

United States District Court
District of Rhode Island

United States of America
v.
David Staveley

Case No. CR-00074-MSM

Motion for Recusal
of Judge Mary S. McElroy

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U.S. DISTRICT COURT
DISTRICT OF R.I.

The following motion is presented to the honorable court by Defendant Pro Se. The Defendant was denied counsel by the court and he is not an attorney nor does he have any legal experience. The Defendant is submitting this motion without advice of counsel, while incarcerated, without any court notification in the form of current court docket, electronic filings, court decisions, etc., in the last 50 days, with limited resources and during Covid-19 protocols creating a limited ability for the Defendant to communicate, garner information or to achieve any level of success in this matter.

Defendant requests the recusal of Judge Mary S. McElroy from this proceeding and as reasons therefore states as follows.

In the Defendants view the Court has engaged in a pattern of prejudicial conduct toward the Defendant and his rights as evidenced by the following.

On 1/6/2021 Defendant Attorney Mark Josephs filed a Motion to withdraw after representing the Defendant for (8) eight months. During that time Attorney Josephs filed not once motion and as far as the Defendant understands took no other action. Never theless, Judge Mary S. McElroy granted his Oral Motion to withdraw on 1/11/21 of which

No notice was given to the Defendant, no assent of the Defendant was obtained, nor an opportunity to be heard. It was not until February when the Defendant was notified by Court appointed Counsel that Josephs was dismissed. Judge McElroy additionally appointed counsel without the knowledge or assent of Defendant.

On 11/15/2021 the Defendant filed Pro Se a motion for leave to Appeal In Forma Pauperis. On 11/18/2021 Judge Mary S. McElroy granted the motion in less than 72 hours demonstrating the ability to recognize the Defendants rights when desired.

On 2/4/2022 a Motion to Return Personal Property was granted by the Court. In October, 2022 the Defendant filed a Motion for Contempt as the government in a period of over (8) eight months did not return the Defendants property including a wallet and a valid Massachusetts Drivers license. Defendants mother repeatedly made independent attempts to retrieve the missing property, that numerous sources identified to be in the governments possession, from U.S. Marshalls (Alvin Silver) and FBI (Christine Brady) to no avail. The Defendants Motion for Contempt was filed and despite the government failure to provide justifiable delay the Court has failed to enter an order finding contempt and Ordering the appropriate sanction. In fact, the governments filing in this matter contained nothing but unverified hearsay and lies regarding alleged conduct by a third party.

11/15/22
page 3

On 8/15/2022 the Defendant, who is indigent, filed a Motion to Obtain Court Appointed Counsel in preparation for a "Collateral Hearing" mandated by the Appeals Court. Judge Mary S. McElroy Denied Counsel citing (3) three factors set forth by the First Circuit Court of Appeals. However, the Defendant is not an attorney, is/was not aware of these factors and as he is incarcerated has/had no resources to discover them. Judge McElroy was obviously aware of the Defendants situation, but yet denied counsel. Arguably in any case the Defendant would meet the (3) three factors cited by Judge McElroy for the denial in her order of 8/17/22.

On 8/6/22 the First Circuit Court of Appeals rendered an opinion on the Defendants Appeal recommending a "Collateral Hearing" citing the deficiency in the record placed before it regarding the allegations made by the Defendant in Section 2255. On 8/25/22 the First Circuit Court of Appeals issued a Mandate.

On 8/29/22 the Defendant, Pro Se, filed (5) five motions. Items 79-83 on the Docket.

79 - Motion to Vacate - 2255

80 - Improper Communication by District Court Chief Justice

81 - Malicious Prosecution

82 - U.S. Attorney Failed to provide Exculpatory Evidence

83 - Motion Identifying Prejudice / Egregious Performance

Judge Mary S. McElroy consolidated motions 79-82- and 83 on 9/15/2022.

On 9/12/2022 - Motion by Prosecution, Requesting an order finding a waiver of Attorney-Client privilege in 2255 proceeding and permitting prior defendant counsel to discuss issues raised by 2255 petition and a request to continue the response date by the prosecution/government memorandum sixty (60) days, with responses due by 9/26/2022.

On 9/15/2022, Judge Mary S. McElroy granted the prosecutions motion prior to the expiration of the time allowed for responses and prior to receipt of the Defendants Objection seeking to limit the Attorney-Client privilege waiver. On 9/21/2022 the Defendant filed a motion seeking relief from the Order granting the waiver of Attorney-Client privilege and a sixty (60) day extension without having considered or objection thereto.

On 9/15/2022, Judge Mary S. McElroy denied (Court Docket) Motion 88, to preserve communication between AVSA Lee Vilker, Defense Counsel and other government law enforcement. Despite the fact that these communication bear directly on critical allegations in the petition under section 2255 regarding the Actions of AVSA Lee Vilker and Attorney Jason Knight (Defense Counsel) which prejudice the Defendant in the underlying Prosecution. For instance, AVSA Vilker indicated he had provided Defense Counsel with the evidence in the underlying prosecution, but all he revealed was emails not the attachments that are the critical element of the Defendants claim.

On September 15, 2022, Judge Mary S. McElroy denied defendant's motion to preserve communication between Judge McElroy and the Chief Justice of the Rhode Island District Court as it relates to motion 80 (improper communication by Chief Justice) which bore directly on Defendant's acceptance of a plea.

Despite the Court's knowledge that the defendant is incarcerated and has been denied counsel, the Court has failed to provide the defendant, for a period of over (50) fifty days with copies of the Docket and relevant filings and decisions which directly affect his rights in this matter, and which heretofore defendant received on a regular basis prior to September 15, 2022. At a critical time in preparation for a "collateral hearing", with multiple issues, without the guidance of counsel and limited resources due to incarceration, the Court has left the Defendant in the dark as to issues which could prejudice his right and affect his liberty. These omissions are the responsibility of Judge Mary S. McElroy.

In the Defendant's view, the foregoing recitation of events in this matter are evidence of a pattern of disregard for the Defendant's rights and may continue to work as prejudice against the Defendant with respect to the prior filings and decisions in this matter and the as yet to be scheduled "Collateral Hearing" which the defendant believes has been unduly delayed.