

proceed pro se when the trial judge had categorically rejected four previous requests). Accordingly, because this error is not subject to harmless error analysis, Mr. Green's final judgment and sentence should be vacated, as well as any and all orders post-dating his Jan. 6 Ltr. requesting to represent himself, and his case should be remanded back to the District Court for consideration of this, as well as any and all other relevant issues raised herein this appeal.

D. THE INDIVIDUAL AND OR CUMULATIVE EFFECTS OF THE ISSUE(S) DISCUSSED THROUGHOUT THIS BRIEF RESULTED IN PLAIN- AND OR PLAIN STRUCTURAL -ERROR(S); AND OR OTHERWISE SO UN- DETERMINED CONFIDENCE IN THE OUTCOME OF THE PROCEEDINGS TO THE POINT WARRANTING THIS COURT'S INTERVENTION

1. Standard of Review

Under the plain error standard, and appellant must demonstrate that: (1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected the appellant's substantial rights, and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings. In order for an error to affect substantial rights, it must be prejudicial, which means that there must be a reasonable probability that the error affected the outcome of the trial. Flannigan v. Vulcan Power Group, LLC, 642 Fed. Appx. 46 (2d Cir. 2016). However, a structural error, which "affect[s] the framework within which the trial proceeds," Arizona v. Fulminante, 499 U.S. 279 (1991), defies harmless error analysis. Accordingly, when a structural error is objected to and then raised on direct review, the defendant is entitled to relief without any inquiry into harm.

Legal Discussion

2. Preservation of Issues for Review; Plain and Structural Errors

The function of reviewing courts is to correct errors committed by trial courts. Fed. R. Evid. In A Nutshell, 10th ed., at 5, §103.1. "[T]he ordinary rule is that, absent exceptional circumstances, a party may not raise on ap-

peal an error that it did not first ask the trial court to correct." Fed. App. Practice and Proc. In A Nutshell, 2nd ed., at 35, §3.1 (citation omitted). However, if a party fails to object, the reviewing court can still correct the error if it is plain. See U.S. v. Olano, 507 U.S. 725, 731 (1993)(discussing plain error as an exception to the well-established rule that "a constitutional right, or a right of any sort, may be forfeited in a criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it."); cf. United States v. Richards, 667 Fed. Appx. 336 (2d Cir. 2016)(An appellate court reviews unpreserved due process errors under plain error review).

The Supreme Court outlined four requirements for plain error: an error occurred, the error was plain, it affected substantial rights, and not correcting the error would seriously affect the fairness of the judicial proceeding. Olano, 507 U.S. at 732. Furthermore, the Court in Olano left open the possibility that "affecting substantial rights" might allow for reversal of plain "structural" errors (i.e., the sort that can never be considered harmless error) that are not otherwise prejudicial. id. at 734-35. The "purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial." Weaver v. Massachusetts, 137 S.Ct. 1899 (2017).

Analysis

3. Why the Issues Discussed Herein this Brief Resulted in Plain- and or Plain Structural -Errors; and or Otherwise So Undermined Confidence in the Outcome of the Proceedings to the Point Warranting this Court's Intervention

The Jan. 5 Tel. Conf.; the Right to an Impartial Tribunal; the Right to Due Process; and, the Right to Self-Representation

Mr. Green argues that there were several errors that occurred in this case; some of which he argued herein this brief. Moreover, these issues, whether taken individually and or collectively, and or the cumulative effect of

such, resulted in plain- and or plain structural -errors, and or otherwise so undermined confidence in the outcome of the proceedings to the point warranting intervention by this Court. This includes the issues relating to the Judge's bias and partiality, the Judge's disconnecting the Jan. 5 Tel. Conf. while Mr. Green was speaking, as well as the District Court's refusal to grant Mr. Green sole pro se status, and not reviewing his IAC and other post-conviction claims prior to sentencing him.

Mr. Green contends that when the Judge disconnected the line during the Jan. 5 Tel. Conf. while he was speaking, that this deprived him of his due process right to be heard, his right to free speech, to access the courts, to petition for redress of grievances, to a fair trial, to represent himself, and to an impartial decisionmaker. However, he shouldn't have been required to object to this because he didn't have an opportunity to do so. See United States v. Buissereth, 833 Fed. Appx. 910, 911 (2d Cir. 2021)(declining to apply plain error because appellant did not have an opportunity to object before the district court.). Furthermore, Mr. Green submits that he did submit several letters complaining about, inter alia, the District Court's abruptly ending the conference while he was speaking. See, e.g., Doc. 932 (Jan. 6 Ltr.)(A 187, and Doc. 953, ECF at 4 (Obj. to Feb. 8 Order)(A 199). Therefore, he argues that he adequately preserved this issue for appeal. Nevertheless, he argues that if this Court were to find he should have objected, it was plain error for the District Court to end the conference while he was speaking. That's because it was an obvious error, it affected his right to, inter alia, due process, to self-representation, to free speech, to access the courts, and to an impartial tribunal, and it severely affected the fairness, integrity, and public reputation of the judicial process, and prejudiced Mr. Green by depriving him of an opportunity to present his case (e.g., explain to the District Court why he needed additional time to submit his Affidavit). See United States v. Sogomo-

