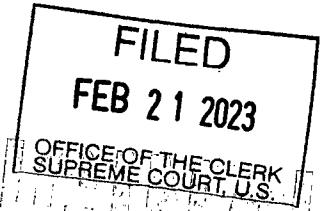


22-6922

No. _____



RECEIVED
SUPREME COURT OF THE UNITED STATES

IN THE

SUPREME COURT OF THE UNITED STATES

SAMUEL T. ROSS

— PETITIONER

(Your Name)

vs.

CLERK OF COURTS, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the 3rd Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Samuel T. Ross

(Your Name)

1590 Walters Mill Road

(Address)

Somerset, PA 15510-0001

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION PRESENTED

Whether the majority Circuit Court of Appeal decisions clarifying that Lewis v. Casey does not foreclose a prisoner's right to access to courts to litigate a civil rights action 'interference' claim unrelated to his incarceration should constitute an extraordinary circumstance to warrant relief under Fed. R. Civ. P. 60(b)(6)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Samuel Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, Pennsylvania; D. Jugle, Prothonotary of the Office of Judicial Records; C. Forte, Prothonotary of the Office of Judicial Records.

RELATED CASES

Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, PA; D. Jugle, Prothonotary of the Office of Judicial Records; C. Forte, Prothonotary of the Office of Judicial Records, 2022 U.S. Dist., (No. 1795012) (August, 30, 2022) 5:22-cv-1795012,.

Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, PA; D. Jugle, Prothonotary of the Office of Judicial Records; C. Forte, Prothonotary of the Office of Judicial Records, 2022 U.S. App. LEXIS 32755, (No. 22-2829) (3d. Cir. Nov. 28, 2022).

Ross v. Clerk of Court of the Court of Common Pleas of Philadelphia, PA; D. Jugle, Prothonotary of the Office of Judicial Records; C. Forte, Prothonotary of the Office of Judicial Records; Order denying SUR PETITION FOR REHEARING, (No. 22-2829) (Jan. 4, 2023).

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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.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix ^B to the petition and is

reported at 2022 U.S. App. LEXIS 32755, (Nov. 28, 2022); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix ^A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 28, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 4, 2023, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, First Amendment – “the right of the people ... to Petition the Government for a redress of grievances.”

United States Constitution, Fourteenth Amendment – “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.”

Federal Rules of Civil Procedure, Rule 60(b)(6) – Rule 60. Relief from Judgment or Proceeding. (b) Grounds for Relief from a Final Judgment, order, or proceeding. On Motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: ... (6) any other reason justifying relief.

STATEMENT OF THE CASE

Petitioner, the son and sole beneficiary to the deceased, Samuel Edgar Jones, filed a complaint against the University of Pennsylvania Health System for medical malpractice for being negligent in diagnosing and treating his father for lung cancer.

Petitioner's complaint had merit where he obtained the hospital records revealing that the University of Pennsylvania Health System had diagnosed his father with G.E.R.D. (Gastroesophageal Reflux) and for two years, they proceeded to treat his father for G.E.R.D. despite the many symptoms implicating cancer. Petitioner also obtained the hospital records revealing that when his father attended Temple University hospital, to get a second opinion, Temple University became immediately concerned about lung cancer and in just two weeks, diagnosed his father with advanced lung, to which x-rays showed that the cancer had spread through-out his body. His father was immediately placed in Hospice Care and died.

The Lawyer for the University of Pennsylvania Health System filed a Notice of Intent to Enter Judgment of Non-Pros pursuant to Pa. Civ. P. Rule 1042.12. Petitioner had 30-days to file for an extension of time to file a certificate of merit.

Petitioner mailed the Motion for Extension of Time to File a Certificate of Merit on July 11, 2015, and the Clerk of Court, contrary to the law '42 Pa. C.S. § 5103(a)', refused to accept and file the motion. Petitioner mailed the motion out again for a second time on July 20, 2015, and the Prothonotary, contrary to the law

'Phila. Civ. R. Rule 205.2(B)', refused to accept and file the motion. Petitioner mailed the motion out again for a third time on August 3, 2015, and the Prothonotary, contrary to the law "Prisoner Mailbox Rule", refused to accept and file the motion which would have tolled the time a certificate of merit had to be filed until the court ruled upon the motion. Each time petitioner mailed the motion out, he attached a new certificate of service, thus, petitioner has three stamped received certificates of services as proof that his motion was received three times in timely fashion and not filed, thus depriving petitioner the tolling effect of the law.

