

IN THE SUPREME COURT OF THE UNITED STATES

DONALD STEVEN REYNOLDS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Case No.: _____

USCA 6 No.: 19-1332

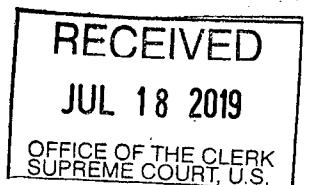
Respondent.

MOTION TO STAY JUDGMENT

NOW COMES, Petitioner, Donald Steven Reynolds ("Reynolds"), acting pro-se, and pursuant to Supreme Court Rule 23(1), moves the Honorable Justice Sonia Sotomayor, to Stay the Judgment of the Sixth Circuit Court of Appeals, entered on April 23, 2019, and on June 26, 2019, denying his Petition for Permission to Appeal and Petition for Rehearing En Banc, respectively. In support, the following is respectfully submitted:

On September 28, 2019, Reynolds filed a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 ("2255 Motion"), in the district court. Along with his 2255 motion, he filed an Addendum with seventy-six (76) double spaced pages. The motion conformed with the format provisions under Rule 2 of the Rules Governing Section 2255 Proceedings ("2255 Rules"). Pursuant to 2255 Rule 2(b), the motion was filed by the clerk, then forwarded to Judge Cox for preliminary review, pursuant to 2255 Rule 4. Judge Cox determined that the motion was not subject to summary dismissal and pursuant to 2255 Rule 4 -- "... order[ed] the [Government] to file an answer ... within a fixed time." see Reynolds v. United States, 2019 U.S. App. LEXIS 11987 @ 2 (CA 6, April 23, 2019).

At that point, 2255 Rule 5(b) provides that "[t]he answer must address the allegations in the petition..." however, instead the Government filed a "Motion to Strike" the 76-page Addendum ("brief") because it exceeded the 25-page limit under Michigan District Court Local Rule 7.1; Reynolds opposed the motion to strike



arguing that such an action would be inconsistent with Sixth Circuit precedent. see Brown & Williamson Tobacco Corp. v. United States, 201 F.2d 819, 822 (CA 6, 1953) ("[T]he action of striking a pleading should be sparingly used by the courts," because "[i]t is a drastic remedy to be resorted to only when ... the pleading to be stricken has no possible relation to the controversy."); see also Felts v. Cleveland Housing Authority, 821 F.Supp.2d 968, 981 (E.D. Tenn. 2011) (citing Brown & Williamson Tabacco Corp., supra). Judge Cox granted the motion to strike citing Martinez v. United States, 865 F.3d 842, 844 (CA 6, 2017) (holding that Local Rule 7.1 applied to 2255 proceedings and affirming the striking of prisoner's 628-page 2255 motion); see Reynolds, 2019 U.S. App. LEXIS 2 (factual background).

The district court's January 15, 2019 Order granting the motion to strike stated as follows:

1. The Court shall not consider the 76-page brief that Reynolds filed in support of the four grounds for relief set forth in his form § 2255 Motion;
2. No later than March 15, 2019, in support of the four grounds for relief set forth in his pending form § 2255 motion, Reynolds may file either:
 - A) A brief of no more than twenty-five (25) pages, doubled-spaced, with 14-point font; or
 - B) A brief of no more than twenty (20) pages, double-spaced, with 12-point font.
3. No later than May 15, 2019, the Government shall file a response brief of no more than 25 pages, double-spaced, with 14-point font; and
4. No later than June 15, 2019, Reynolds may file either:
 - A) A brief of no more than seven (7) pages, double-spaced with 14-point font; or
 - B) A brief of no more than five (5) pages, doubled-spaced, with 12-point font.

(see Exhibit A, Attached).

