

23 No. 6395

ORIGINAL

**In The
SUPREME COURT OF THE UNITED STATES**

IN RE DANIEL LEE BECKLEY, ET. AL., PETITIONER

**ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PETITION FOR A WRIT OF MANDAMUS

Supreme Court, U.S.
FILED

DEC 18 2023

OFFICE OF THE CLERK

DANIEL L. BECKLEY
PRO SE
D.O.C. NO. 728916
MAIN PRISON, CYPRESS-4
LOUISIANA STATE PENITENTIARY
ANGOLA, LA 70712

NOVEMBER 28, 2023

QUESTIONS PRESENTED

In *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988), this Honorable Court held that when an incarcerated person submits his/her legal pleadings to a prison official for mailing that legal pleading is deemed filed into the court on the date it was given to the prison official.

The question presented is whether a writ of mandamus should issue directing the court of appeals to abide by the Supreme Court's holding in *Houston v. Lack* and accept Petitioner's petition for *En Banc* Rehearing that was given to the classification department here at the Louisiana State Penitentiary at Angola for mailing on October 5, 2023 which was ten (10) days after Petitioner received the court of appeals ruling on September 25, 2023.

PARTIES TO THE PROCEEDINGS

Petitioner in the Court (appellee in the court of appeals) is Daniel Lee Beckley, D.O.C. No. 728916

Respondent in the Court is the United States Court of Appeals for the Fifth Circuit. Respondents also include Lyle w. Cayce, in his official capacity as Clerk for the United States Court of Appeals for the Fifth Circuit; Monica R. Washington, in her official capacity as Deputy Clerk for the United States Court of Appeals for the Fifth Circuit.

STATEMENT OF RELATED PROCEEDINGS

The following proceeding is directly related to this filing within the meaning of Rule 14.1(b)(iii): U.S. Court of Appeals or the Fifth Circuit, No. 23-30268, *Beckley v. Hooper*, (June 1, 2023).

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
STATEMENT OF RELATED PROCEEDINGS	iii
TABLE OF AUTHORITIES	iv
JURISDICTION	1
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	1
A. Proceedings in the Court of Appeals	2
REASONS FOR GRANTING THE PETITION	2
PETITIONER'S RIGHT TO ISSUANCE OF A WRIT IS CLEAR	3
A WRIT OF MANDAMUS IS WARRANTED GIVEN THE URGENT CIRCUMSTANCES OF THE CASE	3
NO OTHER ADEQUATE MEANS TO RETAIN RELIEF EXIST	4
CONCLUSION	5
CERTIFICATE OF SERVICE	6
INDEX OF EXHIBITS	7

TABLE OF AUTHORITIES

CASES:	PAGE(S)
BECKLEY v. HOOPER, No. 23-30268 (2023)	iii
CHENEY v. UNITED STATES DIST. CT., 542 U.S. 367, 380-81 (2004)	2, 3
In re SANFORD FORK & TOOL CO., 160 U.S. 247, 255 (1895)	3
GEN. ATOMIC CO. v. FELTER, 436 U.S. 493, 497 (1978)	3
HOLLINGSWORTH v. PERRY, 558 U.S. 183, 190 (2010)	2
HOUSTON v. LACK, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988)	i, 1, 3
EX PARTE REPUBLIC OF PERU, 318 U.S. 578, 583 (1943)	4
UNITED STATES v. FOSSATT, 62 U.S. 445, 446 (1858)	3, 4
WILL v. UNITED STATES, 389 U.S. 90, 95-96 (1967)	4
STATUTES, CONSTITUTIONAL PROVISIONS AND RULES:	
28 U.S.C. § 1651	1, 2
FED. R. APP. P. 40	1
RULE 14.1(b)(iii)	iii

PETITION FOR A WRIT OF MANDAMUS

Petitioner respectfully petitions for a writ of mandamus to the United States Court of Appeals for the Fifth Circuit, requesting that the Fifth Circuit be instructed to follow the directions of the United States Supreme Court in *Houston v. Lack* and accept Petitioner's *Pro Se* legal pleading as timely filed.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The All Writs Act, 28 U.S.C. § 1651(a), provides:

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

STATEMENT OF THE CASE

There is no clearer rule in all appellate jurisprudence than the rule that a lower court must comply with the mandate of a superior court and that the issues decided by the superior court are not subject to re-litigation below.

Here, when Petitioner submitted his legal pleading to the prison officials on October 5, 2023, ten (10) days after Petitioner received the ruling of the court appeals, Petitioner was within the fourteen (14) day time period to do so by Fed. R. App. P. 40. The court of appeals ruled on October 11, 2023 that Petitioner's filing was untimely and that "no action" would be taken on the petition for rehearing (See Exhibit 1, Ruling by United States Court of Appeals for the Fifth Circuit)

Petitioner submits as exhibits to support this request for a writ of mandamus the mailing slips provided to him by the Louisiana State Penitentiary Classification Department; Exhibit 2, Offender's Request for Legal/Indigent Mail, Exhibit 3, Department of Public Safety and Corrections, Corrections Services, Offender Funds Withdrawal Request. Petitioner is also submitting as an exhibit his petition

for *En Banc* Rehearing, Exhibit 4 and his Motion for Certificate of Appealability and Memorandum in Support, Exhibit 5.

Because the court of appeals has refused to accept the *En Banc* Rehearing petition as timely filed, Petitioner respectfully requests that this Court issue a writ of mandamus directing the appeals court to do so.

