

No.

~~19-6740~~

IN THE
SUPREME COURT OF THE UNITED STATES

GLENDAL RHOTON -- PETITIONER

VS.

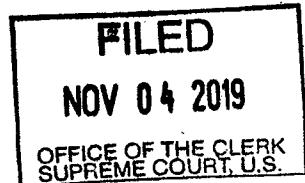
ORIGINAL

RICHARD BROWN -- RESPONDENT(S);

ON PETITION FOR A WRIT OF CERTIORARI TO

SEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WIRT OF CERTIORARI



Glendal Rhoton, #110746

Wabash Valley Correctional Facility

P.O. Box 1111

Carlisle, Indiana 47838

812-398-5050

QUESTION PRESENTED FOR REVIEW

The District Court mandated that all prisoner communications to and from the Court be transmitted via the E-Filing system. The prison's legal librarian is the custodian of the E-Filing system and thus serves simultaneous functions as an agent of both the Court and the adverse party, i.e., the Warden. Does the legal librarian's 7-month delay in notifying Rhoton of the District Court's Order denying his Petition for Writ of Habeas Corpus following a civil action, The State's attorney admits that Rhoton did not receive the order for 7 months. The respondent originally denied its failure to supply Rhoton with the order denying his Petition for Writ of Habeas Corpus. Following a civil action, the State's attorney admits that Rhoton did not receive the order for 7 months. Does the admission and the delay warrant relief under Rule 60 (b) under the "extraordinary circumstances" and "fraud upon the court" clauses?

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APPENDIX B- Decision of the District Court denying motion for a Rule 60 (b) relief from judgment.

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APPENDIX G- Karen Richards relied on letter from the Attorney Case Administrator of the United States District Court authorizing the filing of an appeal via the E-File system.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Maples v. Thomas</i> , 132 S. Ct. 912 (2012)	6
<i>Buck v. Davis</i>, 137 S. Ct. 759, 773, 197 L. Ed. 2d 1 (2017)	5

STATEMENT OF THE CASE

Glendal Rhoton is currently incarcerated at the Wabash Valley Correctional Facility in Carlisle, Indiana. Following proper exhaustion of his issues, Rhoton filed a Petition for Writ of *Habeas Corpus*, which was denied in July 2016. (Ex. B). Pursuant to an order issued by the District Court, Rhoton was required to submit all communications to the District Court via the E-File system. The prison's legal librarians function as the gatekeepers to the E-File system. Thus, the prison's legal librarians are simultaneously an agent of the Court and an agent of the adverse party, i.e., the Warden. The prison will not mail any letters or parcels to a District Court. If submitted to the mailroom for mailing, the prison returns the letter/parcel with a note stating that the correspondence must be E-Filed. Thus, prisoners have no means of communicating with the Court except through the adverse party. The Respondent is still required to serve prisoners via the United States Mail; however, court orders are sent via the E-File system.

In this case, Rhoton's petition was denied in July 2016. (Ex. B). Despite diligence efforts to check the status of my case through the appropriate legal librarian, Rhoton did not receive the ORDER denying his Petition for a Writ of *Habeas Corpus*, and the legal librarian refused to even check the docket for me.¹ After persistent complaints, Rhoton was able to obtain indirect permission to request a certificate of appealability from the District Court, based on the fact that the legal librarian did not provide a copy of the order of denial and would not check on the status of his case. (Ex. E). Karen Richards, Jennifer Theobald Staff relied on the E-Mail Attorney Case Administrator of the United States District Court, indicated that Rhoton could still file an appeal because the prison's legal librarian failed to notify him of the order. (Ex. F). Rhoton subsequently filed a Petition for Writ of certiorari with this Court. The Petition was summarily denied. Rhoton then filed a civil action against prison officials. Rhoton V. Brown, et al. 2:17-cv-0555-JRS-MJD. This action was settled and the State's attorney provided Rhoton with an affidavit, stating that Rhoton did not receive the Court's order for a period of 7 months. This admission runs counter to the respondent's arguments to the Seventh Circuit Court of Appeals and to this court.

¹ This is a common occurrence. Whenever offenders attempt to litigate anything in the District Court from this facility, the adverse party has control of all communications with the Court and actively frustrates prisoners attempts to meet deadlines, communicate with the court, or receive copies of orders and filings. The District Court has seriously erred in giving such absolute control to the adverse party.

Upon receiving the Affidavit, Rhoton filed a Motion for Relief from Judgment, pursuant to Rule 60 (b) and presented the affidavit as evidence of extraordinary circumstances. The District Court denied the motion Rhoton Appealed.

The Seventh Circuit Court of Appeals dismissed the appeal, holding that "Rule 60 (b) cannot be used to enlarge the time for appeal." This ruling is a ruling on the merit of the question before the Court, which was presented as follows:

Rhton was told to E-Filed his Request for certificate of Appeal ability, and it would be permitted as a late filing. (Ex. F).

Because Rhoton was specifically notified to E-Filed, he did not request an extension of time. However, Rhoton subsequently made a request for extension of time due to the complete lack of notification of the ruling in his case. Rhoton contemporaneously file his Designation of Pleadings. Notice of Appeal, Docketing Statement and Transcript Information Sheet along with the extension. Upon docketing the appeal, the Seventh Circuit Court of Appeals order him to file a jurisdictional memorandum on or before April 13, 2017. On April 12, 2017, Rhoton submitted his jurisdictional memorandum to prison officials for placement in the United State Mail along with a Transaction Form to deduct the postage from Rhoton's Trust Fund Account.²

Instead of placing the material in United States Mail, it was sent to the law library for E-Filing. The legal librarian returned the material to Rhoton along with a memorandum stating that the facility did not E-File to the Court of Appeals and that Rhoton only needed to send one (1) copy to the Court via United States Mail. Rhoton immediately submitted the material to prison officials for placement in the United States Mail.

