

Original

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Jorge Casanova - PETITIONER - Pro - se

Vs.

Robert Ulibarri - Warden - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This petition for Writ of Certiorari is with only a question presented in the determination of a federal law.

This petition shows a careful review of the standards that the Court applies in ruling upon petitions that the Supreme Court should hear this case.

This old pro se knows the Supreme Court is not a court of error; it does not intervene simply to correct injustices and misapplications of the law.

The 10th Circuit did not use Rule 60 of Civil Procedures for a solution of the Appellant's case, Rules 60(a) 60 (b) (1) and 60 (c) (1), according with those Rules the Appellant has timing until June 2018, in case he wants to appeal his Motion for a New Trial and did not dismiss the Tenth Circuit Court of Appeals his Appeal No. 17 – 2093; In both cases the Appellant followed faithfully and exactly the instructions by the Court of Appeals for the Tenth Circuit Office of the Clerk, according step by step with the 17 APPENDICES in this Petition for a Writ of Certiorari.

The decision of the 10th Circuit Court of Appeals conflicts with decisions of all federal courts of appeals and conflicts with rulings of the Supreme Court and being asked to review because the question presented is of Considerable National Importance not just for the petitioner, but for all petitioners.

PARTIES

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

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jorge Casanova respectfully prays that a petition for a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Tenth Circuit below.

OPINIONS BELOW

The opinion of the United States Court Appeals appears at Appendix A to this petition and is unpublished.

JURISDICTION

The date on which the United States Court Appeals for the Tenth Circuit concluded without Jurisdiction to consider the appeal and decided dismissed, on October 30, 2017 – Appendix –(B)

A petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals for the Tenth Circuit on the following date: December 1, 2017 and a copy of the order denying rehearing appears at Appendix (A),

The Jurisdiction of the Court is invoked under 28. U.S.C. 1254 (1)

STATEMENT OF THE CASE

The Petitioner pro se Jorge Casanova shows in this petition for a writ of certiorari 17 APPENDICES with a total of only 22 pages. In his strong attempt to obey the requirements of federal rules always has followed step by step the instructions from the Court of Appeals regarding the prosecution of the Appeal No.17- 2093.

In the previous paragraph the Petitioner considers extremely relevant to show how the appellate court ruled and why this petition is meritorious. Obeying the requirements of the Court of Appeals is considered extremely important for all Petitioners.

In relation to some merits of the Appeal No.17-2093, this Petitioner is not begging to correct injustices; he is not disputing factual findings or discussing some errors by the appellate court.

The Petitioner shows in this petition only compelling reasons when the heart of the petition consists in an ORDER by the Court of Appeals for the Tenth Circuit on September 29, 2017....” Within the attached APPENDIX E “before the court of its own initiative,.....has revealed a potential jurisdictional defect in the Appeal No. 17- 2093.”

A potential jurisdictional defect came after near four months since the Petitioner filed his Notice to Appeal, as a surprise for the Appellant and for the Defendant- Appellee. Even this occurred with his legal corporation Kennedy, Moulton & Wells, P.C, within his attorneys, paralegals and legal secretaries when before Plaintiff filed his Opening Brief on August 9, 2017 and Defendant Appellee filed his Response Brief on September 11, 2017. Plaintiff-Appellant filed his Reply Brief on September 29, 2017. On that same date the Tenth Circuit filed a potential jurisdictional defect with the Appeal No. 17- 2093.

Is extremely rare that the potential jurisdictional defect occurred after the Petitioner Casanova followed carefully instructions from the Clerk- Elizabeth a. Shumaker, Ellen Rich Reiter-Jurisdictional Attorney and Lisa A. Lee – Counsel to the Clerk.

Showing a degree of confidence is not easy when commonsense and justice are on the Petitioner’s side, when he cannot write more of five pages with 1500 words. However without doubt, this petition for writ of certiorari is an important issue of federal law. It is of great national importance because uniformity counts and the conflict is going to be difficult to live with not only for this Petitioner pro se, but for other Petitioners that followed rigorously exact instructions from the Clerk’s Offices by Courts of Appeals .

