21-5320

No.

ORIGINAL

IN THE

Supreme Court of the United States

TRENTON JOHN TOMPKINS - *Petitioner*

v.

LAUREN LEIGH HACKETT- *Respondent*

On Petition For Writ of Certiorari To
United States Court of Appeals for the Third Circuit

Petition for Writ of Certiorari

Trenton Tompkins, QA1283
SCI Fayette
50 Overlook Drive, LaBelle PA 15450
After 9/20/21:
510 Main Street, Prospect PA 16052
(724) 290 2571

Questions Presented

A pro se prisoner was unable to submit his appellant's brief and appendix (copies of which are provided in this petition's appendix) because the Court of Appeals first granted summary affirmation (pursuant to 3d Cir. I.O.P. 10.6) based on a "clear error".

1. Would holding that petitioner's 14th amendment right to due process necesssitated the court to consider his "Motion to Correct Error" prevent such occurences in the future and reduce the amount of "demonstratively wrong" decisions allowed to stand?

2. Where a local rule (3d Cir. L.A.R. 27.6) authorizes judicial review of actions taken by the clerk, did failing to consider a motion filed pursuant to that rule violate petitioner's 14th amendment right to due process?

3. Did the Court of Appeals for the Third Circuit violate petitioner's right to due process by simply overlooking the submitted "Questions Presented for Review"?

Overlook Drive,

no was assigned

PA 16137).

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Appendix

Table of Cited Authorities

Cases

Statues and Rules

IN THE

Supreme Court of the United States

Petition For Writ Of Certiorari

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Decisions Below

The opinion of the United States Court of Appeals for the Third Circuit appears at Appendix A and is "Not Precedential" and unpublished.

The orders relevant to this petition, entered in the United States Court of Appeals for the Third Circuit, appear at Appendix B.

(note: The opinion of the United States District Court for the Western District of Pennsylvania is contained in the appellant's appendix found at Appendix K)

Jurisdiction

The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1). A timely petition for rehearing was denied on May 12th, 2021 by the United States Court of Appeals for the Third Circuit and appears at Appendix C.

Constitutional and Statutory Provisions Involved

This case involves Amendment XIV to the United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves summary action pursuant to I.O.P. 10.6 of the Court of Appeals for the Third Circuit, which provides:

> I.O.P. 10.6 Summary Action
>
> The court, *sua sponte* or upon motion by a party, may take summary action affirming, reversing, vacating, modifying, setting aside, or remanding the judgment, decree, or order appealed from; granting or denying a petition for review; or granting or refusing enforcement of the order of an administrative agency if it clearly appears that no substantial question is presented or that subsequent precedent or a change in circumstances warrants such action. Before taking summary action, the court will afford the parties an opportunity to submit argument in support of or in opposition to such disposition if briefs on the merits have not already been filed. Summary action may be taken only by unanimous vote of the panel. If a motion panel determines that summary action is not appropriate at that time, it may, in lieu of denial, refer the matter to the merits panel without decision and without prejudice.

And, the constitutionality of a deviation from 3d Cir. L.A.R. 27.6, which provides:

> 27.6 Motions Decided by the Clerk
>
> The clerk may entertain and dispose of any motion that can ordinarily be disposed of by a single judge of this court under the provisions of FRAP 27(c) and 3d Cir. L.A.R. 27.5, provided the subject of the motion is ministerial, relates to the preparation or printing of the appendix and briefs on appeal, or relates to calendar control. If application is promptly made, the action of the clerk may be reviewed in the first instance by a single judge or by a panel of the court.

Statement of the Case

This petition presents a clear example of a meritorious federal appeal that did not survive the summary determination screening process, despite everything being filed correctly.

The legal basis for relief is straightforward: petitioner had the right to de novo review of a matter of law (*Boyle v. U.S.*, 200 F.3d 1369, 1371 (Fed Cir. 2000)). Before he could submit his appellant's brief, the Court of Appeals for the Third Circuit granted summary affirmation pursuant to I.O.P. 10.6, citing the standard in *Murray v. Bledsoe*, 650 F.3d 246, 247 (3rd Cir. 2011)(per curiam) which allows summarily affirmation of a district court's decision "on any basis supported by the record" only if the appeal fails to present a substantial question. Petitioner had presented substantial questions multiple times, such as in the "Application to Proceed In Forma Pauperis" (Appendix E) he filed with his notice of appeal which declares under penalty of perjury "This appeal is taken in good faith and I intend to raise the following issues: - whether the court errored as a matter of law when granting dismissal - whether ..." (*continued* at Appendix E). Questions were provided again in an "Argument in Support of Appeal" (Appendix F) which was submitted for summary determination purposes in response to a clerk's order (*see* I.O.P. 10.6 on page 2, "Before taking summary action, the court will afford parties an opportunity to submit argument"). But neither that document nor the questions presented within it are referred to in the court's opinion (Appendix A). The panel judges appear to have never read, and were likely not given a copy of, the document. Also absent from the court's opinion is that the same "Questions to be Presented" were also provided as a standard part of the ifp application addendum form used by The Court of Appeals for the Third Circuit.

