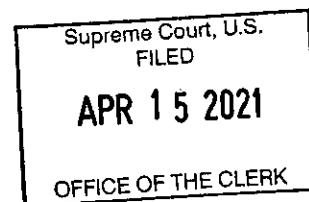


No. 20-1477



IN THE SUPREME COURT OF THE UNITED STATES

Randy Raymond Bell

Petitioner,

v.

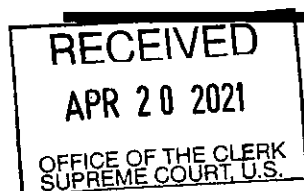
New York State Department of Corrections
and Community Supervision et. al

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Second Circuit**

PETITION FOR WRIT OF CERTIORARI

Randy Bell
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QUESTIONS PRESENTED FOR REVIEW

1. Did Northern New York District Court Judge David Hurd lack jurisdiction to issue a decision, dismissing petitioner's complaint, as a result of fraud upon the Court committed by him in his decision?

2. Did the Second Circuit Court abuse its discretion, when it dismissed petitioner's appeal disregarding extended time limitations for him to file a notice of appeal in the District Court, as a result of fraud upon the Court, committed by Northern New York District Court Judge David Hurd, when it ordered that the petitioner's District Court notice of appeal was untimely filed and that the Court of Appeals, as a result, lacked jurisdiction to hear the appeal?

PARTIES INVOLVED IN THE PROCEEDINGS

Parties Involved in The Second Circuit Court Action:

Appellant: Randy Bell

Respondents: New York State Department of Corrections and Community Supervision, New York State Corrections Officers and Police Benevolent Association Inc., Anthony Annucci, Greg Fredricks, Mike Powers, Terry Pike, Kevin Aldous, Michael Caldwell, Calvin O Rabsatt, Brian McAuliffe, Mike Sovie, Michele O'Gorman, Scott Clary, Steve Garabrandt, Tony Harper, Carl Hewko, Tom Patnode, Patrick Gray, Jim Bleu and James Bell (no relation to petitioner).

Parties Involved in Supreme Court Third Department Action:

Appellant: Randy Bell

Respondents: Greg Fredericks, New York State Corrections Officers and Police Benevolent Association Inc., Jim Bleau, Terry Pike, Kevin Aldous, Michael Caldwell, Brian McAuliffe, Mike Sovie, Michele O'Gorman, James Bell, Scott Clary, Steve Garabrandt, Tony Harper, John Shipley, Kelly Ahearn.

CORPORATE DISCLOSURE STATEMENT

Respondent, New York State Corrections Officers and Police Benevolent Association Inc. is a governmental corporation, has no parent corporation, has no publicly owned stock, and has no publicly held company owning 10 percent or more of its stock. Because there are no nongovernmental corporate parties to this case, the disclosure requirement of Rule 29.6 does not apply.

**LIST OF ALL FEDERAL AND STATE ACTION
RELATED TO THIS PETITION**

Federal Actions:

A. United States District Court for the Northern District of New York, Case # 1:17-cv- 0937, Caption – Randy Bell v. New York State Department of Corrections and Community Supervision et. al, date of entry of judgement, March 22nd, 2019.

B. United States Court of Appeals for the Second Circuit, case # 20-3525, Caption - Randy Bell v. New York State Department of Corrections and Community Supervision et. al, date of entry of judgement, January 27th, 2021, dismissing petitioner's appeal (appealed from A above), and which simultaneously mooted petitioners petition for writ of mandamus, served on the Second Circuit on January 22nd, 2021, entered January 26th, 2021, document timely corrected on February 4th, 2021, arising from the denied second motion for temporary stay, indicated in D below.

State Actions:

C. New York State Supreme Court for the County of St. Lawrence, Case # cv-19-155303, Caption – Randy Bell v. Greg Fredricks et. al, date of entry of judgement May 11th, 2020 (arose from A above).

D. New York State Supreme Court Appellate Division, Third Department, Case # 532-142, Caption – Randy Bell v. Greg Fredricks et. al, date of entry of interlocular order. January 8th, 2021, denying second motion for temporary stay, pending the outcome of Second Circuit Appeal. (Third Department appeal was appealed from C above).

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Randy R. Bell, respectfully requests the issuance of a writ of certiorari, to review the judgment of the United States Court of Appeals for the Second Circuit.

