NO. _____

In the Supreme Court of the United States

ROGER LEE MORSE,

Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Morse filed an appeal *pro se* in the Fourth Circuit Court of Appeals, after the 30-day jurisdictional deadline of 28 U.S.C. § 2107. He filed no motion to extend that deadline in the district court, as provided by the statute. Instead, he obtained counsel, abandoned his appeal, and pursued post-trial relief in the district court.

The Fourth Circuit interpreted his late notice of appeal as a motion to extend the deadline, and remanded to the district court for a ruling on whether the deadline should be extended. The district court ruled that it should. The circuit court therefore reopened Mr. Morse's appeal and denied it. Based on the circuit court's exercise of jurisdiction, the district court refused to consider Morse's request for post-trial relief

1. Given Morse's untimely appeal, did the circuit court have jurisdiction to solicit a ruling from the district court, instead of dismissing the appeal?

2. As Morse did not request an extension of the deadline under 28 U.S.C. § 2107(c), could the district court's order support jurisdiction in the circuit court?

3. As Morse had abandoned his appeal and sought post-trial relief in the district court, was the circuit court impermissibly imposing a legal strategy on him, and a losing strategy at that?

PARTIES TO THE PROCEEDINGS

Petitioner

- Roger Lee Morse

Respondent

- United States District Court for the Eastern District of Virginia

Respondent and Real Party in Interest

- Virginia Department of Corrections

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit

No. 25-1252

In Re: Roger Lee Morse, Plaintiff

Final Order: October 31, 2025

Rehearing Denial: December 2, 2025

U.S. Court of Appeals for the Fourth Circuit

No. 23-2039

Roger Lee Morse, Plaintiff-Appellant v.
Virginia Department of Corrections et al.,
Defendants-Appellees

Final Opinion: October 22, 2024

U.S. District Court, E.D. Virginia (Richmond)

No. 3:21-cv-00168

Roger Lee Morse, Plaintiff v.
Virginia Department of Corrections et al., Defendant

Order Dismissing Complaint with Prejudice:
August 11, 2023

Order Refusing to Consider Post-Trial Relief
on the Merits: December 11, 2024

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OPINIONS BELOW

This petition challenges a decision of the Fourth Circuit Court of Appeals to deny a petition for extraordinary writ (App.1a) and a motion for rehearing (App.37a). The Fourth Circuit denied the original writ on October 31, 2025, and denied rehearing on December 2, 2025.

The purpose of the writ was to reopen and dismiss an appeal previously decided by the Fourth Circuit itself (App.30a) based on lack of appellate jurisdiction. The appeal was taken from a dismissal issued by the Eastern District of Virginia (App.8a).

The Fourth Circuit based its exercise of jurisdiction on a timeliness order issued by the Eastern District (App.16a), which had been solicited by the Fourth Circuit itself in a remand order (App.13a). Because of the Fourth Circuit's exercise of jurisdiction, the Eastern District refused to consider a request for post-trial relief and an amended complaint filed by the appellant. (App.33a.)

The opinions and orders are unpublished.

JURISDICTION

The Fourth Circuit denied rehearing on its refusal to grant an extraordinary writ on December 2, 2025. (App.37a). This court has certiorari jurisdiction under the All Writs Act. 28 U.S.C. 1651(a), as noted in *McClellan v. Carland*, 217 U.S. 268, 277-79 (1910). In the alternative, this court has jurisdiction to grant certiorari under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2107
Time for Appeal to Court of Appeals

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

(1) the United States;

(2) a United States agency;

(3) a United States officer or employee sued in an official capacity; or

(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced,

the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

STATEMENT OF THE CASE

I. Mr. Morse files his case, it is dismissed, and he appeals it *pro se*.

Mr. Morse filed his case in the Eastern District of Virginia on March 29, 2021.[1] He was a former employee of the Virginia Department of Corrections and a former sergeant major in the U.S. Army, and alleged violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301-4334.[2] The District Court therefore had jurisdiction under 38 U.S.C. § 4323(b)(1).

