

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

James Anthony Barnett, JR. — PETITIONER
(Your Name)

vs.

Alamance County Sheriff
Office Detention Center, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Anthony Barnett, JR. # 0591420
(Your Name)

Mountain View Correctional Institution
545 Amity Park Road
(Address)

Spruce Pine, North Carolina 28777
(City, State, Zip Code)

828-766-1990
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Did the United States District ^{court} Court, Middle District of North Carolina, error by granting defendant's Summary Judgment and dismissing the action with Prejudice.
- 2.) Did the United States District Court, Middle District of North Carolina, Clerk's Office error by not attempting to locate Mr. Barnett via North Carolina Department of Corrections (NCDOC) website, once the envelope containing the "Memorandum Opinion and Recommendation of United States Magistrate Judge" was rejected and returned by Warren Correctional Institution and the envelope being stamped "undeliverable" and marked "Return to Sender, Unable to Forward".
- 3.) Did the United States Court of Appeals for the Fourth Circuit error by affirming the lower Courts decision.

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:

Alamance County Sheriff Office Detention Center

Janice Tilley

Susan Fortner

C. "Betty" Kennedy

Eve Schon

Kristin Whitlow

Debbie Yates

Jeff Schenk

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

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OTHER

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 B(2-3) 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☒ is unpublished.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 E(9-24) 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 13, 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

STATEMENT OF THE CASE

On Thursday March 24, 2016, Petitioner was transferred from Warren Correctional Institution in Norling, North Carolina to Lanesboro Correctional Institution in Polkton, North Carolina. On Sunday March 27, 2016, Petitioner submitted two letters for mailing, one letter to the United States District Court, Eastern District of North Carolina and one letter to the United States District Court, Middle District of North Carolina, notifying the Clerk of Court for each district of a change in Petitioner's address. On April 7, 2016, the Magistrate Judge Joe L. Webster entered a Memorandum Opinion and Recommendation of United States Magistrate Judge (D.E. 70) recommending that defendant's Motion for Summary Judgment be granted. (Note: United States District Court, Eastern District of North Carolina received Petitioner's notice of Change of address) On April 21, 2016, the envelope containing Memorandum Opinion and Recommendation of United States Magistrate Judge was returned back to the United States District Court, Middle District of North Carolina, marked undeliverable because envelope marked "Return to Sender, Unable to Forward". Warren Correctional Institution returned the legal envelope and its contents due to Petitioner not being at that Institution any longer, therefore Petitioner never received the Memorandum and Recommendation of United States Magistrate Judge and knew of no such Recommendation. On May 4, 2016, the case was referred to Honorable Loretta C. Biggs for ruling and on May 5, 2016 (D.E. 72) Honorable Loretta C. Biggs entered Judgment Prescribed by § 636 and therefore granted defendant's Summary Judgment, and the action was Dismissed with Prejudice. This Judgment was not mailed to Petitioner and there was no documentation of the mailing on Petitioner's Docket Text.

From May 21, 2016, Petitioner continually wrote letters to the Clerk of Court - Johns. Brubaker - of the United States District Court, Middle District of North Carolina as well as Honorable Loretta C. Biggs inquiring about the case. Towards the very end of the year "2016" Petitioner finally received a copy of the Judgment by Honorable Loretta

(continued)

[Statement of the Case]

C. Biggs as a reply to Petitioner's many letters of inquiry about the case status.

However, Once Petitioner received the Judgment Petitioner continually wrote John S. Brubaker, Clerk of Court and Honorable Loretta C. Biggs, informing each individual that Petitioner never received the Memorandum and Recommendation of United States Magistrate Judge and that Petitioner just received the Judgment of Honorable Loretta C. Biggs. Petitioner also asked how does he go about appealing the Judgment of Honorable Loretta C. Biggs but Petitioner received no replies. Petitioner wrote several more letters but still no replies at all from either individual.

On December 15, 2017, Petitioner received a letter from the Clerk's Office of the United States District Court, Eastern District of North Carolina in reference to a different Civil Action - Barnett v. Curtis case no. 5:16-CV-3056-FH. Petitioner immediately notified the Court of notice of intent to appeal, Petitioner found out from the Clerk of Court, - Peter A. Moore, Jr. - of the United States District Court, Eastern District of North Carolina that North Carolina United States District Courts are under the jurisdiction of the United States Court of Appeals for the Fourth Circuit.

