

NO. 19-5257 ORIGINAL

FILED

JUL 16 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

VINCENT JOHNSON - Plaintiff

VS.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
&

CLERK FOR THE SIXTH CIRCUIT
DEBBRAH HUNT - Respondents

ON PETITION FOR WRIT OF MANDAMUS TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF MANDAMUS

Vincent Johnson 688-089
Chillicothe Corrections
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QUESTIONS PRESENTED

1. Whether the clerk for the Sixth Circuit Debbrah Hunt should be order to file movant's R. 60(b)(6) motion.
2. Whether the Sixth Circuit court of Appeals should be order to accept jurisdiction of movant's R.60(b)(6) motion.

RELIEF SOUGHT

To allow movant to file his R. 60(b)(6) motion and have it adjudicated on the merits by a Justice of the appeals court.

LIST OF PARTIES

All parties in the caption of the case on cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF MANDAMUS

OPINIONS BELOW

The opinion of the Sixth Cir. Court of Appeals denying initial Mandamus at Appendix B

The opinion of the Sixth Cir. court of Appeals denying En banc hearing at Appendix C

The order by this Supreme court denying Writ of Certiorari at Appendix A

The opinion by the Dist. court denying R. 60(b)(6) motion at Appendix G

JURISDICTION

The Sixth Cir. rendered its decision to deny petitioner's Mandamus on July 16, 2018. Mr. Johnson then filed a timely petition for a Rehearing En banc which was denied on Sept. 5, 2018. A petition for a Writ of Certiorari was denied by this Supreme court on April, 1, 2019. This court has jurisdiction under 28 U.S.C.A. section 1651 to issue a writ of mandamus.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTIONAL PROVISIONS

BILL OF RIGHTS

United states Constitution, Bill of Right

Amendment XIV

Section 1. All person born or naturalized in the United States and subject to the jurisdiction thereto, are citizens of the United States and of the wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

STATUTES

Federal Rule of Civil Procedure

60(b) ,ON motion and just terms, the court may relieve a party or its legal representative from a final judgement, order, or proceeding .

Federal Rule of Appellate Procedure

25(a)1 , Filing with the clerk,A papper required or permitted to be filed in a court of appeals must be filed with the clerk.

25(a)4 , Refusal of documents, The clerk must not refuse for filing any paper presented for that purpose solely because it is not presented in proper form as required by the rules or local rules of practice.

STATEMENT OF THE CASE

On March 11, 2013 , the Petitioner, Vincent M. Johnson, was indicted by the Franklin County Grand Jury of two counts of rape one count of attempted rape, two counts of kidnapping, one count of robbery , one count of abduction, and one count of domestic violence in connection with alleged assault of Ms. Frances Call, the mother of his child and girlfriend at the time of incident.

The case came on trial on July 22, 2013, in the Franklin County Court of Common Pleas, befor Hon. Judge Michel J. Holbrook. On July 26, 2013 the jury returned a verdict of not guilty on one kidnapping and one robbery count, but guilty verdict on the remaining counts. The matter came befor the trial court for sentencing on August 19 2013. The court imposed the following sentence: eleven years on each rape count and eight years on the attempted rape count, and ordered that they be served consecutively to each other; the court futher imposed an additional conseccutive term of nine years on the R.V.O. specification, as to the first rape count for a total aggregate term of 39 years. An appeal was taken all the way to the United States Supreme Court which the court denied jurisdiction on Nov. 27, 2017.

FACTS NECESSARY TO UNDERSTAND THE ISSUE PRESENTED.

On Nov. 27, 2017 the United States Supreme court denied Mr. Johnson petition for writ of Certiorari case No. 17-6045 arguing among other things the improper denial of his COA by the Sixth Cir. Mr. Johnson had then filed a 60(b)(6) with the Dist. court asking the court to reopen his case in light of this Supreme Court's ruling in Buck v. Davis 137 S.Ct. 759, 2017, the motion was denied on Aug 21, 2017 case No. 2:15-Cv-0097. In response to both the Supreme court's decision and the Dist. court opinion and order where the Dist. court ruled that it did not have jurisdiction to rule on a decision by the Sixth Cir. Mr. Johnson attempted to file his 60(b) with the Sixth Cir. the motion was time stamped received on Dec.15 and returned unfiled, see Appdx D. The motion was resubmitted and again returned unfiled for the reason of the case being closed, see Appdx E. In a third attempt to get a understanding of why the clerk was refusing to file the motion a letter was written to both the clerk and to Chief Justice Cole. The letter to Justice Cole was forwarded to the Chief Deputy clerk Susan Rogers in which she replied the motion was returned because an Appellate court does not review R.60(b) motions, see Appdx. F. A writ of Mandamus was submitted to the Sixth Cir. to compel the clerk to file movant's R. 60(b)(6) motion. It was denied on July 16, 2018, see Appdx. B. A timely Writ of Certiorari was submitted to this Supreme court which was denied on April, 1, 2019 see Appdx. A. This Writ of Mandamus is being submitted to resolve these issues.

INTRODUCTION.

This mandamus is being pursued to rectify a usurpation of the Sixth Cir. authority by the clerk and chief deputy clerk. The clerks have made a determination on the Appellate court's jurisdiction, by refusing to file movant's 60(b)(6) motion for the reason of the case being closed, and stating the Sixth Cir. as an Appellate court does not hear R. 60 motions. Therefore pursuant to the all writs Act 28 U.S.C 1651 plaintiff seeks for this honorable court to compel the Sixth Cir. court of appeals to exercise it's proper duty to allow petitioner to file his 60(b)(6) motion and except jurisdiction.

ARGUMENT IN SUPPORT.

Writs are among the most potent weapons in the judicial arsenal as extraordinary remedies they are reserved for really extraordinary causes Exparte Faher, 332 U.S. 258, 260 (1947). A mandamus is a drastic remedy justified by only exceptional circumstances. There are three conditions that must be satisfied before it may be issued KERR v. United States Dist. Court for Northern Dist. of Cal. 426 U.S. 394.

- 1) The party seeking issuance of the writ must have no other adequate means to attain relief.
- 2) Petitioner must satisfy the burden of showing that his right to the issuance of the writ is clear and indisputable.
- 3) Even if the first two prerequisite have been met the issuing court in the exercise of it's authority has absolute discretion.

a. Petitioner has no other means to attain relief.

On Nov. 27, 2017 this Supreme court denied petitioner's request for a writ of Certiorari of his initial

Hebeas proceedings. In response to this court's ruling, petitioner submitted a 60(b)(6) motion to the Sixth Cir. asking the court to reopen his case in light of this Supreme court's ruling in Buck v. Davis 137 S. Ct 759, 2017. The motion was returned by the clerk unfiled for the reason of the case being closed, see Appdx. E . A total of three attempts were made to get the motion filed. On the third attempt a letter was sent by the Chief Deputy clerk Susan Rogers on Jan, 17, 2018, stating the Sixth Cir, as an Appellate court does not review rule 60 motion. See Appdx. F . A mandamus was filed with the Sixth Cir. to compel the clerk to file movant's R. 60(b)(6) motion. The petition was denied. The Sixth Cir. ruled the clerk's decision not to file movant's motion proper. The court incorrectly made a determination into the clerk's decision rather than assessing whether the right was clear and indisputable for the 60(b) motion to be filed see 'Appdx. B .

However this mandamus does not seek to correct an error in the Sixth Cir. decision as an En Banc was filed on the court's ruling which was then appealed to this Supreme court by way of a writ of Certiorari and denied on April, 1 2019 case No. 18-7688. This mandamus seeks for this honorable Supreme court to compel the Sixth Cir. to exercise its authority and except jurisdiction of movant's R. 60 (b)(6) motion, Roche v. Evaporated Milk Assn. 319 U.S. 21,26. While courts have never confined themselves to an arbitrary and technical definition of jurisdiction it is clear that only exceptional circumstances amounting to judicial usurpation of power will justify the invocation of this extraordinary remedy, Will v. United States Supra at 95. In this case the Sixth Cir has allowed the deputy clerk to make a determination of the Appellate court's jurisdiction over movant's R.60 motion.

It has created exceptional circumstances which has left no other means to attain relief except by way of mandamus, as petitioner has been completely denied access to the court to file his 60(b)(6) motion, or appeal the actions of the clerks which are outside the scope of normal judicial proceedings.

b. The right to the issuance of the writ is clear and indisputable:

Petitioner first filed his R. 60(b)(6) motion to the Dist. court, as correct procedure requires that the merits of a rule 60 motion be addressed in the first instance by the Dist. court, Abur' Rahman v, Bell 537 at 97. Rule 60(b) allows a party to seek relief from a final judgement or order and request reopening of his case, when movant shows reason justifying relief from the operation of the judgement, Gonzales v. Crosby 545 U.S. 524. The 60(b) which was submitted to the Dist. court claimed the Sixth Cir. inverted the statutory order of operation by deciding the merits of the appeal and then denying the COA based on its adjudication of the actual merits in violation of this court's ruling in Buck v. Davis 137S.Ct 759. In Davis, this Supreme court determined when a court of appeals side steps the COA process by first deciding the merits of an appeal and then justifying its denial of COA based on its adjudication of the actual merits it is in essence deciding an appeal without jurisdiction. Id at 336-337. 123 S.Ct 1029. In movant's case the Dist. court ultimately ruled that it does not have jurisdiction to change a decision of the Sixth cir. , "for relief from that court's decision movant must apply to that court". United States v. Alford 2017 WL 1734225 also see Appdx G, the Dist. court's opinion and order.

In light of the Dist. court's ruling. Petitioner attempted to file his 60(b) motion with the Sixth Cir. , which the clerk refused to file for the reason of the case being closed. Federal rules of Appellate procedures 25(A)(1) filing with the clerk states, a paper required or permitted to be filed in a court of appeals must be filed with the clerk. A review of rule 25(A)(1) shows the clerk had a duty to file the motion, though there may be a question on whether a rule 60(b) motion is permitted in the first instance at the appellate level. The Sixth Cir. ruling in this case to except the clerk's decision as proper, allowed the clerk to make a determination on a question of law that should have been determined by the Appellate court. Movant had a right under the fourteenth amendment to due process and the equal protection of the law to have his motion filed and addressed by a Justice of the Appeals court as the claims being argued in movant's R. 60(b)(6) motion originated in the jurisdiction of the Sixth Cir. . 60(b) provides the courts with authority adequate to enable them to vacate a judgement whenever such action is appropriate to accomplish justice. Liliberg v. Health Service Acquisition Corp. 486 U.S. 847 (1988) quating Kalapprott v. United States 335 U.S. 601.

The Sixth Cir refusal to except jurisdiction and adjudicate the issues properly presented to it under Fed. R. of Civil Procedures 60(b), impedes the ultimate exercise of this Supreme court's appellate jurisdiction granted to it by 28 U.S.C. 1254(1).

c. This court's discretion is needed in this case.

The Sixth Cir. has displayed a persistence disregard to the rules of civil procedures promulgated by this Supreme court in Crosby v. Gonzales 545 U.S. 524 .

It must be pointed out again that the origins of the claims presented in movant's 60(b) motion began in the jurisdiction of the Sixth Cir. It is only at the appellate level the court's examination at the COA stage is limited to a threshold inquiry into the underlying merits of a claim, Buck v. Davis Id. at 336, 123 S. Ct. 1029. The court's refusal to allow movant the chance to file his 60(b) motion or to except jurisdiction demonstrates an abdication of its responsibility. It must not be overlooked, rather than filing the motion the deputy clerk made a determination on the appellate court's jurisdiction. This usurpation of the court's authority makes clear the disturbing departure from normal judicial proceedings. The whole purpose of the 60(b) motion in this case was to ask the Sixth Cir. to make an exception to the finality of its judgement in petitioner's appeal proceedings, Gonzales 545 at 529. The action of both the Sixth Cir. and the clerks have denied movant the benefit of R. 60(b) to challenge a defect in the integrity of his appeal proceedings when all other avenues have been exhausted, therefore this court's discretion is needed to compel the Sixth Cir. to exercise its proper jurisdiction and authority, in doing so it will also prevent an injustice from being disregarded by the Sixth Cir.

d. Conclusion

The decision by the Sixth Cir. and the actions of both the deputy clerk and the clerk have created a situation outside the sphere of normal judicial proceedings. This departure from the basic principle of fairness in the judicial process injures the law as an institution. In the pursuit of justice this writ of mandamus simply seeks fairness in the application of the law and the democratic ideal reflected in the processes of the courts.