

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Charlton Bradshaw — PETITIONER
(Your Name)

vs.

Lorie Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHARLTON BRADSHAW #1703357
(Your Name)

9601 SPUR 591
(Address)

AMARILLO, TEXAS, 79107
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

DO A TIMELY FILED MOTION FOR REHEARING OF AN
PETITION FOR DISCRETIONARY REVIEW THAT IS NEVER
RECEIVED, RECEIVE THE BENEFIT OF THE MAILBOX RULE ?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1) LORIC DAVIS T.D.C.J DIRECTOR

2) KING circuit Judge

3) JONES circuit Judge

4) James E. Graves JR "circuit Judge dissenting"

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5-8
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A	THE United States Court of Appeals for the Fifth Circuit affirmed decision
APPENDIX B	United States District Court Report and Recommendation of the United States Magistrate Judge.
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Campbell v State 320 SW 3d 338, 340, 344 Tex crim app 2010	<u>5</u>
Causey v Cain 450 F.3d 601 5th cir 2006	<u>5</u>
Colman v State 320 SW 3d 338, 339 Tex crim app	<u>5</u>
Houston v Lack 487 US 266, 270-72 1988	<u>6</u>
Huizar v Carey 273 F3d 1220, 1223, 9th cir 2001	<u>7</u>
Jones v Heimgartner 602 F App'x 705 (10 cir. 2015).	<u>7</u>
Kay v Clements 700 F3d 993 1004 7th cir. 2012	<u>7</u>
Richard, 710 F3d at 577-78	<u>7</u>
Stout v Cain 570 F3d 664, 672 5th cir 2009	<u>5</u>

STATUTES AND RULES

T.R.A.P. 18(a)(2)

7

T.R.A.P. 79.1

7

OTHER

United States v McNeil 523 F App'x 979, 982 4th cir 6

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 12, 2018.

☒ No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th and 14th Constitutional Amendment guarantee due process.

STATEMENT OF THE CASE

A Bexar County, Texas Jury found Petitioner Charlton Bradshaw guilty of Capital murder and the trial court sentenced Petitioner to life imprisonment. The Fourth Court of Appeals of Texas affirmed Petitioner's conviction on May 9, 2012. On October 3, 2012 The Texas Court of Criminal Appeals refused Petitioner P.D.R. - Petitioner timely filed a motion for rehearing on October 15, 2012, by placing it in the hands of mailroom officials to be logged in and mailed out. Upon learning that the Texas Court of Criminal Appeals never received Petitioner's timely filed motion Petitioner sent multiple letters seeking advice and showing proof Petitioner timely filed his motion for rehearing. Petitioner then file another motion, but only seeking permission to resubmit another Motion for rehearing. On February 11, 2013 the Texas Court of criminal Appeals ruled Petitioner Motion as Untimely. The Courts has clearly mistaken Petitioner Motion Seeking permission to resubmit another rehearing as Petitioner original Motion for rehearing. Petitioner then filed his first state Habeas Petition on September 17, 2013. The Texas Court of Criminal Appeals dismissed the Petition as Non Compliant with Texas rule of Appellate Procedure 73.1. Petitioner filed a second state habeas petition on February 21, 2014 which was denied without written order on June 18, 2014. Petitioner filed his 2254 petition on July 2, 2014 and the State moved to dismiss the petition as untimely. The Magistrate Judge granted the motion, over ruled Petitioner's objections, adopted the magistrate Judge's recommendation, and dismissed the petition as untimely. Petitioner appealed and the United States Court of Appeals for the Fifth Circuit granted Petitioner a Certificate of Appealability on the procedural issue of wheather the § 2254 Petition was timely in light of Petitioner's effort to obtain a rehearing of his P.D.R. On June 12, 2018, The United States Court of Appeals for the Fifth Circuit defered to the Texas Court of Criminal Appeals's conclusion of untimeliness and implict refusal to apply the mailbox rule and affirmed.

REASONS FOR GRANTING THE PETITION

The Texas Court of Criminal Appeals and the Fifth Circuit United States Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this court. [S.Ct. rule 10 (c)].