The trial court had some difficulty understanding Mr. Morse's original complaint and, on May 10, 2021, ordered him to file an amended complaint.[3] Mr. Morse obtained counsel on June 10, 2021,[4] but his counsel moved to withdraw on July 13, 2021.[5] The court granted this motion on November 16, 2021, and Mr. Morse proceeded *pro se* for the next two years.[6]

On December 15, 2021, Mr. Morse filed an amended complaint.[7] On January 24-25, 2023, the various

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[1] App.105a.

[2] App.40a-41a, 44a, 78a-79a.

[3] App.3a-6a.

[4] App.107a.

[5] App.108a.

[6] App.109a, 109a-142a.

[7] App.112a-113a.

defendants moved to dismiss that complaint with prejudice.[8] On May 24, 2023, the trial court dismissed the complaint without prejudice, but gave Mr. Morse leave to file another amended complaint in keeping with the court's orders.[9]

On August 8, 2023, Mr. Morse filed a Second Amended Complaint, which did not meet with the court's approval.[10] On August 11, 2023, the court dismissed that complaint with prejudice.[11] In its order, the court mistakenly told Mr. Morse that he had 60 days to appeal the case.[12] In fact, he had 30, because his opponents were State rather than federal entities. Mr. Morse filed his Notice of Appeal on October 2, 2023, outside the jurisdictional limit of 21 U.S.C. § 2107(a).[13] (This fact is extremely important for the argument that follows; on it turns the question of whether the Circuit Court had jurisdiction for its subsequent actions.)

Afterwards, Mr. Morse and the Defendants filed opposing informal briefs in the Circuit Court.[14]

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[8] App.117a-120a.

[9] App.129a-130a.

[10] App.132a-133a.

[11] App.8a-12a.

[12] App.23a.

[13] App.134a.

[14] App.40a-70a (Mr. Morse's brief).

II. Mr. Morse obtains counsel and changes strategy, abandoning his appeal and seeking post-trial relief in the District Court.

In December 2023, Mr. Morse again obtained counsel, to see if he could salvage his appeal. Counsel reviewed the trial court's records and advised him not to pursue the appeal further. Counsel knew the appeal was untimely and therefore beyond the circuit court's jurisdiction. Counsel also knew the appeal was hopeless as framed, because the trial court's final dismissal order was very likely to be upheld on appeal.[15]

Counsel therefore suggested that Mr. Morse abandon his appeal and instead seek post-trial relief under Fed. R. Civ. P. 60.[16] This strategy was designed to get Mr. Morse a chance to file a new amended complaint with the aid of counsel, one that would comport with the court's expectations.[17] That way, Mr. Morse's case might be considered on its merits.

Mr. Morse agreed with this strategy, and counsel filed the Rule 60 petition on January 14, 2024.[18] In this petition, counsel laid out their belief that the Circuit Court lacked jurisdiction to hear Mr. Morse's untimely petition under *Bowles v. Russell*.[19] More importantly, Mr. Morse was seeking Rule 60 relief be-

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[15] App.99a.

[16] App.99a.

[17] *See* App.78a-87a (amended complaint that counsel later attempted to file).

[18] App.135a.

[19] App.72a-73a, *citing Bowles v. Russell*, 551 U.S. 205, 211-13 (2007).

cause, with the aid of counsel, he was now in a better position to articulate his case to the court's satisfaction.[20] This petition was never considered on its merits.

III. The Fourth Circuit, in conjunction with the Eastern District of Virginia, revives Mr. Morse's appeal, then denies it without input from him.

On February 26, 2024, the circuit court *sua sponte* remanded the case to the district court. In so doing, the circuit court stated,

> Morse's notice of appeal and informal reply brief contain language that we liberally construe as a request for an extension of time to appeal. Accordingly, we remand the case to the district court for a determination of whether Morse can establish excusable neglect or good cause warranting an extension of the 30-day appeal period.[21]

In fact, Mr. Morse's *pro se* Notice of Appeal and his informal brief contained no language requesting an extension or anything like it. Both instead expressed his confidence that his appeal was in fact timely.[22]

On May 2, 2024, the district court issued an order, finding "that Mr. Morse has established excusable neglect warranting an extension of the 30-day appeal period." It then denied his Rule 60 petition as moot,

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[20] App.72.