CITATION OF OPINIONS AND ORDERS ENTERED

Second Circuit Court Clerk stated there was no opinions issued, only the dismissal order for lack of jurisdiction, as a result of untimely notice of appeal, citing 28 USC 2107 and *Bowles v. Russell*, 551 U.S. 205, 214 (2007) and making moot petitioners motion for appointed counsel.

BASIS FOR JURISDICTION

The Second Circuit Court of Appeals issued its decision on January 27th, 2021. The interlocutory order denying a stay by the Supreme Court Appellate Division, Third Department, was entered on January 8th, 2021. This Court's jurisdiction is invoked under 28 USC 1254; 28 USC 1257; U.S. Const. art. III, sec. II and F.R.C.P. Rule 60(d)(3) and as important questions of state, federal and constitutional law are involved.

CONSTITUTIONAL PROVISIONS AND LEGAL PRINCIPLES INVOLVED

(The pertinent text is contained within Appendix H)

28 U.S.C. 2107

28 U.S.C. 1254

28 U.S.C. 1257

U.S. Const. art. III, sec. II

U.S. Const. amend I

28 U.S.C 1367(d)

28 U.S.C. 1331

28 U.S.C. 1343

N.Y. CPLR 213(8)

18 U.S.C 3282(a)

N.Y. Civ. Serv. Law 134(3)

U.S. Const. amend. V

U.S. Const. amend. XIV sec. I

42 USC 1983

Federal Rules of Civil Procedure, Rule 60(d)(3)

Federal Rules of Civil Procedure, Rule 61

Federal Rules of Civil Procedure, Rule 23(a)

STATEMENT OF THE CASE SETTING OUT THE FACTS

Introduction

This case arises simply because petitioner and 73 other New York State Corrections Officers wanted to work overtime in a fair, legal overtime hiring system, at Riverview Correctional Facility, so as to increase our income, while working, but more importantly, to increase our retirement income, which is based on that overtime while working, both to benefit ourselves and our families.

This case also began from the theft of large amounts of state and federal taxpayer funded overtime money and retirement income from Officers, perpetrated by other Officers, Sergeants and state employees, via money bribes, favors etc., at Riverview Correctional Facility, located on the Canadian border. After observing numerous conflicts of overtime corruption and wishing to work in a legal overtime hiring system, in 2013, petitioner presented an overtime hiring proposal to the 250 facility Corrections Officers, which was put up for a formal secret ballot vote, which was passed by the majority of 140 officers, who voted in favor of implementing such proposal, as a Labor Management Agreement, allowed per contract. Upon numerous intentional delays by the defendants, from 2013 to 2016, it was approved at the Executive level, at both the Corrections Department and Officers labor union and was to be implemented on January 1st, 2017. But in April of 2016, a group of Officers, mostly Officers who were stealing or perpetrating stealing overtime hours away from other Officers, attended a union meeting, where they wrongfully voted down, via an informal hand vote, the implementation of the agreement that was to

be implemented, hence the filing of the District Court action on August 24th, 2017. In addition to the theft of overtime and retirement income, petitioner was severely discriminated and retaliated against, simply as a result of exercising his U.S. Const. Amend. I rights, when he criticized both the facility administration and the labor union representatives, for their refusal to stop the corruption and for filing suit, which ultimately resulted in petitioner's unjust suspension and two terminations from his job, after 29 ½ years of loyal service.

**Second Circuit Court of Appeals Dismissal of Petitioners
Appeal Which Simultaneously Mooted Petitioners
Petition for Writ of Mandamus in the Same Court**

This petition, a common-sense petition, arises from the dismissal of the petitioner's appeal in the Second Circuit Court of Appeals, who asserted an untimely notice of appeal in the District Court, citing time limits pursuant to 28 USC 2107. This petition also arises as the petitioner asserts that District Court Judge David Hurd committed fraud upon the Court, pursuant to F.R.C.P Rule 60(d)(3), and as a result lacked authority and jurisdiction to issue a decision dismissing petitioner's complaint, which should void any time limits to file a notice of appeal.

This petition further arises as the Second Circuit Court of Appeals disregarded the effects of fraud on time limits; disregarded previous U.S. Supreme Court and Circuit Court's precedence; disregarded conflicts with state and federal fraud time limits; disregarded state and national public interest; disregarded class action considerations and the violation of petitioner's and other Officers state, federal and constitutional rights, in which they dismissed this petitioner's appeal for lack of

jurisdiction, asserting that the notice of appeal petitioner filed, pursuant to F.R.C.P. Rule 60(d)(3) (fraudulent concealment by the defendants and fraudulent concealment and fraud upon the Court committed by District Court Judge David Hurd), was untimely.

