

Original

No. 17-7715

In the
Supreme Court of the United States

Jorge Casanova

Petitioner

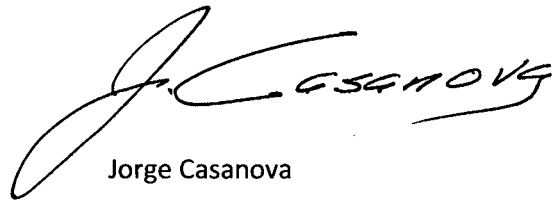
V

Robert Ulibarri, Warden

Respondent

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

PETITION FOR REHEARING



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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44 petitioner respectfully petitions this Court for rehearing of its April 16, 2018 order for dismissing the writ of certiorari in this case No. 17-7715.

Petitioner had no intention of abandoning his case. When he learned of the dismissal promptly set about trying to get his case reinstated with this rehearing.

Petitioner is a pro se party unrepresented by counsel; petitioner will have eighty years old the next July and in all proceedings before this Court in this matter going forward, the same he did within the Court of Appeals for the Tenth Circuit when obtained a PUBLISH and a REVERSAL District Court's Judgment in his lawsuit case 6.08-CV-00288 JAP- CG with more of ten years (the oldest in New Mexico) and near 400 legal documents despite is a deaf person with English like his second language which should alleviate any concerns about petitioner's ability to comply with the Supreme Court Rules in the future.

FACTUAL & PROCEDURAL BACKGROUND

A--- Proceeding Below

On June 6, 2017, petitioner filed on time his Appeal at the Tenth Circuit docketed No. 17-2093 showing cause and prejudice during his pretrial hearings and trial when the plaintiff protested errors at trial when the trial court still had the chance to correct the errors so prejudicial as to have made a fair trial impossible.

The District Court and the Court of Appeals have ample knowledge along the years with legal documents and exhibits with more of two hundred pages that plaintiff Casanova was diagnostic in Division Vocational Rehabilitation since 1995 a disabled person with binaural hearing loss, declares officially a deaf person who learned for more of two years how to read the lips and hear special sounds, because he can't hear music or normal sounds from a person speaking.

Petitioner has a hard limitation in this rehearing due counted number of words which be less than 3,000 words, nevertheless he will try to show cause and prejudice during pretrial and trial in his Appeal at the Tenth Circuit due during his writ of certiorari at the Supreme Court was on bed hospitalized and can't expose relevant facts enough to show that his rights have been violated and harmed plaintiff in many ways.

It is impossible to show in this rehearing the heart of this petition consistent of the severe conflict with the Court of Appeals in which it denied petitioner his Appeal No. 17-2093 and denied his petition for rehearing and rehearing en banc showing some of many premeditated actions that happened during pretrial and trial that was very shameful not only for the trial court also for the District Court of New Mexico, nevertheless due the short of this rehearing, this petition will make reference only at one fact due petitioner is deaf and was unable to receive some help by the Court's Trial.

Without any doubt the Court since the first day of pretrial conferences until the last day of trial always took advantage of plaintiff severe hearing impediment.

Before pretrial hearings this petitioner went at the Chamber of the Trial's Judge and talked with the Judicial Assistant and courtroom Clerk showing many papers of his disability that the Court before have ample knowledge and petitioner asked for at least a qualified interpreter and adequate hearing devices for the next proceedings (pages 7 and 8- Appeal No. 17- 2093).

Is clear the plaintiff since the first time contacted the Court in advance to request the accommodation that it is necessary to him to understand the court proceedings.

What excuse will bring the Trial's Judge for bring at a Rule 16 Conference on January 2016 without any importance with the exception of the disqualification's matters for both judges when before they setting telephonic status conference on 6-11 2013 without an interpreter, without any auxiliary aides for hearing impaired only is possible in a case of total indifference when they knew a disabled deaf person didn't see the lips from the other party, but in the Conference on January 2016 for disqualification, both Judges without Plaintiff request, bring two interpreters with headphones and other for Plaintiff without any cost. (Appeal No. 17-2093).

FOUR PRETRIAL HEARINGS.

During two pretrial hearings on 3-16 and 4-12-2017 were without qualified interpreter and any hearing device and 3 hours before the first pretrial conference plaintiff received an email by the Law Clerk of Senior Judge Parker, " that I need to seek an interpreter", please see APPENDIX-1, plaintiff called his daughter in law, nevertheless she is nor a qualified interpreter and never was in a court proceeding, APPENDIX -2, "Casanova can't see or hear and was difficult to me ,due the Attorney was in all moment back to us".

