

No. 19-7276

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

KETUT PUJAYASA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

KETUT PUJAYASA, Pro Se
FCI Beaumont Medium
Reg. No. 04876-104
P.O. Box 26040
Beaumont, Tx 77720

QUESTION PRESENTED FOR REVIEW

Mr. Ketut Pujiyasa contends that he is entitled to relief pursuant to Rule 4(a)(6), to reopen time to file an appeal. He filed his motion to reopen time to appeal on February 20, 2019, with a certified mail No.: 700 3090 0003 3372 3195, together with a Notice of Appeal. In finding, the Eleventh circuit and the District Court, however, concluded that Mr. Pujiyasa's Rule 4(a)(6) motion was filed late and did not apply a special rule for a pro se prisoner litigant. It, instead, applied the usual rule and considered that Mr. Pujiyasa's document was sent the day it was received by the court. The document was received on March 7, 2019, but it was given to the prison official, Mr. T. Pille [the unit P-A's Counselor] on February 20, 2019. The Appellate and District Court's reliance upon the date the document was received, and not when it was sent or given to the prison official, is grossly prejudicial to Mr. Pujiyasa as a pro se prisoner litigant. The case thus presents the following question:

(1) Did the District Court and Appellate Court err in concluding that Mr. Pujiyasa's Rule 4(a)(6) motion, which was sent on February 20, 2019, and in timely manner, was too late and counting the date when it was received, instead the date when it was sent, as the basis of its conclusion?

LIST OF PARTIES

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

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

The Petitioner, Mr. Pujoyasa, Pro Se and respectfully Prays that a Writ Certiorari issue to review the Judgment and Opinion of the Eleventh Circuit Court of Appeals, rendered in this Proceedings on 09/03/2019

OPINION BELOW

The Eleventh circuit Court of Appeals dismissed the appeal for denial of "Motion to Re-Open Time to File Appeal for Return of Pro-Party", Cause No. 19-10896-E. The opinion is published, and is provided a copy of it in the Appendix to this Petition at Page 1a, infra.

JURISDICTION

The original opinion of the Eleventh circuit Court of Appeals was entered on October 3, 2019.

The Jurisdiction of this Court is invoked in 28 U.S.C. § 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The XIV Amendments to the U.S. Constitution provides, in pertinent part, that "No State shall make or enforce any law which shall abridge the Privileges or Immunities of Citizens of the United States; nor shall any State deprive any Person of Life, Liberty, or Property, without due Process of Law; nor deny to any Person within its Jurisdiction the equal protection of Laws.

STATEMENT OF THE CASE

Mr. Pujiyasa is an alien inmate who his criminal case in the District Court and Appellate Court is done, but all his property that was held by the authority was never given back to him. During his arrest, all his properties were seized by the authority as evidence in his case. Yet, none of his property was seized is part of his crime or contraband. Neither it was result from robbery or stolen. And, most importantly, there was no forfeiture form, no forfeiture proceeding, and no forfeiture order was ever issued.

After his sentence and during his appeal, Mr. Pujiyasa had requested to his lawyers, in ~~the~~ numerous times, that to request to the authority to release his property. His appellate's counsel insist that he will be given back his property when his appeal is over. One of appellate counsel's statement is docketed in the Eleventh Circuit. She stated that "she will try to get Mr. Pujiyasa's property back . . ." Appendix 4a

After his appeal was affirmed, Ms. ~~the~~ Gail M. Stage, his appellate counsel told him that she is no longer his lawyer and her office no longer represent Mr. Pujiyasa in any proceeding.

On 04/20/2018, despite of his struggle with communication, language problem and his ignorance of law, Mr. Pujiyasa filed his initial motion for return of his property to the sentencing court. Because he was in transfer status, he was worry that if the court send some mail to him during his transfer it would not be able to reach him, so, he filed a motion to the same court to send a copy a re-mail, recent, and future mail to Indonesian consulate on 05/01/2018 which was finally denied on 05/17/2018, which where he never received a copy of the denial or the judgment.

