

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOSEPH CUCINIELLO,

v.

Case No. 8:02-cr-111-T-17MAP
8:10-cv-1209-T-17MAP

UNITED STATES OF AMERICA.

ORDER

This cause is before the Court on the Government's motion for dismissal of Cuciniello's motion to vacate, set aside, or correct sentence as time-barred under section 2255 (Doc. cv-1; cr-1909) and to stay this Court's May 28, 2010, Order directing the United States to respond on the merits to Cuciniello's section 2255 motion, pending a ruling on the motion to dismiss. (Doc. 14)

BACKGROUND

On November 16, 2004, a grand jury sitting in the Middle District of Florida returned a second superseding indictment charging Joseph Cuciniello and others with conspiracy to commit securities fraud, wire fraud, and mail fraud, in violation of 18 U.S.C. § 371, five counts of securities fraud, in violation of 15 U.S.C. § 78j(b) and 18 U.S.C. § 2, three counts of selling unregistered securities, in violation of 15 U.S.C. § 77e(a) and 18 U.S.C. § 2, thirteen counts of mail fraud, in violation of 18 U.S.C. §§ 1341 and 2, money laundering conspiracy, in violation of 18 U.S.C. § 1956(h), eight counts of engaging in illegal monetary transactions, in violation of 18 U.S.C. §§ 1957 Case 8:10-cv-01209-EAK-MAP Document 14 Filed 08/25/10 Page 1 of 13 and 2, and seven counts of laundering of monetary instruments, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i) and 2. D-577.

After a three-month trial, a jury convicted Cuciniello of the overarching conspiracy count, one count of securities fraud, three counts of selling unregistered securities, eight counts of mail fraud, conspiracy to commit money laundering, seven counts of engaging in illegal monetary transactions, and seven counts of money laundering. D-979. This Court sentenced Cuciniello to 210 months' imprisonment. D-1179, D-1183. Cuciniello directly appealed his conviction and sentence. D-1176.

On March 17, 2008, the Eleventh Circuit affirmed Cuciniello's conviction and sentence. *See United States v. Tyrrell*, 269 Fed. App'x 922 (11th Cir. 2008).¹ D-1871, Attachment D1. Cuciniello did not seek further review in the Supreme Court. See Attachments D1-D5.

On May 26, 2010, Cuciniello filed a motion, pursuant to 28 U.S.C. § 2255, to vacate, set aside, or correct his sentence. D-cv-1. In his motion, Cuciniello asserts:

(1) His appellate counsel was ineffective in his "refus[al]" to submit a motion Cuciniello wanted to file concerning alleged "governments criminal mis-conduct." Cuciniello alleges the government's expert on securities, Charles Stutts, varied his testimony between the two trials causing "the three (3) federal charges 15:USC:77e(a) Sale of Unregistered Securities (counts 7, 8, & 9)" as "false charges rending the indictment defective and void." D-cv-1 at 5-7;

(2) The government's use of "wrongfully seized" records from his storage facility denied him the use of "exculpatory evidence." D-cv-1 at 8-10;

(3) Various changes to the Court's transcript dated February 28, 2005, indicate not only "intentional 'hacking' into the federal courthouse computers" but such actions also indicate a "cover-up" as to the seizure of Cuciniello's business records from his storage facility and the nonexistence of the

¹ The government attached, to their response, Attachments D1 through D5 which are copies of Westlaw KeyCite history for Eleventh Circuit Appeal No. 05-14492, negative Supreme Court docket query for "Cuciniello," co-defendant Tyrrell's Supreme Court docket for No. 08-910, codefendant Sinibaldi's Supreme Court docket for No. 08-590, and Eleventh Circuit docket for No. 05-14492, respectively.

Stipulation Agreement. D-cv-1 at 12-14; and

(4) A violation of the Petit Policy barring a "federal prosecution based on the same acts" unless "approved by the Assistant Attorney General." D-cv-1 at 15-16.

For the reasons cited below, Cuciniello's motion to vacate is untimely.

DISCUSSION

There is a one-year statute of limitations period on the filing of all non-capital habeas petitions and motions attacking sentence in federal courts. 28 U.S.C. §§ 2244(d)(1), 2255. Title 28, United States Code, Section 2255 contains a one-year limitation period on habeas motion by federal prisoners which, as applied in this case, runs from "the date on which the judgment of conviction becomes final." 28 U.S.C. § 2255(f).

Section 2255 itself does not define when a conviction "becomes final." The Supreme Court ended ongoing dispute about calculating timeliness of section 2255 motions, however, when it clearly and unambiguously stated: "We hold that, for federal criminal defendants who do not file a petition for certiorari with this Court on direct review, section 2255's one-year limitation period starts to run when the time for seeking such review expires." *Clay v. United States*, 537 U.S. 522, 532 (2003). Hence, per the clear rule of *Clay*, Cuciniello's convictions became final upon the expiration of his deadline for seeking Supreme Court review of the Eleventh Circuit's opinion denying his appeal. Cuciniello's convictions became final on December 29, 2009.

Supreme Court Rule 13 governs deadlines for filing petitions for Supreme Court review of appellate decisions. It provides, in pertinent part:

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals [] is timely when it is filed with the Clerk

of this Court within 90 days after entry of the judgment.[]

2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time.[]

3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for a writ of certiorari for all parties [] runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.

The Eleventh Circuit opinion affirming Cuciniello's convictions and sentence was filed on March 17, 2008. *United States v. Tyrrell*, 269 Fed. App'x 922 (11th Cir. 2008). Cuciniello does not dispute this fact. See D-cv-1 at 3. Cuciniello acknowledges filing a petition for rehearing. *Id.* Cuciniello states that his section 2255 motion is timely by relying on the petition for certiorari filed by co-defendant Tyrrell. D-cv-1 at 20. Cuciniello further claims because Tyrrell's petition was denied on June 19, 2009, the one-year deadline for filing his section 2255 motion became June 19, 2010. *Id.* He is mistaken.

As the Supreme Court's docket in Attachment D3 clearly reflects, Tyrrell's petition was denied on June 15, 2009 and nothing in the Supreme Court rules or the holding in *Clay* allows Cuciniello to benefit from a co-defendant's denial of certiorari to extend the finality of his own conviction when failing to separately petition for certiorari. Cuciniello had ninety days from the denial of his petition for rehearing on September 29, 2008—*i.e.*, December 29, 2008—to file his own petition for review by the Supreme Court of his judgment. When Cuciniello did not file any such petition, his conviction became final for section 2255 purposes on December 29, 2008, making the last day he could file a section 2255 motion

December 29, 2009. By filing his section 2255 motion on May 10, 2010,² five months past the filing deadline, Cuciniello's motion is untimely. See 28 U.S.C. § 2255 ¶ (f)(1). Thus, this Court is without authority to address the Cuciniello's section 2255 motion because the one-year period of limitations had expired before he filed his motion. Accordingly, the motion is untimely absent equitable tolling.³

It is generally accepted, although never specifically confirmed by the Supreme Court, that claims of error raised in an untimely section 2255 petition may, nonetheless, be considered under very limited circumstances. First, the doctrine of equitable tolling may provide a petitioner with additional time in which to prepare and file his claims. Second, a defaulted claim by a federal prisoner may merit review under section 2255 if new evidence supports a claim of actual innocence sufficient to implicate a fundamental miscarriage of justice.

