

23-5910
No. 23-5910

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
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SUPREME COURT, U.S.

Stuart Alexander Dameri — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Stuart Alexander Dameri

(Your Name)

U.S.M. # 07009-509

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(Phone Number)

QUESTIONS PRESENTED

Whether the Fifth Amendment's protection of Due Process was violated, by the Court of Appeals when it granted the Government's Rule 4 motion to dismiss Petitioner's Appeal--which was raised on the grounds of a challenge to the subject-matter jurisdiction of the UNITED STATES DISTRICT COURT and fraud?

This question is of great concern to Petitioner because the Court of Appeals has ruled adversely to standing precedents set in each of the judicial circuits and this Court, which has held that (1) subject-matter jurisdiction may be raised at anytime, (2) challenges to a Court's jurisdiction cannot be procedurally time barred, and (3) subject-matter jurisdiction can be raised for the first time on Appeal. This, coupled with the fact that any Fraud that exists makes any judgement or conclusion reached void, showcases that there exists clear exceptions to the reach of Rule 4 that arise from the issues being raised on appeal.

This Court is asked to find that a Rule 4 dismissal cannot be extended to challenges of jurisdiction of the Court of first instance and allegations of fraud, because to deny such review would tarnish the public trust in the judiciary and tarnish the integrity of the courts. The protection of Due Process must prevail despite the outcome that may be reached by thorough review.

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JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 20, 2023.

☐ 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: August 1, 2023, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

SUMMARY OF CASE

NCIS Special Agent, Lisa Carroll, using an undercover persona, contacted Petitioner. While encouraging conversation with Petitioner, Department of Defense Component NCIS Special Agent Lisa Carroll conducted surveillance operations and database searches on Petitioner, a Californian currently residing on the land under Virginia's sovereignty. Despite the absence of a nexus between Petitioner and the Navy, NCIS Special Agent Lisa Carroll pursued an entrapment scheme.

NCIS Special Agent Lisa Carroll filed a sealed criminal complaint in the United States District Court for the Eastern District of Virginia, against Petitioner and received an arrest warrant by a Magistrate Judge.

NCIS Special Agent Lisa Carroll executed the arrest warrant in early September 2020. Assistant United States Attorney Heck was appointed to prosecute Petitioner and obtained a Grand Jury Indictment.

The indictment was subsequently waived and the case proceeded on a Criminal Information alleging that in September 2019 in the Eastern District of Virginia, Petitioner was in receipt of material constituting child pornography, in violation of 18 U.S.C. § 2252(a)(2). A Pre-sentence investigation was conducted by the U.S. probation office, which found that Petitioner did not reside in the Eastern District of Virginia at the time the Government alleges the violation of 18 U.S.C. § 2252(a)(2) occurred, but rather, that he lived in New York.

Petitioner was sentenced on July 16, 2021 to 168-months of incarceration. Petitioner filed a direct appeal on December 4, 2021 in the Fourth Circuit

challenging the subject-matter jurisdiction of the District Court. Petitioner asserted that NCIS Special Agent Lisa Carroll violated Posse Comitatus by being directly involved in civilian law enforcement, which ultimately violates the Fourth and Fifth Amendment protections of Privacy and Due Process. Petitioner further asserted that the conviction was obtained through the Government's fraud on the court which, if corrected, would deprive the Court of jurisdiction to sustain the conviction.

The Fourth Circuit dismissed the Appeal, relying on the time prescription under FRAP Rule 4. Petitioner contends that Rule 4 does not apply to challenges of a court's jurisdiction.

PETITIONER'S BRIEF

1. Petitioner, being of sound mind and having reached the age of maturity, has a vested and guaranteed interest, as of right, to the protection of Due Process enshrined in the Constitution's Fifth Amendment which stems from his status as a native Californian, American National. This protected right has been thwarted by the UNITED STATES COURT OF APPEALS for the FOURTH CIRCUIT when they granted the Government's Rule 4 motion to dismiss his appeal for the alleged issue of timeliness. In reaching this decision, the Fourth Circuit had to depart with the legal standards and principles that challenges to a court's jurisdiction cannot be procedurally barred, nor can they be prevented from being raised at any time, to include, for the first time, on appeal.
2. Challenges to a court's jurisdiction has historical significance dating back to the rise of Edward Coke to the bench in the year 1606. The infamous decision, issued in The Marshalsea case of 1610, opened the discussion regarding jurisdiction being a determinative factor in a case. The decision that the court had jurisdiction "only of trespass simpliciter," and not "trespass secundum quid... upon the case," made the judgement rendered against defendant Hall void because, for the first time, it was jurisdiction of the "cause" that was made significant. Today the term "subject matter" has been often substituted for the term "cause."
3. Coke's proposal of the "cause test" to find competency was not rooted in the basis of common law but rather on the basis of inductive reasoning whereby it could be found that judgements rendered against certain

