

DOCKET NO.: _____

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

PLAINTIFF-APPELLEE

v.

DONALD STEVEN REYNOLDS

DEFENDANT-APPELLANT

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

PETITIONER'S APPENDIX

DONALD STEVEN REYNOLDS, PRO SE
REGISTER NO.: 47864-039
FCI ELKTON
PO BOX 10
LISBON, OHIO 44432

DONALD STEVEN REYNOLDS, Petitioner-Appellant, v. **UNITED STATES OF AMERICA**,
Respondent-Appellee.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
2019 U.S. App. LEXIS 11987

No. 19-1332
April 23, 2019, Filed

Editorial Information: Prior History

United States v. Reynolds, 2013 U.S. Dist. LEXIS 43127 (E.D. Mich., Mar. 27, 2013)

Counsel **{2019 U.S. App. LEXIS 1}Donald Steven Reynolds**, Petitioner - Appellant, Pro se, Lisbon, OH.

For United States of America, Respondent - Appellee: Matthew A. Roth, Assistant U.S. Attorney, Sara D. Woodward, United States Attorney's Office, Detroit, MI.

Judges: Before: ROGERS, SUTTON, and READLER, Circuit Judges.

Opinion

ORDER

This matter is before the court upon initial consideration to determine whether appeal No. 19-1332 was taken from an appealable order. **Donald Steven Reynolds** has filed a petition for permission to appeal pursuant to Rule 5 of the Federal Rule of Appellate Procedure.

Reynolds filed on September 28, 2018, a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence in the district court. Along with his § 2255 motion, Reynolds filed an oversized brief consisting of seventy-six pages, doubled-spaced. The government filed a motion to strike the oversized brief and asked the district court to order Reynolds to file a brief in compliance with the applicable local rules. The district court granted that motion in an order entered on January 15, 2019. On February 8, 2019, Reynolds filed a motion for reconsideration, which the district court denied by order entered on February 12, 2019. On February 26, 2019, Reynolds filed a second motion for reconsideration and asked the district **{2019 U.S. App. LEXIS 2}** court to "certify the matter for interlocutory appeal to the Sixth Circuit Court of Appeals." The second motion for reconsideration and request for certification were denied by order entered on March 11, 2019. Reynolds appeals the orders entered on January 15, 2019, February 12, 2019, and March 11, 2019.

This court lacks jurisdiction over the appeal. No final appealable order terminating all of the issues presented in the litigation has been entered by the district court. Reynolds's § 2255 motion remains pending in the district court.

Although a district court's denial of 28 U.S.C. § 1292(b) certification is not immediately appealable, it may be reviewed in a mandamus proceeding. *In re Powerhouse Licensing*, 441 F.3d 467, 471 (6th Cir. 2006). A notice of appeal from an order that is not immediately appealable may be treated as a

petition for a writ of mandamus. *Hammons v. Teamsters Local No. 20*, 754 F.2d 177, 179 (6th Cir. 1985). Mandamus is a remedy "to be invoked only in extraordinary situations." *Kerr v. United States Dist. Court for Northern Dist.*, 426 U.S. 394, 402, 96 S. Ct. 2119, 48 L. Ed. 2d 72 (1976). Mandamus may be appropriate if irreparable harm seems imminent from the denial of an immediate appeal. *Mischler v. Bevin*, 887 F.3d 271, 272 (6th Cir. 2018) (per curiam). Nothing in the record suggests that Reynolds will suffer irreparable harm from the denial of an immediate appeal. The petition for permission to appeal is **DENIED**.

The appeal is **DISMISSED** for lack of jurisdiction.

CIRHOT

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff/Respondent,

Civil Case No. 18-13104

Criminal Case No. 12-20843

v.

Donald Steven Reynolds,

Sean F. Cox
United States District Court Judge

Defendant/Petitioner.

ORDER GRANTING
THE GOVERNMENT'S MOTION TO STRIKE

Defendant/Petitioner Donald Steven Reynolds was convicted of child pornography offenses following a jury trial and his conviction and sentence were affirmed on direct appeal.

