

19-5193

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

JONATHAN R. BURRS

Petitioner, Pro Se

v.

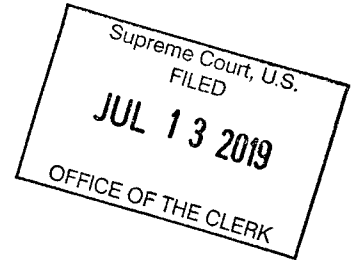
UNITED TECHNOLOGIES CORPORATION, and
WALTER KIDDE PORTABLE EQUIPMENT, INC.,

Respondents,

On Petition for Certiorari to the United States Court of Appeals for the
Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

Jonathan R. Burrs
118 Pangborn Boulevard
Hagerstown, Maryland 21740
301.739.8030



QUESTIONS PRESENTED FOR REVIEW

In *United States v. Throckmorton*, 98 U.S. 61 (1878), this Court held that “There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.”

The question presented is:

Does a District Court Judge engage in a Fraud Upon The Court by participating in the theft of a Petitioner’s Opposition to a Respondent’s Motion To Dismiss during the proceedings, where the Judge intentionally misrepresents the official record in the Final Order, covering up for the disappearance of a Petitioner’s Opposition.

In *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) the Seventh Circuit states “The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.” In *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), the Supreme Court ruled and reaffirmed the principle that “justice must satisfy the appearance of justice.”

The question presented is:

Has Due Process and the “appearance of justice” been satisfied when District Court personnel with the assistance of the District Court Judge, steal, obstruct, and dispose of a Petitioner’s Opposition to a Respondent’s Motion to Dismiss effectively denying a Petitioner the right to Due Process and opportunity to oppose a Respondents Motion.

LIST OF PARTIES

- 1) JONATHAN R. BURRS, Plaintiff and Petitioner;
- 2) UNITED TECHNOLOGIES CORPORATION, Defendant and Respondent; and
- 3) WALTER KIDDE PORTABLE EQUIPMENT, INC., Defendant and Respondent.

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OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Fourth Circuit affirming the district court judgment is reported at *Burrs v. United Techs. Corp.*, 2019 U.S. App. LEXIS 14034, docket number 18-2406 and is reprinted in the Appendix hereto, pp. 1a-2a.

The memorandum opinion and order of the United States District Court for the Middle District of North Carolina of November 2, 2018, granting Respondents' Motion to Dismiss, is reported at *Burrs v. United Techs. Corp.*, 2018 U.S. Dist. LEXIS 187929, docket number 1:18-CV-491, and is reprinted in the Appendix hereto, pp. 3a-14a

JURISDICTION

On or about June 20, 2018, Petitioner filed suit against the Respondents in the United States District Court for the Middle District of North Carolina at Greensboro, alleging that Respondents had violated his rights pursuant to 42 U.S.C. § 1981, equal rights under the law.

On November 2, 2018, the Honorable Catherine Eagles, Judge for the District Court for the Middle District of North Carolina, issued a Final Order dismissing the Petitioner's complaint. On December 21, 2018, Petitioner appealed the dismissal of his complaint to the United States Court of Appeals for the Fourth Circuit.

On May 10, 2019, the Fourth Circuit issued an unpublished opinion affirming the District Court's Order. See App., pp. 1-2.

The jurisdiction of this Court to review the Judgment of the Fourth Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTE AND REGULATIONS AT ISSUE

Fifth Amendment To The United States Constitution

No person shall “be deprived of life, liberty, or property, without due process of law;”.

Seventh Amendment To The United States Constitution

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

18 U.S. Code § 1708. Theft or receipt of stolen mail matter generally

Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein;

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein,

which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted—

Shall be fined under this title or imprisoned not more than five years, or both.

18 U.S. Code § 2. Principals

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S. Code § 3. Accessory after the fact

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

18 U.S.C. § 1621. Perjury generally

Whoever--

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and

contrary to such oath states or subscribes **any material matter** which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code , willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

A. Facts Giving Rise To This Case

The core basis of the Fifth Amendment, the right to Due Process, the goals, requirements, and process rules are meant to protect persons from the mistaken or unjustified deprivation of life, liberty, and property. In any matter before a court of competent jurisdiction, when a party to a matter files a motion, the non-moving party has the right to oppose that motion.

The Petitioner is the Plaintiff in the case before this Court and was denied the opportunity to oppose a Motion to Dismiss his complaint filed by the Respondent in the District Court proceedings. The opposition was mailed and delivered by the United States Postal Service to the district court mailroom in Greensboro, subsequently was stolen, and presumably disposed of by district court

personnel. In the Memorandum Opinion and Order of November 2, 2018¹ the District Court judge intentionally misrepresents the record and fabricates a narrative regarding a text order she issued on October 9, 2018, declaring that the district court had not received a response from the Petitioner to the Respondent's Motion to Dismiss, then falsely claimed she had extended the time for the Petitioner to respond until October 22, 2018. A review of the October 9, 2018 Text Order (See App., p. 15a.) unambiguously contradicts Judge Eagles claims in the Final Order.

