# APPENDIX A

# District of Columbia Court of Appeals



No. 12-CO-341

KEITH ROGERS,

Appellant,

v.

**1991 FEL 9067**

UNITED STATES,

Appellee.

BEFORE: Glickman and Thompson, Associate Judges, and Farrell, Senior Judge.

**JUDGMENT**

On consideration of appellee's motion for summary affirmance, the opposition thereto, appellant's brief and appendix, and the record on appeal, it is

ORDERED that the motion for summary affirmance is granted. *See Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). Appellant's motion before the trial court is procedurally barred as either a successive motion made pursuant to D.C. Code § 23-110 or a motion for reconsideration based on newly discovered evidence. *See Bradley v. United States*, 881 A.2d 640, 645 (D.C. 2005) ("We have often and consistently upheld the denial of a second or successive § 23-110 motion without a hearing, at least in the absence of a showing of cause and prejudice, which appellant has not made." (citations omitted)); Super. Ct. Crim. R. 33 ("A motion for a new trial based on newly discovered evidence may be made only before or within three years after the verdict or finding of guilty."). In addition, even if appellant's motion was not otherwise barred, the trial court already rejected his argument made pursuant to *Wilson-Bey v. United States*, 903 A.2d 818, 821 (D.C. 2006), and this court dismissed his appeal from that rejection, so the argument is barred by res judicata. *See Kleinbart v. United States*, 604 A.2d 861, 864 (D.C. 1992) ("Under the doctrine of res judicata, a prior judgment on the merits precludes relitigation of the same cause of action between the original parties or those in privity with them."). It is

FURTHER ORDERED that the Clerk of this court shall not accept for filing any prospective *pro se* appeal by Keith Rogers seeking review of the denial of a motion or petition filed in 1991 FEL 9067 unless such submission is accompanied by an order issued by a member of the court, pursuant to D.C. App. R. 27(c), granting Rogers leave to file.

# APPENDIX B

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CRIMINAL DIVISION—FELONY BRANCH**

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|---|---|
| UNITED STATES | : Case No: 1991 FEL 9067 |
| v. | : |
| KEITH ROGERS | : |

## ORDER

Before the court is Defendant Keith Rogers' *pro se* Motion for Reconsideration, filed May 7, 2025. In the instant Motion for Reconsideration, Mr. Rogers reiterates his claim that "[u]pon being released from prison in 2020, Mr. Rogers had chance to review the records and files of the Court at the Clerk's office and there was no evidence or reference to a probable cause hearing that took place within forty-eight (48) hours or the asserted sworn affidavit in support of a criminal complaint." *See* Mot. at 2. For the following reasons, the court will deny the Motion for Reconsideration.

On April 24, 2025, the court denied Mr. Rogers' pro se "Petition for Writ of Error Coram Nobis/Relief from Judgment/Independent Action" ("Petition"), finding that in the absence of any evidence to establish "cause and prejudice" for Mr. Roger's delay in raising his current claims in any of his prior collateral attack motions, he is procedurally barred from relief. The court also found that even if Mr. Rogers were not barred from relief under the "abuse of writ doctrine," his assertions would not merit vacating the judgment in this case under either a writ of coram nobis, the Fourth or Fifth Amendment, or D.C. Civil Rule 60(b). *See* April 24, 2025, Order at 2.

Under D.C. SCR-Civil Rule 60(b), the Court may relieve a party from a final judgment or order for any of the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. To prevail on a claim of newly discovered evidence under section (b)(2), the moving party must demonstrate that the evidence (1) is truly newly discovered, (2) could not have been discovered before trial, (3) is not merely cumulative or impeaching, and (4) is such that would produce a different result at trial. *Forgotson v. Shea*, 491 A.2d 523 (D.C. 1985); *Mahallati v. Williams*, 479 A.2d 300 (D.C. 1984). Moreover, "[a] motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." *See* D.C. SCR-Civil Rule 60(c)(1).

Recognizing that Mr. Rogers is proceeding without counsel, this court now further elaborates on its determination that his claim is both procedurally barred and does not warrant relief from judgment under D.C. Civil Rule 60. Writ of Error Corum Nobis, or other independent action in the context of this criminal case. First, information contained in the court record, or the absence thereof, does not constitute "newly discovered evidence" simply because Mr. Rogers had not had an opportunity to examine the court docket prior to his release. Mr. Rogers was represented by competent counsel from the time of his initial presentment on August 2, 1991,[1] up through trial, sentencing, appeal and, most recently in connection with the filing of a successful motion for compassionate relief and early termination of his probation. Thus, while Mr. Rogers may have lacked direct access to his court records during his incarceration, his attorneys had access

[1] *See* Historical Case File Documents at 345, Notice of appearance of attorney Frederick Sullivan, Aug. 2, 1991.

to these records and could (and in many instances did) raise procedural and constitutional issues on Mr. Rogers' behalf.