Reynolds filed a motion for reconsideration arguing, inter alia, that the

brief in support of the 2255 motion contained two additional grounds for relief that could not fit in the space provided on the 2255 form and that the district court's order granting the motion to strike did not apply the analysis set forth in Brown & Williamson Tobacco Corp., supra. @ 822 ("It is well established that the action of striking a pleading should be sparingly used by the courts" and ... "be granted only when the pleading to be striken [sic] has no possible relation to the controversy.")(ECF No. 208 @ pp. 4-5). Reynolds cited several decision in the district court that applied this rule to civil pleadings. see e.g. ABCDE Operations, LLC v. City of Detroit, 254 F.Supp.3d 931, 936, n. 3 (ED Mich. 2017)(permitting defendant to file a 69 page brief based on the complex facts involved and the number of claims at issue); Counts v. GM, LLC., 237 F. Supp. 3d 572, 594 (ED Mich. 2017)(doubling page limits for parties in recognition of the complex issues of law implicated by plaintiff's claim).

On February 12, 2019, the district court denied Reynolds' motion for reconsideration. On February 26, 2019, Reynolds filed a second motion for reconsideration wherein he asked the district court to "certify the matter for interlocutory appeal to the Sixth Circuit Court of Appeals." The district court denied this second motion for reconsideration/certification on March 11, 2019. Reynolds then filed a Petition for "Permission to Appeal" pursuant to Rule 5 of the Federal Rules of Appellate Procedure in the Sixth Circuit. see Reynolds v. United States, 2019 U.S. App. LEXIS 11987.

Reynolds argued that appeal was authorized under the collateral order doctrine because -- (1) the district court's order striking the brief in support of his 2255 motion conclusively determined an important legal issue completely separate from the "merits" of the claims presented in the motion, and (2) that order is effectively unreviewable on appeal from the final judgment. (citing United States v. Young, 424 F.3d 499, 504 (CA 6, 2005)). Accordingly, Reynolds first argued that in granting the government's motion to strike, the district court, in effect,

allowed the government to circumvent its order pursuant to 2255 Rule 4(b) to file an answer and 2255 Rule 5(b) directive that the answer "must address the allegations in the motion" He further contended that such a practice undermines the integrity of the 2255 proceedings because it permits the "respondent" to limit the amount of claims a petitioner can raise and the extent of facts that can be presented to support such claims. Accordingly, Reynolds argued that the Sixth Circuit's decision in Martinez, supra. -- a one page precedent -- not fully briefed -- litigated by a prisoner -- pro-se -- raised an important legal issue -- whether application of the 25-page limit of Local Rule 7.1 to a 2255 motion improperly permits the Government to circumvent Rules 4(b) and 5(b) of the 2255 Rules -- and thus avoid answering the allegations presented in the 2255 motion. Reynolds further argued that such a procedure was inconsistent with Rule 2 of the 2255 Rules, which governs the format and does not contain any page limits. see also Spagnola v. Scutt, 2014 U.S. Dist. LEXIS 81324 (ED Mich. June 16, 2014) (pre-Martinez decision holding that Local Rule 7.1(d)(3)(A) concerns briefs filed in support of a motion or response thereto ...," and that "Rule 2 of the Rules Governing § 2254 Cases does not contain any page limits for a habeas petition or supporting brief, nor do this Court's Local Rules. Accordingly, it is unnecessary for Petitioner to obtain the Court's permission to file a memorandum in excess of twenty pages.") (same provisions under 2255 Rule 2).

As for the second prong, Reynolds argued that he would not be able to effectively appeal the district court's order to strike in this matter because: (1) compliance with the page limitations would require him to forgo some of the claims and to drastically limit the facts supporting his claims. Therefore, if the conforming brief were denied, an appeal then must be sought by filing a Certificate of Appealability (COA), which would be limited to only those claims raised in the conforming brief. The legal importance of the application of Local Rule 7.1 to

the 2255 motion and need to review the Martinez decision would not be properly addressed in a COA, hence would not be reviewable on appeal from the district court's final judgment, if the 2255 motion were denied and a COA was granted.

