No. 24-

24-6018 ORIGINAL

In The Supreme Court of the United States

Timothy Fredrickson
Petitioner

vs

United States of America
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Case Nos. 22-3311, 23-1003, 23-1735, 23-2582

PETITION FOR WRIT OF CERTIORARI

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OPENING BRIEF

Questions Presented

Whether public perception of the integrity and appearance of impartiality in the judiciary is deteriorated when, over an objection, the same judge who affirmed a conviction later attempts to pass upon its validity. 22-3311

Whether the right to counsel's assistance in drafting a Rule 33 motion for a new trial should be left to happenstance. 23-1003

Is rule 41(g) functionally void because federal agents across the country routinely store pretrial property at the local police station, or does the rule contemplate revoking the *federal* government's *constructive or joint possession*[1] of that citizen's property? 23-1735

Without determining any property's location, does it violate the plain text of Rule 41(g)'s property return procedure, when a district court concludes, and an appellate court affirms, *without evidence* or affidavit that the property sought to be returned is not in the possession of the government? 23-1735

If delay alone can result in the granting of a habeas petition, then why not bail as an intermediate sanction for less extreme delays in answering the petition? 23-2582

Considering that delays in habeas corpus petitions are becoming nationally lengthier as population increases, while judicial resources remain the same; Should release pending disposition also comprehensively include administrative delays? 23-2582

1 That is to say revoking the *federal* government's *interest* in retaining the property, as distinct from the *State's* interest --which is a separate question for it's own courts-- if they have charges pending, which they do not and never did here.

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List of Proceedings & Opinions Below

The opinion of the United States Court of Appeals appears at Appendix Q to the petition and is not reported.

The opinions of the United States District Court appears at Appendix A, E, I, and M, to the petition and are all unreported text order entries

Jurisdiction

Applicable Dates

The date on which the United States Court of Appeals decided all four appeals was March 7, 2024[2]. A "notice of mandate" was issued on March 29, 2024.

A petition for rehearing was received on April 12, 2024[3] and denied on April 15, 2024 which began the 90-day period to seek certiorari

This petition was received and filed 86 days later on July 10, 2024

Statutory Authority

The appellate court had jurisdiction over appeal number 23-2582 pursuant to Title 18 §3145

The appellate court had jurisdiction over the remaining appeals pursuant to Title 28 §1292

This court has jurisdiction pursuant to United States Supreme Court Rule 10 and 28 USC §1254(1)

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2 To properly determine timeliness, it is relevant to know Fredrickson is incarcerated and did not receive notice of the same until later. A reasonable mail delay to FCI Seagoville in Texas is 4 days, with an additional 2 days processing at the jail facility.

3 Further considering that the date it was "filed" under the prisoner mailbox rule is not clear, the motion was very likely within the 28 days necessary to reset the appeal period.

Statement of the Case

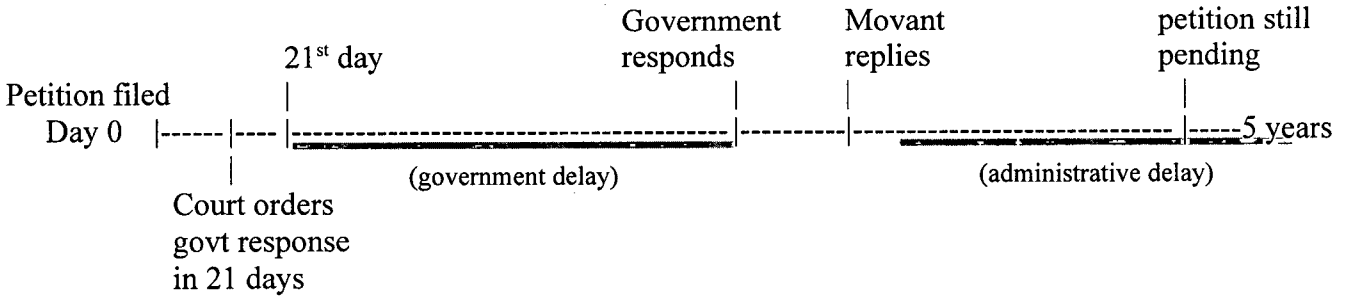
The origin of this case is sufficiently removed from the appealed issues as to be virtually irrelevant. Fredrickson was in a relationship with a woman who was *over* the federal age of consent. See §2243(a). A different federal law, however, criminalizes the *photography* of that same *legal* act. See §2251(a). The wisdom in maintaining this discrepancy between laws, and the improper characterization as "child" pornography is not directly at issue in this writ, but it does shed light on the animus underlying the issues presented. This writ consolidates four such auxiliary issues.

