

No.: 77 -

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE

STEVEN MICHAEL BACKSTROM - PETITIONER

vs.

LYLE W. CAYCE - RESPONDENT

ON PETITION FOR AN ORIGINAL WRIT OF MANDAMUS TO
THE HONORABLE CIRCUIT COURT CLERK IN THE
UNITED STATES CIRCUIT COURT OF APPEALS/FIFTH CIRCUIT

ORIGINAL WRIT OF MANDAMUS

STEVEN MICHAEL BACKSTROM
CLEMENTS UNIT
9601 Spur 591
Amarillo, TX
79107

I.

QUESTIONS PRESENTED

1. Is mandamus the appropriate remedy into a circuit court to compel its clerk to accept, file, and submit a motion to recall that court's prior mandate?
2. If so, did the 5th Circuit Court Clerk usurp judicial power when he refused to take action on such a mandamus?
3. If so, in any form or fashion did the Clerk's actions deny appellant access to the courts?

II.

LIST OF PARTIES

APPELLANT

STEVEN MICHAEL BACKSTROM is currently incarcerated at the Clements Unit, 9601 Spur 591, Amarillo, Texas, Potter County, by Lori Davis in her official capacity as the Director of Texas Department of Criminal Justice -- Institutional Division pursuant to Appellant's conviction out of the 33rd Judicial District Court, Burnet County Texas.

RESPONDENT

LYLE W. CAYCE is the 5th Circuit Court Clerk, located at 600 S. Maestri Place, New Orleans, Louisiana 70130.

IV.

TABLE OF CONTENTS

QUESTIONS AND PARTIES	2.
TABLE OF AUTHORITIES	4.
JURISDICTION	5.
HABEAS HISTORY	6.
BASIS FOR ISSUANCE	7.
CONCLUSION	11.
RELIEF SOUGHT/PROOF OF SERVICE	12.
CERTIFICATES OF SERVICE & INTERESTED PERSONS	13.

V.

INDEX OF APPENDICES

APPX A: Proof of COA;
APPX B: 5 th Circuit order denying COA;
APPX C: 5 th Circuit Docket Sheet;
APPX D: District Court Docket Sheet;
APPX E: 5 th Circuit judgment denying federal habeas reentry;
APPX F: Letter from 5 th Circuit Court Clerk taking "no action" regarding a motion to recall a prior mandate;
APPX G: Letter from 5 th Circuit Court Clerk taking "no action" regarding a motion for reconsideration;
APPX H: Letter from 5 th Circuit Court Clerk taking "no action" regarding a writ of mandamus.

TABLE OF AUTHORITIES

DAVIS V. AYAKA, 135 S.Ct. 2187 (2015)	10.
DeBEERS MINES LTD., 325 U.S. 212 (1945)	5.
GULFSTREAM AEROSPACE CORP., 485 U.S. 221 (1988)	8.
HOUSE V. BELL, 126 S.Ct. 2064 (2006)	9.
IN RE BLODGETT, 502 U.S. 236 (1992)	8.
KERR V. DISTRICT COURT, 426 U.S. 394 (1976)	8.
LILJEBERG V. HEALTH SVCS., 486 U.S. 856 (1988)	10.
MAYBURY V. MADISON, 5 U.S. (1 Cranch) 137 (1803)	5.
MAXWELL V. BISHOP, 385 U.S. 650 (1967)	8.
ROCHE V. EVAPORATED MILK ASSN., 319 U.S. 21 (1943)	8.
SCHLUP V. DELO, 513 U.S. 298 (1995)	9.

CONSTITUTIONAL CITATIONS

Fifth Amendment to the U.S. Constitution	10.
Fourteenth Amendment to the U.S. Constitution	10.

