

IN THE SUPREME COURT
OF THE UNITED STATES

Case No.

20 - 50 40

In re: Antwoyn Terrell Spencer

Petitioner

ON PETITION FOR A WRIT OF MANDAMUS FROM THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

ORIGINAL

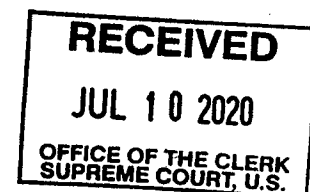
COMES NOW, Petitioner, Antwoyn Terrell Spencer proceeding pro se, and hereby moves this Honorable Court for a writ of mandamus. In support of petitioner's request, petitioner submits the following:

RELIEF SOUGHT

Pursuant to 28 USCS 1651(a), the All Writs Act, petitioner respectfully request a Peremptory Writ of Mandamus directing the Eighth Circuit Court of Appeals to vacate its March 6, 2020 order appointing counsel and instructing supplementary briefing and proceed to Final Judgment of the issues properly presented before the Court in Case No. 19-2685.

ISSUES PRESENTED

1. Petitioner is deprived of Due Process of Law Contrary to Law in violation of the Fifth Amendment and Section 404 of the First Step Act.
2. Because the issues pending before the Eighth Circuit has been ripe for ruling for over 8 months mandamus is warranted to provide fairness in administration and to eliminate unjustifiable delay.
3. The Eighth Circuit's order is strictly to delay adjudication thereby blocking Appellate Review therefore mandamus is necessary for this Court to utilize the jurisdiction of review given to it by law.



FACTS NECESSARY

- 1) On 4/15/19, Petitioner filed a Motion for Imposition of a Reduced Sentence Pursuant to Section 404 of the First Step Act.
 - 2) On 7/26/19, Petitioner's motion was denied by Chief Judge, John R. Tunheim, United States District Court (District of Minnesota).
 - 3) Petitioner filed a timely Notice of Appeal.
 - 4) On 8/27/19, Petitioner filed his brief after a briefing schedule was established by the Eighth Circuit Court of Appeals.
 - 5) On 10/3/19, after receiving an extension of time, the United States filed its response brief.
 - 6) On 10/16/19, Petitioner filed his reply brief.
 - 7) Petitioner later sought a writ of mandamus from this Court.
 - 8) On March 6, 2020, the Eighth Circuit Court of Appeals issued an order appointing counsel and instructing supplementary briefing.
 - 9) Petitioner filed a Petition for Writ of Certiorari which this court denied as a petition before judgment.
 - 10) The instant petition follows.
- (2)

Furthermore,

Absent mandamus relief, petitioner will continue to suffer unlawful governmental restraint. In light of the Constitutional issue lingering in the appellate court, specifically petitioner is deprived of due process of law contrary to law in violation of the Fifth Amendment and Section 404 of the First Step Act, petitioner's confinement is unlawful because he has exceeded his sentence authorized by law.

The Due Process Clause, which prohibits a person being deprived of individual right's of personal liberty against law, and Section 404 of the First Step Act, which mandates a sentence reduction for defendant's sentenced for crack cocaine offenses prior to August 3, 2010, read in conjunction establishes petitioner's entitlement to immediate release.

Because petitioner's continued restraint is unlawful, any further delay results in continued irreparable injury to petitioner.

CONCLUSION

Eight months and counting to reach a decision in this particular case is delayed justice. Justice delayed is justice denied.

Respectfully Submitted,

/s/ ANTWOYN TERRELL SPENCER (Dated: 7/2/20)

CERTIFICATION

I, Antwoyn Terrell Spencer, Petitioner, Pro se, certify under penalty of perjury that this petition is brought in good faith and is true and correct to the best of my understanding and belief. It is being sent in accordance with 28 USCS 1746 as a self notarized form from FCI- Sandstone, a federal prison located in the State of Minnesota.

/s/ ANTWOYN TERRELL SPENCER (Dated: 7/2/20)

(4)

REASONS TO GRANT MANDAMUS RELIEF

Pending before the Eighth Circuit Court of Appeals, ripe for adjudication (fully briefed), is an appeal of an order denying petitioner's motion to impose a reduced sentence pursuant to Section 404 of the First Step Act, denied by Chief Judge John R. Tunheim of the United States District Court for the District of Minnesota. Persistently and without reason, the Eighth Circuit Court of Appeals refuses to proceed to final judgment.

The Supreme Court, in repeated decisions, has established the rule that this Court has power to issue mandamus, in the exercise of its appellate jurisdiction, and that the writ will lie in a proper case to direct a subordinate federal court to decide a pending cause. See *Insurance Company v. Comstock*, 83 U.S. (16 Wall.) 258, 270, 21 L. Ed. 493 (1872).

The power to issue the writ of mandamus to circuit courts is exercised by this court to compel the circuit court to proceed to final judgment in a cause, in order that this court may exercise the jurisdiction of review given by law. *Insurance Company v. Comstock* at 83 U.S. 270. Also see *Will v. United States*, 389 U.S. 90, 95, 19 L. Ed. 2d 305, 88 S. Ct. 269 (1967), quoting *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26, 87 L. Ed. 1185, 63 S. Ct. 938 (1943) (The peremptory writ of mandamus has traditionally been used in federal courts "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or 'to compel it to exercise its authority when it is its duty to do so.'").

Because the appellate court, without reason, refuses to decide petitioner's case, this court being that its necessary must, in aid of its appellate jurisdiction, exercise its power to issue a writ of mandamus to force the court of appeals to render final judgment.

(3)