

BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

FILED



SEP 12 2024

Board of Disciplinary
Appeals

IN THE MATTER OF §
WILLIAM TOPP MAXWELL §
STATE BAR CARD NO.: 24028775 §

CAUSE NO.: 56591

MOTION FOR CONTINUANCE

AND

MOTION TO FILE PAPER MOTIONS (RULE 1.05(A)(4)(III))

TO THE HONORABLE BOARD:

COMES NOW, William Topp Maxwell ("Maxwell"), and files this Motion for Continuance and for just cause would show unto the Board as follows:

During the October 2024 setting, this matter is set for trial on the merits of the Motion for Entry of Judgment of Disbarment.

Maxwell's case, Docket No.: 23-7404 is still pending on the Supreme Court's docket.

The deadline for filing is ten (10) days prior to the hearing (on information and belief, as Maxwell does not have access to State of Texas Rules -- Civil Procedure).

Maxwell would request a ninety (90) day extension, or until the next Board of Disciplinary Appeals meeting.

This is the second request for extension.

Since the time of Maxwell's first request for extension (granted, continuing the matter from July 2024 until October 2024), the Solicitor General filed two requests for extension, which were granted by the Supreme Court, extending the deadline

for the Solicitor General to reply to the Supreme Court until August 28, 2024.

Maxwell has additionally filed a Second Supplemental Petition, noting an additional change in law, see Macquarie Infrastructure Corp. v. Moab Partners, L.P., 601 U.S. 257 (2024).

On August 28, 2024 the Solicitor General filed their response, and on September 3, 2024 Maxwell filed a reply.

The case remains active on the United States Supreme Court docket as of the date of this filing.

FACTUAL BACKGROUND

1) On July 17, 2023, the Third Circuit Court of Appeals affirmed Maxwell's 2015 conviction in Cause No.: 1:11-CR-00740(03). See Cause No.: 15-2925.

2) On September 15, 2023, the Third Circuit denied Maxwell's timely filed Sur Petition for Rehearing. See Exhibit 1 attached hereto.

3) On November 3, 2023, Justice Alito Granted Maxwell an extension "to and including February 12, 2024 to file his petition for certiorari with the Supreme Court." See Exhibit 2 attached hereto.

4) On May 7, 2024, the Supreme Court docketed Maxwell's February 9, 2024, Petition for Certiorari, Docket No.: 23-7404. See Exhibit 3 attached hereto.

5) On May 14, 2024, the Solicitor General waived its right to file a response. See Exhibit 4 attached hereto.

6) On May 28, 2024, the Supreme Court notified the Solicitor General that "[a]llthough your office has waived the right to file a response to the petition for a writ of certiorari in the above

case, the Court nevertheless has directed this office to request that a response be filed..." The Solicitor General's response was due on or before June 27, 2024. See Exhibit 5 attached hereto.

7) Maxwell raised two (2) questions in his Petition for Certiorari. First, because several cases had been issued in Maxwell's favor by the Supreme Court, post-Third Circuit Panel decision in July, 2022, Maxwell sought whether G.V.R. or full certiorari was appropriate. See Ciminelli v. United States, 598 U.S. ____ (2023); and related cases Dubin v. United States, 216 L.Ed.2d 136, 157 (2023); Percoco v. United States, 598 U.S. ____, ____ (2023); New York Rifle & Pistol Assn. v. Bruen, 597 U.S. 1 (2022); Fischer v. United States, 144 S.Ct. 2176 (2024); and United States v. Rahimi, 144 S.Ct. 1889 (2024).

Second, Maxwell noted structural error, because the Government had tendered to the jury two hundred seventy-six (276) exhibits that were never offered for admission into evidence by the Government, and were never admitted into evidence by the trial court. The two hundred and seventy-six (276) exhibits were material exhibits and prejudiced the case. Maxwell notified the Supreme Court of the Government's concession of these facts. See Exhibit 6 attached hereto.

MOTION FOR EXTENSION

8) The rules of compulsory discipline, Rule 6.01(c) require, during the period of interlocutory suspension, that prior to Maxwell filing a Motion to Terminate, he must obtain "certified copies" of the decision and mandate of the reversing court and attach those to his Motion.

9) Because the Solicitor General's response was not due to the Supreme Court until August 28, 2024 and because Maxwell's reply will delay the Supreme Court's ruling either granting certiorari, denying certiorari, or ordering full briefing, or issuing a G.V.R., Maxwell requests a ninety (90) day extension or until the next Board of Disciplinary Appeals meeting to obtain notice from the Supreme Court regarding the standing of his case, and to so advise the State Bar.

10) Because Maxwell remains incarcerated, there is no prejudice to anyone regarding the delay. Because the Supreme Court's reversal will necessarily increase costs of appeal, should the hearing move forward, Maxwell requests the extension to obtain the necessary certified documents to attach to his Motion for Termination, and/or file his objections to the disbarment proceeding.

