19-7162

ORIGINAL

Docket No.: (*to be assigned*)

In the
SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 2019

CARLOS JUAN NEGRON, *Petitioner*,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA, *Respondent*,

---

On Petition for a Writ of Certiorari to the United State Court of Appeals for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

Carlos Juan Negron, *pro se*
DC No.: U37664
Holmes Correctional Institution
3142 Thomas Drive
Bonifay, Fl. 32425

December 2019

QUESTIONS PRESENTED

1. Whether a document when placed in the hands of prison officials hands for mailing pursuant to Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988) is considered properly filed even if ample time has passed from its initial filing.

PARTIES WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED AND CORPORATE DISCLOSURE STATEMENT

PLEASE TAKE NOTICE, Petitioner states that the following trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations, those persons also having an interest in the outcome of the case are as follows:

- Bass, Hugh, Esq., Assistant State Attorney
- Block, Susan H., Judge, Eleventh Circuit Judge, Florida
- Bondi, Pamela J., Former Elected Attorney General, State of Florida
- Briggs, Don F., Judge, Fifth Judicial Circuit Court, State of Florida
- Carranza, Morris, Esq., Assistant Public Defender
- Coffman, Paula C., Esq., Attorney
- Cohen, Jay P., Judge, Fifth District Court of Appeals, State of Florida
- Compton, Robin A., Esq., Assistant Attorney General
- Evander, Kerry I., Chief Judge, Fifth District Court of Appeals, State of Florida
- Griffin, Jacqueline R., Retired Judge, Fifth District Court of Appeals, State of Florida
- Hodges, Terrel Wm., Senior Judge, U.S. District Court of Appeals, State of Florida
- Hull, Frank M., Judge, Eleventh Circuit Judge, Florida
- Jacobus, Bruce W., Judge, Fifth District Court of Appeals, State of Florida
- Johnson, Michael T., Judge, Fifth Judicial Circuit Court, State of Florida

- Lammens, Philip R., Magistrate Judge U.S. District Court of Appeals, State of Florida
- Lawson, Alan C., Retired Judge, Fifth District Court of Appeals, State of Florida
- Marcus, Stanley, Judge, Eleventh Circuit, Florida
- McCollum, Bill, Former Elected Attorney General, State of Florida
- Moody, Ashley B., Elected Attorney General, State of Florida
- Orfinger, Richard B., Judge, Fifth District Court of Appeals, State of Florida
- Palmer, William D., Retired Judge, Fifth District Court of Appeals, State of Florida
- Phillips, Ann, Esq., Assistant Attorney General
- Sawaya, Thomas D., Retired Judge, Fifth District Court of Appeals, State of Florida
- Tatman, Kaylee, Esq., Assistant Attorney General
- Tijoflat, Gerald Bard, Judge, Eleventh Circuit Judge, Florida
- Wildridge, Robert E., Esq. Assistant Public Defender
- Wilson, Charles R., Judge, Eleventh Circuit Judge, Florida

I hereby certify that no publicly traded company or corporation or that there is any corporation that owns 10% or any amount of stock is a party or has an interest in the outcome of the instant case.

TABLE OF CONTENTS

QUESTIONS PRESENTED....ii

PARTIES WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED AND CORPORATE DISCLOSURE STATEMENT....iii

TABLE OF AUTHORITIES....v

PETITION FOR WRIT OF CERTIORARI....1

CITATION TO OPINIONS....1

STATEMENT OF THE BASIS FOR JURISDICTION....1

STATEMENT....2

REASONS FOR GRANTING THE PETITION....5

CONCLUSION....12

APPENDIX....13

CERTIFICATE OF COMPLIANCE....14

CERTIFICATE OF SERVICE....14

TABLE OF AUTHORITIES

Cases

Adams v. United States, 173 F.3d 1339 (11th Cir. 1999) 7

Boog v. McDougall, 454 U.S. 363 (1982) 10

Doe v. Busby, 661 F.3d 1001, 1015 (9th Cir. 2011) 11

Garvey v. Vaugh, 993 F.2d 776, 780-783 (11th Cir. 1993) 6

Griffin v. Sistuenck, 816 So.2d 600 (Fla. 2002) 7

Houston v. Lack, 487 U.S. 266 (1998) 6

Negron v. Sec'y Fla. Dept. of Corr., Case No.: 5:13-cv-126-Oc-10PRL (Mid. Dist. Fla. April, 25, 2019) 1