The fear of giving any favorable ruling in this controversial case has pervaded every aspect, including ancillary issues like the return of property, standards for compassionate release, the propriety of a convicting judge later ruling on a habeas petition, release on bail pending that ruling, and failing to assign counsel for factual disputes in support of a new trial (much less hold an evidentiary hearing).

The property at issue was seized in Iowa by a task force consisting of both federal and state officers, which is typical in federal investigations. Some articles of property were used at a federal trial and were forfeited at sentencing. The *remaining* property was the subject of appeal in 23-1735. Federal Rule 41(g) unambiguously requires proof of location, which the AUSA hinted it would provide, but never did. Fredrickson stressed both points on appeal --the requirement and AUSA hinting it would be followed. A chain-of-custody sheet was neither utilized nor offered, at any point in the history of this case, and the current location of the property is not known. The district court denied, and the appeals court affirmed denial, of the motion without Rule 41(g)'s express requirement of evidence. The district court seemed to agree with the government's blanket assertion that at least some property would be needed at any retrial, but declined to find which such articles that rationale would apply to. Fredrickson preemptively located cases expressly disallowing such blanket assertions of necessity, which the government and both courts seemed to ignore even on appeal. In spite of arguing blanket necessity, it also stated that unspecified property was not under *direct* federal control, ignoring constructive possession. Both courts took the bait.

Regarding appeal 23-2582, Fredrickson requested bail pending resolution of an 80-claim petition for habeas corpus, and raised two grounds for release: 1) that the enormous number of claims at a bare minimum implied a high likelihood of success, especially giving the inclusion of 6 reversible errors; and 2) an alternative ground that did not *not* depend on the merits of the underlying petition *at all*. Specifically, after first noting circuit precedent that punishes shorter government delays by waiving procedural default, while punishing extreme government delays by outright granting the petition; He then advocated for an intermediate sanction for delays falling in the middle --release pending disposition. Fredrickson further asked the court to consider administrative delays that are *not* the respondent's fault, along with delay that *is* the government's fault. That is, the cumulative total delay as shown in the following visual aid:

Sample Case Timeline



The district court did not address this second ground *at all*. See Appendix A. Instead, it concluded "from a cursory review of his submissions that he has not met th[e] strict standard" of "show[ing] *both* a substantial claim of law ••• *and* circumstances making the motion for bail exceptional and deserving of special treatment", id, without stating *which* threshold was not met, or *how* it came to that conclusion.

The seventh circuit merely concluded that "the district court reasonably ruled that neither condition is present". Appendix Q. To get there, the panel *assumed* that the district court "could not identify a likely wining claim", and then not only *imported the standard from compassionate release sua sponte,* but further looked to Fredrickson's prior compassionate release motions to find "no extraordinary or exceptional circumstances [] justified his release". id. Notably, constitutional errors do not meet the even more narrow compassionate release standard of "extraordinary and compelling reasons", whereas it could in the great writ. The seventh circuit also avoided his independent second ground (visual aid above).

