

20-7597
No. _____

In the
Supreme Court of the United States

In re: GARY E. PEEL

ON PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

ORIGINAL PETITION FOR WRIT OF MANDAMUS

Gary E. Peel, *pro se*
9705 (Rear) Fairmont Road
Fairview Heights, IL 62208
Garyepeel@Hotmail.com
618-514-7203 (Cell)

I. QUESTION PRESENTED

Whether a Writ of Mandamus should issue directing the United States Court of Appeals for the Seventh Circuit to issue a dispositive decision upon Gary E. Peel's habeas corpus appeal¹ [Seventh Circuit Case No. 18-2732], when the habeas appeal has remained pending for *more* than two and a half (2-1/2) years.

¹ And related, *UNOPPOSED*, "Motion to Vacate the Convictions on Counts 3 & 4 of Amended judgment in a Criminal Case (Entered August 1, 2011) for Lack of Subject Matter Jurisdiction." [Filed on 7-7-20].

II. PARTIES

This is an original filing in the United States Supreme Court. The parties to this case are Gary E. Peel, and the United States Court of Appeals for the Seventh Circuit.

TABLE OF CONTENTS

Questions Presented	Page...	2
Parties	Page...	3
Table of Contents	Page...	3
Table of Authorities	Page...	3
Official Report of Opinion(s) Below	Page...	4
Jurisdiction	Page...	4
Constitutional, statutory, and rule provisions involved	Page...	4
Statement of the Case	Page...	5
Reasons Relied Upon for Allowance of Writ	Page...	8
Argument	Page...	10
Conclusion and Relief Sought	Page...	11
Appendix	Page...	12

III. TABLE OF AUTHORITIES

United States Constitution, Art. III, Section 2.	Page...	3,4,10
28 U.S.C. §1651	Page...	3,4,10
Supreme Court Rule 20	Page...	3,4,10
Seventh Circuit Court of Appeals "Operating Procedures, Section 9, Presumptive Times for Action"	Page...	3,5,10

Handbook for Appeals to the United States Court of Appeals for the Seventh Circuit, 2019 Edition	Page...	4,5,10
<u>http://www.ca7.uscourts.gov/opinions-and-oral-arguments/opinions-arguments.htm</u>	Page...	9

IV. OFFICIAL REPORT OF OPINION(S) BELOW

The docket sheet of the Seventh Circuit Court of Appeals [hereinafter “Seventh Circuit”] from the related habeas corpus appeal [Seventh Circuit Case No.18-2732] is attached, as Exhibit “1.” Because this is an *original* filing, there are no official reports of opinions in the lower courts with the exception of the Seventh Circuit’s Order to show cause (entered 8-15-18)[Exhibit “2”], and four Orders (entered 12-5-18, 8-29-19, 3-2-20, and 11-16-20, [Exhibits “3,” “4,” “5,” and “6” respectively] responding to Gary E. Peel’s motions for status reports. As of 3-19-21, no Order has been entered in response to Gary E. Peel’s Fifth Motion for Status Report.

V. JURISDICTION

Jurisdiction to grant a Writ of Mandamus is conferred upon the United States Supreme Court, by 28 U.S.C. §1651(a) and Rule 20 of this Court.

VI. CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

- a) United States Constitution, Art. III, Section 2. Page... 3,4,10
- b) 28 U.S. Code § 1651 Page... 3, 4,10
- c) Supreme Court Rule 20 Page... 3,4,10
- d) Seventh Circuit Rules, Operating Procedures, and 8-3-20 “ORDER regarding COVID-19” Page... 4, 5,10

- e) Seventh Circuit "Operating Procedures, Section 9,"² Page... 3, 5,10
- f) Handbook for Appeals to the United States Court of Appeals for the Seventh Circuit, 2019 Edition, Page... 4, 5,10

VII. STATEMENT OF THE CASE

The attached habeas corpus appeal Docket Sheet [Exhibit "1"] from the Seventh Circuit reveals the following:

1. Gary E. Peel's Notice of Appeal and Docketing Statement were filed with the Seventh Circuit on 8-9-18, and assigned Case Number 18-2732..
2. On 8-15-18, the Seventh Circuit entered an Order giving Gary E. Peel 30 days to file a Memorandum explaining why that Court should not summarily affirm the District Court's judgment. [Exhibit "2"]
3. On 8-23-18, Gary E. Peel filed his Response to the Seventh Circuit's Order of 8-15-18, which, *inter alia*, incorporated an opening Brief and Short Appendix.
4. Gary E. Peel's first "Motion for Status Report," was filed on 12-4-18.
 - a) The Seventh Circuit's Order regarding same was entered on 12-5-18 and informed that "...The appeal is proceeding as this court's docket permits." [Exhibit "3"]

