

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2020

JEAN MCINTOSH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

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

PETITION FOR WRIT OF CERTIORARI

SALVATORE C. ADAMO
Attorney at Law
1866 Leithsville Road, #306
Hellertown, PA 18055
Tel: 215-751-1735
Fax: 908-859-3182
Attorney for Petitioner
Jean McIntosh

QUESTIONS PRESENTED

1. Was the Court of Appeals decision to dismiss the appeal in error?

**PARTIES TO THE PROCEEDING
AND RELATED CASES**

The petitioner is:

Jean McIntosh

The respondent is:

United States of America

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TABLE OF AUTHORITIES

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Statutes

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Other Sources

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OPINIONS BELOW

The United States Court of Appeals for the Third Circuit dismissed Petitioner Jean McIntosh's appeal as untimely. App. 1-4.

STATEMENT OF JURISDICTION

Jean McIntosh seeks review of the July 15, 2020, Order of the United States Court of Appeals for the Third Circuit. Jurisdiction of this Court to review the judgment of the Third Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5 of the United States Constitution, which provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

In this case, the Government invokes its right to enforce the 14-day rule. In *Government of Virgin Islands v. Martinez*, 620 F.3d 321, 327-329 (3d Cir. 2010), the Third Circuit ruled that the 14-day deadline is rigid. The district court advised defendant that she has to file a Notice of Appeal within 14 days of the sentence being docketed. *Rodriguez v. United States*, 395 U.S. 327 (1969). The record indicates that defendant did not file her Notice of Appeal within 14 days of the sentence being docketed.

Defendant respectfully submits that this court should overturn the Third Circuit's decision in *Government of Virgin Islands v. Martinez*, *supra*, and allow the filing of a Notice of Appeal outside the 14-day rule in the interest of justice.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS DECISION TO DISMISS
THE APPEAL IS IN ERROR.

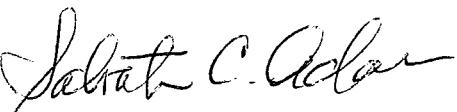
In *Government of Virgin Islands v. Martinez*, 620 F.3d 321, 327-329 (3d Cir. 2010), the Third Circuit ruled that the 14-day rule to file a Notice of Appeal is rigid. The record indicated that the District Court advised Petitioner of the 14-day rule and Petitioner did not file a Notice of Appeal within 14 days.

Petitioner respectfully submits that the rigid rule of *Government of Virgin Islands v. Martinez* should be overturned and that Petitioner be permitted to file a Notice of Appeal outside the 14-day rule in the interest of justice.

CONCLUSION

For these reasons stated in this petition, Jean McIntosh respectfully requests that a writ of certiorari be issued to review the decision below.

Respectfully submitted,


Salvatore C. Adamo

SALVATORE C. ADAMO
Counsel for Petitioner
1866 Leithsville Road, #306
Hellertown, PA 18055
215-751-1735

Dated: July 18, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
BCO-070
No. 19-2688

UNITED STATES OF AMERICA

v.

JEAN MCINTOSH,
a/k/a "SHAY"
a/k/a "JEAN PIERCE"
a/k/a "LARONDA SMITH",
Appellant

(E.D. Pa. No. 2-13-cr-00025-002)

Present: AMBRO, GREENAWAY, JR., and BIBAS, Circuit Judges

1. Motion by Appellee United States to Dismiss Appeal as Untimely
2. Response by Appellant Jean McIntosh in Opposition to Motion to Dismiss Appeal as Untimely
3. Supplemental Response by Appellant Jean McIntosh to Motion to Dismiss Appeal as Untimely.

Respectfully,

Clerk/dwb

ORDER

The defendant has appealed from a judgment entered on August 23, 2018, and amended on September 4, 2018. Her notice of appeal was not, however, filed within fourteen days, as Federal Rule of Appellate Procedure 4(b) requires. That deadline is rigid and must be enforced where, as here, the government objects to an appeal's untimeliness. See Manrique v. United States, 137 S. Ct. 1266, 1271–72 (2017); United States v. Muhammad, 701 F.3d 109, 111 (3d Cir. 2012); Gov't of the V.I. v. Martinez,

affi

620 F.3d 321, 328–29 (3d Cir. 2010). The government's motion to dismiss this appeal is therefore GRANTED.

By the Court,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: July 15, 2020

cc: Richard P. Barrett, Esq.
Faith M. Taylor, Esq.
Salvatore C. Adamo, Esq.



A True Copy:

A handwritten signature in black ink that appears to read "Patricia S. Dodsweid".

Patricia S. Dodsweid, Clerk
Certified Order Issued in Lieu of Mandate

app 2

PATRICIA S. DODSZUWEIT

CLERK



TELPHONE NO.
215-597-2995

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

July 15, 2020

Salvatore C. Adamo, Esq.
1866 Leithsville Road
#306
Hellertown, PA 18055

Richard P. Barrett, Esq.
Faith M. Taylor, Esq.
Office of United States Attorney
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106

RE: USA v. Jean McIntosh
Case Number: 19-2688
District Court Case Number: 2-13-cr-00025-002

ENTRY OF JUDGMENT

Today, **July 15, 2020** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

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Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very Truly Yours,

s/ Patricia S. Dodszuweit

Clerk

By: s/ Desiree,
Case Manager
267-299-4252

cc: Ms. Kate Barkman

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