

No. 21-1203

In The
Supreme Court of the United States

IN RE ROGER ROWE,

FILED
APR 21 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Petitioner

On Petition For Writ Of Mandamus & Prohibition
To The United States District Court
For The Eastern District Of New York
Decision & Order Filed On 12/17/21
Hon. William F. Kuntz, II U.S.D.J.
Case 2:19-CV-05770-WFK-VMS

PETITION FOR REHEARING

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RECEIVED
APR 25 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Whether Petitioner is entitled to a direct review of a District Courts order, decision and judgment when the Court of Appeals mandates the transfer of the appeal to this Court.
2. Whether the Second Circuit's error in timely transferring Petitioners appeal, deprived him of due process, equal treatment under the law and a right to a review?

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PETITION FOR REHEARING

Petitioner, respectfully moves this Court for an order (1) vacating its denial of the petition for writ of mandamus and/or prohibition, entered on April 4, 2022, and (2) granting the petition. The grounds for rehearing are stated below.

PROCEDURAL BACKGROUND

On January 14, 2022 Petitioner filed a notice of appeal with the District Court seeking a review of its order and judgment via direct appeal (see SCR 18). On February 23, 2022 Petitioner filed his petition which was docketed on March 2, 2022 (see Docket # 21-1203). On March 8, 2022 the Government filed a waiver of its rights to respond to the petition. On April 1, 2022 the Court of Appeals issued an order transferring the appeal to this Court. On April 1, 2022 the Court of Appeals issued a subsequent order mandating the appeal be transferred to this Court.

REASONS FOR GRANTING REHEARING

Pursuant to Supreme Court Rule (SCR) 44.2 “Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds

shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented".

In this instance Petitioner should be granted rehearing for intervening circumstances and substantial grounds not previously presented to this Court. The Constitutional right of judicial review is probably the most essential of our rights as citizens. The Judiciary Act of 1789 gave the Supreme Court original jurisdiction to issue writs of mandamus (legal orders compelling government officials to act in accordance with the law). Not only is Petitioner entitled to mandamus and/or prohibition review, Petitioner is entitled to an appellate review of a post judgment order in which the District Court adhered to its original determination and the Court of Appeals lacks jurisdiction due to prior mandate.

INTERVENING CIRCUMSTANCES

The Court of Appeals failure to inform this Court of Petitioners right to an appeal and transfer the necessary files deprived Petitioner of his right to an appeal and or obtain a proper review of the record. Although not intentional, the error outlined in the Court of Appeals April 1, 2022 order affected or would reasonably be expected to affect this Courts April 4, 2022 order. The absence of the Court of Appeals mandate and the circuits record undermined this Courts ability to render a proper decision and comply with Article VI of the

United States Constitution which binds this Court and all other courts to its prior rulings ("The Law of The Land").

In *United States v. Ohio Power Co.*, 353 U.S. 98 (1957) this Court stated "We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules. This policy finds expression in the manner in which we have exercised our power over our own judgments, both in civil and criminal cases. *Clark v. Manufacturers Trust Co.*, 337 U.S. 953; *Goldbaum v. United States*, 347 U.S. 1007; *Banks v. United States*, 347 U.S. 1007; *McFee v. United States*, 347 U.S. 1007; *Remmer v. United States*, 348 U.S. 904; *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413; *Boudoin v. Lykes Bros. S.S. Co.*, 350 U.S. 811; *Cahill v. New York, N.H. & H. R. Co.*, 351 U.S. 183; *Achilli v. United States*, 352 U.S. 1023".

Like in *Ohio Power Co.*, this Court has power over its own judgment and in the interest of finality of litigation must yield where the interests of justice would make unfair the strict application of our rules. However, in this instance the Court is within the rule which provides all the more reason to vacate its own judgment and adhere to its prior decision which is now the law of the land.

SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED

The Second Circuit's decisions, orders and judgment must be vacated in order to prevent the deprivation of Petitioner rights under the color of law (see 42 U.S.C. § 1983). Despite Petitioners challenges to these deprivations and his request to provide exculpatory evidence, the respondents refused to provide discovery or delay judgment until discovery was completed. In lieu of following the normal judicial process the Second Circuits departed from the normal process and rendered a determination contrary to the law of the land.

This Court has consistently determined that the ten-year extension period begins when the letter 1153 is delivered see *United States v. Galletti*, 541 U.S. 114 (2004). Moreover, In *United States v. Weintraub*, 613 F.2d 612, 620-21 (6th Cir. 1979) the Court determined that the collection extension period is triggered when a timely proceeding in court is commenced, triggering the collection extension period and when on levy of action reducing a lien to judgment was taken, the time to collection is not extended. As such any determination contrary to this Courts prior determination is subject to this Courts appellate jurisdiction.

