22-6249

NO. 21-40502

IN THE SUPREME COURT OF THE UNITED STATES

****

RUBEN JAMES RIOS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

****

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

****

PETITION FOR WRIT OF CERTIORARI

RUBEN JAMES RIOS, pro se
89118-379
PO Box 10101
Bastrop, Texas 78602

October 28, 2022

ISSUES PRESENTED

Appellate Rule of Procedure 4(a)(6)(b) allows for reopening the time to file a notice of appeal for cause. It requires a motion and specific findings, and an order, but is about the form of reporting each. This Court is respectfully asked to clarify the following:

1. Whether a pro se litigant's "Notice of Appeal" explaining why he submitted out of time constitutes a liberally-construed "Motion to Reopen Time to File" as well as a "Notice of Appeal";

2. Whether the district court's ruling on the motion for Certificates of Appealability indicated the district court was vested with the jurisdiction necessary to issue the order on that motion, indicating the Motion to Reopen was decided in Appellant's favor;

3. Whether the Appellate Court's apparent determination that the Notice of Appeal was procedurally deficient and thus the Appellate Court lacked jurisdiction was improper when it could have remanded for clarification;

4. Whether the procedural deficiencies could have been resolved in the pro se appellant's favor on appeal since the facts satisfied the criteria for reopening the time to file and this matter was adequately briefed, or whether, in the alternative, the Appellate Court should have remanded back to the district court for clarification?

LIST OF INTERESTED PARTIES

The following have an interest in the outcome of this Petition:

Magistrate Judge Micaela Alvarez

AUSA Benavidez

District Judge Randy Crane

Appellate Judge Duncan

Attorney Rick Salinas

Magistrate Judge Scott Hacker

Appellate Judge Higginbotham

Attorney Samual Jarvis

AUSA Leo James Leo, III

Appellate Judge Cory T. Wilson

PETITION FOR WRIT OF CERTIORARI

OPINIONS AND RULINGS BELOW

It is not known if the opinion of the Court of Appeals will be reported.. The appellate court's ruling is in the Appendix. The appellate court's order denying rehearing is not reported, and is in the Appendix.

JURISDICTION

The Court of Appeals' judgment was entered on July 13, 2022. The Court of Appeals denied rehearing on August 8, 2022. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

This Petition involves Federal Rule of Appellate Procedure 4(a)(6)(B).

STATEMENT

Petitioner Rios respectfully moves this Court to grant certiorari to consider whether a Rule 4(a)(6)(B) matter is appealable and, if so, whether the Court of Appeals erred in its handling of this issue; whether a pro se litigant's Notice of Appeal is to be liberally construed, in certain circumstances, as a joint 'Notice of Appeal' and a 'Motion to Reopen the Time to File an Appeal' under Federal Rule of Appellate Procedure 4(a)(6)(B) and, if so; whether the district court's decision to proceed with considering whether to grant Certificates of Appealability indicates it was vested with the jurisdiction necessary to proceed and therefore effectively granted the liberally-construed Rule 4(a)(6)(B) 'motion to reopen'.

The pro se litigant explained in the body of his 'Notice of Appeal' that the district court failed to send him notification when it filed its judgment denying his Rule 60 Motion, and he comported with the 14-day limit of Rule 4(a)(6)(B). Rios's July 21, 2021 'Notice of Appeal' explained that it was out-of-time because he just learned on July 15, 2021, through another inmate (Gagnon), at a different institution (Gagnon is at Oakdale, Rios is at Bastrop) - whose sister (Lori Gagnon) accessed PACER to investigate the status of the Rios case - that the district judge entered an order and failed to notify Rios. Rios filed his Notice of Appeal within seven days of discovering the district court's order had been filed, and well within the Rule's 180-day statutory limit.

