

22-5227

In Re: Krieg

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

JUL 29 2022

OFFICE OF THE CLERK
U.S. DISTRICT COURT
S.D. N.Y.

Eric Krieg - Petitioner

v.

United States of America - Respondant

ON A PETITION FOR A WRIT OF MANDAMUS

7th CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF MANDAMUS

Eric Krieg

BOP #: 17161-027

Berlin Federal Correctional Institution

P.O. Box 9000

Berlin, NH 03570

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QUESTIONS PRESENTED

- 1) Should the Supreme Court grant a Writ of Mandamus to compel the 7th Circuit Court of Appeals to rule on petitioner's Writ of Mandamus (itself to compel the U.S. District Court for the Northern District of Indiana to rule on petitioner's Motion for Summary Judgement)?
- 2) Is one year an "undue delay" in ruling on a Writ of Mandamus?

LIST OF PARTIES

- 1) United States of America

RELATED CASES

Tables of Authorities Cited

CASES

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1) <u>Allied Chemical Corp. v. Daiflon, Inc.</u> , 66 L.Ed. 2d 193, 101 S. Ct. 188 (1980)	7, 9
2) <u>In Re: Special March 1974 Grand Jury, etc.</u> , 541 F.2d 166 (7th Cir. 1976)	9
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OTHER

IN THE SUPREME COURT
OF THE UNITED STATES
PETITION FOR WRIT OF MANDAMUS

Petitioner Eric Krieg, pro se, in forma pauperis, who currently has a motion to vacate sentence pursuant to 28 U.S.C. § 2255 before the U.S. District Court for the Northern District of Indiana in case no. 2:17-cr-146-JUB that has been pending since July 29, 2019, and who is seeking a writ of mandamus before the 7th Circuit Court of appeals in case no. 21-2339 seeking to compel the District of Northern Indiana to rule on his motion for summary judgement and which was filed on July 2021, seeks a writ of mandamus issue to compel:

- 1) The 7th Circuit Court of Appeals to rule on petitioner's writ of mandamus (Appendix A).
- 2) The writ of mandamus before the 7th Circuit Court of Appeals seeks to compel the U.S. District Court for the District of Northern Indiana to rule on petitioner's motion for summary judgement (Appendix B).
- 3) The petitioner's motion for summary judgement seeks summary judgement in petitioner's motion to vacate (Appx C).

JURISDICTION

This court has jurisdiction to issue the writ of mandamus under 28 U.S.C. § 1651(a) and Supreme Court Rule 20.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1) Writs of Habeas Corpus are intended to afford a speedy remedy to those illegally restrained. Johnson v. Rogers, 967 F.2d 1283, 1284 (10th Cir. 1990).

2) Pursuant to 28 U.S.C. § 1657(a) (2000), the district Court must give priority to habeas corpus cases over other civil cases.

3) Petitioners are entitled to calendar priority in Courts of appeals over ordinary civil appeals, and administrative reviews and enforcement proceedings; Federal Rules of Appellate Procedure Rule 21(b)(6).

4) The writ must aid the Court's appellate jurisdiction; Supreme Court Rule 20.1

5) Exceptional Circumstances warrant the exercise of the Court's discretionary powers; Supreme Court Rule 20.1

6) Adequate Relief cannot be obtained in any other form or from any other court; Supreme Court Rule 20.1

7) Petition for writ of mandamus issue are subject to the same format rules as writ of certiorari (i.e. Rule 14), S.C.R. 2002

7) Petitions for writ of mandamus have mandatory contents:

- a) Name and office or function of every person against whom relief is sought; S.C.R. 20.1
- b) Show with particularity why the relief sought is not available in any other court; S.C.R. 20.1
- c) Attach a copy of the judgement or order to which writ is sought; S.C.R. 20.3
- d) Append any other document essential to understanding the petition. S.C.R. 20.3

8) Petition for writ of mandamus must be served on all parties to proceeding. Service must be accomplished according to the requirements of Supreme Court Rule 29. A proof of service complying with the requirements of S.C.R. 29 must accompany the filing of the petition; S.C.R. 20.3

9)

STATEMENT OF THE CASE

1) Eric Krieg is an inmate with the Federal Bureau of Prisons confined to the Berlin Federal Correctional Institute in Berlin, New Hampshire, serving a 29 year sentence in case no. 2:17-CR-146-JVB out of the U.S. District Court for the Northern District of Indiana.

2) The petitioner was sentenced on April 4th, 2019.

3) The petitioner filed a timely motion to vacate

his sentence pursuant to 28 U.S.C. § 2255 on July 29th, 2019.

3) The government answered the petitioner's § 2255 on May 1st, 2020.

4) The petitioner responded to the government's answer on June 1st, 2020.

5) The petitioner amended his § 2255 on April 20th 2020. The court ordered the government to ^{answer} ~~answer~~ and it did so on June 23rd, 2020.

