

No 19-8293

Supreme Court, U.S.
FILED
MAR 06 2020
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

TIMOTHY WALKER - PETITIONER

VS

THIRD CIRCUIT COURT OF APPEALS - RESPONDENT
ON PETITION FOR WRIT OF CERTIORARI TO
THIRD CIRCUIT COURT OF APPEALS
PETITION FOR WRIT OF CERTIORARI

TIMOTHY WALKER
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P.O. BOX 2000
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QUESTIONS PRESENTED

Did the Third Circuit Court of Appeals error when it failed to compel its Circuit Clerk to accept, file, and submit Appellant's recall the mandate motion?

Did the Circuit Court Clerk's refusal to take no action on such a motion, in any form, or fashion, deny Appellant Due process of the law, and access to the Courts?

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JURISDICTION

The date on which the United States Court of Appeals decided Appellant's case was December 20, 2019.

No petition for re-hearing was timely filed in Appellant's case.

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

This case, now before the bar, is different in that it involves circumstances surrounding a failure to [apply a judicial power], which would require this Court to reverse a lower Court, where that decision was derived by its Clerk, making this Court's intervention "clearly Appellate", and should a decision by the Court be forthcoming, it would have, for once, ceased the widespread pattern of engaging in such conduct. It would require clerks around the country to file Pro Se petitioner's motions. It would have precedential value, in that, on October 29, 2018, the Clerk of the Third Circuit refused to file documents statutorily mandated that the Clerk do so, denying Appellant his Sixth, and First Amendment rights. On December 20, 2019, the Third Circuit Court of Appeals erred in not compelling its Circuit Clerk to accept, file, and submit Appellant's recall the mandate motion. Such a case has yet to be decided by this Court. See Third Circuit Fed R. App. P. 45 1(a), and Third Circuit Internal Operating Procedures (I.O.P.) 10.4.

STATEMENT OF THE CASE

NOTE: Appellant's Direct Appeal is important in that everything leads to Appellant recall the mandate, therefore, Appellant will begin with that proceeding.

Appellant appealed his conviction and sentence to the Third Circuit Court of Appeals (Case # 97-1101). That court affirmed Appellant conviction and sentence. In a unpublished opinion Appx A, after unsuccessful collateral attacks Appellant filed a Motion to Recall that court mandate on October 22, 2018, Appx B, arguing: That there was a fundamental defect in the manner his direct appeal was decided and that a fundamental defect resulted in an egregious miscarriage of justice ... In addition, subsequent Third Circuit rulings have reinforced the viability of Appellant's argument that his sentence is unjust. Appx B at pg. 2 On October 29, 2018 the clerk responded to Appellant RTM - stating: The Mandate Issued in that case on February 5, 2018.^{FN1} Since that time, you have raised all the arguments you raise in your motion to recall the mandate in multiple filings with the court accordingly, no action will be taken on the motion to recall the mandate - Appx C: Letter from clerk.

On or about November 5, Appellant filed a Letter Motion

FN1 The clerk inadvertently misstated the year that Appellant appeal was affirmed. The correct date is 1998.

for Reconsideration pursuant to one of the issues cited above, Appx D. On November 8, 2019 Appellate's Letter Motion for Reconsideration was docketed to the Third Circuit Motion panel Appx E, Docket Sheet from the Third Circuit.

The clerk "must" record all papers filed with the clerk and process orders, and judgments. Third Circuit Fed. R. App. P. Rule 45(a)1. The clerk decision not to comply with the Fed. R. App. P. and the Third Circuit failure to compel the clerk to file Appellant Motion to RTM resulted in a violation of Appellant due process rights and his right to access to the courts.

Under this Court's jurisdiction, 28 U.S.C. Title 1254(1) and the compelling reasons set forth herein, seeks review of those decisions by the clerk of court and the Court of Appeals.

If proved to be erroneous and contrary to federal law, remand back to the Appeals Court with instructions to order its clerk to submit to the Third Circuit Court of Appeals Appellant Motion to RTM.

THRESHOLD STANDARD

Circuit Court Clerk must record all papers filed with the Clerk ...

APPLICATION OF LAW TO FACTS

When the Court Clerk took no action to file or submit Appellant RTM motion because the Clerk assumed that Appellant since the Mandate of February 27, 1998 Appellant had raised all of the arguments he raised in his motion to RTM in multiple filings with the Court. Appellant filed a motion to recall that mandate under the premise that a mandate is justified under the extraordinary circumstances prongs 1) The District Court and the Appeals Court sidestepped their duty to apply the correct law at the time of Appellant's sentence; subsequent legal authority has clarified that the Third Circuit Court of Appeals was in error; 2) The blatant error in the prior decision results in a serious injustice, an injustice deserving of correction See Appx. B at p. 3. To put briefly, the courts (both District and Appellate) failed to apply the principles and mandates of U.S. v. Taylor, 495 U.S. 575, 110 S. Ct. 2143, 109 L. Ed. 2d 607 (1990). Appellant's claim is that his prior Pennsylvania robbery conviction could not serve as a predicate offense to make him a career offender (C) which resulted in Appellant being sentenced to 480 months (40 years) term of incarceration ... Nonetheless, the clerk decided to take "no action" on Appellant motion. Third Circuit Local Rules 27.6, states the clerk may entertain and dispose of any motion that can ordinarily be disposed of by a single judge of this Court under the provisions of FRAP 27(c) and