On 5/15/2018, Mr. Ketut Pujiyasa's Notice of Change of Address was docketed in the District Court. Based on its docket sheet, on 05/12/2018, dock. # 98, there was a document filed by the government, but Mr. Pujiyasa was not provided with a copy of the said document. And, on 07/12/2018,² based on the docket sheet, dock. # 28 and # 29 there were two ~~the~~ times the document addressed to Mr. Pujiyasa were undelivered. It was due to, based on the docket sheet record (Appendix 5a), the mistake of the clerk who put

the wrong address despite of Mr. Pujayaga's Notice of Change of Address had entered the court file away before it. Instead of FCI Beaumont Medium P.O. Box 26040, Beaumont, Texas 77720, the clerk put 5830 KNAUTH ROAD BEAUMONT, TX 77705 as Mr. Pujayaga's address. It is unclear that where the clerk got that fictitious address and how it came out with that address?

On 10/18/2018, Mr. Pujayaga's letter to the clerk requesting a copy of his docket sheet was docketed in the District Court file. And on February 8, 2019 he received his docket sheet. It revealed that his motion was denied on 10/19/2018, but, again, the clerk never provided Mr. Pujayaga with a copy of the denial or any notification of the denial.

Mr. Pujayaga is an indigent pro se litigant who has no ability to know directly what was going on and what has been filed to the court by the opposing party or by the court itself unless the clerk of the court fairly give him any notification or a copy of the document been filed.

On March 7, 2019, Mr. Pujayaga's motion to reopen time to appeal and its Notice of Appeal was docketed to the sentencing court. The said document was actually sent on February 20, 2019. See Appendix 3a, (Certificate of Service). The court denied its motion but, again, Mr. Pujayaga was not provided any copy of the denial. Nor any notification was furnished on his behalf. On 08/02/2019, the Eleventh Circuit issued an order to remand the case back to the District Court. Again, it was denied after remanded. Then, on 09/03/2019, the Eleventh Circuit dismissed the appeal concluding that Mr. Pujayaga motion and its Notice of Appeal was too late. In making its conclusion, the Eleventh Circuit relied on the date the document was received by the court and disregard the fact, supported by sworn document (Certificate of Service), that the said document was sent on February 20, 2019, and in timely manner.

REASON FOR GRANTING THE WRIT

Unfair Treatment Of The District Court to a Pro Se Prisoner Litigant and The Eleventh Circuit's Reliance on The Date Of Documents Were Received and Disregarded the Facts that When The Documents Were Sent Warrant This Court Attention.

This case presents the Court with opportunity to clarify that whether Equal Protection of Laws is applied to every body, including to an alien pro se prisoner and how is time deadline in federal court proceeding is computed and calculated. Especially, in this case, the petitioner is a pro se litigant and an alien who did everything that he can, in spite of all the obstacles he had, to litigate his case and to get what he is entitled to, such as a copy of every document that been filed to the court by opposing party and any judgment or order been issued by the court. Is he entitled of equal protection of laws and how his time deadline to file Rule 4(b)(6) motion and its Notice of Appeal should be computed and calculated are the main issues here. It appears that when an alien pro se litigant treated unfairly, [the clerk of the court did not provide him with a copy of all documents he is entitled to such as any document been filed by opposing party and any judgment or denial or order issued by the court as well as any notification of it been filed or issued], and when a district court and Appellate Court concluded that a document from a pro se prisoner ~~is~~ was too late because it was received after the time deadline was over, even though the facts show that the document was sent days before the time deadline was over, those holding are in contrary with this Court holdings.

First, the XIV Amendment's equal protection of laws clause is applied to everybody, including to the petitioner in this case. *Plyler v. Doe*, 457 U.S. 202, 72 L. Ed. 2d 786, 102 S. Ct. 2382 (1982) (The 14th Amendment's equal protection clause extends to anyone, citizen or alien, who is subject to the laws of the state). Here, Mr. Pujadas is an alien pro se petitioner who had been sentenced and all his appeal are done, tried to litigate his case, to get his property back, is subject to the law of United States. He was never provided a copy of some documents that

he is entitled to, by the Clerk of the Court. He tried to request to the court that to send a copy of any letter from the court pertaining to his case to his Consulate in Houston, Texas, it just in case the letters could not reach him for reason that he was in transfer or any other reason. But, such request was denied despite of extraordinary circumstance exists in this case that could warrant such request.

in this case, Mr. Pujarasa is entitled to get his property back. There was no forfeiture proceeding been held and no forfeiture order was issued. Also, all his criminal proceeding and appeals been decided. Most importantly, his property is not contraband and not part of his criminal activity or not result from stolen or robbery act. Thus, he is entitled of due process of law before he forfeit his non contraband property. The forfeiture of his property without any due process of law and unfair treatment from the Clerk of the court who failed to provide Mr. Pujarasa with all documents he is entitled to are violations of equal protection of laws of XIV Amendment.

