

No. 18M69

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT TREASE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

*On Petition for a Writ of Certiorari to the
Supreme Court of Florida*

THIS IS A CAPITAL CASE

**SUPPLEMENT TO MOTION TO DIRECT THE CLERK TO FILE THE
PETITION FOR WRIT OF CERTIORARI OUT OF TIME**

Comes the Petitioner and respectfully submits this Supplement to his Motion to Direct the Clerk to File the Petition for Writ of Certiorari Out of Time (“the Motion”), based upon facts that arose after the filing of the Motion:

1. The petition for writ of certiorari and supporting papers were electronically filed with this Court on September 24, 2018, the due date. *See the*

Motion, Appendix B. Paper copies of the petition and supporting papers were not filed until October 4, 2018. The Clerk returned the petition as untimely.

2. The Motion, mailed on October 23, 2018, explained why the Clerk's basis for returning the petition was incorrect.¹

3. This Supplement does not readdress the Clerk's basis for returning the petition. New developments from this Court bring into further question whether the Petition was even untimely, given that it was timely filed with and received by the Court electronically.²

4. On November 1, 2018, after the Motion was prepared and sent to the Court, the Court published Proposed Revisions to the Rules to the Supreme Court

¹ According to the Clerk:

The petition is out-of-time. On July 19, 2018, Justice Thomas granted application No. 18A69, extending the time to file a petition for writ of certiorari in this case until September 23, 2019 [a Sunday]. Rules 13.1, 29.2, and 30.1. **When the time to file a petition for writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.**

See Motion, p.2 (Appendix C) (emphasis added). In the Motion, Petitioner explained that this case is a criminal, not a civil, case, and that this Court has the power to review the petition. *Id.* at 2-3.

²Cf. Rule 15.8 ("Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing.")

of the United States, and requested Comments.³ Proposed revisions to Rule 29 are relevant to whether the petition was timely filed. Rule 29 presently states in pertinent part:

1. Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk.
2. A document is timely if it is received by the Clerk within the time specified for filing; or...

The petition in this case was timely electronically filed/received.

5. This Court's proposed amendment to Rule 29 adds the words "in paper form."

1. Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk in paper form.
2. A document is timely if it is received by the Clerk in paper form within the time specified for filing; or...

(Underlined works in the Proposed Revisions).

6. The Comment to these Proposed Revisions states: "This amendment is intended to make clear that paper remains the official form of filing, and that the timeliness of a filing turns upon when the paper version was submitted to the

³See <https://www.supremecourt.gov/filingandrules/2018ProposedRulesChangesforPublicComment.pdf>; see also https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_11-01-18.

Clerks' Office." The Comment was "furnished solely to assist readers in understanding the revision[]." *See note 2, supra.*

7. Under existing Rule 29, Petitioner filed and this Court received the Petition "within the time specified for filing." A Petition should not be considered untimely when the Rules of this Court do not clearly say so and, even, suggest the opposite.

8. This is a state death penalty criminal case. The petitioner electronically filed, and this Court electronically received, a Petition for Writ of Certiorari to the Florida Supreme Court within the time for filing it.

WHEREFORE, for the reasons herein, and in the Motion, Petitioner Respectfully requests that the Court direct the Clerk to file the Petition.

Respectfully submitted,


/s/ Mark Olive

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