

No. 20-7657

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

OCT 28 2020

OFFICE OF THE CLERK
SUPREME COURT U.S.

David Erike MacLloyd — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

David Erike MacLloyd
(Your Name)

FCI McKean, PO Box 8000
(Address)

Bradford, PA 16701
(City, State, Zip Code)

(Phone Number)

UNITED STATES SUPREME COURT
FOR THE SIXTH CIRCUIT

DAVID MACLOYD,
Pro Se Petitioner,

V.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI

QUESTION PRESENTED

I. Should a Writ of Certiorari Issue because the Sixth Circuit failed to apply the Pro Se litigant standard to a Pro Se Defendant's pleadings?

Background

In May 2019, I filed a motion for a reduction of a sentence pursuant to the 18 USC 3582. The District Court denied that motion on December 5, 2019. The District Court mailed the order to me via ordinary mail on December 5, 2019. On January 24th, 2020, I mailed a letter to the District Court asking was the Order denying my sentence reduction appealable. The District Court received my letter, which was postmarked January 30th, 2020, on February 7th, 2020. In turn, the District Court treated the letter as a Notice of Appeal and filed it. On February 10, 2020, the Sixth Circuit mailed me a letter instructing me to place a signature on my Notice of Appeal and return by February 24th, 2020. On February 25th, 2020, the Sixth Circuit mailed me a briefing schedule with my first brief due April 8th, 2020. I submitted my brief approximately one month before my due date. On May 7th, 2020, the government filed a Motion for Extension. This was

four days before the government's brief was due. On May 28th, 2020, the government filed a Motion to Dismiss Appeal as Untimely. The Government cited Rule 4b of FRAP which states that a Court is required to dismiss late appeals if the Government raises the issue of timeliness. The Government states that my appeal was due no later than December 19th. The Sixth Circuit sided with the Government.

Reasons for Granting the Writ

This District Court mailed my Order via ordinary mail on December 5th, 2019. Because of the "mailbox rule" my fourteen days to file a Notice of Appeal did not start until December 6th, 2019. To start my Notice of Appeal clock while my order is still being processed by the Postal Service seriously undermines my "due process rights" that are afforded to me by the 5th Amendment. Time to file a Notice of Appeal is almost expired by the time I receive the Order.

Under Rule 3 of the FRAP the District Court had the discretion to treat my letter as the "functional equivalent" of a Notice of Appeal. Also, because Rule 4 (b) is not jurisdictional it gives Courts discretion to waive filing deadlines for defendants. It is the government's position that under FRAP Rule 4(b) that once they raise untimeliness my appeal should automatically be dismissed. *US v. Gaytan-Garza*, 652 F.3d 680, 681 6th Cir. 2011. This may be the case for a seasoned attorney, but not for a Pro Se litigant acting in good faith. For a Pro Se litigant all documents and pleadings should be construed liberally as to do substantial justice. In *Gaytan-Garza* the defendant attempted to file a Notice of Appeal "four years" later, and this is not the case here. The District Court liberally construed my letter as a Notice of Appeal. FRCP Rule 8(f) and *Estelle*, 429 US at 106, 97 S. Ct. 285 50 LED 2d 251

When a Pro Se defendant filed a notice of appeal after the fourteen-day deadline of Rule 4(b), but before the additional thirty-day period for requesting extensions as expired, the district court should treat the notice as a request for extension of the filing deadline. U.S. V. Montoya, 335 F. 3d 73, 76 (2nd Cir. 2003). As a Pro Se litigant this gives me a minimum of forty-five days from when I first received the order to file an appeal. I placed my letter in the prison mailbox on January 24th, 2020 and it was not post marked until January 30th, 2020. From there it took "another" seven days just for the Court to receive my letter. It took a total of "thirteen" days for the Court to receive my letter. I believe that the District Court is well aware of the hurdles that ProSe litigants encounter from day to day and that is why my letter was treated as a Notice of Appeal. My documents should be held to the standard of a Pro Se litigant and not that of a "seasoned" attorney with "E-FILE".

Lastly, the Sixth Circuit has adopted the rule that the government as up until their first brief to raise untimeliness. Under FRAP the government had 30 days to respond to the filing of my notice of appeal. They did not do this until almost "four months" later. Please excuse me as I am unable to locate in the FRAP that the government has until it's first brief to raise untimeliness. Even if I were able to locate the "first brief rule" technically the first brief was the "Motion for Extension". I would also like to add that in the government's "Motion to Dismiss" they did not say my appeal was meritless. A Writ of Certiorari should issue because my appeal has merit, my letter was properly construed as a Notice of Appeal, and I was well within the Forty-Five day filing deadline that is afforded to Pro Se litigants. In the name of justice I pray that this High Court preserve my "Constitutional" rights.

Respectfully submitted,

David MacLloyd

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David Mac Lloyd

Date: 2-1-21