

No. 23-7749

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED

JUN 10 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

CARLOS ENRIQUE LOPEZ SOTO
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CARLOS ENRIQUE LOPEZ SOTO
pro se petitioner
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QUESTION PRESENTED

Whether the Court of Appeals could dismiss
an action based on untimely notice
where (1) the district court's judgment
was never notified, and (2) in the
absence of a timely objection from
the government.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption
of the case on the cover page.

RELATED PROCEEDINGS
Appeal Nos. 22-1800, 22-1801

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The decision of the court of appeals.

See Appendix 1a.

JURISDICTION

The decision of the court of appeals was entered on March 22, 2024. The jurisdiction of this Court is invoked under 28 USC § 1254 (1).

STATEMENT OF THE CASE

Following this Court ruling of the Rehaif's case, petitioner Carlos Enrique Lopez Soto ("Lopez Soto") filed in the district court, a competent motion to dismiss his 922 (g)(1) conviction and charges. See District Court Criminal No. 14-415(DRD) at Dkt. 569.

On November 08, 2021, the district court entered an order denying Lopez Soto's motion to dismiss, but said order never was notified to Lopez Soto. Id. at Dkt. 600-606.

On October 9, 2022, Lopez Soto learned about said denial, and he filed a notice of appeal. See Appeal Nos. 22-1800, 22-1801 of the First Circuit.

On November 22, 2022, the appellate court's clerk entered an order directing the parties to file

a response addressing whether the appeal should be dismissed as untimely. See Appendix 2a

On March 22, 2024, the court of appeals entered a decision dismissing the case. See Appendix 1a.

INTRODUCTION

Following the denial of his motion, almost a year later, pro se petitioner inmate Carlos Enrique Lopez Soto filed a late notice of appeal. The fundamental reason for this excessive tardiness was undoubtedly the district court's failure to notify him of the judgment or order entered. See District Court Criminal No. 14-415 at Dkt. 631.

Forty days after the notice of appeal was filed, and under the imminent silence or lack of a timely objection from the government, the clerk of the appeals court prevented the government to file a motion to dismiss ultimately granting the motion. Id. at Appendix 1a, 2a.

REASONS FOR GRANTING THE WRIT

1. Lopez Soto cannot be faulted for the excessive late file of the notice of appeal.

The litigation of a case where a party is a pro se inmate depends basically in the notifications of the court's rulings or orders, for that reason, the due process requires that the court should notify said

rulings or orders opportunely. See Hill v. Hawes, 320 U.S 520, 64 S.Ct 334 85 L.Ed 283 (1944); Oddo v. United States, 171 F.2d 854 (2d Cir 1949); Remine v United States, 161 F.2d 1020 (6th Cir 1947).

In United States v. Rapoport, 159 f.3d 1 (1st Cir 1998), the first Circuit has held that the Clerk's failure to give notice does not affect the time to appeal even where the defendants represent that he did not receive timely notice of the district court's ruling. Here, a review is necessary in order to establish if the First circuit law under this circumstance violates due process, and how the district court failure of notification prejudiced not only Lopez Soto's right for a timely appeal but amounts also to a gross miscarriage of justice. Id.

2. Government's absence of a timely objection for the excessive tardiness, amounts to a waiver of objection.

In Bowles v. Russell, 551 U.S 205 209 13 127 S.Ct 2360 168 LEd 96 (2007), this court has held that "Rule 4 (b)'s time limits in federal Rules of Appellate Procedure are not "mandatory and Jurisdictional" stating that their are a claim processing Rules that can be forfeited. Similarly, corroborating this principle, the First Circuit has held that the time limit set out at rule 4(b)(1)(A) is a non jurisdictional claims processing rule, but its application is mandatory

only when invoked by the government. See United States v. Reyes Santiago, 804 F.3d 453 458 (1st Cir 2015).

As articulated before, the government does not timely invoke the time limits related to Lopez Soto late file, there was the Clerk's Office who prevented the government to object and file its motion to dismiss, in other words the government forfeited its objection and therefore, Lopez Soto have the right to proceed with his appeal. Id. at Bowles, 127 S.Ct. 2360.

Here, a review is necessary to determine if the clerk's court actions can white-wash the omissions and waiver of the government. Id. at Appendix 1a,2a.

3. A conflict exist among other circuits.

The Court of Appeals for the Tenth Circuit have held that a motion to dismiss an untimely appeal should be filed within (14) days after the notice of Appeal is filed. See United States v. Winter Rose Old Rock, 76 F. 4th 1314 (10th Cir 2023). ("In Winter Rose's case, the government forfeited its untimely notice of appeal argument by raising the issue for the first time in its response brief, and offered no good cause for its failure to file a motion to dismiss").

If we observe, in Lopez Soto's case, was the Clerk of the Court who facially suggested to the government to object and file its motion to dismiss more than 40 days after the notice of appeal was filed.

In similar circumstances, and based on the same reasoning, if we put in a context the unsettled law of the Tenth Circuit and apply it in Lopez Soto's case, we will find that Lopez Soto have the right to proceed with his appeal. Id.

Therefore, because this split among the First and the Tenth Circuit is entrenched, and unlikely to resolve without action by this court, a review is absolutely necessary.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Dated on May 28, 2024

Respectfully Submitted,

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