Petitioner immediately wrote Patricia S. Connor, Clerk of Court for the United States Court of Appeals for the Fourth Circuit and explained to the Clerk of Court, the situation that happened and occurred with case number 4:14-cv-00732-LCB-SLV from the United States District Court, Middle District of North Carolina. Patricia S. Connor, sent Petitioner appeal forms (Informal Brief, etc.) so that the action could be appealed without further delay. Petitioner appealed the action and the appeal was heard and decided on June 13, 2018, dismissing the appeal for lack of jurisdiction because notice of appeal was not timely filed... citing Bowles v. Russell, 551 U.S. 205, 214 (2007) ("[T]he timely filing of a notice of appeal in a civil case is a jurisdiction requirement") Petitioner was found to be indigent and thus was allowed to bring Suite "in forma pauperis" within the United States Court of Appeals for the Fourth Circuit.

REASONS FOR GRANTING THE PETITION

This Court has held that appeals from Judgments and Orders involving Civil regulatory schemes such as Mr. Barnett's case are governed by rules of Federal Rules of Appellate Procedure. However, the Clerks Office of the United States District Court, Middle District of North Carolina, failed to even attempt to locate Mr. Barnett after the Envelope containing the "Memorandum Opinion and Recommendation of United States Magistrate Judge", was returned as undeliverable because Envelope was marked "Return to Sender, unable to Forward".

The United States District Court, Eastern District of North Carolina Clerks Office received Petitioners' letter containing a notice of change of address, so there is no reason the United States District Court, Middle District of North Carolina Clerks Office should not have received Petitioners' letter containing a notice of change of address.

Because the time to give notice of appeal has now passed, this error cannot be corrected in the United States District Court, Middle District of North Carolina, and Mr. Barnett has lost his rights to appellate review of that Judgment and Order. Federal Rules of Appellate Procedure permits this Court to issue its writ of Certiorari in appropriate circumstances when the right to prosecute an appeal has been lost by failure to take timely action. The circumstances presented here are appropriate for issuance of the writ.

Petitioner promptly gave written notice of appeal to the United States Court of Appeals for the Fourth Circuit immediately once he found out how to appeal the Judgment and Order and who to appeal to. Although Petitioner failed to file notice of appeal timely from the Judgment and Order, there is nothing in the record to indicate that Mr. Barnett intended to omit that Judgment and Order from his appeal. Through no fault of his own, Petitioner failed to effect a valid appeal from that Judgment and Order.

The Court should issue the writ so that Mr. Barnett is not penalized for the Clerks Office, of the United States District Court, Middle District of North Carolina error.

The Court should also issue the writ because the Judgment and Order sought to be reviewed are manifestly erroneous, and review is required to avoid manifest injustice.

This Court should issue the writ because Petitioner timely filed objections to defendants Motion for Summary Judgment, therefore if

[Reason For Granting The Petition]

Petitioner would have timely received the Memorandum Opinion and Recommendation of United States Magistrate Judge, Petitioner would have timely filed objections.

If Petitioner would have timely received the Judgment and responses to his letters of request from the Clerk of Court of the United States District Court, Middle District of North Carolina and Honorable Loretta C. Biggs, about how to appeal the Judgment of the District Court and whom to appeal the Judgment to, the Petitioner would have timely appealed the District Court Judgment.

Finally, this Court has recognized the authority and jurisdiction to review this said Judgment and Order by writ of certiorari when a Plaintiff and or defendant rights to appeal has been lost by failure to timely file written notice of appeal.

Prayer For Relief

WHEREFORE, Petitioner respectfully requests:

1. That this Court issue its Writ of Certiorari to Permit appellate review of the United States Court of Appeals Opinion and Judgment ~~and~~ dated and entered June 13, 2018,
2. That this Court issue its Writ of Certiorari to permit appellate review of the United States District Court, Middle District of North Carolina, Memorandum Opinion and Recommendation of ~~the~~ United States Magistrate Judge dated and entered April 7, 2016, a Judgment dated and entered May 5, 2016;
3. That this Court permit the previous determination of Petitioner indigency to stand without further action.
4. That Jurisdiction over Petitioner's case be allowed to remain within the Supreme Court of the United States, so that his Petition For Writ of Certiorari can proceed without further delay;
5. That the Court grant such other relief as it deems proper, just and equitable.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James A. Barnett, Jr.
James Anthony Barnett, JR.
PRO SE Petitioner

Date: October 25, 2018