In an Opinion and Order dated April 23, 2019, the Sixth Circuit held that it lacked jurisdiction. Reynolds, supra. 2019 U.S. App. LEXIS 11987 @ 2. The appellate court's opinion did not address the collateral order doctrine, but instead treated Reynolds' filing as a writ of mandamus that may "be invoked only in extraordinary situations." Id. (quoting Kerr v. United States Dist. Court for Northern Dist., 426 U.S. 394, 402; 96 S.Ct. 2119; 48 L.Ed.2d 72 (1976)). The court concluded that "[n]othing in the record suggests that Reynolds will suffer irreparable harm from the denial of an immediate appeal." Id.

On May 23, 2019, Reynolds filed a "Petition for Rehearing with Suggestion for Rehearing En Banc" -- wherein he argued the panel erred in concluding it lacked jurisdiction under either the "collateral order doctrine" or the "multi-factor test for determining the propriety of mandamus ...," set forth in In re Chimenti, 79 F.3d 534, 539 (CA 6, 1996), as follows: (1) whether the party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired; (2) whether the petitioner will be damaged or prejudiced in a way not correctable on appeal; (3) whether the district court's order is clearly erroneous as a matter of law; (4) whether the district court's order is an oft-repeated error or manifest a persistent disregard of the federal rules; and (5) whether the district court's order raises new and important problems, or issues of law of first impressions." Id. (quoting In re Bendectin Products Liability Litigation, 749 F.2d 300, 304 (CA 6, 1984)(noting that "[r]arely if ever will a case arise where all the guidelines point in the same direction or even where each guideline is relevant or applicable.")). Reynolds also urged the Sixth Circuit to rehear its decision in Martinez v. United States, supra. -- en banc -- because it was not fully briefed by

counsel, but rather filed by a prisoner pro-se, -- undermines Rule 2(b)(1) of the 2255 Rules and runs afoul of Sixth Circuit precedent. see Brown & Williamson Tobacco Corp., *supra*.; Anderson v. United States, 39 Fed. Appx. 132 (CA 6, May 3, 2002)(holding "[t]he district court's order striking the [2255] motion ... contravened the case law of this circuit, and the Federal Rules of Civil Procedure.").

While the petition for rehearing en banc was pending in the Sixth Circuit, Reynolds received an Order entered on May 21, 2019 by the district court restating its previous order striking the 76-page brief to the 2255 motion, and instructing that "Reynolds must [file a conforming 20-page brief] no later than June 14, 2019 ...," or the district court "will order the Government to file a response based on ... [the] form § 2255 motion ...," and "further advis[ing] that the Court will not entertain any additional motions seeking an extension of time for filing his brief, or any motions seeking to file an over-size brief." see Ex. B.

A. Motion to Stay Mandate:

This action by the district court prompted Reynolds to file a "Motion to Stay Mandate" in the appellate court -- pursuant to Federal Rule of Appellate Procedure 41(d)(1), on June 4, 2019. Reynolds then received a letter from his appellate court Case Manager, Robin L. Johnson, dated June 12, 2019, "advis[ing] .. that no ruling will be forthcoming on [his] motion to stay the mandate ..." because "[m]andates do not issue in cases where appeals are dismissed for lack of jurisdiction." see Ex. C.

B. Motion For Reconsideration Of Clerk's Administrative Order:

Reynolds considered the clerk's letter as an administrative order to reject his motion to stay the mandate, and pursuant to Federal Rule of Appellate Procedure 45(c), he filed a "Motion for Reconsideration" -- on June 21, 2019. In a letter dated June 28, 2019, Case Manager Johnson returned the motion to reconsider unfiled and noted that "[o]n June 26, 2019, the court denied [the] petition for rehearing

en banc." Ex. D. The letter further advised Reynolds that his case was closed, no mandate would issue, no further avenue for relief exists and that any "future filing regarding this matter will be returned unfiled and without ruling." Id.

Strangely, Reynolds then received another letter from Case Manager Johnson predicated as June 27, 2019 and restating the June 28, 2019 letter with a different more amendable tone as follows:

Because of the nature of the order of dismissal, a formal mandate does not issue. Therefore, your motion to stay the mandate has been administratively terminated. As you have been advised, the court recently denied your petition for en banc review. No further action is forthcoming from this court, and you are free to petition the United States Supreme Court for certiorari without further involvement from this Court.