On September 28, 2018, Reynolds filed a form Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (ECF No. 199 at Page ID 3890-3900) wherein he asserted the following four grounds for relief:

- 1) "Mr. Reynolds' Right To Due Process Was Violated Where The Prosecution Knowingly Presented False Testimony" (Ground One);
- 2) "Mr. Reynolds' Right To Due Process Was Violated Where The Prosecutor's Comments On Facts Not In Evidence Coupled With The Misrepresentation Of The Evidence Deprived Him Of A Fair Trial" (Ground Two);
- 3) "Mr. Reynolds Was Denied A Fair Trial, Where Counsel Rendered Ineffective Assistance Of Counsel By Failing To Adequately Investigate The Law And Facts Of The Case To Prepare A Viable Defense" (Ground Three); and
- 4) "Mr. Reynolds Was Deprived A Fair Trial, Where Counsel Abandoned His Loyalty To Reynolds, And Entirely Failed To Subject The

Government's Case To Meaningful Adversarial Testing" (Ground Four).
(*Id.*).

Along with his form § 2255 Motion, Reynolds filed a supporting brief that consists of seventy-six pages, doubled-spaced, with 12-point font.

Thereafter, the Government filed a motion asking the Court to strike Reynolds's over-sized brief and order him to file a brief of no more than twenty-five pages in length, in compliance with the applicable local rules. (ECF No. 203).

Reynolds opposes the motion, asserting that his non-compliance with the page limitations was unintentional. Reynolds also asserts that he has limited time in the prison law library, and has to use a typewriter without memory, suggesting that it may take some time for him to file a compliant brief.

The Court finds that oral argument on the pending motion is not necessary and shall rule without a hearing.

Having considered the Government's motion, Reynolds's brief opposing it, and Reynolds's over-sized brief, the Court hereby **GRANTS** the Government's Motion to Strike. Pursuant to *Martinez v. United States*, 865 F.3d 842 (6th Cir. 2017) and Local Rule 7.1 of the Local Rules of the Eastern District of Michigan this Court **ORDERS** as follows:

- 1) The Court **shall not consider** the 76-page brief that Reynolds filed in support of the four grounds for relief set forth in his form § 2255 Motion;
- 2) No later than **March 15, 2019**, in support of the four grounds for relief set forth in his pending form § 2255 motion, Reynolds may file either:
 - A) A brief of no more than twenty-five (25) pages, doubled-spaced, with 14-point font; or
 - B) A brief of no more than twenty (20) pages, doubled-spaced, with

12-point font.¹

- 3) No later than **May 15, 2019**, the Government shall file a response brief of no more than 25 pages, doubled-spaced, with 14-point font; and
- 4) No later than **June 17, 2019**, Reynolds may file either:
 - A) A brief of no more than seven (7) pages, doubled-spaced, with 14-point font; or
 - B) A brief of no more than five (5) pages, doubled-spaced, with 12-point font.

IT IS SO ORDERED.

Dated: January 15, 2019

s/Sean F. Cox

Sean F. Cox

U. S. District Judge

I hereby certify that on January 15, 2019, the foregoing document was served on counsel of record via electronic means and upon Donald Reynolds via First Class mail at the address below:

Donald Steven Reynolds #47864039
ELKTON FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 10
LISBON, OH 44432

s/J. McCoy

Case Manager

¹The Court is giving Reynolds this option as a courtesy, in the event the typewriter he has access to does not have 14-point font.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff/Respondent,

v.

Donald Steven Reynolds,

Defendant/Petitioner.

Civil Case No. 18-13104

Criminal Case No. 12-20843

Sean F. Cox
United States District Court Judge

ORDER

Defendant/Petitioner Donald Steven Reynolds was convicted of child pornography offenses following a jury trial and his conviction and sentence were affirmed on direct appeal.

On September 28, 2018, Reynolds filed a form Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (ECF No. 199 at Page ID 3890-3900) wherein he asserted four grounds for relief.

Along with his form § 2255 Motion, Reynolds filed a supporting brief that consists of seventy-six pages, doubled-spaced, with 12-point font.

Thereafter, the Government filed a motion asking the Court to strike Reynolds's oversized brief and order him to file a brief of no more than twenty-five pages in length, in compliance with the applicable local rules. (ECF No. 203). This Court granted that motion in an order issued on January 15, 2019, and ordered as follows:

- 1) The Court **shall not consider** the 76-page brief that Reynolds filed in support of the four grounds for relief set forth in his form § 2255 Motion;
- 2) No later than **March 15, 2019**, in support of the four grounds for relief set

forth in his pending form § 2255 motion, Reynolds may file either:

- A) A brief of no more than twenty-five (25) pages, doubled-spaced, with 14-point font; or
- B) A brief of no more than twenty (20) pages, doubled-spaced, with 12-point font.¹

3) No later than **May 15, 2019**, the Government shall file a response brief of no more than 25 pages, doubled-spaced, with 14-point font; and

4) No later than **June 15, 2019**, Reynolds may file either:

- A) A brief of no more than seven (7) pages, doubled-spaced, with 14-point font; or
- B) A brief of no more than five (5) pages, doubled-spaced, with 12-point font.

