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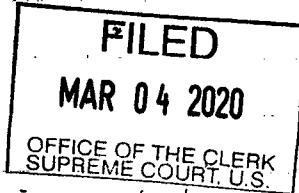
SUPREME COURT OF THE UNITED STATES

IN RE: "LEVAR LEE SPENCE"

ORIGINAL

ON PETITION FOR A WRIT OF MANDAMUS TO
THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF
PENNSYLVANIA

PETITION FOR WRIT OF MANDAMUS



The party named in the above-captioned action is a state inmate, designated "LEVAR LEE SPENCE", confined within the State Correctional Institution at COAL TOWNSHIP, 1 Kelley Drive, Coal Twp., Pennsylvania, petitions this Court for a writ of mandamus to the United States District Court for the Middle District of Pennsylvania, at 228 Walnut Street, Harrisburg, Pennsylvania.

On December 12, 2019, a Federal Rule of Civil Procedure 60 petition, along with petitions for change of venue, recusal of the judicial officer, and for a prompt evidentiary hearing, was filed in regards to the district court's judgment at Docket No. 17-CV-00881. On or about January 27, 2020, the United States Court of Appeal for the Third Circuit informed Your petitioner that a notice of appeal, referring to the Civil Rule 60 petition(s),

stating that:

"An appeal has been filed from the final order of the District Court denying a petition for writ of habeas corpus filed pursuant to 28 U.S.C. Section 2241 or Section 2254, or a related motion filed pursuant to Fed. R. Civ. P. 60(b)."

It is obvious that the petition was a Civil Rule 60 filing pursuant to the Fed. R. Civ. P. And, therefore, neither the district court nor the court of appeals can feign ignorance to the fact that the filing was NOT a filing in pursuance to any Federal Rule of Appellate Procedure. The district court recharacterized the Civil Rule 60 petition as a notice of appeal, and filed the same in the court of appeals on January 17, 2020, notwithstanding. Additionally, the apparent lack of jurisdiction in the court of appeals did not deter that court from entertaining the matter "if" the petitioner pays a \$ 550.00 fee or an application for leave to proceed In Forma Pauperis in the action (See 20-1125) it knows the jurisdiction is wanting.

Questions Presented

1. Whether the district court should have filed the Petitioner's Civil Rule 60 petition as a notice of appeal in the court of appeals?
2. Whether the court of appeals (U.S.C.A.3) has jurisdiction to entertain a Civil Rule 60 petition that was filed pursuant to the Federal Rules of Civil Procedures at the district court?

List of Parties

The parties that do not appear in the caption of the action on the cover page are all listed below as the parties to the proceeding in the court whose judgment(s) is the subject of this petition.

- 1) United States District Court Judge John E. Jones III for the Middle District of Pennsylvania (Harrisburg).

2) The United States District Court Chief Judge Christopher C. Conner, for the Middle District of Pennsylvania (Harrisburg Branch).

Related Cases

- Gonzales v. Crosby, 125 S.Ct. 2641 (2005)

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Statutes and Rules

28 U.S.C. 1651 (June 25, 1948, c. 646, 62 Stat. 944; May 24, 1949, c. 139,

§ 90, 63 Stat. 102)

Federal Rules of Civil Procedure 60 (Relief from a Judgment or Order)

- (a) Corrections Based on Clerical Mistakes; Oversights and Omissions.
- (b) Grounds for Relief from a Final Judgment, Order, or Proceeding.
- (c) Timing and Effect of the Motion.*
- (d) Other Powers to Grant Relief.

Other

Opinion(s) Below

Petitioner respectfully prays that a writ of mandamus issue to the lower district court to consider the claims raised under Civil Rule 60 without delays with regard to the judgment of that court.

The judgment of the district court for the Middle District of Pennsylvania appears at U.S.D.C.M.D.Pa. Docket No. 17-cv-00881, SPENCE v. MCGINLEY, entered on December 18, 2018.

Jurisdiction

This petition is brought pursuant to, and in accord with, the Supreme Court Rule specifically at Rule 20.3(a). 28 U.S.C. 1651(a).

Statement of the Case

On December 18, 2018, the United States District Court for the Middle District of Pennsylvania (Harrisburg) entered a judgment denying the Petitioner, "LEVAR LEE SPENCE", 2254 habeas corpus relief on procedural grounds. At that time, the Petitioner, who is a prisoner at the State Correctional Institution at Coal Township, was unable to receive legal mail because of prison interferences; and, therefore, was never notified of the judgment. Petitioner did provide the district court with an alternative location by which legal mail could have had been received as notice to the Petitioner, but the district court failed or refused to provide such notice.

As a result thereof, despite numerous inquiries made by outside parties, the judgment was concealed from the Petitioner by the district court for more than three (3) months, March 25, 2019.