² "9. Presumptive times for action

"Expedited preparation and release of opinions and orders is important not only to the litigants ("justice delayed is justice denied") but also to the operation of the court...." The Seventh Circuit's 8-3-20 "ORDER regarding COVID-19" informs that said Court will continue to operate under its Continuity of Operations Plan activated by Chief Judge Diane P. Wood on March 18, 2020 until termination of that Order.

5. On 2-11-19, Gary E. Peel filed a “Motion to Expedite Appeal” (followed by a correction filed on 2-14-19).
 - a. The Seventh Circuit Court has never ruled upon Gary E. Peel’s Motion to Expedited Appeal (as corrected).
6. Gary E. Peel’s “Second Motion for Status Report,” was filed on 8-29-19.
 - a. The Seventh Circuit’s Order regarding same was entered on 8-29-19 and informed, *inter alia*, that “A review of the docket indicates that this appeal is proceeding to a determination of whether this court should summarily affirm the district court’s judgment....” [Exhibit “4”]
7. Gary E. Peel’s “Third Motion for Status Report,” was filed on 2-28-20.
 - a. The Seventh Circuit’s Order regarding same was entered on 3-2-20 and informed that briefing was suspended per 8-15-18 Order, that nothing was due at that time, and that “A review of the docket indicates that this appeal is proceeding to a determination of whether this court should summarily affirm the district court’s judgment....” [Exhibit “5”]
8. Gary E. Peel’s “Fourth Motion for Status Report,” was filed on 8-28-20.
 - a. The Seventh Circuit’s Order regarding same was entered on 11-16-20 and informed that “A review of the docket indicates that this appeal is proceeding to a ruling on appellant’s July 2020 motion to vacate and a determination of whether this court should summarily affirm the district court’s judgment.” [Exhibit “”]

9. On 7-7-20, Gary E. Peel filed a “Motion to Vacate the Convictions on Counts 3 & 4 of Amended judgment in a Criminal Case (Entered August 1, 2011) for Lack of Subject Matter Jurisdiction.”

a. This motion remains pending, despite the passage of eight (8) months.

10. **More than two and a half (2-1/2) years have now passed** since this appeal was opened by the Seventh Circuit [on 8-9-18].

11. **More than two and a half (2-1/2) years have now passed** since the Seventh Circuit entered its show cause Order [on 8-15-18].

12. **More than two and a half (2-1/2) years have now passed** since Gary E. Peel filed his Response to the Seventh Circuit’s Order of 8-15-18.”

13. **More than two and a half (2-1/2) years have now passed** since Gary E. Peel filed his opening brief - as an attachment to his “Response to the Seventh Circuit’s Order of 8-15-18.”

14. The habeas respondent (United States of America) still has not filed any responsive brief as any briefing schedule was apparently suspended per the Seventh Circuit’s Order of 8-15-18. [See Order of 8-29-19].

15. The habeas respondent (United States of America) has filed no objection to Gary E. Peel’s 7-7-20 Motion to Vacate.... for lack of federal court subject matter jurisdiction (as supplemented on 3-2-21).

VIII. REASONS RELIED UPON FOR ALLOWANCE OF WRIT

1. The writ of mandamus will be in aid of this Court's appellate jurisdiction in that a decision by the inferior Seventh Circuit is *the* necessary prerequisite to Supreme Court appellate review via a Writ of Certiorari, or otherwise.
2. Exceptional circumstances warrant the exercise of this Court's discretionary powers because the failure of the Seventh Circuit to render *any* decision on the merits of Gary E. Peel's habeas appeal, or on the lack of federal court subject matter jurisdiction, establishes an intolerable precedent and exposes Gary E. Peel, and others similarly situated, with no other avenue of relief despite the severe impediments to liberty as guaranteed by the U.S. Constitution. The issues relied upon in the present proceeding are of exceptional character and of great public importance in that persons seeking habeas corpus relief are "in custody," subject to rules of probation or parole, restricted in movement and personal freedoms, and are often subject to annual fees or assessments (e.g. annual sex offender registration payments).
3. Adequate relief cannot be obtained in any other court, as there is no other supervisory authority over the Seventh Circuit to whom, or from which, relief can be sought. And despite five (5) motions requesting status reports – over a period of more than two and a half (2-1/2) years – the Seventh Circuit has refused to render any opinion on the merits of Gary E. Peel's habeas appeal or partial subject matter jurisdictional challenge. Public criticism of the justice system is not diminished by unreasonable delays in judicial