Negron v. Sec'y Fla. Dept. of Corr., No.: 19-11057-F (11th Cir. August 8, 2019) 1

Negron v. Sec'y Fla. Dept. of Corr., No.: 19-11057-F (11th Cir. October 2, 2019) 1

Negron v. State, 56 So.3d 22 (Fla. 5th DCA 2011) 4

Washington v. United States, 243 F.3d 1299, 1301 (11th Cir. 2001) 7

Williams v. McNeil, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009) 7

Treatises

28 U.S.C. § 1254 2

Regulations

Florida Administrative Code Title 33-501.301(3)(d) 10

IN THE SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 2019

CARLOS JUAN NEGRON, *Petitioner*,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA, *Respondent*,

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The Petitioner, Carlos Juan Negron, *pro se*, respectfully petitions for a writ of certiorari to review the judgment of the United State Court of Appeals for the Eleventh Circuit in this case.

CITATION TO OPINIONS

The decision of the United States Court of Appeals for the Eleventh Circuit is reported at Negron v. Sec'y Fla. Dept. of Corr., No.: 19-11057-F (11th Cir. August 8, 2019). (Appx. A). The decision of the United States District Court for the Middle District is reported at Negron v. Sec'y Fla. Dept. of Corr., Case No.: 5:13-cv-126-Oc-10PRL (Mid. Dist. Fla. April, 25, 2019). (Appx. C). The denial by the United States Court of Appeals for the Eleventh Circuit of a motion for reconsideration is reported at Negron v. Sec'y Fla. Dept. of Corr., No.: 19-11057-F (11th Cir. October 2, 2019). (Appx. B).

STATEMENT OF THE BASIS FOR JURISDICTION

The United States District Court for the Middle District entered its judgment on April 24, 2019 (Appx. C). The United States Court of Appeals for the Eleventh Circuit denied certificate of appealability on August 8, 2019. (Appx. A). The United States Court of Appeals for the Eleventh Circuit further denied a Motion for Reconsideration on October 2, 2019. (Appx. B). The time seeking review expires on Tuesday, December 31, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATEMENT

The following is a concise statement of the facts material to the consideration of the questions presented. The review follows denial of review from the Florida Supreme Court subsequent to a *per curiam* affirmed written opinion.

A. Proceedings Below

The Petitioner filed a Petition for Writ of Habeas Corpus, Title 28 U.S.C. § 2254, on March 7, 2013 in the Middle District Court of Florida, Ocala Division (Middle Dist. Ct.).

The Middle Dist. Ct. issued a show cause order to the Respondent pursuant to Rules 4, 5, and 11, rules governing Sec. 2254 cases in the U.S. District Courts.

The Respondent's electronically filed a response (answer) to the Petitioner's Habeas Corpus on May 14, 2013.

The Respondent's response asserted that the Petitioner's § 2254 petition was untimely filed and should be dismissed with prejudice with summary judgment granted for the Respondents. The Petitioner filed a reply on June 7, 2013.

The Middle Dist. Ct. Honorable Terrel Hodges entered a final order on October 10, 2014 dismissing the Petitioner's § 2254 as untimely. The judgment was entered in the same day.

Following a successful motion for enlargement of time the Petitioner entered a Motion to Alter or Amend Judgment on November 17, 2014. Which was then later denied on December 8, 2014.

The Petitioner then filed on January 12, 2015 a Motion for Certificate of Appealability. This motion was later denied and declined to issue a COA.

