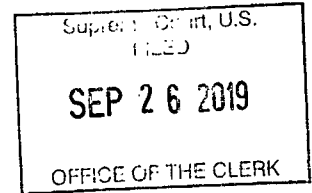


No. 19-6153

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



DAVONTAH LEE NELSON — PETITIONER
(Your Name)

vs.

TONY TRIERWEILER
~~XXXXXXXXXXXXXXXXXXXX~~ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVONTAH LEE NELSON
(Your Name)

2400 S. SHERIDAN DRIVE
(Address)

MUSKEGON, MT 49460
(City, State, Zip Code)

(231) 773-3201
(Phone Number)

QUESTION(S) PRESENTED

DID THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DECIDE AN IMPORTANT QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT?

DID THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT JUDGMENT AND/OR ORDER CONFLICTS WITH FEDERAL RULES OF APPELLATE PROCEDURE (FRAP) 25 (a)(1), and FRAP 42(c)(1), AND CONFLICTS WITH A DECISION BY THE SIXTH CIRCUIT THAT SHOULD BE SETTLED BY THIS COURT?

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A *United States Court of Appeals for the Sixth Circuit
Judgment/Order, dated July 16, 2019.*

APPENDIX B *United States District Court Order denying motion for
reconsideration/ Order denying motion for Certificate of appealability*

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Houston v Lack, 497 U.S. 266, 275, 108 S.Ct 2379, 101 L.Ed
2d 245 (1991) 4,5

STATUTES AND RULES

FEMP 4 (c)(1) 4,5

FEMP 25 (a)(c) 4,5

OTHER

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**:

The opinion of the United States court of appeals appears at Appendix A 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☐ is unpublished.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 B to the petition and is

- ☐ reported at _____; 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 _____ 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 _____ 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 July 16, 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: _____, 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. § 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 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

14TH AMENDMENT TO THE U.S. CONSTITUTION (§ 1)

" Nor shall any state deprive any person of life, liberty, property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law

STATEMENT OF THE CASE

The district court entered its judgment dismissing Davontah Lee Nelson's habeas corpus petition on May 3, 2019. Petitioner filed his motion for reconsideration through the institution's internal mail system (Legal mail) on June 3, 2019. The district court filed the motion for reconsideration on June 7, 2019. The district court denied the motion for reconsideration on June 25, 2019, therefore the notice of appeal taken from the May 3, 2019, judgment, is timely. Despite that the United States District Court never denied the motion for reconsideration, notice of appeal, as being untimely. The United States Court of Appeals for the Sixth Circuit issued an order and judgment dated July 16, 2019 dismissing the appeal as untimely due to the district court filing the motion on June 7, 2019, which is over thirty (30) days, which the Sixth Circuit judgment/order conflicts with the Federal Rule of Appellate Procedure (FRAP) 25 and *Houston v Lack*, 497 U.S. 266, 275, 108 S.Ct. 2379, 101 L.Ed.2d (1988), therefore making the appeal timely pursuant to FRAP 4(c)(1).

REASONS FOR GRANTING THE PETITION

There is a conflict with the Judgment and/or order with FRAP 25 (a) (c) and *Houston v Lack*, 487 U.S. 266, 275, 108 S.Ct 2379, 101 L.Ed 2d 245 (1988). FRAP 25 (a) (c) states in pertinent part: "(C) Inmate filing. A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule." Under FRAP 4 (c) (1) and Petitioner submitting his motion for reconsideration on June 3, 2019 on the last day of filings in compliance with FRAP 25 (a) (c) and the mail box rule from *Houston v Lack* through rule 4 (c), the appeal is considered timely. *In re Jacobs* U.S. App. Lexis 35157.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David L. Wilson

Date: 9-25-19