Since the district court judgment also denied Petitioner a COA, the Petitioner sent a letter to the Third Circuit Court of Appeals explaining the reasons for delay and informing the court that an application for a COA was forthcoming. That letter was construed as an application for a COA, *sua sponte*, by the court of appeals (U.S.C.A. 3 Docket No. 19-1069) and denied by a case dispositive order. Moreover, when the actual application for a COA was sent to the court of appeals that court adamantly held its decision to construe Petitioner's letter as an application for COA and amended the Petitioner's actual application for a COA, *sua sponte*, as a petition for rehearing. Then denied rehearing.

Petitioner then sought out a remedy with the Supreme

Court of the United States on the extraordinary circumstances premised upon the fact that there is, to the present day, neither any answer on the merits of any of Petitioner's claims nor is there any adjudication on the merits of any of Petitioner's claims whatsoever, which was considered a travesty of justice of public importance until this Court gave the lower courts warrant to circumvent Petitioner's claims by refusing the Petitioner any remedy. On or about December 9, 2019, this Supreme Court of the United States refused Petitioner Certiorari on rehearing.

Thus, on December 12, 2019, a Civil Rule 60 petition was filed pursuant to the Federal Rules of Civil Procedure upon the United States District Court (M.D. Pa.) to notice the court of defects in the record in a new action that require a district court's judgment on the merits in the interest of justice. The district court, refusing to make a judgment on the merits, re-characterized Petitioner's Civil Rule 60 as a notice of appeal and filed the same with the court of appeals. However, the court of appeals, noticing the petition (Fed. R. Civ. P. 60) is in fact NOT a notice of appeal, did not remand the Civil Rule 60 petition but presume to entertain it where it is apparent the court of appeals lack jurisdiction of an alleged notice of appeal (See U.S.C.A. 3 Docket No. 20-1125).

Reasons for Granting the Writ

On December 12, 2019, a Civil Rule 60 petition was filed pursuant to the Federal Rules of Civil Procedure. The petition was re-characterized as a notice of appeal, along with a petition for a change of venue, recusal of judge, and an prompt evidentiary hearing,

then filed in the Third Circuit Court of Appeals in error. However, because the court of appeals had decided to entertain the Civil Rule 60 petition as a notice of appeal (U.S.C.A. Dkt. 20-1125) in spite of the previous appeal (U.S.C.A. Dkt. 19-1069) on the same issues and facts, the Petitioner is prejudicially delayed proceeding on the Procedural and Substantive Facts instituted at the district court. It is becoming frivolous to seek any remedy from this Court that had already sanctioned greater injustices of the Federal courts.

The petition notice the district court of "clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission". That section is headed "'Mistake' Under Rule 60". Fed.R.Civ.P. 60(a). The Petitioner here contends, that because of the apparent mismanagement of Petitioner's habeas corpus in both the Eastern and Middle Districts of Pennsylvania, depriving him of procedural and substantive due process, a new action under Fed.R.Civ.P. 60 was instituted regarding the "mismanagement" of the AEDPA and furthering miscarriage of justice. Fed.R.Civ.P. 60(a) (60(a) may be raised at any time.)

The reason for instituting a new action under Civil Rule 60 is because the "clearly erroneous" district court judgment(s) have already been warranted by appeals taken thereafter, and concluded on December 9, 2019. Therefore, since no appeal was docketed or pending, the new action is proper.

The petition also notices the district court, under Rule 60, of "Misrepresentation", "Fraud", "Misapplication of Statute", newly discovered evidence, void judgment, and inadvertence, etc. Fed.R.Civ.

P. 60. See e.g. *Gonzalez v. Crosby*, 125 S.Ct. 2641 (2005), 2645 ("Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances ...").

Although there is no adjudications made upon the merits of any of the Petitioner's habeas claims, CAUTION had been taken to prevent other "mistake" of a second or successive petition. The Petitioner had also taken special Care to file his petition "no more than a year after the entry of the judgment". Fed. R. Civ. P. 60(c). Thus, Your petitioner deserves meaningful Circumspection which would mandate the district court to expedite review and determination on the merits of Petitioner's Civil Rule 60 action under a new docket for prompt disposition within 60 days of mandamus or as if it had been docketed on the date of filing whichever is earlier for disposition. See Fed. R. Civ. P. 60(d)(1).

Conclusion

With respect to the misapplication of statute, *inter alia*, therein-stated, when a prisoner, especially one that is without any assistance of an attorney, has shown reasonable diligence in seeking relief based on substantive and procedural laws, and when that prisoner can show that there is (unequivocal) probable merit to the underlining claims, the district court under Rule 60(b)(6) to reopen the habeas judgment or grant an immediate evidentiary hearing for habeas relief. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988). Also, this Court has consistently recognized that Rule 60(b)(6) "provides courts with authority adequate to enable them to vacate judgments" whenever such action is appropriate to accomplish justice". *Id.* at 864 [quoting *Kiapprott v. U.S.*, 335 U.S. 601, 614-615 (1949)].

This Court should therefore grant this petition pursuant to Fed. R. Civ. P. 60(d)(1), etc.

Respectfully,

"LEVAR LEE SPENCE"

BY: Levar Lee Spence

Date: March 3, 2020

All of the foregoing statements are true and correct, subject to actual innocence under penalty of perjury. 28 U.S.C. 1746