

22-6186

ORIGINAL

SUPREME COURT OF THE UNITED STATES
October Term, _____

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2
3 MICHAEL JACE,
4 Petitioner,

5 v

6 THE STATE OF CALIFORNIA,
7 Respondent,

ON PETITION FOR WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. _____

FILED

NOV 17 2022

OFFICE OF THE CLERK
SUPREME COURT U.S.

9 PETITION FOR WRIT OF CERTIORARI

10 Michael Jace (Pro se)
C.S.P. 3b03-109 BA3055
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QUESTIONS PRESENTED

2 1. Is Rule 60(b) available as a means of providing relief to
3 an individual who missed the appellate deadlines in Rule 4 (a)
4 (1) and Rule 4(a)(5)?
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8 2. Can the State rebut the "look through" presumption without having
9 fully adjudicated the case?

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LIST OF PARTIES TO ACTION

1. Ron Davis, Warden
2. The State of California

CORPORATE DISCLOSURE

There is no parent or publicly held company owning 10% or more of the corporation stock.

LIST OF ALL PROCEEDINGS

United States District Court
Central District of California

No. 2:19-cv-03020-ODW-KES

Michael Jace, Petitioner v Ron Davis, Warden, Respondent

DKT #51 August 05, 2020

DKT #56 April 22, 2021

DKT #589 August 05, 2021

DKT #65 February 15 2022

BKT #68 M 13 2020

United States Court of Appeals
For The Ninth Circuit

No. #21-55915

September 15, 2021

December 14, 2021

January 05, 2022

No. #22-55241

May 11, 2022

June 24 2022

LIST OF ALL PROCEEDINGS
(Cont.)

United States District Court
Eastern District of California

No. 1:22-CV-00419-AWI@CDB

OPINIONS AND ORDERS BELOW

United States Court of Appeals
For The Ninth Circuit

Order September 15, 2021 No. 21-55915 App. F

Order December 14, 2021 No. 21-55915 App. C

Mandate January 05, 2022 No. 21-55915 App. H

Order May 11, 2022 No. 22-55241 App. I

Order June 24, 2022 No. 22-55241 App. I

United States District Court
Eastern District of California

Order Reassignment October 06, 2022 App. C

GROUND FOR JURISDICTION

Petitioner, Michael Jace, respectfully prays that a writ of certiorari issue to review the judgment of U.S. Court of Appeals for the Ninth Circuit, which affirmed the judgment of U.S.D.C. Central District of California to deny petitioner a Certificate of Appealability and deny relief that is permitted under Rule 60.

The Court of Appeal entered its judgment on June 24, 2022.

A copy of the decision appears at App. I

GROUND FOR JURISDICTION
(Cont.)

An extension of time to file the petition for a writ of certiorari was granted to and including November 21, 2022 on September 13, 2022, in Application No. 22A222. App M

Petitioner invokes the jurisdiction of this Court under 28 USC § 1257 on the ground that his rights under the First, Sixth and Fourteenth Amendment to the U.S. Constitution were violated.

Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations

Constitutional Amendment I

Constitutional Amendment VI

Constitutional Amendment xiv

Amendment 1

Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right...to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment XIV

...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.

STATEMENT OF THE CASE

Question 1, Is Rule 60(b) available as a means of providing relief to an individual who missed the appellate deadlines in Rule 4(a)(1) and Rule 4(a)(5)?" was first introduced in the U.S. D.C. Cent. Dist. of California. The Magistrate Judge's Report and Recommendation was accepted as a final ruling on February 05, 2021, DKT #51, App. A and DKT #52 "noting no objection had been filed." This was in spite of the fact that Petitioner had mailed an Objection to the R&R on August 27, 2020, App. B. Upon receiving notification of the final ruling on February 11, 2022, Petitioner wrote to the dist. ct. as soon as was possible March 17, 2021

Petitioner couldn't respond before March 17, because the prison had been on a modified program that severely restricted inmate movement from Feb. 11, when petitioner received final ruling through March 16, 2021, due to COVID-19. The only way for petitioner to gain access to the law library was as a Preferred Legal User (PLU). But the prison repeatedly refused to issue petitioner a PLU. Petitioner was forced to file a 1983 suit, Jace v Lirones, et., al 1:22-CV-00419-AWI-CDB. The actions of Corcoran prison caused petitioner to miss the filing deadline.

