

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Dietrick Lewis Johnson, Sr.

Johnson · No. 15-41085 and 15-41086 · Decided November 6, 2015

SUMMARY

This document is a pro se application for a certificate of appealability and supporting brief filed in the United States Court of Appeals for the Fifth Circuit. Dietrick Lewis Johnson Sr. challenges the denial of relief under 28 U.S.C. § 2255, raising claims concerning the voluntariness of his guilty plea, ineffective assistance and conflict of interest, competency, the validity of the indictment, prosecutorial misconduct, and discovery.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
JURISDICTION	Texas
DECIDED	November 6, 2015
DOCKET	15-41085 and 15-41086
DISPOSITION	other
PROCEDURAL POSTURE	Application for a certificate of appealability from the denial of a motion under 28 U.S.C. § 2255.
STANDARD OF REVIEW	For a certificate of appealability, the applicant must make a substantial showing of the denial of a constitutional right by demonstrating that reasonable jurists could debate whether the petition should have been resolved differently or that the issues deserve encouragement to proceed further. The brief also asserts abuse-of-discretion review for denial of discovery.
PRECEDENTIAL VALUE	none; appellate brief rather than court opinion
PARTIES	Dietrick Lewis Johnson, Sr. v. United States of America

TOPICS

- federal habeas corpus
- appellate procedure
- post-conviction relief
- ineffective assistance
- plea bargaining

PRACTICE AREAS

federal habeas corpus

criminal procedure

appellate procedure

ineffective assistance of counsel

plea bargaining

QUESTIONS PRESENTED

1. Whether a certificate of appealability should issue on Johnson's claim that his guilty plea was not knowing and voluntary because he allegedly was not advised of its consequences in a parallel state prosecution.
2. Whether a certificate of appealability should issue on Johnson's ineffective-assistance-of-counsel claims concerning investigation, suppression of evidence, preservation of error, and advice regarding the guilty plea.
3. Whether a certificate of appealability should issue on Johnson's alleged conflict-of-interest claim involving counsel's advice to accept a plea agreement containing a collateral-attack waiver.
4. Whether a certificate of appealability should issue on Johnson's claim that the district court violated Federal Rule of Criminal Procedure 11 and failed to inquire adequately into competency and the effects of prescription medication.
5. Whether a certificate of appealability should issue on Johnson's claim that he was convicted and sentenced under an indictment allegedly returned by an expired grand jury.
6. Whether the district court abused its discretion by denying Johnson's request for discovery in the § 2255 proceeding.

FACTUAL BACKGROUND

According to the appellant's brief, a federal grand jury returned a superseding indictment charging carjacking, possession of a firearm in furtherance of a crime of violence, and felon in possession of a firearm. Johnson entered a guilty plea to the carjacking count in exchange for dismissal of the firearm counts and was later sentenced to 240 months on the carjacking count and a concurrent 125 months for witness tampering. Johnson alleged that his federal plea agreement was used in a parallel Texas prosecution, that counsel failed to advise him of that consequence, and that counsel failed to investigate alleged warrantless searches, phone records, witnesses, and other evidence.

PROCEDURAL HISTORY

Johnson pleaded guilty in federal district court to carjacking under 18 U.S.C. § 2119 after the government agreed to dismiss firearm-related counts. He was later sentenced to 240 months on the carjacking count and a concurrent 125-month sentence for witness tampering. The district court denied his § 2255 motion, and Johnson sought a certificate of appealability in the Fifth Circuit.

DISPOSITION

other

CASES CITED

- Haines v. Kerner, 404 U.S. 519 (1972)
- Miller-El v. Cockrell, 537 U.S. 322, 336 (2003)
- Medellin v. Dretke, 544 U.S. 660, 666 (2005)
- Drinkard v. Johnson, 97 F.3d 751, 755 (5th Cir. 1996)
- Fuller v. Johnson, 114 F.3d 491, 495 (5th Cir. 1997)
- United States v. Gaitan, 954 F.2d 1001, 1011 (5th Cir. 1992)
- United States v. Pearson, 910 F.2d 221, 223 (5th Cir. 1990)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Hill v. Lockhart, 474 U.S. 52, 59 (1985)
- Bond v. Dretke, 384 F.3d 166, 167-68 (5th Cir. 2004)
- Wood v. Georgia, 450 U.S. 261, 271 (1981)
- Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)
- United States v. Garcia-Jasso, 472 F.3d 239, 243 (5th Cir. 2006)
- United States v. Vaquero, 997 F.2d 78, 79 (5th Cir. 1993)
- McCarthy v. United States, 394 U.S. 459 (1969)
- Pate v. Robinson, 383 U.S. 375 (1966)
- Drope v. Missouri, 420 U.S. 162 (1975)
- United States v. Pandilidis, 524 F.2d 644, 647-48 (6th Cir. 1975)
- United States v. Weintraub, 871 F.2d 1257, 1259 (5th Cir. 1989)
- Gibbs v. Johnson, 154 F.3d 253, 258 (5th Cir. 1998)
- Perillo v. Johnson, 79 F.3d 441, 444-45 (5th Cir. 1996)
- Blackledge v. Allison, 431 U.S. 63, 82-83 (1977)
- United States v. Henderson, 72 F.3d 463, 465 (5th Cir. 1995)
- United States v. Ihsan Elashyl, 554 F.3d 480 (5th Cir. 2008)
- United States v. Somner, 127 F.3d 405, 408 (5th Cir. 1997)
- United States v. Lewis, 476 F.3d 369 (5th Cir. 2007)