On June 6, 2017 the Appellant Casanova according with his knowledge of legal procedures and the instructions from the Clerk Office of the Tenth Circuit Court of Appeals made his notice of Appeal on time using Rule 3 and 4 by Federal Rules of Appellate Procedure against the document 354 when the case is dismissed due a final judgment with prejudice by a Senior United States District Judge.

The same day, June 6, 2017, the Appellant Casanova served the motion for a new trial according Rule 59 and Rule 60 of Federal Rules of Civil Procedures. Those Rules may order a faster new trial within 28 days of the court owns initiative that would justify granting one on a party's motion. Please see attached APPENDICES M, N and O.

Within APPENDIX N, the Appellant stated very clear "Once the District Court decides the post- trial motion, the time to Appeal begins to run again.

On June 16, 2017, the District Court had denied motion for a new trial, Appellant called the Office of the Clerk of the Tenth Circuit, and he asked this question: "Do I need to file motion for a new trial or something else legal?", the Clerk office of the Court of Appeals said to me the following: "the Appellant needs to wait for following written requirements for prosecuting this matter by Court of Appeals."

Below are some of the written requirements since June 6, 2017 by the Clerk's Office for the Tenth Circuit that are within the APPENDICES attached when at that moment the Plaintiff filed his motion for a new trial-document 355 in search of, "if may a prompt trial as soon as possible, before the Plaintiff have a surgery during December, 2017 ".

APPENDIX L- June 6, 2017 "The court has received and docketed your appeal, No. 17- 2093.

APPENDIX K - June 7, 2017 "The appeal No.17-2093 is ABATED pending further order of this court."

APPENDIX G- June 27, 2017 "The plaintiff is relieved of his obligation to notify this court of the district receive instructions from the court regarding the prosecution of this appeal".

APPENDIX F- June 27, 2017 "You must submit an entry of appearance" "You must file an opening brief within 40 days from the date of this letter...."

Above show very clear, the instructions by the Clerk's office of Tenth Circuit to go ahead immediately with the Appeal No. 17-2093 and nothing more in reference, the plaintiff post -trial motion for a new trial.

APPENDIX E- September 29, 2017, The Petitioner Casanova received an ORDER from the Court of Appeals after near four months since made his notice for appeal No. 17- 2093. The ORDER advised a potential jurisdictional defect with the Appeal No. 17-2093.

This Petitioner pro se believes that an appellate court during every stage of the proceeding must advise any jurisdictional defect when it affects the substantial rights of the parties on time, in special when the Petitioner always followed the instructions from the Tenth Circuit.

REASONS FOR GRANTING THE PETITION

The Court of Appeals have recognized on several occasions that “ The Appellate Process without Lawyer’s assistance is a perilous endeavor for a person”, Halberd v Michigan 545 U.S. 621 (2005) sees e.g. Erickson v Perdue 55, U.S. 621 (2005 sees e.g. Erickson v Perdue 55, U.S. 89. 94 (2007).

This 80 years old Petitioner pro se, disabled, deaf, with English as a second language has been dedicated to defend the truth through ten years of litigation. In a lawsuit of 375 legal documents he obtained a PUBLISH and REVERSAL District Court’s judgment through the Court of Appeals.

Interestingly, the Appellant facing six different defense attorneys, the last one from a legal corporation, possibly the best in New Mexico, NEVER FOUND ANY JURISDICTIONAL DEFECT until the Counsel to the Clerk advised of its existence in an Order on September 29, 2017.

Never the Court of Appeals for the Tenth Circuit SENT TO ME A LEGAL OBSERVATION as a WARNING DURING 10 YEARS WORKING AS PRO SE THAT A POTENTIAL JURISDICTIONAL DEFECT EXISTED.

Circuit Judges BRISCOE, BACHARACH and McHUGH made their references belonging exclusively against this Appellant pro se within ORDER on October 30, 2017- APPENDIX B “Proceeding pro se does not relieve (Mr. Casanova) of the responsibility to learn about and follow the correct procedures to file notice of appeal”.