Cuciniello does not assert actual innocence. See generally, D-cv-1. Even if this Court were to look at Cuciniello's claims on the merits, he would still be unable to obtain any relief. To the extent Ground One addresses the sufficiency of the evidence, the Eleventh Circuit's review forecloses that claim. *Tyrrell*, 269 Fed. App'x at 934-935. In Grounds One, Two, and Three Cuciniello makes a Fourth Amendment claim regarding the storage facility. No relief would be available on the grounds he alleges because Cuciniello stipulated to the facts regarding how the records were obtained from the storage unit after

² Giving benefit of mailbox rule pursuant to *Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that habeas petitions are deemed filed with the district court to whom they are addressed on the day inmates present the documents to prison officials for mailing).

³ See *Day v. McDonough*, 547 U.S. 198, 209 (2006) ("we hold that district courts are permitted . . . to consider, sua sponte, the timeliness of a . . . habeas petition").

abandonment (see D-cv-13 and Stipulation filed February 28, 2005) and to the extent that he wishes to relitigate that issue by falsely alleging that the search did not occur in the manner he stipulated to, Cuciniello bears the burden of proving, through competent evidence, that his rights were violated during the government's investigation, which he has not done here. In any event, Grounds One through Three would also be barred because this type of claim is also not cognizable in a motion to vacate. Fourth Amendment violations are not cognizable on collateral review as long as the defendant had a "full and fair" opportunity to litigate the claim on direct appeal. See *Stone v. Powell*, 428 U.S. 465, 494 (1976) ("where the State has provided an opportunity to full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial"). Lastly, a violation of the Petite policy, a claim Cuciniello advances in Ground Four without any support, is not present here. In *Petite v. United States*, 361 U.S. 529, 530 (1960), the Supreme Court recognized the policy when the Government sought to have a conviction vacated based upon its policy of refraining from multiple prosecutions arising out of the same conduct. The Petite Policy is based upon the fair exercise of justice and efficient exercise of law enforcement resources. *Id.* The policy, however, is inapplicable where there has been no determination of guilt or innocence in a state prosecution, and no burden of trial on a defendant. *United States v. Nelligan*, 573 F.2d 251, 254 (5th Cir. 1978), citing, *Rinaldi v. United States*, 434 U.S. 22, 28 (1977). Cuciniello's claim that no "official approval" exists for his prosecution following a state investigation is a concession that he was not prosecuted by the State of Florida for the instant offenses. See D-cv-1 at 16. As such, the Petite Policy is not applicable on these facts.

Cuciniello Cannot Demonstrate an Exception to the One-Year Limitations Period

Each of the exceptions to the one-year limitations period (equitable tolling and a claim of actual innocence based on new evidence) carries a very high burden which a petitioner must meet before the district court may even consider the merits of an otherwise-barred allegation of error. Cuciniello's motion makes no claim to either potential exception to the statute of limitations, and no basis for either exception is evident in the record.

There is no basis for equitable tolling.

The Eleventh Circuit has held that the one-year time limitation in section 2255 actions may be equitably tolled. *Akins v. United States*, 204 F.3d 1086, 1089 (11th Cir. 2000), citing *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999). Equitable tolling is appropriate in cases when a petitioner's motion is untimely "because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence." *Johnson v. United States*, 340 F.3d 1219, 1226 (11th Cir. 2003) (citations omitted). To establish eligibility for equitable tolling, a petitioner must show: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." *Lawrence v. Florida*, 549 U.S. 327, 336 (2007) (citation omitted). Equitable tolling "is a remedy that must be applied sparingly." *Downs v. McNeil*, 520 F.3d 1311, 1318 (11th Cir. 2008). "The burden of establishing entitlement to this extraordinary remedy plainly rests with the petitioner." *Drew v. Dep't of Corr.*, 297 F.3d at 1286. Equitable tolling "is an extraordinary remedy which is generally applied sparingly." *Helton v. Sec'y for Dep't of Corr.*, 233 F.3d 1322, 1325 (11th Cir. 2000).

AEDPA's one-year limitation begins to run from "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." 28 U.S.C. § 2255(t)(4). Equitable tolling is available only if a petitioner establishes both extraordinary circumstances and due diligence. See *Diaz v. Sec'y for the Dep't of Corr.*, 362 F.3d 698, 702 (11th Cir. 2004). In *Miller v. Florida*, 307 Fed. App'x 366, 368 (11th Cir. 2009), the Eleventh Circuit stated:

[A]n Appellant carries the burden of showing that he was diligent in his efforts to file timely and that the extraordinary and unavoidable circumstances prevented the Appellant from filing timely. See *Holland v. Florida*, 539 F.3d 1334, 1338 (11th Cir. 2008). 'A truly extreme case is required.' *Id.*

Cuciniello acknowledges his petition for rehearing was denied on September 29, 2008. D-cv-1 at 4. Cuciniello's response as to why he did not further appeal the Eleventh Circuit's denial was based on his belief "given the fact that the appeals Court denied the petition for Rehearing without giving any explanation only proves the court had no legal position to defend its decision." D-cv-1 at 5. In the timeliness section of his motion, Cuciniello asserts that based on this Court's October 6, 2009 order (D-1894) he believes the one-year period to file his section 2255 motion ran from the denial of co-defendant Tyrrell's petition for certiorari on June 19, 2009, making Cuciniello's deadline for timely filing of his section 2255 motion June 19, 2010. D-cv-1 at 20. Contrary to Cuciniello's assertion, his failure to timely file a petition for certiorari for further review with the Supreme Court made his section 2255 motion due 90 days after the denial of rehearing at the Eleventh Circuit, December 29, 2009. Cuciniello failed to seek further review. See Attachment D2.

While co-defendants Tyrrell and Sinibaldi did timely file petitions, see Attachments D3 and D4, nothing in the Supreme Court rules extends Cuciniello's time for filing his

section 2255 motion based on a co-defendants' filing of a petition for certiorari. Nor does this Court's October 6, 2009, Order affect the calculations for determining the one-year period for filing Cuciniello's section 2255 motion. Cuciniello has not advanced any claim to equitable tolling. His motion fails to state any circumstances, extraordinary or otherwise, which prevented his filing his claims within the required one-year period. See D-cv-1. Moreover, no such circumstance is apparent from the record.

Cuciniello does not make the argument for the application of equitable tolling, but even if he did, he cannot satisfy the burden of demonstrating that equitable tolling is appropriate in this case. Although a petitioner may attempt to argue that he should be given the benefit of equitable tolling in an effort to excuse his failure to comply with the filing deadline, by a fair reading of his motion, Cuciniello has not even alleged, much less established, any circumstances surrounding his late filing that might justify an arguable basis for equitable tolling of the limitation period.⁴ Cuciniello's mistaken calculation fails to satisfy either requirement for equitable tolling. See *Akins v. United States*, 204 F.3d 1086, 1090 (11th Cir. 2000)(citing *Lewis v. Casey*, 518 U.S. 343, 355 (1996) ("The mere inability of a prisoner to access the law library is not, in itself, an unconstitutional impediment. The inmate must show that this inability caused him actual harm, or in other words, unconstitutionally prevented him from exercising that fundamental right of access to the courts in order to attack his sentence or to challenge the conditions of his confinement."); *Felder v. Johnson*, 204 F.3d 168, 171-72 (5th Cir. 2000) (finding ignorance of the law and

⁴ See *Day*, 547 U.S. at 199-200 (district courts may consider sua sponte the timeliness of a state inmate's habeas petition but must accord the parties fair notice and an opportunity to present their positions); see also *Gay v. United States*, 816 F.2d 614, 616 n.1 (11th Cir. 1987) (stating that the principles developed in habeas cases also apply to section 2255 motions) (citations omitted).

lack of legal training do not support tolling of AEDPA limitation); *Fisher v. Johnson*, 174 F.3d 710, 714 (5th Cir. 1999) (finding that "ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing").

