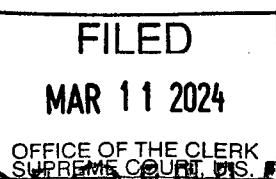


23-7658



ORIGINAL

IN THE UNITED STATES SUPREME COURT

No. _____

IN RE: ROBERT GENE REGA

PETITION FOR A WRIT OF MANDAMUS PURSUANT TO 28 U.S.C. §1651 AND RULE
21 OF THE FEDERAL RULES OF APPELLATE PROCEDURE

SUBMITTED BY:

ROBERT GENE REGA
Petitioner, Pro Se
D.O.C.#: FA-4771
1200 Mokychic Drive
Collegeville, PA 19426

Date: May _____, 2024

IN THE UNITED STATES SUPREME COURT

: No: _____

IN RE: ROBERT GENE REGA : LOWER COURT NO.
18-9002/18-9003

:

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I. QUESTIONS PRESENTED

Whether the United States Court of Appeals for the Third Circuit's failure to issue a dispositive order disposing of Petitioner's Writ of Habeas Corpus that has been pending in said court since 2018, violates Petitioner's right to due process.

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Appendix - A Docket Sheet Depicting Order Of The United States Court Of Appeals Dismissing Petitioner's Letter For A Final Order.

IV. LIST OF PARTIES

Petitioner avers that all parties do not appear in the caption of the case on the cover page. The Original party to this case would be the Secretary of the Pennsylvania Department of Corrections; Superintendent of SCI Greene; Superintendent of SCI Rockview - Respondents.

V. RELATED CASES

Petitioner does not know of any related cases presently pending before the court.

VI. TABLE OF AUTHORITIES

Cases

Allied Chemical Corp. V. Daiflon Inc.

449 U.S. 33, 34 (1980), 57 F. 3d 31, 37 (1st. Cir. 1995).P. 9

In re U.S.

158 F. 3d 26 (1st. Cir. 1995).....P. 8, 9, 10

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490 U.S. 296, 308 (1989).....P. 8, 9

New York V. Hill

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Will v. Calvert Fire Ins. Co.

437 U.S. 655, 661 (1978).....P. 8

Constitutional Provisions

IN THE UNITED STATES SUPREME COURT

No. _____

IN RE: ROBERT GENE REGA

PETITION FOR A WRIT OF MANDAMUS PURSUANT TO 28 U.S.C. §1651 AND RULE
21 OF THE FEDERAL RULES OF APPELLATE PROCEDURE

The Petitioner, Robert Gene Rega, hereby petitions for writ of mandamus in the United States Supreme Court, from the United States Court of Appeals, for the Third Circuit, to issue a final dispositive order resolving Petitioner's Writ of Habeas Corpus which has been pending in said court since 2018.

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Statutes

28 U.S.C.A. §1651.....	P. 1,5
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Federal Rule of Appellate Procedure 21	P. 1,5
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VII. ORDERS/OPINIONS BELOW

On March 30, 2022; (ECF-118/119), and September 29, 2023; (ECF-126/127), the United States Court of Appeals, for the Third Circuit, has dismissed either Petitioner's motion and/or request for a final order.

The relevant text of the Court's Orders as referred to in this Petition are attached hereto at Appendix - A.

VIII. STATEMENT OF JURISDICTION

This Court has jurisdiction under the All Writs Act, 28 U.S.C.A. §1651, and Rule 21 of the Federal Rules of Civil Procedure.

IX. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth and Fourteenth Amendments to the United States Constitution.

Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or

public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment:

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

X. STATEMENT OF THE CASE

Since May 31, 2018, the United States Court of Appeals, for the Third Circuit, has had pending before it, this Petitioner's Writ of Habeas Corpus. A criminal matter which does not constitute complex legal issues, but rather constitutes legal matters which are answered by well established federal law.