IT IS SO ORDERED.

(ECF No. 207).

On February 8, 2019, Reynolds filed a Motion for Reconsideration. (ECF No. 208). In that motion, Reynolds asked this Court to reconsider its ruling on the Government's Motion to Strike and allow him to proceed with his over-sized § 2255 brief. Reynolds further asserted that while his form § 2255 motion only contained the four grounds for relief noted in this Court's order, his brief raised two additional issues: 1) that he "is entitled to resentencing where counsel rendered ineffective assistance at the sentencing stage of the proceedings;" and 2) the "restitution judgment is infirm and must be vacated as a matter of law." (ECF No. 208 at PageID 4068).

Having considered Reynolds's Motion for Reconsideration, this Court "**DENIE[D]** **WITH PREJUDICE** Reynolds's request to allow him to proceed with his over-sized brief. If

¹The Court is giving Reynolds this option as a courtesy, in the event the typewriter he has access to does not have 14-point font.

Reynolds wishes to include the two additional issues set forth above, he may do so in his brief.

But Reynolds's must file a brief in accordance with the page limitations set forth in this Court's January 15, 2019 Order." (ECF No. 209).

On February 26, 2019, Reynolds filed a motion that seeks reconsideration of this Court's order denying his February 8, 2019 Motion for Reconsideration. (ECF No. 210). In an Order issued on March 11, 2019, this Court denied that motion, stating:

The Court hereby DENIES this motion for lack of merit. The Court's February 12, 2019 Order Denying Reynolds's Motion for Reconsideration (ECF No. 209) stands as written. Petitioner is advised that the Court will not consider any additional motions seeking reconsideration of the Court's rulings on the length of Petitioner's brief.

In addition, to the extent that Reynolds's February 26, 2019 motion asks this Court to "certify the matter for interlocutory appeal to the Sixth Circuit Court of Appeals," that request is also **DENIED**.

IT IS SO ORDERED.

(ECF No. 211).

Thereafter, Reynolds filed a Notice of Appeal, stating that he was appealing this Court's orders on his motions for reconsideration. (ECF No. 212). On April 23, 2019, the Sixth Circuit issued an Order dismissing that appeal for lack of jurisdiction. (ECF No. 214).

To date, Reynolds has not filed a supporting brief in compliance with this Court's orders.

The Court hereby ORDERS that Reynolds must do so no later than June 14, 2019. If

Reynolds fails to do so, the Court will order the Government to file a response based upon

Reynolds's form § 2255 motion. Reynolds is further advised that the Court will not entertain any additional motions seeking an extension of time for filing his brief, or any motions seeking to file an over-sized brief.

IT IS SO ORDERED.

Dated: May 21, 2019

s/ Sean F. Cox

Sean F. Cox

U. S. District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff/Respondent,

v.

Donald Steven Reynolds,

Defendant/Petitioner.

Civil Case No. 18-13104
Criminal Case No. 12-20843

Sean F. Cox
United States District Court Judge

ORDER REGARDING
BRIEFING ON PETITIONER'S FORM § 2255 MOTION

Defendant/Petitioner Donald Steven Reynolds was convicted of child pornography offenses following a jury trial and his conviction and sentence were affirmed on direct appeal.

On September 28, 2018, Reynolds filed a form Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (ECF No. 199 at Page ID 3890-3901). Along with that form § 2255 Motion, Reynolds filed a supporting brief that consists of seventy-six pages, doubled-spaced, with 12-point font.

The Government filed a motion asking the Court to strike Reynolds's over-sized brief and order him to file a brief of no more than twenty-five pages in length, in compliance with the applicable local rules.

This Court granted that motion in an Order issued on January 15, 2019, wherein the Court ruled as follows:

Having considered the Government's motion, Reynolds's brief opposing it, and Reynolds's over-sized brief, the Court hereby **GRANTS** the Government's Motion to Strike. Pursuant to *Martinez v. United States*, 865 F.3d 842 (6th Cir.