Cuciniello has not shown that he lacks access to this Court. Given Cuciniello's ability to file the August 18, 2008 petition for rehearing in the Eleventh Circuit, and his subsequent district court filings concerning requests for bond and transcripts on November 18, 2008 (D-1872, D-1873), his motion to request withdrawal of counsel on January 6, 2009 (D-1878), and his motion for miscellaneous relief, specifically for production of court records to complete and file his section 2255 motion, dated September 10, 2009 (D-1888), all indicate Cuciniello's ability to freely petition both Courts with his requests for relief. In fact, Cuciniello in his motion for production, states he believes his filing deadline for submitting his section 2255 motion is October 6, 2009. D-1888 at 1. Cuciniello offers no explanation on his mistaken interpretation extending his filing period.

In *Clay v. United States*, 537 U.S. 522, 532 (2003) the Supreme Court held that finality attaches when the time for filing a petition of certiorari expires, triggering the one-year period to file for post-conviction relief. In October 2009 Cuciniello's one-year period had not expired; it did not do so until December 29, 2009. Nothing Cuciniello alleges in his current motion is newly discovered or previously unknown to him by the conclusion of his direct appeal and he fails to articulate any extraordinary circumstance that prevented him from timely filing his section 2255 motion. By falsely claiming his entitlement to a later filing period, Cuciniello simply is attempting to circumvent the strict filing rules governing the filing of section 2255 motions by relying on his co-defendants procedural history rather than his own. As Attachments D1-D5 clearly demonstrate, Cuciniello did not seek review from the

Supreme Court and his miscalculation of the limitation period does not excuse his late filing.

Cuciniello identifies no reason why he did not seek review from the Supreme Court on his own accord or why he was unable to timely file his section 2255 motion. Even if this Court were to consider Cuciniello's statement that he relied on the denial of a certiorari petition filed by a co-defendant as the operative date, his ignorance of the law does not justify equitable tolling. Cuciniello provides no explanation as to how his thinking changed regarding the filing deadline from "October 6, 2009" to "June 19, 2010." D-1888 at 1, D-cv-1 at 20. Any assertion by Cuciniello that he diligently prosecuted his case is contradicted by the facts; he offers no explanation of the time between the Eleventh Circuit's denial of his rehearing petition and his failure to seek further review with the Supreme Court and the expiration of the AEDPA's statute of limitations. Cuciniello simply neglected to timely file his section 2255 motion. By providing no other valid reason for missing the deadline, he fails to meet his burden in demonstrating equitable tolling should apply. The government's exhibits demonstrate that Cuciniello's filing is untimely and warrants dismissal on that basis. Cuciniello has not shown and cannot show why extraordinary circumstances apply to him in the late filing of his motion and therefore equitable tolling does not afford him any relief. Accordingly, Cuciniello is not entitled to equitable tolling and his section 2255 motion should be dismissed as untimely. In sum, Cuciniello's case has neither the extraordinary circumstances nor the due diligence on Cuciniello's part necessary to toll section 2255's one-year statute of limitations. Cuciniello's section 2255 motion was untimely filed on May 10, 2010, and must be denied as time-barred.

Accordingly, the Court orders:

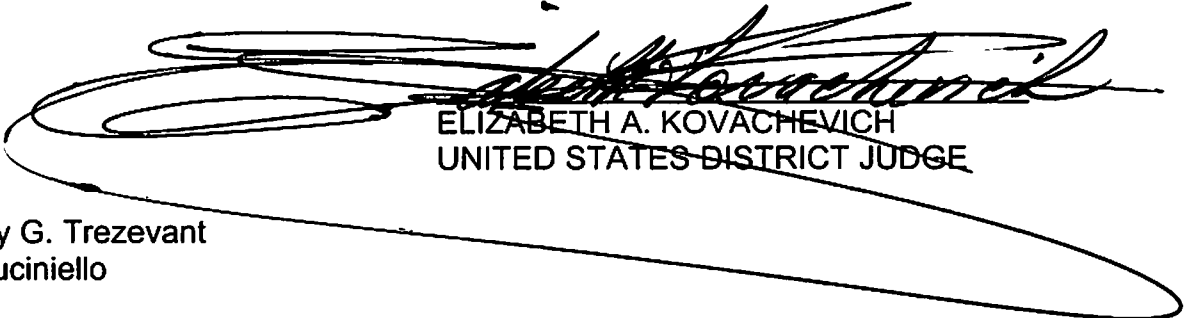
That the government's motion to dismiss Cuciniello's motion to vacate as time-

barred (D-cv-14) is granted. Cuciniello's motion to vacate is denied. The Clerk is directed to enter judgment against Cuciniello and to close this case.

**CERTIFICATE OF APPEALABILITY AND
LEAVE TO APPEAL IN FORMA PAUPERIS DENIED**

IT IS FURTHER ORDERED that Defendant is not entitled to a certificate of appealability. A prisoner seeking a motion to vacate has no absolute entitlement to appeal a district court's denial of his motion. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability (COA). *Id.* "A [COA] may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." *Id.* at § 2253(c)(2). To make such a showing, Defendant "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or that the issues presented were adequate to deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983)). Defendant has not made the requisite showing in these circumstances. Finally, because Defendant is not entitled to a certificate of appealability, he is not entitled to appeal in forma pauperis.

ORDERED at Tampa, Florida, on SEPTEMBER 30th 2010.


ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

AUSA: Jay G. Trezevant
Joseph Cuciniello

DI

W. Stat.

Date of Printing: Aug 18, 2010

KEYCITE

H U.S. v. Tyrrell, 269 Fed.Appx. 922 (11th Cir.(Fla.),Mar 17, 2008) (NO. 05-14492)

History

Direct History

- => 1 U.S. v. Tyrrell, 269 Fed.Appx. 922 (11th Cir.(Fla.) Mar 17, 2008) (Not selected for publication in the Federal Reporter, NO. 05-14492)
Rehearing and Rehearing en Banc Denied by
- H** 2 U.S. v. Tyrrell, 284 Fed.Appx. 806 (11th Cir.(Fla.) Jun 09, 2008) (Table, NO. 05-14492-BB)
AND Rehearing and Rehearing en Banc Denied by
- H** 3 U.S. v. Tyrrell, 307 Fed.Appx. 439 (11th Cir.(Fla.) Sep 29, 2008) (Table, NO. 05-14492-BB)
AND Certiorari Denied by
- H** 4 Sinibaldi v. U.S., 129 S.Ct. 663, 172 L.Ed.2d 616, 77 USLW 3282, 77 USLW 3318, 77 USLW 3324 (U.S. Dec 01, 2008) (NO. 08-590)
AND Certiorari Denied by
- H** 5 Tyrrell v. U.S., 129 S.Ct. 2790, 174 L.Ed.2d 290, 77 USLW 3437, 77 USLW 3674, 77 USLW 3678 (U.S. Jun 15, 2009) (NO. 08-910)
AND Post-Conviction Relief Denied by
- H** 6 Sinibaldi v. U.S., 2010 WL 2933057 (M.D.Fla. Jul 23, 2010) (NO. 8:02-CR-00111-EAKMAP, 8:09-CV-2440-T-17MAP)

Court Documents

Appellate Court Documents (U.S.A.)