Third Circuit L. A. R. 27 5 provided the subject of the motion is ministerial, relates to the preparation or printing Appendix and Briefs on appeal, or relates to calendar controls. These rules extend from 27.1-27.8. The Court may refer to the clerk for disposition any category of motions other than those which are case dispositive or which by statute or rule must be decided by a judge^{FN2} 10.4.

These rules extend from I.O.P. 10.1 to 10.9; none of the Third Circuit Rules grant discretion regarding the motion to recall a prior mandate. The clerk abused her discretion when she decided to take "no action" on Appellant's motion.

Once the clerk decided to take no action, Appellant's only recourse was to file a motion for reconsideration.^{FN3}

FN2 10.5.2 ... As a matter of practice refers to a single judge the following motions: (a) stay pending appeal or mandamus (generally only in emergency situations); (b) motion for appointment of counsel whether pursuant to title 1915 or under criminal justice act; (c) approval of transcripts at the government expense in criminal and civil cases; (d) motions to withdraw; (e) motions to expedite; (f) motions to intervene; (g) motions to compel to ordering of transcripts and; (h) motions to unseal or seal.

FN3 Appellant motion for Reconsideration, Argued while it is true that I have made multiple requests of various courts to set aside my "career offender" designation ... the issue raised in my motion to recall the mandate has never been previously raised in any court. Appx. B at pg. 1.

Local Rule 27.5 sets that if an application is promptly made the action of the clerk may be reviewed in the first instance by a single judge or by a panel of the court.

Appellant's reconsideration letter was sent to the Third Circuit Court of Appeals "motion panel" which affirmed the clerk no action decision Appx F. The clerk and the Third Circuit violated Appellant's Sixth and First Amendment rights to due process and access to the courts.

PRECEDENTIAL VALUE

The matter at large surrounds a Circuit Court clerk refusing to file or submit Appellant's RTM motion and the Third Circuit refusing to compel the clerk to do its duty. Elliot v. May teaches us .. our research has not uncovered any statutory or common-law duty which requires a court employee, whether an official clerk of the courts or a member of the court's staff, to review the proposed filings of litigants for accuracy of legal validity and upon such review, determine whether the party can file the action. 122 FED APPX 994 at 946 (10th Cir. 2004).

This is exceptional in that Appellant could find no competent legal precedent from any federal court addressing a matter similar to the instant matter which fogs the "clear and indisputable requisite. Clearly the clerk violated Appellant's due process. The fundamental requirement of due process is the

opportunity to be heard at a meaningful time, and in a meaningful manner. UNITED STATES V. SOLLENBERGER, 732 Fed. Appx. 153, at 157 (3rd Cir., 2018). The Clerk of Courts, and the Appellate Court's adverse ruling violated Appellant's First Amendment right; access to the Courts.

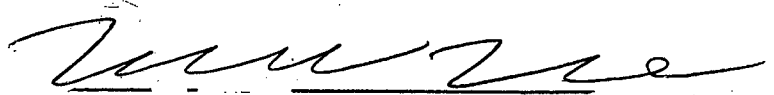
Clearly, this Court can review this determination, and if no precedent exists, make such.

CONCLUSION

Appellant prays this Honorable Court will issue this WRIT, and ORDER the Third Circuit to compel the Clerk to file, and submit Appellant's motion to recall the mandate onto the Court. Appellant, also, asks the Court to recognize any precedential value this case may reveal.

Respectfully Submitted,

Date: 4/7/2020



TIMOTHY WALKER
Appellant Pro Se

CERTIFICATE OF COMPLIANCE

No.

TIMOTHY WALKER
Petitioner(s)


v.

THIRD CIRCUIT
COURT OF APPEALS
Respondent(s)

Pursuant to Fed. R. App. P. 32(a)(7), Appellant certifies this brief complies with the type-volume limitations. Exclusive of the exempted portions. Statutorily granted, the brief contains only (8) pages. The brief contains proportionally spaced typed - facing as double-spaced per Swintec brand typewriter, model 2416DM.

The undersigned understands a material misrepresentation in completing this certificate, or circumvention of the type volume limits in Fed. R. App. P. 32(a)(7) courts striking the brief and imposing sanctions.

DATE 3/5/20


Timothy Walker
Petitioner