The prison's legal librarians made no attempt to facilitate timely filings. They refused to send passes to accommodate filing deadlines. The mailroom will not mail any parcel going to the District Court and often reroutes mail going to this Court. The District Court's MANDATE for E-Filing has given prison officials total control over prisoners' ability to communicate with courts, which is denying Rhoton and many others from being able to comply with deadlines. Once Rhoton was able to get the required jurisdictional memorandum filed and show cause for the delay in seeking to appeal, his appeal was dismissed for a lack of jurisdiction.

² The Seventh Circuit Court of Appeals is not included in the District Court's mandate to use the E-File system.

Reasons for granting the Petition

In **Buck v. Davis, 137 S. Ct. 759, 773, 197 L. Ed. 2d 1 (2017)**, this court held that Court of Appeal cannot address the merit of the issue when denying a certificate of appeal ability. In this case, the Seventh Circuit of Appeals ruled on the merits of the issue when dismissing the appeal. This directly contravenes rah' male in Buck v. Davis.

Rule 60 (b) permits the district courts to set aside its judgment when a petitioner demonstrates extraordinary circumstances that warrant relief. It also permits relief when a party commits fraud upon the court.

The Senior Deputy Attorney General, David A. Arthur, has provided Rhoton with an admission that prison officials did not deliver the denial of his Petition for a Writ of Habeas Corpus for 7 months. This fact was contested during the initial attempt to appeal and during the application for a writ of certiorari to this Court. Thus, the admission is new evidence that the State's attorney has deliberately presented a false argument to the courts, i.e., fraud.

The Seventh Circuit Court of Appeals decision that "Rule 60 (b) cannot be used to enlarge the time for appeal" is a ruling on the merits without proper briefing.

The cited cases are readily distinguishable from the facts of this case, Rhoton is not aware of any case where the prisoner's only communication with the court is through the adverse party. Rhoton believes these facts constitute extraordinary circumstance to warrant relief under Rule 60 (b).

Essentially, the Seventh Circuit Court of appeals indicated that his failure to file a timely Notice of Appeal prevented him from appealing.

Mr. Rhoton alleges the District Court's ORDER sets a dangerous precedent that substantially impacts a prisoner's right to access to the court and meaningful review. The District Court's MANDATING the use of E-Filing gives prison authorities complete control over a prisoner's ability to communicate with the courts. Prisoner officials are an adverse party to the vast majority of the filings in the District Court. Rhoton notes that the Warden is the named Respondent in this action. Most civil matters filed in the District Court are also related to the prisoner's conditions of confinement or incidents arising from their incarceration. Thus, prison officials have a direct, conflicting interest in promptly notifying prisoners of the court rulings or facilitating filings to meet scheduled deadlines.

In this particular case, Rhoton was prevented from seeking an appeal because the prison's legal librarian waited 7 months to notify him of the court's ruling. Rhoton's failure to timely file a Notice of appeal was due to circumstances beyond his control and such extraordinary circumstances should allow Rhoton's appeal to proceed. See e.g., *Maples v. Thomas*, 132 S. Ct. 912 (2012) (finding excuse to excuse a missed notice of appeal deadline sufficient to overcome procedural default and to allow the claims to proceed). In fact, Rhoton's failure to timely file a Notice of Appeal was based upon governmental interference, i.e., an agent of the court, who also serves as an agent of the adverse party, failed to notify Rhoton of the denial for 7 months. Rhoton constantly sought updates on the status of his case. The prison's legal librarian would not provide them.

If this Court does not intervene regarding such practices, prison officials will garner unfettered control over a prisoner's access to the court's. Prison legal librarians are not neutral parties. They serve at the discretion of the Warden. They are loyal to the Warden because their livelihoods depend upon it. This conflict of interest presents a significant problem.

They adverse party has a vested interest in a prisoner's failing to meet deadlines. Failing to meet deadlines causes cases to be dismissed. Therefore, prisons across the United States can shield themselves from civil litigation and effectively prevent prisoners from seeking federal relief regarding their criminal cases simply failing to notify prisoners of the Court's orders. This case proves just that.

Such unfettered control over a prisoner's access to the court's will undoubtedly cause prison conditions to regress to the time of intolerable and inhumane conditions, overcrowdings, and a complete denial of human rights. After all, there can be no court interference if E-file request are not filled. There can be no court interference if cases are dismissed on technical grounds because prisoners were not notified of court orders and cannot access the docket. There can be no court interference when a prisoner cannot even send a letter to the court because all communication with the court must route through the E-File system, which can be screened to cover-up malfeasance.

Even if the E-File mandate is not rescinded by this Court, an exception should be carved out in exceptions as this one. The fault for Rhoton's failure to timely file his Notice of Appeal and Request for a Certificate of Appealability, and related documents result wholly from the

prison's legal librarian's failure to notify him of the order. And the Court appointed the Prison's legal librarian's as the gatekeepers to the court. It is fundamentally unfair and violates due process principles for a court to provide an impediment and then fault the prisoner. This Court should intervene before such practices become rampant across the U.S.

CONCLUSION

This case presents issues of national importance, which are appropriately decided by this Court. Mr. Rhoton implores this Court to grant certiorari and to set a clear and unequivocal precedent that prohibits the Circuit Courts from violating the axiomatic, bedrock principles of the American judicial system. Otherwise, a prisoner's fundamental right to seek redress of grievance through the court will erode beyond recognition. Left unchecked, the most basic rights of prisoners will disappear, and cruel and unusual punishment will, once again, become the norm.

The petition for writ of certiorari should be granted.

Respectfully submitted,

Glendal Rhoton
Glendal Rhoton

Date: _____