

IN THE
UNITED STATES COURT OF APPEALS
FIRST CIRCUIT

CARL ERIC OLSEN,	*	
in propria persona,	*	
	*	
Petitioner-Appellant,	*	07-2310
	*	
v.	*	
	*	
UNITED STATES DISTRICT COURT,	*	Motion for Judicial Notice
	*	Pursuant to
Respondent-Appellee.	*	Federal Rule of Evidence 201(d)

**MOTION FOR JUDICIAL NOTICE
PURSUANT TO FEDERAL RULE OF EVIDENCE 201(d)**

On September 21, the Petitioner filed a motion for reconsideration of the orders in Carl Eric Olsen v. United States, No. 07-1883, requiring the Petitioner to submit a memorandum in support of an application for certificate of appealability. This Court has not ruled on that motion.

A similar motion for reconsideration was filed in the United States Court of Appeals for the Eighth Circuit in the appeal of Tom Brown, No. 07-3268. On October 19, 2007, the United States Court of Appeals granted the motion.

Pursuant to Federal Rule of Evidence 201(d), the Petitioner moves this Court to take Judicial Notice of the attached copies of the "Request for Reconsideration" filed on October 12, 2007, and the "Order" filed on October 19, 2007, in the United States Court of Appeals for the Eighth Circuit in the appeal of *Thomas F. Brown v. United States*, No. 07-3268.

Respectfully submitted this 5th day of November, 2007.

CARL ERIC OLSEN
130 E Aurora Avenue
Des Moines, IA 50313-3654
515-288-5798
IN PROPRIA PERSONA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion for judicial notice was mailed by first class mail on this 5th day of November, 2007 to the following respondent:

MARGARET D. MCGAUGHEY
Assistant United States Attorney
100 Middle Street Plaza
East Tower Sixth Floor
Portland, Maine 04101-4100

CARL ERIC OLSEN
130 E Aurora Avenue
Des Moines, IA 50313-3654
515-288-5798
IN PROPRIA PERSONA

1 Rev. Tom Brown, *in propria persona*
First Church of the Magi
2 P.O. Box 2827
Fayetteville, Arkansas 72702
3 <http://www.firstchurchmagi.org>
revtombrown@hotmail.com
4 (479) 521-5470

5 **EIGHTH CIRCUIT COURT OF APEALS**
6
7

8 Rev. Tom Brown, *in propria persona,*)
9)
10 Plaintiff,)
11)
12 vs.)
13)
14 United States of America,)
15 Defendant)

APPELLATE No. 07-3268

Being an Appeal of
Western District Arkansas
Criminal No. 5:94cr50030
Civil No. 94-5034
Civil No. 07-5037

**Request for
Reconsideration
Notice of
Plain Error of Fact
And
Plain Error of Law**

21
22
23 **REC**

OCT 12 2007

24 **U.S. COURT OF APPEALS**
25 **EIGHTH CIRCUIT**

1 **Introduction**

2
3 Plaintiff, Rev. Tom Brown, comes to this Court to notify the Court of
4 its Plain Error of Fact, its Plain Error of Law and to respectfully request
5 that this Court reconsider of its latest "Order" of October 2, 2007 for the
6 following reasons:

7
8 1. On September 24, 2007, Plaintiff filed a "Notice of Appeal" of the
9 District Courts "Order" listed as docket #241 of this case at the District
10 Court in Fayetteville. Plaintiff did not file a motion for a "Certificate of
11 Appealability", Plaintiff filed a "Notice of Appeal".

12 A Notice of Appeal initiates an appeal of a motion under section 1651
13 and / or 2241 as a matter of right. A Certificate of Appealability is a gate
14 keeping mechanism, which is statutorily required to invoke an appeal from a
15 decision of a state court or a review of a motion under section 2255 in a
16 federal court. There are vast differences between a motion for Certificate
17 of Appealability and a Notice of Appeal.

18 Plaintiff never requested a Certificate of Appealability.. Plaintiff
19 never suggested to the District Court that the Court had jurisdiction to
20 inhibit, prohibit, or in any other way to obstruct justice in this matter by
21 exercising gate keeping powers over the appeal of this case to the 8th
22 Circuit Court of Appeals.

23 Since the District Court has misconstrued the "Notice of Appeal" as a
24 motion for a Certificate of Appealability. that Court has made a Plain Error
25 of Fact. Plaintiff respectfully requests that this Court recognize that

1 Plain Error of Fact and correct the record in accordance with the true fact
2 that Plaintiff filed a Notice of Appeal.

3
4 2. The District Court claimed jurisdiction to inhibit, prohibit and
5 obstruct an appeal of this matter by denying a Certificate of Appealability
6 by citing the provisions of 28 U.S.C. section 2253(c)(2). However, a simple
7 reading of that statute shows that the statute does not empower that Court
8 with that jurisdiction. In fact, the sections of that statute as cited by
9 that Court are totally irrelevant to the adjudication of a motion under
10 section 1651 or 2241. The relevant plain language of the statute is:

11
12 **28 U.S.C. section 2253: Appeal**

13 (a) In a habeas corpus proceeding or a proceeding under section 2255
14 before a district court, the final order shall be subject to review, on
15 appeal, by the circuit court of appeals for the circuit in which the
16 proceeding is held.