Second, Mr. Rogers' Motion, filed on April 18, 2025, comes thirty-three years after the original Judgment and Commitment Order was entered on April 28, 1992, and four-and-a-half years after the issuance of an Amended Judgment and Commitment Order on October 28, 2020, effectuating his release following the grant of his Motion for Compassionate Release. Thus, in addition to the reasons previously articulated, Mr. Rogers' Motion is time-barred by the plain language of Civil Rule 60 (c) given that it was not filed within one year or within a reasonable time following his release.

Third, Mr. Rogers' assertion that he "was held in the 5th District police station from August 2, 1991 until August 6, 1991," prior to a judicial determination of probable cause is plainly contradicted by the Historical Case File (HCF), which contains Commitment Orders signed by Commissioner Treanor on August 2, 1991, *see* HCF at 341-2; an August 2, 1991, docket entry reflecting "Sworn Statement Filed/ Rule 5(c)[2] Determination Made," *see* HCF at 1; and a sworn

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[2] This reference is to D.C. Criminal Rule 5- Initial Appearance. At the time of Mr. Rogers' arrest in 1991, Rule 5(c) contained the provisions of current paragraph 5(e), "set[ting] forth the procedures for a probable cause determination that must be made whenever the court imposes significant restraints on the pretrial liberty of a person arrested without a warrant. See *Gerstein v. Pugh*, 420 U.S. 103 (1975). Subparagraph (e)(5) substitutes the term 'docket' for 'case jacket.'" D.C. SCR-Crim. Rule 5 (Comment to 2017 amendments).

Probable Cause Determination Following Arrest Without a Warrant.

(1) Sworn Statement of Fact. If a defendant is arrested without a warrant, and the court imposes upon the defendant any conditions of release which constitute a significant restraint on pretrial liberty, the court must, unless the defendant waives an initial probable cause determination, require the prosecutor to file with the clerk by the end of the next working day a copy of a sworn statement of fact offered to establish probable cause.

(2) Probable Cause Determination. Upon the filing of the sworn statement of fact, the court must then proceed promptly to determine if there is probable cause to believe that an offense has been committed and that the defendant committed it.

(3) Without a Hearing. The determination of probable cause may be made by the court without conducting a hearing.

(4) Hearsay Evidence. The court's finding of probable cause may be based upon hearsay evidence in whole or in part.

(5) Docket Entry. The court must enter its determination as to probable cause on the docket along with the date of the determination.

D.C. SCR-Crim. Rule 5(e).

complaint and affidavit dated August 1, 1991, charging Mr. Rogers with first-degree murder while armed of Henry East. *See* HCF at 344, 347.[3] Thus, while no audio recording or transcript of the initial appearance is available, the contemporaneous record reflects that a judicial officer made a probable cause determination on August 2, 1991, following review of the complaint and affidavit, within 48 hours of Mr. Rogers' arrest and prior to ordering Mr. Rogers' detention.

Fourth, to the extent that Mr. Rogers asserts that he "was not taken before a judicial officer until ninety-six (96) hours after his unwarranted arrest," *see* Petition at 2, in violation of the 48-hour constitutional standard set forth in *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), any delay in Mr. Rogers' presentment appears to be attributable to his escape from custody following his arrest. The government's Opposition to Defendant's Motion to Modify Conditions of Release, filed on October 29, 1991, reflects that:

> [o]n August 2, 1991, after a second-sighting, defendant was escorted to the Homicide Office where he was placed under arrest and charged with first degree murder while armed. After being processed, defendant was transported to the Fifth District Metropolitan Police Department where he was to remain overnight pending his presentment the following morning. While defendant was being transported, he managed to get free from his restraints and as he was being escorted out of the transport vehicle he broke free and escaped from the custody of the police. After a lengthy search of the area surrounding the National Arboretum, defendant was found hiding inside a trailer.
>
> HCF at 312-315, ¶2; *see also* HCF at 310-311 (Order denying bond view motion, noting "Defendant's previous escape from police custody.").

This intervening factor clearly constitutes "a bona fide emergency or other extraordinary circumstance," justifying any delay. *See Riverside*, 500 U.S. 47 ("Where an arrested individual does not receive a probable cause determination within 48 hours . . . the arrested individual does

[3] Given the age of the case and the fact that the D.C. Superior Court was reliant on paper records until the early 2000s, the historical case file documents, uploaded to the docket on February 28, 2019, are not organized in chronological or sequential order.

not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance.")

Finally, even if Mr. Rogers' claim was not procedurally barred and even if Mr. Rogers could plausibly proffer that he was detained more than 48 hours prior to a judicial determination of probable cause and in the absence of extraordinary circumstances, his claim of a *Riverside* violation would not warrant setting aside Mr. Rogers' conviction. Dismissal is not the appropriate remedy for a *Riverside* violation. *See Yarbough v. Eagen*, 2014 U.S. Dist. LEXIS 181064 (E.D.MI Nov. 17, 2014); *State v. Bridges*, 372 Wis. 2d 834, *11 (Ct. App. 2016)("Dismissal of charges for a *Riverside* violation is not required unless the State intentionally delays and hampers the defendant's ability to prepare a defense."). Although declining to reach the question, the Supreme Court has stated that from the mere existence of a *Riverside* violation, "it does not necessarily follow . . . that [the defendant] must be 'set free' or gain other relief." *Powell v. Nevada*, 511 U.S. 79, 84 (1994).

