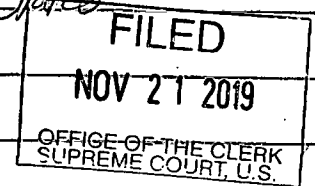


19-7366

ORIGINAL

Supreme Court of the United States

No. (Clerk To Supply)



In re: Andrew Johnston

Petitioner

PETITION FOR WRIT OF PROHIBITION

Originating Case Information: Appeal Nos. 19-1624;
19-3376, U.S.C.A.-7th Circuit; Case No. 17-cr-517,
U.S. District Court, Northern District of Illinois

Date: 12/17/19

Andrew Johnston

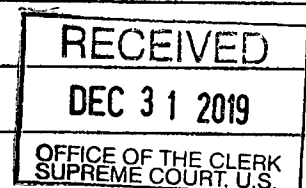
Andrew James Johnston

Prisoner # 22712-424

FMC

P.O. Box 17500

Lexington, Kentucky 40512



Questions Presented

1. Will this Court issue a writ of prohibition to the court of appeals prohibiting:

(a) continued detention of petitioner pending disposition of his direct appeal in light of *Stokeling v. United States*, 139 S. Ct. 544, 550 (2019), and the pleadings filed in the district court: #350, #361, #366, as well as the court of appeals: #51 and #1 (in 19-3376) thereupon?

(b) continued deprivation of the requested transcripts and documents from the district court needed for the briefing at this juncture petitioner's reply brief of his direct appeal?

2. Does the court of appeals' circuit precedent *United States v. Bilanzich*, 771 F.2d 292 (7th Cir. 1985) accurately reflect legislative intent/history of 18 U.S.C. § 3143(b)?

(a) If not, will this Court overrule *Bilanzich* and interpret § 3143(b) to unify its purposes nationally?

(b) If so, will this Court hold that petitioner made an adequate showing under *Bilanzich* and order his release pending appeal on GPS ankle monitoring?

Jurisdictional Statement

The jurisdiction of the district court was not founded upon any federal statute;

The jurisdiction of the court of appeals is founded upon 28 U.S.C. § 1291, and is based on the following particulars:

(a) Date of entry sought to be reviewed: judgment of conviction and sentence entered on April 7, 2019 by way of oral pronouncement; (R. at #339);

(b) Filing date of motion for a new trial: January 21, 2019; (R. at #303);

(c) Disposition of motion and date of entry: April 7, 2019; (R. at #339);

(d) Date that notice of appeal was filed: April 7, 2019; (R. at #340);

The jurisdiction of this Court is founded upon 28 U.S.C. § 1651 as petitioner's direct appeal is currently being briefed. No final order has been entered in that appeal.

Table of Authorities

Evitts v. Lucey, 469 U.S. 387, 393 (1985)

Pulliam v. Allen, 466 U.S. 522, 533-535 (1984)

Spencer v. Kemna, 523 U.S. 1, 18 (1998)

United States v. Bilanzich, 771 F.3d 292 (7th Cir. 1985)

Will v. United States, 389 U.S. 90, 95 (1967)

18 U.S.C. § 3143 (b)

Statement of the Case

This is a petition seeking prohibition of the omission of the court of appeals' exercise of its authority to compel the district court to provide the requested transcripts and documents needed for the briefing in a direct appeal of a federal criminal case, also prohibition of continued detention of petitioner pending disposition of his appeal. No other court, besides this Court, has the authority to reverse the denial of bail pending appeal by the court of appeals. No other court, besides this Court, has the authority to issue quo warranto, mandamus, or prohibition to the court of appeals, thus no other Court can provide the relief requested herein. Issuance of prohibition to the court of appeals in this case aids this court's appellate jurisdiction by confining the court of appeals to a lawful exercise of its jurisdiction because:

- (a) the court of appeals would be compelled to follow this Court's precedent, *Evitts v. Lucey*, 469 U.S. 387, 393 (1985) with the respectful application to the currently omitted transcripts;
- (b) the court of appeals would be compelled to follow the provisions of § 3143(b) and congressional intent therewith;
- and, (c) the court of appeals would be compelled to take action against the district court's omissions/impedances of petitioner's direct appeal via withholding the requested transcripts and documents instead of remaining idle and allowing the briefing to proceed without the transcripts appended.

Statement of the Facts

On April 7, 2019, petitioner filed his notice of appeal in the district court upon the oral pronouncement of conviction and sentence by handing it to the courtroom clerk at the close of the sentencing hearing. In response, the district court changed petitioner's financial status from in forma pauperis. As a result, if petitioner did not pay \$505.00 by April 19, 2019 his appeal would be dismissed. #1 on appeal. On April 17, 2019, petitioner filed a motion to correct his financial status, #9 on appeal, and on April 18, 2019 the court of appeals corrected the fee/financial status, #10 on appeal. Also on April 18, 2019, petitioner filed his seventh circuit transcript information sheet, #7 on appeal.

