

20-8338

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

MAR 23 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Mark Woods, prose — PETITIONER
(Your Name)

vs.

U.S. District Court — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mark Woods 72075066
(Your Name)

USP Lee Penitentiary P.O. Box 305
(Address)

Jonesville, Va 24263
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the United States Court of Appeals for the Third Circuit abused its discretion in denying Petitioner's Writ of Procedendo ad Judicium or Mandamus or Otherwise.
2. Whether Petitioner is entitled to the relief sought, as the lower appellate Court only have jurisdiction of Appeals from all final decisions of the district courts of the United States. 28 USC Sec. 1291.

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:

THE UNITED STATES

RELATED CASES

Pursuant to Supreme Court Rule 14(d)(b)(iii), Petitioner submit the following cases which are directly related to this Petition:

U.S. v. Khalil Smith Criminal No. 15-180

Mark Woods v. Sean Marler Case No. 16-v-5766

Warden of Federal Detention

Center of Philadelphia

Mark Woods v. Warden, Philadelphia FDC Civil No. 17-1073

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IN THE
SUPREME COURT OF THE UNITED STATES

Mark Woods, pro se
Petitioner

VS
UNITED STATES DISTRICT COURT
Respondent

ON PETITION FOR WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

The petitioner, Mark Woods, respectfully pray that a writ of certiorari issue to review the judgment and order of the United States Court of Appeals for the Third Circuit entered in the above-entitled proceedings on March 22, 2021.

OPION BELOW

The Third Circuit entered its judgment/order without an opinion, and is attached hereto as Appendix A.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 22, 2021.

☐ 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: _____, 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. § 1254(1). And
28 U.S.C. Section 1651

☐ 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

Amendment V of the United States Constitution provides in part:

"No person shall be... deprived of life, liberty, or property, without due process of law..."

28 U.S.C. Section 1651 provides:

(a) The Supreme Court and all courts established by Act of Congress may issue all Writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. Section 2241 provides in part:

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district Courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(c) The writ of habeas corpus shall not extend to a prisoner unless -

1) He is in custody under or by color of authority of the United States or is committed for trial before some court thereof; or

3) He is in custody in violation of the Constitution or laws or treaties of the United States...

STATEMENT OF THE CASE

Petitioner was indicted on April 28, 2015 of seventeen-counts along with several others for alleged violations of Title 18 USC, sections 1951, 2119, 924(C) and 2, and Title 21 U.S.C. Section 841(a)(1).

On May 26, 2016, a federal grand jury returned a thirty-count superseding indictment charging Petitioner, and an addition of four others, with alleged violations of Title 18 U.S.C. sections 1201(a)(1), 1951, 2119, 924(C) and 2, and Title 21, U.S.C. Section 841(a)(1).

On or about October 27-30, 2016, petitioner filed a Habeas Corpus under Title 28 U.S.C. Section 2241.

On November 1, 2016, the district Court granted petitioner's motion to proceed pro se after denying his motion to replace, then trial Counsel, Mr. Brendan T. McGuigan.

On December 29, 2016, a hearing was held on petitioner's Habeas Corpus under Title 28 U.S.C. Section 2241, which was summarily denied and an order was entered.

On January 4, 2017, petitioner filed a notice of Appeal to the United States Courts of Appeals for The Third Circuit. The next day, he filed the same petition in the district Court on the correct form for 2241 Petitions.

On January 9, 2017, the Court denied that petition, too. (See D.E.s 605, 606, 618 and 619).

On January 12, 2017, the United States Court of Appeals for The Third Circuit docketed his appeal.

In the meantime, the unlawful criminal trial proceeded on January 31, 2017, which resulted in petitioner's conviction on April 17, 2017.

On May 4, 2018, the United States Courts of Appeals for The Third Circuit entered a judgment denying petitioner's appeal.

On or about August 5, 2018, petitioner appealed that judgment to this court, but was denied for filing after the due date (of no fault of his own).

On December 19, 2018, petitioner filed a "Motion to Vacate Judgment of Conviction and to Dismiss for want of Jurisdiction as the trial court was automatically 'Divested' of Jurisdiction upon filing a notice of appeal." (See Motion attached as Appendix B)

On or about January 2, 2019, petitioner filed a motion in the district court to remove standby counsel, Mr. Brendan T. Mc Guigan, and an order was entered on January 15, 2019 denying such motion on the grounds of "Lack of Jurisdiction pursuant to Federal Rules of Appellate Procedure 4(b)." (See D.E.s, 1649, 1650 and 1655). However, that court has refused to enter a "final decision" or "Order" on the motion at issue (emphasis).