(Ex. D @ p. 2)(emphasis added).

The problem with both letters was addressed in Reynolds' motion for reconsideration and is clearly set forth in Sixth Circuit Internal Operation Procedure ("IOP") Rule 41(c), which, in relevant part, provides: "The clerk will refer a motion for stay or recall of the mandate, as a single-judge matter, to the judge who wrote the opinion." Id. (emphasis added). Further, in his motion for reconsideration, Reynolds cited to cases where, contrary to the clerk's representations, mandates issued despite a finding that the court lacked jurisdiction and motions to stay mandate were granted. see Gravitt v. Pogats, 803 F.2d 719 (CA 6, 1986)(Dismissed for lack of jurisdiction and ordering that "[t]he mandate shall issue forthwith."); Bolling v. Director, Office of Workers' Comp. Prgms, U.S. Dept. Of Labor, 823 F.2d 165 (CA 6, 1987)(Dismissing appeal for lack of jurisdiction and ordering that "the clerk of the court shall reissue the mandate immediately ..."); Bearden v. IRS, 1990 U.S. App. LEXIS 14792 (No. 90-1310)(CA 6, Aug. 23, 1990)(Noting prior appeal "dismissed for lack of jurisdiction ... and the mandate issued ..." and dismissing instant appeal for lack of jurisdiction); United States v. Carroll, 2012 U.S. App. LEXIS 9520 (No. 10-1400)(CA 6, April 27, 2012)(Stating that the court did not "... lightly stay the mandate in appeals

dismissed for lack of jurisdiction, the effect of which is to retain power over a matter we had no business handling in the first place."); see also Shakhabzayan v. Ashcroft, 22 Fed. Appx. 883 (No. 00-71605)(CA 9, Dec. 28, 2001)(dismissing appeal for lack of jurisdiction and staying mandate for 30 days to allow petitioner to file a habeas corpus petition in the district court under 28 U.S.C. § 2241).

C. Relief Sought Not Available From Other Courts Or Judges:

The procedural impasse in this case has reached the point where only this Court using its supervisory power can resolve the four procedural questions set forth in Reynolds' motion to stay mandate filed in the Sixth Circuit: (1) Is the Sixth Circuit's holding in Martinez v. United States, that the 25 page limit under Local Rule 7.1 applies to § 2255 motions, inconsistent with 2255 Rule 2(b), which places no page limits on § 2255 motions (or 2254 motions); (2) Can the Government contravene 2255 Rules 4(b) & 5(b), which directs that it must file an answer addressing all allegations in the § 2255 motion, when directed to do so by the district court if the motion is not summarily dismissed, by filing a "pre-answer" motion to strike the § 2255 motion for excess pages that the district court took no issue with in its preliminary review; (3) Does a district court's preliminary review of §§ 2255 or 2254 motions exceeding a local rule page limit and order directing the respondent to file an answer, implicitly grant permission to exceed such page limits; (4) Does a district court abuse its discretion in granting a motion to strike § 2255 motion for excessive pages without also determining whether such an action is in the interest of justice and does not undermine the principle of this Court that the purpose of a civil pleading is to facilitate a proper decision on the merits. see e.g. Foman v. Davis, 371 U.S. 178, 181-82 (1962) ("The Federal Rules [] reject the approach that pleading is a game of skill in which one misstep by [a party] may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."); see

also Conley v. Gibson, 335 U.S. 41, 48 (1957).

As noted by the Sixth Circuit, Reynolds is "free to petition" this Court "for certiorari" review. Ex. D @ p. 2. In the interim, he should not have to fear that the district court "will order the Government to file a response based upon [only] Reynolds's form § 2255 motion . . .," Ex. B, without regard to the factual support and other two issues presented in the 76-page addendum to the form § 2255 motion. The addendum provides testimonial and documentary evidence admitted at trial or generated by the government, but not introduced at trial. This evidence is relevant to the controversy set forth in the grounds Reynolds presents for relief. The government's attempt to avoid addressing this evidence is simple. If true and relief is granted, the agents and prosecutors involved will be held accountable for their misconduct during the investigation of the case and its presentation at trial.