17 (c)(1) Unless a circuit justice or judge issues a certificate of
18 appealability, an appeal may not be taken to the court of appeals from-

19 (A) the final order in a habeas corpus proceeding in which the
20 detention complained of arises out of process issued by a State court;

21 or

22 (B) the final order in a proceeding under section 2255.

23 (2) A certificate of appealability may issue under paragraph
24 (1) only if the applicant has made a substantial showing of the denial
25 of a constitutional right.

1 The filing of the original Motion for Writ of Habeas Corpus under
2 sections 1651 and or 2241 is permitted by section (a) because section (a)
3 establishes a statutory right for review of the appeal of the Writ of Habeas
4 Corpus under sections 1651 and/or 2241 by a panel of the 8th Circuit Court of
5 Appeals.

6 As section (c)(1) applies only as described in subsection (A) or (B),
7 section (c)(1) and its subsection do not apply to this Plaintiff or to this
8 motion as the Notice of Appeal filed by Plaintiff is not described by
9 subsection (A) or (B) because:

10 a. That section does not establish an authority for the Court to
11 issue a Certificate of Appealability in this case because the "detention
12 complained of arises out of a process issued by a State court" (c)(1)(A).
13 Plaintiff is not complaining of a detention that arose of out a "process
14 issued by" a state court. Plaintiff is complaining about a "process issued
15 by" by the Federal District Court in Fayetteville, Arkansas.

16 Therefore section (c)(1)(A) does not apply to this Plaintiff or to this
17 motion.

18 b. As stated above, Plaintiff has made a motion under section 1651
19 and 2241 and neither of those are section 2255. Therefore, since section
20 (c)(1)(B) applies only to an appeal of section 2255, it does not apply to
21 this motion under sections 1651 and 2241.

22 Therefore as none of the statute as written by Congress empowers the
23 District Court to inhibit, prohibit or obstruct this Plaintiff from the right
24 to a full adjudication, briefing, submission of argument and evidence in
25 support of the appeal to the 8th Circuit Court of Appeals in this matter, the

1 District Court has made a Plain Error of Law.

2 Since the District Court has made a Plain Error of Fact and a Plain
3 Error of Law by issuing the "Order" of September 27, 2007, Plaintiff
4 respectfully requests that this Court recognize those Plain Errors of Fact
5 and Law and correct the record to reflect the facts and law of this case
6 within the bounds of the Law as written by Congress and interpreted by the
7 several federal district and appellate courts.

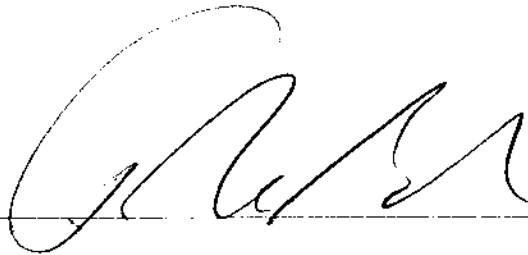
8
9 3. Subsequently this Court, by order signed by Clerk of the Court Michael
10 E. Gans, chose to consider this appeal as a matter of motion for a
11 Certificate of Appealability. As stated above, this Court is not empowered
12 by federal statute to misconstrue the Notice of Appeal as a motion for
13 Certificate of Appealability. Nor is the Clerk of the Court or this Court
14 empowered to inhibit, prohibit, or obstruct justice by using the gate keeping
15 mechanism of the statute in sections (c)(1)(A) or (B) to deny a full review
16 and appeal of a motion under sections 1851 and / or 2241.

17
18 Therefore Plaintiff respectfully requests that this Court reconsider
19 the Order of October 2 2007 signed by Clerk of Court Michael Gans, order
20 that Clerk to correctly file and process the Notice of Appeal as a Notice of
21 Appeal and not as a motion for Certificate of Appealability, and establish
22 proper and lawful procedures in this Court that will prevent this kind of
23 malfeasant exercise of office in the future.

1 Respectfully Submitted by:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Signed



Rev. Tom Brown, *in propria persona*

First Church of the Magi

P.O. Box 2827

Fayetteville, Arkansas 72702

revtombrownh@hotmail.com

<http://www.firstchurchmagi.org>

(479) 521-5470

Date

Oct. 9, 2007

Certificate of Service:

I affirm under penalty of perjury that on the date indicated above, I, Rev. Tom Brown placed true copies of this Document in the U.S. Postal Service, first class postage prepaid, addressed to the U.S. Attorney in Ft. Smith Arkansas and the Clerk of the Eighth Circuit Clerk of Court, as indicated by my signature above.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 07-3268

United States,

Appellee

v.

Thomas F. Brown,

Appellant

Appeal from U.S. District Court for the Western District of Arkansas - Fayetteville
(5:07-cv-05037-JLH)

ORDER

Appellant's pleading "Request for Reconsideration, Notice of Plain Error of Fact and Plain Error of Law" asks that the court re-characterize the initial pleading filed in this case simply as a notice of appeal. Appellant's request is hereby granted and the reference to the application for certificate of appealability is deleted

October 19, 2007

Order Entered Under Rule 27B(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans