

No. _____

In The
Supreme Court of the United States

GREGORY DANIELS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit**

PETITION FOR WRIT OF CERTIORARI

Samuel B. Winthrop
Counsel of Record
WINTHROP & GAINES MESSICK, PLLC
706 Harness Road
Statesville, NC 28677
Telephone: (704) 872-9544
Facsimile: (704) 872-7712
sam@winthrop-law.com

Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

- A. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED AS A MATTER OF LAW BY DISMISSING PETITIONER'S NOTICE OF APPEAL.

LIST OF THE PARTIES

GREGORY DANIELS, *Petitioner*

UNITED STATES OF AMERICA, *Respondent*

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gregory Daniels (hereinafter “Petitioner”) respectfully prays for a writ of certiorari to review the decision and judgment of United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at *United States of America v. Gregory Daniels* (4th Circuit 18-4627). (Appendix A).

JURISDICTION

The United States Court of Appeals for the Fourth Circuit dismissed Petitioner’s appeal on April 25, 2019 and denied Petitioner’s Petition for Rehearing and Petition for Rehearing En Banc on May 29, 2019. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), and this Petition is timely filed within ninety days of the underlying Judgment of the Fourth Circuit pursuant United States Supreme Court Rule 13(1) and 28 U.S.C. § 2101.

CONSTITUTIONAL PROVISIONS

Amendment V, United States Constitution

“No person shall be...deprived of life, liberty, or property without due process of law...”

Amendment VI, United States Constitution

“In criminal prosecutions, the accused shall enjoy...the Assistance of Counsel for his defense.”

Amendment XIV, United States Constitution

“...nor shall any State deprive any person of life, liberty, or property, without due process of law...”

STATEMENT OF THE CASE

On March 13, 2017, the Government filed a Rule 35 Motion to reduce Petitioner’s sentence by six (6) months, and on April 10, 2017, the District Court for the Western District of North Carolina granted the Government’s Rule 35 Motion and reduced Petitioner’s sentence by six (6) months. R p 72. On August 31, 2018, Petitioner, on his own motion, appealed the Court’s Order on the Government’s Rule 35 Motion. R p 80. Petitioner filed his brief and joint appendix with the Fourth Circuit on January 23, 2019. On March 4, 2019, the United States filed a Motion to Dismiss the Petitioner’s appeal as being untimely. Petitioner filed his Response to the Motion to Dismiss by the United States on March 13, 2019 and the Fourth Circuit Court of Appeals issued its Order dismissing the appeal on April 25, 2019 (Appendix A). Petitioner filed his Petition for Rehearing with Petition for Rehearing En Banc on May 8, 2019 (Appendix B). The Fourth Circuit issued its Order denying Petitioner’s Petition for Rehearing and Petition for Rehearing En Banc on May 29, 2019 (Appendix C).

STATEMENT OF THE FACTS

Gregory Daniels (hereinafter “Petitioner”) was arrested on April 12, 2003 for possession of a firearm by a convicted felon. R p 87. On October 6, 2003, Petitioner was indicted for one count of possession of a firearm, a Marlin 30/30 rifle, after having

been convicted of a crime punishable by imprisonment exceeding a term of one year in violation of Title 18 U.S.C. § 922(g) in the United States District Court for the Western District of North Carolina. R p 87. On January 7, 2004, Petitioner entered a straight up guilty plea and, on March 30, 2005, was sentenced to imprisonment for a term of 246 months. R p 53. On June 12, 2017, Petitioner made a motion to have his sentence reduced under *Johnson v. United States*, 135 S. Ct. 2551 (2015) and requested an attorney to represent him. R p 56. On June 20, 2016, the Honorable Judge Martin Reidinger denied Petitioner's request as moot. R p 59. On November 2, 2016, Petitioner filed a request for a new court appointed attorney regarding *Johnson v. United States* and requested counsel to represent his interests regarding his cooperation with law enforcement investigations. R p 61. On December 20, 2016, the District Court denied Petitioner's pro se motion for counsel. R p 64. On March 13, 2017, the Government filed a Rule 35 Motion based on Petitioner's cooperation and substantial assistance to the government subsequent to his original date of sentencing, requesting that Petitioner's sentence be reduced by six (6) months, and, on April 10, 2017, the District Court granted the Government's Rule 35 Motion and reduced Petitioner's sentence by six (6) months. R p 72. The District Court only considered the Government's Motion in granting the Rule 35 sentence reduction, and failed to hear or consider any factors from Petitioner. On August 31, 2018, Petitioner, on his own motion, appealed the Court's Order on the Government's Rule 35 Motion. R p 80.

REASONS FOR GRANTING THE WRIT

Courts have held that “the late filing of a notice of appeal does not deprive the Court of subject matter jurisdiction, but Rule 4 is a mandatory claim-processing rule.” *United States v. Hyman*, 880 F.3d 161, 163 (4th Cir. 2018) citing *United States v. Urutyan*, 564 F.3d 679, 685 (4th Cir. 2009)(Holding that violation of Rule 4(b) does not deprive the Court of Jurisdiction). North Carolina precedent states that a “mandatory claim-processing rule – like Rule 4(b)(1)(A) is inflexible but can nonetheless be forfeited if the party asserting the rule waits to long to raise the point.” *Id.* citing *Eberhart v. United States*, 546 U.S. 12, 15, 126 S. Ct. 403, 163 L. Ed. 2d 14 (2005)(per curiam)(quoting *Kontrick v. Ryan*, 540 U.S. 443, 456, 124 S. Ct. 906, 157 L. Ed. 2d 867 (2004)). However, the Government is treated differently upon delayed or untimely filings of its appeals or related certificates. Petitioner agrees that 18 U.S.C. § 3731 requires the Government to file its appeals within a reasonable time – without specification of a particular time frame; however, upon delayed filing of appeal, the Court weighs the equities to determine whether the appeal should be allowed or not despite the irregularities. *United States v. DeQuasie*, 373 F.3d 509, 516 (4th Cir. 2004).

The facts here, unlike *Hyman*, cited above, show a Petitioner who has repeatedly been denied his right to counsel and right to Due Process in violation of Amendments V, VI, and XIV of the United States Constitution. The record shows that the Petitioner twice requested legal counsel, and was denied. It also shows that an Order, which altered the length of his sentence and impacted his constitutional

rights to life and liberty, was then entered. This Order did not advise the Petitioner of his right to appeal. Further, the Petitioner was denied a hearing, and denied an opportunity to be instructed of his legal rights by the Court system or declare an appeal in open court.

The distinction from *Hyman*, is important because it shows a Petitioner who has consistently been denied the right to understand the proceeding he is facing within our criminal justice system. Therefore, principles of equity, like the principles granted to the Government in 18 U.S.C.S. § 3731, should extend to Petitioner in cases such as this, where the record is clear that the Petitioner did not understand the proceedings against him, was denied assistance in the proceeding, and was denied any notice as to his right to appeal the Order. Failure of the Court to weigh the equities would further the injustices already sustained by Petitioner. In weighing the equities, the prejudice to the Petitioner to not consider his appeal far outweighs any other factors, particularly when Petitioner's appeal was made after being denied the assistance of counsel twice.

Additionally, the Government only filed its motion to dismiss after Petitioner filed his brief and joint appendix with the Court on January 23, 2019. The filing of this motion to dismiss was untimely.

For these reasons, the Petitioner respectfully requests this Court grant his Petition.

CONCLUSION

When an individual's life and liberty is altered, the individual should have a constitutional right to assistance of counsel to be properly heard for the proceeding, even if the change is in the individual's favor. Just because the Petitioner's sentence was reduced, does not mean that it would not have been reduced further if the Petitioner had just received an opportunity to be heard and the assistance to tell his side of the story.

The Petitioner did not understand the criminal justice system, and his denial of Counsel to a proceeding affecting his life and liberty, even if for the better, is an equitable factor we ask the Court to remand this matter back to the Fourth Circuit Court of Appeals to rule on the merits of Petitioner's appeal.

Respectfully submitted,

/s/ Samuel B. Winthrop
Samuel B. Winthrop
Winthrop & Gaines Messick, PLLC
706 Harness Road
Statesville, NC
Telephone: (704)872-9544
Facsimile: (704)872-7712
sam@winthrop-law.com

Counsel for Petitioner