Accordingly, pursuant to Rule 23, Reynolds adjures the Court to Stay the Judgment of the Sixth Circuit pending the outcome of his petition for a writ of certiorari to this Court within the 90 day time period set forth Supreme Court Rule 13(1).

C O N C L U S I O N

WHEREFORE, for the reasons above Petitioner respectfully request the Court grant a stay of the judgment(s) entered by the Sixth Circuit on April 23, 2019, denying his Petition for Permission to Appeal and on June 26, 2019, denying his Petition for Rehearing En Banc until his petition for certiorari review is filed and decided by the Court.

Dated: July 9, 2019


Donald Steven Reynolds #47864-039
Petitioner/Pro-se
FCI Elkton/P.O. Box 10
Lisbon, OH 44432

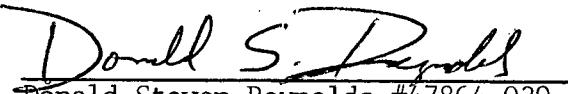
CERTIFICATE OF SERVICE

The undersigned certified that on the date below a true and correct copy of the foregoing Motion to Stay was delivered to prison mailroom staff in accordance with prison legal mail procedures with First Class U.S. Postage prepaid and properly addressed to the following parties:

Sara D. Woodward
Assistant U.S. Attorney
211 West Fort Street/Suite 2001
Detroit, MI. 48226

Solicitor General of the United States
Room 5616, Dept. of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001

Dated: July 11, 2019


Donald Steven Reynolds #47864-039
Petitioner/Pro-se
FCI Elkton/P.O. Box 10
Lisbon, OH 44432

A P P E N D I X

**DONALD STEVEN REYNOLDS, Petitioner-Appellant, v. UNITED STATES OF AMERICA,
Respondent-Appellee.**

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

2019 U.S. App. LEXIS 11987

No. 19-1332

April 23, 2019, Filed

Editorial Information: Prior History

United States v. Reynolds, 2013 U.S. Dist. LEXIS 43127 (E.D. Mich., Mar. 27, 2013)

Counsel {2019 U.S. App. LEXIS 1} **Donald Steven Reynolds**, Petitioner - Appellant, Pro se, Lisbon, OH.

For United States of America, Respondent - Appellee: Matthew A. Roth, Assistant U.S. Attorney, Sara D. Woodward, United States Attorney's Office, Detroit, MI.

Judges: Before: ROGERS, SUTTON, and READLER, Circuit Judges.

Opinion

ORDER

This matter is before the court upon initial consideration to determine whether appeal No. 19-1332 was taken from an appealable order. **Donald Steven Reynolds** has filed a petition for permission to appeal pursuant to Rule 5 of the Federal Rule of Appellate Procedure.

Reynolds filed on September 28, 2018, a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence in the district court. Along with his § 2255 motion, Reynolds filed an oversized brief consisting of seventy-six pages, doubled-spaced. The government filed a motion to strike the oversized brief and asked the district court to order Reynolds to file a brief in compliance with the applicable local rules. The district court granted that motion in an order entered on January 15, 2019. On February 8, 2019, Reynolds filed a motion for reconsideration, which the district court denied by order entered on February 12, 2019. On February 26, 2019, Reynolds filed a second motion for reconsideration and asked the district {2019 U.S. App. LEXIS 2} court to "certify the matter for interlocutory appeal to the Sixth Circuit Court of Appeals." The second motion for reconsideration and request for certification were denied by order entered on March 11, 2019. Reynolds appeals the orders entered on January 15, 2019, February 12, 2019, and March 11, 2019.

This court lacks jurisdiction over the appeal. No final appealable order terminating all of the issues presented in the litigation has been entered by the district court. Reynolds's § 2255 motion remains pending in the district court.