As a result of such dismissal, the Court of Appeals simultaneously mooted petitioner's petition for writ of mandamus to the same Circuit Court, to mandate to the Supreme Court Appellate Division, Third Department, to temporarily stay that pending appeal, until a decision could be made in petitioner's associated Second Circuit appeal.

Timeline and Procedural Background

This action began when the petitioner, a whistle blower, a victim and a New York State Corrections Officer, revealed overtime corruption, after numerous violations of his and 73 to 250 other Officers' contract, state, federal and constitutional rights were violated. The petitioner then filed a Northern New York District Court complaint on August 24th, 2017, which began litigation. Upon continued violations by the defendants, petitioner filed an Amended District Court Complaint, under severe duress, while still employed in the prison, on January 16th, 2018, one day before he was unjustly suspended, and later fired twice. On March 22nd, 2019, 14 months later, District Court Judge David Hurd dismissed all of petitioner's federal and constitutional claims, including federal criminal claims, pre-answer, and declined jurisdiction over the contract and state claims (App. 7a-District Court order), at which time the petitioner was tricked into thinking Judge

Hurd's reasons for dismissal were true, when actually, they were not. After petitioner initially, upon a search, found no grounds to argue against Judge Hurd's dismissal, he then, pursuant to 28 USC 1367(d), timely filed a complaint, on April 17th, 2019, in New York State Supreme Court, St Lawrence County, in Canton New York. Then, 13 months later on May 22nd, 2020, New York State Supreme Court Judge Mary Farley, again pre-answer, dismissed all 21 of petitioner's contract, state, federal and constitutional claims, including federal criminal claims. At which time, upon the discovery of severe fraud upon the Court, contained in Supreme Court Judge Farley's Supreme Court decision, lead this petitioner to the discovery that District Court Judge David Hurd committed extrinsic and intrinsic fraud upon the Court contained within his decision, in which he took advantage of this Pro se petitioner, not knowing the law, and dismissed his complaint. It was discovered that Judge Hurd omitted any proper applicable standards of statutes, authorities or justice being served and based his decision instead on inapplicable cited fraudulent authorities, statutes and asserted highly deceptive statements and of most concern, among many concerns, he granted eleventh amendment immunity as a defense, to all defendants who perpetrated theft from me and others, of state and federal taxpayer funded overtime and retirement monies (App. 17a,18a- District Court order: Sovereign Immunity). Petitioner then timely filed a notice of appeal, appealing the lower Supreme Court decision on June 5th, 2020, at which time he also, as a Pro se under duress, mistakenly appealed at the same time the District Court complaint, for fraud upon the Court, in that Third Department Appellate

Court, (App. 3a- Supreme Court notice of appeal), addressing not only the fraud, but addressing res-judicata and collateral estoppel effects among others reasons, and that the lower Supreme Court Judge saturated her decision with the fraudulent statements made by District Court Judge Hurd, which also severely and negatively infected the Supreme Court action with fraud as well. Upon opposing counsel informing petitioner, at a late date, that he could not appeal a District Court decision in the Third Department Court, the petitioner, having no other options but to go back to where the wrong began, which was the District Court action, then, as soon as possible, statutorily timely filed a District Court appeal on October 7th, 2020, approximately four months after the discovery of fraud and within approximately five days of being notified by opposing counsel of his filing mistake. Petitioner's District Court notice of appeal was intentionally filed, pursuant to F.R.C.P. Rule 60(d)(3), but was mistakenly typed as Rule 60(3)(d), but correctly described as "fraudulent concealment by the defendants and fraudulent concealment and fraud upon the Court by District Court Judge David Hurd" (App. 4a- District Court notice of appeal) which, pursuant to the statute and authorities, has no statute of limitations.

F.R.C.P. Rule 61 (Harmless Error) allows a Court not to vacate a case on grounds of an error and the intent of the notice of appeal was clearly shown by the petitioner in the notice of appeal, citing: *Sanabria v. United States*, 437 U.S. 54, 67 n.21 (1978). Additionally, there is no Rule 60(3)(d), only Rule 60(d)(3) and petitioner simply made a mistake and quoted the fraud rule incorrectly.