On May 3, 2019, petitioner was permitted to proceed pro se, and the appeal was docketed for briefing. #17 on appeal. From that time, until present, petitioner has not been rendered a single transcript of the district court proceedings, despite numerous motions requesting the transcripts or to continue the briefing because no transcripts were provided. See, #19, #25, #32, #35, #39, #41, #45, #52, #53, #57, on appeal, and most recently another motion for the transcripts was filed/dated on December 6, 2019, which petitioner has heard nothing about from the court of appeals. On August 16, 2019, petitioner filed a renewed motion for release in light of *Stokeling v. United States*, 139 S. Ct. 544, 550 (2019) which incorporated by reference petitioner's earlier filed motion for release, (R. at #36) (incorporating #330)). ⑤

On August 20, 2019, the district court ordered the government to respond, (R. at #362), which it did on September 16, 2019, (R. at #364), and on September 17, 2019 the district court ordered petitioner to reply, (R. at #365). Petitioner replied prior to the October 8, 2019 deadline, (R. at #366), and has not received a single order from the district court since. On October 18, 2019, petitioner renewed his motion for release with the court of appeals, #51 on appeal, and on October 25, 2019 the court of appeals denied that motion "without prejudice to renewal after the district court rules on the motion for release pending before it." #54 on appeal. Petitioner received no further orders from the district court nor the court of appeals on the motion for release.

On December 2, 2019, petitioner filed appellant's petition for corrective writ of mandamus addressed to appeal no. 19-1624 under the impression the district court had not ruled on the motion for release. On its own, the court of appeals opened a new docket, no. 19-3376, as an original proceeding, and on December 10, 2019 directed the district court to explain its October 28, 2019 order denying the motion for release (which petitioner never received). On December 12, 2019 the district court filed its extended explanation, and on December 13, 2019 the court of appeals affirmed its denial of the motion for release without explaining how the district court's order is accurate across the pleadings and § 3143(b).

Because petitioner has not received any orders from the district court since September 17, 2019, he did not/does not have a copy of the December 12, 2019 order to argue against on rehearing en banc/reconsideration in the court of appeals nor before this Court here. On December 16, 2019, petitioner mailed a petition to the court of appeals seeking rehearing en banc/reconsideration of its December 13, 2019 order. However, for purposes here the December 13, 2019 order is the target of this petition with respect to the release motion because the court of appeals has denied release pending appeal on two separate motions: one not relying on Stokeling, and one relying on Stokeling as of the December 13, 2019 order.

Summary of the Argument

The argument shows that the court of appeals condoning the district court to withhold transcripts and documents requested for a direct appeal currently before it is a clear abuse of discretion, judicial usurpation of power against this Court's precedent, and exceptional circumstances. The argument shows that the court of appeals denying release pending appeal despite Stokeling and the other argued factors, (R at #35, #36, #36), is against the legislative intent and purposes of § 3143 (b) enacted by Congress, and that Bilanzich highlights a circuit split on the interpretation of § 3143 (b). (7)

Argument

This Court reaffirmed/observed "that the [government] must provide [a transcript of the trial court proceedings] to indigent criminal appellants who could not afford to buy one if that was the only way to assure an adequate and effective appeal." *Fritts v. Lucey*, 469 U.S. 387, 393 (1985) (internal citations and quotations omitted).

Petitioner was in forma pauperis in the district court since July 26, 2017, and through April 4, 2019, and in the court of appeals since April 19, 2019 to present, thus qualifying him as an "indigent criminal appellant [7]." At this juncture, petitioner's opening brief was filed on November 12, 2019 without transcripts, #58 on appeal, and petitioner's reply brief is currently due on February 3, 2020 per the court of appeals' December 5, 2019 order.

The omitted transcripts by the district court and court of appeals are identified in an affidavit attached to petitioner's opening brief, and a subsequent affidavit of correction including April 4, 2019 as a pertinent date of transcripts to be considered on the appeal. Those transcripts, January 12, 2018, July 7, 2018, August 2, 2018, October 23, 2018, November 26, 2018, January 8, 9, 10, 2019, and April 4, 2019 are needed for petitioner's reply brief "to assure an adequate and effective appeal" for rebuttal of the government's response brief. It is entirely unreasonable in all realms of logic that petitioner has been deprived transcripts and documents since his appeal was docketed on May 3, 2019 for briefing to date.

With respect to bail, petitioner extensively carried his burden under § 3143(b) and the court of appeals' interpretation of § 3143(b) in *Bilanzich*. See, (R. at #350, #361, #366). Specifically, how there is no assertion that petitioner is a danger to the community or a flight risk by the government, how petitioner's appeal raises several substantial questions of both law and fact, and how *Stokeling* confirms the likelihood of reversal of petitioner's renewed motion for acquittal, (R. at #301, #305, #326). Yet, petitioner has still been denied bail pending appeal. Even more unreasonable, the government could not even cite the court of appeals' controlling precedent, *United States v. Thornton*, 539 F.3d 777 (7th Cir. 2008), to state there is not a likelihood of the reversal of petitioner's acquittal motion in its response to the motion for release, (R. at #364). Its exceptional circumstances for the district court to go along with the omission of the circuit precedent to deny bail, and its wholly erroneous for the court of appeals to go along with such an omission.

Thus this Court should issue a writ of prohibition to prohibit the above stated omissions and denial of release pending direct appeal at the earliest opportunity available pursuant to *Pulliam v. Allen*, 466 U.S. 522, 533-535 (1984); *Spencer v. Kemna*, 523 U.S. 1, 18 (1998); and *Will v. United States*, 389 U.S. 70, 75 (1967).

Conclusion

Wherefore petitioner prays that this Honorable Court grant this petition, and the relief requested.

Respectfully Submitted,

Date: 12/17/19

Andrew Johnston

Andrew James Johnston

Prisoner No. 22712-424

FMC

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