In the previous paragraph the judges do not mention anything in reference that procedures were followed by the Appellant and the Defendant –Appellee according to the requirements of the Jurisdictional Attorney, Counsel to the Clerk or the same Clerk of the Tenth Circuit, when on September 29, 2017 the Court of Appeals sent a notice that a review has revealed a potential jurisdictional defect with Appeal No. 17-2093 and stated- “This court lacks jurisdiction to review the denial of a motion for new trial if appellant does not file a new notice of appeal or amend his previous notice of appeal to include the court’s denial of that motion and shall file a memorandum brief.....”.

Granting leave to amend will enable an Appellant with a meritorious claim to cure any technical defects and ensures that meritorious lawsuits are not swept away in the process. http://caselaw.findlaw.com/us-9th-circuit/1452249.html. “...the pro se litigant is far more prone to making errors in pleading that the person who benefits from the representation of counsel”- Noll, 809 F.2d at 1448.13. The pro se litigant must be given notice of the deficiencies in his complaint and “....an opportunity to amend the complaint to overcome the deficiency.....Noll, 809 F 2d at 1448.

Previous paragraph show this Petitioner may need assistance in navigating through the process in his Appeal No.17-2093 from the Clerk’s Office of Tenth Circuit Court of Appeals.

Nevertheless something POTENTIAL is expressing only a possibility BUT NOT YET ACTUALLY and the Court of Appeals may use expressing possibility but NEVER at that moment like a fact a thing known to be true or to have really happened or alleged to have occurred in connection with Appellant’s case used that potential jurisdictional defect for dismissed the oldest civil lawsuit for a pro se in New Mexico with 10 years and 375 legal documents.

If the Appellant followed the instructions of the Counsel to the Clerk-Lisa A. Lee does not make any sense to dismiss the case because even to file an appeal IS TOTALLY DISCRETIONARY. What happens to other pro se appellants who follow the instructions of the court of appeal when it announces that the case has a jurisdictional defect and dismissed the pro se appellant twice? The jurisdictional defect can be cured by invoking the Court of Appeals in case the Appellant wants to appeal his Motion for a New Trial. Parties will be given an opportunity to file written responses presenting arguments of jurisdiction, nevertheless the Appeal No. 17-2093 was in a timely fashion from a final order of a district court.

Both the Appeal No.17-2093 for document 354 and the judgment of post-trial motion for a New Trial in document 361 deal with the same issues from pre-trial and trial. However the exception is the Motion for a New Trial giving an option for a fast New Trial within 28 days with judge’s own consideration.

Is necessary cited the case “Robertson and Kirkham * when stated “I hope to persuade the court of their convention that injustice will result in which the mandate was recalled because the court deemed the original order enormous, both after the expiration of the ordinary time, and after rehearing.”

The Circuit Judges have options to resolve the Appeal No. 17- 2093 and the Motion for New Trial both filed on June 6, 2017, but they denied both of them, the Rules of Civil Procedure—Rule 60- Relief from a

Judgment or Order. The Rule 60 (a) Corrections Based on Clerical Mistakes, Oversights and Omissions, - when an appeal has been docketed in the appellate court (No. 17- 2093) and while it is pending such a mistake may be corrected (a potential jurisdictional defect) only with the appellate court's leave.

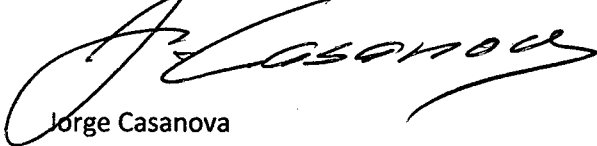
Rule 60 (b) (1) Grounds for Relief from a Final Judgment, Order or Proceeding-mistake, inadvertence, surprise or excusable neglect. Rule 60 (c) (1) Timing: a motion under Rule 60 (b) must be made within a reasonable time..... No more than a year after the entry of the judgment or order.

Above show this Petitioner has until June 6, 2018 in case wants appeal that Judgment- from Doc 361.

CONCLUSION

For the reason discussed above, Petitioner Jorge Casanova respectfully seeks a Petition for Writ of Certiorari:

RESPECTFULLY SUBMITTED:



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Date: January 2018