Rios contends that his Notice of Appeal was to be construed liberally so as to serve as a joint 'Notice of Appeal' and a Rule 4(a)(6)(B) 'Motion to Reopen for Filing Notice of Appeal' (filed simultaneously), and that the district court's proceeding to acknowledge the Notice of Appeal, evidenced by its decision to specifically deny issuing Certificates of Appealability as without merit and not debatable, but without also specifically denying his Rule 4(a)(6)(B) motion, is a tacit but implicit grant of the Rule 4(a)(6)(B) motion, since granting the liberally-construed 'motion to reopen' was a necessary and prerequisite step to have the jurisdiction to proceed on considering whether to grant or deny issuing CoAs.

In this case, a separate 'Motion for Certificates of Appealability' was filed by Rios and ruled on by the district court, giving the district court ample opportunity to voice that it considered the Notice of Appeal to be officially out-of-time and determine on that basis that the district court was unable to proceed to rule on the Motion for CoAs due to lack of jurisdiction. Thus the district court's silence on the liberally-construed Rule 4(a)(6)(B) issue was essentially an implied reasoning by the court was that it made the requisite findings and granted the prerequisite Rule 4(A)(6)(B) motion, and therefore reasoned it had jurisdiction to rule on the Motion for CoAs, and simply did not agree with Rios that CoAs were warranted. The district court did not strike the Notice of Appeal as moot because of a procedural defect, nor did it strike the Motion for CoAs as moot because of a procedural defect. Instead, the court determined it had jurisdiction to rule on the motion(s) which would procedurally follow granting the 'motion to reopen' so the court's decision subsequent to that step implies that the court effectively reopened the filing period to let in the Notice so it could rule on the subsequent motions. This also implies that the district court made the necessary requisite findings to possess jurisdiction so it could rule as it did on that part of the "joint" motion to proceed to the next step. It was not necessary to report on its ruling because this "joint", liberally-construed motion was already in the district court's hands, rendering such reporting as unnecessary because Rios did not need to be notified the time for filing had been reopened since the "joint" Notice was filed at the same time as his liberally construed "joint" Motion to Reopen. Notably, the government had ample opportunity to cross appeal if it disagreed with the district court.

The district court's ruling can take many forms. It is not a violation of Rule 4(a)(6)(B) not to specifically report the court's findings, it must simply consider the facts and make the necessary specific findings and therefore agree with the appellant on the Rule 4(a)(6)(B) requirements. Rule 4(a)(6)(B) is satisfied by the district court proceeding to grant or deny CoAs, because the court obviously vested itself with the jurisdiction to rule on

the motion rather than strike as defective and thus moot. If the district court had ruled against the petitioner, then it had a duty to report its findings and rationale for appellate review. No Certificate of Appealability would be necessary for appealing an unfavorable decision, or to appeal whether the court's silence as it moved procedurally past this issue - which the Court of Appeals obviously considered a defect in the procedure - was an appealable matter which the Appellate Court could decide in the favor of Rios.

It appears the Court of Appeals did not consider whether Rios's motion must be construed liberally, and that the district judge's specific denial on some issues while it remained silent on the Rule 4(a)(6) issue implied a tacit grant of a liberally construed motion. I believe this is an issue of first impression before this Court. Even if the Court of Appeals disagreed with Rios that the district court's "taking the next step" implied the district court granted the liberally-construed Rule 4(a)(6)(B) motion so as to obtain jurisdiction necessary to rule on the procedurally- subsequent motion, the motion for certificates of appealability, it was still an appealable issue which was sufficiently briefed and the Appellate Court had a duty to remand for findings and a formally-reported decision if it needed clarification. It is clear that the Court of Appeals only looked at whether Rios filed a motion in strict conformance with Rule 4(a)(6)(B) and decided he did not and dismissed his appeal for lack of jurisdiction on that basis. But Rios is pro se, and his pleadings are to be construed liberally and not held to the same strict standards as a professional attorney.

