

UNITED STATES SUPREME COURT

ALTONY BROOKS

PLAINTIFF MOTION IN AFFIDA
AFFIDAVIT TO FILE A OUT OF
TIME PETITION ON BEHALF OF
COURT UPON OBJECTION
OF PLAINTIFF THAT THE
PETITION IS TIMELY DESPITE
PARTY DEFENDANTS
INTRUSIONS

PLAINTIFF

VS.

SHEILA JOHNSTON, KRIS JACUMIN, SALISA FLUDD,
BERKELEY COUNTY SHERIFFS OFFICE, OFC GREENE,
JOHN DOE NURSE, JOHN DOE,
DEFENDANTS,

PETITIONER moves the court with motion in affidavit to file a motion in affidavit to file a petition for writ of certiorari. On march 16th 2023 the clerk of court sent petitioner writ of certiorari back to him after his several attempts to have the petition filed. Due to governmental intrusion on behalf of party defendants. On march 9th 2023 petitioner spoke with the clerk of the united States Supreme Court and the issues was clarified the issues of the order that he was appealing. Petitioner

has been requesting this court to review the November 18th 2022 Court of Appeals order denying him a extension to brief his petition for rehearing en banc. Petitioner wrote the court of appeals December 7 2022 requesting that the court forward his request for notice of appeal for case 21-7115 in the court of appeals. See exhibit A-B

If a litigant wishes to appeal an order or judgment a notice of appeal must be filed with the district court within thirty days after entry of the judgment or order the appellant wishes to appeal was filed too late, however, the letter that he wrote to the district court will suffice, provided that it is the functional equivalent of a notice appeal. *Smith v. Barry*, 502 U.S. 244, 2489(1992).

Federal Rule of Appellant procedure 4(a) (1) (a) gives civil litigants thirty days from entry of judgment to file their notice of appeal. Here, the district court judgment to file their notice of appeal. Here, the district court's judgment was entered on March 23, 2015, which gave Lamb until April 22, 2015 to file his notice of appeal . Lamb did not file his formal notice of appeal until May 14, 2015

The required contents of a notice of appeal are governed by Rule 3, and essentially require that the appellant provide the "who, what, and where

of her desired appeal. *See Fed R. App. P. 3(c); see also Becker v. Montgomery*, 532 U.S. 757, 767 (2001) (noting that "imperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court"). Rule 3(c) requires the notice of appeal to (1) specify the party taking the appeal, (2) designate the judgment or order being appealed, and (3) name the court to which the appeal is taken. Fed. R. App. P. 3(c)(1)(A)-(C). Rule 3(c)(4) instructs that "[a]n appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice." Fed. R. App. P. 3(c)(4). Further, the arguments and filings of *pro se* litigants should be liberally construed. *El Bey v. Roop*, 530 F.3d 407, 413 (6th Cir. 2008); *see also Boswell v. Mayer*, 169 F.3d 384, 387 (6th Cir. 1999) ("Pro se plaintiffs enjoy the benefit of a liberal construction of their pleadings and filings.").

Documents other than formal notices of appeal can satisfy Rule 3(c)'s requirements. *See Smith*, 502 U.S. at 248. While "Rule 3's dictates are jurisdictional in nature," and noncompliance is thus fatal to an appeal, the Supreme Court has held that even "when papers are 'technically at variance with the letter of [Rule 3], a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires.'" *Id.* (quoting *Torres*, 487 U.S. at 315).

Lamb's letter, liberally construed, satisfies Rule 3's three content requirements. First, it identifies the party taking the appeal. Fed. R. App. P. 3(c)(1)(A). Lamb's letter identified himself as the person seeking the appeal. Further, *pro se* notices of appeal are considered filed on behalf of the signer, Fed. R. App. P. 3(c)(2), and Lamb signed his letter. Second, Lamb's letter sufficiently designated the judgment or order being appealed. Fed. R. App. P. 3(c)(1)(B). While he did not specifically designate the order or judgment being appealed, he did provide his case number. We will probe the notice of appeal and the district court's docket to determine what order or judgment a *pro se* litigant intended to

appeal. *See Ramsey v. Penn. Mut. Life Ins. Co.*, 787 F.3d 813, 819 (6th Cir. 2015). As there was only one judgment in his case, it easily can be inferred what Lamb sought to appeal. Rule 3's final requirement is that the notice of appeal name the court to which the appeal is taken. Fed. R. App. P. 3(c)(1)(C). Lamb did not indicate that he was appealing his case to the Sixth Circuit. However, where there is but one court to which an appellant can avail himself of appellate review, we cannot dismiss the case for failure to name that court specifically. *Dillon v. United States*, 184 F.3d 556, 557 (6th Cir. 1999) (*en banc*). Where, as here, the document acting as a notice of appeal includes the case number and the appellant's name, and is sent to the district court from whose judgment the appeal is taken, we can readily determine to which court the appellant seeks to appeal. *Id.* Thus, Lamb's letter satisfies Rule 3's content requirements and should be construed as a notice of appeal. This result not only conforms to the requirement that *pro se* litigants' filings and pleadings be liberally construed, but also complies with Rule 3(c)(4)'s dictate that appeals not be dismissed for informality in the form or title of the notice of appeal. As his letter was sent within Rule 4's thirty-day window, we have jurisdiction to hear Lamb's appeal. Here petitioner request that the court of appeals for the fourth circuit forward his letter requesting an Appeal of the case and to forward it to the Supreme Court and the court refused. Petitioner was told by the court of appeals clerk that it's not there procedure to send any documents to the court and that the document would not be sent unless the Supreme Court request it. Petitioner submit that governmental intrusions of the party defendant has caused substantial burdens on the plaintiff as defendants held petitioners mail while held in there custody and now we are here with this procedural hurdle of someone who's actually showed due diligence for over 7 years in this case to come to this point . The request for review was placed in petitioner request to the court

December 7th 2022. See. Exhibit. B. the UNITED STATES SUPREME COURT FOR THE FOURTH CIRCUIT letter dated December 20, 2022 informing petitioner of the supreme court of the united States address which included the court of appeals case number 21-7115 stating your petition for writ of certiorari (titled notice of Appeal to the united states Supreme court is returned so that you can file it directly with the Supreme court of the united States. Petitioner submit that this argument is argued more thoroughly in his petition in his question before the court see. {The court of Appeals erred when it denied petitioner the right to file his petition for rehearing.

