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No. 21-5189

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IN THE

SUPREME COURT OF THE UNITED STATES

IN RE TONY WEEMS, PETITIONER

ON PETITION FOR A WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

TONY WEEMS

P.O. BOX 1000

MARION, IL 62959

QUESTION PRESENTED

U.S. SHOULD THE DISTRICT OF COLUMBIA COURT OF APPEALS HAVE THE AUTHORITY UNDER THE FIFTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION TO RECHARACTERIZE A PRO SE LITIGANT(S) MOTION UNDER CASTRO V. UNITED STATES, 540 U.S. 375, 124 S.Ct. 786, 157 L.Ed.2d 778 (2003).

LIST OF PARTIES

TONY WEEMS #108171001
USP MARION
P.O. BOX 1000
MARION, IL 62959
Petitioners

HONORABLE JUDGE MILLETT
HONORABLE JUDGE RAO
HONORABLE JUDGE CHILDS
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
333 CONSTITUTION AVENUE N.W.
WASHINGTON, D.C. 20001

RELATED CASES

WEEMS v. CASHWA, No. 1:20-cv-00726, U.S. District Court for the District of Columbia. Judgment entered Aug. 17, 2021.

WEEMS v. CASHWA, No. 21-5189, U.S. Court of Appeals for the District of Columbia. Judgment entered Mar. 8, 2022.

WEEMS v. CASHWA, No. 21-5189, U.S. Court of Appeals for the District of Columbia. Judgment entered Oct. 4, 2022.

WEEMS v. CASHWA, No. 21-5189, U.S. Court of Appeals for the District of Columbia. Judgment entered Dec. 2, 2022.

WEEMS v. CASHWA, No. 21-5189, U.S. Court of Appeals for the District of Columbia. Judgment entered Jan. 26, 2023.

Wheeler v. Cashman, No. 21-5189, U.S. Court of Appeals for the District of Columbia. Judgment entered Jan. 26, 2023.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

OPINION'S RECALL

The opinion of the United States court of appeals appears at Appendix A to the petition and is reported at Hearts v. Cushman, 2023 U.S. App. LEXIS 2179 (D.C. Cir. Jan. 26, 2023).

The opinion of the United States court of appeals appears at Appendix B to the petition and is reported at Hearts v. Cushman, 2023 U.S. App. LEXIS 14627 (D.C. Cir. June 12, 2023).

SUBSCRIPTION

The date on which the United States Court of Appeals decided my case was October 4, 2022.

No petition for rehearing was afforded by the United States Court of Appeals, a copy of the order appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. 31254(d); 28 U.S.C. 32106.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides:

"No person shall be deprived of life liberty or property without due process of law, nor shall private property be taken for public use without just compensation."

The Fourteenth Amendment of the United States Constitution provides:

"No state shall make or enforce any law... nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

The statutes involved and under review are:

Civil Rules of Appellate Procedure Rule 35 (b)(1)(A):

(b) Petition for Hearing or Rehearing En Banc.

A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions, *id.*

Civil Rules of Appellate Procedure Rule 40 (a)(1)(C):

(a)(1) Time... But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

(C) a United States officer or employee acting in an official capacity id.

STATEMENT OF CASE

Within July, 2019, Mr. Wleems, was reviewed by the United States Parole Commission (USPC), under the D.C. Parole Guidelines of 1987. Prior to Mr. Wleems parole hearing, the United States District Court for the District of Columbia, issued its opinion against the (USPC), Sellmon v. Reilly, 2008 U.S. Dist. LEXIS 36082 (D.C. Cir. 2008), whereas, the USPC was informed not to use accountability towards or against a D.C. Code offender to deny them qualified parole. Mr. Wleems was denied parole for the nature of his offenses, and a 5-year incident infraction.

Under Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 425, 92 S.Ct. 594 (1972), Mr. Wleems initiated a 42 U.S.C. § 1983, against the USPC, the action focused on the Ex Post Facto Clause; accountability of criminal offenses; a 5-year incident infraction; and the increase of Mr. Wleems minimum sentence under the old law by placing petitioner in a sex offender treatment program that was enacted under the Bureau of Prisons in 2001. Petitioner cited numerous cases by this Court, as well as other courts. Garner v. Innes, 529 U.S. 244, 120 S.Ct. 1362, 146 L.Ed.2d 236 (2000); Collins v. Youngblood, 497 U.S. 37, 116 S.Ct. 2715, 111 L.Ed.2d 30 (1990); Nasir v. Smart, 282 F. Supp. 3d 74, n. 20 (D.C. Cir. 2018). The District Court denied petitioner's civil action, Wleems v. Cushman, 2021 U.S. Dist. LEXIS 154302 (D.C. Cir. 2021). On appeal, Mr. Wleems argued against the USPC, asserting that Mr. Wleems had 3-strikes under the prison litigation reform act, the Court found Mr. Wleems did not have 3-strikes, during that course of litigation, the USPC initiated a summary affirmance motion, and petitioner filed a response to the USPC summary affirmance motion. The Court of Appeals on October 4, 2022, granted the USPC summary affirmance motion. Wleems v. Cushman, 2022 U.S. App. LEXIS 6020 (D.C. Cir. 2022). Wleems v. Cushman, 2022 U.S. App. LEXIS 27237 (D.C. Cir. 2022). On December 2, 2022, Mr. Wleems filed a motion for reconsideration,