defendants could be found void. This was achieved by finding defect in the jurisdiction relating to the cause. Coke held that jurisdictional defects invalidated the judgement when they deprived a court of jurisdiction over the cause [subject matter]. At that time, however, there was a statute [Statutes made at Westminster, 1436, 15 Hen. 6, c. 1 (repealed)] which expressly forbade jurisdiction by estoppel as to the surety, so that the surety would not be bound by the party's failure to object to jurisdiction. Despite Coke's rulings, he never made any clear or consistent proposed theory on the issue of jurisdiction by consent. That said, he believed that a defendant failing to seek prohibition prior to the entering of final judgement had available to him a tort action against the plaintiff who had taken him into the court that lacked jurisdiction. (See: Decline of Jurisdiction by Consent, Dan B. Dobbs, NORTH CAROLINA LAW REVIEW, 12-1-1961).

4. As the centuries have come to pass, the "cause" or "subject matter" of a case, pertaining to the authority vested in a court to hear a particular case has been enumerated within Article III of the Constitution and in congressional legislation located in Title 28 of the United States Code. Contemporary jurisprudence, Ex parte Bain's elastic conception of what jurisdiction includes, has narrowed the term jurisdiction to only allow statute to dictate the kinds of actions that may be heard and determined in the United States Courts. The present concept inherently mandates that jurisdiction can never be forfeited or waived due to it being a statutory requirement. Thus, defects in subject-matter jurisdiction require correction, regardless of whether the error was raised in the District Court or for the first time on appeal.

5. This narrow view of jurisdiction departs from the standard set in *Curtis v. United States*, 511 US 485, 494, 128 LED2D 517, 114 SCt 1732, in favor of meaning "the courts' statutory or constitutional power to adjudicate the case," *Steel Co. v. Citizens for Better Environment*, 523 US 83, 89, 140 LED2D 210, 118 SCt 1003. This standard was solidified in the Court's ruling in *United States v. Cotton*, 535 US 625, 152 LED2D 860, 122 SCt 1781 (2002). It is under this understanding of jurisdiction that Petitioner raises challenge to the Court of Appeals dismissal.

6. Petitioner filed a Notice of Appeal in the UNITED STATES DISTRICT COURT for the EASTERN DISTRICT OF VIRGINIA on December 4, 2021, raising a challenge to the District Court's subject-matter jurisdiction and for claims of fraud. Petitioner's notice followed the imposition of a final judgement by the District Court entered on July 16, 2021. Accompanying the Notice was Petitioner's Affidavit, which explained to the Court why he was filing a direct appeal, which under any other circumstances could be considered untimely, with a showing of good cause. In an exercise of the Court's discretion, the District Court granted the filing of the appeal and forwarded the case to the Court of Appeals. (See Appendix A, pages xxxii).

7. A briefing schedule was set by the Court of Appeals and Petitioner filed a timely brief which challenged the District Court's jurisdiction to have entered judgement due to the fact that the Government committed fraud on the court, and that the party, (NCIS), raising claim against Petitioner did not have the requisite standing to file a complaint and obtain a valid indictment due to an egregious violation of Posse Comitatus.

8. The Government responded to the breif by utilizing Local Rule 27, which

essentially tolls the time afforded for the Government to file a Rule 4 motion, to dismiss, up until the date their Appellee Brief is due. Petitioner responded to the Government's motion to dismiss by raising challenge to the applicability of Rule 4 to challenges of subject-matter jurisdiction, because such a challenge cannot be waived, forfeited, or procedurally barred. In a decision contrary to precedents set in sister circuits, and this Court, the Fourth Circuit granted the Government's motion to dismiss without proceeding to the merits of Petitioner's challenge to jurisdiction. (See Appendix A, pages ii).

