

No. 20-6002

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
SEP 30 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Curtis Lee Dale — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Curtis Lee Dale
(Your Name)

P.O. Box 10
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Lisbon, OH 44432
(City, State, Zip Code)

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(Phone Number)

QUESTION(S) PRESENTED

Does Petitioner, a pro-se litigant, have a procedural due process right to access the Court and file an initial brief in the appeals court related to the district court's adverse decision in his criminal matter?

Is federal law enforcement required to inventory and/or log personal property (to include cash) and illegal drugs when serving a search warrant?

Is federal law enforcement required to inventory and/or log personal property (to include cash) and illegal drugs when making an arrest?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

May be a case of first impression regarding the Eighth Circuit Court of Appeals local rule prohibiting Petitioner from filing an Initial Brief regarding his property loss issue directly related to his underlying criminal case.

Petitioner contends Gordon v. Hansen, 168 F.3d 1109, 1114 (8th Cir. 1999) is related in that it establishes what must be set forth for a procedural due process violation and to establish that his protected liberty and property interest stake is legitimate.

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Gordon v. Hansen, 168 F.3d 1109, 1114 (8th Cir. 1999) 9.

STATUTES AND RULES

28 U.S.C. § 2072 3, 7, + 8

Federal Rules of Appellate Procedures, 31 (a)(1) 7 + 8

Federal Rules of Criminal Procedures, 41(f)(1)(C) 9

8th Cir. Local Rule 47A(a) 3, 7, + 8

8th Cir. Local Rule - III Procedure and Time Limitations B-1 8

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 30, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 11, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner has a constitutional right to access the Court along with a constitutional right to due process when it comes to being able to file his Initial Brief in the appeals court related to his criminal case.

Petitioner has a constitutional right to due process of law when it comes to law enforcement serving a search warrant. Also, the applicable^① rules of court must be followed. None of these rules were adhered to, or inventory provided when Petitioner's money was seized during the execution of the search warrant in his criminal case.

28 U.S.C. § 2072 (b) has been violated by the 8th Circuit creating the 8th Circuit Rule 47A(a) prohibiting Appellate from briefing their property issues related to his criminal case.

1. Fed. R. Crim. P., Rule 41

STATEMENT OF THE CASE

Allegedly, a probable cause affidavit was provided to Magistrate Judge, Stephen B. Jackson, on June 02, 2016, and a search warrant issued shortly thereafter in United States District Court, District of Iowa, Case No. 3:16-cr-00033-JAJ-SBJ-1.

Upon executing the supposed search warrant on June 03, 2016, Petitioner was arrested and searched by DEA Special Agent Girkis. Agent Girkis removed approximately \$3,000⁰⁰ from Petitioner's Left Front Pocket.

Agent Girkis, nor any other law enforcement, provided Petitioner with a copy of the search warrant or inventory of property confiscated upon serving the search warrants.

To date, even though Petitioner has been extremely diligent in obtaining a copy of the search warrants and inventory documents connected thereto, none have been provided.

Defendant, on November 19, 2018, filed his pro-se motion for return of property (Doc. 149). The Court issued an order and scheduled a hearing to be held March 27, 2019 (Doc. 102). The March 27, 2019 hearing was rescheduled for May 16, 2019 and conducted on that date. Petitioner attended the hearing telephonically. SEE: Appendix D

The district court verbally denied Petitioner's Motion for return of property on May 16, 2019 (Appendix D, Pg. 10), but did not issue a denial order, even though Petitioner repeatedly requested said ^②. SEE: Appendix E.

2. It wasn't until after Petitioner filed his Notice of Appeal that the district court issued the order denying Petitioner's Motion for return of property.

Petitioner, on October 15, 2019, filed his Notice of Appeal with the Eighth Circuit Court of Appeals acknowledging it on October 18, 2019, and issuing Case Number 19-3262 (SEE: Appendix F). In the Eighth Circuit's acknowledgment letter, it stated in pertinent part:

"Your appeal is being referred to the Court. No briefing schedule will be established, and no additional pleadings are required from you. Our office will advise you of any action taken in your case."

SEE: Appendix F, Third Paragraph

Out of confusion and concern, Petitioner on October 30, 2019, mailed via Certified Mail, his letter to the Eighth Circuit questioning aforementioned paragraph of Appendix F. The Eighth Circuit received Petitioner's October 30, 2019 Letter (Appendix G), and responded to said on November 14, 2019, with the letter stating:

"Please be advised your case is currently under review by this Court, and as previously indicated within the case opening letter, 'no briefing schedule will be set'..."

SEE: Appendix H

On February 01, 2020, Petitioner submitted yet another letter via Certified Mail to the Eighth Circuit Court of Appeals inquiring on his appeal and alerting the Court again of his wishes to file an initial brief in the matter. SEE: Appendix I.

On February 12, 2020, the Eighth Circuit Court of Appeals responded to Petitioner's Inquiry (Appendix J) by stating:

"As previously iterated to you, your case is under review by this Court, 'and no briefing schedule has been set in this matter', once a ruling has been received, you will be immediately notified". SEE: Appendix J.