U.S. Appellate Petitions, Motions and Filings

- 7 Tyrrell v. United States of America, 2008 WL 5537238 (Appellate Petition, Motion and Filing) (U.S. Sep. 4, 2008) **Petition for Writ of Certiorari** (NO. 08-910)
- 8 Sinibaldi v. United States of America, 2008 WL 4792493 (Appellate Petition, Motion and Filing) (U.S. Oct. 29, 2008) **Petition for Writ of Certiorari** (NO. 08-590)
- 9 Tyrrell v. United States of America, 2009 WL 1354417 (Appellate Petition, Motion and Filing) (U.S. May 2009) **Brief for the United States in Opposition** (NO. 08-910)
- 10 Tyrrell v. United States of America, 2009 WL 1655122 (Appellate Petition, Motion and Filing) (U.S.

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Court Rules ▶ Docketed: January 22, 2009
Case Handling Guides ▶ Lower Ct: United States Court of Appeals for the Eleventh Circuit
Opinions ▶ Case Nos.: (05-14492)
Orders and Journals ▶ Decision Date: March 17, 2008
 Rehearing Denied: June 9, 2008

Supreme Court Information

About the Supreme Court ▶ ---Date--- -----Proceedings and Orders-----
Visiting the Court ▶ Sep 4 2008 Petition for a writ of certiorari filed. (Response due February 23, 2009)
Public Information ▶ Jan 27 2009 Waiver of right of respondent United States to respond filed.
Jobs ▶ Feb 4 2009 DISTRIBUTED for Conference of February 20, 2009.
Links ▶ Feb 11 2009 Response Requested . (Due March 13, 2009)
 Mar 5 2009 Order extending time to file response to petition to and including April 13, 2009.
 Apr 8 2009 Order further extending time to file response to petition to and including May 13, 2009.
 May 13 2009 Brief of respondent United States in opposition filed.
 May 26 2009 DISTRIBUTED for Conference of June 11, 2009.
 Jun 9 2009 Reply of petitioner Gene A. Tyrrell filed. (Distributed)
 Jun 15 2009 Petition DENIED.

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Bar Admissions	▶	Docketed: November 4, 2008
Court Rules	▶	Lower Ct: United States Court of Appeals for the Eleventh Circuit
Case Handling Guides	▶	Case Nos.: (05-14492)
Opinions	▶	Decision Date: March 17, 2008
Orders and Journals	▶	Rehearing Denied: July 30, 2008
		-----Date----- -----Proceedings and Orders-----
		Oct 29 2008 Petition for a writ of certiorari filed. (Response due December 4, 2008)
		Nov 7 2008 Waiver of right of respondent United States to respond filed.
		Nov 10 2008 DISTRIBUTED for Conference of November 25, 2008.
		Dec 1 2008 Petition DENIED.

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		Party name: United States		

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U.S. Circuit Court of Appeals

U.S. Circuit Court of Appeals - 11th Circuit

05-14492

USA v. Gene A. Tyrrell

This case was retrieved from the court on Wednesday, August 18, 2010

Case Number: 05-14492

Date Filed: 08/16/2005

Date Full Case Retrieved: 08/18/2010

Status: Closed

NOS Description: (999); Appeal

[\[Summary \]](#) [\[Associated Cases \]](#) [\[Participants \]](#) [\[Proceedings \]](#) [\[Pending Motion \]](#) [\[Brief \]](#) [\[History \]](#) [\[Additional Case \]](#)

No Information is Available for this case

<u>Case Number</u>	<u>Relationship</u>	<u>Lead Case</u>	<u>Member Case</u>	<u>Additional Information</u>
05-14420-B	Related			Short Style: In Re: Gregory G. Schultz, Status: Closed
05-14421-B	Related			Short Style: In Re: Gregory G. Schultz, Status: Closed
05-14614-Bb	Multi			Short Style: USA v. Dean A. Sinibaldi, Status: Closed
05-15290-Bb	Multi			Short Style: USA v. Joseph Cuciniello, Status: Closed
06-11673-Bb	Related			Short Style: USA v. Gregory G. Schultz, Status: Closed
07-11735-Bb	Related			Short Style: USA v. Gregory G. Schultz, Status: Closed

Litigant

Gene A. Tyrrell
Appellant
Address Not On File
E-Brief Tendered: Appellant filed on 02/09/2006
Appellant Brief Filed filed on 02/13/2006
Record Excerpts filed on 02/13/2006
E-Brief Tendered: Reply filed on 02/06/2007
E-Brief Tendered: Reply filed on 02/06/2007
Reply Brief Filed filed on 02/08/2007
Fees: Paid on 08/10/2005

Attorney

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District Court Appointed
No Briefing Information Found.

Dean A. Sinibaldi
Appellant
Address Not On File
Appellant Brief Filed filed on 02/08/2006

George E. Tragos
The Law Office of Tragos & Sartes
601 Cleveland St Ste 800
Clearwater, FL 33755-4169

Record Excerpts filed on 02/08/2006
E-Brief Tendered: Appellant filed on 02/09/2006
Reply Brief Filed filed on 02/08/2007
Supplemental Authority for Appellant filed on 07/30/2007
Fees: Paid on 08/19/2005

Joseph Cuciniello (40774-018)

Appellant
PO Box 1031
Coleman, FL 33521-1031
Appellant Brief Filed filed on 10/23/2006
Record Excerpts filed on 10/23/2006
E-Brief Tendered: Appellant filed on 11/14/2006
Fees: IFP on 09/20/2005

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No Briefing Information Found.

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No Briefing Information Found.

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United States of America
Appellee
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Appellee Brief Filed filed on 01/23/2007
E-Brief Tendered: Appellee filed on 01/23/2007