[21] App.15a.

[22] App.38a, 43a-44a.

on the grounds that jurisdiction now lay with the circuit court.[23]

On September 12, 2024, Mr. Morse attempted to file a Third Amended Complaint, drafted with the aid of counsel.[24] On September 23, 2024, the district court advised counsel that this filing was procedurally improper, on the grounds that the circuit court rather than the district court had jurisdiction over the case.[25] (The instant petition is based on the opposite proposition.)

On October 22, 2024, the circuit court denied Mr. Morse's appeal in an unpublished *per curiam* opinion.[26]

On December 11, 2024, the district court ruled on Mr. Morse's motion to amend, taking the view that the circuit court's ruling rendered any further proceedings in the district court "procedurally improper."[27]

IV. Mr. Morse seeks relief through Extraordinary Writ. It is denied.

On March 18, 2025, Mr. Morse sought relief in the Fourth Circuit by means of an extraordinary writ. Through counsel, he asked that the court reopen his prior appeal and dismiss it, so that his Rule 60 petition could be heard on its merits.[28]

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[23] App.16a, 137a.

[24] App.78a-87a, 138a.

[25] App.138a-139a.

[26] App.30a-32a.

[27] App.33a-36a, 141a-42a.

[28] App.88a-89a.

Counsel argued that Mr. Morse had abandoned his untimely appeal in order to seek likelier relief in the trial court. Counsel argued that the trial court (and, by implication, the appellate court) had *sua sponte* granted relief that was no relief at all, since they had simply revived a futile appeal without being asked to. Counsel further argued that the courts of the Fourth Circuit strongly favor trial on the merits, and that permitting the Rule 60 petition to go forward would at least give Mr. Morse a chance to have his allegations judged on their merits.[29]

On October 31, 2025, the Fourth Circuit denied relief in an unpublished *per curiam* opinion.[30] The opinion did not address the particulars of Mr. Morse's petition, but declared that relief was not warranted.

On November 17, 2025, Mr. Morse petitioned for a rehearing.[31] Through counsel, he argued that the Fourth Circuit had wrongly imposed a legal strategy on him. It had supplied him with arguments he had not made to grant him relief he had not requested.[32] Counsel argued that the appeal had been jurisdictionally barred by his late filing, and that in the absence of a genuine request to excuse the late filing, the Circuit Court should not have been issuing orders with respect to this appeal.[33]

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[29] App.91a-93a.

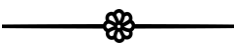
[30] App.1a-2a.

[31] App.95a.

[32] App.97a-98a.

[33] App.100a, 102a.

On December 2, 2025, the Circuit Court again denied relief, this time with no discussion at all. This petition follows.[34]



REASONS FOR GRANTING THE PETITION

A circuit court issued orders in an appeal over which it had never gained jurisdiction. It also directed a trial court to rule on a "motion" that had never been filed. In so doing the court imposed a legal strategy on a plaintiff when the plaintiff himself had abandoned that strategy. It also deprived him of the strategy he *had* chosen, that strategy being post-trial relief in the trial court. These actions depart from the proper course of judicial proceedings, and justify the exercise of the court's supervisory power in keeping with Sup. Ct. R. 10(a).

This Court should grant certiorari to make clear that no circuit court may ever do this, especially not when a *pro se* litigant obtains counsel and abandons his old strategy in favor of a better one. This court should order the circuit court to reopen and dismiss Mr. Morse's appeal, and remand the case to the district court to consider his Rule 60 petition on its merits.

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[34] App.37a.

I. The Circuit Court lacked jurisdiction over Mr. Morse's appeal, because that appeal was untimely. It had no authority to seek a ruling from the district court to give itself jurisdiction.

Under 28 U.S.C. § 2107(a),

> [N]o appeal shall bring any judgment, order or decree . . . of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

In *Bowles v. Russell*,[35] this Court held this language to be jurisdictional. Thus, if an appeal is late, the circuit court lacks jurisdiction over that appeal. And "[w]hen Congress enacts a jurisdictional requirement, it marks the bounds of a court's power: A litigant's failure to follow the rule deprives a court of all authority to hear a case."[36]

The implication for Mr. Morse's case is simple enough. His appeal was a nullity. The Fourth Circuit had no power to entertain it. The informal briefs should never have been accepted, and the circuit court's remand of February 26, 2024 should never have issued. It is not the business of courts to manufacture their own jurisdiction.[37] The circuit court should have

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[35] 551 U.S. 205, 211-13 (2007).

