No. 19-6740

IN THE
Supreme Court of the United States

GLENDAL RHOTON,

Petitioner,

v.

RICHARD BROWN, Warden

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION

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QUESTION PRESENTED

In *Bowles v. Russell*, 551 U.S. 205 (2007), the Court held that the statutory time limits for taking an appeal prescribed by 28 U.S.C. § 2107 are "mandatory and jurisdictional," *id.* at 209 (internal quotation marks and citation omitted), and that federal courts accordingly have "no authority to create equitable exceptions" to these requirements, *id.* at 214.

Here, following the district court's denial of his habeas petition, Glendal Rhoton filed a motion for a certificate of appealability that failed to comply with section 2107's time limits. The Seventh Circuit promptly dismissed the motion, and the Court denied Rhoton's subsequent cert petition. And after the Court did so, Rhoton filed a Rule 60(b) motion in district court, which the district court denied. Rhoton again appealed to the Seventh Circuit, and the Seventh Circuit again dismissed his appeal, holding that Rule 60(b) motions cannot be used to evade the appellate time limits Congress has chosen to impose.

The question presented is:

Did the Seventh Circuit properly reject Rhoton's attempt to use a Rule 60(b) motion to evade 28 U.S.C. § 2107 and revive his untimely appeal?

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STATEMENT OF THE CASE

In September 2008, Glendal Rhoton killed Martin Wilburn as Rhoton burglarized the Red Dog Saloon in Indianapolis. Pet. Ex. E at 2–3. After a jury found Rhoton guilty of murder and burglary and he admitted to being a habitual offender, the trial court sentenced Rhoton to an aggregate term of 81 years, which the Indiana Court of Appeals affirmed. *Rhoton v. State*, 938 N.E.2d 1240 (Ind. Ct. App. 2010). A state trial court, affirmed by the Indiana Court of Appeals in an unpublished decision, denied Rhoton's petition for post-conviction relief. Pet. Ex. E.

Rhoton next filed a petition for a writ of habeas corpus in the Southern District of Indiana, and in so doing consented to receive electronic service of court orders from the district court through the prisoner e-service program. Dist. 2; Dist. 3.[1] On July 19, 2016, the district court denied both his petition and a certificate of appealability. Dist. 22; Dist. 23. One hundred and eighty-eight days later, Rhoton sent a letter to the district court asking for a copy of the docket sheet. Dist. 25. About a week later, he sent a letter asking for a copy of the judgment, a request the district court granted the following day. Dist. 26; Dist. 27.

On March 17, 2017, 241 days after entry of judgment, Rhoton filed a Motion for Certificate of Appealability, which the district court denied but also treated as a notice of appeal. Dist. 29; Dist. 30. The court observed that Rhoton's motion could not be treated as a motion to re-open the time to appeal under Federal Rule of Appellate

[1] "Dist." refers to the district court's docket, and "CA7" refers to the appellate docket under cause number 17-1642.

Procedure 4(a)(6) because the motion was not filed within 180 days of the entry of judgment as required under 28 U.S.C. § 2107. Dist. 30.

Notwithstanding that ruling, Rhoton then filed a Motion for an Extension of Time to File Notice of Appeal where he repeated his assertion—first made in his Motion for Certificate of Appealability—that despite his diligence he did not receive notice of the trial court's entry of judgment until February 2017. Dist. 34; Dist. 29. The district court denied this motion, reiterating that Rhoton's appeal was untimely because he first sought to appeal the judgment outside the 180-day window of Federal Rule of Appellate Procedure 4 and 28 U.S.C. § 2107. Dist. 36.

On appeal, when the Seventh Circuit ordered Rhoton to file a memorandum showing why the case should not be dismissed for lack of jurisdiction, Rhoton argued that his failure to comply with the appeal deadline should be excused because the prison law library prevented him from becoming aware of the status of his case. CA7 7 at 1, 3–4. The Seventh Circuit dismissed the appeal for lack of jurisdiction, CA7 14, and this Court denied Rhoton's petition for a writ of certiorari challenging the dismissal of his appeal, *see* No. 17-6070 (U.S.).

About a year later, Rhoton filed a Motion for Relief from Judgment under Trial Rule 60(b), Dist. 41, which the district court denied, Dist. 43. The Seventh Circuit then dismissed Rhoton's appeal of this denial, explaining that Rhoton could not use Rule 60(b) to "evade the deadlines" contained in 28 U.S.C. § 2107. Pet. Ex. A.

REASONS FOR DENYING THE PETITION

Rhoton's first appeal failed to comply with jurisdictional requirements, and he cannot use Trial Rule 60(b) to remedy that non-compliance

Rhoton asks the Court to consider his argument that, because he allegedly did not receive notice of the judgment against him when it was initially entered, he should be able to appeal even after the jurisdictional deadline expired. The Court, however, *already* declined to consider this argument the *first* time Rhoton filed a cert. petition in this case. *See* No. 17-6070 (U.S.). It should do so again. The only issue Rhoton adds in this *second* go-around is whether he can use a Rule 60(b) motion in the district court to evade the jurisdictional deadlines that barred his initial appeal. Rhoton, however, fails to argue that any of the Rule 10 considerations justify review here, and he is wrong on the merits: Section 2107 barred his first appeal and this appeal. His petition should be denied.

