

In The
Supreme Court of the United States

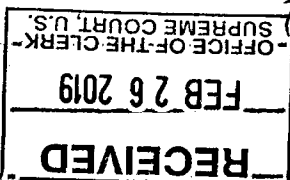
Case No: 17-30689

Felix A. Rice

petitioner

Darrel Vannoy

Respondent



Motion to File Out-of-Time Request
For Writ of Certiorari

May It Please The Court:

Now into Court comes, Felix A. Rice,
hereinafter the Petitioner, in No. 89,
who moves this Honorable Court for due
of time, filing and adjudication on the
Merits of Claims, urged in the attached
Writ of Certiorari, per instruction by
Mr. Redmond K. Barnes, deputy Clerk of
Court, U.S. Supreme Court. (See Lett-
er dated Feb. 5, 2019 attached as AT).

Please receive, file, and provide
petitioner with notice for the reas-

ons as stated in the attached, "Request for Rehearing of The Clerk's Refusal To File Petitioner's Writ of Certiorari." (See Attached as B1).

For convenience, and to avoid a large build up of pages of discussions repeating itself, petition would respectfully request that his attached "Request for Rehearing" ... is permitted to serve as the showing of Cause to grant petitioner's request for Out-of-Time filing of his Request for Writ of Cert.

Conclusion

Wherefore, Petitioner forever Pray that this Court Grant his Motion for Out of Time filing and adjudication of petitioner's Writ of Cert.

Respectfully Submitted:

Mr. Xelú A. Guice

Camp C Raven-1-Left-13

17544 Tunica Trace

Lc. State Penitentiary

Angola, La 70712

Done This 11th day of Feb. 2019

In The
Supreme Court of The United States

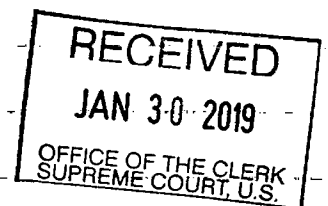
Case No:

Felix A. Price

petitioner

v.
Darrel Vannoy

respondent



Request for Rehearing of The
Clerk's Refusal To File Petition-
ers Writ of Cert.

May It Please The Court:

Now Into Court, comes, Felix A. Price, her-
einafter the Petitioner, in Pro Se, who moves
this Honorable Court for rehearing under Rule
44(1)

1

In the present case no: USCA #17-30689
the Clerk of this Court refused to receive and
file petitioner's pro se Writ of Cert., find-
ing, in his opinion that his Writ action
was untimely submitted to this Court,
(See Clerk's Decision attached as exhibit A)

2
It is the Clerk's finding that petitioner had from Sept. 25, 2018 until Dec. 24, 2018 to have his Cert. Writ in this Court. Which is in fact 90 days, however...

3
Pursuant to Rule 30(1) of this U.S. Supreme Court... "In the computation of any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included, unless it is a Saturday, Sunday, Federal legal holiday listed in 5 U.S.C. 86103" etc. ...

4
December 24th and 25th, 2018 was Christmas Eve and Christmas Day, both of which were legal Federal holidays.

5
Item number 5 is a letter stamped and dated Dec. 19, 2018 as coming from L.S.P.'s Legal Programs Department, responding to petitioner's inquiry as to the location of his Cert. Writ that was mailed to Legal Programs for mailing to this Court.

At the bottom of page Item (5), L.S.P. agents respond to petitioner's inquiry by stating:

"We just scan and mail it back the same day we receive it. You should be receiving it shortly!"

This response proves that petitioner's Writ of Cert. was in possession of L.S.P. agents. This response coupled with Item #3, Withdrawal Slip, verified by signature of L.S.P. Cadet D. Minor and Item #2, the L.S.P. indigent mail slip, both of which are dated Dec. 12, 2018, corroborates claims made in petitioner's letter of inquiry sent to L.S.P.'s Legal Programs Dept. on Dec. 18, 2018, where petitioner is trying to find out the status of his Writ of Cert. (has the writ been mailed)

⁶
The L.S.P. Legal Programs Dept. agents did not return petitioner's Writ of Cert. to him until December 24, 2018 Christmas Eve, with a stamp sticker attached stating:

"Need to send this to Classification."

7

Here at T.U. Max lockdown, records containing its Classification Officer's signature will prove that the Officer did not show up until December 27, 2018, as indicated by the indigent mail receipt listed as Item # 6. The L.S.P. agent at its Legal Programs Department confirm that they do scan electronic mailing, but fail to state any reason for not mailing petitioner's Writ of Cert. through this process.

8

Under this High Courts ruling in *Houston v. Lack*, 487 U.S. 266, 275-76 (1988), petitioner's Writ of Cert. was filed on December 12, 2018, the date petitioner mailed the Writ to L.S.P.'s Legal Programs Dept. for electronic scan mailing to this Court. See also, Fed. R. App. P. 4(c) which holds:

"A prisoner's notice of Appeal may be considered timely if it is posted in the prison legal mail system within the applicable time limit, even if it is not timely received by the Court."