FEDERAL RULES AND STATUTES

FEDERAL RULE OF APPELLATE PROCEDURE, RULE 27(b)	10.
FEDERAL RULE OF APPELLATE PROCEDURE, RULE 21(a)(3)	10.
28 U.S.C. §1651	5.
28 U.S.C. §1254	5.
28 U.S.C. §2244(b)(3)(A)	6.
28 U.S.C. §2244(b)(3)(E)	7.
5 th Circuit Local Rules 27.1 - 27.1.20	9.
5 th Circuit Local Rule 27.2.7	9.

VI.

JURISDICTION

This extraordinary writ is proper before this Court pursuant to the All Writs Act, 28 U.S.C. §1651 as it is "Necessary or appropriate in the aid of [the Supreme Court's] jurisdiction and agreeable to the usages and principles at law."

The Supreme Court has never confined itself to an arbitrary and technical definition of "jurisdiction," it is clear that only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy. De Beers Consol. Mines, Ltd., 325 U.S. 212, 217 (1945).

This case now before the Bar is different in that it involves extraordinary circumstances surrounding an [usurpation of judicial power] which would require this Court to reverse a lower court where that decision was derived by its clerk -- making this Court's intervention "clearly appellate," and should a decision by the Court be forthcoming, it would have precedential value. In that on 01/07/2019 and 01/29/2019 the [Clerk] out of the 5th Circuit refused to file documents statutorily mandated that he do so, denying Appellant his Fifth and Fourteenth Amendment rights, and such a case has yet to be decided by this Court. See Fed.R. App.P. Rule 21(a)(3); 5th Circuit Local Rule 27.2.7.

28 U.S.C. §1254 allows that when a litigant seeks extraordinary writ in a lower court (federal), the Supreme Court can ultimately review the decision rendered in that proceeding by certiorari. *Id.*

VII.

STATEMENT OF THE CASE

NOTE: Appellant's habeas history is important in that everything begins with and surrounds the 5th Circuit's judgment regarding Appellant's COA; therefore, he will begin with that proceeding. Appellant appealed the Western District of Texas' judgment through COA into the 5th Circuit [16-51212]; APPX A. That Court held that reasonable jurists would agree with the district court's resolution and that Appellate "has not made a tenable claim of actual innocence."[] APPX B: P. 2:Par 2.

After an unsuccessful return to state habeas, Appellant moved back into federal habeas. On 08/09/2018, Appellant requested permission to reenter the district court again pursuant to 28 U.S.C. §2244(b)(3)(A) arguing the same claims as his original §2254 AND that the Court had previously denied relief as "untenable" without any of Appellant's evidence before the Court, 35 exhibits; 120+ pages of documentary proof of 'no crime,' due to no fault of Appellant's. See APPX C: 5th Circuit Docket Sheet: item dated 12/07/2016: P. 4. The Court Clerk noted that Appellant's exhibits were not on file at the district court. Now see APPX D: Civil Docket Sheet For Case#: 1:16-cv-00394-LV: items 19-22: P. 3. Nonetheless, the 5th Circuit denied access to federal habeas pursuant to §2244(b)(3)(E) since the claims raised were previously "reviewed." See APPX E: Denied September 18, 2018.

On or around December 24, 2018, Appellant filed a motion to recall that mandate into the 5th Circuit where the Court Clerk took "no action" pursuant to §2244(b)(3)(E); APPX F.

On or about January 25, 2019, Appellant filed his motion for reconsideration. Pursuant to the reasons cited above, the Court Clerk took "no action" on January 29, 2019.

Appellant then filed a writ of mandamus compelling the Court to order the Court Clerk to file and submit Appellant's motion to recall the prior mandate. On February 26, 2019, per the Clerk, §2244(b)(3)(E) precludes attack by way of petition for rehearing or writ of certiorari; thus, took "no action." APPX H.

By operation of law, the 5th Circuit Court Clerk had a ministerial duty to accept, docket and submit both the motion to recall the prior mandate and the writ of mandamus pursuant to 5th Circuit Local Rule 27.2.7 and Fed.R.App.P., Rule 21(a)(3). The Clerk's decision not to comply with the law resulted in a violation of Appellant's due process rights and his right to access the courts.