Regarding appeal 22-3311, Fredrickson seeks to prevent habeas judge Michael Mihm from deciding whether trial judge Michael Mihm made or permitted various mistakes at trial. That is, Fredrickson wants a different judge than the same one who convicted him to later rule on trial mistakes. Fredrickson sought to accomplish this in two different ways. First he echoed common sense principles about reviewing one's own ruling from a materially identical case, and advocated for a natural extension of circuit precedent from §2254 to §2255. The district court held it was bound by Habeas Rule 4(a). Next Fredrickson sought a magistrate judge, which the district judge denied simply because the rules "do not give him the authority to demand referral to a magistrate judge". See Appendix A. The appeals court erred in declining review on jurisdictional grounds, overruling Fredrickson's objection based on recusal meeting the Cohen collateral exception for appeal. Recusal is traditionally appealable pre-ruling

Regarding appeal 23-1003, an unrepresented Fredrickson moved the district court under Rule 33 for a new trial based on two types of newly discovered evidence [Dist. Dkt. #245]. Without the benefit of counsel or an evidentiary hearing, the district court denied each as "wholly unsupported". Appendix M. The issue presented here is narrowed to the associated requests for counsel in drafting a Rule 33 motion [261] [276] [278]. Fredrickson began by noting that the right to counsel ending after direct appeal was a generally applied rule of thumb, but is often mistakenly thought of as a per se rule. He then asked for the contours of the right to be further clarified in favor of entitlement. In support, Fredrickson noted several odd results if a per se rule were applied to Rule 33 new trial motions and it's 3 year window. Fredrickson further noted that Rule 33 also implicates the most fundamental aspects of trial, including new evidence showing innocence (much less reasonable doubt), and is used to "routinely evaluate" several constitutional claims. Appendix N. On appeal, Fredrickson pressed the appeals court to clarify and further define the contours of the right to counsel. It declined, instead adopting a per se rule in a single paragraph of a "nonprecedental disposition" that would not bind future panels as rashly as it did Fredrickson.

Reasons Why Writ Should Grant

A national interest in how to apply Rule 33

A national interest of the highest order is how our justice system handles new evidence. The ability to present such evidence showing either innocence or at least reasonable doubt of guilt is a dead letter if it exists yet cannot be obtained --and only counsel can do that for the prematurely imprisoned. A right to counsel for Rule 33's modest 3 year limitations period is indispensable to justice and safeguarding constitutional rights, and this court should not hesitate to enforce this as a national standard.

This is especially true when a citizen pleads *no contest*, because the very reason they take the Alford plea is because exculpatory evidence is difficult to grapple (eg unreliable witness, grainy footage of an alibi). In such cases, only counsel can listen[4] (or continue to look[5]) for new evidence and methods[6] to obtain it. A favorable decision goes far beyond Fredrickson.

The [im]proper adjudicator in the nation's §2255 petitions

It is a national concern when modern practice permits judges to review their own rulings on any kind of appeal. This court must clarify or amend the national standard for Rule 4(a) of the rules governing 2255 proceedings, to regain public trust and confidence that *any* conviction is constitutional. By reaffirming Rule 4(a) was simply designed to ensure that the fact-finder has key evidence and resources close by, and at most implies the initial merit review is done by one who can quickly point out obvious falsities based on familiarity with the case, this court should clarify that the effort to reduce administrative inconvenience must not go too far and create the appearance of bias like when one decides for themselves if they made (or permitted) a mistake.

4 Perhaps the true culprit is later identified
5 Perhaps a complaining witness recants on social media, or an officer is later discovered to falsify reports or embezzle
6 Such as a new way to recover digital data, recover DNA, geo-locate, or reverse a deep-fake

A national interest in how to apply Rule 41(g)

It is a national practice for at least one federal agent to accompany state police during a residential search. Often at least one agent is employed by both entities, here it was Detective McAullife. Following an initial search and seizure of property, which is a faux state proceeding on paper, the federal government uses it's relationship with the state to maintain seized property at state owned facilities long after the state itself declines charges. At this point only the federal government has an interest in the property. Thus, while outwardly appearing to merely have a finger in state's pie, upon closer inspection it is actually the federal government's exclusive pie. The national problem is the resulting finger-pointing by officials when a citizen seeks the involuntary return of property, aggravated by judicial avoidance[7].

