

FROM: 48192066
TO: Rauso, Gennaro
SUBJECT: U.S. SUPREME CT-motion to compel-Part 1
DATE: 06/12/2019 09:40:26 AM

Gennaro Rauso
Registration No. 48192-066
LSCI-Allenwood
P.O. Box 1000
White Deer, PA 17887

SUPREME COURT OF THE UNITED STATES

Gennaro Rauso :
: :
v. : No. 18A949
: :
United States of America : :

MOTION TO COMPEL CLERK TO DOCKET PETITION FOR
WRIT OF CERTIORARI AND MOTION TO STAY, ETC. AS OF THE DATE
SAID PETITION, ETC. WAS MAILED, NUNC PRO TUNC; ALTERNATIVELY, TO ORDER THE
CLERK OF THIS COURT TO FILE SAID CERTIORARI PETITION AND MOTION, ETC. OUT OF TIME

Now comes, Gennaro Rauso, petitioner in the above captioned matter, requesting relief from this Honorable Court, pursuant to Supreme Court Rule 21.1, for the issuance of an order either ordering the Clerk of this Court, hereinafter, referred to as "THE U.S. SUPREME COURT CLERK:" (a) to docket his petition for writ of certiorari and motion to stay and or hold in abeyance, this court's disposition of the petition for writ of certiorari pending, a remand to the district court for the entry of petitioner's sixth motion to correct the criminal docket entries of the underlying criminal case and the district court hearing and determining the merits of the grounds for relief being asserted in said motion, alternatively, for the issuance of a writ of mandamus, hereinafter, collectively, referred to as "THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC.," nunc pro tunc, on the date he mistakenly mailed said petition and motion, etc. to the Supreme Court of Pennsylvania, in enforcement of Sup.Ct. Rule 29.2, alternatively, (b) to file THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. out of time, and avers the following in support thereof: (FN # 1)

I) FACTS SUPPORTING THE MOTION

I, Gennaro Rauso, hereby state under penalty of perjury, pursuant to 28 U.S.C. 1746, the following facts set forth herein below are true and correct to the best of my knowledge, information and belief:

1. On November 30, 2018, the United States Court of Appeals for the Third Circuit, "THE THIRD CIRCUIT," denied my timely filed petition for panel rehearing and or for suggestion for rehearing en banc, "THE REHEARING PETITION," which I had filed in the case USA v. Rauso, (3d Cir. C.A. No. 18-1819), which case will, hereinafter, be referred to as "(THE 18-1819 APPEAL)." (FN # 2)

2. On March 20, 2019 Justice Alito granted my motion for an extension of time by which I was required to file my petition for writ of certiorari in this court to April 29, 2019.

3. On April 29, 2019, I caused to be mailed THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC., mistakenly, to the Supreme Court of Pennsylvania, by having placed same in an envelope with postage pre-paid, by certified return receipt mail No. 7016 0910 0000 9657 8439, which envelope, in turn, was placed in the United States mail first class. See Exhibits C and D (a true, correct and complete copy of: (a) the United States Postal Service Form 3800, post marked April 29, 2019 showing paid postage of \$14.15, hereinafter referred to as "PETITIONER'S PROOF OF MAILING REGARDING THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY," and, (b) the envelope in which THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC., was included. (FN # 3)

4. On May 2, 2019, the Prothonotary of the Supreme Court of Pennsylvania, hereinafter referred to as "THE PA STATE PROTHONOTARY," returned THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. back to me,

without having included the envelope in which said aforementioned petition and motion, etc. were mailed; which documents I did not receive until May 8, 2019. See Exhibit E.