The Eighth Circuit Court of Appeals issued its denial order on April 30, 2020 without any sort of decision. SEE: Appendix A.

Petitioner timely filed his motion for rehearing pointing out that he wasn't allowed to brief his issues to the appellate court. SEE: Appendix K

The Eighth Circuit issued its order denying the rehearing on June 11, 2020. Appendix C.

REASONS FOR GRANTING THE PETITION

A. It is Petitioner's pro-se understanding that the Eighth Circuit Court of Appeals is the only U.S. Court of Appeals that has a Local Rule which abridges on Petitioner's substantive right to fully brief his deprivation of property issue. SEE: 8th Cir. Rule 47A(a)

Petitioner asserts the 8th Circuit Court of Appeals, Local Rule 47A stating "On Motion of Court, the Court on its own motion may summarily dispose of any appeal without notice..." used to deny his appeal related to the loss of his property does violate his substantive due process rights. SEE: Appendix A.

It is obvious the 8th Circuit Local Rule is abridging on Petitioner's substantive rights to file his initial brief related to his seizure of property issue. The 8th Circuit's actions in creating Local Rule 47A(a) are contrary to 28 U.S.C. § 2072(b), which states: "(b) such rules shall not abridge, enlarge, or modify any substantive right. All laws in conflict with such shall not be of no further force or effect after such rules have taken effect."

Federal Rules of Appellate Procedure 31(a)(1) (created by the United States Supreme Court^①) states:

"The Appellant must serve and file a brief within 40 days after the record is filed."

The 8th Circuit Local Rule cannot trump Fed. R. App. P., 31, which authorizes Petitioner to file his initial brief if he so desires to do so. It's glaringly apparent Petitioner wished to timely file his Initial Brief, hence the reason for the inquiry letters to the 8th Circuit Court of Appeals. SEE: Appendix G and I.

1. Pursuant to the authority given in 28 U.S.C. § 2072(a).

The Eighth Circuit's denial of Petitioner's claim using 8th Cir. Rule 47A(a) does not only create a due process violation (Appendix A), it also is in conflict with Fed. R. App. P., 31(a)(1) and their own rules for establishing Procedures and Time Limitations for briefing schedule (SEE: 8th Cir. Local Rule - III Procedures and Time Limitations B.1.). The statute, 28 U.S.C. § 2072(b) makes clear "such rules shall not abridge, enlarge, or modify any substantive right."

The Local Rule violates Petitioner's substantial due process rights because the Local Rule is a substantial departure from accepted professional judgment, practice and/or standards expected. The Eighth Circuit has stated, "to set forth a procedural due process violation, a plaintiff must establish that his protected liberty or property interest at stake." Gordon v. Hansen, 108 F.3d 1109, 1114 (8th Cir. 1999). "Secondly, the plaintiff must prove that he was deprived of such an interest without due process." Id. Petitioner being denied to brief his claim in the appeals court does equate to a due process violation.

Furthermore, because the 8th Circuit is the only Circuit Court of Appeals that has a local rule allowing the Court to summarily dismiss a criminal appeal without affording any briefs to be filed has to be a violation of Petitioner's equal protection rights. If Petitioner's appeal was filed in any other Circuit, he would have been allowed to fully brief his property loss.

B. Petitioner has made countless attempts to obtain a copy of an inventory of property, money, and illegal drugs, seized during the execution of the search warrants executed in his underlying criminal case ⁽²⁾.

"To date", the government, appointed defense counsel, nor the district court have produced copies of "ANY" sort of an inventory, very much in violation of Fed.R.Crim.P., 41(f)(1)(C).

Because there never was an inventory of the money seized from Petitioner on the day the alleged search warrant was executed, during the May 16, 2019 hearing (Appendix D), the government was unable to confirm or deny the actual amount Petitioner claimed, approximately \$3,000⁰⁰.

The district court has an obligation and/or duty to assure law enforcement is following the same rules and law members of the public are required to follow. Because law enforcement did not follow the clear directives of Rule 41(f)(1)(C), law enforcement was able to essentially "steal" over \$2,000⁰⁰ from Petitioner. The district court continually ignoring Petitioner's inculcating attempts seeking a copy of law enforcement's inventory of property, money, and illegal drugs, related to the execution of the search warrants, allowed the district court to rely on third party testimony from law enforcement in denying Petitioner's motion to return his property. SEE: Gordon v. Hansen, 168 F.3d 1109, 1114 (8th Cir. 1999).

2. Petitioner raised this issue pre-trial, during trial, and post-trial in numerous motions as district court's docket summary indicates.

As the district court's record indicates, it took Petitioner almost one year to obtain an appealable order in order to file his Notice of Appeal regarding the loss of property issue. It is as if the district court was doing its best to ignore Petitioner's issue in hopes it would go away.
SEE: Appendix E.

CONCLUSION

By the Circuit Court summarily denying his appeal in his criminal case using 8th Cir. Rule 47A(a) "shocks the conscience" and offends the common sense understanding of fair play and decency.
The petition for a writ of certiorari should be granted.

Respectfully submitted,

Curtis L. Dal

Date: Sept. 28th 2020