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Date	Details
03/12/2004	Transcript Already Filed in D.C. - 3/3/04 Faretta Hearing (Doc. # 366): (Atty: Grady Charles Irvin, Jr.)
06/08/2004	Transcript Already Filed in D.C. - 5/26/04 hearing (Doc. # 427): (Atty: Grady Charles Irvin, Jr.)
06/09/2005	Transcript Filed in D.C. - 4/20/05 trial (Doc. # 1037)::
08/10/2005	Fee Status: Paid (08/10/05) for Gene A. Tyrrell
08/18/2005	DKT2 (Docketing Notice) issued. To:Musilli, Ralph, Esq.; c:Bedke, Rachelle DesVaux; c:Few, Adelaide G.; c:Perez, Paul I., Jr.; c:Phipps, Tamra; c:Runyon, Michael Edward; c:Sheryl L. Loesch; c:Shotwell, Tonya L.; c:Trezevant, Jay Gilchrist
08/18/2005	Probable Jurisdiction Noted:
08/19/2005	Court Reporter Financial Arrangements (from TOF / apt Tyrrell)-2/7/05-4/25/05 trial; 7/25/05 motion for release on bail pending appeal; 7/25/05 sentencing:
08/22/2005	Transcript Order Form - 2/7/05 - 4/25/05 trial (39 days); 7/25/05 sentencing; 7/25/05 motion for release on bail pending appeal (CR Sandi Lee):
08/24/2005	DKT2 (Docketing Notice) issued (apt Sinibaldi). To:Tragos, George E.; c:Bedke, Rachelle DesVaux; c:Few, Adelaide G.; c:Musilli, Ralph, Esq.; c:Perez, Paul I., Jr.; c:Phipps, Tamra; c:Runyon, Michael Edward; c:Sheryl L. Loesch; c:Shotwell, Tonya L.; c:Tre
08/24/2005	Probable Jurisdiction Noted:
08/24/2005	DC Transmittal: \$255 fees paid 8/19/05:
08/26/2005	Court Reporter Financial Arrangements (apt Sinibaldi) (from TOF) - 4/20/05 trial:
08/26/2005	Court Reporter Financial Arrangements (apt Sinibaldi) (from TOF) 4/13/05 trial:
08/26/2005	Court Reporter Financial Arrangements (apt Sinibaldi) (from TOF) 3/22-23/05 trial; 8/12/05 sentencing:
08/29/2005	Court Reporter Financial Arrangements - 2/7/05 - 4/25/05 trial (apt Sinibaldi)
08/29/2005	Emergency Motion for Bond Pending Appeal (incarceration date 9/12/05):
08/30/2005	(Emergency) Motion for Release on Bail Pending Appeal (report date Sept. 13, 2005) (no CIP):
08/31/2005	Certificate of Interested Persons:
08/31/2005	Response to Dean A. Sinibaldi's Emergency Motion for Release on Bond Pending Appeal:
09/01/2005	Transcript Order Form - Trial - All (2/7/05 - 4/25/05 trial (CR Sandi Lee):
09/01/2005	Court Reporter Acknowledgement - 2/7/05 - 4/25/05 trial (apt Sinibaldi):
09/01/2005	Transcript Order Form - 3/22/05, 3/23/05 trial; 8/12/05 sentencing (CR Donna Pike):
09/01/2005	Transcript Order Form - 4/13/05 trial (CR Sherrill Jackson):
09/01/2005	Transcript Order Form - 4/20/05 trial (CR Carol Jacobs):
09/06/2005	RPTR1 (Letter to court reporter) issued re: apt Tyrrell. To:Lee, Sandi; c:Bedke, Rachelle DesVaux; c:Few, Adelaide G.; c:Musilli, Ralph E., Esq.; c:Perez, Paul I., Jr.; c:Phipps, Tamra; c:Runyon, Michael Edward; c:Sheryl L. Loesch; c:Shotwell, Tonya L.;
09/07/2005	The matter of Appellants' (Sinibaldi & Tyrrell) release pending appeal is REMANDED for the limited purpose of entry of an order specifying the reasons for denial. The district court is directed to enter such order as expeditiously as possible. (SFB/WHP)
09/07/2005	CLK3 (Letter to district court re limited remand) issued. To:Sheryl L. Loesch; c:Bedke, Rachelle DesVaux; c:Few, Adelaide G.; c:Kovachevich, Elizabeth A.; c:Musilli, Ralph E.; c:Perez, Paul I., Jr.; c:Phipps, Tamra; c:Runyon, Michael Edward; c:Shotwell,+
09/08/2005	Court Reporter Financial Arrangements (apt Tyrrell) - CJA-24 approved (per phone call):
09/08/2005	DC Order: re: Order of Remand, Motion for Bond Pending Appeal, Response...Defendant's Motion for Bond Pending Appeal is Denied.:
09/08/2005	DC Order: re: Order of Remand, Motion for Release on Bail Pending Appeal, Response...Defendant's Motion for Release on Bail Pending Appeal is Denied.:
09/09/2005	Appellants' motions for release pending appeal are DENIED. (SFB/WHP)
09/09/2005	MOT2 (Notice of court action) issued. c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Few, Adelaide G.; c:Harrison, Yvette Rhodes; c:Musilli, Ralph E.; c:Perez, Paul I., Jr.; c:Phipps, Tamra; c:Runyon, Michael Edward; c:Sheryl L. Loesch; c:Sho+
09/13/2005	RPTR1 (Letter to court reporter) issued. To:Jackson, Sherrill; To:Jacobs, Carol; To:Pike, Donna; c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Few, Adelaide G.; c:Harrison, Yvette Rhodes; c:Musilli, Ralph E.; c:Perez, Paul I., Jr.; c:Phipps,+
09/14/2005	Appearance Form Submitted.
09/16/2005	Court Reporter Acknowledgement (Carol Jacobs) - 4/20/05 transcript previously filed::
09/20/2005	Fee Status: IFP (09/20/05) for Joseph Cuciniello
09/27/2005	Appearance Form Not Needed for Court Appointment by District Court on 09/20/05 for Cuciniello, Joseph
09/27/2005	DKT2 (Docketing Notice) issued (re: Cuciniello). To:Castillo, Daniel Lawrence; c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Few, Adelaide G.; c:Grandy, Todd B.; c:Harrison, Yvette Rhodes; c:Musilli, Ralph E.; c:Perez,

Paul I., Jr.; c:Phipps,

09/27/2005 Transcript Filed in D.C. - 3/22/05, 3/23/05 trial

09/27/2005 Probable Jurisdiction Noted (multi): (Atty: Daniel Lawrence Castillo)

09/28/2005 CJA-20 Voucher Issued to Daniel Castillo (JOESPH CUCINIELLO)

09/28/2005 CJA1 (CJA appointment of counsel letter) issued. To:Castillo, Daniel Lawrence; c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Few, Adelaide G.; c:Grandy, Todd B.; c:Harrison, Yvette Rhodes; c:Musilli, Ralph E.; c:Perez, Paul I., Jr.; c:Phipps+

09/28/2005 Transcript Filed D.C. - 2/7/05, 2/8/05, 2/9/05,2/10/05, 2/14/05, 2/15/05, 2/16/05, 2/22/05, 2/23/05, 2/24/05, 2/28/05, 3/1/05, 3/2/05, 3/3/05, 3/7/05, 3/8/05, 3/9/05, 3/14/05, 3/15/05, 3/16/05, 3/17/05, 3/21/05, 3/22/05, 3/29/05, 3/30/05, 3/31/05 trial

09/28/2005 (Cont'd) Transcript Filed in D.C.-4/4/05, 4/5/05, 4/6/05, 4/7/05, 4/11/05, 4/12/05, 4/18/05, 4/19/05, 4/20/05, 4/21/05, 4/25/05 trial

09/28/2005 Court Reporter Financial Arrangements (Cuciniello - from TOF) - 3/3/04 Faretta Hearing:

09/28/2005 Court Reporter Financial Arrangements (Cuciniello - from TOF) - 5/26/04 Discovery Hearing:

09/29/2005 Transcript Filed in D.C. - 7/25/05 sentencing

09/29/2005 Court Reporter Acknowledgement - 1/9/04 Faretta Hearing & 9/16/05 sentencing (Cuciniello):

09/29/2005 Court Reporter Financial Arrangements (Cuciniello) - 1/9/04 Faretta Hearing & 9/16/05 sentencing:

09/30/2005 Transcript Filed in D.C. - 4/13/05 trial

09/30/2005 Notice of Transcript Filing Rec. from Ct. Rptr. - 4/13/05 trial:

09/30/2005 Transcript Order Form - 1/9/04 Faretta Hearing; 2/7/05-4/25/05 trial (already filed); 9/16/05 sentencing (CR Sandi Lee): (Atty: Daniel Lawrence Castillo)

09/30/2005 Transcript Order Form - 3/3/04 Faretta Hearing (CR Diane Montana): (Atty: Daniel Lawrence Castillo)

09/30/2005 Transcript Order Form - 5/26/04 Discovery Hearing (CR Lynda Mills / Montana Reporting): (Atty: Daniel Lawrence Castillo)

09/30/2005 Transcript Order Form - 6/18/04 discovery hearing (CR Dennis Miracle): (Atty: Daniel Lawrence Castillo)

