

18-9413

IN THE SUPREME COURT OF THE UNITED STATES

HOZAY ROYAL,

:

NO.

:

Petitioner,

:

:

v.

:

:

THE ATTORNEY GENERAL OF :

THE STATE OF NEW JERSEY, :

et al., :

:

Respondents. :

ORIGINAL

FILED

MAY 03 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

PETITION FOR WRIT OF CERTIORARI _____ HOZAY ROYAL, Pro Se,
Petitioner, P.O. Box 3840, Philadelphia, PA 19146, (267)-273-8954,
royalhozay1@gmail.com.

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QUESTION PRESENTED

A. Does the thirty-day period under **28 U.S.C. § 2107** and **Fed.R.App.Proc. 4(a)(1)(A)** allow for the notice of appeal to be filed in the United States District Courts' clerk's office when the mail is postmarked before the thirty-day period has expired.

PARTIES TO PROCEEDINGS

The parties to the proceedings are those identified in the caption.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Third Circuit. The Third Circuit held that a party has 30 days from the entry of the District Court's order to file his notice of appeal, *see Fed.R.App.P. 4(a)(1)(A)*, and the "*notice is deemed filed on the date that it is received by the District Court Clerk's Office*,"¹ *see Lee v. Houtzdale SCI*, 798 *F.3d* 159,163 (3d Cir.2015)" (emphasis added). The District Court entered their order on May 9, 2018. The District Court is in Newark, New Jersey. Petitioner received the order via the United States Postal Service (hereinafter, "USPS") on May 14, 2018, he mailed the notice of appeal from Philadelphia, Pennsylvania, where he resides on Wednesday, June 6, 2018. The District Court Clerk's Office received the notice of appeal on Saturday, June 9, 2018. Because the District Court Clerk's Office which is in Newark, New Jersey, received the notice of appeal one (1) day beyond the 30-day deadline, the Court of Appeals for the Third Circuit deemed Petitioner's notice of appeal untimely. Certiorari should be granted to review an issue when an individual who lives outside

¹ There is no provision under **Fed.R.App.P. 4** delineating how to compute the thirty-day period for when the notice of appeal is filed.

the District Court's jurisdiction and depends on the USPS to deliver the notice of appeal in a timely manner, should the notice of appeal be deemed filed on the date the mail is postmarked. **Fed.R.App.P. 4 (a) (1) (A)** states in relevant part: Rule 4. Appeal as of Right—When Taken(a) APPEAL IN A CIVIL CASE.(1) *Time for Filing a Notice of Appeal.*(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from. However, the Rule and **28 U.S.C. § 2107(a)**² is silent on how to compute when the notice of appeal is filed or received within the 30-days when it is postmarked and deposited in the USPS possession.

OPINIONS BELOW

The opinion of the court of appeals, **App.**, *infra*, **1a**, and the opinion and judgment of the district court, **App.**, *infra*, **3a** are unreported.

² **28 U.S.C. § 2107.** Time for appeal to court of appeals **(a)** Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

JURISDICTION

The Judgment of the court of appeals was entered on February 5, 2019. **App.**, *infra*, **2a**. The jurisdiction of this Court is invoked under **28 U.S.C. § 1254(1)**.

STATUTORY PROVISION INVOLVED

28 U.S.C. § 2107(a), provides: "Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree."

28 U.S.C. § 2107(a).

RULE INVOLVED

Fed.R.App.P. 4(a)(1)(A), provides: "(a) Appeal in a Civil Case. (1) Time for Filing a Notice of Appeal. (A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from."

Fed.R.App.P. 4(a)(1)(A).

STATEMENT OF THE CASE

This case presents an important question when an individual who lives outside the district court's jurisdiction and depends on the USPS to deliver the notice of appeal in a timely manner, that is before the 30-day period expires, should the notice of appeal be deemed filed on the date the mail is postmarked. In this case, the Court of Appeals for the Third Circuit deemed that the notice of appeal was untimely by one-day, when Petitioner mailed his notice of appeal within the thirty-day period and relied on the USPS delivery of the notice of appeal.

1. 28 U.S.C. § 2107(a) and Fed.R.App.P. 4(a)(1)(A). This statutory provision and Rule are silent on how to compute the thirty-day period for filing a notice of appeal from the district court's judgment.

2. Fed.R.App.P. 26(c). This Rule has been coined the "3-day rule." This Rule provides in relevant part: "**ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE.** When a party may or must act within a specified time after being served, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service."

3. The Facts of This Case. On or about May 9, 2018, the district court denied Petitioner's **Section 2254** petition.

App., infra, 3a. Petitioner received the district court's order on May 14, 2018. Petitioner mailed his notice of appeal to the district court clerk's office on June 6, 2018, via the USPS. **App., infra, 4a and 5a.** USPS delivered the notice of appeal to district court clerk's office in Newark, New Jersey, on June 9, 2018. **App., infra, 5a.**

4. Petitioner obtained a copy of the USPS tracking information concerning the delivery of the notice of appeal and noticed the notice of appeal was delivered on Saturday, June 9, 2018. **App., infra, 5a.** Equipped with this information Petitioner hand-delivered a letter motion addressed to the Chief Judge and Judges of the Court of Appeals concerning his mailing of the notice of appeal on June 6, 2018, but the district court clerk's office received it on June 9, 2018. **App., infra, 6a.**

5. After the parties filed briefs concerning the certificate of appealability, the Court of Appeals held that Petitioner's notice of appeal was untimely by one-day and denied the application for a certificate of appealability as moot on December 14, 2018. **App., infra, 1a.** Petitioner requested a rehearing on December 19, 2018. The Court of Appeals denied the petition for rehearing by the panel and the Court en banc on February 5, 2019. **App., infra, 2a.**

REASONS FOR GRANTING THE WRIT

I.