The Second Circuit Court of Appeals then dismissed petitioner's appeal, for lack of jurisdiction, one week before the opposing counsels appeal brief was due, for the reason of an untimely notice of appeal to the District Court, citing 28 USC 2107 and *Bowels v. Russell* 551 US 205, 214 (2007) as justification for such dismissal, even though neither addressed the issue of fraud upon the Court by an Officer of the Court. (App. 1a- Court of Appeals order dismissing appeal),

This petitioner, now having two pending appeals, made two motions in the Third Department, Appellate Division, for a temporary stay, pending the outcome of the pending Second Circuit Appeal, at which time they denied both motions (App. 5a -first motion denied and App. 6a second motion denied). Upon their denials of those motions, petitioner petitioned for a writ of mandamus to the Second Circuit, to mandate to the Third Department a temporary stay of the petitioner's appeal in that Court, pending the outcome of the Second Circuit appeal, and as a result of the dismissal of the petitioner's appeal in the Second Circuit, made moot this petitioner's petition for the writ of mandamus to that same Circuit Court (App. 2a -order mooted writ of mandamus). Currently the petitioner, after two extensions were granted him, with a current filing deadline of March 8th, 2021, it appears that the lower Supreme Court decision/action, which arose from the District Court action, is moot, null and void and also voids any time limits in that action, as a result of fraud in the District Court action, for reasons stated below in "Reasons for Granting the Writ #II".

District Court Jurisdiction

The Northern New York District Court, being the place of original instance, had jurisdiction, pursuant to 28 U.S.C. 1331 and 28 U.S.C. 1343, as there were federal and constitutional questions.

REASONS FOR GRANTING THE WRIT

Fraud upon the Court, committed by a Judge, attacks the very foundation of the United States and its Constitution, it attacks the very heart of a lawful, modern, first world country and any such fraud can not be tolerated.

I. Judge Hurds Decision is Null and Void and Does Not Exist as He Lacks authority and Jurisdiction.

The notice of appeal and the brief were filed solely to make void the decision of Northern New York District Court Judge David Hurd's dismissal order, as he lacked any authority and jurisdiction to issue such order, as a result of extrinsic and intrinsic fraud upon the Court, committed by him. If the Court grants this petition, the petitioner will present, upon a filing of a merits brief, clear undisputable facts, which will support Judge Hurd's lack of authority and jurisdiction, voiding his decision and the time limits which the Court of Appeals now relies upon for its dismissal of petitioner's appeal, see *Kenner v. Commissioner of Internal Revenue*, 387 F.2d 689, 691 (7th Cir. 1968) holding, "a judgement obtain by fraud is not a judgement at all"; *Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) holding "But, if it (a court) acts without authority, its judgments and orders are regarded as

nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them.” and *US v Throckmorton* [98 U.S. 61(1878) holding “fraud vitiates everything”. This Court should decide if Judge Hurd lacked jurisdiction citing *Basso v. Utah Power & Light Co.*, 495 F 2d 906, 910 (10th Cir. 1994) holding “Jurisdiction can be challenged at any time.” and “Jurisdiction, once challenged, cannot be assumed and must be decided,”

Petitioner believes this is the dominant argument.

II. The Subsequent New York State Supreme Court Decision Issued by Judge Mary Farley Is Also Null and Voided as It Arose from A Null and Void District Court Decision/Action

Citing *Allcock v. Allcock* 437 N.E. 2d 392 (Ill. App. 3 Dist. 1982) Holding “Res judicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect.”

III. The Second Circuit Court of Appeals Decision Conflicts with Previous U.S. Supreme Court Rulings

The Second Circuit Court of Appeals decided an important federal and constitutional question of law, which conflicts with previous time limit rulings of the U.S. Supreme Court, for fraud upon the Court.

Citing: *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 250 (1944) recognizing that an Officer of the Court, an attorney, committed fraud upon the court 12 years earlier by authoring a publication, which was concealed and

purported to be from a disinterested person, when actually the author was defendants Hartford's attorney, constituting fraud upon the patent office and fraud upon the Circuit Court of Appeals and further asserting that there are no statute of limitations for fraud upon the Court: *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 244 (1944).

The Court of Appeals, in dismissing petitioners appeal, excluded considerations for the doctrine of equitable tolling, for fraud upon the Court, in its dismissal of petitioner's appeal, pursuant to 28 USC 2107 and disregarded the US Supreme Court's decision in *Holmberg v. Armbrecht*, 327 U.S. 392, 397, 66 S.Ct. 582, 585, 90 L.Ed. 743 (1946), in which the Supreme Court stated: "This equitable doctrine [tolling a statute of limitation because of concealment of fraud] is read into every federal statute of limitations.