B. The District Court Proceedings

On or about June 20, 2018, Petitioner filed suit against the Respondents in the United States District Court for the Middle District of North Carolina at Greensboro, alleging that Respondents had violated his rights pursuant to 42 U.S.C. § 1981, equal rights under the law, based on race and retaliation leading to constructive discharge.

On September 14, 2018, the Respondents filed a motion to have the Appellant's claim dismissed under the doctrines of collateral estoppel and res judicata.

¹ See App., p. 5a. at footnote 2. "Mr. Burrs has not responded to the defendants' motion to dismiss within the time limits specified under the Local Rules or the Court's text order extending the deadline for Mr. Burrs' response. See LR 7.3(f) (allowing a respondent 21 days from service of a motion to file a response if he or she wishes to oppose the motion); Doc. 16 at 6 (defendants' motion to dismiss, certifying that defense counsel sent the motion to Mr. Burrs by overnight courier and email on September 14, 2018); Text Order 10/09/2018 (extending the deadline for Mr. Burrs to respond to defendants' motion to dismiss until October 22, 2018). "If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice." LR 7.3(k).

On October 1, 2018, Petitioner submitted to the District Court the first amended complaint and jury trial demand.

On October 4, 2018, Petitioner submitted the Plaintiff Opposition To Defendants Motion To Dismiss and Memorandum of Law (See App., pp. 16a-35a) via United States Postal Service (See App., pp. 36a-38a) asserting the issues before the District Court were not issue or case precluded because the Petitioner contended he had not been afforded full and fair opportunity to litigate, therefore Respondent did not have an affirmative defense under the doctrines of collateral estoppel and res judicata.

On October 6, 2018, Petitioners opposition to Respondents motion to dismiss was delivered to Respondent by the United States Postal Service. See App., p. 37a.

On October 9, 2018, at 11:10am., United States District Court Judge Catherine Eagles issued a text order regarding the Petitioners first amended complaint. See App., p. 15a.

On October 9, 2018 at 2:46 pm. the Petitioners opposition to Respondents motion to dismiss, was delivered to the mailroom of the United States District Court for the Middle District of North Carolina in Greensboro by the United States Postal Service. See App., p. 38a.

On November 2, 2018, the Honorable District Court Judge Catherine Eagles issued a Final Order granting the Respondents Motion To Dismiss purporting in the Memorandum Opinion and Order (See App., 3a-14a) that Mr. Burrs had failed to

respond and contest the Respondents motion. Judge Eagles alleges that in her October 9, 2018 text order she notified Mr. Burrs that the court had not received a response from him and that she was extending the time for him to file a response to October 22, 2018.²

C. The Appellate Court Proceedings

On or about November 28, 2018, Petitioner filed a notice of appeal from the District Court's Order. On December 21, 2018, Petitioner submitted the Appellant's Brief and Appendix (See App., pp. 39a-54a.) questioning whether the District Court Judge had engaged in fraud against the court for her part in covering up for the Opposition he submitted to the lower court that had been stolen from the courthouse.

On May 10, 2019, the Fourth Circuit issued an unpublished opinion affirming the District Court's order. See App., p. 1a.

REASONS WHY CERTIORARI SHOULD BE GRANTED

- I. Review Is Warranted Because The Appeals Courts Unpublished Opinion Affirming A Fraudulent Final Judgment Conflicts With This Court's Longstanding Precedent And Well Settled Law On Frauds Against The Court And Fair And Impartial Hearing.**

² See App., p. 5a at footnote 2. "Text Order 10/09/2018 (extending the deadline for Mr. Burrs to respond to the defendants' motion to dismiss until October 22, 2018)." "If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice." LR 7.3(k).

In *United States v. Throckmorton*, 98 U.S. 61 (1878), this Court held that “There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.”

Federal law requires the automatic disqualification of a Federal judge under certain circumstances. In 1994, the U.S. Supreme Court held that “Disqualification is required if an objective observer would entertain reasonable questions about the judge’s impartiality. If a judge’s attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified.” *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994).

In *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), the Supreme Court ruled and reaffirmed the principle that “justice must satisfy the appearance of justice.”

In *Burrs v. United Techs. Corp.*, 2018 U.S. Dist. LEXIS 187929, the basis of the District Court’s Final Judgment Memorandum Opinion and Order³ is that the matter before the court was uncontested, a claim unmistakably negated by the Plaintiff Opposition and Memorandum of Law In Opposition To Defendants’ Motion To Dismiss (See App., pp. 16a-35a) and United States Postal Service mail tracking history. See App., pp. 36a-38a.