11) Because Maxwell is incarcerated, he is unable to contact Ms. Amanda M. Kates, esq., with the State Bar of Texas, to determine whether she is opposed to the extension requested.

RELIEF UNDER RULE 1.05(a)(4)(iii)

12) Maxwell seeks permission to file this paper copy pursuant to Rule 1.05(a)(4)(iii) for good cause shown. Maxwell does not have access to the internet or computers for electronic filing.

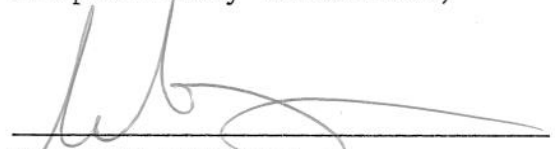
12) Maxwell will immediately notify the State Bar and Ms. Amanda Kates, esq., of any decision by the United States Supreme Court.

PRAYER

For these reasons, Maxwell requests and extension of ninety

(90) days or until the next meeting of the Board of Disciplinary Appeals for the hearing on the merits of the Motion for Entry of Judgment of Disbarment, currently scheduled for October, 2024.

Respectfully Submitted,




WILLIAM MAXWELL

Fed. Reg. No.: 71944-279
FCI-Beaumont-Low
Post Office Box 26020
Beaumont, Texas 77720

VERIFICATION

I hereby certify that all material facts contained in the foregoing motion are true and correct to the best of my knowledge and belief. I make this verification under penalties of perjury and pursuant to 28 U.S.C. §1746.

September 5, 2024




WILLIAM MAXWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served on Ms. Amanda M. Kates, esq.; Assistant Disciplinary Counsel; Office of the Chief Disciplinary Counsel, State Bar of Texas; Post Office Box 12487; Austin, Texas 78711, at the same time service was made upon Ms. Jenny Hodgkins; Board of Disciplinary Appeals; Supreme Court of Texas; Post Office Box 12426; Austin, Texas 78711. Service was made by posting same in the BOPL Legal Mail System, first class postage prepaid and properly addressed on the 5th day of September, 2024. I make this certification under penalties of perjury and pursuant to 28 U.S.C. §1746.

September 5, 2024



WILLIAM MAXWELL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15-2925

UNITED STATES OF AMERICA

v.

WILLIAM MAXWELL, a/k/a BILL,

William Maxwell,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Nos. 1-11-cr-0740-003)
District Judge: Honorable Robert B. Kugler

SUR PETITION FOR REHEARING

Present: JORDAN, HARDIMAN, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS,
FREEMAN, MONTGOMERY-REEVES, CHUNG and AMBRO*, *Circuit Judges*

The petition for rehearing filed by appellant William Maxwell in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATE: September 15, 2023

* Judge Ambro's vote is limited to panel rehearing only.

671

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 3, 2023

Mr. William Maxwell
Prisoner ID 71944-279
FCI Beaumont
P.O. Box 26020
Beaumont, TX 77720

Re: William Maxwell
v. United States
Application No. 23A399

Dear Mr. Maxwell:

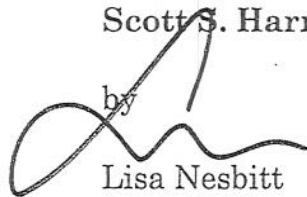
The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Alito, who on November 3, 2023, extended the time to and including February 12, 2024.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by



Lisa Nesbitt
Case Analyst

Ex 2

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

May 7, 2024

Mr. William Maxwell
Prisoner ID 71944-279
FCI Beaumont
P.O. Box 26020
Beaumont, TX 77720

Re: William Maxwell
v. United States
No. 23-7404

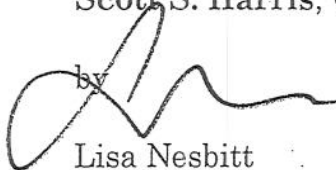
Dear Mr. Maxwell:

The petition for a writ of certiorari in the above entitled case was filed on February 9, 2024 and placed on the docket May 7, 2024 as No. 23-7404.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

Scott S. Harris, Clerk

by 

Lisa Nesbitt
Case Analyst

Enclosures

E73

IN THE SUPREME COURT OF THE UNITED STATES

MAXWELL, WILLIAM
Petitioner

vs.

No: 23-7404

USA

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

May 14, 2024

cc:

WILLIAM MAXWELL
PRISONER ID: 71944-279
FCI BEAUMONT
P.O BOX 26020
BEAUMONT, TX 77720

E24

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

May 28, 2024

Mrs. Elizabeth B. Prelogar
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

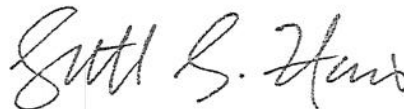
Re: William Maxwell
v. United States
No. 23-7404

Dear Mrs. Prelogar:

Although your office has waived the right to file a response to the petition for a writ of certiorari in the above case, the Court nevertheless has directed this office to request that a response be filed.