09/30/2005 Transcript Order Form - 3/22/05, 3/23/05 trial (CR Donna Pike) (already filed 9/27/05): (Atty: Daniel Lawrence Castillo)

10/04/2005 Court Reporter Acknowledgement - new CJA received for 1/9/04 Faretta hearing & 9/16/05 sentencing:

10/04/2005 Court Reporter Financial Arrangements - 1/9/04 Faretta Hearing & 9/16/05 sentencing:

10/04/2005 Court Reporter Acknowledgement - 6/18/04 discovery hearing - awaiting CJA-24 approval:

10/05/2005 Notice of Transcript Filing Rec. from Ct. Rptr. - 4/13/05 trial (Cuciniello):

10/05/2005 Notice of Transcript Filing Rec. from Ct. Rptr (Tyrrell) - 4/13/05 trial:

10/05/2005 Notice of Transcript Filing Rec. from Ct. Rptr. (Sinibaldi) 4/13/05 trial:

10/06/2005 Motion to Accept Appellant's Pro Se Filing for Consideration by the Court (Re: Emergency Motion to Allow Joseph Cuciniello a Stay of the "Turn In" Date (10/18/05)..." referring to RA 05-14420-B): (Atty: Daniel Lawrence Castillo)

10/07/2005 Response to Motion to Accept Appellant's Pro Se Filing....: (Atty: Todd B. Grandy)

10/13/2005 Appearance Form Submitted.

10/17/2005 Motion to Accept Appellant Cuciniello's Pro Se Filing, which asks that the attached pro se "Emergency Motion to Allow...a 'Stay of the Turn-in' Date be accepted & considered by the Court, is DENIED. (JFD)

10/17/2005 MOT2 (Notice of court action) issued. c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Castillo, Daniel Lawrence; c:Few, Adelaide G.; c:Grandy, Todd B.; c:Harrison, Yvette Rhodes; c:Musilli, Ralph E.; c:Perez, Paul I., Jr.; c:Phipps, Tamra; c:R+

10/17/2005 RPTR1 (Letter to court reporter) issued. To:Mills, Lynda J.; To:Montana, Diane L.; c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Castillo, Daniel Lawrence; c:Few, Adelaide G.; c:Grandy, Todd B.; c:Harrison, Yvette Rhodes; c:Musilli, Ralph E.+

10/18/2005 MOT2 (Notice of court action) issued. To:Castillo, Daniel Lawrence

10/19/2005 DC Endorsed Order: granting motion to withdraw as attorney...Daniel L. Castillo withdrawn from case.: (Atty: Daniel Lawrence Castillo)

10/19/2005 Notice of Transcript Filing Rec. from Ct. Rptr. - 6/18/04 discovery hearing:

10/19/2005 Transcript Filed in D.C. - 6/18/04 discovery hearing:

10/20/2005 Appearance Form Not Needed for Court Appointment by District Court on 10/17/05 for Cuciniello, Joseph

10/20/2005 DC Order: CJA-20 appointment of attorney Grady C. Irvin, Jr.: (Atty: Grady Charles Irvin, Jr.)

10/21/2005 CJA-20 Voucher Issued to Grady Irvin (JOSEPH CUCINIELLO)

10/21/2005 CJA1 (CJA appointment of counsel letter) issued. To:Irvin, Grady Charles, Jr.; c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Few, Adelaide G.; c:Grandy, Todd B.; c:Harrison, Yvette Rhodes; c:Musilli, Ralph E.; c:Perez, Paul I., Jr.; c:Phipps+

10/27/2005 RPTR2 (Letter to court reporter) issued. To:Pike, Donna; c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Few, Adelaide G.; c:Grandy, Todd B.; c:Harrison, Yvette Rhodes; c:Irvin, Grady Charles, Jr.; c:Kovachevich, Elizabeth A.; c:Musilli, Ralph+

- 10/28/2005 Appearance Form Not Needed for Court Appointment by District Court
- 10/28/2005 DC Order: Appointment of Counsel Ralph Musilli to represent defendant Gene A. Tyrell on appeal.: (Atty: Ralph E. Musilli)
- 11/01/2005 CJA-20 Voucher Issued to Ralph Musilli (GENE A. TYRRELL)
- 11/01/2005 CJA1 (CJA appointment of counsel letter) issued. To:Musilli, Ralph E.; c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Few, Adelaide G.; c:Grandy, Todd B.; c:Harrison, Yvette Rhodes; c:Irvin, Grady Charles, Jr.; c:Perez, Paul I., Jr.; c:Phipps+
- 11/08/2005 Transcript Filed in D.C. - 1/9/04 Faretta Hearing (Doc. # 1332); 9/16/05 sentencing (Doc. # 1333): (Atty: Grady Charles Irvin, Jr.)
- 11/08/2005 Notice of Transcript Filing Rec. from Ct. Rptr. - 1/9/04 Faretta Hearing, 4/25/05 trial, 9/16/05 sentencing (Cuciniello):
- 11/18/2005 RPTR5 (Letter to court reporter) issued. To:Pike, Donna; c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Few, Adelaide G.; c:Grandy, Todd B.; c:Harrison, Yvette Rhodes; c:Irvin, Grady Charles, Jr.; c:Kovachevich, Elizabeth A.; c:Musilli, Ralph+
- 12/30/2005 Transcript Filed in D.C. - 8/12/05 sentencing (Doc. # 1421): (Atty: George E. Tragos)
- 01/10/2006 Briefing Notice Issued
- 01/10/2006 BR1 (Letter confirming brief due date) issued. c:Bedke, Rachelle DesVaux; c:Bodnar, Roberta Josephina; c:Few, Adelaide G.; c:Grandy, Todd B.; c:Harrison, Yvette Rhodes; c:Irvin, Grady Charles, Jr.; c:Musilli, Ralph E.; c:Perez, Paul I., Jr.; c:Phipps, T+
- 02/08/2006 Appellant Brief Filed: (Atty: George E. Tragos)
- 02/08/2006 Record Excerpts: (Atty: George E. Tragos)
- 02/09/2006 Appearance Form Submitted.
- 02/09/2006 E-Brief Tendered: Appellant by George E. Tragos for Dean A. Sinibaldi
- 02/09/2006 E-Brief Tendered: Appellant by Ralph E. Musilli for Gene A. Tyrrell
- 02/13/2006 Appellant Brief Filed: (Atty: Ralph E. Musilli)
- 02/13/2006 Record Excerpts: (Atty: Ralph E. Musilli)
- 02/15/2006 Motion for Extension to File Appellant Brief: (Atty: Grady Charles Irvin, Jr.)
- 02/27/2006 Appellant's out-of-time motion for extension of time to file appellant Cuciniello's initial brief and record excerpts, up to and including 03/27/06, is GRANTED. (SFB)
- 02/27/2006 MOT2 (Notice of court action) issued. To:Grady Charles Irvin, Jr.; c:George E. Tragos; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 03/29/2006 2nd Motion for Extension to File Appellant Brief: (Atty: Grady Charles Irvin, Jr.)
- 04/12/2006 APLT Cuciniello's "Motion for Ext. of Time, and Motion to File Initial Brief Out of Time," construed as a motion to file an out of time motion for an ext. of time, is GRANTED. Brief/record excerpts are due 60 days of the date of this Order. (SFB)
- 04/12/2006 MOT2 (Notice of court action) issued. c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 04/17/2006 Renewed Motion for Release Pending Appeal: (Atty: Ralph E. Musilli)
- 04/19/2006 Over the Phone Extension to File Response to Renewed Motion to Release Pending Appeal Granted by jls Until 04/26/06: (Atty: Todd B. Grandy)
- 04/19/2006 Joint Motion to Sever for Appellant's Tyrrell and Sinibaldi: (Atty: Peter Anthony Sartes)
- 04/19/2006 Response to Motion to Sever: rec'd on 04/17 (Atty: Todd B. Grandy)
- 04/26/2006 Response to Motion: in Opposition to Tyrrell's Renewed Motion for Release Pending Appeal. (Atty: Todd B. Grandy)
- 05/02/2006 Appellant Tyrrell's renewed motion for release pending appeal is DENIED. Appellants Tyrrell's and Sinibaldi's motion to sever the appeal of Appellant Cuciniello is DENIED. (SFB)
- 05/02/2006 MOT2 (Notice of court action) issued. c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 06/09/2006 DC Order: The defendant Cuciniello's Motion to Terminate Court Appointed Appellate Attorney and to Proceed with Appeals and Motions Pro Se and IFP is DENIED without prejudice. The Def. can file the motion with the Clerk for the USCA. (Mark Pizzo)
- 06/12/2006 Appellant's Cuciniello 3rd Motion for Extension of Time to File Appellant's Brief
- 06/15/2006 Appellant Cuciniello's 3rd motion for extension of time in which to file the initial brief and record excerpts, up to and including August 11, 2006, is GRANTED. (SFB)
- 06/15/2006 MOT2 (Notice of court action) issued. c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 06/29/2006 Joint Motion to Sever: (Atty: George E. Tragos): (Atty: Ralph E. Musilli)
- 07/06/2006 Response to Motion: (Atty: Todd B. Grandy)
- 07/18/2006 Amended Joint Motion to Sever: (Atty: Ralph E. Musilli)
- 08/11/2006 4TH Motion for Extension to File Appellant Brief: (Atty: Grady Charles Irvin, Jr.)
- 08/15/2006 Response to Motion: 4th Extension of Time - Cuciniello (Atty: Todd B. Grandy)