Under this Court's jurisdiction, 28 U.S.C. 41254; Mabury V. Madison, 5 U.S. (1 Branch) 137,175 (1803); and the compelling reasons set forth herein, Appellant seeks review of those decisions by the Court Clerk and if proved to be erroneous and contrary to federal law, order the Clerk to submit to the 5th Circuit Court of Appeals, Appellant's writ of mandamus.

VIII.

BASIS FOR ISSUANCE

THRESHOLD STANDARD

In general, the writ of mandamus is sought to compel [a lower

court] to do something it has refused to do. a writ of certiorari under §1651 allows a writ of mandamus to be employed before the Court for review, in exceptional circumstances, otherwise non-appealable orders. Id De Beers. Mandamus is used on proper occasions to correct judicial errors on the part of the lower court. Kerr V. Distict Court, 426 U.S. 394 (1976).

The peremptory writ of mandamus has traditionally been used in the federal courts only to "confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is a duty to do so." Roche V. Evaporated Milk Assn., 319 U.S. 21,26 (1943).

Mandamus is to be used only when, for some special reason, the normal appellate route does not provide an adequate remedy. See Supreme Court Practice (10th Ed.), Ch. 11: P. 666 (Jan.2017); Maxwell V. Bishop, 385 U.S. 650 (1967).

In short, exceptional circumstances must exist to "warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court." FRAP Rule 20.4(a).

Finally, the party seeking issuance of the writ must show that there is "no other adequate means to attain relief he desires" and satisfies the burden of demonstrating that the right to issuance of the writ is "clear and indisputable." Gulfstream Aerospace Corp. V. Mayacamas Corp., 485 U.S. 272,288-90 (1988); In re Blodgett, 502 U.S. 236,240 (1992)(the Court will not grant and extraordinary writ where another potential avenue of relief remains open.).

APPLICATION OF LAW TO FACTS

When the 5th Circuit Court denied Appellant's application to reenter federal habeas pursuant to §2244(b)(3)(E) because the Court had previously "reviewed" the claims Appellant filed with his application, Appellant filed a motion to recall that mandate under the premise that the prior ruling was erroneous because the Court had made that ruling ("untenable" claim of actual innocence, in part) without having review his evidence and in such, did so "contrary to" Supreme Court Law, i.e., Schlup V. Delo, 513 U.S. 298, (1995) and its progeny which made plain that habeas courts had to consider:

"'all the evidence' old and new, incriminating and exculpatory ... on the basis of the total record ..." Id at 327-28.

See also House V. Bell, 126 S.Ct. 2064 (2006) which held:

"in light of []all the evidence it is more likely than not no reasonable juror would have found petitioner guilty beyond a reasonable doubt." (emph's added).

Nonetheless, the Court Clerk decided to take "no action" on Appellant's motion. 5th Circuit Local Rule 27.1 affords the Court Clerk certain discretion when evaluating incoming pleadings. See FRAP, Rule 27(b). These Rules extend from 27.1 through 27.1.20 -- none of which grant discretion regarding the motion to recall a prior mandate (outside of page limitations). In fact, Rule 27.2.7 clearly sets out that the jurisdiction for such a motion lies with a single judge. The Clerk abused his discretion when he, and he alone decided to take "no action" on the motion.

Once the Clerk decided to take no action, Appellant's only recourse was to file a motion for reconsideration. Local Rule 27.1 sets that the Clerk's actions are [subject to review] by a single judge [upon a motion for reconsideration]. Bear in mind that "subject to review" is not mandated. Once again, the Clerk took "no action" pursuant to §2244(b)(3)(E) under the premise that a denial by the Court regarding a motion for reentry into federal habeas precludes attack. Although the Clerk's actions here are repugnant, no competent legal argument can be advanced against that particular action because the Clerk had the "discretion" to rule on such a motion. With diligence in mind, Appellant filed his last possible motion into the Court by way of mandamus requesting the Court order the Clerk to file Appellant's motion to recall the Court's prior mandate. Again, the Clerk decided to take "no action." The Court never saw the motion(s). The Clerk violated Appellant's 5th and 14th Amendment rights to due process and access to the courts.