6. Under **28 U.S.C. § 2107** and **Fed.R.App.P. 4**, it is silent on how to compute the thirty-day period for filing the notice of appeal. However, under **26 U.S.C. § 7502**, any "return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be." **Id.** Here, if the mail is postmarked on or before the expiration date, usually April 15th of every year, it is timely filed on the postmarked date.
7. A matter is deemed filed on the postmarked date by USPS, as long as the matter was postmarked on or before the expiration date, makes sense, and allows for any delays or mishaps by the U.S.P.S., especially when one doesn't have

privity to electronic filing, lives many miles from the district court clerk's office and doesn't have control over the delivery of the mail by the USPS.³

8. Petitioner should have been granted the "3-day rule" enunciated under **Fed.R.App.P. 26(c)**. The Committee Notes on Rules-2009 Amendment, states in relevant part: "Under the amendment. A party that is required or permitted to act within a prescribed period should first calculate that period, without reference to the 3-day rule provided by Rule 26(c), but with reference to the other time computation provisions of the Appellate Rules. After the party has identified the date on which the prescribed period would expire but for the operation of Rule 26(c), the party should add 3 calendar days." ... "To illustrate: A paper is served by mail on Thursday, November 1, 2007. The prescribed time to respond is 30 days. The prescribed period ends on Monday, December 3 (because the 30th day falls on a Saturday, the prescribed period extends to the following Monday). Under Rule 26(c), three calendar days are added-Tuesday, Wednesday, and Thursday-and thus the response is due on Thursday, December 6." **Id.**

³ Petitioner lives and resides in Philadelphia, Pennsylvania. The district court clerk's office is in Newark New Jersey

9. As the Court of Appeals opined, Petitioner's notice of appeal was untimely by one-day but had the "3-day rule" been applied, Petitioner's notice of appeal is timely. This is an important matter because there is no guidance in computing the thirty-day period under **28 U.S.C. § 2107(a)** and **Fed.R.App.P. 4(a)(1)(A)**. Petitioner has spoken to various Court of Appeals clerks and they have different methods in computing the thirty-day period for filing a notice of appeal in a habeas corpus case. Some have stated they deemed the notice of appeal filed on the USPS postmarked date, if the mail is postmarked before the expiration of the thirty-day period. Other Court of Appeals clerks office follow a methodology of computing the thirty-day period strictly to 30-days regardless of when the mail was postmarked. This is the case here. This computation method is totally unfair and does not consider that Petitioner relied on USPS handling of the mail to be delivered on Friday, June 8, 2018.⁴

II.

10. Both statutes, **26 U.S.C. § 7502(a)(1)** and **28 U.S.C. § 2107(a)**, are similar that they mention a time limitation

⁴ On the receipt from the USPS for payment of the postage for the notice of appeal, it reads: "(Estimated Delivery Date) (Friday 06/08/2018)." **App., infra, 4a.**

for filing a notice of appeal, but **section 7502(a)(1)** enunciates the notice of appeal is timely if it is postmarked on or before the expiration period. Also, under **Fed.R.App.P. 13(a)(2)** provides in part: "If sent by mail the notice is considered filed on the postmark date[.]"⁵ However, under **Fed.R.App.P. 4(a)(1)(A)**, same as **section 2107(a)** are silent for computing when the notice is filed. These statutes and rules should be held in pari materia. They relate to the same subject. Both concern the filing of a notice of appeal in a timely manner. Statutes that are in pari materia or relating to the same subject matter are to be interpreted in light of, and consistently with, one another. **U.S. v. Stewart**, 311 U.S. 60, 64 (1940) ("[A]ll acts in pari materia are to be taken together, as if they were one law."); also see **Hallenbeck v. Penn. Mut. Life Ins. Co.**, 323 F.2d 566, 571 (4th Cir. 1963) ("It is well established that statutes which relate to the same persons or things or have a common purpose may be regarded as in pari materia." (emphasis added)). "The guiding principle ... is that if it is natural and reasonable to think that the understanding of members of the legislature

⁵ **Fed.R.Civ.P. 5(b)(2)(C)**, enunciates that "a paper is served under this rule by: mailing it to the person's last known address-in which event service is complete upon mailing[.]"

or persons to be affected by a statute, be influenced by another statute, then a court called upon to construe the act in question should also allow its understanding to be similarly influenced." **2B Sutherland's Statutory Construction § 51.03, at 212.**

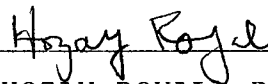
11. This Case Is An Excellent Vehicle To Decide The Question Presented. This case presents an ideal vehicle to decide whether a notice of appeal is filed when it is delivered via the USPS mailing system and postmarked before the expiration of the thirty-day period. Especially, where **28 U.S.C. § 2701(a)** and **Fed.R.App.P. 4(a)(1)(A)**, are silent on how to compute the thirty-day period for when a notice of appeal is filed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dated: May 3, 2019


HOZAY ROYAL, Pro Se
P.O. Box 3840
Philadelphia, PA 19146