

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM WRIGHT, JR.
Petitioner

V.

United States of America
Respondent

On Petition for Writ of mandamus to the
United States Court of Appeals for the Eleventh Circuit

Petition for Rehearing

WILLIAM HAROLD WRIGHT, JR.
United States Penitentiary
P.O. Box 2099
POLLOCK LA, 71467
Pro Se / litigant

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Petition for Rehearing

Petitioner William Wright, JR. respectfully moves the Court for an order (1) Vacating its denial of the petition for Writ of mandamus, enter January 25, 2021 (2) granting the petition (3) Vacating the denial and (4) remanding to the Eleventh Circuit for further proceedings. As grounds for this motion, petitioner states the following:

Jurisdiction

This Court entered an order denying the petition for writ of mandamus on January 25, 2021. As stated in petitioner's Certification pursuant to Rule 44.2 attached to the end of this petition is restricted to addressing intervening circumstances of a controlling effect, specifically the impact of this Court's decision in *Cappede v. United States*, 369 U.S. 438 (1962).

Reason for Granting the Petition

Because this Court's decision in *Cappede v.*

United States overruled the Court of Appeals decision that had denied Petitioner's Motion For in Forma pauperis For writ of mandamus, grant the petition and remand to the Eleventh Circuit For further proceedings.

In *Cappadocia v. United States* this Court decided that a person convicted in Federal District Court of a Federal offense is entitled to appeal as a matter of right and need not petition the Court of Appeals for the exercise of its discretion to allow him to bring the case before it. Under 28 U.S.C. § 1915 For leave to appeal in Forma pauperis.

This is the precise issue that petitioner raised in his petition for writ of mandamus and now in his Petition For Rehearing and the Eleventh Circuit decision to the contrary was in error.

The Central issue in *Coppedge* and in this case are identical. The issue presented and decided in *Coppedge* (and in Wright's petition for a writ of mandamus as well) was whether a defendant is unable to pay the fee for docketing his appeal in the Court of Appeals or to pay the cost of preparing a transcript of the record of the proceedings in the trial court, he cannot perfect his appeal except by applying under 28 U.S.C. § 1915 for leave to appeal in forma pauperis.

Coppedge held:

The summary disposition of petitioner's application was not justified.

If the claim made or the issue sought to be raised by the applicant or such that their substance cannot adequately be ascertained from the face of the application, the Court of Appeals "must" provide the would-be appellant with the assistance of

Counsel and with a transcript of the record sufficient to enable him to attempt to make a showing that the District Court's Certificate of lack of good faith is erroneous. Which this Court has not done in this matter.

The Rule of *Ellis v. United States* is a simple one. An appeal in forma pauperis must be allowed in a Criminal Case "unless the issues raised are so frivolous that the appeal would be dismissed in the case of a nonindigent litigant." 356 U.S. 356 U.S. 674, 356 U.S. 675.

The difficulties may stem in part from a failure to consider the in forma pauperis statute in context of over-all scheme governing Criminal appeals. Our statute and rules make an appeal in a Criminal Case a matter of right. The provision governing appeals in forma pauperis are not to be read as diluting that right by imposing a more stringent test of merit.

Rather, 28 U.S.C. § 1915 provides, at most, a device for advance screening of appeals which, if paid, would upon motion be dismissed before argument as frivolous.

The only justification for such a preliminary screening is the absence of the built-in pecuniary brake upon frivolous appeals which is presented in nonindigent cases. There is no other difference between paid and unpaid appeals. In both the burden of showing that the right to appeal has been abused is on the party making the suggestion.

Finally, the Court "concluded when a Court of Appeals choose to utilize the preliminary screening device permitted by § 1915, difficulties to the kind evident in this case frequently arise. The bare application for leave to appeal in forma pauperis seldom furnish sufficient material for evaluating the weight of the issue involved. For this reason, we have held that

in such cases a Court of Appeals must provide the applicant with the assistance of Counsel and with a record of sufficient completeness to give him full opportunity to show that the appeal is in "good faith" ^{AA} Johnson v. United States, Supra; Farley v. United States, 354 U.S. 521.

In the course of such proceeding, however, experience has shown that there may be a tendency to lose sight of the precise issue before the Court at this point -- whether the appeal is so frivolous that it would be dismissed even if all the fees has been paid. Obviously arguments concerning the weight of the issues raised by an appeal are difficult to disengage from argument dealing with the ultimate merits of these same issues, understandably and commendably, Counsel for indigent defendant often exert every effort to prove the substantial nature of their client's claim -- an exertion of energy which draw a similar effort from

government counsel. The product of these force is a procedure which may bear close superficial resemblance to the appeal itself.

The Eleventh Circuit denied Mr. Wright's Motion based entirely on Ellis V. United States. The Court explained "An appeal in forma pauperis must be allowed in a Criminal Case" unless the issues raised are so frivolous that the appeal would be dismissed in the case of a nonindigent litigant.

The Eleventh Circuit decision did not rely on any ground other than Ellis V. United States.

This Court explained "a Court of Appeals must provide the applicant with the assistance of counsel and with a record of sufficient completeness to give him full opportunity to show that the appeal is in good faith," Johnson V.

United States, *Supra*; Farley v. United States 354 U.S. 521. Petitioner has been denied the opportunity to show that the appeal is in good faith. Which the Court of Appeals was in error denying Petitioner's motion.

The requirement that an appeal in forma pauperis be taken "in good faith" is satisfied when the defendant seeks appellate review of any issue that is not frivolous.

The sole statutory language to guide the District Court in passing upon such an application is that "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."

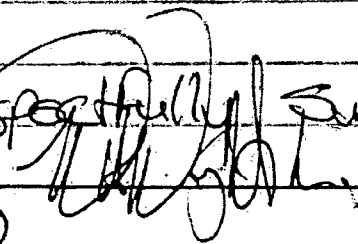
The district Court did not certify in writing petitioner in forma pauperis Motion was frivolous. The Court underlying reasoning for the denial, because the Court local Rule 42, not filing a timely Transcript Information

Conclusion

This Court decision in *Coppedge v. United States* Overruled the Eleventh Circuit decision that denied the petition, *informa pauperis Motion*. The legal arguments presented in the petition for a writ of mandamus in this case and those decided in *Coppedge* are identical. The petitioner therefore respectfully ask this Court to reconsider its order denying petition and instead grant petition, and remand his case to the Eleventh Circuit for further proceedings in light of *Coppedge*. The Supreme Court reasoning in *Coppedge Controls*.

Petitioner asserts he has shown that this writ should be issue and that petitioner has exhausted every avenue and form and that this Court is the last result. Which satisfies the Court.

Petitioner satisfies the three prong test in *Chanay v. United States District Court*, 542 U.S. 367 (2004).

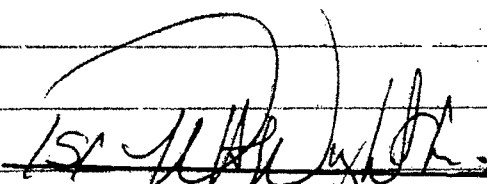
Respectfully Submitted,

(9)

CERTIFICATE OF SERVICE

I Hereby Certify that an original copy of the foregoing has been furnish to the Supreme Court of the United States 11st NE Washington D.C. 2054-0001, and a copy to the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave. NW Washington D.C. 20530-0001, by Regular U.S. Mail this 27th day of April 2021.

CERTIFICATE OF COUNSEL

Petitioner, I Hereby Certify that this petition for rehearing is presented in good faith and not for delay and restricted to the grounds specified in Rule 44.2


WILLIAM HAROLD WRIGHT, JR.