The matter has been fully briefed since May 7, 2021. See, Docket Sheet Attached hereto as Appendix - A. Petitioner believes, and therefore avers that the Writ of Habeas Corpus has been deliberately stalled in the United States Court of Appeals, for the Third Circuit, for reasons other than legitimate judicial reasons; In short, political favors for District Attorney, Jeffrey D. Burkett, the respondent in this matter. The Petitioner submits that after doing a reasonable search, Petitioner could find any other case that had been pending in the United States Court of Appeals, for the Third Circuit, for over Seven-(7) years as had Petitioner's

case. Petitioner believes that the above is circumstantial evidence that the Petitioner's case is being improperly handled and stalled in the court, that of which constitutes inordinate delay, and a clear violation of Petitioner's right to Due Process .

Petitioner avers that the above mentioned delay is prejudicial to Petitioner as witnessses that would be required to testify in a retrial; if granted, are dying and/or are getting to the age that demantia is affecting thier ability to recollect the details of the case, not to mention Petitioner's life is being *squandered* by the inordinate delay.

Whereas, on May 29, 2018, Hunter Labovitz, Esq., counsel for Petitioner, filed a notice of appeal in the United States District Court, for the Western District of Pennsylvania, in the matter of Rega v. Secretary, Pennsylvania Department of Corrections, 2:13 CV 01781-JFC .

The United States Court of Appeals, for the Third Circuit, issued a certificate of appealablity on or about October 16, 2018, at 18-9002 & 18-9003.

The United States Court of Appeals, for the Third Circuit, issued a briefing schedule on or about July 11, 2019.

Petitioner avers that the briefing in this matter has been completed since May 7, 2021.

Petitioner avers that despite the briefing in this matter having been completed since May 7, 2021, no oral arguments have been held, nor scheduled to date, and the matter has been ripe for a dispositive order since May 7, 2021.

XI. REASONS FOR GRANTING THE WRIT

The Petitioner respectfully requests that this Honorable Court order the United States Court of Appeals, for the Third Circuit, to issue issue a dispositive order disposing of Petitioner's Writ of Habeas Corpus within the next 60 to 90 days.

Argument

- A. The United States Court of Appeals for the Third Circuit should be ordered to decide the Petitioner's Writ of Habeas Corpus that has been pending since 2018.

1. General Principles And Standards Of Review

A court of appeals should issue a writ of mandamus to confine a [] court to a lawful exercise of its prescribed jurisdiction or to compel a [] court to exercise its authority when it has a duty to do so. *Mallard v. U.S. District Court for the Southern District of Iowa*, 490 U.S. 296, 308 (1989). "There can be no doubt that, where a court persistently and without reason refuses to adjudicate a case properly before it, the [United States Supreme Court] may issue a writ in order that it may exercise the jurisdiction of review given by law." *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661 (1978). Citing *Knickerbocker Ins. Co. of Chicago V. Comstock*, 83 U.S. 258 (1872).

A party seeking mandamus "must show both that there is a clear entitlement to the relief requested, and that irreparable harm will likely occur, if the writ is withheld." *In re U.S.*, 158 F. 3d 26, 30 (1st. Cir. 1995).

2. Mandamus Is The Proper Remedy In This Case

The Petitioner readily acknowledges that a writ of mandamus is an extraordinary remedy. Allied Chemical Corp. V. Daiflon Inc., 449 U.S. 33, 34 (1980), 57 F. 3d 31, 37 (1st. Cir. 1995). However, one of the primary reasons that writs of mandamus are disfavored by the courts is that they contribute to "piecemeal" litigation. Mallard, 490 U.S. at 309; Allied Chemical Corp., 449 U.S. at 35; In re United States, 158 F 3d. at 30. In the instant case, this well-founded concern about piecemeal litigation is exactly the reason why this writ of mandamus should be issued. This "piecemeal" aspect does not exist under these circumstances. The denial of an dispositive order prevents Petitioner from having any other adequate means to obtain the desired relief. Madden V. Myers, 102 F. 3d 74, 79 (3rd. Cir. 1996). In short, until the United States Court of Appeals for the Third Circuit issues an order disposing the matter at hand, Petitioner's life will remain in limbo as it has been for the past seven-(7) plus years.