9. Petitioner presents to this Honorable Court an unique issue that arises due to inconsistencies between the several circuit courts that has led to wavering opinions regarding the Fifth Amendment right to Due Process regarding challenges to jurisdiction of a court of first instance. In the Eleventh Circuit, the court has held that "challenges to a court's subject matter jurisdiction survive a sentence-appeal waiver. Both the United States Supreme Court and the Eleventh Circuit Court of Appeals have explicitly recognized that challenges to a court's subject matter jurisdiction cannot be waived, forfeited, or procedurally barred. *United States v. Cotton*, 535 U.D. 625, 630, 122 SCt 1781, 152 LED2D 860 (2002) (stating that subject matter jurisdiction can never be forfeited or waived because it involves a court's power to hear a case); *United States v. Peter*, 310 F.3d 709, 712 (11th Cir. 2002) (jurisdictional error "can never be waived by parties to litigation"). [] However, because some of Miller's claims challenge the validity of his guilty pleas or the Court's subject-matter jurisdiction, the Court will review those claims on the merits." *United States v. Miller*, 432 F. App'x at 960. See also *Harris v. United States*, 149 F.3d 1304, 1308 (11th

Cir. 1998).

10. Petitioner contends this disparity between the Fourth Circuit and the mentioned Eleventh Circuit, showcase a clear prejudice that was harmful to his cause and right to seek redress on appeal. It could be said that had Petitioner's case be in the Eleventh Circuit he would have been afforded the opportunity to be heard. It is not that Petitioner must prove that he would have prevailed on his appeal, but rather, that the Fourth Circuit's decision robbed him of his right to be heard on an issue that cannot be procedurally barred because it is violative of the Fifth Amendment's protection of Due Process. This violation exists because the Fourth Circuit did not afford Petitioner Due Process but, rather, thwarted it.

11. Petitioner raises further disparity between the sister circuits with the handling of Rule 4 motions by the Sixth Circuit. In a long list of cases, the Government filed motions to dismiss appeals due to timeliness. In a majority of these cases, the Sixth Circuit denied the Government after deferring to the District Court's discretion. "By an earlier order, we deferred ruling on the government's motion to dismiss and remanded for the district court to determine whether Bloomer's untimely filing was due to excusable neglect or good cause. On remand, the district court determined that Bloomer had made the necessary showing to warrant an extension of time and deemed the notice of appeal timely." *United States v. Bloomer*, 2021 U.S. App. LEXIS 36445 (2021). See also: *United States v. Westine*, 2023 U.S. App. LEXIS 8406 (2023); *United States v. Young*, 2022 U.S. App. LEXIS 35822 (2022); *United States v. Baker*, 2022 U.S. App. LEXIS 6047 (2022); *United States v. Booker*, 2022 U.D. App. LEXIS 20966 (2022); *United States v. Abdul-Rahman*, 2022 U.S. App. LEXIS 9729 (2022); *United States v. Oliver*, 2022 U.S.

App. LEXIS 32133 (2022); United States v. Harris, 2021 U.S. App. LEXIS 35870 (2021).

12. In each of the above mentioned cases stemming from the Sixth Circuit, the Government sought to dismiss the appellant's appeal for reasons of untimeliness. In each, the appellant prevailed because the Court of Appeals remanded to the District Court and allowed them the opportunity to explain why they granted the filing of the Appeal using their discretion.

13. In this matter, Petitioner was not afforded the same opportunity by the Fourth Circuit. The Fourth Circuit has adopted the position that whenever the Government raises a Rule 4 motion, vicariously through Local Rule 27, they simply must grant it without further question. This circuit specific precedent despoils the integrity of the American judicial system and creates a unfair and prejudicial advantage in favor of the government. Petitioner was not given his right to Due Process and the Court of Appeals further disregarded the District Court's discretion to grant the filing of Petitioner's appeal on the clearly stipulated grounds of subject-matter jurisdiction and fraud. It can also be argued that Local Rule 27, which tolls the time for the government to file a motion to dismiss is unfairly advantageous to the government and shows a clear disrespect to the standard time frames afforded to non-government parties to submit replies to filings. This advantage can arguably be interpreted as a "rigged" system which defiles judicial integrity by a clear showing of ethical maley.

CHALLENGE TO RULE 4 MOTION

14. It is common knowledge that a "jurisdictional defect cannot be waited or procedurally defaulted and a defendant seeking post-conviction relief need

not show cause and prejudice to justify his failure to raise one." Howard v. United States, 374 F.3d 1068, 1071 (2004). Further, questions regarding subject-matter jurisdiction "may be raised by parties at any time or by court sua sponte." Rath Packing Co. v. Becker, 530 F.2d 1295 (1975), aff'd, 430 US 519, 97 Sct 1305, 51 LEd2D 604 (1977).

15. Despite these facts, the Government began their motion to dismiss by claiming that Petitioner's guilty plea, via an agreement "expressly waived his right to appeal his conviction and sentence on any ground." (See Appendix A, page xxi). This statement contradicts the notion that challenges to subject matter jurisdiction cannot be procedurally barred or waived.