There is no question that Rhoton's first attempted appeal was properly dismissed. In general, notices of appeal must be filed within thirty days of the entry of judgment. 28 U.S.C. § 2107(a). Even where a party fails to receive notice of the entry of judgment, district courts may reopen the time for appeal *only* if the party files a motion requesting such reopening "within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier," and in such cases may only "reopen the time for appeal for a period of 14 days." 28 U.S.C. § 2107(c).

Because Congress "determine[s] when, and under what conditions, federal courts can hear [cases]," *Bowles v. Russell*, 551 U.S. 205, 213 (2007), and because the

time limits in section 2107 were enacted by Congress—not courts—these requirements are "mandatory and jurisdictional," *id.* at 209 (quoting *Griggs v. Provident Consumer Discount Co.,* 459 U.S. 56, 61 (1982) (per curiam)); *see also United States v. Robinson*, 361 U.S. 220, 229 (1960). For this reason, courts have "no authority to create equitable exceptions to jurisdictional requirements" in statutes such as section 2107. *Bowles*, 551 U.S. at 214. In *Bowles*, for example, a district court granted a state habeas petitioner's motion to reopen the time for appeal under section 2107(c), but gave the petitioner 17 days to file the notice of appeal, rather than the 14 days specified by section 2107(c). *Id.* at 207. The petitioner filed his appeal within the 17 days allowed by the district court's order, but the Court held that the petitioner's appeal was jurisdictionally barred because it was filed outside section 2107(c)'s mandatory 14-day window. *Id.* at 214–15.

Here, Rhoton plainly failed to comply with section 2107(c)'s mandatory jurisdictional requirements. He filed his Motion for Certificate of Appealability—which the district court treated as a notice of appeal—241 days after the entry of judgment, far beyond section 2107(c)'s 180-day deadline for reopening an appeal for failure to receive notice of entry of judgment, "and [courts] may not create equitable exceptions to the 180–day deadline." *In re Jones*, 670 F.3d 265, 267 (D.C. Cir. 2012); *see also Bowles*, 551 U.S. at 207–08 (noting that the Courts of Appeals have uniformly held that the "180–day period for filing a motion to reopen is also mandatory and not susceptible to equitable modification"); *Baker v. United States*, 670 F.3d 448, 456 (3d Cir. 2012) (affirming denial of pro se prisoner's motion to reopen time for appeal

because the motion was filed "well beyond the 180-day outer limit" and "[g]iven *Bowles*, we cannot extend the 180–day outer limit").[2]

Because Rhoton failed to comply with section 2107(c)'s jurisdictional requirements, the courts below correctly dismissed the appeal, and this Court properly denied Rhoton's *first* petition for a writ of certiorari. *See* Dist. 36; CA7 14; No. 17-6070 (U.S.).

Rhoton's current petition to this Court repeats the same arguments from before and cites no cases where the Court has permitted litigants to use Rule 60(b) to evade jurisdictional appellate filing deadlines. The petition cites only one case addressing notice-of-appeal deadlines, *Maples v. Thomas*, 565 U.S. 266 (2012), but that case merely addressed whether a federal habeas petitioner can establish adequate cause to excuse state procedural defaults. It has nothing to do with whether a federal court may create an equitable exception to section 2107(c)'s jurisdictional deadlines—a question *Bowles* definitively answers in the negative. *See* 551 U.S. at 214–15.

Permitting litigants to use Rule 60(b) to evade section 2107's requirements would undermine Congress's clearly expressed intent: "If rigorous rules" such as 2107(c)'s deadlines "are thought to be inequitable, Congress may authorize courts to

[2] It also bears observing that section 2107(c) provides that a motion to reopen must be made "within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, *whichever is earlier*." 28 U.S.C. § 2107(c) (emphasis added). It is therefore unnecessary to determine whether Rhoton filed his motion within 14 days of receiving notice of the judgment, though it is unlikely that he did, as the district court sent Rhoton notice on February 2, 2017, Dist. 27, a month-and-a-half before Rhoton filed his Motion for Certificate of Appealability, Dist. 29.

promulgate rules that excuse compliance with the statutory time limits." *Bowles*, 551 U.S. at 214. Congress, however, has not done so.

Rhoton's Rule 60(b) motion repeated his arguments about why he should be able to appeal and simply asked the district court to excuse his failure to comply with the jurisdictional deadlines. The motion fails to make any new argument, or explain why *Bowles* does not control. Rhoton's cert petition is largely the same. Rhoton makes no attempt to explain why the Court's precedents would permit him to use the vehicle of a Rule 60(b) motion to cure the deficits or avoid the result of his first attempted appeal. On the contrary, the Court's precedents squarely foreclose Rhoton's theory. His petition should therefore be denied.

CONCLUSION

Rhoton's petition for a writ of certiorari should be denied.

Respectfully submitted,

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February 12, 2020