The State Appellate Courts acknowledged that the motion was timely filed, but refused to enforced the law's tolling effect.

Petitioner filed a Civil Rights Action suit pursuant to 42 U.S.C. § 1983 against the Clerk of Court and the Prothonotaries, D. Jugle and C. Forte for violating his constitutional right to access to the courts under the First and Fourteenth Amendments by failing and refusing, to timely file his motion to extend the time to file a certificate of merit for the sole purpose of illegally entering a judgment of non-pros against Petitioner.

The District Court summarily denied the complaint on the basis that because petitioner had a petition for allowance of appeal pending at that time, he had not shown that he has suffered an actual injury to his medical malpractice suit because he could not demonstrate that he has no other remedy other than the present suit.

Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, PA;

Prothonotary, D. Jugle; Prothonotary C. Forte, 2017 U.S. Dist. LEXIS 189339, No. 17-5012, (November 15, 2017).

Petitioner appealed to the United States Court of Appeals for the Third Circuit and argued that the actual injury was the judgment of non-pros entered as a direct result of the defendant's willfully refusing to accept and file his motion to extend the time to file a certificate of merit and that dismissal of his civil rights action suit without discovery and a fair hearing because a pending petition seeking discretionary review in state court is contrary to the sole purpose of 42 U.S.C. section 1983 as this United States Supreme Court explained in Monroe v. Pape, 365 U.S. 167, 183, 5 L. Ed.2d 492, 81 S. Ct. 473 (1961) ("It is no answer that the state has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy and the latter need not be first sought and refused before the federal one is invoked").

Prior to the Third Circuit's review of the appeal, the State Supreme Court denied discretionary review per curium. Petitioner had that State Supreme Court order supplemented to the appeal as evidence that the basis of the District Court's dismissal had been removed.

Contrary to the controversy that petitioner paid the filling fee to have resolved on appeal by the Third Circuit, the Third Circuit sua sponte held that because petitioner's medical malpractice action is not related to his criminal sentence or conditions of confinement, he has failed to state an access to the courts

claim under section 1983 because "a prisoner has no constitutional right of access to the courts to litigate an unrelated civil claim."

Petitioner filed a petition for rehearing or rehearing en banc asserting that the Third Circuit's decision conflicted with decisions of this United States Supreme Court governing the right to access to the Court's outside the prisoner context and relied upon the Sixth, Seventh, and Ninth Circuit Court of Appeal's interpretation of the parallel development of two distinct line of United States Supreme Court case governing the right to access to the courts for prisoners. The petition was denied despite the authorities cited.

Petitioner filed a Rule 60(b)(6) motion as an attack on the integrity of the Third Circuit sua sponte summary dismissal unrelated to the merits or issue raised. Petitioner relied upon the Second and Fourth Circuit Court of Appeals reiterating the same Sixth and Seventh Circuit Court of Appeals cases relied upon by petitioner in petition for rehearing or rehearing en banc argument that prisoners do have a right to access to the court to petition the courts free from state-imposed barriers and undue interference as clarification that the Third Circuit's sua sponte dismissal rested upon an erroneous view of the law and relief from the erroneous judgment should be granted where denial of relief would prevent the true merits of petitioner's constitutional claim from ever being heard.

The District Court, in denying Rule 60(b)(6) relief, concluded that none of the arguments change the conclusion that his constitutional right to access to the courts

does not cover his medical malpractice claim as a matter of law. Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, PA; Prothonotary, D. Jугle; Prothonotary C. Forte, No. 17-5012, (August 30, 2022).

Petitioner appealed and the Third Circuit affirmed the judgment of the District Court expressing that "in our Circuit, "Prisoners may only proceed on access-to-courts claims in ... challenges (direct or collateral) to their sentences and conditions of confinement." Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, PA; Prothonotary, D. Jугle; Prothonotary C. Forte, No. 22-2829, (November 17, 2022).

Petitioner petitioned for rehearing or rehearing en banc and such petition was denied.

And now comes this Writ of Certiorari to this United States Supreme Court.

REASONS FOR GRANTING THE PETITION

- I. The majority Circuit Court of Appeal decisions clarifying that *Lewis v. Casey* does not foreclose a prisoner's right to access to courts to litigate a civil rights action 'interference' claim unrelated to his incarceration should constitute an extraordinary circumstance to warrant relief under Fed. R. Civ. P. 60(b)(6).