CONCLUSION

For the forgoing reasons, and the reasons stated in the petition for writ of mandamus and/or prohibition, Petitioner prays that this Court grant rehearing of the

order of denial dated April 4, 2022, vacate that order, grant Petitioners writ for mandamus and/or prohibition, and review the decisions, orders and judgments from below.

Date 21st day of April, 2022.

Respectfully submitted,

ROGER ROWE
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CERTIFICATE OF PETITIONER

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

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APPENDIX A
No. 21-1203
Supreme Court of the United States

United States of America

Plaintiff

- v -

Roger Rowe

Defendant

Decision & Order Filed on Dec. 17, 2021
Hon. William F. Kuntz, II U.S.D.J.
Case 2: 19-CV-05770-WFK-VMS

Supreme Court Order
April 4, 2022

1a

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 4, 2022

Mr. Roger Rowe
20 Spruce Rd.
Amityville, NY 11701

Re: In Re Roger Rowe
No. 21-1203

Dear Mr. Rowe:

The Court today entered the following order in the above-entitled case:

The petition for a writ of mandamus and/or prohibition is denied.

Sincerely,

/s/ Scott S. Harris
Scott S. Harris, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

United States of America

Plaintiff-Appellee

- v -

Roger Rowe

Defendant-Appellant

Order Filed on Oct. 14, 2021
Circuit Judges Amalya L. Kearse,
Gerard E. Lynch, Denny Chin
Docket No. 20-3409

Order Transferring Appeal
April 1, 2022

From: ecf_bounces@nyed.uscourts.gov
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 2: 19-cv-05770-WFK-VMS
United States of America v. Rowe USCA
Order
Date: Friday, April 1, 2022 4:33:59 PM

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

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Case Name: United States of America v. Rowe

Case Number: 2:19-cv-05770-WFK-VMS

Filer:

WARNING: CASE CLOSED on 09/17/2020

Document Number: 54

Docket Text:

ORDER of USCA as to [52] Notice of Appeal filed by Roger Rowe. The above-captioned appeal was opened in error after the Defendant-Appellant filed a Notice of Appeal requesting a direct appeal to the Supreme Court of the United States. Upon consideration thereof, IT IS HEREBY ORDERED that the appeal is transferred to the United States Supreme Court. Certified Copy Issued: 4/1/2022. USCA# 22-111. (Jones, Vasean)

2:19-cv-05770-WFK-VMS Notice has been electronically mailed to:

Thelma A Lizama thelma.a.lizama@usdoj.gov,
northern.taxcivil@usdoj.gov

Roger Rowe rroweny@gmail.com

2:19-cv-05770-WFK-VMS Notice will not be electronically mailed to:

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Document description: Main Document

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Electronic document Stamp:

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D4f72fea]]

APPENDIX C
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

United States of America
Plaintiff-Appellee

- v -

Roger Rowe
Defendant-Appellant

Order Filed on June. 28, 2021
Circuit Judges Amalya L. Kearse,
Gerard E. Lynch, Denny Chin
Docket No. 20-3409

Order transferring Appeal Mandate
April 1, 2022

From: ecf_bounces@nyed.uscourts.gov
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 2: 19-cv-05770-WFK-VMS
United States of America v. Rowe USCA
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Eastern District of New York

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Case Number: 2:19-cv-05770-WFK-VMS

Filer:

WARNING: CASE CLOSED on 09/17/2020

Document Number: 55

Docket Text:

MANDATE of USCA as to [52] Notice of Appeal filed by Roger Rowe. The above-captioned appeal was opened in error after the Defendant-Appellant filed a Notice of Appeal requesting a direct appeal to the Supreme Court of the United States. Upon consideration thereof, IT IS HEREBY ORDERED that the appeal is transferred to the United States Supreme Court. Issued as Mandate: 4/1/2022. USCA# 22-111. (Jones, Vasean)

2:19-cv-05770-WFK-VMS Notice has been electronically mailed to:

Thelma A Lizama thelma.a.lizama@usdoj.gov,
northern.taxcivil@usdoj.gov

Roger Rowe rroweny@gmail.com

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dfda71f4821c887ad3831aa61f91b527ca6fede72d75041
9f13ac5]]

APPENDIX D
No. 21-1203
Supreme Court of the United States

United States of America
Plaintiff-Appellee

- v -

Roger Rowe
Defendant-Appellant

Government Waiver
Docket No. 21-1203

March 8, 2022

6a

IN THE SUPREME COURT
OF THE UNITED STATES

IN RE ROWE, ROGER
Petitioner

vs.

No: 21-1203

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

March 08, 2022

cc:

ROGER ROWE
20 SPRUCE RD.
AMITYVILLE, NY 11701
