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SUPREME COURT OF THE UNITED STATES
October Term, _____

ORIGINAL

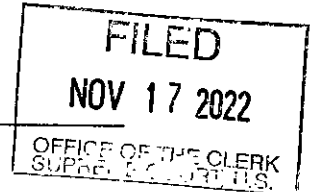
MICHAEL JACE,
Petitioner,

v

THE STATE OF CALIFORNIA,
Respondent,

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

No. _____



PETITION FOR WRIT OF CERTIORARI

Michael Jace (Pro se)
C.S.P. 3b03-109 BA3055
P.O. BOX 3466
Corcoran, CA 93212

QUESTIONS PRESENTED

1.
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 22. Can the State rebutt the "look through" presumption without having
9 fully adjudicated the case?
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1 LIST OF PARTIES TO ACTION

- 2 1. Ron Davis, Warden
3 2. The State of California
4

5 CORPORATE DISCLOSURE

6 Where is no parent or publicly held company owning 10% or more
7 of the corporation stock.
8

9 LIST OF ALL PROCEEDINGS

10 United States District Court
11 Central District of California

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

13 Michael Jace, Petitioner v Ron Davis, Warden, Respondent

14 DKT #51 August 05, 2020

15 DKT #56 April 22, 2021

16 DKT #589 August 05, 2021

17 DKT #65 February 15, 2022

18 DKT #69 May 13, 2022
19

20 United States Court of Appeals
21 For The Ninth Circuit

22 No. #21-55915

23 September 15, 2021

24 December 14, 2021

25 January 05, 2022

26 No. #22-55241

27 May 11, 2022

28 June 24, 2022

1 LIST OF ALL PROCEEDINGS
2 (Cont.)

3 United States District Court
4 Eastern District of California

5 No. 1:22-CV-00419-AWI/CDB

6 OPINIONS AND ORDERS BELOW

7 United States Court of Appeals
8 For The Ninth Circuit

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

10 Order December 14, 2021 No. 21-55915 App. G

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

12 Order May 11, 2022 No. 22-55241 App. J

13 Order June 24, 2022 No. 22-55241 App. L

14
15 United States District Court
16 Eastern District of California

17 Order Reassignment October 06, 2022 App. C

18
19 GROUND FOR JURISDICTION

20 Petitioner, Michael Jace, respectfully prays that a writ of
21 certiorari issue to review the judgment of U.S. Court of Ap-
22 peals for the Ninth Circuit, which affirmed the judgment of
23 U.S.D.C. Central District of California to deny petitioner
24 a Certificate of Appealability and deny relief that is per-
25 mitted under Rule 60.

26
27 The Court of Appeal entered its judgment on June 24, 2022.

28 A copy of the decision appears at App. L.

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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 ~~con-~~ 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 Corcoran 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

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

15 REASONS FOR GRANTING THE WRIT

16 Currently there is a circuit split as to whether Rule 60(b)§
17 (6) is an available means of providing relief to an individual
18 who missed the appellate deadlines in Rule 4(a)(1) and
19 4(a)(5). And petitioner's second question addresses an issue
20 this court and country have long struggled with, equal justice
21 "[T]o deny adequate review to the poor means that many of them
22 may lose their life [and/or] liberty... There can be no equal
23 justice where the kind of trial a man gets depends on whether
24 he has the money..."
25

27 Date November 17, 2022

Respectfully submitted
Michael Jace
Petitioner