

In the Supreme Court of the United States

James E. Rose Jr.
Appellant

No: _____
USCA1 No: 19-2039

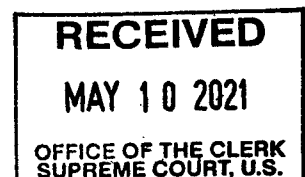
V

Chris Sununu,
Governor of New Hampshire, et al.
Appellants

**Motion Directing Clerk of the United States Supreme Court to File
Writ of Certiorari Out-Of-Time**

Statement of Facts

1. On the 8th day of June, 2021, the 1st Circuit Court of Appeals entered an order approving the Report and Recommendation of the Magistrate Judge. See **Appendices** of the Petition for Writ of Certiorari.
2. Appellant timely filed for reconsideration, and on the 21st day of August, 2021, the 1st Circuit Court of Appeals denied the Appellant Reconsideration. This Order specifically references “requests for reconsideration”; whereas, the Order of June 8, 2020 makes no such reference. See **Appendices** of the Petition for Writ of Certiorari.
3. On the 17th day of January, 2021, Appellant’s Petition for Writ of Certiorari was mailed to the United States Supreme Court Clerk’s Office.



4. On the 2nd day of February, 2021, the Clerk of this Honorable Court sent a letter to the Appellant stating that Appellant's Petition was rejected because it was out of time. The Clerk stated that the time for Filing was based upon the June 8, 2020 Order and not the August 21, 2020 Order. See **Exhibit "A"** attached hereto.

5. On the 10th day of February, 2021, Appellant directed his process server, Marcus A. Henry, Jr., to send a letter to the Clerk of this Honorable Court detailing the mailing dates in the above-captioned matter. See **Exhibit "B"** attached hereto.

6. On the 9th day of April, 2021, the Clerk of this Honorable Court responded to Mr. Henry's letter, directing the Appellant to file a Motion to file the Petition out-of-time. See **Exhibit "C"** attached hereto.

Mailing Delays

7. The 1st Circuit Court of Appeals entered their original Order on the 8th day June, 2020; however, due to mailing delays the Appellant did not receive that order until much later than that date. Upon receiving the June 8, 2020 Order, the Appellant immediately mailed his Motion for Reconsideration and Addendum thereto.

8. Similarly, the 1st Circuit Court of Appeals Order dated the 21st day of August, 2020, did not arrive to the Appellant's doorstep until much later than that date.

9. Since the Orders did not come with tracking numbers, the Appellant is unable to produce the dates upon which these orders arrived.

10. The delay in mailing in the year 2020 is a well-known issue, and everyone around the United States was affected by these delays due to the COVID-19 Pandemic. These delays in mailing caused a great deal of confusion with the Appellant, and the Appellant should not be held responsible for the inadequacies in the U.S. Postal Service.

Argument and Applicable Law

11. The time for filing runs from the date of denial of rehearing. **Rule 13** states in pertinent part

"[I]f a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment."

12. Appellant contends that the Order which denies the Appellant reconsideration was entered on August 21, 2020. The June 8, 2020 Order merely affirms the District Court's Order, stating in pertinent part *"The judgment of the district court is affirmed."*

13. As this is the case, the time for filing began to run on the 21st day of August, 2020. Since the Appellant sent his Petition for Writ of Certiorari on the 17th day of January, 2021, it appears the Appellant's pleading is timely filed within the 150-day limit.

Wherefore, the Appellant prays that this Honorable Court enter an Order directing the Clerk of Court to File Appellant's Petition for Writ of Certiorari which is enclosed and set the matter for disposition on the

merits. The Appellant has a 9th grade education, he is dyslexic, an American with a Disability, and it sure would be nice if the Supreme Court gave consideration to a Person of Color who is less educated.

With this in mind, the Appellant places his faith in God and in this Honorable Court.

April 27, 2021

Respectfully Submitted,

S/

James E. Rose, Jr.

United States Court of Appeals For the First Circuit

No. 19-2039

JAMES EDWARD ROSE, JR.,

Plaintiff - Appellant,

v.

CHRIS SUNUNU, Governor, State of New Hampshire; HILLSBOROUGH COUNTY;
TONI PAPPAS, Chair, Board of Commissioners, Hillsborough County, New Hampshire;
JOYCE CRAIG, Mayor, City of Manchester; DONNA RUTH JACKSON;
BEVERLY KIDDER; ALAN KIDDER; ALL NAMED AND UNNAMED COUNTY, CITY,
MEDICAL PERSONNEL, DOCTORS, NURSES AND COUNSELORS,

Defendants - Appellees.

Before

Howard, Chief Judge,
Thompson and Barron, Circuit Judges.