The Eleventh Circuit Court granted a Certificate of Appealability but ultimately affirmed the U.S. District Court's dismissal on February 23, 2016. The United States Supreme Court denied certiorari review.

On January 14, 2019 the Petitioner moved for Relief from Judgment or Order pursuant to Fed. R. Civ. P. Rule 60(b). Petitioner moved for appeal of the Court's denial of his motion for relief from judgment. The Middle District Court Clerk construed this as a Certificate of Appealability.

The Middle Dist. Ct. denied the interpreted Certificate of Appealability and Motion for Leave to Proceed on Appeal as a Pauper on April 24, 2019.

On April 25, 2019 the Eleventh Circuit received notice that an issue of a Certificate of Appealability and leave to proceed on appeal in forma pauperis was denied, giving the Petitioner thirty days to file a COA.

The Petitioner filed a Certificate of Appealability on ... . The United States Court of Appeals for the Eleventh Circuit entered an order denying said petition on August 8, 2019. The Petitioner timely filed a motion for reconsideration, but said motion was denied on October 2, 2019.

B. Timeliness of Federal Habeas Petition

The Middle Dist. Ct. made the determination in it's order denying Petitioner's 28 U.S.C. § 2254 that it was entered after the effective date of the Antiterrorism and Effective Death Penalty Act (AEDPA).

May 16, 2011 was the date on which the Petitioner's judgment and sentence became final, following the period upon which expiration of the time seeking certiorari review of the affirmance in the Petitioner's direct appeal.[1]

Following the conclusion of direct review, the Petitioner filed in the lower State court on August 25, 2011 his first *pro se* Fla. R. Crim. P. 3.800(a) Motion to Correct Illegal Sentence.

One-hundred and one (101) days transpired at this point.

The Petitioner having not received a ruling on his first Fla. R. Crim. P. 3.800(a) motion filed in the same lower State court on October 26, 2011 a second Fla. R. Crim. P. 3.800(a) Motion to Correct Illegal Sentence. This was later denied

[1] Negron v. State, 56 So.3d 22 (Fla. 5th DCA 2011)

on November 1, 2011. An appeal was taken to the lower State appellate court which was denied by mandate on March 29, 2012.

The Petitioner on August 16, 2012 filed a *pro se* "Motion for Subject Matter Jurisdiction Post Conviction Relief" pursuant to Fla. R. Crim. P. 3.850(a) & (b). Which was appealed to the lower State appellate court and denied on January 25, 2013. On March 7, 2013 the Petitioner filed his first § 2254 Writ of Habeas Corpus petition.

The Middle Dist. Ct. makes no notice of the argument presented by the Petitioner in either his reply to his § 2254 response or in his Motion for Relief from Judgment or Order as it relates to the time being tolled by his August 25, 2011 Fla. R. Crim. P. 3.800(a) Motion to Correct Illegal Sentence. This Motion was date stamped by officials at Gulf Correctional Institution.

The Petitioner filed a second *pro se* Motion to Correct Illegal Sentence on October 26, 2011. Though neither the Respondent nor the Middle Dist. Ct. made any notice as to his August 25, 2011 Motion to Correct Illegal Sentence which was not ruled on until July 17, 2017.

REASONS FOR GRANTING THE PETITION

In arriving to its conclusion, the United States Court of Appeals for the Eleventh Circuit decided that the Petitioner's Writ of Habeas Corpus § 2254 was untimely. Though they took into consideration the filing of the Petitioner's Fla. R. Crim. P. Rule 3.800(a) Motion to Correct Illegal Sentence, it did not decide that this

was imperative to the decision of timeliness as to the petition itself due to the longevity of time since its filing and when it was mentioned by Petitioner.