On or about September 16, 2019, petitioner filed a "Motion to Compel" in the United States Court of Appeals for The Third Circuit, which a response was due on September 26, 2019, however, no response was filed.

On October 1, 2019, Mark A. Berman was appointed to represent petitioner on his direct appeal, in which his "Motion to Compel" was referred to him "for whatever action counsel deemed appropriate." Clearly, this was after the response due date.

On April 10, 2020 (Item No. 50), petitioner filed a "Motion for summary vacating," which no action was taken because such motion was filed "at the time" petitioner was represented by counsel. An order was entered on April 14, 2020.

On September 8, 2020 (Dkt No. 63), petitioner's motion to proceed pro se on direct appeal was granted by the United States Court of Appeals for The Third Circuit.

On October 16, 2020, petitioner filed a "Motion for Action on Motion for Summary Vacating."

On October 30, 2020, the United States Court of Appeals for the Third Circuit denied such motion stating that "An Order was already entered on April 14, 2020, taking no action on the Motion for Summary vacating as appellant was represented at the time it was filed." (See D.E. No. 66)

On January 25, 2021, petitioner filed a Writ of Procedendo Ad Judicium or Mandamus or otherwise appropriate remedy, in the United States Court of Appeals for the Third Circuit.

In the Third Circuit Court of Appeals, petitioner asked two questions:

1. Whether the issuing of a writ of procedendo ad judicium or Mandamus or otherwise an appropriate remedy for the relief that is sought.

2. Whether Petitioner is entitled to the relief sought, as this Court only have jurisdiction of Appeals from all final decisions of the district Courts of the United States, 28 U.S.C. sec. 1291.

On March 22, 2021, the United States Court of Appeals for The Third Circuit denied said petition. (See Appendix A)

Reasons For Granting The Writ

1. Petitioner has exhausted all adequate means to attain a "final decision" or "order" on his "Motion to Vacate..." from the District Court.

The "writ of Procedendo Ad Judicium was the earliest remedy for the refusal or neglect of justice on the part of the Courts." See *In re Press Printers and Publishers Inc.*, 12 Fed 660 (3d Cir. 1926)

In addition, "the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr v. U.S. District Court*, 426 US 394, 402 (1976) (quoting *Will v. U.S.*, 389 US 90, 95 (1967)). This Court has consistently observed that the writ "has traditionally been used in the federal court only 'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or compel it to exercise its authority when it is its duty to do so.'" *Id.* *Will*, at 95 (quoting *Roche v. Evaporated Milk Assn.*, 319 US 21, 26 (1943)). "The power to issue [the Writ] is discretionary and it is sparingly exercised." See *Parr v. US*, 351 US 513, 520 (1956).

Ever "since Congress first organized the Federal Judiciary in 1789, only final decisions of District Courts have been appealable, subject to limit exceptions." *Defense Distributed v. AG No. 2*, 2020 US App Lexis 26964 (3d Cir.) (quoting *Abbot v. Perez*, 138 S.Ct 2305 (2018)).

The purpose of this doctrine is to prevent the burden, expense, and delay that would otherwise accompany a rule that authorized piecemeal review of various orders during an ongoing case.

In 3 W. Blackstone Commentaries on the law of England 74 (1769)-The Oxford edition by Wilfrid Prest (2016) "Of Private Wrongs," he said:

"I shall just mention two species of injuries, which will properly fall now within our immediate Consideration; and which are, either when Justice is delayed by an inferior Court that has proper Cognizance of the Cause; or, when such inferior Court takes upon itself to examine a cause and decide the merits without any legal authority.

1.) The first of these injuries, refusal or neglect of justice, is remedied either by writ of procedendo ad Judicium or of mandamus. A writ of procedendo ad judicium, issues out of the Court of Chancery, where judges of any Court do delay the Parties; for that they will not give judgment, either on the one side or the other, when they ought so to do. In this case a writ of procedendo ad judicium shall be awarded, Commanding them in the King's name to proceed to judgment, for that (if erroneous) may be set aside in the course of appeal, or by writ of error or false judgment..."

He then goes to mention the "Writ of Mandamus," and says in part: "This Writ is grounded on suggestion, by the oath of the party injured, of his own right, and the denial of justice below..."