ORDER OF COURT

Entered: August 21, 2020

Appellant's motion dated July 19, 2020, and the addendum thereto are construed as a second motion to recall the mandate and are denied. Judgment has entered, and the court already has considered and denied prior requests for reconsideration and recall of the mandate. This matter now has been fully adjudicated, and further filings of this nature will not be availing and are strongly discouraged.

By the Court:

Maria R. Hamilton, Clerk

cc:

James Edward Rose Jr.
Gordon J. MacDonald
Luke Sobota

United States Court of Appeals For the First Circuit

No. 19-2039

JAMES EDWARD ROSE, JR.,

Plaintiff - Appellant,

v.

CHRIS SUNUNU, Governor, State of New Hampshire; HILLSBOROUGH COUNTY; TONI PAPPAS, Chair, Board of Commissioners, Hillsborough County, New Hampshire; JOYCE CRAIG, Mayor, City of Manchester; DONNA RUTH JACKSON; BEVERLY KIDDER; ALAN KIDDER; ALL NAMED AND UNNAMED COUNTY, CITY, MEDICAL PERSONNEL, DOCTORS, NURSES AND COUNSELORS,

Defendants - Appellees.

Before

Howard, Chief Judge,
Thompson and Barron, Circuit Judges.

ORDER OF COURT

Entered: July 21, 2020

The petition to recall the mandate to permit consideration of the motion for reconsideration is denied. Even assuming appellant could satisfy the demanding standard for recall of mandate, or even had the motion been received prior to entry of mandate, the arguments set out in the motion for reconsideration would not compel the court to revisit its judgment of affirmance.

By the Court:

Maria R. Hamilton, Clerk

cc:

James Edward Rose Jr.
Gordon J. MacDonald
Luke Sobota

United States Court of Appeals For the First Circuit

No. 19-2039

JAMES EDWARD ROSE, JR.,

Plaintiff - Appellant,

v.

CHRIS SUNUNU, Governor, State of New Hampshire; HILLSBOROUGH COUNTY;
TONI PAPPAS, Chair, Board of Commissioners, Hillsborough County, New Hampshire;
JOYCE CRAIG, Mayor, City of Manchester; DONNA RUTH JACKSON;
BEVERLY KIDDER; ALAN KIDDER; ALL NAMED AND UNNAMED COUNTY, CITY,
MEDICAL PERSONNEL, DOCTORS, NURSES AND COUNSELORS,

Defendants - Appellees.

Before

Howard, Chief Judge,
Thompson and Barron, Circuit Judges.

JUDGMENT

Entered: June 8, 2020

Plaintiff-appellant James Edward Rose, Jr., appeals from the dismissal, following screening under 28 U.S.C. §1915(e)(2), of his pro se complaint alleging due process and other related constitutional claims stemming from custody and adoption proceedings commenced in 1974 in the State of New Hampshire.

As an initial matter, Rose's "Motion for Clarification for the Arguments Raised in this Appeal and Brief Addendum" is construed as a motion to file supplemental brief. The motion is granted, and we have considered fully the content of the filing. After our own careful consideration of the record and Rose's submissions on appeal, we affirm the judgment of the district court on the ground that the claims presented are barred by the applicable statute of limitations. See Gorelik v. Costin, 605 F.3d 118, 121 (1st Cir. 2010)(Section 1983 cases borrow the limitations period applied in personal injury cases in the state where the claim arose); N.H. Rev. Stat. § 508:4 (three-year statute of limitations applies to personal injury claims).

We disagree with Rose's assertion that the "discovery rule" shields his due process and other related constitutional claims from operation of the applicable three-year statute of limitations. The allegations of the complaint make clear that the core facts underlying Rose's claim(s)--that his son was adopted following a proceeding from which he was excluded--were known to Rose many years ago, and certainly were known to Rose more than three years prior to his initiation of the underlying action. See Gorelik, 605 F.3d at 122 ("Section 1983 claims generally accrue when the plaintiff knows, or has reason to know of the injury on which the action is based, and a plaintiff is deemed to know or have reason to know at the time of the act itself and not at the point that the harmful consequences are felt.") (internal quotations omitted). We are not convinced by Rose's contention that, before filing suit, he needed to access sealed adoption records in order to understand the precise details of the adoption proceedings or to uncover the specific identities of the individuals involved. Also unconvincing is Rose's claim of error as to the procedural specifics of the district court's handling of the matter. In light of the foregoing, we need not address the district court's alternative grounds for dismissal, including application of the Rooker-Feldman doctrine.

The judgment of the district court is affirmed. See Local Rule 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

James Edward Rose Jr.
Gordon J. MacDonald

**Additional material
from this filing is
available in the
Clerk's Office.**