6) The petitioner filed a motion for summary judgement with the district court on June 4th, 2021.

The district court has never accepted nor rejected this motion, nor ordered the government to respond.

It appears that the district court has abandoned the petitioner's case.

7) The petitioner filed a petition for writ of mandamus on July 19th, 2021, to the 7th Circuit Court of Appeals, which was docketed as 21-2339. As of the date of this filing, the 7th Circuit has not ruled on this writ. See Appendix F and G.

Reasons for Granting the Petition

1) Consider this narrative from In Re: Hicks, 118 Fed App'x. 778 (4th Cir., 2005) at *1, which bears directly on Petitioner's claims:

"Hicks has petitioned this court for a writ of mandamus, complaining of the district court's delay in acting on this case. ... The government offers no explanation for the delay in the case. Writs of habeas corpus are intended to afford a speedy remedy to those illegally restrained. Johnson v. Rogers, 967 F.2d 1283, 1284 (10th Circuit 1990). Pursuant to 28 U.S.C. §1657(c) (2000), the district court must give priority to habeas corpus cases over other civil cases.

As we conclude that Hicks has established a clear and indisputable right to expeditious treatment of his §2255 motion, and no other adequate remedy is available, we find that he has shown entitlement to the writ of mandamus. See Allied Chemical Corp v. Daihlon, Inc., 66 L.Ed.2d 193, 101 S.Ct. 188 (1980). Therefore, the writ of man -

clamus is granted. The district court is ordered to action within 60 days..."

2) Like in In Re Hicks, this petitioner has petitioned the 7th Circuit Court of Appeals for a writ of mandamus, complaining of the U.S. District Court's for the Northern District of Indiana's delay in acting on case no. 2:17-CR-146-JVB, specifically a motion for summary judgement in relation to a motion to vacate sentence pursuant to 28 U.S.C. §2255. Thus, like Hicks, the petitioner has shown an indisputable right to expeditious treatment of his motion for summary judgement (as well as his §2255 petition, which is fully argued and appears to be abandoned by the District Court), and no other remedy is available.

3) The petitioner has no alternate remedies. His ineffective assistance of counsel claims can only be addressed via 28 U.S.C. §2255 motion. It appears that the district court has abandoned his case, as it was filed over three years ago. It appears that the 7th Circuit Court of Appeals has abandoned the petitioners writ of mandamus as well, which was filed over a year ago. Thus, the petitioner has a clear and indisputable right to expeditious treatment of his motion because there are no alternate remedies available.

to him. See Allied, 1d.; In Re: Special March 1974 Grand Jury, etc., 541 F.2d 166 (7th Cir. 1976).

4) Petitioners are entitled to calendar priority in courts of appeals over ordinary civil appeals, administrative reviews and enforcement proceedings; F.R. Civ. P. Rule 21(b)(6). That has not occurred in this situation.

5) This current writ aids this Court's appellate jurisdiction as this Court is supervisory over the appeals courts.

6) Exceptional Circumstances warrant the exercise of this Court's discretionary powers, as one year is clearly an undue delay in an Appeals Court's decision regarding a writ of mandamus, and three years is clearly an undue delay in a district Court's decision regarding a §2255 motion.

7) This petition properly follows the format rules of S.Ct. Rule 14.

8) This petition properly presents the mandatory content required of writ of mandamus:

a) Name and office of every person against whom relief is sought.

b) The petitioner has shown with particularity why relief is not available in any other court.

c) There is no judgement or order to which this writ

is sought. Rather, this writ is sought in order to compel the 7th Circuit Court of Appeals to rule on Petitioner's writ of mandamus with that court. Thus, no judgement nor order of any court is attached.

d) The petitioner has appended his writ of mandamus with the 7th Circuit Court of Appeals, his motion for Summary judgement and §2255 motion with the U.S. District Court for Northern Indiana, which are essential to understanding the petition.

8) This petition for writ of mandamus has been served on the Assistant U.S. Attorney for the Northern District of Indiana. Copies were also sent to the U.S. District Court Judge Von Bokkelen and the 7th Circuit Court of Appeals. Proof of service pursuant to S. Ct. Rule 29 are attached to the petition. See Appendix E.

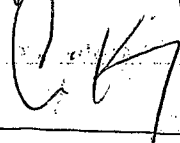
9) Application to proceed in forma pauperis is attached. See Appendix D.

CONCLUSION

Therefore, because the petitioner has shown an indisputable right to expeditious treatment of his motion, that he has no other remedy available, that it aid's in this Court's appellate jurisdiction, that these are extraordinary circumstances, that this

Petition follows the proper format and presents the mandatory content, the Petitioner respectfully requests that this Petition for writ of mandamus be granted.

Respectfully Submitted,



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July 20th, 2022