The same during the second pretrial hearing, APPENDIX-3 , "I remember the bad behavior by Court and Defendant Attorney, she avoided you are able to listen what she said when she was always talking back to you, in special when you don't have an interpreter and a hearing set."

HANDWRITING EXPERT

Casanova requested at pretrial that is absolutely necessary a handwriting expert due are four false signatures in his medication. The Court advised the plaintiff needs to pay for the expert.

Casanova due is an indigent with a very low income, the unique option was sale his car in 3,500 dollars and two thousand went to hired the handwriting expert please see - APPENDIX -4, but the Court avoided the expert to be at Trial to showing at Jury those fake signatures.

QUALIFIED INTERPRETER

During the pretrial conferences Casanova asked for hearing devices and interpreter, but nobody had knowledge, then called his friend Leo Rodriguez, a witness that plaintiff need to use at Trial nevertheless never was in court's proceedings.

Casanova later knows that a Judge can't allow a family member (Casanova's daughter in law) or anyone else who might care about the Court's decision (witness Leo Rodriguez) even if plaintiff wanted. (Appeal No. 17-209, page 8).

The incredible came when Casanova after many attempts to obtain a qualified interpreter knew he needs to pay no less than 125 dollars per hour due is impossible for the Court gave him an interpreter nevertheless before at the hearing for disqualification of both judges, they bring two without payment and without Casanova request.

With the hard stress for obtain an interpreter, this petitioner found he needs to sell his unique jewelry, his wending gold ring and his gold necklace with a crucifix that had with him more of sixty years.

TRIAL

During May 8 2017 during the selection of the Jury at Judge's Chamber, this petitioner made reference at his problem with the unique device provided by the Court that can't hear well and the necessity his interpreter will have a headphone, the same like legal proceedings in all the courts with deaf party.

Never above occurred, NEVER the Court provided at least an hour, a minute or seconds a headphone for the interpreter to ensure an effective communication between the Court, interpreter and the petitioner.

ADMISSION OF EXHIBITS

Casanova always believes, he will win this case at Trial due the strong of his evidences with 32 EXHIBITS with more of 300 pages and his witnesses, but the Judge excluded nearly all of them, when only FOUR pages were admitted into evidence.

Casanova was unable to understand the Court's oral ruling for the proposed EXHIBITS during the pretrial conferences without interpreter and properly hearing devices and with Defendant Counsel always back to plaintiff allowed by the Trial's Judge in order can't see the lips.

The Jury at Trial requested "May we receive the Plaintiff other exhibits such as grievances, letters from attorneys to Deputy Warden, etc". The response by Court was: "4 pages are the only part by evidence". Casanova had knowledge of his only four pages from 300 during the Trial, when at that moment was to late (Appeal No. 17-2093, pages 12-13-14 and 22).

ATTORNEY

After the Trial concluded, the Court stated: "that it was unfortunate that plaintiff did not have an attorney at Trial". "However the Court is under no obligation to appoint Counsel for pro se parties in civil proceedings". "However, the appointment of an attorney only one month before Trial would have significantly delayed this proceeding that was already nine years old".

Nevertheless above statements, during the plaintiff's motions for disqualification both Judges, the Court appointed an attorney for plaintiff, but NEEDED WITHDRAW MY PENDING APPEAL AND MOTIONS TO DISQUALIFY BOTH JUDGES, and due plaintiff was under serious medical treatment, signed the contract , see APPENDIX-.5

The only the attorney executed immediately was the withdraw of disqualification motions, other important issues like Discovery, Dauber's motions , Deposition etc, were not concluded, but the worse damage was with less of two months for Trial "found" a guardian ad litem , that never knew nothing of this lawsuit, see APPENDIX -. 6

The attorney's withdraw never had justification due the material adverse effect near Trial.

Plaintiff made a motion request for appointment of Counsel , APPENDIX '7 and if there are only a case in all federal court to appoint Counsel was at that moment, due plaintiff is the oldest pro se at least in New Mexico, deaf, with a hard stress to see the lips, without at that moment with a qualified interpreter, but never the Judge make the step that he made before during the motions for disqualification, when provided two qualified interpreters and adequate hearing device without cost.

B--- Proceedings at the Tenth Circuit Court of Appeals.