This Supreme Court has granted certiorari to resolve conflicts amongst the Court of Appeals. Catlin v. United States, 89 L.Ed. 911, 324 U.S. 229, 232 (1945) (We granted certiorari, ..., in order to resolve conflict upon this question among several Circuit Court of Appeals); Exxon Mobil v. Saudi Basic Indus., 544 U.S. 280, 291, 161 L.Ed. 2d 454, 125 S.Ct. 1517 (2005) (We granted certiorari, ..., to resolve conflict among the Court of Appeals over the scope of the Rooker-Feldman doctrine. We now reverse the judgment of the Court of Appeals for the Third Circuit); Peugh v. United States, 569 U.S. 530, 133 S.Ct. 2072, 186 L.Ed. 2d 84 (2013) (This Court granted certiorari to resolve a conflict among the Court of Appeals over whether the Ex Post Facto Clause may be violated when a defendant is sentenced under the version of the sentencing Guidelines in effect at the time of sentencing rather than the version in effect at the time the crime was committed, and the newer Guidelines yield a higher applicable sentencing range).

This Court has also granted certiorari to review a District Court's misinterpretation of Supreme Court precedent. Wisconsin Right to Life v. FEC, 546 U.S. 410, 126 S.Ct. 1016, 163 L.Ed. 2d 990 (2006).

In this case, it is asked of this Supreme Court to grant certiorari to resolve a conflict among the Court of Appeals on whether this Court in Lewis v. Casey, 518

U.S. 343, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996), foreclosed a prisoner's First Amendment right to access to the Courts to litigate civil rights actions unrelated to incarceration free from state-imposed barriers and undue interference, and if not, to reverse the judgment of the District Court denying Rule 60(b)(6) relief because it incorrectly held that the majority Court of Appeals clarification of Lewis v. Casey does not change anything and is not an extraordinary circumstance to warrant relief under Rule 60(b)(6).

In Klapprott v. United States, 335 U.S. 601, 93 L.Ed. 266, 69 S.Ct. 384 (1949), this Supreme Court held that Rule 60(b)(6) permits a district court to vacate a judgment whenever such action is appropriate to accomplish justice.

In Buck v. Davis, 137 S. Ct. 759, 777, 197 L.Ed. 2d 1 (2017), this Supreme Court held that Fed. R. Civ. 60(b) concludes with a catchall category, Fed. R. Civ. 60(b)(6), providing that a court may lift a judgment for any reason that justifies relief. Relief is available under Rule 60(b)(6), however, only in extraordinary circumstances.

Extraordinary circumstances occur where there are other compelling reasons for opening the judgment that prevented the movant from raising the basis of the motion during the pendency of the case. Bynoe v. Baca, 966 F.3d 972, 979, 983 (9th Cir. 2020) (quoting Klapprott v. United States, 335 U.S. 601, 613, 93 L.Ed. 266, 69 S.Ct. 384 (1949)).

A decision of the Supreme Court of the United States or a Court of Appeals may provide the extraordinary circumstances for granting a Rule 60(b)(6) motion ..." Cox v. Horn, 757 F.3d 113, 121 (3d Cir. 2014) (quoting Wilson v. Fenton, 684 F.2d 249, 251 (3d Cir. 1982) (per curiam)).

Petitioner filed a Rule 60(b)(6) motion relying upon other Circuit Court of Appeals decisions as clarification of this Court's holding in Lewis v. Casey as an attack on the integrity of a sua sponte ruling that rested upon a misinterpretation of this Courts precedent that prevented the Court from ever reaching the merits of his civil rights action filed against the Clerk Of Courts Of The Court Of Common Pleas Of Philadelphia, Pennsylvania; D. Julge, Prothonotary; and, C. Forte, Prothonotary for willfully interfering with his right to litigate a medical malpractice suit on behalf of his deceased father by refusing, on three timely occasions, to docket and file his motion for extension of time to file a certificate of merit, which, by law, would have stopped the clock until the court had ruled upon the motion.

The conflict involved in this matter is the Third Circuit Court of Appeal's interpretation of page 354-355 of Lewis v. Casey to have held that 'Prisoners may only proceed on access-to-courts claim in two types of cases, challenges (direct or collateral) to their sentences and conditions of confinement.' Monroe v. Beard, 536 F.3d 198, 205 (3d Cir. 2008) (citing Lewis, 518 U.S. at 354-55).

