-makers in the judiciary?

D. 2254(d)(1) "unreasonable application" language is unconstitutional. (as stated earlier herein)

-Conclusion-

Based on the foregoing facts + reasoning stated herein, the instant application should be GRANTED, awarding Certificate of Appealability to Petitioner Robert L. Tatum in this matter as urged.

Dated this 12th day of August, 2025. Signed: [signature]

Robert L. Tatum, Petitioner

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