I. The United States Court of Appeals for the Eleventh Circuit denial went contrary to the holding of Houston v. Lack, 487 U.S. 266 (1998) when it decided that even though the petition was stamped, ample time passed since it's filing that it had no merit as to the tolling principles

Pro se prisoners are a particular class of criminal litigants in that they are at a unique disadvantage. They are unable to visit the courthouse and determine the status of their filings, browse online electronic dockets, they cannot utilize a private express carrier, and they cannot place a telephone call to ascertain whether a document mailed for filing arrived. Oftentimes they are forced to rely on third parties to verify the status of their filings and this is not the case for all *pro se* prisoner's, as everyone does not have such ability to do so. They lack the safeguards available to other litigants that ensure that their court filings are timely, more importantly, they often do not have counsel to really monitor the filing process. Thus when an inmate places a document in the hands of prison officials, he is forced to rely and entrust that his court filings will arrive as mailed. To entrust in a process he often has no control over. *See* Garvey v. Vaugh, 993 F.2d 776, 780-783 (11th Cir. 1993). Oftentimes, either failures of the institutional mail channels, postal service, or other miscellaneous bars may get in the way of a court filing actually finding its way to the court. Thus it was in Houston v. Lack, 487 U.S. 266 (1998) that this Court announced that absent evidence to the contrary, it must be assumed that a prisoner delivered a filing to prison authorities on the date that he signed it,

and the burden is on the government to prove the filing was delivered to prison authorities on a date other than the date the prisoner signed it. This is designed to provide *pro se* litigant prisoner's the ability to ensure that their filings are timely when mailed.

The Petitioner had diligently pursued his available post-conviction and appellate rights in the lower State court. The State of Florida and the Eleventh Circuit recognize that "[U]nder the prison mailbox rule, a *pro se* prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." Williams v. McNeil, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009); Griffin v. Sistuenck, 816 So.2d 600 (Fla. 2002) (date of service in prisoner's certificate of service was used as the filing date. *See* Fed. R. App. 4(c)(1) ("If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing."). Unless there is evidence to the contrary, like prison logs or other records, a prisoner's motion is deemed delivered to prison authorities on the day he signed it. *See* Washington v. United States, 243 F.3d 1299, 1301 (11th Cir. 2001); Adams v. United States, 173 F.3d 1339 (11th Cir. 1999) (prisoner's pleading is deemed filed when executed and delivered to prison authorities for mailing); Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988). The Respondent at no time presented records to indicate that his filing never took place. Instead the argument relied on was that ample time had passed until the Petitioner asserted that the motion was filed.

> "Although he included a copy of the Rule 3.800 motion, stamped by prison officials as being received on August 25, 2011, he did not discover that it was never mailed until six years later, and, upon discovering the error, waited nearly two years before brining it to the district court's attention by filing his Rule 60(b) motion."

(Appx. A).

However, shifting the blame and the burden onto the Petitioner is improper and thus incorrect. Review of the record in this case will reveal two orders denying Motions to Correct Illegal Sentence. However, the second of these orders upon cursory inspection, will reveal that the tile of the order is in error and that the order actually denies relief on Petitioner's "Motion for Subject Matter Jurisdiction Post Conviction Relief." There is no order denying the Petitioner's first Motion to Correct Illegal Sentence. The date stamp on that particular motion clearly indicates it's filing on August 25, 2011. The Middle District Court never reached the merits of his petition and thus disallowed him a review of his substantial constitutional claims. This was not a motion that was necessarily absent, rather, this was a motion followed with court orders that was contained in the record itself. So it does not fall on the Petitioner to assert that his motion tolled the time to file his Federal Habeas, as all that was required from the Petitioner was to assert that the filing of his § 2254 Federal Habeas Corpus was timely, which was correct. For the Eleventh Circuit Court of Appeals to then return and state that it was on the Petitioner for not asserting early on in the litigation of the petition that it was tolled due to the Motion to Correct Illegal Sentence is improper, since they had a copy of the record

itself and could see that their was a confusion as to the issue and that the actual motion to correct illegal sentence was not ruled on.