In analogous circumstances, the Supreme Court has held that "a failure to comply with the first appearance requirement [of 18 U.S.C. § 3142] does not defeat the Government's authority to seek detention of the person charged." *United States v. Montalvo-Murillo*, 495 U.S. 711, 717 (1990), and Federal courts uniformly have held that dismissal is not an appropriate remedy for a violation of the prompt arraignment requirement of Federal Rule of Criminal Procedure 5(a), *See Yarbough v. Eagen*, 2014 U.S. Dist. LEXIS 181064 (E.D.MI Nov. 17, 2014); *United States v. Jernigan*, 582 F.2d 1211, 1214 (9th Cir. 1978); *United States v. DiGregorio*, 795 F. Supp. 630, 634 (S.D.N.Y. 1992).

Courts have made clear that a *Bivens* or Section 1983 suit is an appropriate remedy for a *Riverside* violation. *United States v. Fullerton*, 187 F.3d 587, 592 (6th Cir. 1999); *see also Luck v.*

*Rovenstine*, 168 F.3d 323 (7th Cir. 1999); *Hallstrom v. City of Garden City*, 991 F.2d 1473 (9th Cir. 1993); *Sivard v. Pulaski County*, 959 F.2d 662 (7th Cir. 1992); *Wayland v. City of Springdale*, 933 F.2d 668 (8th Cir. 1991). Based on the attachment to Mr. Rogers' April 18. 2025. Petition. it appears that he may have already initiated a civil action pursuant to 42 U.S.C. §1983.

For these reasons, and for the reasons stated in the court's April 24, 2025. Order. it is this 4th day of June 2025, hereby

**ORDERED** that Defendant's Motion for Reconsideration is **DENIED.**

**IT IS FURTHER ORDERED** that future filings seeking to relitigate this issue may be summarily denied.

Juliet J. McKenna
Associate Judge
(Signed in chambers)

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APPENDIX C

# District of Columbia Court of Appeals

FILED
FEB 20 2026
DISTRICT OF COLUMBIA COURT OF APPEALS

**No. 25-CO-0579**

KEITH ROGERS,

Appellant,

v. **1991-FEL-009067**

UNITED STATES,

Appellee.

BEFORE: Easterly and Shanker, Associate Judges, and Thompson, Senior Judge.

## ORDER

On consideration of this court's order directing appellant to show cause why this pro se appeal should not be dismissed as filed without obtaining prior leave of court as required by the November 9, 2012, judgment in appeal No. 12-CO-341, appellant's motion for extension of time to file the lodged response, appellant's motion for extension of time to file a brief, appellant's motion for summary reversal, and appellant's motion to treat appellee's failure to respond as a concession, it is

ORDERED that appellant's motion for extension of time to file a response is granted and the lodged response is filed. It is

FURTHER ORDERED that this appeal is dismissed due to appellant's failure to obtain prior leave of court as required by the November 9, 2012, judgment in appeal No. 12-CO-341. To the extent appellant's response requests leave of court to file the appeal, he has not shown good cause to support that request. It is

FURTHER ORDERED that appellant's motions for extension of time to file a brief, for summary reversal, and to treat appellee's failure to respond as a concession are denied as moot.

**PER CURIAM**

# APPENDIX D

District of Columbia
Court of Appeals

FILED
MAR 10 2026
DISTRICT OF COLUMBIA
COURT OF APPEALS

**No. 25-CO-0579**

KEITH ROGERS,

Appellant,

v. **1991-FEL-009067**

UNITED STATES,

Appellee.

BEFORE: Easterly and Shanker, Associate Judges, and Thompson, Senior Judge.

**ORDER**

On consideration of appellant's motion to reconsider, construed as a petition for rehearing, it is

ORDERED that the petition for rehearing is denied. *See* D.C. App. R. 40. As noted in our February 20, 2026, order, the court dismissed this appeal in part because, even if we construed appellant's response to the show cause order as a request for leave, we determined that he had not shown good cause. We reached that conclusion because it was apparent that appellant had failed to satisfy the criteria for a petition for a writ of error coram nobis. *See United States v. Hamid*, 531 A.2d 628, 634 (D.C. 1987) (explaining "[t]he writ of error coram nobis requires that (1) the trial court be unaware of the facts giving rise to the petition; (2) the omitted information be such that it would have prevented the sentence or judgment; (3) petitioner be able to justify the failure to provide the information; (4) the error be extrinsic to the record; and (5) the error be 'of the most fundamental character'").

**PER CURIAM**

Copy e-served to:

Honorable Juliet J. McKenna

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**No. 25-CO-0579**

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