

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER 2018 TERM

Nathaniel Caldwell ~~III~~

Petitioner

v

Warden Roberto Roberts

Respondent

1 PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION TO FILE PETITION OUT-OF-TIME

Nathaniel Caldwell ~~III~~ #341823

Prose Petitioner

F4 B12 Allendale Correctional Institution

1057 Revolutionary Trail

Fairfax SC 29827

Other Counsel of Record=

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Sr. Asst. Atty-Gen.

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER 2018 TERM

Petitioner, (herein Caldwell), respectfully prays that the Court direct the Clerk of Court to accept the petition for Writ of Certiorari. Caldwell's petition for a writ of Certiorari in this action presently bears a Post-Mark of December 12, 2018, which renders the petition untimely by twelve, (12), days.

Caldwell attempted to have his petition mailed/filed, (See Houston v Lack, 487 U.S. 266, 108 S.Ct 2379 (1988)), by the November 30, 2018 deadline; however due to the unusual circumstance which existed with the malfunction of the Allendale Correctional Institution's Pitney Bowes Postage metering equipment (broken), such mailing/filing was prevented and Caldwell was unable to obtain First-Class Pre-Paid Postage in a timely manner.

Caldwell attempted again on December 6 2018. Believing the mailing/filing would be accomplished, and completing the Affidavit of Service. He again was unable to acquire First-Class PrePaid Postage due to the same circumstances beyond his control.

On December 12 2018 Caldwell was able to obtain the required metered postage and mail/file his petition from the Institution's mail room facility.

In light of the aforementioned, it is respectfully requested that the Clerk and Court accept the petition for writ of Certiorari out-of-time for filing.

Respectfully submitted,

Nathaniel Caldwell

Nathaniel Caldwell
Prose Petitioner

January 25, 2019

FILED: July 3, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6271
(1:14-cv-04277-RMG)

NATHANIEL CALDWELL, III

Petitioner - Appellant

v.

WARDEN ROBERTO ROBERTS

Respondent - Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-6271

NATHANIEL CALDWELL, III,

Petitioner - Appellant,

v.

WARDEN ROBERTO ROBERTS,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Aiken.
Richard Mark Gergel, District Judge. (1:14-cv-04277-RMG)

Submitted: March 20, 2018

Decided: April 25, 2018

Before KING, DIAZ, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Nathaniel Caldwell, III, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Nathaniel Caldwell, III, seeks to appeal the district court's orders accepting the magistrate judge's recommendation in part, denying relief on his 28 U.S.C. § 2255 (2012) motion, and denying his motion for reconsideration. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012).

When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Caldwell has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny the pending motion as moot, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

**Additional material
from this filing is
available in the
Clerk's Office.**