03-8403

No. _____

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Supreme Court U.S.
FILED
DEC 15 2003

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Nicholas James Queen — PETITIONER
(Your Name)

VS.

Scott Dodrill, Warden — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

[ ] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Civil No. 3:CV-9874, U.S. District Court Middle District Penn.
No. 00-2780, US Court of Appeal Third Circuit

[ ] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

(Signature)

Nicholas Queen
#29623-037
USP-Lewisburg
P.O. Box 1000
Lewisburg, PA. 17837

QUESTION PRESENTED

1. WHETHER THE FEDERAL BUREAU OF PRISONS HAVE AUTHORITY TO NEGATE CALCULATION OF A FEDERAL SENTENCE, THEN START A NEW CALCULATION, PRIOR TO DUE PROCESS OF LAW ?

REASONS FOR NOT MAKING APPLICATION TO THE DISTRICT COURT

The Petitioner avers that it is imperative that this Court review this matter on the grounds set forth herein at Why Relief Can Not be Obtained in any other court, or any other form, and Aid of Appellate jurisdiction.

WHY RELIEF CAN NOT BE OBTAINED IN ANY OTHER COURT OR IN ANY OTHER FORM

Respectfully, the Petitoner is a pro se litigant who has erroneously been denied the right to relief before the United States District Court of the Middle District of Pennsylvania, pursuant to 28 U.S.C. 2241, which was affirmed by the United States Appellate Court of the Third Circuit, on the grounds that his allegations did not amount to unlawfull imprisonment, and subsequently denied these same allegations pursuant to title 5 U.S.C. 552a (e)(5), on the grounds that amount to "unlawful imprisonment". Certainly these rulings are contradictive giving the effect of applying principles of estoppel to Petitioner's right to relief. Which this petitioner respectfully request that this Court exercise its equitable discretion to avoid a total miscarrirage of justice.

TYPE OF RELIEF SOUGHT

The petitioner respectfully request that this Honorable Court Order his immediate release of unlawful imprisonment, to the Federal Bureau of Prisons, or to the united States District Court for the Middle District of Pennsylvania , through the United States Court of Appeals for the Third Circuit.

presences before the district court may have been secured pursuant to a writ of habeas corpus ad prosequendum "absent due process" of law without being devested of jurisdiction pursuant to Title 18 U.S.C. 4001 (a). The question herein presented are of great public importance because it affects the operation of prison systems in all fifty states, the District of Columbia, and humdreds of City and County jails.

The question is also of great importance to the judiciary as a goverment in a civil society must always be accountable for an individuals imprisonment in view of the large amount of litigation over prison calculation of confinment.

In addition, the question is of great importance to prisoners, because it effects their ability to injoy fundamental principles of liberty and justice after prison officials have erroneously violated the Order of a federal or otherwise sentencing Court by turning a prisoner over to another sovereign while negating calculation of a confinement in exchange for later commencement dates. Causing that these prisoners become no longer judicially commited but rather committed by executive policy.

STATEMENT OF THE CASE

The question before the Court presents the sole question involving the authority of the penal division, (i.e. Federal Bureau of Prisons).

Accordingly, the Petitiner in December 1998, petitioned the United States District Court for the Middle District of Pnnsylvania seeking relief from being "unlawfully imprisoned". In the petition, the Petitioner alleged that the Federal Bureau of Prisons violated his 5th Amendment United States Constitutional Right not to

be deprived of liberty without due process of law, by negating calculation of the federal sentence, for the purpose of transferring him to the State of Maryland to serve a state sentence consecutively, then regaining custody t began a new calculation of the federal term.

Before the district court, the Federal Bureau of Prisons did not deny Petitioner's allegations. However, instead claimed that petitioner's original placement in federal prison for service of the federal term was a error because the federal sentencing court should have Ordered that Petitioner be returned to the State to complete an unfinished state term as his custody in federal court was pursuant to a federal writ of habeas corpus ad prosequendum, therefore the U.S.Marshals errored by requesting that Petitioner be designated to a federal facility for service of the federal term . Since the Federal sentencing court did not specify that the federal sentence be ran concurrent with the State sentence. Under these circumstances the Federal Bureau of Prisons Program Statement provides that "when it has been determined " that an inmate has been improperly committed to federal prison , federal prison staff shall take necessary steps to return the prisoner to the sending soveign and lable the federal sentence as a detainer to assure a return.

The Petitioner herein avers that the district and Appellate Court erroneously determined this case on the basis of primary jurisdiction, rather than, whether the Federal Bureau of Prisons have authority to negate calculation of a federal term, then start a new calculation prior to due process of law, on the basis that a defendant's presence before the district court was pursuant to