

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GARY DANIEL RODGERS, JR. -- PETITIONER

vs.

JEFFERSON PARISH SHERIFF'S OFFICE, ET. AL. -- RESPONDENT(S)

PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR REHEARING

GARY DANIEL RODGERS JR. # 700016
CAMP "C" - JAG. 1 RIGHT
LOUISIANA STATE PENITENTIARY
ANGOLA, LA 70712

2020 WL 5883020

GARY DANIEL RODGERS, JR. -- PETITIONER

vs.

R. MCINTYRE, ET. AL. -- RESPONDENT(S)

NO. 19-8796

OCTOBER 5, 2020

PETITION FOR REHEARING

JEFFERSON PARISH SHERIFF'S OFFICE ET. AL.
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GARY DANIEL RODGERS JR. # 700016
CAMP "C" - JAG. 1 RIGHT
LOUISIANA STATE PENITENTIARY
ANGOLA, LA 70712

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GARY DANIEL RODGERS, JR. -- PETITIONER

vs.

JEFFERSON PARISH SHERIFF'S OFFICE, ET. AL. -- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR CERTIORARI

GARY DANIEL RODGERS JR. # 700016
CAMP "C" - JAG. 1 RIGHT
LOUISIANA STATE PENITENTIARY
ANGOLA, LA 70712

QUESTION(S) PRESENTED

Whether Petitioner's timely filed "Motion and Order to Release Evidence" satisfies the requirements as a functional equivalent of a Notice of Appeal.

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:

The petitioner is Gary Daniel Rodgers Jr. a prisoner at the Louisiana State Penitentiary in Angola, Louisiana. The respondents are Jefferson Parish Sheriff's Office et al Sheriff Newell Normand, Roney McIntyre, Jr, Jairus Boudoin, and Deputy Jamal Perrier are all former Jefferson Parish Sheriff Deputy and Sheriff at Jefferson Parish Correctional Center.

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OPINIONS BELOW

The decision of the United States Court of Appeals for the 5th Circuit is unreported. It is cited in the table at 792 Fed.Appx. 317 (WL521371 2020) and a copy is attached as Appendix A to this petition (A 1). The order of the United States District Court for the Eastern District of Louisiana is not reported. A copy is attached as Appendix B to this petition (A 11).

JURISDICTION

The judgment of the United States Court of Appeals for the 5th Circuit was entered on January 31, 2020. An order denying a petition for rehearing was entered on March 3, 2020, and a copy of that order is attached as Appendix B & C to this petition (A 10). Jurisdiction is conferred by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution which provides:

Section 1. All persons born or Naturalized in the United states and subject to the jurisdiction thereof, are subject to the jurisdiction thereof, are citizen of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive and person of life, Liberty or property, without due process of laws nor deny to any person with in its jurisdiction to equal protection of the laws

* * *

Section 5. The congress shall have power to enforce by appropriate legislation the provision of this article.

The Amendment is enforced by title 42, section 1983 United States code:

Every person who under color of any statute, ordinance, regulation custom, or usage of any state or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any brights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suite in equity, or other proper proceeding for redress except that in any action brought against a judicial officer for an act on omission taken in such officer's judicial capacity injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any act of congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Colombia

STATEMENT OF THE CASE

The petitioner appeals a judgment and order from the District Court Eastern District of Louisiana to the United States Court of Appeals 5th Circuit. Prior to petitioner's memorandum of law and Notice of appeal he filed a timely filed "Motion and Order to release evidence, on March 6, 2017. After the Circuit Court granted petitioner's Motion to proceed in forma pauperis and Motion for production of trial transcripts at government expense the circuit court dismissed petitioner's appeal alleging lack of jurisdiction. The circuit court construed petitioner's motion to reconsider the contents of the functional equivalent of a notice of appeal as a petition for re-hearing but denied re-hearing on March 3, 2020.

On March 19, 2020 petitioner filed a petition for re-hearing en banc, but the clerk stated no action will be taken on petition re-hearing en banc the time for filing a petition for re-hearing en banc has expired.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. 1331.

