

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018

Samuel B. Randolph, IV, Petitioner

Commonwealth Of Pennsylvania, Respondent

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The Third Circuit

MOTION FOR LEAVE TO FILE
WRIT OF CERTIORARI-OUT-OF-TIME

Samuel B. Randolph, IV.
#FJ-5881
SCI-Phoenix
P.O. Box 244
Collegeville, Pa. 19426-
0244

AND NOW, comes Samuel B. Randolph, IV., proceeding as a pro se petitioner, and respectfully requests your Honorable Court/Clerk to extend the filing deadline to allow petitioner to file his Writ Of Certiorari, within (60) days of your Order of Court. Petitioner's Writ of Certiorari is attached to the instant motion. Petitioner seeks his request for the following reasons:

1. Petitioner is a Capital Case Prisoner, proceeding pro se, on his case and instant matter. This is an most extraordinary circumstance and writ, pertaining to petitioner's Actual innocence claim, and conflicted counsel laboring under a conflict of interest, and waiving/refusing to raise petitioner's meritorious claims, in violation of Martel v. Clair, and petitioner's U.S. Const. Rights.
2. Due to the emergency lockdown of all of Pennsylvania's state prisons, petitioner's institution refused to accept any outgoing/incoming legal mail or personal mail.
3. This emergency prevented petitioner from receiving any notice that a final order had been issued in his pending pro se appeal in the Third Circuit Court of Appeals.
4. Attached herein, in petitioner's Writ Of Certiorari, is the proof/verification of the emergency lockdown, and fact that the institution refused to accept the incoming legal mail from the Third Circuit's Clerk, and did so on several occasions,-see, letters from Clerk, addressed to petitioner, at Exhibit C and Exhibit D, of petitioner's attached Appendix.
5. Petitioner bears no fault for the emergency lockdown. Had petitioner been informed sooner, that a final Order was issued, then petitioner would've met the 90-day deadline.
6. The Writ Of Certiorari involves the question of whether the district court's order denying petitioner's pro se Motion For Substitution of conflicted counsel, laboring under a conflict of interest, effectively depriving petitioner of effective assistance of counsel, and also whether such denial and forcing petitioner to proceed with conflicted counsel, laboring under the same previously acknowledged conflict of interest, from

same entity, constituted a final appealable order?

7. Petitioner believes this is a significant issue of substantive law that is of nation-wide importance affecting a multitude of litigants, -pro se and/or appointed attorneys laboring under a conflict of interest.

8. In addition, petitioner's appeal is crucial, due to his Actual Innocence Claim, which isn't currently being properly raised, by the conflicted counsel that's laboring under the conflict of interest.

9. The district court and the Third Circuit Court Of Appeals misapplied U.S. Supreme Court case law, in Martel v. Clair; and also violated petitioner's U.S. Const. Rights.

10. No prejudice to any party would result from this extension of time for the filing of this Writ Of Certiorari.

WHEREFORE, petitioner respectfully requests this Honorable court to permit the filing of this Writ Of Certiorari; attached herein, and within the (60) days of your Court's Order.

Respectfully Submitted,

By: Samuel B. Randolph, III
Samuel B. Randolph, IV., Pro Se
#FJ5881
P.O. Box 244
Collegeville, Pa. 19426-
0244

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-9000

In re: SAMUEL RANDOLPH,
Appellant

(D.C. Civ./Crim. No. 06-cv-00901)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE,
RESTREPO, BIBAS, NYGAARD*, and RENDELL*, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

* The votes of the Honorable Richard L. Nygaard & Honorable Marjorie O. Rendell, Senior Judges of the United States Court of Appeals for the Third Circuit, are limited to panel rehearing.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ D. Brooks Smith
Chief Circuit Judge

Dated: August 28, 2018

NMR/cc: Mr. Samuel B. Randolph, IV

ELD-025

June 28, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-9000**

In re: SAMUEL RANDOLPH , IV, Appellant

(M.D. Pa. Civ. No. 1:06-cv-00901)

Present: SMITH Chief Judge, NYGAARD and RENDELL, Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) Appellant's Opposition to Dismissal;
- (3) Appellant's Motion for Appointment of Counsel

in the above-captioned case.

Respectfully,

Clerk

ORDER

The appeal is dismissed for lack of appellate jurisdiction. Appellant appeals from an order denying his motion seeking substitution of counsel. This Court may hear appeals only from final orders of the District Court. 28 U.S.C. § 1291. A final order ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. See Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62, 68 (1948). The order must end the litigation as to all claims and all parties. See Andrews v. United States, 373 U.S. 334 (1963). The order appealed was not a final order; it did not end the litigation on the merits as to all claims and all parties. In addition, the order does not qualify as an appealable collateral order under this Court's narrow construction of the doctrine. See Richardson-Merrell, Inc. v. Koller, 472 U.S. 424, 431 (1985); Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368 (1981);

see also Robinson v. Hartzell Propeller, Inc., 454 F.3d 163, 168 (3d Cir. 2006). Appellant's motion for appointment of counsel on appeal is denied.

By the Court,

s/ D. Brooks Smith
Chief Circuit Judge

Dated: July 10, 2018

NMR/cc: Mr. Samuel B. Randolph, IV



A True Copy:

Patricia S. Dodsweat

Patricia S. Dodsweat, Clerk
Certified Order Issued in Lieu of Mandate

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