App. C

The court construed the letter dated March 17, 2021, as

"a Motion for Relief from Judgment under Federal Rule of Civil Procedure 60, which permits the Court to relieve a party from a final judgment for 'any...reason that justifies relief.' "

STATEMENT OF THE CASE

The court denied the motion on April 22, 2021. At the time Petitioner was not aware of the significance of the court's CONSTRUING HIS March 17, letter as a Motion 60(b). Petitioner had only been addressing the dist. ct. in pursuit of his freedom having filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. When the magistrate issued the R&R to deny Petitioner's habeas he wasn't sure what court he was now to reply, or what needed to be done, having had no opportunity to do any legal research. Had Petitioner been afforded that opportunity he would have filed an appeal to the Ninth Circuit regarding the April 22, 2021, DKT #56, judgment, rather than file a Leave to File a Late Appeal(Good Cause Appearing) DKT #57

In their denial of the Leave to File a Late Appeal on August 05, 2021, DKT #58, App.E, the court notes petitioner didn't file his "Request" until June 22,2021. After petitioner was granted access to the law library on March 17, 2021, he wasn't granted access again until April 19, 2021. And the issue of Corccran prison's obstruction of petitioner's meaningful access to the courts continued. Petitioner was forced to go on a hunger-strike on May 20, 2021 when he was thrown in the hole as the prison continued their obstruction.

Hoping a court would intervene petitioner appealed the denial of his Request to Leave to File a Late Appeal. On September 15, 2021 App.F, The Ninth Circuit denied the appeal; stating, "this court

STATEMENT OF THE CASE

has no authority to extend time for appeal," and "the request for a certificate of appealability is denied because the notice of appeal was not timely filed." Petitioner was given 21 days to "show cause why summary affirmance of the district court's August 6, 2021 order is not appropriate."

On December 14, 2021, the Ninth Circuit Court of Appeals affirmed the dist. court's August 06, order. On January 05, 2022 the Ninth Circuit issued a mandate. App.G and H, respectively

Petitioner filed a second motion under Federal Rule of Civil Procedure 60, DKT #64. On February 15, 2022 the dist ct. ~~denied~~ denied the motion. DKT. #65, App.I

Petitioner appealed the denial to the Ninth Circuit which issued an order, May 11, 2022 for the dist. ct to issue or deny a COA. App.J

On May 13, 2022, the dist. ct. declined to issue a COA, stating "Petitioner failed to demonstrate that judgment should be vacated on the basis of the lost objections." DKT #69, App.K

Petitioner appealed the dist. ct's May, 13, 2022 judgment. On June 24, 2022, the Ninth Circuit also declined to issue a COA. App. L.

STATEMENT OF THE CASE

Question 2, Can a State rebut the look-through presumption without it having fully adjudicated the case? was first raised by the State and the request to have the look through presumption rebutted granted by the court in the Magistrate's Report and Recommendation, DKT #51, App.A, and then in Petitioner's Objection to the R&R, App.B that never reached the court. After granting the State's request to rebut the look through presumption the court never addressed whether Petitioner rebutted the Richter Presumption. It was not addressed in the court's response DKT #56, App.D to Petitioner's letter dated March 17, 2021, nor in any other communication by the court to petitioner, other than possibly a passing reference in DKT #69, App.K, when the court states, "Petitioner failed to demonstrate that judgment should be vacated on the basis of the lost objections."

REASONS FOR GRANTING THE WRIT

Currently there is a circuit split as to whether Rule 60(b)(6) is an available means of providing relief to an individual who missed the appellate deadlines in Rule 4(a)(1) and 4(a)(5). And petitioner's second question addresses an issue this court and country have long struggled with, equal justice "[T]o deny adequate review to the poor means that many of them may lose their life [and/or] liberty... There can be no equal justice where the kind of trial a man gets depends on whether he has the money..."

Date November 17, 2022

Respectfully submitted
Michael Jace
Petitioner