16. Beyond the mere fact that challenges to subject-matter jurisdiction cannot be procedurally barred, Petitioner went on to show that Rule 4 should be disqualified because he met the qualifying exceptions therein. Petitioner relies on Laporte from 2017, where the court found that "Rule 4(a)(6) allows the district court to reopen the time to file an appeal... The court construes Laporte's notice of appeal, in conjunction with his response to the show-cause order, as a Rule 4(a)(6) motion to reopen the appeal period. See Sanders v. United States, 113 F. 3d 184, 187 n.5 (1997) ("Construing a pro se litigant's late notice of appeal as a Rule 4(a)(6) motion satisfies that Rule's requirement for a motion.")" Laporte v. United States, 2017 US App. LEXIS 3663 (2017). Petitioner was under the unprecedented constraints of COVID-19 at the time of sentencing and was transferred to a facility, FCI Fort Dix, that has been documented to be the worst affected by the pandemic, giving validity to his showing of good cause for the reopening of the time to appeal. This is furthered by the fact that Petitioner's attorney had

failed to file a timely notice on his behalf when asked immediately after sentencing. For good cause, an extension of time, within a 180 day period, is permissible and was presumably granted by the District Court. Further, Petitioner should "not [be] time barred because his [] lawyer's ineffective assistance counted as an exceptional circumstance excusing his lateness." *Reyes Mata v. Lynch*, 576 US 143, 135 SCT 2150 (2015). Because the Appeals Court did not follow course with the Six Circuit, which deferred to the court's discretion, Petitioner was not given a fair chance to be heard.

17. What the Fourth Circuit has failed to recognize is that Petitioner is not challenging his conviction, on its face or collaterally, but rather the subject-matter jurisdiction of the court of first instance based on preliminary defects that would deny the court jurisdiction, which includes fraud. Further, the Fourth Circuit, ruled contrary to their own ruling in *Urutyan v. United States* which states as follows:

"Fed. R. App. P. 4(b) is a court-prescribed, procedural rule. Rule 4(b) is not backstopped by any federal statutory deadline. Court-prescribed rules of practice and procedure, as opposed to statutory time limits, do not create or withdraw federal jurisdiction. The non-statutory time limits in Rule 4(b) do not affect subject-matter jurisdiction. -Criminal Law & Procedure > Appeals > Reviewability > Time Limitations. []

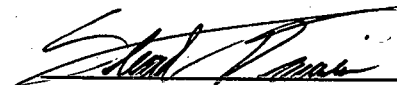
"We have said that "where a common-law principle is well established,... courts may take it as given that Congress has legislated with an expectation that the principle will apply" absent statutory cues to the contrary. *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 US 104, 108, 111 S.Ct. 2166, 115 LEd 2D 96 (1991); see also *Eskridge, Interpreting Law*, at 348 ("[C]ourts will assume that legislatures act against the background of the common law"). so, for example, a federal statute of limitations ordinarily is subject to equitable tolling even when the text is silent because "Congress must be presumed to draft limitations periods in light of this background principle." *Young v. United States*, 535 US 43, 49-50, 122 SCT 1036, 152 LEd2D 79 (2002); see also *Nelson, Statutory Interpretation*, at 629 ("[C]ourts frequently understand federal statutes to come with some unstated qualifications or embellishments suggested by principles of general jurisprudence")." *Urutyan v. United States*, 564 F. 3d 679; 2009 US App. LEXIS 9827; 73 Fed. R. Serv. 3d (Callaghan) 721 (2009).

For more on Petitioner's challenge to the government's Rule 4 motion see the full reply in Appendix A, pages V - XX .

CONCLUSION

18. Herein, Petitioner raises a significant question regarding the applicability of Rule 4 motions to dismiss challenges to a court's subject-matter jurisdiction. Petitioner contends that standing precedent and legal principles dictate that Rule 4 is inapplicable to challenges of a court's subject-matter jurisdiction. Because the Fourth Circuit has departed from its own holdings and has employ practices that vastly differ from sister circuits and this Supreme Court, it is prudent, and in the public interest, that this Court intervene and find that Rule 4 cannot be utilized to procedurally bar Petitioner's challenge to subject-matter jurisdiction. In this finding, Petitioner asks this Honorable Court to remand the case back to the Fourth Circuit with instructions to hear Petitioner's Appeal on the merits of his challenge to subject-matter jurisdiction of the District Court.

Respectfully submitted, in good faith,



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