Ten typewritten or otherwise reproduced copies of your response, together with proof of service thereof, should be filed on or before June 27, 2024.

Sincerely,



Scott S. Harris
Clerk

cc: William Maxwell

EYS

DOCKET NO. 23-7404

BEFORE THE UNITED STATES SUPREME COURT

WILLIAM MAXWELL

Petitioner/Appellant/Defendant,

VS.

UNITED STATES OF AMERICA

Respondent/Appellee/Plaintiff.

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

On Appeal from the United States District Court for the District of
New Jersey, Camden Vicinage, Honorable Robert Kugler, presiding.

SUPPLEMENTAL BRIEF TO
PETITION FOR CERTIORARI

Respectfully submitted,

William Maxwell
Reg. No. 71944-279
FCI Beaumont Low
Post Office Box 26020
Beaumont, Texas 77720
Pro se'

ETG

TO THE HONORABLE SUPREME COURT:

COMES NOW, William Maxwell ("Maxwell"), petitioner herein, and files this Supplemental Brief, noting the United States' admission of the factual underpinnings of Maxwell's structural error argument, and for just cause would show unto the Court as follows:

1) Maxwell; his brother, John Maxwell; Nick Scarfo; and Salvatore Pelullo were convicted after trial in this matter. The trial was eight (8) months long.

2) Maxwell asserted in his Opening Brief that, as a result of this "Monster Trial," which was objected to by the defendants (multiple times) throughout, structural error occurred. The Federal Rules of Evidence were abrogated. In this case, two hundred seventy-six (276) material exhibits that were never offered for admission into evidence, never admitted into evidence, were nevertheless given to the jury by the United States, considered by the Trial Court in its denials of Rule 29 and Rule 33 motions, and were considered by the Appellate Court in its affirmance of the case. Maxwell argued that giving two hundred seventy-six (276) material exhibits to the jury that were never offered for admission by the Government (thereby triggering the defense duty to object), nor admitted by the Trial Court into evidence, was a break down of the adversarial process and constituted the type of error this Court has called structural.

3) Scarfo, who is now proceeding in the Trial Court on a \$2255 case, raised the inadmitted exhibit issue. In its Response, found at Cause No. 1:23-cv-22432-RBK, Doc. No. 7, Page 101 the United States confesses:

"...To be sure, the cases discussed above did not involve anywhere near the number of unadmitted exhibits at issue here. Nor does the Government dispute that, had the unadmitted exhibits been excluded from evidence, the overall strength of the Government's case against [the defendants] would have been eroded."

4) The Government has confessed that the two hundred seventy-six (276) exhibits were material; that they were not offered for admission into evidence; that they were not admitted into evidence, ever, and that they affected the outcome of the case.

5) The Government took other positions in the Brief in regards to Scarfo that are not material to Maxwell's assertions in his Opening Brief.

6) The Government confesses that it has known about this structural (Maxwell alleges that it is structural) error since at least 2019. The exhibits (276) that were highlighted for the Court in Maxwell's Appendix show a District Court filing in 2019. Despite this knowledge of structural error, the Government did not alert the Appellate Court that two hundred seventy-six (276) exhibits that it included in the joint appendix were not properly before the Appellate Court.

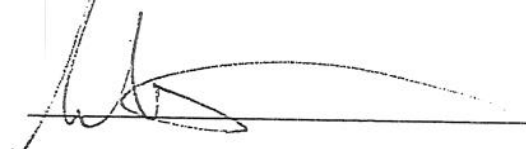
7) The Government makes other arguments that are perhaps better raised by the Government.

8) The filing did not become available to Maxwell until today, May 23, 2024. Maxwell files this Supplement to clarify that there is no dispute that:

- (1) two hundred seventy-six (276) material exhibits were never offered into evidence by the United States;
- (2) two hundred seventy-six (276) material exhibits were never admitted into evidence by the Court;
- (3) two hundred seventy-six (276) material exhibits that were never offered into evidence or admitted into evidence were prejudicial to Maxwell (defendants);
- (4) two hundred seventy-six (276) material exhibits that were not offered into evidence nor admitted into evidence were nevertheless given to the jury and considered by the Trial Court and Appellate Court (and reasonable inferences therefrom) in reaching its decisions (Rule 29, Rule 33, Direct Appeal, Jury Deliberations) in this case.

9) Maxwell urges that, under these undisputed facts, structural error occurred. Alternatively, full briefing may be appropriate under GVR to the Court below.

Respectfully submitted,



William Maxwell

Reg. No. 71944-279

FCI-Beaumont-Low

P.O. Box 26020

Beaumont, TX 77720

VERIFICATION

I hereby verify that the material factual statements contained herein are true and correct to the best of my knowledge and belief. I make this verification under 28 U.S.C. §1746 and penalties of perjury.

5/23/2024

Date

A handwritten signature in black ink, appearing to read 'William Maxwell', written over a horizontal line.

William Maxwell