Although a district court's denial of 28 U.S.C. § 1292(b) certification is not immediately appealable, it may be reviewed in a mandamus proceeding. *In re Powerhouse Licensing*, 441 F.3d 467, 471 (6th Cir. 2006). A notice of appeal from an order that is not immediately appealable may be treated as a

CIRHOT

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petition for a writ of mandamus. *Hammons v. Teamsters Local No. 20*, 754 F.2d 177, 179 (6th Cir. 1985). Mandamus is a remedy "to be invoked only in extraordinary situations." *Kerr v. United States Dist. Court for Northern Dist.*, 426 U.S. 394, 402, 96 S. Ct. 2119, 48 L. Ed. 2d 72 (1976). Mandamus may be appropriate if irreparable harm seems imminent from the denial of an immediate appeal. *Mischler v. Bevin*, 887 F.3d 271, 272 (6th Cir. 2018) (per curiam). Nothing in the record suggests that Reynolds will suffer irreparable harm from the denial of an immediate appeal. The petition for permission to appeal is **DENIED**.

The appeal is **DISMISSED** for lack of jurisdiction.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff/Respondent,

Civil Case No. 18-13104
Criminal Case No. 12-20843

v.

Donald Steven Reynolds,

Sean F. Cox
United States District Court Judge

Defendant/Petitioner.

ORDER GRANTING
THE GOVERNMENT'S MOTION TO STRIKE

Defendant/Petitioner Donald Steven Reynolds was convicted of child pornography offenses following a jury trial and his conviction and sentence were affirmed on direct appeal.

On September 28, 2018, Reynolds filed a form Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (ECF No. 199 at Page ID 3890-3900) wherein he asserted the following four grounds for relief:

- 1) "Mr. Reynolds' Right To Due Process Was Violated Where The Prosecution Knowingly Presented False Testimony" (Ground One);
- 2) "Mr. Reynolds' Right To Due Process Was Violated Where The Prosecutor's Comments On Facts Not In Evidence Coupled With The Misrepresentation Of The Evidence Deprived Him Of A Fair Trial" (Ground Two);
- 3) "Mr. Reynolds Was Denied A Fair Trial, Where Counsel Rendered Ineffective Assistance Of Counsel By Failing To Adequately Investigate The Law And Facts Of The Case To Prepare A Viable Defense" (Ground Three); and
- 4) "Mr. Reynolds Was Deprived A Fair Trial, Where Counsel Abandoned His Loyalty To Reynolds, And Entirely Failed To Subject The

Government's Case To Meaningful Adversarial Testing" (Ground Four).
(*Id.*).

Along with his form § 2255 Motion, Reynolds filed a supporting brief that consists of seventy-six pages, doubled-spaced, with 12-point font.

Thereafter, the Government filed a motion asking the Court to strike Reynolds's over-sized brief and order him to file a brief of no more than twenty-five pages in length, in compliance with the applicable local rules. (ECF No. 203).

Reynolds opposes the motion, asserting that his non-compliance with the page limitations was unintentional. Reynolds also asserts that he has limited time in the prison law library, and has to use a typewriter without memory, suggesting that it may take some time for him to file a compliant brief.

The Court finds that oral argument on the pending motion is not necessary and shall rule without a hearing.

Having considered the Government's motion, Reynolds's brief opposing it, and Reynolds's over-sized brief, the Court hereby **GRANTS** the Government's Motion to Strike. Pursuant to *Martinez v. United States*, 865 F.3d 842 (6th Cir. 2017) and Local Rule 7.1 of the Local Rules of the Eastern District of Michigan this Court **ORDERS** as follows:

- 1) The Court **shall not consider** the 76-page brief that Reynolds filed in support of the four grounds for relief set forth in his form § 2255 Motion;
- 2) No later than **March 15, 2019**, in support of the four grounds for relief set forth in his pending form § 2255 motion, Reynolds may file either:
 - A) A brief of no more than twenty-five (25) pages, doubled-spaced, with 14-point font; or
 - B) A brief of no more than twenty (20) pages, doubled-spaced, with

12-point font.¹

- 3) No later than **May 15, 2019**, the Government shall file a response brief of no more than 25 pages, doubled-spaced, with 14-point font; and
- 4) No later than **June 17, 2019**, Reynolds may file either:
 - A) A brief of no more than seven (7) pages, doubled-spaced, with 14-point font; or
 - B) A brief of no more than five (5) pages, doubled-spaced, with 12-point font.