MINISTERIAL DUTY

Fed.R.App.P., Rule 21(a)(3) states:

Upon receiving the prescribed docket fee, the clerk [must] docket the [mandamus] petition and submit it to the court.

Appellant asserts that the Clerk had a ministerial duty to file the motion to recall mandate (not withstanding here) and the writ of mandamus. Appellant further asserts that the Clerk's failure to file the motion(s) violated the integrity and fairness of judicial proceedings. See Davis V. Ayaka, 135 S.Ct. 2187 (2015); Liljeberg V. Hlth Svcs. Corp., 486 U.S. 856-64 (1988).

NO ADEQUATE REMEDY AT LAW

Appellant asserts that the 5th Circuit Court of Appeals is his last court of equity, no other court is available. He would further assert that no other motion can be filed into that Court. In whole, no adequate remedy of law exists outside of intervention through mandamus by this Court[.]

EXCEPTIONAL CIRCUMSTANCES

The matter at large surrounds a circuit court clerk refusing to do his ministerial duty which in turn usurps the judicial power of that court. This is exceptional in that Appellant could find no competent legal precedent from any federal court addressing a matter similar to this case which fogs the "clear and indisputable" requisite. Clearly the Clerk usurped judicial power which, in effect netted a determination from a lower court, and clearly, this Court can review this determination and if no precedent exists, make such.

On a sidebar, Appellant asserts he is actually innocent and the decision by a court clerk has left him dead in the water, with no means by which to appeal since no matter what pleading Appellant enters, the clerk will take "no action."

IX.

CONCLUSION

With respect to the questions asked, mandamus is an appropriate remedy in the circuit court attempting to compel the court

to order the Clerk to file and submit Appellant's mandamus. Furthermore, the Clerk usurped the judicial power of the Court by preventing the judge(s) from ruling where their purview is statutory. And finally, the Clerk's decisions to take "no action" denied Appellant due process of law and ultimately denied him access to the courts where a reasonable liklihood exists that should the mandamus be presented onto the court, a decision will be handed down ordering the Clerk to file and submit Appellant's motion to recall the Court's prior mandate. This Honorable Court has the jurisdiction to review and issue this writ for extraordinary relief.

X.

RELIEF SOUGHT/PRAYER

Appellant prays this Honorable Court will issue this writ and order the 5th Circuit Court Clerk to file and submit Appellant's writ of mandamus onto the Court. Appellant also asks the Court to recognize and precidential value this case may reveal.

XI.

PROOF OF SERVICE

Appellant avers to all of the statements, facts, and allegations herein. He further avers that he has forwarded a copy of this pleading to the 5th Circuit Court Clerk located at 600 S. Maestri Place, New Orleans, Louisiana 70130.



Steven M. Backstrom

XII.

CERTIFICATE OF COMPLIANCE

pursuant to Fed.R.App.P. 32(a)(7), Appellant certifies this brief complies with the type-volume limitations.

1. Exclusive of the exempted portions statutorily granted, the brief contains only ten (10) pages.
2. The brief contains proportionally spaced type-facing as double-spaced per Swintec 2410 CC typewriter.
3. The undersigned understands a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in Fed.R.App.P. 32(a)(7) may result in the Court's striking the brief and imposing sanctions



Steven M. Backstrom

XIII.

CERTIFICATE OF INTERESTED PERSONS

In re Steven Michael Backstrom V. Lyle W. Cayce

No. _____ - _____

Appellant certifies that he knows of no persons, associations of persons, or corporations which have an interest in the outcome of this particular case other than the parties noted in the style of the case.



Steven M. Backstrom

**Additional material
from this filing is
available in the
Clerk's Office.**