

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

LEONARD LASHUN BRADLEY
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 19-60402

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

**Whether the district court erred by denying Mr. Bradley's Motion for
Permission to File Out of Time Appeal**

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

On September 28, 2009, the United States District Court for the Southern District of Mississippi entered a Judgment convicting Mr. Bradley of possession with intent to distribute crack cocaine. The court sentenced him to serve 140 months in prison, followed by five years of supervised release. On January 3, 2012, the court reduced the prison sentence to 120 months under retroactively applicable amendments to the United States Sentencing Guidelines.

On January 18, 2019, after Mr. Bradley's release on the above-described conviction, the district court revoked his supervised release because he was charged by Mississippi state authorities of committing another crime. The court sentenced him to serve an additional 24 months in prison. A copy of the Revocation Judgment is attached hereto as Appendix 1.

A few months later on April 12, 2019, Mr. Bradley filed a *pro se* Motion for Sentence Reduction under the First Step Act. The district court denied the Motion via an Order entered on May 1, 2019.

Nineteen days later on May 20, 2019, the Office of the Federal Public Defender entered an appearance on Mr. Bradley's behalf. The Entry of Appearance was pursuant to an Administrative Order that assigned the Federal Public Defender to represent defendants in Southern District of Mississippi on

sentencing issues related to the First Step Act. The district court entered the Administrative Order on February 6, 2019.

On the day the Entry of Appearance was filed, the undersigned realized that a notice of appeal regarding Mr. Bradley's pro se Motion for Sentence Reduction was a few days overdue. Therefore, the Public Defender Office filed a Motion for Permission to File Out of Time Appeal. The Motion for Time was filed in district court on May 20, 2019. The district court denied the Motion on June 6, 2019. A copy of the district court's Order is attached hereto as Appendix 2.

Mr. Bradley appealed the district court's denial of his Motion for Permission to File Out of Time Appeal. He filed his Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on June 10, 2019. The Fifth Circuit affirmed the district court's rulings via an Opinion entered on December 31, 2019. It entered a Judgment on the same day. The Fifth Circuit's Opinion and its Judgment are attached hereto as composite Appendix 3.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on December 31, 2019. This Petition for Writ of Certiorari is filed within 150 days after entry of the Fifth Circuit's Judgment as required by Rule 13.1 of the Supreme Court Rules, which was amended by this Court's Covid-19 related Order dated March 19, 2020. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. FEDERAL RULE OF APPELLATE PROCEDURE INVOLVED

Upon a finding of excusable neglect or good cause, the district court may-- before or after the time has expired, with or without motion and notice-- extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Fed. R. App. P. 4(b)(4).

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a Revocation Judgment entered against Mr. Bradley for violating terms of federal supervised release. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the underlying criminal charge and conviction against Mr. Bradley arose from the laws of the United States of America.

B. Statement of material facts.

This case involves the district court's denial of Mr. Beasley's Motion for Permission to File Out of Time Appeal. Both the facts and the procedural posture relevant to this issue are stated above in the "Opinions Below" section of this Petition. No further statement of facts is needed.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion.” This Court should exercise its discretion to grant certiorari in Mr. Bradley’s case because the district court abused its discretion by denying him the important right to appeal his issues to the court of appeals.

B. The district court erred by denying Mr. Bradley’s Motion for Permission to File Out of Time Appeal.

“In a criminal case, a defendant’s notice of appeal must be filed in the district court within 14 days after the later of ... the entry of either the judgment or the order being appealed[.]” Fed. R. App. P. 4(b)(1)(A)(i). This appeal is based on an Order entered by the district court on May 1, 2019. So under Rule 4(b)(1)(A)(i), Mr. Bradley should have filed a notice of appeal on or before May 15, 2019. He did not, probably because he was not represented by counsel at the time.¹

¹ Courts should liberally construe pleadings filed *pro se*. *Vandenades v. United States*, 523 F.2d 1220, 1224 (5th Cir. 1975) (citation omitted).

Failing to file a notice of appeal is not detrimental to a defendant's right to pursue appellate remedies, so long as the defendant meets the requirements of Rule 4(b)(4) of the Federal Rules of Appellate Procedure. This Rule states:

Upon a finding of excusable neglect or good cause, the district court may-- before or after the time has expired, with or without motion and notice-- extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Id. (emphasis added).

On May 20, 2019, five days after the notice of appeal was due, the Office of the Federal Public Defender entered its appearance in this case. As stated above, Mr. Bradley represented himself *pro se* prior to May 20.

Realizing that the notice of appeal was five days overdue, the Public Defender Office filed a Motion for Permission to File Out of Time Appeal on the same day the Entry of Appearance was filed – May 20, 2019. In the Motion for Time, the defense argued that Mr. Bradley should be allowed to appeal his case under the “excusable neglect” provision of Rule 4(b)(4).

In *United States v. Clark*, 51 F.3d 42, 43 (5th Cir. 1995), the Fifth Circuit recognized that “the concept of [excusable] neglect is ‘somewhat elastic’ and may include ‘inadvertent delays.’” (Citing *Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380 (1993)). A court must consider “the equitable nature of the inquiry” when determining if neglect is excusable. *Id.* at 44

(citing *Pioneer*). A court should also consider the following factors in the excusable neglect analysis:

[1] the danger of prejudice to the [defendant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

Id. (bracketed numbers and verbiage added) (quoting *Pioneer*).

The first factor addresses prejudice to Mr. Bradley if he is not allowed to file an out of time notice of appeal. He will be prejudiced because his right to appellate review of his sentencing issue will be eliminated if the district court's ruling is upheld.

The second factor addresses the length of the delay and its potential impact on judicial proceedings. The undersigned filed the Motion for Time a mere five days after the due date for filing a notice of appeal. It is hard to imagine how this small delay could adversely affect the judicial proceedings.

Under the third factor, we consider the reason for the delay, including whether it was within the reasonable control of the movant. Mr. Bradley was representing himself *pro se* on the due date for the notice of appeal. As a non-lawyer, the Court should not fault him for failing to file a timely notice of appeal. On the same day that the Office of the Federal Public Defender entered its appearance, it filed the subject Motion for Time. Under this fact scenario, the third factor weighs in favor of finding excusable neglect.

The fourth and final factor asks whether the movant acted in good faith. Again, the Public Defender Office filed the subject Motion for Time on the same day that it entered an appearance in this case. The Court should conclude that filing the subject Motion on the same day that the Public Defender Office entered its appearance was a good faith effort to protect Mr. Bradley's rights.

In summary, four factors must be analyzed to determine whether the "excusable neglect" exception applies to filing an out of time appeal. All four of the factors weigh in Mr. Bradley's favor. Therefore, the district court erred by denying the defense's Motion for Permission to File Out of Time Appeal. This Court should grant certiorari to correct the error.

VI. CONCLUSION

Based on the arguments presented above, Mr. Bradley asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted June 25, 2020 by:



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