As due process mandates, Petitioner has a clear right to relief as he has a right to due process and the adjudication of his case; Mallard v. U.S. District Court for the Southern District of Iowa, 490 U.S. 296, 308 (1989).

3. Reasoning Behind Request

Since May 31, 2018, the United States Court of Appeals, for the Third Circuit, has had pending before it, this Petitioner's Writ of Habeas Corpus. The Petitioner believes, and therefore avers that the case should have been resolved long ago. In the process thereof, Petitioner has lost his mother as a viable witness as a result of her death. This alone establishes a clear entitlement to the relief

requested as irreparable harm has already occurred as Mrs. Joan Mary Rega, a primary witness in the origional trial, has died. In re U.S., 158 F. 3d 26, 30 (1st. Cir. 1995) In addition, "delay can lead to a less accurate outcome as witnesses become unavailable and memories fade. New York V. Hill, 120 S. Ct. 659, 665 (U.S. 2000). In short, this case has been in the Appellate Court's for over Twenty-Two years.

The United States Court of Appeals, for the Third Circuit's failure to issue a dispositive order is troubling after several requests.

Petitioner avers that on December 1, 2021, Petitioner filed a motion for a dispositive order; (ECF-118). However, this request was ignored. Petitioner avers that on September 25, 2023, Petitioner filed a letter seeking a dispositive order; (ECF-126). However that request was referred to counsel, whom, due to political reasons, has refused to file any motions seeking a dispositive order from the court despite Petitioner's repeated requests. It should be clarified that counsel's failure to file a motion for a dispositive order in the Third Circuit is not necessarily due to his personal unwillingness, but rather he is being prevented from filing a motion by the supervisors of the Federal Defenders Asssociation, an agency that receives most of its funding from the Federal Courts to represent indigent defendants as they do not want to "ruffle the feathers" of the Court.

It is acknowledged that counsel for Petitioner has filed numerous continuances, most without Petitioner's knowledge or approval, but this is only part of the delay. The primary cause of the delay appears to be due to some ex parte reason. Again, it is the only logical explanation as the court has had this case pending before it for over seven (7) years. It can be argued, and circumstantial

evidence exists to demonstrate that this delay is due to the Respondent (District Attorney's Office) need to delay the proceedings due to *inter alia*, re-election reasons as the Respondent has used Petitioner's conviction in most, if not all, of the Respondent's political campaign adds. Petitioner avers that such an occurrence is repugnant to Rule 1, of the Federal Rules of Civil Procedure, which dictates that all "proceedings in all civil cases...should be....administered to secure the *just, speedy, and inexpensive determination of every action and proceedings*".

Petitioner avers that said intentional delay is prejudicial to Petitioner, in that witnesses memories are fading, and that such deprivations violate Petitioner's clear right to due process of law.

4. The Writ Will Be In Aid Of The Court's Appellate Jurisdiction

Petitioner avers that this Writ, if granted, will ultimately aid in the this Court's appellate jurisdiction as without a dispositive order from the Third Circuit, this Court cannot review the merits of the Third Circuit's Order when challenged by a Writ of Certiorari.

5. Lack Of Any Other Adequate Relief

Petitioner avers that adequate relief cannot be obtained in any other form or from any other court due to their being no other remedy available outside of the supervisory review by the United States Supreme Court, as there is no other higher court to petition for relief to compel a final order. Petitioner has submitted motions and letters seeking an order, and because Petitioner is represented by counsel, who due to a political reasons, has (after numerous requests), refused to

intervene by filing a motion for a final order, Petitioner has no other adequate remedy. In short, the Third Circuit has no intention on issuing a final order due to political favors.

XII. CONCLUSION

For all the reasons set forth in this petition, the Petitioner respectfully requests that this Honorable Court order the United States Court of Appeals, for the Third Circuit to issue a dispositive Order deciding Petitioner's Writ of Habeas Corpus within the next Sixty-(60) to Ninety-(90) Days.

Respectfully Submitted,



Robert Gene Rega

Date: May 30, 2024