

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAY 30 2013

MOLLY D. DWYER, CLERK
U.S. COURT OF APPEALS

OTIS LEE RODGERS,

Petitioner - Appellant,

v.

JOHN MARSHALL, Warden,

Respondent - Appellee.

No. 10-55816

D.C. No. 5:08-cv-01003-VLP-
MLG
Central District of California,
Riverside

ORDER

Before: REINHARDT and W. FLETCHER, Circuit Judges, and ZOUHARY,
District Judge.*

Rodgers's pro se motions before this court, all of which are deficient for
having been filed after our initial mandate issued on July 10, 2012, are
DISMISSED.

This court now has jurisdiction following the Supreme Court's decision in
Marshall v. Rodgers, 133 S. Ct. 1446, 1451 (2013). This case is REMANDED to
the district court for further proceedings consistent with the Supreme Court's
decision.

IT IS SO ORDERED.

* The Honorable Jack Zouhary, District Judge for the U.S. District
Court for the Northern District of Ohio, sitting by designation.

Supreme Court of the United States

No. 12-382

JOHN MARSHALL, WARDEN,

Petitioner

v.

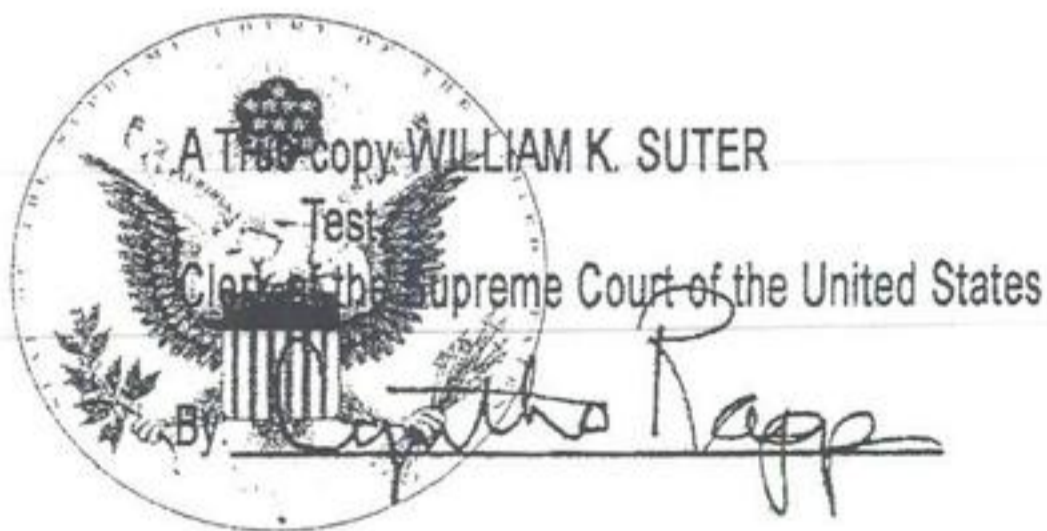
OTIS LEE RODGERS

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

THIS CAUSE having been submitted on the petition for writ of certiorari and the response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the petition for writ of certiorari is granted. The motion of respondent for leave to proceed *in forma pauperis* is granted. The judgment of the above court is reversed, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further proceedings consistent with the opinion of this Court.

April 1, 2013



FILED
JUL 19 2012
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

OTIS LEE RODGERS,
Petitioner,
v.
JOHN MARSHALL, Warden,
Respondent.

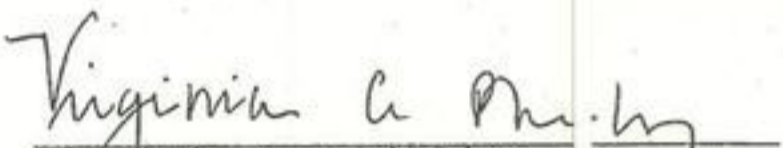
Case No. EDCV 08-1003-7AP (MLG)