Alcorno v. Cushman, 2022 U.S. App. LEXIS 33396 (D.C. Cir. 2022). The Court of Appeals response indicated petition for rehearing denied. Within December, 2022, Mr. Alcorno filed another copy of a motion for reconsideration because petitioner did not file a petition for rehearing, at that point Mr. Alcorno had attached a motion to stay mandate, on December 12, 2022, Appeals Court issued its mandate, December 21, 2022, petitioner filed a motion for clarification, by the Court of Appeals recharacterizing Mr. Alcorno's motion. On January 26, 2023, the court ordered motion to stay the mandate which the court had construed as a motion to recall the mandate. *Alcorno v. Cushman*, 2023 U.S. App. LEXIS 2179 (D.C. Cir. 2023), APPENDIX A. In March, 2023, petitioner filed a petition for a writ of mandamus asserting that the court of appeals again recharacterized Mr. Alcorno's motion. June 12, 2023, the Court of appeals denied Mr. Alcorno's writ of mandamus. *Alcorno v. Cushman*, 2023 U.S. App. LEXIS 14627 (D.C. Cir. 2023), APPENDIX B.

The Court of appeals have taken up the position with the District Court in affirming the denial of petitioners' civil action that petitioner did not meet the ex post facto clause. Petitioner acknowledge that under the *Bellon*, *Supra.* analysis and Supreme Court case law did meet the ex post facto clause and therefore the forementioned court have created a conflict with its own forum as well the Supreme Court.

RECORDS FOR GRANTING THE PETITION

This Court made it clear in the *Castro supra* opinion at 372, and the Question Presented demonstrates (APPENDIX A) that the District of Columbia Court of Appeals have ignored the *Castro supra* procedure. Petitioners did file for a writ of mandamus, with the D.C. Court of Appeals, and that was denied. IN RE UNITED STATES ET AL, 139 S.Ct. 458, 208 L.Ed.2d 344, 2008 U.S. LEXIS 6514, at LEXIS 3 (2008):

Although the Ninth Circuit has twice denied the Government's request for mandamus relief, *id.*

Mr. Alvarado has no other recourse, *Ex Parte Republic of Peru*, 483 U.S. 578, 585, 43 S.Ct. 793, 87 L.Ed. 1014 (1993). *Ex Parte Foley*, 338 U.S. 258, 360, 91 L.Ed. 304, 67 S.Ct. 1558 (1947).

Petitioner claims that the Court of Appeals admitted that Mr. Alvarado's motion for reconsideration was construed as a petition for panel rehearing. APPENDIX A COURT ORDER JANUARY 20, 2023.

The Court of Appeals, January 20, 2023, Order is clear and violates this Court precedent set by *Castro supra*, and all lower judicial figures must adhere to the passage of case law handed down by the Supreme Court. On December 7, 2023, Mr. Alvarado had attached a motion to stay the mandate, until after filing what petitioner had believed he had 45 days after entry of the judgment, Fed. R. App. P. 40 (a)(1), and on October 12, 2023, Mr. Alvarado was still within the 45 days when filed for a motion for reconsideration, from October 4-12, 2023, is not 45 days.

Petitioner request that this Honorable Court grant the petition, pursuant to the hurdles incurred on him.
Kerr v. United States District Court for the Northern Dist. of Cal., 426 U.S. 394, 403, 48 L.Ed.2d 725, 96 S.Ct. 2119 (1976); Calderon v. Thompson, 523 U.S. 538, 49-50, 118 S.Ct. 1489, 140 L.Ed.2d 728 (1998); Donnelly v. Parker, 486 F.2d 402, 405-406 (D.C. Cir. 1973); La Re. Halkin, 549 F.2d 176, 179-80 n.1 (D.C. Cir. 1977); Schlangehauf v. Holder, 379 U.S. 104, 111 n.8, 85 S.Ct. 234, 13 L.Ed. 2d 152 (1964); and Will v. United States, 389 US 90, 95, 19 L.Ed.2d 305, 88 S.Ct. 240 (1967).

CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully submitted,
Yany W. ~~Wend~~

Date: November 24, 2023.