Contrary to the Third Circuit's language, in reading page 354-355 of Lewis v. Casey, this Supreme Court held that the "tools it requires to be provided are

those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the condition of their confinement. Impairment of any other litigating capacity is simply one of the incidentals (and perfectly constitutional) consequences of conviction and incarceration.” Lewis, 518 U.S. at 355.

The impairment referred to by the United States Supreme Court was regarding not having access to certain legal materials like the entire U.S. Code, N.C. Digest and Modern Federal Practice Digest. Id.

Petitioner’s only recourse to rebut the Third Circuit Court of Appeal’s sua sponte summary dismissal was a discretionary petition for rehearing en banc, in which he relied upon a Sixth Circuit, Seventh Circuit and Ninth Circuit Court of Appeal cases to argue that his civil rights action claim was an interference claim and not an assistance claim.

In Snyder v. Nolen, 380 F.3d 279, 291 (7th Cir. 2004), the Seventh Circuit held that:

The right of access to the courts is the right of an individual, whether free or incarcerated, to obtain access to the courts without undue interferences. The right of individuals to pursue legal redress for claims that have a reasonable basis in law of fact is protected by the First Amendment right to petition and the Fourteenth Amendment right to substantive due process.

The Snyder case is exactly on point where in that case, Nolen first maintained that Mr. Snyder was not deprived of a constitutional right because a

prisoner's right of access to the courts is limited to actions challenging his conviction, sentence or conditions of confinement. The members of the panel agreed that Mr. Nolen's argument misconstrued the relevant Supreme Court precedent.

In Snyder, the Seventh Circuit explained that:

This parallel development of these two distinct lines of case recognized explicitly by our colleagues in the Sixth Circuit in *John L. v. Adams*, 969 F.2d 228, (6th Cir. 1992). That court held that "in order to assure that incarcerated persons have meaning access to courts, states are required to provide affirmative assistance in the preparation of legal papers in cases involving constitutional rights and other civil rights actions related to their incarceration" but "in all other types of civil actions, states may not erect barriers that impede the right of access of incarcerated persons. *Id.*, 380 F.3d at 235.

In Smith v. Cobb, 2018 U.S. Dist. LEXIS 34797 (March 2, 2018) (quoting *Silva v. Di Vittorio*, 658 F.3d 1090, 1102-03 (9th Cir. 2011), the Court explained:

The Ninth Circuit has traditionally differentiated between two types of access to court claims: (1) the right to assistance, such as access to law libraries, and (2) the right against unreasonable, active interference, described as erecting barriers that impede the right of access of incarcerated persons. (quoting *John L. v. Adams*, 969 F.2d 228, 235 (6th Cir. 1992)). The Court will refer to former category as 'assistance' claims, and the latter as "impediment" claims. With respect to impediment claims, however, the Ninth Circuit has suggested that Lewis's limitation do not apply.

In Silva v. Di Vittorio, 658 F.3d 1090, 1102-03 (9th Cir. 2011), the Ninth Circuit held that:

In the interference line of cases, the United States Supreme Court has held that the First Amendment right to petition the government includes the right to file other civil actions in court that have a reasonable basis in law or fact. This right does not require prison officials to provide affirmative assistance in the preparation of legal papers, but rather forbids states from erecting barriers that impede the right of access of incarcerated persons. The right of access to the court is the right of an individual, whether free or incarcerated,

to obtain access to the courts without undue interference. Thus, aside from their affirmative right to the tools necessary to challenge their sentences or conditions of confinement, prisoners also have a right, protected by the First Amendment right to petition and the Fourteenth Amendment right to substantive due process, to pursue legal redress for claims that have a reasonable basis in law or fact. *Id.*

These cases by the Sixth, Seventh and Ninth Circuit Court of Appeals supported Petitioner's argument that his civil rights action suit under 42 U.S.C. § 1983 filed against the defendants acting under color of law for interference with his medical malpractice wrongful death suit complaint should have never been sua sponte dismissed without being heard on the merits.

Contrary to the Sixth, Seventh and Ninth Circuit Court of Appeals, the Third Circuit's position indicates that *Lewis*'s limitation does apply to other civil rights action interference claims. Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, PA; Prothonotary, D. Jogle; Prothonotary C. Forte, No. 17-3719, (August 1, 2018).