On June 6, 2017, the Appellant Casanova filed his motion for new trial after the final judgment.- APPENDIX - 8 The motion is according Rule 59 when the time to file a Notice to Appeal does not begin to run until the Judges decides the motion. Federal Rule. App. 4(a) (A) (iv) (v) APPENDIX - 9

The same day June 6, 2017, the Appellant made his notice to Appeal on time. APPENDIX - 10

On June 6, 2017, the Tenth Circuit received and docketed the Appeal No. 17-2093, APPENDIX - 11

On June 7, 2017, the Appeal No.17-2093 is abated, pending further order of this Court, APPENDIX - 12. On June 16, 2017, the District Judge filed a Memorandum Opinion and Order denying the motion for new trial, APPENDIX- 13

When the Tenth Circuit received notice the District Court had denied plaintiff's motion, stated: "Plaintiff is relieved of to file a status report and the abatement of the Appeal. No. 17-2093 is lifted and Plaintiff WILL RECEIVE INSTRUCTIONS REGARDING THE PROSECUTION OF THIS APPEAL IN SEPARATE LETTER." APPENDIX- 14

The requirements for prosecuting the Appeal came on June 27, 2017 with an entry of appearance and opening brief within 40 days from this letter. APPENDIX- 15

The Appellant called the Clerk's Office of Tenth Circuit in order to know if he needs to make something in reference his motion and the response was "NOTHING MORE" only following the written requirements for prosecution the Appeal No. 17-2093.

Since the Appeal was docketed the Appellant followed step by step regarding the instructions for prosecution of the Appeal No.17-2093.

After the opening brief , the plaintiff wanted to show the abuse perpetrated by Defendant Counsel allowed by Trial's Judge with premeditated actions against plaintiff that were recorded by the six security video recorder camera along the pretrial and trial and John de la Rosa, Court' Reporter had testimony of those days that was thereafter transcribed and plaintiff called at Clerk's Office to inform he will try to have those videos and transcripts to add at his Appeal, but came an Order APPENDIX - 16 with a potential jurisdictional defect that came after near four months since plaintiff file his notice to appeal that was a surprise for the appellant due an appellate court during every stage of proceeding must advise any jurisdictional defect when it affects the substantial rights of the parties, in special when the petitioner pro se following all instruction from the Tenth Circuit.

EXTRAORDINARY CIRCUMSTANCES

Is very hard for an old pro se demonstrate a Senior Judge since plaintiff before on 2016 made Complaint of Judicial Misconduct and a Defendant Counsel at Trial made DELIBERATE FACTS. Is not enough to show his first page from 30 pages of his Appeal No. 17-2093. "Appellant Request New Trial due Multiple Legal Errors and Premeditated Actions against Plaintiff during Pretrial Conferences and Trial. APPENDIX- 17

Above the best proofs are transcripts and videos during pretrial and trial, but in civil procedures indigent parties are not entitled to free transcripts.

Plaintiff doesn't know the number of transcript's pages when protested those deliberate facts. Only the sure option is the entire transcripts with all testimony.

Appellant made a hard task due the issues raised in his Appeal No. 17-2093 needs to include those transcripts.

District Court's Clerk informed the transcripts are not automatically placed into Court's file, plaintiff believe Judge's Trial don't want a single transcripts that will include in Appeal's Record No. 17-2093.

1. Plaintiff requested entire transcripts, but the fee cost thousands dollars which depend the faster's request and transcript's length, due those eight days could be hundreds pages.
2. This is not a case of a particular day, because all WERE PREMEDITATED ACTIONS AGAINST PLAINTIFF, these are only few examples from many: a) Judge's Trial seated the handwritten expert at his side in front of Defendant Counsel that was impossible to see her lips. b) Plaintiff's objections when Defendant Counsel spoke nearly ALWAYS with her back to plaintiff or read papers in front of her face that was unable to see her lips. c) Melinda Gonzales, staff interpreter bring more information that the Court provided when state: "the interpreter hired (Raquel Troyce) should be able to use the court's equipment for simultaneous interpretation that is AVAILABLE IN THE COURTROOM". "The headphones that are part of the equipment will allow you to increase the volume as needed, so you can hear what is being said".

In reference above statements, NEVER interpreter Raquel Troyce had a single court's equipment and is clear, never those actions were allowed against plaintiff if the Trial's Judge avoids all of them.

Appellant called Tenth Circuit Clerk's Office to inform, he will obtain money with the help of family and friends for videos and transcripts see APPENDIX 18 with the first page of Appellant Reply Brief with all those important APPENDIX like a clear denounce of everything that happened during those days. At THAT MOMENT CAME THE INCREDIBLE ORDER WITH "a potential jurisdictional defect".

Proceedings at the Supreme Court of the United States.

Proceeding pro se, petitioner timely filed a petition for writ of certiorari and motion for leave to proceed in forma pauperis in this Court when still was coming back to health recovery within hospital from severe spine pain. He was wrong that probably he cannot write more of five pages with 1500 words in his writ of certiorari.

Now in this Rehearing, he is able to make more statements and APPENDIXES showing how he following the Orders by the Circuit Court in references the prosecution of his Appeal No. 17-2093.