Four Fed. R. App. P. Grace Period, 3 days

9

Had petitioner placed his writ of Cert. in an actual L.S.P. Mail Box on Christmas Day, Dec. 25, 2018, it would have remained there until an L.S.P. employee came and picked up mail. Warden's and their subordinate employees, here at L.S.P., design their own rules from one year to the next, according to what's satisfactory to their needs, not the inmates' needs. And they do so without giving any notice to the inmate population. In the present case, it was over a week before mail was picked up, before [redacted] after Christmas here at T.U. Extended Lockdown.

10

The indigent mail receipt attached as Item #6, proves that L.S.P.'s Classification Officer did not make rounds on this unit until December 27, 2018, and resulted in being the earliest opportunity petitioner had to mail his writ of Cert. to this Court under L.S.P.'s Classification System.

11

five The fact that the writ was not received by this High Court until Jan. 9, 2019 is only further evidence that proves L.S.P.

Otherwise, petitioners would remain this
Honorable Court that during early October
2018 petitioners sought stay of this on-
line matter until the case released

Conclusion
Given the fact that petitioners first gave
this writ to L.S.P's mailing agents on the
12th of December, well in advance of his
deadline of the 24th, and although no pay-
ment of petitioners, the writ was delayed via
a series of orders caused by L.S.P Office
errors, the deadline must be lifted to the 12th
of Dec.

Officials do everything in their own time.
They had it the second day after Christ-
mas, the 27th, but they got on it until
after the 1st year. Before that, L.S.P's
dealt from L.S.P's Dept. agents had petition-
ers writ of Cert. from the 12th of Dec.
and again got on it for twelve days, until
the 24th. Instead of sending the writ
to the Disposition Dept. with insten-
tions to them, to mail the writ, they
returned it to petitioners.
And as previously stated, no reason
has been advanced for their failure to do
so.

from the Main Prison's Dungeon. Petitioner pointed out to this Court that he did not have any of his papers connected to this case. They were taken by LSP security and placed in storage. And, where he could not connect with members of LSP's inmate counsel dept., that petitioner could not adequately appeal this case.

Consequently, where petitioner remained in the dungeon from Sept. 18, 2018 until Dec. 15, 2018, again, petitioner's deadline must be tolled until December 10th, 2018 when petitioner's papers, i.e. Court rulings were returned to him.

Respectfully Submitted By
Mr. Felix A. Davis
17544 Tunica Trace
La. State Penitentiary
Angola, LA 70712

Done This 15th day of Jan 2019

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-30689
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
August 29, 2018

Lyle W. Cayce
Clerk

FELIX A. PRICE,

Petitioner-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:17-CV-4052

Before KING, SOUTHWICK, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Felix A. Price, Louisiana prisoner # 91688, appeals from the denial of his Federal Rule of Civil Procedure 60(b) motion. The magistrate judge denied Price's Rule 60(b) motion. After Price filed a notice of appeal, the district court affirmed the magistrate judge's denial.

The magistrate judge lacked authorization to rule on Price's Rule 60(b) motion under these circumstances because Price did not consent under 28

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 17-30689

U.S.C. § 636(c) and there was no other basis for the magistrate judge's authority over that motion. See *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 925 F.2d 853, 856 (5th Cir. 1991); *Parks By and Through Parks v. Collins*, 761 F.2d 1101, 1104 (5th Cir. 1985). Because the magistrate judge's order was not a final appealable decision, we lack jurisdiction to review it. See 28 U.S.C. § 1291; *Trufant v. Autocon, Inc.* 729 F.2d 308, 309 (5th Cir. 1984). Moreover, Price's premature notice of appeal was insufficient to confer jurisdiction on this court from the district court's order affirming the magistrate judge's denial. See *FirsTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269, 276-77 (1991); see also *United States v. Cooper*, 135 F.3d 960, 963 (5th Cir. 1998).

APPEAL DISMISSED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-30689

FELIX A. PRICE,

Petitioner - Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent - Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING EN BANC

(Opinion 8/29/18, 5 Cir., _____, _____ F.3d _____)

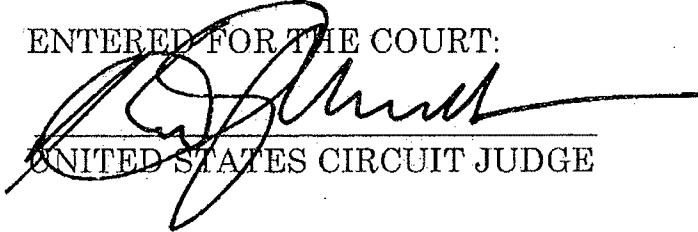
Before KING, SOUTHWICK, and ENGELHARDT, Circuit Judges.

PER CURIAM:

- (✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.
- () Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court

having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

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