In Brown v. Dep't of Pub. Safety & Corr. Serv., 383 F. Supp. 3d 519, 544 (D.Md. 2019), the Fourth Circuit Court of Appeal explained that:

As the Sixth and Seventh Circuits have recognized, another line of Supreme Court cases holds that the First Amendment "includes the right to file other civil actions in court that a reasonable basis in law or fact." *Snyder v. Nolen*, 380 F.3d 279, 290091 (7th Cir. 2004) (collecting cases); *John L. v. Adams*, 969 F.2d 228, (6th Cir. 1992). Harmonizing these authorities with *Lewis*, the Sixth and Seventh Circuits have concluded that in civil actions unrelated to their incarceration, prisoners enjoy a First Amendment right to petition the courts free from state-imposed barrier or undue interference." *Snyder*, 380 F.3d at 291; *John L.*, 969 F.2d at 235.

Discovering that this Fourth Circuit Court of Appeal's decision relied upon the same exact Sixth and Seventh Circuit Court of Appeal cases that Petitioner himself relied upon in rebutting the Third Circuit Court of Appeals sua sponte summary dismissal of his appeal, thus also clarifying that *Lewis* does not apply to interference civil rights claims, Petitioner relied upon all, the 4th, 6th, 7th, and 9th Circuit Court of Appeals decisions as justifiable clarifications of this Court's precedent and as extraordinary circumstance for seeking Rule 60(b)(6) relief.

The District Court, in denying Rule 60(b)(6) relief, concluded that none of the arguments change the conclusion that his constitutional right to access to the courts does not cover his medical malpractice claim as a matter of law. Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, PA; Prothonotary, D. Jугle; Prothonotary C. Forte, No. 17-5012, (August 30, 2022).

The Third Circuit affirmed the judgment of the District Court denying Rule 60(b)(6) motion expressing that "in our Circuit, 'Prisoners may only proceed on access-to-courts claims in ... challenges (direct or collateral) to their sentences and conditions of confinement.'" Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, PA; Prothonotary, D. Jугle; Prothonotary C. Forte, No. 22-2829, (November 17, 2022).

Again, despite the majority other Circuit Court of Appeals clarification that *Lewis* does not apply to interference claims, the Third Circuit Court of Appeals

maintains that Lewis's limitation does apply to other civil rights action interference claims and has attributed such interpretation as a matter of law.

The District Court did not initially rule that Petitioner did not have a right to access to the court to litigate his medical malpractice claim, which as a result, Petitioner was deprived of the opportunity to 'stop and think' before filing an appeal to the Third Circuit Court. See: Siluk, Jr. v. Merwin, 783 F.3d 421, 430 (3rd Cir. 2015) ("In enacting the PLRA, Congress sought to put in place economic incentives that would prompt prisoner's to 'stop and think' before filing a complaint").

Petitioner asserts that provided this grant review and resolve in favor of *Lewis's* limitation not applying to interference claims, then the Third Circuit Court of Appeals interpretation of *Lewis* in Monroe v. Beard, 536 F.3d 198, 205 (3d Cir. 2008) does not apply.

This Supreme Court's resolution of this conflict is needed where *Lewis* did not address whether it foreclosed a prisoner's right to access to vindicate rights outside of incarceration. In *Lewis*, Justice Souter, with whom Justice Ginsburg and Justice Breyer join, concurring in part, dissenting in part, and concurring in the judgment, stated:

It is not clear to me that a State may force a prisoner to abandon all opportunities to vindicate rights outside these two categories no matter how significant.... This case does not require us to consider whether, as a matter of constitutional principle, a prisoner's opportunities to vindicate rights in these spheres may be foreclosed, and I would not address such issues here. *Lewis*, 518 U.S. at 403 – 404.

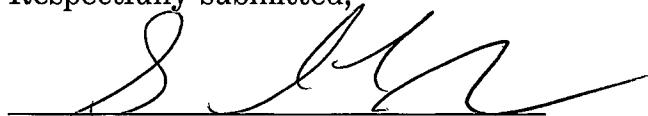
This Supreme Court's resolution and review is also needed to enforce Petitioner's right to seek relief under Rule 60(b)(6) by relying upon majority Court of Appeals decisions as provisions of extraordinary circumstances.

Thus, in this case, reversing the District Court's denial of Rule 60(b)(6) is appropriate to accomplish justice where a civil rights action filed under 42 U.S.C. § 1983 alleging an interference claim should have never been dismissed *sua sponte* and without notice on appeal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. McRae".

Date: Feb. 19, 2023