nian, 247 F.3d 348 (2d Cir. 2001)(A finding of plain error requires a court to rule that a district court made a mistake that is clear and obvious, affected substantial rights, and seriously affects the fairness, integrity, or public reputation of judicial proceedings.).

Furthermore, Mr. Green argues that the cumulative effect of the issues discussed throughout this brief deprived him of his right to due process, and were so prejudicial as to render the District Court proceedings fundamentally unfair. Cf. United States v. Al-Moayad, 545 F.3d 139 (2d Cir. 2008)(the cumulative effect of a trial court's errors, even if they are harmless when considered singly, may amount to a violation of due process requiring reversal of a conviction.); and, cf. Tyrell v. Lee, 2015 U.S. Dis. LEXIS 173968 (2d Cir. 2015)(Habeas relief may be justified based on cumulative effect of errors. To do so, petitioner must show that the individual errors are actually errors, and that they were so prejudicial so as to render petitioner's trial fundamentally unfair). Mr. Green submits that the District Court's refusal to recuse in light of the impermissible appearance of bias and partiality, among other things, coupled with the refusal to review his IAC and other post-conviction claims prior to sentencing, and by not honoring his request to represent himself, clearly deprived him of fundamental fairness. The proceedings in the District Court were not what the Constitution envisions. And Mr. Green was surely prejudiced because of this: He was deprived of his right to the effective assistance of counsel, which deprived him of a fair trial, resulting in his wrongful convictions--and he was never given a meaningful opportunity to be heard regarding this. This is something that can and should now be addressed by this Court, along with the other issues discussed herein. Moreover, if this Court were to allow these issues to go unaddressed, it would have a chilling affect on essentially every right guaranteed to the accused. It would also severely undermine public confidence in the integrity of the judicial proc-

ess. Therefore, this Court should address these issues.

Finally, Mr. Green argues that the issues discussed herein amounted to and or otherwise were plain, plain structural, and or structural errors, requiring reversal of, inter alia, the final judgment and his sentence without any inquiry into prejudice. "The defining feature of a structural error is that it affects the framework within which the trial proceeds, rather than being simply an error in the trial process itself." Weaver, 137 S.Ct. at 1907. Errors that count as "structural," and require automatic reversal, occur in a "very limited class of cases." United States v. Nelson, 277 F.3d 164, n.48 (quoting Johnson v. United States, 520 U.S. 461, 468, 137 L.Ed. 2d 718, 117 S.Ct. 1544 (1997)). However, Mr. Green argues that this is one of those rare cases. As the Supreme Court has reiterated, "among those basic fair trial rights 'that can never be treated as harmless' is a defendant's 'right to an impartial adjudicator, be it judge or jury.'" Gomez v. United States, 490 U.S. 858, 876, 104 L.Ed. 2d 923, 109 S.Ct. 2237 (1989)(quoting Gray v. Mississippi, 481 U.S. 648, 668, 95 L.Ed. 2d 622, 107 S.Ct. 2045 (1987)(quoting Chapman v. California, 386 U.S. 18, 23, 17 L.Ed. 2d 705, 87 S.Ct. 824 (1967))); see also, Shabazz v. United States, 923 F.3d 82 (2d Cir. 2019)(Errors recognized by the Supreme Court as structural have included complete denial of counsel, a biased judge, racial discrimination in the selection of grand jury, denial of self-representation at trial, denial of public trial, and a defective reasonable doubt instruction.).

CONCLUSION

The final judgment of the District Court should be vacated, along with Mr. Green's sentence, as well as any and all orders entered since on or before January 5, 2021. The case should further be remanded back to the District Court, and reassigned to another judge, so that further fact-finding can be conducted, and moreover, so that Mr. Green can be heard regarding his ineffective assistance of counsel and other post-conviction claims in a motion for new trial and for a judgment of acquittal; and or this Court should grant any and all other available relief deemed fair and just.

EXECUTED On this ____ day of _____, 2022.

Respectfully Submitted,

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Pro Se, Defendant-Appellant