REASONS FOR GRANTING THE PETITION

A. Conflicts with Decision of other Courts

The holding of the courts below that Petitioner's "Motion and Order to Release Evidence" is not enough to satisfy "only one of the three requirements of a functional equivalent of a notice of appeal" is directly contrary to the holding of four federal circuits. See *Campiti v. Matesanz*, 333 F.3d 3317 (1st Cir. 2003); *DeLong v. Dickhaut*, 715 F.3d 362, 385 (1st Cir. 2013); *Hill v. Corrections Corp. of America, Inc.*, 189 Fed.Appx. 693, 696 (10th Cir. 2006); *Pimental v. Spencer*, 305 Fed.Appx. 672, 673 (1st Cir. 2009).

In addition, the United States Supreme Court has held that "if petitioner's motion is a document clearly enough to put the clerk on notice to have determined that petitioner intended to appeal and would be sufficient to perfect an appeal then the equivalent of a notice of appeal 3 requirements will essentially be reduced from three requirements of rule 3 of the Federal Rules of Appellant Procedure to one naming the party taking the appeal. *Smith v. Barry*, 502 U.S. 244, 248, 249, 122 S.Ct. 618, 116 L.Ed.2d 678 (1992).

B. Importance of the Question Presented

This case presents a fundamental question of the interpretation of this court's decision in *Smith v. Barry*, 502 U.S. 244, 248, 249, 122 S.Ct. 618, 116 L.Ed.2d 678 (1992), and consideration by this court is therefore necessary to secure and maintain uniformity of the court's decision.

The issues importance is enhanced by the fact that the lower court in this case have seriously misinterpreted *Smith*. This court held in *Smith* that a motion is a document clearly enough to put the clerk on notice and petitioner's intentions to appeal would be enough to satisfy as a functional equivalent of a notice of appeal. "The court reiterated this point in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988); and stated the functional equivalence is the correct measure of compliance and

that the requirements of the procedure should be liberally construed and that mere technicalities” should not stand in the way of consideration of a case on its merits.

This Court, when defining the proper standard of review for applications to proceed in forma pauperis, approved decisions that applied a functional equivalence approach to all manner of documents. *Coppedge v. U.S.*, 369 U.S. 438, 442 (1962).

In *Coppedge*, this court noted that because the federal courts had taken “a liberal view of papers filed by indigent and incarcerated defendants, as equivalents of notices of appeals,” *Id.* at 442 N 5, these defendants generally experience “no material difficulty in filing a timely notice of appeal,” *Id.* at 442. Applying this “liberal” approach, the federal courts have ruled that all manner of documents can serve their intended purpose and also serve as a notice of appeal.

Admittedly, the document does not specify the judgment appealed from or the appellate court, but specifically notifies the clerk of petitioner's intentions to perfect an appeal related to that above captioned action docket that is in the courts custodial custody see appendix E, where no doubt exists as to either, Rule 3 buttressed by latitude for a pro se litigant forgives those informalit[ies] of form.” *Campiti v. Matesanz*, 333 F.3d 317 (1st Cir. 2003). Fed R. App. P. 3(c)(4).

However, a notice of appeal filed by a pro se litigant must be viewed liberally, *Conway v. Village of Mount Kisco*, 750 F.2d 205, 211-12 (2nd Cir. 1984); *Bradley v. Coughlin*, 671 F.2d 686, 689 (2nd Cir. 1982) and not every technical defect in a notice of appeal constitutes a jurisdictional defect. See *Matarese v. Lafevre*, 801 F.2d 98, 105 (2nd Cir. 1986); *Bradley*, 671 F.2d at 688; Fed R. App. P. 3(c). (“An appeal shall not be dismissed for informality of form or title of the notice of appeal”). Our task is to interpret the notice of appeal so as to remain faithful to the intent of the appellant, fair to the appellee, and consistent with the jurisdictional authority of this court.” *Conway*, 750 F.2d at 211. As long as the pro se party's notice of appeal evinces an intent to appeal an order or judgment of the district court and appellee has not been prejudiced or misled by the notice, the notice's technical

deficiencies will not bar appellate jurisdiction see *In re Bertoli*, 812 F.2d 136, 138 (3rd Cir. 1987); *Harlin v. Mitchelson*, 794 F.2d 834, 838 (2nd Cir. 1986).

Finally, the mere failure to identify that the appeal would be taken to the court of appeals does not nullify the notice when it is clear that this is the court to which the appeal would be directed. See 9 J. Moore B. Ward & J. Lucas, *Moore's Federal Practice* ¶ 205, 17[8] at 3-88 (2nd ed. 1990).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

GARY DANIEL RODGERS JR. # 700016

Date: _____