³ See App., p. 3a. “This matter is before the Court on an uncontested motion to dismiss by defendants United Technologies Corporation and Walter Kidde Portable Equipment, Inc.”

The underhandedness of the District Court proceedings becomes fully manifest when the District Court Judge intentionally misrepresents the record in the Memorandum Opinion and Order purporting,

“Mr. Burrs has not responded to the defendants’ motion to dismiss within the time limits specified under the Local Rules or the Court’s text order extending the deadline for Mr. Burrs’ response. See LR 7.3(f) (allowing a respondent 21 days from service of a motion to file a response if he or she wishes to oppose the motion); Doc. 16 at 6 (defendants’ motion to dismiss, certifying that defense counsel sent the motion to Mr. Burrs by overnight courier and email on September 14, 2018); Text Order 10/09/2018 (extending the deadline for Mr. Burrs to respond to defendants’ motion to dismiss until October 22, 2018). “If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.” LR 7.3(k).” See App., p. 5a. at footnote 2.

At no point in the October 9, 2018 Text Order (See App., p. 15a.) does Judge Eagles indicate the Court had not received a response from Mr. Burrs to the defendants’ motion to dismiss nor does the order mention “extending the deadline for Mr. Burrs to respond to defendants’ motion.” In fact, the Text Order (See App., p.

15a) states the exact opposite that the Court did not envision extensions of time related to the briefing.⁴

The undisputable facts are these:

1. The premise for the Final Judgment hinges on the claim that the Petitioner failed to respond to the Respondents' motion to dismiss thus determining the motion before the court was uncontested and warranted dismissal based on the local rules.
2. The Petitioner submitted an opposition to the Respondents motion to dismiss that was mailed and postmarked on October 4, 2018 (See App., pp. 16a-35a) five days prior to the October 9, 2018 deadline.
3. The mailed opposition was physically in the district court's possession on October 9, 2018 (See App., p. 38a.) and prior to the purported extended deadline of October 22, 2018, subsequently negating the premise of the Final Judgment that the motion before the court was uncontested.
4. The opposition was not added to the docket by the clerk's office indicative of mail theft that occurred inside the walls of the District Court in Greensboro.
5. The District Court Judge covered up for the disappearance of the Petitioner's opposition in the Final Judgment claiming the court had not

⁴ See App., p. 15a "This case is already several months old and the Court does not contemplate extensions of time related to this briefing. If new motions are filed, the parties should expect the briefing schedule to be shortened. Signed by JUDGE CATHERINE C. EAGLES on October 9, 2018. (EAGLES, CATHERINE)"

received a response from Mr. Burrs to the defendant's motion to dismiss in spite of the court having extended the deadline for him to provide a response.⁵

II. Review Is Warranted Because The District Court Proceedings Undermine The Fifth Amendment And Are A Blueprint For Injustice By Embracing And Enabling A Culture Of Corruption.

The core precept of the Fifth Amendment is the right to due process. In *Burrs v. United Techs. Corp.*, 2018 U.S. Dist. LEXIS 187929, due process was violated by personnel at the District Court in Greensboro when multiple individuals, including Judge Eagles, participated in a scheme to steal the Petitioner's opposition to the Respondents motion to dismiss (See App., pp. 16a-35a) then cover-up for the theft by having Judge Eagles falsely claim in her Memorandum Opinion and Order (See App., pp. 3a-14a.) that Mr. Burrs had not responded to the defendants' motion.

The actions of the District Court Judge covering-up for the disappearance of Mr. Burrs' opposition, denied the Petitioner his constitutional right to oppose the motion before the district court thus violating the Fifth Amendment Due Process Clause. Furthermore, none of the proceedings meet this Court's standard satisfying the appearance of justice. In *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), the Supreme Court ruled and reaffirmed the principle that "justice must

⁵ See App., p. 5a. at footnote 2. "Mr. Burrs has not responded to the defendants' motion to dismiss within the time limits specified under the Local Rules or the Court's text order extending the deadline for Mr. Burrs' response."

satisfy the appearance of justice.” In *Burrs v. United Techs. Corp.*, 2018 U.S. Dist. LEXIS 187929, the ongoing pattern of suspicious activities associated with District Court Judge Eagles’ behaviors has established probable cause for a criminal investigation of Judge Eagles, personnel at the District Court in Greensboro, the Respondents, and Respondents Counsel. See App., pp. 56a-62a.

Almost as alarming as the fraud in the District Court proceedings, are the Appellate Court proceedings where the United States Court of Appeals For The Fourth Circuit, either rubberstamped the lower court decision without reviewing the evidence and arguments presented, or by affirming the District Court decision due to an extension of the corruption from the fraud upon the court in the district court proceedings. In either scenario, the process employed by the Fourth Circuit is broken, undermines the Fifth Amendment Due Process Clause, runs afoul of this Courts longstanding precedent and well settled case law, and disregards congressional appeals court creators intent for increased uniformity and reliability in the fields of national law.