Appellant ask respectfully, where is the wrong he committed at Court of Appeals when filed a mandatory and jurisdictional notice of appeal against final judgment Doc 354 when the case is dismissed with prejudice, APPENDIX-8 and APPENDIX-10. *Bowles v Russell*, 551 U.S. 205, 209, 213 (2007) and *Alexander v Raytheon Aircraft Co.* 439. F.3d 1236, 1239 (10 th Cir 2006).

The same day filed a motion for new trial with 20 pages, not a notice of appeal, APPENDIX- 9 with the first page of the motion, later the motion was not possible due the main plaintiff's objective due his bad health is seeking a faster new trial according with Rule 59 (d) "no later than 28 days after the entry of judgment the court in his own initiative may order a new trial that may justify the motion" (plaintiff motion for a new trial on June 6 2017), but since the District Court denied that motion on June 16, 2017, APPENDIX-13, don't have any common sense continuing with the motion due plaintiff filed on time his Appeal No. 17- 2093 with all requirements with entry of appearance, forma pauperis, opening brief, reply brief, etc that may be longer than a year, but was very clear in its denounces when in his first page stated: Main Issue. - "Appellant Request a New Trial".

Nevertheless, appellant don't seeks to appeal District Court's denial his motion, but received on September 29, 2017 an Order by Tenth Circuit., APPENDIX-16 near four months since made notice of his Appeal No. 17- 2093 that is totally confusing that appellant "needs to file a 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....."

Above is totally confusing for pro se an attorneys, nevertheless appellant again followed the instructions for the appellate court more when in page two stated: "Failure to file a timely response to this Order may result in dismissal of this appeal without further notice."

The incredible came with Order – October 30, 2017, APPENDIX-19 Appeal dismissed, plaintiff believed was his motion for new trial, but when called Clerk's Office that he will add transcripts to his Appeal No. 17- 2093, knew is dismissed and case closed.

REASONS FOR GRANTING THIS PETITION

This Petition is not used as a vehicle for Petitioner pro se to vent anger or frustration after more of TENTH YEARS IN HIS LAWSUIT AND 376 LEGAL DOCUMENTS, and only beg a more favorable result or at least an opinion that improves further review.

This Rehearing is not with the absence of extraordinary circumstances, the potential jurisdictional defect is without sense.

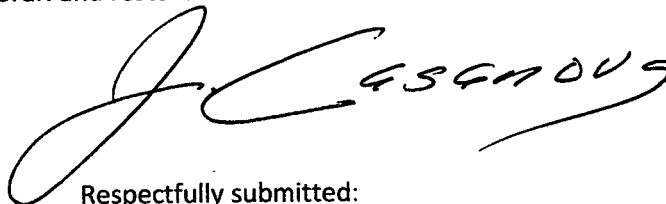
Respectfully Petitioner request, where is his mistake, where is the wrong? When his Appeal No.-17- 2093 is in timely fashion from a final Order.

Why this case is DISMISSED TWICE, first after district court had denied plaintiff's motion, the appellant don't seek to appeal that motion and should proceed with his Appeal No.17-2093 in accordance with Fed. Rules of App, Procedures;² second the Appeal No. 17-2093 is dismissed too and the Tenth Circuit denies the Petition for Rehearing or Rehearing En Banc.

Petitioner asked for a reasonable response, because injustice will result for the oldest civil lawsuit in New Mexico, and the Appeal No. 17-2093.

CONCLUSION

For the foregoing reasons this Court should grant this Petition for Rehearing, vacate the Order dismissing the Writ of Certiorari and restore this case to its merits docket.

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Respectfully submitted:

Jorge Casanova- Petitioner pro se.

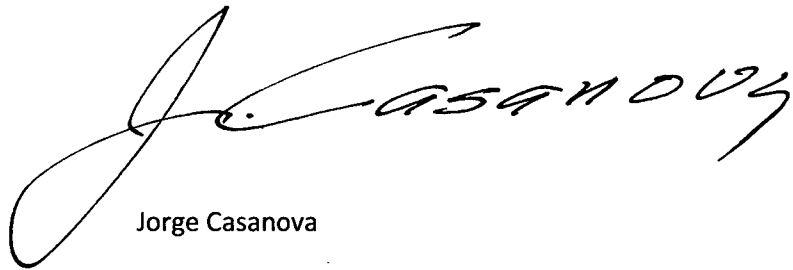
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CERTIFICATE OF A PARTY UNREPRESENTED BY COUNSEL

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay. The words limits are 2989.

A handwritten signature in black ink, appearing to read "J. Casanova". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Jorge Casanova

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**Additional material
from this filing is
available in the
Clerk's Office.**