

ORIGINAL *

No. 19-5068

ORIGINAL

Supreme Court, U.S.
FILED

JUN 21 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIE J. TRIMBLE, JR., — PETITIONER
(Your Name)

vs.

WARDEN: MATHEW HANSEN, et al. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

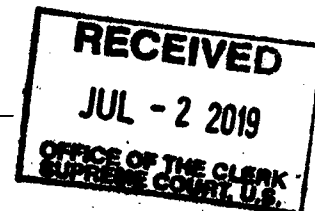
PETITION FOR WRIT OF CERTIORARI

(PRO-SE) Willie J. Trimble, Jr. No.# 61884
(Your Name)

P.O. BOX 6000/ Unit- one
(Address)

Sterling, Colorado 80751
(City, State, Zip Code)

NONE
(Phone Number)



QUESTION(S) PRESENTED

I.

WHETHER THE TENTH CIRCUIT COURT OF APPEAL(S) DECISION WAS IN CONTRARY WITH U.S. SUPREME COURT PRECEDENT, BY FAILING TO LIBERALLY CONSTRUE THE MAILBOX RULE WHEN CONSIDERING FEDERAL HOLIDAYS, CALCULATING THE ONE YEAR TIME LIMITATION PERIOD, UNDER 28 U.S.C.A. 2244(d)(1). *Mc Neil v. U.S.*, 508 U.S. 106, 113, 113 S.ct. 1980 (1993).

II.

WHETHER THE TENTH CIRCUIT COURT OF APPEAL(S) DECISION VIOLATED PETITIONER(S) DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION, THE PRINCIPLE OF PARTY PRESENTATION BY ALTERING THE DISTRICT COURT(S) DECISION THROUGH A IMPLICIT CONCLUSION OF THE FACT(S), THAT BENEFITED THE NONAPPEALING PARTY. *Greenlaw v. U.S.*, 554 U.S. 237, 243-44, 128 S.ct. 2559 (2008).

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [x] 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:

Warden: Mathew Hansen

Sterling Correctional Facility
P.O. BOX 6000
Sterling, Colorado 80751

Colorado Attorney General:

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Denver, Colorado 80203

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OTHER

(NONE)

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:** ☐ [NO]

The opinion of the United States court of appeals appears at Appendix O to the petition and is

☐ reported at 2019 U.S. App. LEXIS 6027; 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 A to the petition and is

☐ reported at Colo. Dist. Case No. 18-1490; 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 B to the petition and is

☐ reported at NONE ; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Colorado Appeals court appears at Appendix C to the petition and is

☐ reported at NONE ; 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 February 28, 2019.

☒ 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: NONE, and a copy of the order denying rehearing appears at Appendix O.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including NONE (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 May 25, 2018. A copy of that decision appears at Appendix O. Law library will not copy. see green form..

☐ 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

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STATEMENT OF THE CASE

On December 9, 2009 petitioner Trimble was sentenced to life in prison, without parole after a Colorado jury convicted him of sexual assault and murder. The state court of appeals affirmed his conviction on September 12, 2013 and state supreme court denied his petition for certiorari on July 28, 2014. The mandate for direct appeal was issued on July 30, 2014. On October 25, petitioner Trimble delivered his state post-conviction petition to the prison mailroom; the state trial judge denied petitioners post-conviction petition on November 17, 2015. Both Colorado court of appeals, and the Colorado supreme court issued order's denying certiorari review and issuing the mandate on May 21, 2018. On May 25, 2018 petitioner Trimble delivered his pro-se 28 U.S.C. A. 2254 Habeas Corpus petition to the prison mailroom. On October 23, 2018 the federal district court dismissed the habeas corpus petition as time-barred under 28 U.S.C.A. 2244(d)(1). Petitioner Trimble petition the United States Tenth Circuit Court of Appeals for a Certificate of Appealability pursuant to 28 U.S.C.A. 2253. The (COA) petition was [granted] and a decision was published in Trimble v. Hansen, 2019 U.S. App. LEXIS 6027.

REASONS FOR GRANTING THE PETITION

A.

THIS CASE BEFORE THE COURT WOULD HAVE A SIGNIFICANT IMPACT ON FUTURE CASES WHEN TOLLING THE TIME UNDER THE HABEAS CORPUS STATUTE OF 28 U.S.C.A. 2244 BECAUSE THERE IS ONLY THREE ADJUDICATED CASES IN THE ENTIRE COUNTRY THAT EXCLUDE FEDERAL HOLIDAYS WHEN CALCULATING THE TIME UNDER 28 U.S.C.A. 2244(d)(2).

B.

