

No. 23-5584

FILED
JUN 07 2013

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

RAYMOND L. ROGERS, Pro se—PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES TENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RAYMOND L. ROGERS
(Your Name)

P.O. BOX 3000 - MEDIUM
(Address)

FORREST CITY, AR 72336
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- (1). DID THE TENTH CIRCUIT COURT OF APPEALS COMMIT A REVERSIBLE ERROR WHEN IT RESOLVED THE MERITS OF YOUR PETITIONER'S CRIMINAL DIRECT APPEALS REVIEW WITHOUT FIRST ASKING AND ANSWERING THE THRESHOLD JURISDICTION QUESTION ALL REVIEWING COURTS MUST FIRST RESOLVE BEFORE PROCEEDING TO A MERITS DETERMINATION?
- (2). DID THE KANSAS DISTRICT COURT DEVOID ITSELF OF SUBJECT AND PERSONAL MATTER JURISDICTION WHEN THE COURT DISMISSED THE GRAND JURY'S JUNE 21, 2011, FIRST SUPERSEDING INDICTMENT IN YOUR PETITIONER'S CRIMINAL CASE?

- (3). CAN A FEDERAL DEFENDANT BE TRIED IN A DISTRICT COURT AFTER THE COURT DISMISSES THE GRAND JURY'S SUPERSEDING INDICTMENT AND WITHOUT ANY NEW INDICTMENT RETURNED IN THE CRIMINAL CASE?

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:

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was APRIL 5, 2013.

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: _____, 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).

STATEMENT OF THE CASE

On December 3, 2010, a two count COMPLAINT was filed in the Kansas District Court against your Petitioner and his two-codefendants.

On December 7, 2010, before the PRELIMINARY HEARING set for December 20, 2010, was conducted, a three count INDICTMENT was returned against your Petitioner and his two co-defendants. On December 13, 2010, your Petitioner was ARRAIGNED on this said December 13, 2010, INDICTMENT, at which point he plead not guilty on all counts. A DETENTION HEARING was also held on this day at which point it was waived. On June 21, 2011, a FIRST SUPERSEDING INDICTMENT was returned in your Petitioner criminal case, charging him and his two co-defendants with all three counts charged in the grand jury's December 7, 2010, INDICTMENT, plus three additional counts for a total of six counts. Your Petitioner was RE-ARRAIGNED on this said June 21, 2011, FIRST SUPERSEDING INDICTMENT, on July 6, 2011, at which point he again plead not guilty on all six counts. On November 28, 2011, the United States Attorney filed a MOTION TO DISMISS the June 21, 2011, FIRST SUPERSEDING INDICTMENT, in its entirety against your Petitioner and his two co-defendants. On this same day (November 28, 2011) District Court Judge J. Thomas Martén GRANTED the MOTION TO DISMISS. On December 1, 2011, your Petitioner was convicted on three charges after a JURY TRIAL was conducted on the December 07, 2010, INDICTMENT. On April 16, 2012, your Petitioner was SENTENCED to 234 months in prison, followed by 5 years SUPERVISED RELEASE, and a \$300 ASSESSMENT FINE.

On May 1, 2012, Petitioner's CJA Counsel of the record filed a NOTICE OF APPEAL with the Kansas District Court. On May 2, 2012, the APPEAL was DOCKETED with the Tenth Circuit Court of Appeals as Appeal No. 12-3125. After ORAL ARGUMENT was had in the Tenth

without respect to the relation of the of the parties to the question; when the lower federal court lacks jurisdiction the reviewing court has jurisdiction on appeal, not of the merits, but merely for the purpose of correcting the lower court's error in entertaining the suit.

The Tenth Circuit Court of Appeals determined the merits of your Petitioner's appeal and AFFIRMED the Kansas District Court's judgment without first asking and answering for itself the "threshold" jurisdiction question of both lower court's as the constitution MANDATES. See STEEL CO. v. CITIZENS FOR BETTER ENVIRONMENT, 523 U.S. 83, 140 L. Ed 2d 210, 118 S. Ct. 1003 (1998).

The Tenth Circuit Court's April 5, 2013, OPINION should be VACATED and REVERSED for the Tenth Circuit Court to make a proper JURISDICTION determination on your Petitioner's criminal direct review appeal. Furthermore, the Kansas District Court's November 28, 2011, ORDER, dismissing the grand jury's June 21, 2011, FIRST SUPERSEDING INDICTMENT, devolved the Kansas District Court of all subject-matter and Personal Matter jurisdiction to criminally prosecute your Petitioner for the crimes he currently sits in federal prison for. See APPENDIX B, C. The Tenth Circuit Court should have noticed this problem with the Kansas District Court's Subject-Matter Jurisdiction before the court affirmed the judgment of conviction. But because the Tenth Circuit Court's panel failed to conduct a jurisdictional determination and simply assumed the jurisdiction of the Kansas District Court's because of the judgment of conviction, the circuit court has acted "ulta vires" by resolving the merits of the appeal without first addressing the "threshold" jurisdictional question it is bound to ask and answer.

Since the "threshold" [j]urisdictional question is the first question that must be resolved before a reviewing court can proceed to the merits of an appeals review and therefore it is so fundamental to the accepted judicial course in a criminal direct review proceeding, your Petitioner is asking of this court to notice the error in the Tenth Circuit Court's April 5, 2013, OPINION, and vacate and remand his cause back to the Tenth Circuit Court for it to make the proper threshold jurisdictional determination of both lower court's jurisdiction in your Petitioner's criminal case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RAYMOND L. ROGERS, Pro se

Date: June 7, 2013.