[36] *Harrow v. Department of Defense*, 601 U.S. 480, 484 (2024) (internal quotations and citations omitted).

[37] *See Chabal v. Reagan*, 822 F.2d 349, 358 (3d Cir. 1987) ("we cannot manufacture jurisdiction if we have none"); *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 164 (7th Cir. 1994) ("a court cannot write its own jurisdictional ticket")

issued one order and one order only: a dismissal of the appeal for want of jurisdiction.[38]

This Court should grant certiorari to remind the Fourth Circuit that it may not give itself jurisdiction over an untimely appeal, but that such jurisdiction may only be exercised within the limits set by Congress. The Fourth Circuit should be required to reopen and dismiss the appeal over which it had no jurisdiction. In ordering this, this Court will vindicate the jurisdictional limits set by Congress.

II. The District Court lacked authority to extend the appeal deadline, because Mr. Morse had filed no motion asking it to do so. Its order therefore could not be a valid basis for the circuit court's jurisdiction.

Under 28 U.S.C. § 2107(c), Congress has provided an exception to the strict 30-day rule, but that exception is itself quite limited:

> [t]he *district court* may, *upon motion filed* not later than 30 days after the expiration of the time otherwise set for bringing appeal,

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[38] *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) ("[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety"); *McGilvra v. Ross*, 215 U.S. 70, 80 (1909) (when circuit court lacked jurisdiction, it should have dismissed instead of ruling on the appeal); *Logicvision, Inc. v. United States*, 54 Fed. Cl. 549, 553 (2002) ("A federal court without jurisdiction is powerless to take any action but announce its lack of jurisdiction and dismiss the case"), *citing National Presto Industries, Inc. v. Dazey Corp.*, 107 F.3d 1576, 1580 (Fed. Cir. 1997); *In Re Delaney*, 110 F.4th 565 (2d Cir. 2024) ("If we lack appellate jurisdiction, we must dismiss the appeal")

> extend the time for appeal upon a showing of excusable neglect or good cause.

(emphasis added). The implications for Mr. Morse's case are twofold. Firstly, the *district* court, but not the circuit court, had the power to extend the time for appealing for up to 30 days. But the district court had no power to do this *sua sponte*; it could only do so on motion of Mr. Morse, and Mr. Morse never filed any such motion. Instead he filed a Rule 60 petition—which the trial court disregarded in the mistaken belief that the circuit court had jurisdiction.

Absent a motion, the trial court had no mandate to even consider whether Mr. Morse had shown "good cause" for missing the appeal deadline. Mr. Morse had not filed a motion to make the showing *in*.

Furthermore, under 28 U.S.C. § 2107(c), any such motion had to be filed within 30 days of the actual due date, *i.e.*, before October 10, 2024. If Mr. Morse had not received notice of the court's dismissal within 21 days of its entry, such a motion could have been filed within 180 days of its entry, *i.e.*, before February 8, 2025. The trial court issued its ruling based on a "motion" made by the appellate court on Mr. Morse's behalf, but that motion came on February 26, 2025, far out of time to be effective under any part of the statute.

The circuit court remanded based on a claim that Mr. Morse's notice of appeal and his informal brief could be "liberally construed" as a motion to extend time.[39] This claim fails on three grounds. First, the circuit court had no jurisdiction over the untimely

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[39] App.15a.

appeal, and therefore had no business "construing" anything as anything. Second, the informal brief came too late to be considered under 28 U.S.C. § 2107(c). Third, the documents contain no sort of request to *excuse* an untimely filing at all. They manifest Mr. Morse's mistaken belief that his appeal was timely and needed no excusing.[40]

The Ninth Circuit addressed this question in 1981, in *Pettibone v. Cupp*. A late Notice of Appeal cannot substitute for a motion to extend the deadlines, at least not after the 1979 amendment to Rule 4(a) of the Federal Rules of Appellate Procedure, an amendment specifically designed to end this practice.[41] Even when the appellant is a prisoner filing *pro se*, "[t]he language of the amended Rule also precludes us from remanding (as we often did before the amendment) on the theory that the untimely notice of appeal itself might be considered by the district judge as a motion for extension of time."[42] It also noted that other circuits had reached the same conclusion.[43] Rule 4(a) and 28 U.S.C. § 2107(c) require "a formal motion [that] explicitly request[s] an extension of time,"[44] and Mr. Morse did not file that.