proceedings. According to the Seventh Circuit's government website, <http://www.ca7.uscourts.gov/opinions-and-oral-arguments/opinions-arguments.htm>, as of 7:00 p.m. on 3-18-21 the Seventh Circuit has rendered at least 888 opinions, dissents, rulings, or corrected opinions in cases that were filed AFTER Gary E. Peel's case [18-2732] was docketed, to wit:

Appellate Case Numbers 18-2735 through 18-2799 = 20

Appellate Case Numbers 18-2803 through 18-2899 = 29

Appellate Case Numbers 18-2905 through 18-2993 = 16

Appellate Case Numbers 18-3000 through 18-3737 = 166

Appellate Case Numbers 19-1004 through 19-3534 = 537

Appellate Case Numbers 20- 1006 through 20-8005 = 120

Total = 888

4. While a substantive ruling on Gary E. Peel's habeas corpus appeal may compel the Seventh Circuit Court of Appeals to revisit and question the validity of its own initial analyses in the underlying criminal appeal, that uncomfortable task does not warrant a delay in processing Gary E. Peel's habeas corpus appeal.
5. It's unfair for Gary E. Peel, [age 77 on 3-15-21], to go to the grave without the opportunity to address his habeas corpus appeal and to actively participate in any related oral argument and/or evidentiary proceeding should that opportunity become available.

IX. ARGUMENT

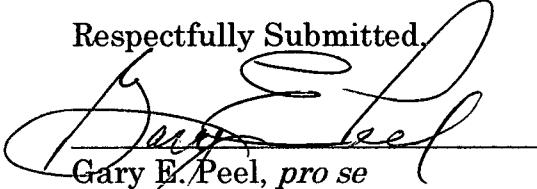
This Court is authorized by United States Constitution, Art. III, Section 2; 28 U.S.C. §1651(a) and Supreme Court Rule 20 [both referenced above] to entertain and issue writs of mandamus when necessary or appropriate to aid its jurisdiction. In the absence of an appealable order from an inferior court, this Court is deprived of its appellate jurisdiction as to both law and fact. Here, despite multiple efforts by Gary E. Peel – over more than two and a half years - the Seventh Circuit has failed to render any decision on the merits of the pending habeas appeal. Also, the federal court subject matter jurisdictional challenge as to Counts 3 & 4 of the Indictment) has not been addressed in over eight (8) months. The Seventh Circuit's claim, for example in its 12-5-18 Order that “....[t]he appeal is proceeding as this court's docket permits,” is belied by the fact that it has bypassed Gary E. Peel's habeas case on at least 888 occasions to make rulings *on later filed cases* (as detailed above). Considering the above, the refusal of the Seventh Circuit to render any decision on the merits during this prolonged period of time, - and in spite of its own “Operating Procedures, Section 9, Presumptive Times for Action;” in spite of its own “Rules, Operating Procedures, and 8-3-20 ‘ORDER regarding COVID-19;’” and in spite of its own Handbook for Appeals to the United States Court of Appeals for the Seventh Circuit, 2019 Edition, providing for expedited appeals at the section designated “XI Expedited Appeals;” - warrants the issuance of a Writ of Mandamus.

X. CONCLUSION and RELIEF SOUGHT

Because there is no adequate remedy by appeal, certiorari, or otherwise, this Court should issue a Writ of Mandamus directed to the Seventh Circuit, and compelling the Seventh Circuit to address – within a time certain –

- a) its show cause Order entered on 8-15-18,
- b) Gary E. Peel's [7-7-20] "Motion to Vacate the Convictions on Counts 3 & 4 of Amended Judgment in a Criminal Case (Entered August 1, 2011) for Lack of Subject Matter Jurisdiction,"
- c) the merits of Gary E. Peel's habeas corpus appeal, and
- d) such other and further mandamus relief as this Court deems just and appropriate (including an assessment of taxable costs.)

Respectfully Submitted,


Gary E. Peel, *pro se*
9705 (Rear) Fairmont Road
Fairview Heights, IL 62208
Garyepeel@Hotmail.com
618-514-7203 (Cell)