

No. 19-5160

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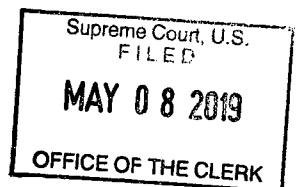
IN THE

SUPREME COURT OF THE UNITED STATES

JAMIE GEER - PETITIONER

vs.

FLORIDA - RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO
THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

JAMIE D. GEER, DC#C06714

WAKULLA C.I. 110 MELALEUCA DR.

CRAWFORDVILLE, FL. 32327

QUESTION(S) PRESENTED

**WHETHER PETITIONER WAS DENIED DUE
PROCESS, EQUAL PROTECTION OF THE LAW,
AND RIGHT TO ACCESS TO THE COURTS
WHEN PRISON OFFICIALS MISHANDLED HIS
APPEAL PAPERS CAUSING HIM TO LOSE HIS
APPEAL OF RIGHT OF HIS POST-CONVICTION
PROCEEDINGS.**

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that writ of certiorari issue to review the judgment
below.

OPINIONS BELOW

[] For cases from **federal courts**:

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

[] reported at _____; 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[] is unpublished.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 _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is
[] reported at _____; 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[] is unpublished.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 _____.

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: _____, 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 _____ on _____ 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 _____.
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: February 20, 2019, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for 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

The Fourteenth Amendment to the United States Constitution provides in pertinent part as follows:

... Nor shall any State deprive any person of life, liberty or property, without due process of law.

U.S. Const. Am. XIV

28 U.S.C. § 1257(a)

STATEMENT OF THE CASE

December 1, 2017, Petitioner's Rule 3.850 motion for post-conviction relief was denied after an evidentiary hearing. December 13, 2017, pursuant to Rule 9.330, Florida Rules of Appellant Procedure, Petitioner timely filed a motion for rehearing and a motion to suppress intercepted communication to the trial court.

Both motions were submitted to prison officials for mailing and dates stamped by the institution per the mailbox rule, December 13, 2017. The certificate of service for the motions complied with Rule 9.420, Florida Rules of Appellate Procedure. In an abundance of caution due to previous mishandlings of Petitioner's pro se motions, Petitioner sent a letter to his prior postconviction counsel requesting she monitor the restricted access case docket to ensure a notice of appeal was timely filed.

Within days of mailing those motions, after six years at the same institution, during the Christmas holidays, Petitioner was unexpectedly transferred by bus to another institution. A week later, January 2, 2018, the 30th day after the denial of the 3.850 motion for post-conviction relief, Petitioner was transported to yet another institution.

On January 19, 2018, the trial court denied Petitioner's motion to suppress intercepted communication, noting that no motion for rehearing had been filed.

Petitioner received the denial order January 25, 2018. Having not heard from counsel and proceeding pro se, Petitioner submitted his notice of appeal of the Rule 3.850 motion to prison officials the next day.

The Second District Court of Appeal ordered Petitioner to show cause why the appeal should not be dismissed as untimely. All was explained as above along with a copy of the motion for rehearing proving the time for filing the notice of appeal was tolled and the appeal was in fact timely. March 8, 2018, the appeal was dismissed as untimely without an opinion. (Appendix D).

Petitioner filed a petition for belated appeal to the Second DCA based on “exceptional circumstances” beyond Petitioner’s control. Specifically, the court had not received the motion for rehearing and counsel had not received Petitioner’s letter. Also the motion for rehearing is considered under state law to be properly filed with the court the day prison officials accept and stamp the motion for mailing.

After an evidentiary hearing was held August 9, 2018, the appointed commissioner issued his findings and recommendations, recommending denial of the petition. (Appendix B).

Petitioner submitted objections to the commissioner’s report to jail officials to deliver to the clerk via internal mail per policy. The objections were never received or filed by the clerk. No hearing was held on the objections.

The Second District Court denied the petition for belated appeal without an opinion, October 9, 2018. (Appendix A).

Petitioner's motion for rehearing was denied February 20, 2019. (Appendix C).

This petition for writ of certiorari followed.

REASONS FOR GRANTING THE PETITION

If a state court system arbitrarily withholds the benefit of a state rule of law from a criminal Defendant, due process of law is denied. If a state court system treats similarly situated criminal defendants differently, equal protection of the law is denied. Amend. XIV.

Ake v. Oklahoma, 470 U.S. 78, 84 L. Ed. 2d 53, 105 S. Ct. 1087 (1985), [This court] has often reaffirmed that fundamental fairness entitles indigent defendants to "An adequate opportunity to present their claims fairly within the adversary system." Ross v. Moffit, 417 U.S. 600, 612, 94 S. Ct. 2437, 2444 (1974).

Prison officials mishandled Petitioner's legal mail, i.e. his motion for rehearing and a letter to counsel, causing Petitioner to lose forever his right to appeal the denial of his Rule 3.850 motion for post-conviction relief, violating Petitioner's Fourteenth Amendment and his right to access the courts. The right to access to the courts is fundamental. See, Johnson v. Avery, 393 U.S. 483, 485, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969); also Bounds v. Smith, 430 U.S. 817, 821, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977).

Prisons have an obligation to timely mail legal documents when prisoners have been diligent and punctual in submitting them to prison officials. Regardless whether prison officials intended to prevent Petitioner from pursuing his appeal,

the effect was the same. The prison's handling of Petitioner's legal mail forever precluded him from his statutory right of appeal. See, Dorn v. Lafler, 601 F.3d 439 (6th Cir. 2010).

Florida State Court decisions on "exceptional circumstance" relevant to belated appeals is extremely rare. There are three cases, only in the First District Court. There are none in the Second District Court and this instant case seems to indicate it does not recognize the standard.

It is important for the court to understand that Petitioner was a high-profile government official. Throughout these criminal proceedings, there has been direct intervention from local and state level elected officials. Powerful interests and involvement were at stake in this case from organized firefighter labor unions.

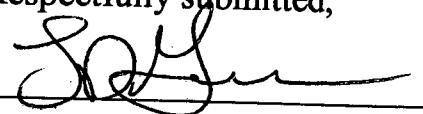
The Florida criminal justice system is in deep trouble. The legislature is experiencing unprecedented complaints, and citizens protest marches in Tallahassee demanding reform. The new governor has publicly criticized circuit court judges for not abiding by Florida and U.S. Constitutions. One Florida Supreme Court justice proclaimed, "What we have here is a real mess."

Florida Courts could use some guidance and direction from this Honorable Court to help them get back on track.

CONCLUSION

In view of this conflict of the decision below with past decisions of this Honorable Court, the court may wish to consider summary reversal and that the petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MAY 8, 2019