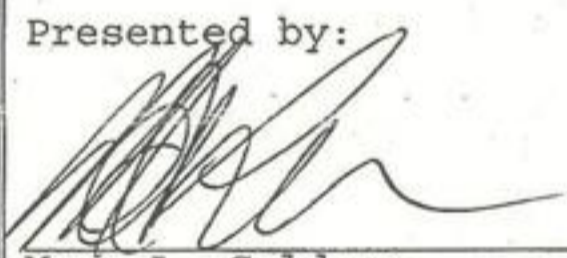
ORDER GRANTING PETITION FOR WRIT
OF HABEAS CORPUS FOLLOWING REMAND

This matter is before the court on a Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254, following reversal by the United States Court of Appeals for the Ninth Circuit. *Rodgers v. Marshall*, 678 F.3d 1149, 12 Cal. Daily Op. Serv. 5337 (9th Cir. 2012). In an order and judgment entered May 4, 2010, this Court adopted the March 19, 2010, Report and Recommendation of United States Magistrate Judge Marc L. Goldman, which concluded in relevant part that Petitioner's Sixth Amendment rights were not violated when the trial court denied his post-trial request for the appointment of counsel for the purpose of filing a motion for new trial, after Petitioner had previously waived counsel and exercised his right to represent himself.

1 On appeal, the Ninth Circuit disagreed, finding that "Rodgers'
 2 Sixth Amendment right to counsel was violated when the trial court
 3 denied his timely request for representation for a new trial motion
 4 based on the notion that once waived, the right to counsel cannot be
 5 reasserted." 12 Cal. Daily Op. Serv. at 5224. The Court further noted
 6 that when a habeas petitioner has been denied the right to counsel,
 7 the Court "'should put the defendant back in the position he would
 8 have been in if the Sixth Amendment violation never occurred.' *Nunes*
 9 *v. Mueller*, 350 F.3d 1045, 1057 (9th Cir. 2003)." 12 Cal. Daily Op.
 10 Serv. at 5225. Accordingly, it is ordered that judgment be entered
 11 granting a conditional writ of habeas corpus. **Petitioner shall be**
 12 **brought before the Riverside County Superior Court within sixty (60)**
 13 **days of the date of the entry of judgment in this case for the**
 14 **purpose of being appointed counsel for consideration of filing a new**
 15 **trial motion.**

16
 17 Dated: July 18 2012

18
 19 
 20 Virginia A. Phillips
 United States District Judge

21 Presented by:
 22 
 23
 24 Marc L. Goldman
 United States Magistrate Judge

ENTER

ENTERED - SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT
JUL 20 2012
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

FILED
JUL 19 2012
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

OTIS LEE RODGERS,
Petitioner,
v.
JOHN MARSHALL, Warden,
Respondent.

Case No. EDCV 08-1003-VAP (MLG)

JUDGMENT

IT IS ADJUDGED that a conditional writ of habeas corpus be GRANTED. It is further Ordered and Adjudged that Petitioner be brought before the Riverside County Superior Court within sixty (60) days of the date of this judgment for the purpose of being appointed counsel for consideration of filing a new trial motion, or alternatively be discharged from the adverse consequences of the conviction and judgment in this case.

Dated: July 18 2012

Virginia A. Phillips
Virginia A. Phillips
United States District Judge

FILED

UNITED STATES COURT OF APPEALS

JUN 28 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

OTIS LEE RODGERS,

Petitioner - Appellant,

v.

JOHN MARSHALL, Warden,

Respondent - Appellee.

No. 10-55816

D.C. No. 5:08-cv-01003-MLG

Central District of California,
Riverside

ORDER

Before: REINHARDT and W. FLETCHER, Circuit Judges, and ZOUHARY,
District Judge.*

The panel has voted unanimously to deny the petition for rehearing. Judges Reinhardt and Fletcher have voted to deny the petition for rehearing en banc, and Judge Zouhary so recommended.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P.

35.

The petition for rehearing and the petition for rehearing en banc are

DENIED. No further petitions for panel or en banc rehearing will be entertained.

* The Honorable Jack Zouhary, District Judge for the U.S. District Court for Northern Ohio, sitting by designation.