2017) and Local Rule 7.1 of the Local Rules of the Eastern District of Michigan this Court **ORDERS** as follows:

- 1) The Court **shall not consider** the 76-page brief that Reynolds filed in support of the four grounds for relief set forth in his form § 2255 Motion;
- 2) No later than **March 15, 2019**, in support of the four grounds for relief set forth in his pending form § 2255 motion, Reynolds may file either:
 - A) A brief of no more than twenty-five (25) pages, doubled-spaced, with 14-point font; or
 - B) A brief of no more than twenty (20) pages, doubled-spaced, with 12-point font.¹
- 3) No later than **May 15, 2019**, the Government shall file a response brief of no more than 25 pages, doubled-spaced, with 14-point font; and
- 4) No later than **June 15, 2019**, Reynolds may file either:
 - A) A brief of no more than seven (7) pages, doubled-spaced, with 14-point font; or
 - B) A brief of no more than five (5) pages, doubled-spaced, with 12-point font.

IT IS SO ORDERED.

(ECF No. 207) (bolding in original).

On February 8, 2019, Reynolds filed a Motion for Reconsideration. (ECF No. 208). In that motion, Reynolds asked this Court to reconsider its ruling on the Government's Motion to Strike and allow him to proceed with his over-sized § 2255 brief. This Court denied that motion in an order issued on February 12, 2019, noting that Reynolds's request to allow him to proceed with his over-sized brief was denied with prejudice and ordering that any brief filed by Reynolds

¹The Court is giving Reynolds this option as a courtesy, in the event the typewriter he has access to does not have 14-point font.

must be "in accordance with the page limitations set forth in this Court's January 15, 2019 Order." (ECF No. 209).

On February 26, 2019, Reynolds filed a motion seeking reconsideration of this Court's order denying his February 8, 2019 Motion for Reconsideration. (ECF No. 210). On March 11, 2019, this Court denied that second reconsideration motion, and expressly advised Reynolds that this **"Court's February 12, 2019 Order Denying Reynolds's Motion for Reconsideration (ECF No. 209) stands as written. Petitioner is advised that the Court will not consider any additional motions seeking reconsideration of the Court's rulings on the length of Petitioner's brief."** (ECF No. 211) (bolding in original).

Rather than file a supporting brief in compliance with the Local Rule and this Court's orders, Reynolds filed a Notice of Appeal on March 18, 2019, purporting to appeal this Court's rulings regarding the page limitations. (ECF No. 212).

On April 23, 2019, the United States Court of Appeals for the Sixth Circuit issued an order wherein it dismissed Reynolds's appeal for lack of subject matter jurisdiction. (See ECF No. 214).

On May 21, 2019, this Court issued an Order noting that Reynolds's appeal had been dismissed for lack of subject matter jurisdiction and ordered as follows:

To date, Reynolds has not filed a supporting brief in compliance with this Court's orders. **The Court hereby ORDERS that Reynolds must do so no later than June 14, 2019.** If Reynolds fails to do so, the Court will order the Government to file a response based upon Reynolds's form § 2255 motion. **Reynolds is further advised that the Court will not entertain any additional motions seeking an extension of time for filing his brief, or any motions seeking to file an over-sized brief.**

IT IS SO ORDERED.

(ECF No. 215) (bolding in original).

Reynolds has not filed a supporting brief in compliance with the Court's orders and the time for doing so has long since passed. Accordingly, given that this Court struck Reynolds's over-sized brief, and Reynolds chose not to file a compliant supporting brief, this Court now **ORDERS** as follows:

- 1) No later than **October 15, 2019**, the Government shall file a brief **responding to Reynolds's form § 2255 motion**. That brief must be no more than twenty-five (25) pages, doubled-spaced, with 14-point font; and
- 2) Any Reply Brief filed by Reynolds must be filed no later than **December 2, 2019**, and shall be no longer than seven (7) pages, doubled-spaced, with 14-point font.

IT IS SO ORDERED.

s/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: August 30, 2019

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 30, 2019, by electronic and/or ordinary mail.

s/Erica Karhoff on behalf of

Jennifer McCoy, Case Manager

APPENDIX
Ex F

No. 19-1332

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jun 26, 2019

DEBORAH S. HUNT, Clerk

DONALD STEVEN REYNOLDS,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee,

O R D E R

BEFORE: ROGERS, SUTTON, and READLER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX
Exhibit E

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