Secondly, the District Court and Appellate Court's conclusion that Mr. Pujarasa Rule 4(b)(6) motion and Notice of Appeals was too late because it was received after the time deadline was over, but thus disregarded the facts that Mr. Pujarasa sent the documents days before the time deadline was over, is in contrary with this Court holdings.

As given the circumstances that a pro se prisoner litigant is so vulnerable and have no similar ability to access to the electronic ways to prepare and to send its documents to the court, as to the formal lawyer and other person outside of the prison, the Rule 6, Fed. R. Civ. P., sets out the rules for calculating time deadlines in federal district court—when a party must file a motion, respond to a motion, etc.. Generally, the day of the deadlines is counted, but the day of the event that starts the time running does not get counted. Fed. R. Civ. P., Rule 6(a)(1)(A, C). If the party is a pro se [prisoner] litigant and is served on by mail to respond something, the pro se party get an additional three days. Fed. R. Civ. P., Rule 6(b)(4). For matters pertaining to appeal, such in this case, there are similar rules in Rule 26 of the Federal Rules of Appellate procedure. And it should be applied in this case too.

There is a special rule for pro se litigants who file legal papers by mail. This court held that a pro se prisoner's Notice of Appeal is deemed filed on the day it is delivered for mailing to prison authorities, rather than, applying the usual rule that it is filed the day it arrives at court, since the litigant loses control over the notice as soon as he turns it over to the prison personnel. *Houston v. Lack*, 487 U.S. 266, 273-76, 108 S.Ct. 2379 (1988); *Stoot v. Cain*, 570 F.3d 669, 671-72 (5th cir. 2009). The lower courts, federal courts, have generally applied this "prison mailbox" rule to other civil litigation deadlines as well, including the filing of complaint. The courts have applied this rule to civil detainees as well as persons under criminal confinement. See, e.g., *Jones v. Blanas*, 393 F.3d 918, 926 (9th cir. 2004).

The Federal Rules of Appellate Procedure explicitly spell out what is necessary to get benefit of the prison mailbox Rule. Rule 4(c)(1), Fed. R. App. P. And this requirements should be applied to other documents. *Douglas v. Noelle*, 567 F.3d 1103, 1108-09 (9th cir. 2009); *Price v. Philpot*, 420 F.3d 1158, 1164-65 (10th cir. 2005). Here, the petitioner expect to the same, the court would hold that his document be considered filed as of the day (date) he gave to his unit counselor, Mr. T. Pike.

Rule 4(c)(1), Fed. R. App. P., provides that a prisoner must also submit a Certificate of Service for its declaration or statement indicating when the document was put into the prison mail system or given to the official. *Davis v. Woodford*, 446 F.3d 957, 960 (9th cir. 2006); *United States v. Ceballos-Martinez*, 371 F.3d 713, 715-18 (10th cir. 2004); *Grady v. United States*, 269 F.3d 913, 918 (8th cir. 2001).

As here, in this case, Mr. Puayasa sent his Rule 4(c)(6) Motion with a certified mail number 7010 3090 0003 3372 3195. See Appendix 3a. He, also, included a Certificate of Service, a sworn statement, that indicate when he handed the said documents to the prison official, (he handed the documents to Mr. T. Pike, his unit counselor, days before his time deadline was over). Thus, the District Court and Appellate Court's reliance on the date of the documents were received, instead of the date of documents were sent, is contrary with holding in this Court.

CONCLUSION

For these reasons, Petitioner asks that this Honorable Court grant a writ Certiorari and review the Judgment of the Court of Appeals.

Respectfully submitted,



Ketut Puayasa, Pro se

04876-104

FCI Beaumont Medium

P.O. Box 26040

Beaumont, TX 77720

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