Granting certiorari here would not only end national abuse of the federal government's relationship with the state, but also re-enable relief for all citizens whose property is being unnecessarily held by the federal government through word play. When this court simply rules that the absence of a state interest, not the location, is key; The court will put a swift and decisive end to abuse in courts across the country where an AUSA disclaims possession of any property on the theory that the property is not technically in a *federal building*, that "some of seized evidence is not *directly* in its possession". Appendix I.

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7 cf In other cases the sixth, seventh, ninth, and tenth circuit recognize Fredrickson's argument. US v Fabela-Garcia, 753 F.Supp. 326 @328 (D.Utah 1989) ("the government ignores a concept used frequently in law, that of constructive possession"); White v US, No. 02-cr-00048 (E.D.Va Nov-9-2004) ("the opinion of the Fabela-Garcia court is compelling, and this court applies the principle of constructive possession to the facts at hand"); US v Copeman, 458 F.3d 1070 @1072 (CA10 2006) (constructive possession if "it is being held for potential use as evidence in a federal prosecution"); US v Lee, 16 F.3d 1222 (CA6 1994) (remanding because "we are unable to discern from the record whether the government had actual *or constructive possession* of the property"); US v Solis, 108 F.3d 722 (CA7 1997) (acknowledging possibility of "constructive possession of the United States"); US v Story, 170 F.Supp.2d 863 @866 (D.Min 2001) ("in some situations [Rule 41(g)] can be used to force the federal government to return items seized by state officials"); Clymore v US, 164 F/3d 569 @571 (CA10 1999 ("there are some limited circumstances under which Rule 41(e) can be used as a vehicle to petition for return of property seized by state authorities")

A national interest in ending bureaucratic paralysis

Administrative delays have slowly become a national crisis in the court system. While being overburdened is no fault of judges or officers of the court, one class of citizens cannot afford to languish in waiting --prisoners. Every day that passes is irretrievably lost in the most restrictive environment legally possible --prison. Once a fast process, today it takes the court system several years to process habeas corpus petitions. The court is not powerless, it merely needs a vehicle, a person with the right argument, to combat each administrative delay. This court can take the first step in that fight with temporary release while the system crawls, authorizing courts to look closer at delays.

A national interest in ending Judicial avoidance

An underlying theme of each of the appealed issues is impermissible judicial avoidance. No judge wants to be heralded as light on crime or branded as the one who ruled that legal sex with a secondary statute's unusual definition of a "minor" is not child porn. Susceptibility to social pressure risks jeopardizing all The Constitution stands for. In a society that prefers highlights and only cares about the end-result; the threat of public ridicule and backlash in judges' personal lives for releasing a murderer, drug dealer, or pornographer --is more than enough to cause a growing number of judges to intentionally defy applying favorable yet clearly established law that would benefit a defendant. When this trend continues on appeal there is no avenue for relief, creating a path to Constitutional destruction which is followed more often than not.

Taking solace in the fact that certiorari (and thus review) is rare, other judges go farther and let their thinly veiled personal preferences or political beliefs dictate a case's outcome. Often following an AUSA's lead, this deception is accomplished by recasting legal arguments, ignoring or intentionally "misunderstanding" inconvenient facts or their relevance in some way. Or simply pretending that the defense did not make any such argument. Each was employed below. The consolidation of four distinct appeals under the guise of judicial efficiency is the latest manipulation of judicial process to stack the deck against review.

This court should send a clear message to the judiciary, and the nation as a whole. Elected officials, and especially appointed ones, have an obligation to rise to the challenge --not wilt under pressure

Conclusion

Because the questions presented are simple and have national impact far exceeding Fredrickson's case, and furthermore involve a large class of citizens, the writ should grant.

Respectfully submitted,

/s/ Tim Fredrickson