III. Review Is Warranted Because The District Court Proceedings Circumvent The Seventh Amendment And Disregard This Courts Instructions Concerning Summary Judgment.

The issues in *Burrs v. United Techs. Corp.*, 2018 U.S. Dist. LEXIS 187929, have not been previously tried by a jury, there has been no discovery on the issue of race discrimination, and none of the issues have been fully and fairly litigated in a court of law.

The Seventh Amendment establishes the constitutional right of trial by jury stating:

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

In the Memorandum Opinion and Order, Judge Eagles admits to having dismissed every claim of the Petitioner on summary judgment⁶ however failed to mention the summary judgment dismissals were without affording the Petitioner the opportunity of discovery. Central to the case before this Court and presented during the District and Appellate court proceedings is the District Court’s misuse of summary judgment.⁷

This Court in *Celotex Corp. v. Catrett*, 477 106 S. Ct. 2548 (1986) held that the,

“Court of Appeals’ position is inconsistent with the standard for summary judgment set forth in Rule 56(c), which provides that summary judgment is proper “if the pleadings, depositions, answers to

⁶ See App., p. 5a “The Court dismissed every claim raised in both suits on the merits by granting judgment on the pleadings or summary judgment.”

⁷ See App., p. 16a. “The issues in the Complaint before this Court have not been tried by a jury, there has been no discovery on the issue of race discrimination, and the single issue for which discovery was afforded to the Plaintiff, was dismissed on summary judgment by this Court contrary to the legal standard of summary judgment, contrary to the doctrine of “clean hands”, and under the most suspicious of circumstances, which according to the U.S. Federal Bureau of Investigations (“FBI”) could involve “a potential criminal violation” by one or both judges involved with the decision. (Doc. 9, Exhibit A)”

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Pp. 322-326.

Additionally, this Court clearly and unmistakably held that the “The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery.”

CONCLUSION

Edmund Burke once said that the only thing necessary for the triumph of evil is for good people to do nothing. The Holy Bible teaches in Ephesians chapter 6 verse 12 that “we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of darkness of this world, against spiritual wickedness in high places.”

The facts and evidences in *Burrs v. United Techs. Corp.*, 2018 U.S. Dist. LEXIS 187929 are irrefutable and undeniable. They reveal multiple due process problems and also expose a great deception during the proceedings; mail theft in violation of 18 U.S. Code § 1708, collusion involving United States District Court Judge Catherine Eagles to cover-up for that mail theft, misrepresentation in the Final Order, a fraud upon the court leaving the “appearance of justice” grossly misrepresented. District Court personnel engaged in a scheme to steal, obstruct, and interfere with United States Postal Service mail delivery of the Petitioners
Opposition to the Respondents Motion to Dismiss to a United States District Court,

effectively denying the Petitioner constitutional guarantees under the Fifth Amendment. Judge Eagles' involvement in these crimes is indisputable even prior to the FBI investigating⁸, leaving federal authorities to determine whether Judge Eagles was a principal in these crimes based on 18 U.S. Code § 2 or simply a co-conspirator and accessory to these crimes under 18 U.S. Code § 3. The evidences and totality of circumstances also raise the question of whether procedurally it makes sense for an appeals court to issue any ruling in a civil or criminal matter, where an officer of the court is being investigated by a federal agency for events related to that case?

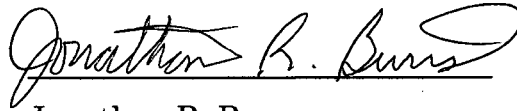
Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted. The Court may wish to consider summary reversal of the unpublished decision of the Fourth Circuit Court of Appeals and enter a default judgment against the Respondents.

The Petitioner also respectfully requests this Court vacate the Final Order and Judgments in *Burrs v. Walter Kiddie Portable Equip., Inc.*, 2016 U.S. Dist. LEXIS 189784 and *Burrs v. Walter Kidde Portable Equip., Inc.*, 2018 U.S. Dist. LEXIS 53851 based on the foregoing.

⁸ See App., p. 62a. "There is a reason Judge Eagles misrepresented the official record and lied multiple time in her Final Order of November 2, 2018 about the context of her text order of October 9, 2018 for the sole purpose and intent to cover-up for the theft of my mailing making Judge Eagles, at the minimum an accessory after the fact to that theft."

Respectfully submitted,

Dated: July 13, 2019

A handwritten signature in cursive script that reads "Jonathan R. Burrs". The signature is written in black ink and is positioned above a horizontal line.

Jonathan R. Burrs

118 Pangborn Blvd.

Hagerstown, MD 21740

301.491.7677

Jburrs1715@aol.com