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[40] App.38a, 43-44a.

[41] *Pettibone v. Cupp*, 666 F.2d 333, 334-35 (9th Cir. 1981).

[42] 666 F.2d at 335.

[43] 666 F.2d at 335, *citing Mayfield v. United States Parole Commission*, 647 F.2d 1053 (10th Cir. 1981); *Bond v. Western Auto Supply Co.*, 654 F.2d 302 (5th Cir. 1981).

[44] *Evans v. Synopsys, Inc.*, 34 F.4th 762, 773 (9th Cir. 2022), *citing Malone v. Avenenti*, 850 F.2d 569, 572 (9th Cir. 1988).

Accordingly, the trial court's order extending the deadline was as much a nullity as Mr. Morse's appeal. It could not support jurisdiction in the circuit court.

The trial court imagined that the circuit court had sole jurisdiction over the case, except for the period of remand, and it therefore avoided ruling on his request for Rule 60 relief.[45] The trial court was wrong: the circuit court never had jurisdiction over the case at all, and the district court could and should have ruled on Mr. Morse's Rule 60 petition.

This Court should grant certiorari to clarify that a circuit court cannot file its own motion in the district court under 28 U.S.C. § 2107(c), then use the results of that "motion" to give itself jurisdiction. In so doing, the Court will not only be keeping its subordinate courts in line with the limits set by Congress, but will vindicate the appellant's right to choose his own legal strategy, and not have it imposed on him by the courts.

III. The Circuit Court imposed a legal strategy on Mr. Morse, and a losing strategy, at that. No court may impose strategy on a litigant, and certainly not a strategy that the litigant has abandoned.

Mr. Morse labored under several misapprehensions when he filed his appeal, including a mistaken belief that his appeal had been timely.[46] When he obtained counsel, he obtained advice on how best to proceed. The advice he received was to abandon his appeal, which was both untimely and hopeless, and seek post-

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[45] App.138a-139a.

[46] App.38a, 43a-44a.

trial relief under Rule 60 of the Federal Rules of Civil Procedure.[47]

Mr. Morse followed this advice, guided by counsel's understanding that the circuit court had no jurisdiction over his appeal anyway. He agreed with counsel's strategy, which was to assist him in crafting a better complaint that would comply with the trial court's expectations and thus give his case a chance to be heard on its merits.

The circuit court, acting in concert with the trial court, decided to give him a different strategy. The circuit court treated his untimely appeal as a motion for extension, even though such motions are supposed to be filed in the district court. The district court proceeded to rule on the "motion," even though it had been made by the circuit court rather than by Mr. Morse himself. Between them these courts imposed a strategy Mr. Morse had abandoned, namely the strategy of pursuing the appeal. In so doing, the courts deprived Mr. Morse of the strategy he *had* chosen, namely the strategy of pursuing post-trial relief in the trial court. The circuit court then closed the circle by denying the appeal Mr. Morse had abandoned. Thus, the courts not only imposed a legal strategy on Mr. Morse, they imposed a *losing* legal strategy on him. That is simply not right.

It is the prerogative of every litigant, in conjunction with counsel if he has any, to choose his own legal strategy. Even criminal defendants in capital cases get to do that.[48] "While the [litigant] has the ultimate

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[47] App.97a.

[48] *Lopez v. Stephens*, 783 F.3d 524, 527 (5th Cir. 2015) (noting that even a criminal defendant facing capital punishment has

authority to decide whether to take an appeal, the choice of what specific arguments to make within that appeal belongs to appellate counsel."[49] This division of labor leaves no room for the courts to take these decisions upon themselves.