5. On May 9, 2019, I mailed, among other things: (a) a cover letter, dated May 9, 2019, addressed to Scott H. Harris, the Clerk of this Court, setting out the details of ~~NY~~ having mistakenly mailed THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. to the Supreme Court of Pennsylvania, (b) PETITIONER'S PROOF OF MAILING REGARDING THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, (c) a declaration, made under penalty of perjury, pursuant to 28 U.S.C. 1746, setting out the details of the filing of THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC., which included the details of the particular date I mailed same. *SEE EXHIBIT F.*

6. On May 30, 2019, Michael Duggan, "DUGGAN," returned the documents listed in paragraph Five (5) hereinabove back to me, along with a cover letter, dated the same day, hereinafter referred to as "DUGGAN'S MAY 30TH LETTER," instructing me to resubmit THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. to this court along "with a motion directing the Clerk of this Court to file it out of time." *SEE EXHIBIT G.*

7. In between the time I received DUGGAN'S MAY 30TH LETTER and the filing of the instant motion, I was able to obtain a copy of the envelope, in which I had included and mailed THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. from the Supreme Court of Pennsylvania, which envelope includes a post mark of April 29, 2019 supporting on what date said envelope was mistakenly mailed through the United States Postal Service to said court; which envelope I incorporate herein by reference as if fully set forth.

8. As set forth in greater detail in the Argument section of the instant motion, it is my primary contention I do not need to seek leave, nor obtain permission, from this court, to order THE U.S. SUPREME COURT CLERK to file THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. out of time.

9. In the alternative, if this court rejects these aforementioned primary contention, I request it to issue an order ordering THE U.S. SUPREME COURT CLERK to file, enter and docket THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. out of time.

II) ARGUMENT

QUESTIONS PRESENTED

A) WHETHER THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. WHICH PETITIONER MISTAKENLY MAILED TO THE PA SUPREME COURT, SHOULD BE DEEMED FILED ON THE DATE HE MAILED SAID DOCUMENTS SAID COURT; AND WHETHER THIS COURT SHOULD ORDER THE CLERK OF THIS COURT TO FILE, ENTER AND DOCKET SAME AS HAVING BEEN FILED ON SAID DATE, NUNC PRO TUNC?

SUGGESTED ANSWER TO BOTH QUESTIONS: YES

Pursuant to Sup.Ct. Rule 21.1, "Every motion to the Court shall clearly state its purpose and the facts on which it is based." Petitioner asserts and contends the facts set forth in this motion, which he has made under penalty of perjury, coupled with the documents he has attached hereto, as exhibits, coupled with the authority set forth herein below, support the contention THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. must be deemed "filed" on the date he mailed same to THE U.S. SUPREME COURT CLERK and not the date said petition and motion, etc. were eventually received by either THE PA STATE COURT PROTHONOTARY, or THE U.S. SUPREME COURT CLERK; and, a fortiori, he does not need to ask this court to order THE U.S. SUPREME COURT CLERK to file said petition and motion, etc., out of time, for the following reasons.

First Supreme Court Rule 29.2 states, in pertinent part: "A document is timely filed...if it is sent to the Clerk through the United States Postal Service by first class mail (including express or priority mail), postage prepaid, and bears a postmark... showing that the document was mailed on or before the last day for filing." Without question, petitioner has provided this court true, correct and complete copies of both the United States Postal Service's PS-3800 form, as well as the envelope in which THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. was included and mailed to the Supreme Court of Pennsylvania, both bearing postmarks of April 29, 2019.

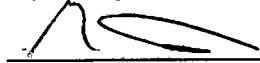
Petitioner asserts and contends, based on these aforementioned facts and rules, etc., coupled with the underlying principles surrounding the fair and orderly administration of justice, this court should order the Clerk of this Court to file THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC., and docket same, as of April 29, 2019, nunc pro tunc.

B) IN THE ALTERNATIVE, WHETHER THIS COURT SHOULD GRANT PETITIONER'S REQUEST TO HAVE HIS CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. FILED AND DOCKETED OUT OF TIME?

SUGGESTED ANSWER: YES

Petitioner asserts and contends this court, in the alternative, should issue an order ordering THE U.S. SUPREME COURT CLERK to file, enter and docket THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. out of time.

Respectfully Submitted



6/13/19
Date

Gennaro Rauso

1. I have attached THE CERTIORARI PETITION AND ACCOMPANYING MOTION TO STAY, ETC. as Exhibits A and B to this motion, respectively; which I incorporate herein by reference as if fully set forth.