In dismissing his appeal as lacking jurisdiction, Rios contends the Court of Appeals erred two ways; first, Rios's Motion was to be construed liberally while the district court's "taking the next step" indicated it possessed jurisdiction over considering whether to issue Certificates of Appealability, which implied a tacit approval in Rios's favor; and second, even if the court of Appeals did not agree with both parts of this above assessment, it still must view the Notice of Appeal as a liberally-construed 'motion to reopen'. Thus, if the district court did not fulfill its duty properly then it abused its discretion and this abuse of discretion was therefore an appealable issue adequately presented to the Court of Appeals, and the Court of Appeals had to make the determination whether the court failed to notify Rios and whether the government would be prejudiced based on the record or else remand the matter back to the district court to make the requisite findings for appellate review.

Rios notified the district court he was appealing all orders in the case, thus even if the district judge issued an order, or intended to issue an order, which denied reopening the time to file (implicitly or explicitly, for any reason), an appeal of that order would properly be covered by his comprehensive Notice of Appeal. Were

this the case, the Court of Appeals erred in dismissing the appeal for lack of jurisdiction when it actually had jurisdiction to consider whether the district court ruled properly on the Rule 4(a)(6)(B) issue or if its decision was debatable. Once again, if the record was inadequate for proper appellate review, the Court of Appeals' proper course of action was to remand for clarification, rather than dismissing the appeal entirely.

Given the long tradition of facilitating pro se litigants so they may be allowed to plead by construing their pleadings liberally, Rios contends he met his pleading burden. This is also consistent with jurisprudence and congressional intent which indicates that Rule 60 pleadings must be construed liberally in order to do substantial justice. Depriving a litigant of his appeal because the procedural complexities mounted due to an error made by the district court is inconsistent with doing substantial justice, and can not be consistent with Congressional intent. It is clear that Congress was creating a mechanism for salvaging appeals rather than deliberately creating a trap to foil pro se habeas petitioners.

REASON WHY THE COURT SHOULD GRANT CERTIORARI

The people most interested in being able to appeal a district court's ruling are pro se habeas petitioners, who are usually imprisoned and thus have the most to lose - their liberty. They also tend to have the least access to legal counsel and the fewest resources for tracking the progression of their cases. Pro se inmates simply must rely on the district court to perform its duty in faithfully notifying them of the outcome of their case, especially because of the jurisdictional requirements created by the Rules of Procedure. The procedural complexities are exacerbated by a failure to notify.

Federal Rule of Appellate Procedure 4(a)(6)(B) creates a mechanism for appellants to file an out-of-time Notice of Appeal. It can not have been the intent of Congress for the Appellate Rules of Procedure to foil or thwart the inexperienced pro se litigant, who are often the most interested in an appeal because they often have the most to lose. This would hardly be consistent with the notion of a government that serves the people it rules. A complex procedural hurdle to get over in no way serves the public interest, because it in no way advances due process or other constitutional rights, including the right to appellate review, especially so if the procedural defects of failing to strictly comply with the Rule itself can not or is not examined with an eye toward doing substantial justice. And since the pro se litigant's pleading burden has already been escalated by an error of the district court in the performance of its duty to notify, fundamental fairness and the notion of due process counters against such a strict interpretation of the Rule that the pro se litigant, whose pleadings in all other things must be construed liberally, can be so easily foiled at this point when all the information any court needs is adequately in the record.

Construing those pro se notices of appeal which provide an explanation for being out of time as a joint 'motion to reopen' as well as a 'notice of appeal' is consistent with construing pro se pleadings liberally to do substantial justice. Construing the district court's silence on the Rule 4(a)(6)(B) issue when the district court considers itself vested with the jurisdiction necessary to go forward to rule on the 'motion for CoA' is consistent with "looking through" to the district court's reasoning on the Rule 4(a)(6)(B) issue and implies the court ruled in favor of the pro se litigant. Otherwise this one Rule, interpreted more strictly than others, creates a discordance with all other jurisprudence and principles of fundamental fairness.

I swear that the foregoing is true and correct pursuant to the penalty of perjury.

Respectfully submitted on this 28 day of Oct, 2022.

Ruben James Rios
#89118-379
PO Box 1010
Bastrop, TX 78602