2.) The other injury, which is that of encroachment of jurisdiction, or calling one *coram non iudice*, to answer in a Court that has no legal Cognizance of the Cause, is also a grievance, for which the Common law has provided a remedy by the Writ of prohibition...."

Here, this cause is consistent with the injuries enunciated in W. Blackstone Commentaries, as petitioner has contended, consistently, that the District Court took "upon itself to examine a cause," that is, petitioner's Criminal trial, "and decide the merits without any legal authority." *Ibid.* As such Court was "divested" of jurisdiction over such trial proceedings. This Court's precedent and the Third Circuit's precedent is clear. See *Griggs v. Provident Consumer Discount Co.*, 459 US 56, 58 (1982); *Venen v. Sweet*, 758 F.2d 117, 121 (3d Cir. 1985) (quoting *Griggs*, *supra*); *Bush v. City of Philadelphia*, 765 Fed. Appx 843 (3d Cir. 2019); *U.S. v. Santerelli*, 929 F.3d 106 (3d Cir. 2019) (quoting *Griggs*, *supra*).

It is acknowledged that "earlier proceedings are presumptively correct and the petitioner bears the burden to show otherwise." See *U.S. v. Stoneman*, 870 F.2d 102, 106 (3d Cir. 1998) (quoting *U.S. v. Cariola*, 323 F.2d 180, 184 (3d Cir. 1963) ("the error must go to the trial Court's jurisdiction, thus rendering the trial itself invalid"). The record establishes that such requirement has been met.

This proposition is further reinforced by the Third Circuit Court of Appeals recent decision, among others, in *Santerelli*, *Supra* at 106:

"While an appeal of the district Court's denial of the initial Habeas Corpus is pending, however, that Court lacks jurisdiction... because 'It]The filing of a notice of appeal is an event of jurisdictional significance - it confers jurisdiction on the Court of appeals and divests the district Court of its control over those aspects of the case involved in the appeal. *Griggs v. Provident Consumer Disc. Co.*, 459 US 56, 58 (1982). Therefore, the pendency of the appeal divests the district Court of jurisdiction..."

"The district Court understood this basic principle," *Vener v. Sweet*, *Supra* at 121, but chose to ignore it.

For the above reasons, a Writ of *Procedendo ad Judicium* "shall be awarded," according to Justice W. Blackstone; or

2. Alternatively, A Writ of *Mandamus* because petitioner's right to the writ is "Clear and indisputable."

This Court has made clear that among the various conditions for the issuance of such writ is "that the party seeking issuance of the writ have no other adequate means to attain the relief he desires, and that he satisfy 'the burden of showing that [his] right to issuance of the writ is clear and indisputable.'" *Will* at 96

As for the first requirement, Petitioner sought a "final decision" or "order," as a matter of first instance, from the District Court. Then he filed a "Motion to Compel" in the United States Court of Appeals for the Third Circuit, which a response was due on September 26, 2019, but no response was filed. Then he filed a Writ of *Procedendo Ad Judicium* and/or *Mandamus* or otherwise in the United States Court of Appeals for the Third Circuit, which was denied on March 22, 2021; despite such procedural journey, petitioner still has not attained the relief he desires, that is, a "final decision" or "Order" on his motion. Second, Fed. R. App. P. 4(b) provides that- "if a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedures, the notice of appeal from a judgment of conviction must be within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion: (i) for judgment of acquittal under Rule 29; (ii) for a new trial under Rule 33...; (iii) for arrest of judgment under Rule 34..."

Petitioner's present motion does not possess the exact label of the above motions, however, this Court has observed that "the reports are filled with cases in which litigants filed postjudgment motions to "reconsider" to "Vacate..." The lower Courts have almost without exception treated these as Rule 59 motions, regardless of their label." *Griggs*, *id* at 459 US 68 n.7 (J. Marshall dissenting) (quoting *inter alia*, *Sonnerblick-Goldman Corp v. Nowalk*, 420 F.2d 858-59 (1970)).

In Nowalk, the defendant filed a "Motion to vacate the trial Court's order and to enter an Order for rehearing and reconsideration." That Court said: "His motion asked that the judgment be vacated and that the Court grant rehearing and reconsideration. As such, it was a motion to alter or amend a judgment under Rule 59(e), Fed. R. Civ. P."