2. I request this court to take judicial notice, pursuant to Fed.R.Evid. 201, of not only these aforementioned facts, which are matters of public record and are not subject to reasonable dispute, but also the fact: (a) on August 31, 2018 THE THIRD CIRCUIT had affirmed the March 26, 2018 and April 12, 2018 orders, rendered by the United States District Court for the Eastern District of PA in the case USA v. Rauso, (E.D. Pa. No. 10-cr-406), which case I will, hereinafter, refer to as "PETITIONER'S UNDERLYING CRIMINAL CASE," (b) I had timely requested, and had been granted leave by, THE THIRD CIRCUIT in (THE 18-1819 APPEAL), Two (2) extensions of time by which to have filed THE REHEARING PETITION in (THE 18-1819 APPEAL), and, (c) I have been incarcerated since June 10, 2011 serving a One Hundred Sixty (160) month term of imprisonment which had been imposed in PETITIONER'S UNDERLYING CRIMINAL CASE.

3. THE CERTIORARI PETITION AND ACCOMPANY MOTION TO STAY, ETC.

It was received and time stamped by the Chief Clerk, and or Prothonotary, of the Supreme Court of Pennsylvania on May 1, 2019.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1819

UNITED STATES OF AMERICA

v.

GENNARO RAUSO,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-10-cr-00406-001)
District Judge: Michael M. Bayson

SUR PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, Jr., VANASKIE, SHWARTZ, KRAUSE, RESTREPO,
BIBAS, and PORTER, *Circuit Judges*.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Dated: November 30, 2018

Lmr/cc: Joseph F. Minni
Gennaro Rauso

DLD-295

August 23, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-1819**

UNITED STATES OF AMERICA

v.

GENNARO RAUSO, Appellant

(E.D. Pa. Crim. No. 2-10-cr-00206)

Present: JORDAN, SHWARTZ, and KRAUSE, Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2), possible summary action pursuant to 3d Circuit L.A.R. 27.4 and I.O.P. 10.6, and a determination as to whether a certificate of appealability is required;
- (2) Appellant's response to possible dismissal pursuant to 28 U.S.C. § 1915(e)(2), possible summary action pursuant to 3d Circuit L.A.R. 27.4 and I.O.P. 10.6, and a determination as to whether a certificate of appealability is required;
- (3) Appellant's motion to correct the record;
- (4) Appellant's motion to expedite his motion to correct the record;
- (5) Appellant's second motion to correct the record; and
- (6) Appellant's Motion to file a response to possible summary action or dismissal that exceeds the Court's page limitations,

in the above-captioned case.

Respectfully,
Clerk

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ORDER

Appellant appeals a March 26, 2018 District Court order directing the Clerk not to docket materials he submitted for filing in light of a filing injunction issued during his § 2255 proceedings, and a related order issued April 12, 2018. We reviewed the injunction in connection with Appellant's request for a certificate of appealability and noted in our March 3, 2015 order denying a certificate that we interpreted the injunction as ending upon the conclusion of Appellant's attempt to appeal. Appellant has since submitted documents asserting that the District Court's orders in his § 2255 proceedings are invalid and that the Court has not resolved those proceedings. He has sought to file a second amended § 2255 motion, which is essentially duplicative of the motion that was adjudicated, motions to compel the District Court to file his papers, and other motions. Although not filed in the record below, Appellant has filed date-stamped copies of those submissions in this Court.

Because Appellant's filings seek to re-litigate his § 2255 proceedings, we agree with the District Court that the injunction should apply. To the extent a certificate of appealability is not required, we summarily affirm the District Court's March 26, 2018 order insofar as it directed the Clerk not to docket his submissions. We also summarily affirm the District Court's April 12, 2018 order with the modification that only documents seeking to re-litigate Appellant's § 2255 proceedings shall not be docketed. Appellant's motion to correct the record, motion to expedite his motion to correct the record, and second motion to correct the record are denied. We deny a certificate of appealability to the extent a certificate is needed. Appellant's request to file a response to possible summary action or dismissal that exceeds the Court's page limitations is granted.

By the Court,

s/ Cheryl Ann Krause
Circuit Judge

Dated: August 31, 2018

CJG/cc: Joseph F. Minni, Esq.
Gennaro Rauso

**Additional material
from this filing is
available in the
Clerk's Office.**