IV. The Second Circuit Court of Appeals Decision Conflicts with Other Circuit Court Decisions

The Second Circuit Court decision conflicts, in a three-way split, with other Circuit Court decisions addressing fraud upon the Court time limitations, pursuant to F.R.C.P Rule(60)(d)(3).

Citing *US v. Stonehill* 660 F.3d at 415, 443 (9th Cir. 2011) holding: "Rule [60(d) (3)], which governs relief from a judgment or order, provides no time limit on courts' power to set aside judgments based on a finding of fraud on the court".

Citing *Baltia Air Lines, Inc., v. Transaction Mgmt., Inc.*, 98 F.3d 640,642 (D.C. Cir. 1996) holding: “However, Rule 60(d)(3) states that the above rules “do not limit a court's power to set aside a judgment for fraud on the Court, In other words, the one-year statute of limitations does not apply when there was a fraud on the Court”.

With the Circuits clearly split, the Supreme Court’s decision will clarify the issue of time limits addressing fraud upon the Court and give uniformity to these serious issues across the country.

V. The Second Circuit Court Decision Conflicts with State and Federal Standards of Time Limits

The Second Circuit Court decision dismissing petitioner’s appeal as untimely, pursuant to 28 USC 2107, conflicts with New York’s current state time limitations for fraud, pursuant to NY CPLR 213(8), which is six years from the date the cause of action accrued, or two years from the time the plaintiff or the person under whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it and further conflicts with the federal statute of 18 USC 3282(a) which provides a five year statute of limitations.

VI. There is Substantial State and National Public Interest

The petitioner’s entire action was based on the misuse, theft, embezzlement and conversion of state and federally taxpayer funded money, not only addressing overtime income, but much more substantially, addressing retirement income which is based on lost overtime earnings while working, pursuant to NYS Civ. Serv. Law

134 (3). Petitioner lost in excess of \$196,000 in lost overtime while employed and lost \$413,000 in lifetime retirement income, based on lost overtime while working, totalling approximately \$609,000.00. Multiply 609,000.00 times a conservative figure of 5,000 Officers out of 23,000 similarly situated, equals 3.04 billion dollars in just one state agency alone. There is much public concern, state wide and nation wide.

VII. There is Substantial Class Action Considerations

This case, being one of a single Pro se litigate, has implications of substantial public concern, as it should have been a class action suit brought, pursuant to F.R.C.P Rule 23(a), affecting 250 Correctional Officers at the Riverview Facility and/or state wide. It could not be brought as a class action because the petitioner could not retain counsel prior to initially filing suit. Further, he was denied counsel by the District Court twice, denied counsel once in the Circuit Court and he did not have the knowledge, law education, experience, nor the resources to address such an action. All law enforcement agencies and Courts notified, took no actions to address or resolve the corruption.

VIII. Setting Precedence for Government Workers

This case will undoubtedly set precedence for future government theft. It will quell future lawsuits that needlessly clog the nation's Court systems and further, it will dramatically change and hopefully lessen government corruption/theft, not only for

23,000 New York State Corrections Officers, but for 22 million government workers in New York and across the United States, affecting billions of dollars.

IX. Effects of Fraud Upon the Court in Relation to State, Federal and Constitutional Law

The Second Circuit Court of Appeals decided questions of federal and constitutional law that is extremely important nationally, as the infection of fraud upon the Court, by a judge, is a grave miscarriage of justice *US v. Beggerly*, 524 U.S. at 47 (1998), and is aimed at defiling the proper judicial machinery itself, and is justification for this Court to review and intervein *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985).

X. Petitioner Was Denied his Lawful Rights with No Remedies Given to Him

The petitioner was denied due process and equal protections under the laws and a deprivation of his rights, privileges, and immunities secured by the Constitution and laws pursuant to U.S. Const. amend. V, U.S. Const. amend XIV, sec. I and 42 USC 1983.

XI. Power of the Court

This Court has the power to set aside Judge Hurd's decision, pursuant to its inherent powers and F.R.C.P Rule 60(d)(3) and citing *Universal Oil Products Co. v. Root Ref. Co.*, 328 U.S. 575, 580 (1946).

XII. Exhausted Efforts

The petitioner has diligently exhausted all avenues known to him to resolve these issues, with no remedies afforded to him, or the other Officers, and his only avenue left, is the United States Supreme Court.

CONCLUSION

I Randy Bell, respectfully request that this Court issue a writ of certiorari.

Dated: April 15th 2021


Randy Bell, Pro Se Petitioner

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