Here, petitioner filed a "Motion to vacate Judgment of Conviction and to Dismiss for want of Jurisdiction as the trial Court was automatically 'Divested' of Jurisdiction upon filing a notice of appeal," which comports with Fed. R. Cr. P. 12(b)(2) "Motions That May Be Made at Any Time. A motion that the Court lacks jurisdiction may be made at any time while the case is pending."

If a "motion for judgment of acquittal under Criminal Rule 29... is the equivalent of a Fed. R. Civ. P. 50(b) motion for judgment notwithstanding the verdict..." Advisory Committee notes 1993 Amendment Note to subdivision (b); then, a fortiori, petitioner's motion is equivalent to a "Motion that may be filed at any time... while the case is pending;" or otherwise.

The Federal Rules of Criminal and Appellate Procedures gives petitioner a right to file such motion. By refusing to rule on such "motion to vacate," the district court in the present cause has failed to exercise its judicial power, which in turn has the potential to inhibit the lower appellate court's exercise of

appellate jurisdiction, as well as this Court's appellate jurisdiction. "It necessarily follows that the district Court had a duty to dispose of that motion, a duty inherent in a judicial system which guarantees a conditional right to an appeal. The district court failed to perform this duty..." See In re Sharon Steel Corporation, 918 F.2d 434, 437 (3d Cir. 1990) (granting Writ of Mandamus on Rule 59(e) motion).

As in the context of a Rule 59(e) motion, inter alia, because the district court refused to enter a final order on the present motion at issue, there is no final order from which to appeal. Fed. R. App. P. 4 Note to subdivision (b) provides that "a notice of appeal filed before the disposition of any of the posttrial tolling motions becomes effective upon disposition of the motions... the amendment is consistent with the proposed amendment of Rule 4(a)(4)." And Subdivision (a)(4) states that: "The proposed amendment would make it clear that after the filing of the specified post trial motions, a notice of appeal should await disposition of the motion...; it would be undesirable to proceed with the appeal while the district Court has before it a motion the granting of which would vacate or alter the judgment appealed from. See e.g., Keith v. Newcourt, 530 F.2d 826 (8th Cir. 1976)..."

Petitioner's "Motion to vacate..." comports with such description.

In addition to the Federal Rules of Procedure affording petitioner a right to file such motion, as a matter of due process under the 5th amend. of the U.S. Constitution, "Some delays are so intolerable as to constitute a denial of due process or a failure by the district Court to exercise jurisdiction, may be appropriate under those circumstances." See *Madden v. Myers*, 102 F.3d 74, 79 (3d Cir. 1996)

Under the circumstances, the petitioner is entitled to relief. The All Writs Act expressly provides that courts of appeal "may issue all writs necessary or appropriate in aid of their respective jurisdictions..." 28 U.S.C. sec. 1651(a). The district Court's dereliction of duty to dispose of petitioner's "Motion to Vacate..." for almost three years, to date, has the potential to frustrate the lower appellate Court's ability to review the district Court's disposition of this issue, and this Court's ability to exercise its appellate jurisdiction over the cause, too. Therefore, the grant of a writ ordering the district to resolve petitioner's "Motion to Vacate..." is necessary in aid of the lower appellate Court's jurisdiction and this Court's jurisdiction. See *Will v. Calvert Fire Ins. Co.*, 437 US 665, 661-62 (1978) ("There can be no doubt that, where a district Court persistently and without reason refuses to adjudicate a case properly before it, the court of appeals may issue the writ 'in order that [it] may exercise the jurisdiction of review by law.'") (Citation omitted).

In McClellan v. Carland, 217 US 268 (1910), this Court quoted, *inter alia*, Knickerbocker Ins. Co. v. Comstock, 16 Wall, 258, 270....:

"In that case the Court said: 'repeated decisions of this Court have established the rule that this Court has power to issue a mandamus, in the exercise of its appellate jurisdiction, and that the writ will lie in a proper case to direct a subordinate Federal Court to decide a pending cause.'" *Id.* at 217 US 280.

To be clear, petitioner is not seeking for this Court to "undertake to say what the decision shall be, but that there shall be one." *Id.* Significantly, a favorable "final decision" or "order" by the District Court will cause petitioner's present direct appeal to become moot, thus saving judicial resources and economy. On the other hand, an unfavorable decision by the District Court will trigger 28 U.S.C. Sections 1291 and 1254, and give both Courts some insight on the District Court's legal reasoning in this cause. In addition, it will aid in the correct standard of review to be invoked.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

All rights reserved

a.k.a. Mark Woods

Date: 6/1/2021