

NO. 18-6575

On The Supreme Court of The United States

FINNESS EDWARD STOKES
Petitioner

v.

LORIE DAVIS, Director - TDCS-ID
Respondent

ON petition for writ of Certiorari TO
The Fifth Circuit Court of Appeals

PETITION FOR Rehearing

FINNESS E. STOKES
#1562066-Clements
9601 Spur 591
AMARILLO, TX 79107
petitioner, pro se

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Houston v. Lack, 108 S.Ct. 2379 (1988) . . . 2

Rules

Supreme Court Rule 44 1

1

Petition FOR Rehearing and suggestions On support

COMES NOW petitioner, FI'NESS EDWARD STOKES, PRO SE, and PRAYS this Court to grant Rehearing pursuant to Rule 44, and thereafter, grant him a writ of Certiorari to Review the opinion of the Fifth Circuit Court of Appeals. In support of petition, MR. STOKES states the following:

STATEMENT OF FACTS

The state of Texas is attempting to circumvent the Constitutional merits/claims of petitioner's case by misapplying the Prisoner's mailbox Rule - that clearly his state writ of habeas corpus was filed "on" the last day for filing - permissible by Federal Appellate Rules and codified into Controlling Law by this Supreme Court with Prisoner's mailbox Rule. A Question of Law Concerning the matter: When is a notice of Appeal deemed timely? When placed into the care & custody of the Prison authorities (in mailbox? OR when logged into mail by prison officials was presented to Fifth Circuit Court of Appeals and not answered, and remains unanswered...

Additionally, Adequate evidence was presented to Circuit and lower Court in regards to equitable tolling eligibility regarding a life endangerment Filed by petitioner with Prison authorities and granted to merit his transfer because of danger. which was the time-period §§2254 writ of habeas corpus was filed therefore equitable tolling should have at least been entertained. Although it was not.

The Respondent presented a prison mail-log that listed petitioner filed his 11.07 writ of habeas Corpus August 17, 2012. The Next day beyond the August 16, 2012, last day for timely filing so that AEPDA would toll while 11.07 pending. A grave misapplication of the prisoner's mailbox Rule that states petition is timely when filed "on" the last day. Therefore, could not be picked up and logged until the next day. This is a common sense analysis that then Constitutional claims would be heard allowing due process of the law, A Constitutional Right to all American Citizens.

REASONS MERITING REHEARING

1. The Fifth Circuit's decision is clearly in conflict with Supreme Court's prisoner's mailbox Rule implemented in *Houston v. Lack*, 108 S.Ct. 2379 (1988); emphasizing *pro se* prisoner's filing are deemed timely filed 'on' or before the last day - when handed over to prison authorities. The language of the Court clearly establishes Congressional Intent.

The Respondent's exhibit A presented stating document being logged in the prison mail-log received - it shows no date - except that it went "out" August 17, 2012. No received date or time is shown. And even if it stated "received" August 17, 2012 - the last day for filing August 16, 2012. This makes petitioner's filing timely, having to have been placed in the mailbox 'on' the last day for filing. If it was picked up by mailroom staff August 17th because mail is picked up from 0700AM - to - 0900AM each day. This misapplication of the prisoner's mailbox Rule, Congressional Intent is a matter that can

Be clarified by this Supreme Court and Otis Case precedent. The fact that this is petitioner's first writ of habeas corpus filing is even greater this cause of constitutional merit that effects pro se petitioner across the 51 states of the United States of America.

CONCLUSION

The Controlling Case/precedent on this matter is so concise and clear cut petitioner should rest his case on hopes that justice prevails and will address constitutionality of merits when court deems necessary. The prisoner's mailbox rule should be applied literally, and deemed filed on the last day for filing, even if the prison authorities did not log it going out until the next day. Thus, relief granted and this rehearing heard. Then writ of certiorari granted.

Respectfully Submitted,


FITNESS EDWARD STOICES

#1562066 - Clements

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AMARILLO, TX 79107

Certificate of Service / Proof of Service

The undersigned hereby certifies that a copy of the foregoing was mailed, postage pre paid, this 14th day of January, 2019, to: Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001. (pending requested copy of denial enclosed to send another final draft).

I declare under penalty of perjury that the foregoing is true and correct.

Executed January 14th 2019.