What is more, upon the filing of the Petitioner's first § 2254 Writ of Habeas Corpus on March 7, 2013 only one hundred and one (101) days have transpired and the time allotted under AEDPA has not expired. It wasn't until July 17, 2017 that the Petitioner's Motion to Correct Illegal Sentence filed on August 25, 2011, was denied. This resulted in his March 7, 2013 filing to be *timely filed* and thus not procedurally barred.

II. The Decision of the United States Court of Appeals is Erroneous

The conclusion by the lower federal appellate court goes contrary to the facts established, and goes contrary to the precedent held in Houston v. Lack. The decision attempts to shift the burden to the Petitioner in not asserting that his petition was timely in initial litigation, but the burden is not on the Petitioner. The Eleventh Circuit Court of Appeals states further:

> "Moreover, other than a language barrier, he offers no explanation for this delay. Thus, Rule 60(b) relief was unavailable because he did not act diligently in pursuing review of the issue sooner."

(Appx. A).

The Petitioner is a *pro se* incarcerated litigant that aside from being unskilled and without knowledge as to the particularities of law is at a substantial disadvantage due to his incomprehension of the English language and low education. This provides a substantial hurdle before him that would in turn defeat the fairness and justice afforded to all pro se litigants. He's both unable and

incapable of affording the consultation of an attorney that is bilingual to assist him in his pleadings, nor are there a bevy of inmates that are knowledgeable or situated as prison law clerks that are bilingual to assist him. Thus the Petitioner is at an inconvenience to quote proper legal authority, is more apt to confuse various legal theories, this is followed by his inability to create proper sentences and syntax to conform with the precision required in many pleadings. *See e.g.* Boog v. McDougall, 454 U.S. 363 (1982). The six year period that transpired is premised not only on him relying on institutional law clerks but also coupled with the fact that correctional institutions do not always specifically provide legal material or research items in the Spanish language. Furthermore, although Florida Administrative Code Title 33-501.301(3)(d) provides "interpreters for any language, other than English, that is native to five percent or more of the statewide inmate population," this does not necessarily mean that it is provided considering the gravity of the position needed. Nor does Title 33-501.301 in any section list the provisions of inmate law clerks that are bilingual or bilingual legal material. The Petitioner is left to his own devices and forced to rely on the advice and rumor mongering of inmates as to the time it takes pleadings to be heard. He is unable, comparable to other inmates, to research material at the institutional library and determine for him the necessary time frame or when that time becomes excessive. The Petitioner was left to file inarticulate pleadings based on the pidgin assistance of various individuals that due to a language barrier were left sidetracked. "The standard for reasonable diligence does not require an overzealous or extreme pursuit of any and every avenue of

relief. It requires the effort that a reasonable person might be expected to deliver under his or her particular circumstances." Doe v. Busby, 661 F.3d 1001, 1015 (9th Cir. 2011). Though, the particular issue is mainly that this motion was filed, as indicated by the stamp and time, it is not that this motion was not brought to the attention of the court as it can be attributed to excusable neglect.

Careful review of the record would have indicated that the date of denial and the nature of the denial were such that his ensuing federal habeas corpus filing was timely on his motion to correct illegal sentence. Thus when his federal habeas petition was filed, he asserted correctly that it was timely as his federal time was adequately tolled. The Petitioner does not have the same training or functionality of an attorney or paralegal, and the limitations based on his knowledge of law impacted his ability to properly litigate and advance notice of this motion having tolled the time. Moreover, the Petitioner's first language is Spanish and he is thus forced to rely on ill-equipped and poorly trained institutional law clerks for the preparation of his filings, when so far as one appears that is capable of translating and speaking with him to continue such filings. The government did not meet its burden at any time to state that the timeliness of the petition was inaccurate since the motion did not toll the time, nor did it even seek to acknowledge the argument until the United States Court of Appeals for Eleventh Circuit touched upon it to notice it's "staleness." The petition was timely and properly filed and should warrant consideration and federal review.