

No. 19-6925

ORIGINAL

Supreme Court, U.S.
FILED

NOV 28 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SULAIMAN MUJAHID TAALIBDIN — PETITIONER
(Your Name)

vs.

KENNETH D. KYLER, et. al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SULAIMAN MUJAHID TAALIBDIN
(Your Name)

1000 FOLLIES ROAD
(Address)

DALLAS, PA 18612
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Pursuant to U.S.C.S. § 1291 did the Circuit Court possess appellate jurisdiction when the district court ruled petitioner's Rule 60(b) motion untimely under Rule 60(b)(6) which was not before the court and failed to issue a final decision on petitioner's claim under Rule 60(b)(4)?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

SULAIMAN MUJAHID TAALIBDIN, v. KENNETH D. KYLER,
No. 94-CV-6649, U.S. DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA. JUDGMENT ENTERED NOV. 6, 2018

SULAIMAN TAALIBDIN v. SUPERINTENDENT DALLAS SCI, et al.
No. 18-3678, UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT. JUDGEMENT ENTERED JULY 18, 2019.

SULAIMAN TAALIBDIN v. SUPERINTENDENT DALLAS SCI, No. 18-3678,
UNITED STATES COURT OF APPEALS FOR THE THIRD CURCUIT.
JUDGMENT ENTERED AUGUST 30, 2019.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Porter v. Zook</u> , 803 F.3d 649 (October 20, 2015)	
<u>Whitherspoon v. White</u> , 232 F.3d 210 (5th Cir. Tex. 2000)	
<u>Prellwitz v. Sisto</u> , 657 F.3d 1035 (September 22, 2011)	

STATUTES AND RULES

U.S.C.S. § 1291

OTHER

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APPENDIX A	District Court's denial of petitioner's Rule 6(b) Motion entered November 16, 2018
APPENDIX B	Third Circuit's denial of petitioner's appeal. Entered July 18, 2019
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APPENDIX D	Petitioner's Federal Rule of Civil Procedure Rule 6(b)(4) petition.
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 18, 2019 _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 30, 2019, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.S. § 1291

§ 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) 1295 of this title.

STATEMENT OF THE CASE

This case involves the District Courts ruling on petitioner's filing of a Federal Rule of Civil Procedure 60(b)(4) See Appendix (D) petition. The District Court ruled that petitioner's motion was untimely under 60(b)(6). However, the Court made no mention of the provision that petitioner's motion was filed under, Rule 60(b)(4). The Third Circuit excercised appellate jurisdiction and ruled petitioner's motion a successive habeas petition.

The Third Circuit's action causes confusion as to what is actually required by U.S.C.S. § 1291 to establish appellate jurisdiction. The Fourth, Fifth, and Ninth Circuits are a few of the the Circuit Courts that hold the view that such circumstance would not give them appellate jurisdiction. Expressly disagreeing with the Third Circuit's action. In fact the Fourth Circuit stated in a case, that it had an independent obligation to verify the existence of appellate jurisdiction.

It is critically important for courts and litigants to know whether the Third Circuit's decision is right or wrong. If the Third Circuit is wrong but its decision remains unreviewed, it may unjustifiably deter parties from seeking appellate review of a decision that the law does not seem to support. Also, it may tend to signal tacit approval of a court exercising appellate jurisdiction where none exist.

If the Third Circuit is right, then review is required bring clarity to a situation that the circuit courts seems to be unclear about.

REASONS FOR GRANTING THE PETITION

In light of the Third Circuit's actions, there is a square conflict among the courts of appeals regarding the question presented. That conflict is starkly illuminated by the contrast between the Fourth Circuit's decision in Porter v. Zook, 803 F.3d 649 (October 20, 2015). Both cases involve a district court issuing a final order without resolving all of the issues that were before it. While the Fourth Circuit has held they did not possess appellate jurisdictions in such instances, the Third Circuit however, exercised appellate jurisdiction and ruled on the merits of the appeal. Other courts of appeal have rejected this approach. What makes this case even more distinguishable than the others is that the district court did not address the only issue that was before it. This sharply different treatment of similarly-situated litigants creates an intolerable conflict-and severe unfairness-that this Court should resolve.

The Third Circuit's action conflicts with the decisions of other courts of appeal that addressed this issue.

The Fourth Circuit rejected the the Third Circuit's approach when it stated in Porter, "Before the United States Court of Appeals for the Fourth Circuit considers the merits of an appeal, it has an independent obligation to verify the existence of appellate jurisdiction. And that jurisdiction generally is limited to appeals from final decisions of the district courts, 28 U.S.C.S. § 1291-decisions that end the litigation on the merits and leave nothing for the court to do but execute the order." Also, "Regardless of the label given a district court

decision, if it appears from the record that the district court has not adjudicated all of the issues of a case then there is no final order."

The Fifth Circuit stated in Whitherspoon v. White, 232 F.3d 210 (5th Cir. Tex. 2000), "When a record clearly indicates that a district court failed to adjudicate the rights and liabilities of all parties, an order is not and cannot be presumed to be final, irrespective of a district court's intent.

The Ninth Circuit stated in Prellwitz v. Sisto, 657 F.3d 1035 (September 22, 2011), "Federal R. Civ. P. 54(b) provides that, unless a district court expressly determines that there is no reason for delay, any order or decision, however designated, that adjudicates less than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties."

The third Circuit's actions appear to be inconsistent with the uniform decisions of the other courts of appeals. This approach is also inconsistent with the language, history and purpose of U.S.C.S. § 1291.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: _____