

No. _____

IN THE
Supreme Court of the United States

NORMAN PAUL FELTS
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

G. ALAN DUBoIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

ERIC JOSEPH BRIGNAC
CHIEF APPELLATE ATTORNEY
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
eric_brignac@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Should the Fourth Circuit have addressed the merits of Petitioner's appeal even though it was untimely filed because he alleged that his counsel "abandoned" him so the court should have treated him as unrepresented?

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit:

United States v. Felts, No. 23-6894

In re: Felts, No. 23-1501

United States District Court for the Eastern District of North Carolina:

United States v. Felts, No. 5:21-HC-2111-FL

TABLE OF CONTENTS

QUESTION PRESENTED	i
LIST OF ALL DIRECTLY RELATED PROCEEDINGS	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION.....	1
RULE INVOLVED.....	2
STATEMENT.....	2
REASONS FOR GRANTING THE PETITION.....	3
CONCLUSION.....	6
APPENDIX:	
Order Dismissing Appeal	1a
Pro Se Petition for Rehearing.....	3a
Order denying petition for rehearing en banc	14a

TABLE OF AUTHORITIES

CASES

<i>Christon v. Roper</i> , 574 U.S. 373 (2015) (per curiam).....	6
<i>Evitts v. Lucey</i> , 469 U.S. 387 (1985)	5-6
<i>Holland v. Florida</i> , 560 U.S. 631 (2010)	5
<i>Maples v. Thomas</i> , 565 U.S. 266 (2012)	5

STATUTES

18 U.S.C. § 4248.....	1, 4
18 U.S.C. § 4248(e).....	4
28 U.S.C. § 1254(a)	2
28 U.S.C. § 1291.....	1

OTHER AUTHORITIES

Fed. R. App. P. 4(a)(6).....	3-5
Sup. Ct. R. 10(c)	4

IN THE
Supreme Court of the United States

NORMAN PAUL FELTS
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit**

PETITION FOR WRIT OF CERTIORARI

Petitioner Normal Paul Felts respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's order granting the government's motion to dismiss is produced in the appendix to this petition. The Fourth Circuit denied an untimely pro-se petition for rehearing. The petition and the order of denial are produced in the appendix to this petition.

JURISDICTION

The United States filed a petition to commit Mr. Felts as a sexually dangerous person under 18 U.S.C. § 4248. The district court had jurisdiction under that statute. The Fourth Circuit had jurisdiction over Mr. Felts's appeal under 28 U.S.C. § 1291.

The Fourth Circuit dismissed Mr. Felts's appeal as untimely filed on June 20, 2024. Mr. Felts filed a pro-se petition for rehearing on August 26, 2024. The Fourth Circuit dismissed it as untimely filed that same day.

This petition is being timely filed on September 12, 2024. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

RULE INVOLVED

(1) Time for Filing a Notice of Appeal

(A) In a civil case, . . . the notice of appeal . . . must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) [In a civil case] [t]he notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is . . . the United States;

...

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a).

STATEMENT

On September 16, 2022, after a hearing, the District Court for the Eastern District of North Carolina civilly committed Petitioner, Mr. Norman Felts, as a

sexually dangerous person under 18 U.S.C. § 4248. On March 15, 2023, Mr. Felts placed into the prison mailbox a pro se notice of appeal of that judgment. The district court received and docketed it on March 28, 2023.

The United States moved to dismiss the appeal as untimely filed. Mr. Felts opposed, arguing through counsel that he had alleged in his pro se notice of appeal that he was “abandoned” by his attorney. Thus, he should receive the benefit of the Eastern District of North Carolina’s “mailbox rule” for unrepresented inmates. Under that rule, he placed the filing in the prison mailbox 180 days after the district court’s order. Thus, he argued, the Fourth Circuit should deny the government’s motion and issue a limited remand for the district court to determine whether to consider the notice of appeal timely filed under Fed. R. App. P. 4(a)(6).

The Fourth Circuit granted the government’s motion and dismissed the appeal as untimely filed, holding that “Felts was represented by counsel in the district court, so he is not entitled to the benefit of the prison mailbox rule.”

Mr. Felts filed an untimely pro-se petition for rehearing, alleging further ineffective assistance of counsel. The Fourth Circuit denied it as untimely.

Currently, a pro-se motion to reconsider the denial of the motion to reconsider is pending in the Fourth Circuit.

This petition follows.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit “has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important

federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c).

As an initial matter, in his pro-se petition for rehearing, Mr. Felts alleges that it was ineffective for undersigned counsel to not present certain facts and arguments to the district court. That petition is attached to this petition, and counsel encourages the Court to examine it as part of its review.¹

Additionally, Rule 4(a)(6) resolves this petition. Simply put, Rule 4(a)(6) is clear:

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
- (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and
- (C) the court finds that no party would be prejudiced.

¹ Mr. Felts is currently civilly committed under a federal mental health commitment statute. *See* 18 U.S.C. § 4248. Because he is eligible for possible discharge, undersigned counsel’s office still represents him. *See id.* § 4248(e). Our office has had multiple conversations with Mr. Felts, and he wants the Federal Public Defender to keep representing him despite his allegations of ineffectiveness. And we want to keep representing him. Considering the amount of work that a new attorney would need to do to learn about the details of Mr. Felts’s case, he believes that it is in his best legal interest for the Federal Public Defender to continue to represent him. And we believe that as well. So despite these allegations of ineffective assistance, undersigned counsel is filing this petition on Mr. Felts’s behalf.

Fed. R. App. P. 4(a)(6).

Here, Mr. Felts alleged in his pro se notice of appeal that his attorney abandoned him. If these allegations are true, then the district court had an obligation to consider whether to address his notice of appeal as a motion to reopen the time to file a notice of appeal under Rule 4(a)(6). But it did not do that, which was error.

The Fourth Circuit attempts to excuse this error, holding that Mr. Felts was represented by counsel, so the prison mailbox rule does not apply. This Court should grant review to address that holding because the Fourth Circuit simply assumes the premise that it needed to address—whether Mr. Felts’s counsel had “abandoned” him. The 4th Circuit instead needed to remand the case for further district court findings on that question because “[c]ommon sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word.” *Holland v. Florida*, 560 U.S. 631, 659 (2010) (Alito, J. concurring).

This Court has granted individuals relief from procedural bars in analogous situations. In *Maples v. Thomas*, this Court excused the procedural default of a Section 2255 habeas petitioner because it “agree[d] that, under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him.” 565 U.S. 266, 283 (2012).

In *Evitts v. Lucey*, this Court excused a defendant’s failure to file a notice of appeal because even though he “did have nominal representation when he brought

this appeal,” that mere nominal representation “does not suffice to render the proceedings constitutionally adequate.” 469 U.S. 387, 396 (1985).

And in *Christon v. Roper*, this Court held that a defendant was entitled to new counsel to examine whether “he was entitled to the equitable tolling of AEDPA’s statute of limitations” based on the failure of previous conflicted counsel to file a timely habeas petition. 574 U.S. 373, 380 (2015) (per curiam).

The Fourth Circuit ignored these precedents. It had an obligation to remand for fact-finding to determine whether Mr. Felts’s allegations of attorney abandonment were true and, if so, whether that allowed him to fit into the Rule 4(a)(6) excusable neglect safe harbor.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

G. ALAN DUBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

/s/Eric J. Brignac
ERIC JOSEPH BRIGNAC
CHIEF APPELLATE ATTORNEY
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
eric_brignac@fd.org

SEPTEMBER 12, 2024

Counsel for Petitioner