This case is representative of those ifp prisoner cases where sloppy handling and cursory treatment create new mistakes at the appellate level that are virtually impossible to address; but it is special in that it offers a judicial solution which solves this issue. That is because after the court issued its opinion, petitioner submitted a short "Motion to Correct Error" (Appendix G), in accordance with Fed.R.App.P. 27, which asked the court to correct the "clear error of fact" on which its opinion was based. The motion was never considered, but had it have been, the court could have fixed its objectively erroneous ruling.

Rather than forward the motion for consideration, clerk Patricia S. Dodszuweit entered an order which "took no action" on the motion. Her order provided no explanation as to why, except to say: "Except for the appellant's right to seek rehearing, the Court's judgment concluded this appeal" (Appendix B). But a Petition for Rehearing is fundamentally different than a motion to correct a clear error. "Summary action may be taken only by unanimous vote of the panel." (*quoting* I.O.P. 10.6, page 2) If that vote was affected by an undisputable mistake, the solution is to correct the mistake and again require a unanimous vote. To do otherwise is prejudicial and arbitrary, as it holds a mistake made by the court against the appealing party in a manner dictated by luck.

Petitioner filed both a motion to correct error, and a "Motion/Application for Review of Clerk's Action Pursuant to 3d Cir. L.A.R. 27.6" (Appendix I). By failing to grant either, petitioner was never able to receive de novo review of the original legal issue. Therefore, The Supreme Court is asked to find that petitioner's fourteenth amendment right was violated, as due process required that his argument on appeal be heard in a "meaningful manner", *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 892, 47 L.Ed.2d 18 (1976).

This petition is submitted with an appendix containing both motions, each providing specific grounds for relief, as required by Fed.R.App.P. 27. It also includes the appellant's brief and appendix he had prepared to submit in a manner congruent with the Federal Rules of Appellate Procedure.

Basis for Federal Jurisdiction

This case raises a question of interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. 1131.

Reasons for Granting the Writ

A. The Supervisory Power of the Supreme Court is Needed

The Supreme Court must provide standards and guidance for the Courts of Appeal. This case both asks The Supreme Court to establish the duty of appellate courts to correct "clear errors" they create, and illustrates why doing so is necessary. The Court of Appeals was given multiple chances to address its mistake. It never did. And since the original Motion to Correct Error was disposed of by the clerk, no feedback was provided to the circuit judges themselves. Worse, the judges were left believing the whole appeal was little more than a nuisance filed by a prisoner lacking a legal argument.

The purpose of the Supreme Court is not to provide quality control by correcting simple errors. Addressing errors in the Court of Appeal where they are made is more certain and more efficient than relying on petitions for writs of certiorari, and doing so will improve the accuracy and credibility of the courts writ large, by reducing the number of "demonstratively wrong" decisions that survive the appeals process.

B. Importance of the Question Presented

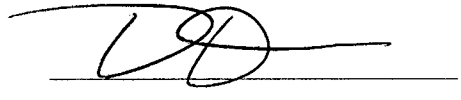
The end result of the three-stage judicial process cannot be: "the Appeals Court probably forgot to read a document"; not if courts are to maintain their credibility with the public. District Courts can make mistakes without impugning the judicial process, because the Courts of Appeal provide a forum for redress. The same cannot be said for the Courts of Appeal themselves. Any appellate-level mistake left uncorrected undermines the integrity of the entire American court system. We live in an age where an opinion can be "not precedential" and unpublished and still

be shared to millions on platforms like YouTube and Redit. Unless the narrative is to become "the appeals process is broken and here is proof" the Supreme Court must intervene.

The petitioner filed everything correctly, yet his appellant's brief and appendix were never even seen by a judge. There was no "appearance of justice". What occurred was not merely a " bad ruling", it was a fundamental failure of the appellate process, where the Court of Appeals itself messed up one of the several extra steps it imposes on incarcerated ifp filers. Mistakes will happen, but not having a method by which to correct them is mistake of a higher order, a flaw in the design of the system itself.

I urge that this petition be granted writ, as the solution it offers will likely never again be presented.

Respectfully submitted this 1st day of August 2021



Trenton Tompkins, *pro se petitioner*