

SUPREME COURT OF THE UNITED STATES

JOSEPA RANDOLEN MAYO, pro se

Petitioner,

v.

T. B. SMITH, Warden, et al.,

Respondent(s).

No.: 23-723

RE: Mayo v. Smith
20-7540 (4th Cir. 2023)

RENEWED MOTION TO FILE MOTION FOR RECONSIDERATION OF PETITION FOR WRIT OF CERTIORARI OUT OF TIME

The Petitioner, a DC inmate incarcerated in the Federal Bureau of Prisons at FCI Victorville II, in Adelanto, California, comes before this Honorable Court to, respectfully, submit his Motion to file his Motion for Reconsideration of [his] Petition for Writ of Certiorari (Application No.: 23A421) for Case No.: 20-7540 Mayo v. Smith (4th Cir. 2023) RE: 5:18-cr-0186-FL (EDNC 4th Cir. 2020) that was denied on February 26, 2024 (No.: 23-723).



The Petitioner submitted his Petition for Reconsideration on March 24, 2024 pursuant to Rule 44 of the Supreme Court Rules.

The Petitioner WAS NOT able to know about the denial of his writ of certiorari until February 28, 2024, at 9:06 PM, via an email response, from former counsel Lawrence Rosenberg, to the Petitioner's email request earlier that day, at 10:49 AM, about the status of the filing of the petition for writ of certiorari in December 2023. See calendar below.

February/March 2024		26 ①	27	28 ②	29	1	2
March 2024	3	4	5	6	7	8	9
	10	11	12	13	14	15	16
	17	18	19	20	21	22 ③	23
	24 ④	25	26	27	28	29	30
	31						

- ① - Cert. denied 2-26-2024 23-723 (Mays v. Smith)
- ② - Informed two days AFTER denial by counsel Lawrence Rosenberg
- ③ - Completed petition for reconsideration (had to hand copy some of remaining pages - NO access to Innate Copier Friday PM or all day Saturday)
- ④ - Mailed out petition for reconsideration - TWO DAYS makes a difference at the end of the week (see ③)

Counsel DID NOT email him or send him a letter to let him know that the Petition (No.: 23-723) had been denied. And, when

he responded (email dated 2-28-2024 09:06:07 am) HE stated, "I am traveling but have prepared a formal letter that I will send you in the next day or two." However, his reply came 41 days LATER. See attached letter/envelope dated April 5, 2024 and April 3, 2024, respectively, and a copy of this Honorable Court's decision on February 26, 2024 (No. 23-723 *Mays v. Smith*) (3 Pages) that was received on April 9, 2024 from the FCI Victorville II (D-Lower) Unit Officer in Adelanto, California. This dereliction of legal duties, under DC Bar Rules 1.3 and 1.4, cost the Petitioner, for all practical purposes, THREE (3) DAYS (February 26, 2024 to February 28, 2024). Additionally, the Petitioner locked down for the night at 9:30 PM on the 28th - less than half an hour after the email arrived - and DID NOT/WOULD NOT have had any time to conduct research and/or work on his petition. Under Rule 44, as pointed out in the [Supreme Court] Clerk's response dated April 3, 2024, the petition is due in 25 days. See calendar on Page 2 of this Motion. However, the rule must, unless disputed otherwise, assume that the Petitioner knows of or is AWARE OF the denial, when it occurs, in order to be able to act on it in a TIMELY manner. The Petitioner WAS NOT AWARE of this denial because he DID NOT/DOES NOT HAVE access to PACER and the Electronic Law Library IS NOT updated daily.

The Petitioner had also been denied meaningful access to counsel as a result of counsel's actions or lack of actions, to include failure to inform the courts (Fourth Circuit Court of Appeals AND the Supreme Court) of FBOP staff interference with access to legal calls to allow the Petitioner to give input on HIS OWN CASE. This is unethical under DC Bar Rules 1.2 and 1.4. See Page 8 of 9 P1 of enclosed Motion for Reconsideration. Additionally, he (Counsel Lawrence Rosenberg) stated that he/his office tried to call FCI Victorville II over 100 times to set up a legal call. There was a SEVEN and a HALF MONTH ~~gap~~ between legal calls on May 1, 2023 at USP Lompoc, CA (one week before the Petitioner's transfer to FCI Victorville, CA) and December 21, 2023 at FCI Victorville II. This was despite the Appellate Court decisions on June 6, 2023, (July 20, 2023 - Petition for Rehearing filed WITHOUT the Petitioner's permission or knowledge), and August 4, 2023. He failed to send any correspondence from mid-August 2023 onward to make the Petitioner aware that he was attempting to call the Petitioner. It is up to HIM (counsel), as per FBOP policy, to INITIATE the legal call. It should also be noted that the Petitioner is a prisoner and, because of his status, is ALWAYS able to be found and/or available for a legal call. Counsel Lawrence Rosenberg has FAILED to provide PROOF of his

efforts to contact the Petitioner to explain his failure to set up legal calls between himself and the Petitioner from June 6, 2023 to December 21, 2023.

Therefore, based on the foregoing, the Petitioner, respectfully, requests that this Honorable Court GRANT this Motion to file his Petition for Reconsideration of [his] Writ of Certiorari Out of Time to

- 1) PREVENT a gross miscarriage of justice (i.e. NO ACCOUNTABILITY for FBOP/government officials' SERIOUS misconduct and DOCUMENTED violations of constitutional and statutory law (defamation of character, wrongful imprisonment (SHU), false charges/falsification of government documents, etc.));
- 2) for the reasons specified in the Petition for Writ of Certiorari and Motion for Reconsideration dated March 22, 2024;
- 3) to PROTECT the RIGHTS of the Petitioner (CONSTITUTIONAL RIGHTS);
- 4) for the FAIR administration of justice;
- 5) the public interest and their RIGHT to KNOW what their government is up to; and
- 6) to show that delay - TWO DAYS/TWO and a HALF DAYS - in notifying the Petitioner was the difference in being on time, pursuant to Rule 44, due to lack of access to a copier and outgoing mail on Friday evening (March 22, 2024).

I, Joseph R. Mays, declare, pursuant to 28 USC § 1746, that the foregoing is true and correct under penalty of perjury under the laws of the United States of America. Executed on April 11, 2024. JRM

151
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PO Box 3850
Adelanto, CA 92301

Attachments:

- Motion to File Petition for Writ of Certiorari Out of Time (3 Pages)
 - Includes Certificate of Service dated 3-28-2024 (1 Page) - Was sent to AVOID the CONTINUED LOSS OF POSTAGE DUE to remailing of Petition (Mays v. Smith 20-7540 - No. 23-723)
- Letter/envelope from [Supreme Court] Clerk dated/postmarked April 3, 2024 - RE: RETURN of Petition above and LOSS of 29 Stamps (\$18.27 at \$0.63/stamp). (2 Pages)
- Letter from former counsel (Lawrence David Rosenberg, Esq.) (3 Pages) dated 4-5-2024, includes envelope (postmarked 4-3-2024 from California 90071 Pitney Bower meter 02 7H 0006047511), which WAS NOT fully copied by Mailroom at FCI Victorville II, CA to show bar code and possible writing (e.g. SPECIAL MAIL) on bottom 1/2" of envelope, and a copy of the Order sent to counsel Lawrence Rosenberg on February 26, 2024. It was received by the Petitioner 41 DAYS LATER!!!
- ★ All previous documents are listed on the Certificate of Service dated 4-11-2024 (2 Pages) JRM