IT IS SO ORDERED.

Dated: January 15, 2019

s/Sean F. Cox

Sean F. Cox
U. S. District Judge

I hereby certify that on January 15, 2019, the foregoing document was served on counsel of record via electronic means and upon Donald Reynolds via First Class mail at the address below:

Donald Steven Reynolds #47864039
ELKTON FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 10
LISBON, OH 44432

s/J. McCoy

Case Manager

¹The Court is giving Reynolds this option as a courtesy, in the event the typewriter he has access to does not have 14-point font.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff/Respondent,

v.

Civil Case No. 18-13104
Criminal Case No. 12-20843

Donald Steven Reynolds,

Sean F. Cox
United States District Court Judge

Defendant/Petitioner.

ORDER

Defendant/Petitioner Donald Steven Reynolds was convicted of child pornography offenses following a jury trial and his conviction and sentence were affirmed on direct appeal.

On September 28, 2018, Reynolds filed a form Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (ECF No. 199 at Page ID 3890-3900) wherein he asserted four grounds for relief.

Along with his form § 2255 Motion, Reynolds filed a supporting brief that consists of seventy-six pages, doubled-spaced, with 12-point font.

Thereafter, the Government filed a motion asking the Court to strike Reynolds's oversized brief and order him to file a brief of no more than twenty-five pages in length, in compliance with the applicable local rules. (ECF No. 203). This Court granted that motion in an order issued on January 15, 2019, and ordered as follows:

- 1) The Court **shall not consider** the 76-page brief that Reynolds filed in support of the four grounds for relief set forth in his form § 2255 Motion;
- 2) No later than **March 15, 2019**, in support of the four grounds for relief set

forth in his pending form § 2255 motion, Reynolds may file either:

- A) A brief of no more than twenty-five (25) pages, doubled-spaced, with 14-point font; or
- B) A brief of no more than twenty (20) pages, doubled-spaced, with 12-point font.¹

3) No later than **May 15, 2019**, the Government shall file a response brief of no more than 25 pages, doubled-spaced, with 14-point font; and

4) No later than **June 15, 2019**, Reynolds may file either:

- A) A brief of no more than seven (7) pages, doubled-spaced, with 14-point font; or
- B) A brief of no more than five (5) pages, doubled-spaced, with 12-point font.

IT IS SO ORDERED.

(ECF No. 207).

On February 8, 2019, Reynolds filed a Motion for Reconsideration. (ECF No. 208). In that motion, Reynolds asked this Court to reconsider its ruling on the Government's Motion to Strike and allow him to proceed with his over-sized § 2255 brief. Reynolds further asserted that while his form § 2255 motion only contained the four grounds for relief noted in this Court's order, his brief raised two additional issues: 1) that he "is entitled to resentencing where counsel rendered ineffective assistance at the sentencing stage of the proceedings;" and 2) the "restitution judgment is infirm and must be vacated as a matter of law." (ECF No. 208 at PageID 4068).

Having considered Reynolds's Motion for Reconsideration, this Court "**DENIE[D]** **WITH PREJUDICE** Reynolds's request to allow him to proceed with his over-sized brief. If

¹The Court is giving Reynolds this option as a courtesy, in the event the typewriter he has access to does not have 14-point font.

Reynolds wishes to include the two additional issues set forth above, he may do so in his brief.

But Reynolds's must file a brief in accordance with the page limitations set forth in this Court's January 15, 2019 Order." (ECF No. 209).