THIS CASE BEFORE THE COURT WOULD BREAK NEW GROUND, SET A CORNERSTONE ON WHEN THE ONE YEAR TIME LIMITATION UNDER 28 U.S.C.A. 2244(d)(2) STARTS AND STOP, THIS CASE WOULD CLARIFY, GUIDE THAT NOTICE OF APPEAL'S AND APPEAL MANDATES REPRESENT THE ON OFF BUTTONS FOR CALCULATING THE STATUTORY TIME LIMITATION FOR FILING A PETITION FOR HABEAS CORPUS.

Petitioner contend that the one year statute of limitation on a petition for federal habeas corpus relief, by state petitioner is not jurisdictional. *Holland v. Florida*, ___ U.S. ___, 130 S.ct. 2549, 2560 (2010). An state application for post-conviction review is properly filed when its delivered in compliance with the applicable state laws. *Artuz v. Bennett*, 531 U.S. 4, 8, 121 S.ct. 361 (2000); *Garcia v. Shanks*, 351 F.3d 468, 471-72 (10th Cir.2003). Petitioner contend that the tenth circuit court erred because petitioner is entitled to the immunities of the MAILBOX RULE under Colo. R. Crim. P. 45(f). *People v. Stanley*, 169 P.3d 258, 259 (Colo. App. 2007); and also the immunities of the exemption

from the ten FEDERAL HOLIDAYS under Colo. R. Crim. P. 45(a); Colo. Rev. Statute 2-4-108. People v. Hampton, 696 P.2d 765, 780 Fn.8 (Colo. 1985). Under 28 U.S.C.A. 2244 (d)(1)(A), a state prisoner has ONE YEAR to file a federal habeas corpus petition, starting from the date on which the judgment became final by the conclusion of DIRECT REVIEW. The one year clock is stopped during the time state petitioner properly filed application for post-conviction relief is pending. Wood v. Milyard, ___ U.S. ___, 132 S.ct. 1826, 1831 (2012). Petitioner's case is published in Trimble v. Hansen, 2019 U.S. App. LEXIS 6027, the opinion of circuit judge, at [Fn.2], the appeals court acknowledges in its opinion that the federal district courts final order did not explicitly discuss the MAILBOX RULE, but seems to have given Mr. Trimble the benefit of the MAILBOX RULE. Petitioner contend that the two lower federal courts never considered the MAILBOX RULE or the ten day exemption from the FEDERAL HOLIDAYS. Kruger v. Apfel, 25 F.supp.2d 937, 939 (E.Dist.W. 1998); Tushner v. U.S., 1829 F.2d 853, 856 Fn.1 (9th Cir. 1987); U.S. v. Humphrey, 1992 U.S. App. LEXIS 16553; *People v. Hampton, at 780 Fn.8. Petitioner also contend that the [Notice of Appeal date] when petitioner when petitioner filed his [direct appeal]; and the [Notice of Appeal date] in petitioner's [post-conviction appeal] plays a significant part in calculating the time limitation, yet no mention of these dates in the findings of fact or final order issued by the two lower federal courts. The time limitation cannot be tolled under 28 U.S.C.A. 2244 (d)(2) unless the lower federal courts consider these two notice of appeal dates because

these dates STOP the statutory clock. The prior opinions in Greenlaw v. U.S., 554 U.S. 237, 243-44, 128 S.ct. 2559 (2008); Cone v. Bell, ___U.S.___, 129 S.ct. 1769, 1790 (2009); Wood v. Milyard, ___U.S.___, 132 S.ct., at 1828 and all these cases disapprove of implicit fact finding, lower court exercising CARTE BLANCHE authority, and also departing from the "Principle of Party Presentation". It is a abuse of discretion by the Tenth Circuit Court of Appeals to [presume] the facts on what the federal district court was thinking when he tolled the time pursuant to 28 U.S.C.A. 2244 (d)(2). In the request for a Certificate of Appealability in Trimble v. Hansen, 2019 U.S. App. LEXIS 6027, the lower court decision was based on miscalculation of the facts, time period's during the direct appeal, post-conviction appeal, and the deficiency of facts was cured by Tenth Circuit implicit fact finding on what the federal district court [might have] been thinking on the MAILBOX RULE, and this was in contrary with McNeil v. U.S., 508 U.S. 106, 113, 113 S.ct. 1980 (1993). Petitioner invokes the U.S. Supreme Court's Doctrine of Stare Decisis in all the above caselaw, and pray that this COURT liberally construe my pro-se petition that is now before this court.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully submitted,

Willie J. Trimble Jr.
pro-se Willie J. Trimble, Jr. No. 61884
Date: JUNE 21, 2019