

GACA v. UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 72-6011. Decided May 7, 1973

Reinstatement, unopposed by Solicitor General, of *in forma pauperis* appeal that had been dismissed for failure to pay filing fee, directed in exercise of Court's supervisory powers.

Certiorari granted; vacated and remanded.

PER CURIAM.

Petitioner was convicted in United States District Court of illegal wiretapping under 18 U. S. C. § 2511. His appeal was dismissed for want of timely prosecution when he failed to pay a \$25 filing fee. Petitioner contends that he thought payment of the fee unnecessary because he had been granted leave to appeal *in forma pauperis* by the District Judge.

In his memorandum before this Court, the Solicitor General states that the United States does not oppose a remand to reinstate the appeal in the exercise of this Court's supervisory powers in order to avoid possible injustice and the possibility of collateral attack upon the conviction. In light of this representation, and upon our independent examination of the record, the motion for leave to proceed *in forma pauperis* and the petition for certiorari are granted and the case is vacated and remanded with instructions that the appeal be reinstated.

It is so ordered.

MR. JUSTICE WHITE and MR. JUSTICE REHNQUIST dissent.