Under the principle of party presentation, the *parties* decide what issues to frame, while the courts serve as neutral arbiters of the issues the parties present.[50] In *United States v. Sineneng-Smith*, this Court found error when a circuit court invited several groups of lawyers to file *amicus* briefs on issues the parties had not briefed, because the parties, not the court itself, had the prerogative to decide what issues the court would consider.[51] In Mr. Morse's case, the circuit court went further: it asked the *district court* to brief and decide an issue that Mr. Morse had not raised, then issued rulings based on the district court's arguments findings. The circuit court had no excuse for that.

In calling for and issuing the ruling, the circuit and district courts did not solicit any input from the parties, thereby stepping out of their role as neutral arbiters in keeping with the principle of party presentation. As the saying goes, "courts call balls and

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the right to decide his own strategy); *K.P. v. District of Columbia*, No. 15-CV-1365, 2018 WL 6181737 at *3 & n.2 (D.C. Cir. Nov. 27, 2018) (noting that it was the plaintiffs' prerogative to choose their own strategy).

[49] *Garza v. Idaho*, 586 U.S. 232, 240 (2019).

[50] *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020).

[51] 590 U.S. at 379.

strikes; they don't get a turn at bat."[52] In this case, the courts played both sides of the game, umpired the results, and did not involve the parties at all.

At the time of his appeal, Mr. Morse was *pro se*. Sometimes courts do depart from the principle of party presentation for the benefit of a *pro se* litigant.[53] In civil cases, this is typically done to ensure that a *pro se* plaintiff's claims are heard on their merits, not forfeited because the plaintiff lacks legal education.[54] In Mr. Morse's case, though, the courts departed from the principle to the plaintiff's detriment, to ensure that his case would be dismissed and not be heard on the merits. Mr. Morse's Rule 60 petition may or may not have succeeded—it lay within the trial court's sound discretion[55]—but his appeal was doomed from the start, a point his attorneys immediately realized as soon as they reviewed the record of trial. It was not the courts' business to resurrect the hopeless appeal, and thereby deprive Mr. Morse of all hope of success from his own strategy.

Furthermore, by imposing Mr. Morse's original *pro se* strategy after he had retained counsel, the courts

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[52] *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (quotes and citation omitted).

[53] *See Sineneng-Smith*, 590 U.S. at 375, *citing Greenlaw v. United States*, 554 U.S. 237, 2004 (2003).

[54] *See Escobar-Salmeron v. Moyer*, 150 F.4th 360, 371 (4th Cir. 2025); *Donald v. Cook County Sheriff's Department*, 95 F.3d 548, 555 (7th Cir. 1996).

[55] *See Transportation, Inc. v. Mayflower Services, Inc.*, 769 F.2d 952, 954 (4th Cir. 1985) (decision to grant relief under Fed. R. Civ. P. 60(b) is committed to the sound discretion of the trial court).

deprived him of the assistance of counsel. A *pro se* party who engages counsel should get the full benefit of that counsel's knowledge and judgment, not be forced to return to his *pro se* strategy.

This Court should grant certiorari to establish that the principle of party presentation applies not only to courts that seek opinions from groups of lawyers, but courts that seek opinions from *other courts*, if the purpose of that seeking is to impose a strategy on a party who does not want it. Doubly so when the strategy being imposed is an obvious losing strategy.

CONCLUSION

Mr. Morse had no hope of prevailing on the appeal he had filed *pro se*, and the Circuit Court had no authority to act on it. With the aid of counsel, he chose a different path: post-trial relief under Fed. R. Civ. P. 60. The Fourth Circuit then forced him back onto his original path, choosing his strategy for him and making sure he lost. It had no authority to do so, because it had no authority to do anything but dismiss the appeal for want of jurisdiction. Mr. Morse could have revived the circuit court's authority with a motion in the trial court under 28 U.S.C. § 2107. Since he did not do so, the circuit court should not have done anything except dismiss the appeal.

This court should order the Fourth Circuit to grant Mr. Morse's writ petition, reopen his appeal, and dismiss that appeal, leaving him free to pursue post-trial relief in the district court.

Respectfully submitted,

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