- 08/16/2006 Amended 4th Motion for Extension to File Appellant Brief: (Atty: Grady Charles Irvin, Jr.)
- 08/22/2006 APPT Cuciniello's 4th motion for an EXT of time is GRANTED. Brief and record excerpts will be due 60 days of the date of this Order. Absolutely no further EXTs will be granted. APLTs Tyrrell's and Sinibaldi's MTN to sever the appeal is DENIED. (RLA)
- 08/22/2006 MOT2 (Notice of court action) issued. c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 08/22/2006 See 08/22/06 Motions Order.
- 09/27/2006 Motion to Dismiss Court Appointed Attorney/Proceed Pro Se: (Appellant himself)
- 10/23/2006 Appellant Brief Filed: M 10/27/06 PTD (pagination & ebrf)(Atty: Grady Charles Irvin, Jr.)
- 10/23/2006 Record Excerpts: M 10/27/06 PTD (tabs)(Atty: Grady Charles Irvin, Jr.)
- 10/24/2006 BR8 (Brief deficiency letter) issued. To:Grady Charles Irvin, Jr.; c:George E. Tragos; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 10/24/2006 EXC-1 (Record Excerpts deficiency letter) issued. To:Grady Charles Irvin, Jr.; c:George E. Tragos; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 11/14/2006 Motion for Extension to File Appellee Brief: (Atty: Todd B. Grandy)
- 11/14/2006 E-Brief Tendered: Appellant by Grady Charles Irvin, Jr.
- 11/20/2006 Appellee's motion for a 44 day extension of time in which to file the response brief, up to and including January 5, 2007, is GRANTED. (CRW)
- 11/20/2006 MOT2 (Notice of court action) issued. c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 11/20/2006 Response to Motion for Extension of Time: (Atty: Ralph E. Musilli)
- 11/28/2006 The motion to discharge counsel and to proceed pro se, filed by appellant Cuciniello himself, is DENIED. (RB)
- 11/28/2006 MOT2 (Notice of court action) issued. To:Joseph Cuciniello; c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 11/28/2006 PRO1 (Letter to pro se) issued. To:Joseph Cuciniello
- 12/28/2006 Motion to File Excess Pages: (Atty: Todd B. Grandy)
- 01/08/2007 Appellee's motion for leave to file a brief of up to 19,000 words is DENIED. Appellee's brief, of no more than 17,000 words, will be due with 14 days of the date of this Order. (JFD)
- 01/08/2007 MOT2 (Notice of court action) issued. c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 01/23/2007 Appellee Brief Filed: (Atty: Todd B. Grandy)
- 01/23/2007 E-Brief Tendered: Appellee by Todd B. Grandy
- 02/06/2007 E-Brief Tendered: Reply by Ralph E. Musilli
- 02/06/2007 E-Brief Tendered: Reply by George E. Tragos
- 02/08/2007 Reply Brief Filed: (Atty: Ralph E. Musilli)
- 02/08/2007 Reply Brief Filed: (Atty: Peter Anthony Sartes)
- 02/12/2007 Record on Appeal: (Atty: Grady Charles Irvin, Jr.)
- 02/12/2007 Exhibits: (Atty: Grady Charles Irvin, Jr.)
- 02/12/2007 PSI: (Atty: Grady Charles Irvin, Jr.)
- 02/12/2007 PSI: (Atty: Peter Anthony Sartes)
- 02/12/2007 PSI: (Atty: Ralph E. Musilli)
- 02/12/2007 Certificate of Readiness
- 04/16/2007 Motion to Exceed Time Limit in Oral Argument (Atty: George E. Tragos)
- 04/17/2007 Attorney Changed for: Dean A. Sinibaldi From: Peter Anthony Sartes (727) 441-9030 peter(at)greeklaw.com To: Tragos, George E..
- 05/04/2007 MP-1 (Multi-Purpose letter) issued. To:Joseph Cuciniello
- 07/19/2007 Motion to Exceed Time Limit in Oral Argument is DENIED. JLE
- 07/19/2007 MOT2 (Notice of court action) issued. c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 07/19/2007 Motion of Defendant Gene A. Tyrrell's Counsel for Order of Court Allowing Attorney Fees in Excess of \$5,000.00.: (Atty: Ralph E. Musilli)
- 07/24/2007 PRO3 (Letter returning papers unfiled) issued. To:Grady Charles Irvin, Jr.
- 07/30/2007 Supplemental Authority for Appellant: (Atty: George E. Tragos)
- 08/01/2007 Oral Argument Scheduled: 08/01/07
- 08/07/2007 Ralph E. Musilli argued for Appellant; George E. Tragos argued for Appellant; Grady Charles Irvin, Jr. argued for Appellant; Todd B. Grandy argued for Appellee
- 08/13/2007 Motion of Defendant Joseph Cuciniello for Order of Court Allowing Attorney Fees in Excess of \$5,000.00.: : (Atty: Grady Charles Irvin, Jr.)