Relevant Facts at issue:

Texas generally applies the Prison mailbox rule to criminal filings as established in Coleman v. State, 320 S.W.3d 338, 339, Tex. Crim.

app. Petitioner timely filed a motion for rehearing within the 15 day period. After learning that the Texas Court of Criminal Appeals never received my motion Petitioner sent proof from T.D.C.J. Mailroom officials to show Petitioner timely filed his motion for rehearing. Prison mail logs usually answers the question of when the Petition was actually mailed.

Under the Prison mailbox rule, a pro se Petitioner's Pleading "is deemed filed at the moment it is delivered to Prison authorities" for mailing.

Causey v. Cain, 450 F.3d 601 (5th Cir. 2006).

In Stoot v. Cain The Fifth Circuit Court considered whether a State Pleading Placed in the Prison mail system but never received by the court was entitled to the benefits of the Prison mailbox rule, Under Louisiana law, Stoot v. Cain 570 F.3d 669 (5th Cir 2009).

The Louisiana courts concluded they would apply the Prison mailbox rule even when the timely Pleading was never received by state court. Also the court concluded specifically:

A Pro se Prisoner's Pleading is deemed filed on the date that the Prisoner submits the Pleading to Prison authorities to be mailed, regardless of whether the Pleading actually reaches the court. Under such a rule, it is of course incumbent upon the Petitioner to diligently pursue his Petition.

The state court docket reflects that Petitioner made multiple Status inquiries and request for assistance regarding my original motion for rehearing, as well as filing a motion for rehearing asking Permission to resubmit another motion for rehearing due to the fact Petitioner has shown sufficient Proof he timely filed a motion for rehearing.

Rejecting application of the Prison mailbox rule when courts do not receive filings that were delivered to Prison officials for mailing contradicts the very nature of the rule and what the United States Supreme Court say about Prisoners seeking to appeal without the aid of Counsel. See Houston v Lack, 487 U.S. 266, 270-72 (1988).

Texas Court and the Fifth Circuit court of Appeals are both in conflict with other circuits who have concluded that the Prison mailbox rule clearly applies even when the court never receives the filing. See United States v. McNeill, 523 F. App'x 979, 982 (4th Cir. 2013),

Ray v Clements, 700 F.3d 993, 1004 (7th cir. 2012),
Jones v Heimgartner, 602 F.App'x 705 (10th cir. 2015),
and Allen v Collier, 471 F.3d 1196, 1198 (11th cir. 2006), and
Huizar v Carey, 273 F.3d 1220, 1223 (9th cir. 2001).

Although the Court of Appeals for the Fifth Circuit agree to the above the majority still refused to apply the mailbox rule to a timely pleading that's never received.

According to Richards, 710 F.3d at 577-78, Texas has not rejected the mailbox rule there for Petitioner should receive the benefit of the Prison mailbox rule which would make my motion for rehearing of a P.D.R.

As well as my habeas corpus 2254 timely for the following reasons:

- 1) Petitioner has shown proof from T.D.C.J. mailroom officials that Petitioner timely filed a motion for rehearing pursuant to Texas Rules of Appellate Procedure 79.1.
- 2) Since Petitioner timely filed a motion for rehearing the courts should have not issued a mandate according to Texas rules, APP. P. 18.1 (a) (2) which make it impossible for Petitioner 1 year to begin.
- 3) Texas Court and Louisiana Courts both applies the Prison mailbox rule to criminal filings

Which Petitioner is entitled to being that Petitioner has done every step correctly and lost control of his motion for rehearing once Petitioner Place his motion in the hands of mailroom officials.

4) Last but not least Petitioner has a Constitutional right to due Process which is guaranteed by the Fifth and Fourteenth Amendment.

Both Courts Texas and Louisiana Courts ruled erroneous, as both courts have ruled in cases similar see Campbell v. State, 320 S.W. 3d 338, 340, 344 (TEX. CRIM. APP. 2010), and Stoot v Cain, 570 F.3d 669, 672 (5th Cir. 2009).

Petitioner respectfully ask the Supreme Court to step in and end all the controversy on the Prison mailbox rule because it isn't clearly stated whether a document timely filed but not received is entitled to the mailbox rule. Although it should be common sense it is well needed to be establish by the Supreme Court due to the fact Majority of Prison population can not afford attorneys and are Pro Se litigants that have to put our mail in the hands of Prison guards or mailroom officials for mailing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Chayton Bradshaw

Date: 8-2-2018