Petitioner submit that he has exhausted extreme due diligence in perfecting the petition for writ of certiorari in this case at its onset.

Lets. See the court of appeals made a judgment September 22, 2022 Party defendants arrested petitioner September 26th 2022. While the order was in the mail to petitioner and him not knowing defendants arrested him and held him in there custody under false pretenses. Petitioner made bail and wrote the court requesting to file a petition for rehearing the court granted the request. Petitioner while working attending funerals and going thru hardship wrote the court requesting A extension of time to file the petition for rehearing November 15th 2023. while preparing the motion for petition for rehearing and awaiting a response for the extension of time to file for rehearing from the unites states court of appeals for the fourth circuit defendant insured that defendant didn't get the petition out on time and arrested him November 23rd 2022 at his place of business with assault rifles to his head for a fraudulent bench warrant to thwart his chances of appeal all this happened in a 45 day span. Petitioner in fear of procedural default while in the hands of the adversary denied paper, pen, envelopes wrote the court December 7th 2022 requesting to appeal the

denial of his motion for rehearing en banc and September 22, 2022 order see record of the united States Court of Appeals. Petitioner called his father and had his father write the same letter to the United States Supreme Court requesting the filing of his petition for writ of certiorari. However, His father sent the letter to the United States court of appeals for the fourth circuit. {See record of the court of Appeals.}

Petitioner was held in custody until January 20 2023, petitioner once home wrote the United States Supreme court requesting a application of time to file a extension to file a petition for a writ of certiorari. See ~~Ex 6~~ letter January 31 2023 written by Scott S. Harris. Petitioner wrote this request because he knew that the November 18th 2022 order was still appealable and that he need time to perfect the appeal since he just came home see exhibit⁹. Petitioner then wrote another letter February of, 2023 requesting a extension of time to file a petition for writ of certiorari as he knew the deadline for the November 18th 2022 order denying him extension of time to file rehearing was due February.

See supreme court letter February 21, 2023, plaintiff sent the petition for review of the November 18th 2022 order on February 21 2023. The Supreme Court sent the petition back. Petitioner re sent the petition back to the us supreme court priority mail March of 2023 and the court sent the petition back stating it was out of date march 16th 2023 see exhibit¹⁰ petitioner was directed by the clerk via phone and mail to file a motion to direct the clerk to file an out of time petition.

Petitioner request this court to liberally construe his complaint and review the September 22, 2022 and November 18th 2022 order of the united states Court of Appeals for the fourth circuit.

Petitioner received a letter for the Supreme court of April 18th 2023 with his motion in affidavit to file a petition for writ of certiorari returned addressing him to file A out of time petition. petitioner request that the court do a de novo review of all his claims and would see that threw his diligence the petition is timely despite party and third party defendants intrusions. Petitioner now files the out of time petition of behalf of the court and request that the court review the timeliness of each claim in this petition. Looking at it with keen eyes and not lead by the deception of perceived procedural default that never occurred due to the seen due diligence of the petitioner.

I swear under Penalty
and perjury That the foregoing
is true and correct

This 21st day of April, 2023

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Exhibit A or B

letter from US court of Appeals? concerning petitioner
assertion to file a writ of certiorari to united states
Supreme court

Exhibit A

FILED: November 18, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7115
(9:15-cv-02677-JFA)

ALTONY BROOKS

Plaintiff - Appellant

v.

SERGEANT SHEILA JOHNSTON; CAPTAIN KRIS JACUMIN; SERGEANT FELISA FLUDD; BERKELEY COUNTY SHERIFF'S OFFICE

Defendants - Appellees

and

HILL FINKLEA DETENTION CENTER; OFFICER JOHN DOE; NURSE JOHN DOE; OFFICER GREENE; OFFICER JOHNSON

Defendants

O R D E R

The court denies the motion for extension of time to file a petition for rehearing.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**
1100 East Main Street, Suite 501, Richmond, Virginia 23219

Exhibit B

December 20, 2022

CERTIORARI PETITION RETURNED

No. 21-7115, Altony Brooks v. Sheila Johnston
9:15-cv-02677-JFA

TO: Altony Brooks

Your petition for writ of certiorari (titled Notice of Appeal to the United States Supreme Court) is returned so that you can file it directly with the Supreme Court of the United States. A petition for writ of certiorari must be addressed as follows:

Clerk, Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543-0001

The petition must be accompanied by a \$300 docket fee, payable to the Clerk of the United States Supreme Court, or by an application to proceed in forma pauperis. The form and contents of the petition must comply with Rules 12 and 14 of the Rules of the Supreme Court. The Supreme Court Rules are available from the Clerk of the Supreme Court or from www.supremecourt.gov. The record is retained in the lower court pending notification from the Supreme Court that it should be transmitted.

If you should have any questions regarding Supreme Court review, please contact the Clerk's Office for the Supreme Court of the United States at (202) 479-3000.

Donna Lett, Deputy Clerk
804-916-2704

Enclosures: Unpublished Opinion and Judgment Order

**Additional material
from this filing is
available in the
Clerk's Office.**