- 12/07/2007 MP-1 (Multi-Purpose letter) issued. To:Joseph Cuciniello
- 01/07/2008 Motion to Compel: (Appellant Himself)
- 01/10/2008 MOT2 (Notice of court action) issued. To:Grady Charles Irvin, Jr.; To:Joseph Cuciniello; c:George E. Tragos; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 01/18/2008 Notice of Filing: (from Aptl himself) Atty Irvin's response to FI bar and Aptl's rebuttal
- 01/24/2008 Response to Motion to Compel (Atty: Grady Charles Irvin, Jr.)
- 02/01/2008 MP-1 (Multi-Purpose letter) issued. To:George E. Tragos
- 02/01/2008 Notice of Filing: Reply in Support of his Motion to Compel (Cuciniello)
- 03/17/2008 The "Petition for Writ of Mandamus", filed by APLT Cuciniello himself, which asks this Court to compel Attorney Grady Irvin to file APLT's "'Notice of Felony' package" is DENIED. (PTF)
- 03/17/2008 Judgment Entered
- 03/17/2008 MOT2 (Notice of court action) issued. To:Joseph Cuciniello; c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 03/17/2008 OPIN1 (Notice of issuance of opinion) issued. c:Elizabeth A. Kovachevich; c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 03/17/2008 Opinion Issued-05-14614X, 05-15290X.
- 03/18/2008 MOT2 (Notice of court action) issued. To:Joseph Cuciniello
- 04/02/2008 Motion to Dismiss Court Appointed Attorney and Motion to Stay the Order of Appeal and Grant a Motion of Reconsideration and a New Hearing (Appellant Pro Se)
- 04/03/2008 MOT2 (Notice of court action) issued. To:Grady Charles Irvin, Jr.; c:Joseph Cuciniello
- 04/07/2008 Motion to File Supplemental Brief: Alternatively File Petition for Rehearing (Atty: Ralph E. Musilli)
- 04/07/2008 Motion to File Supplemental Brief: Alternatively File Petition for Rehearing (Atty: George E. Tragos)
- 04/07/2008 Petition for Rehearing En Banc: (Atty: Ralph E. Musilli)
- 04/18/2008 Response to Motion: to Dismiss Court Appointed Counsel and Motion to Stay the Order of Appeal and Grant a Motion of Reconsideration and a New Hearing (Atty: Grady Charles Irvin, Jr.)
- 04/18/2008 Response to Motions of Sinibaldi and Tyrrell to File Supplemental Briefs (Atty: Todd B. Grandy)
- 06/09/2008 The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, the Petition(s) for Rehearing En Banc are DENIED.
- 06/09/2008 REHG1 (Letter enclosing order) issued. To:Ralph E. Musilli; c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Todd B. Grandy
- 06/11/2008 Amended Motion to File Supplemental Brief: Atternatively File Petition for Rehearing (Atty: George E. Tragos)
- 06/16/2008 Response to Motion: (Atty: Todd B. Grandy)
- 07/30/2008 APLTs Tyrrell's & Sinibaldi's MTNS are DENIED. Cuciniello's MTN to discharge counsel is DENIED. Cuciniello's MTN for EXT of time to file a PTN for REH. is GRTD IN PART to the extent that APLT's PFR is due 21 days of the date of the Order.JLE, EEC, PTF
- 07/30/2008 MOT2 (Notice of court action) issued. c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Joseph Cuciniello; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 07/30/2008 MP-1 (Multi-Purpose letter) issued. To:Joseph Cuciniello; c:Grady Charles Irvin, Jr.
- 08/18/2008 Pro Se Petition for Rehearing En Banc: M 08/27 (Joseph Cuciniello)
- 08/20/2008 MP-1 (Multi-Purpose letter) issued. To:Joseph Cuciniello
- 09/11/2008 MOOT Motion for Release Pending Appeal: (Appellant himself)
- 09/22/2008 Response to Motion: (Atty: Todd B. Grandy)
- 09/29/2008 The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, the Petition(s) for Rehearing En Banc are DENIED.
- 09/29/2008 REHG1 (Letter enclosing order) issued. To:Joseph Cuciniello; c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 10/07/2008 Record and Exhibits Returned to District Court: 3 psi's.
- 10/07/2008 CASE CLOSED-Mandate Issued
- 10/07/2008 Mandate Issued
- 10/07/2008 MDT1 (Letter issuing mandate) issued. To:Sheryl L. Loesch; c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Ralph E. Musilli; c:Todd B. Grandy
- 11/03/2008 Motion of Defendant Gene A. Tyrrell's Counsel for Order of Court Allowing Attorney Fees in Excess of \$5,000.00 is GRANTED. (PTF)
- 11/03/2008 MOT2 (Notice of court action) issued. To:Ralph E. Musilli; c:George E. Tragos; c:Grady Charles Irvin, Jr.; c:Peter Anthony Sartes; c:Todd B. Grandy
- 11/07/2008 Notice of Filing Certiorari: SC # 08-590 (Atty: George E. Tragos)
- 11/24/2008 Motion of CJA Counsel Grady C. Irvin, Jr. for order of court allowing for attorney's fees to exceed fee cap, is GRANTED. (PTF)
- 11/24/2008 MOT2 (Notice of court action) issued. To:Grady Charles Irvin, Jr.; c:George E. Tragos; c:Peter Anthony Sartes; c:Ralph

E. Musilli; c:Todd B. Grandy

12/04/2008 Certiorari Denied: SC # 08-590 (Atty: George E. Tragos)

12/08/2008 MDT-4 (Notice of certiorari denial to district court) issued. To:Sheryl L. Loesch; c:Elizabeth A. Kovachevich

01/26/2009 Notice of Filing Certiorari: SC# 08-910 (Atty: Ralph E. Musilli):

06/19/2009 Certiorari Denied (#08-910): (Atty: Ralph E. Musilli)

08/03/2009 REC3 (Letter returning record to district court) issued. To:Sheryl L. Loesch

08/03/2009 Record and Exhibits Returned to District Court: v. 7, 9, 12, 15, 47, 61, 65, 67, 2 fld. of exh., 2 env. of exh.

Date

Description

No Pending Motions

No Information is Available for this case

No Information is Available for this case

Additional Case Information

Clerk: Camp, Jan

Clerk Phone: (404) 335-6171

Docket #: 02-001111-CR-T-17MAP

Judge: Elizabeth A. Kovachevich

Dkt Date: 03/27/2002

District: Florida-Middle

Noa Date: 08/10/2005

Office: MFL-Tampa

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SUPREME COURT OF THE UNITED STATES

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Supreme Court Documents

Docket ▶	No. 08-590
Oral Arguments ▶	Title: Dean A. Sinibaldi, Petitioner
Merits Briefs ▶	v. United States
Bar Admissions ▶	Docketed: November 4, 2008
Court Rules ▶	Lower Ct: United States Court of Appeals for the Eleventh Circuit
Case Handling Guides ▶	Case Nos.: (05-14492)
Opinions ▶	Decision Date: March 17, 2008
Orders and Journals ▶	Rehearing Denied: July 30, 2008
	---Date--- Proceedings and Orders-----
	Oct 29 2008 Petition for a writ of certiorari filed. (Response due December 4, 2008)
	Nov 7 2008 Waiver of right of respondent United States to respond filed.
	Nov 10 2008 DISTRIBUTED for Conference of November 25, 2008.
	Dec 1 2008 Petition DENIED.

Supreme Court Information

About the Supreme Court ▶			
Visiting the Court ▶	---Name-----	-----Address-----	---Phone---
Public Information ▶	Attorneys for Petitioner:		
Jobs ▶	Douglas A. Trant	900 S. Gay Street Suite 1502 Riverview Tower Knoxville, TN 37902	(865) 525-9780
Links ▶	Party name: Dean A. Sinibaldi		
	Attorneys for Respondent:		
	Gregory G. Garre	Solicitor General United States Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530-0001	(202) 514-2217
	Party name: United States		

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