On February 26, 2019, Reynolds filed a motion that seeks reconsideration of this Court's order denying his February 8, 2019 Motion for Reconsideration. (ECF No. 210). In an Order issued on March 11, 2019, this Court denied that motion, stating:

The Court hereby DENIES this motion for lack of merit. The Court's February 12, 2019 Order Denying Reynolds's Motion for Reconsideration (ECF No. 209) stands as written. Petitioner is advised that the Court will not consider any additional motions seeking reconsideration of the Court's rulings on the length of Petitioner's brief.

In addition, to the extent that Reynolds's February 26, 2019 motion asks this Court to "certify the matter for interlocutory appeal to the Sixth Circuit Court of Appeals," that request is also **DENIED**.

IT IS SO ORDERED.

(ECF No. 211).

Thereafter, Reynolds filed a Notice of Appeal, stating that he was appealing this Court's orders on his motions for reconsideration. (ECF No. 212). On April 23, 2019, the Sixth Circuit issued an Order dismissing that appeal for lack of jurisdiction. (ECF No. 214).

To date, Reynolds has not filed a supporting brief in compliance with this Court's orders.

The Court hereby ORDERS that Reynolds must do so no later than June 14, 2019. If Reynolds fails to do so, the Court will order the Government to file a response based upon Reynolds's form § 2255 motion. Reynolds is further advised that the Court will not entertain any additional motions seeking an extension of time for filing his brief, or any motions seeking to file an over-sized brief.

IT IS SO ORDERED.

Dated: May 21, 2019

s/ Sean F. Cox

Sean F. Cox

U. S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 12, 2019

Mr. Donald Steven Reynolds
F.C.I. Elkton
P.O. Box 10
Lisbon, OH 44432

Re: Case No. 19-1332, *Donald Reynolds v. USA*
Originating Case No. : 2:18-cv-13104 : 2:12-cr-20843-1

Dear Mr. Reynolds:

This is to advise you that no ruling will be forthcoming on your motion to stay the mandate. Mandates do not issue in cases where appeals are dismissed for lack of jurisdiction.

Sincerely yours,

s/Robin L. Johnson
Case Manager
Direct Dial No. 513-564-7039

cc: Mr. Matthew A. Roth
Mr. David J. Weaver
Ms. Sara D. Woodward

Exhibit C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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CINCINNATI, OHIO 45202-3988

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www.ca6.uscourts.gov

Filed: June 28, 2019

Mr. Donald Steven Reynolds
F.C.I. Elkton
P.O. Box 10
Lisbon, OH 44432

Re: Case No. 19-1332, *Donald Reynolds v. USA*
Originating Case No. : 2:18-cv-13104 : 2:12-cr-20843-1

Dear Mr. Reynolds:

Please find your motion to reconsider returned unfiled. On June 26, 2019, the court denied your petition for rehearing en banc. This resulted in the closure of your case. A mandate will not issue, and your appeal is complete. No further avenue for relief exists in this case. You should generally expect that future filings regarding this matter will be returned unfiled and without ruling.

Sincerely yours,

s/Robin L. Johnson
Case Manager
Direct Dial No. 513-564-7039

cc: Mr. Matthew A. Roth
Ms. Sara D. Woodward

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 27, 2019

Mr. Donald Steven Reynolds
F.C.I. Elkton
P.O. Box 10
Lisbon, OH 44432

Re: Case No. 19-1332, *Donald Reynolds v. USA*
Originating Case No. : 2:18-cv-13104 : 2:12-cr-20843-1

Dear Mr. Reynolds:

Because of the nature of the order of dismissal, a formal mandate does not issue. Therefore, your motion to stay the mandate has been administratively terminated. As you have been advised, the court recently denied your petition for en banc review. No further action is forthcoming from this court, and you are free to petition the United States Supreme Court for certiorari without further involvement from this court.

Sincerely yours,

s/Robin L. Johnson
Case Manager
Direct Dial No. 513-564-7039

cc: Mr. Matthew A. Roth
Ms. Sara D. Woodward

No. 19-1332

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 26, 2019
DEBORAH S. HUNT, Clerk

DONALD STEVEN REYNOLDS,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

O R D E R

BEFORE: ROGERS, SUTTON, and READLER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

Exhibit E