PROCEEDINGS IN THE COURT OF APPEALS

Petitioner filed a motion requesting a *Certificate of Appealability* and a memorandum in support with the court of appeals dated June 1, 2023. (See Exhibit 5) This request was done in opposition to the federal district court's denial of Petitioner's Writ of Habeas Corpus, Case No. 22-860. The request for a COA was denied by the appeals court on September 15, 2023. (See Exhibit 6, Ruling by Fifth Circuit Court of Appeals) Petitioner received the appellate court's ruling on September 25, 2023. Petitioner submitted, for mailing, a petition for *En Banc* Rehearing to the Classification Department of the Louisiana State Penitentiary on October 5, 2023. (Please See Exhibit 2 & Exhibit 3) This submission was ten (10) days after Petitioner received the ruling of the appellate court. On October 16, 2023, Petitioner received a letter from the appellate court stating that "no action" would be taken because under rule 40 of federal appellate procedure time to file for a rehearing had expired. (Please See Exhibit 1)

REASONS FOR GRANTING THE PETITION

The Court may "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a)

A writ of mandamus is warranted where "(1) no other adequate means exist to attain the relief [the party] desires, (2) the party's right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (quoting *Cheney v. United States Dist. Ct.*, 542 U.S. 367, 380-81 (2004))

Mandamus is reserved for “exceptional circumstances amounting to a judicial ‘usurpation of power.’” *Cheney*, 542 U.S. at 380 (citation omitted). Where a lower court “mistakes or misconstrues the decree of this Court” and fails to “give full effect to the mandate, its action may be controlled *** by a writ of mandamus to execute the mandate of this Court.” *Gen. Atomic Co. v. Felter*, 436 U.S. 493, 497 (1978) (per curiam) (quoting *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895); see also *United States v. Fossatt*, 62 U.S. 445, 446 (1858) (When a case is sent to the court below by mandate from this court,*** if the court does not proceed to execute the mandate, or disobeys and mistakes its meaning, the party aggrieved may, by motion for a mandamus, at any time, bring the errors or omissions of the inferior court before this court for correction.”).

Exceptional circumstances are present here, where a clear error has been committed on the part of the Fifth Circuit Court for which that court has failed to abide by the rules of appellate procedure and the mandates of this Court and that error is in dire need of correction.

PETITIONER'S RIGHT TO ISSUANCE OF A WRIT IS CLEAR

Petitioner is entitled to a writ directing the Fifth Circuit to accept the *En Banc* Rehearing request as timely filed and therefore perform their judicial duty in determining the merits of Petitioner's legal pleading because this Court has made it abundantly clear that when an incarcerated, *Pro Se*, petitioner gives his legal paperwork to a prison official for mailing purposes that legal paperwork is considered filed into the court on the date it was given to the prison official. *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988).

This Honorable Court cannot allow the court of appeals to flout this Court's mandate and derail Petitioner's due process rights as outlined in the rules of appellate procedure. The merits of Petitioner's legal pleading deserve their day in court and the court of appeals actions effectively deny that.

A WRIT OF MANDAMUS IS WARRANTED GIVEN THE URGENT CIRCUMSTANCES OF THE CASE

Because the Court of Appeals is acting in conspicuous violation of this Court's mandate and Fed. R. App. P. 40, a writ of mandamus from this court is the appropriate vehicle to rectify the error. See, e.g., *Ex parte Republic of Peru*, 318 U.S. 578, 583 (1943); *Fossatt*, 62 U.S. at 446.

Petitioner's COA request was denied on September 15, 2023. Petitioner received the ruling on September 25, 2023. Being that Petitioner has only ninety (90) days for which to seek certiorari with this Honorable Court on the denial by the appellate court, Petitioner calculates that as of the formulation of this writ he has less than thirty (30) days remaining for which to submit a writ of certiorari to this Court. That being the case, the urgency of this request is obvious in that Petitioner is in need of a decision on this writ before his time expires to submit his certiorari writ. The results are two-fold in that if this Honorable Court decides to use its discretionary power and grant the mandamus the time frame for submitting a writ of certiorari becomes moot until a final decision is made by the *En Banc* Court. Also, if this Honorable Court decides to not grant the mandamus, Petitioner can submit his writ of certiorari timely to this Honorable Court.

NO OTHER ADEQUATE MEANS TO OBTAIN RELIEF EXISTS

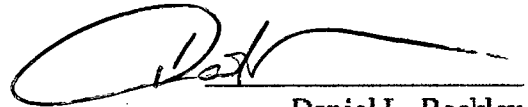
No other adequate means exist to obtain Petitioner's requested relief. "The Court has indicated that mandamus is the only proper remedy available to a party who has prevailed in the Supreme Court where the lower court "does not proceed to execute the mandate, or disobeys and mistakes its meaning" *United States v. Fossatt*, 62 U.S. (21 How.) 445, 446 (1858).

Absent intervention by this court, the Fifth Circuit will, in the future, feel empowered to disobey any mandate established by this Court. Rendering any and all protections provide to individuals by this Court nonexistent. Therefore, Petitioner has no recourse in another court. "One function of the writ of mandamus is to force a lower court to comply with the mandate of an appellate court. When the mandate or judgment in question is that of the Supreme Court, application for the writ must, of course, be made to that Court." *Will v. United States*, 389 U.S. 90, 95-96 (1967)

CONCLUSION

For the foregoing reasons, the Court should issue a writ of mandamus directing the court of appeals to accept Petitioner's petition for *En Banc* Rehearing as timely filed.

Respectfully submitted this 7 day of December, 2023.



Daniel L. Beckley
D.O.C. No. 728916
Main Prison, Cypress-4
Louisiana State Penitentiary
Angola, La 70712