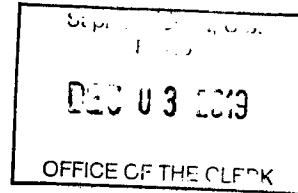


No. 19A614

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Embery J. McBride,  
PETITIONER,



V.  
WALTER BEERY, WARDEN  
RESPONDENT,

MOTION FOR EXTENSION OF TIME

COMES NOW PETITIONER Embery J. McBride, MOVES THIS HONORABLE COURT PURSUANT TO SUPREME COURT RULES 13.5, 21, 22, 30 AND 33.2, by filing THIS INSTANT MOTION FOR EXTENSION OF TIME.

PETITIONER HAS VERY GOOD CAUSE FOR FILING SUCH A MOTION, THEY ARE AS FOLLOWS TO WIT:

(1)

PETITIONER IS CURRENTLY INCARCERATED AT AUSTIN STATE PRISON P.O. BOX 648 DELHAM, GEORGIA 31779.

## LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

THE CAPTION OF THE CASE CONTAINS THE NAMES OF ALL THE PARTIES. NO CORPORATIONS ARE INVOLVED.

## JURISDICTIONAL STATEMENT

THE JUDGMENT OF THE ELEVENTH CIRCUIT WAS ENTERED ON JUNE 20<sup>TH</sup> 2019, AND THE MOTION FOR RECONSIDERATION WAS DENIED ON SEPTEMBER 10<sup>TH</sup> 2019. THE JURISDICTION OF THIS COURT TO REVIEW THE JUDGMENT OF THE ELEVENTH CIRCUIT COURT OF APPEALS IS INVOKED UNDER 28 U.S.C. § 1254.

2).

PETITIONER IS PROCEEDING IN THIS MATTER IN PROPRIA PERSONA,

3).

PETITIONER ASSERTS THAT IT IS UNDERSTOOD THAT A MOTION OR APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF HABEAS CORPUS IS NOT FAVORED, RULE 13.5,

4).

PETITIONER WAS RELUCTANT TO EVEN FILE THIS MOTION, BUT PETITIONER HAD NO OTHER ALTERNATIVE,

5).

PETITIONER ASSERTS ABOUT THREE TO FOUR MONTHS AGO, ARIZONA STATE PRISON STOPPED ISSUING OUT CARBON PAPER PERIOD, DESPITE THE FACT THAT THE STANDARD OPERATING PROCEDURE (S.O.P.) TO ACCESS TO COURT SPECIFICALLY STATES IN PART: "CARBON PAPER IS TO BE ISSUED."

6).

PETITIONER ASSERTS THAT ARIZONA STATE PRISON DOES NOT MAKE COPIES OF PETITIONER LEGAL DOCUMENTS OR PLEADINGS PERIOD,

7).

PETITIONER ASSERTS ON NOVEMBER 4<sup>th</sup> 2019,  
PETITIONER TOOK THE PETITION FOR A WRIT OF  
CERTIORARI IN A MANILA ENVELOPE OPENED TO THE  
MAILROOM, PER S.O.P 227.06 PAGE 9 OF 18 (Axi)

8).

PETITIONER ASSERTS ON NOVEMBER 4<sup>th</sup> 2019,  
PETITIONER ALLOWED ONE OF THE MAILROOM  
PERSONNEL TO OBSERVE THE PETITION FOR A  
WRIT OF CERTIORARI TO GIVE ITS APPROVAL TO  
MAIL IT OUT AND HAVE COPIES MADE,

9).

PETITIONER ASSERTS ON NOVEMBER 4<sup>th</sup> 2019, THE  
MAILROOM PERSONNEL APPROVED IT AFTER  
OBSERVING THE PETITION, THE MAILROOM  
PERSONNEL WEIGHED IT, AFTERWARDS PETITIONER  
SEALED IT, PLACED THE NECESSARY POSTAGE  
AND MAILED IT OUT,

10).

PETITIONER ASSERTS THAT THE PETITION FOR A  
WRIT OF CERTIORARI WAS MAILED TO ONE OF  
PETITIONER'S APPROVED VISITOR'S A FRIEND,

11).

PETITIONER ASSERTS THAT ON NOVEMBER 15<sup>th</sup> 2019, PETITIONER DISCOVERED THAT THE ORIGINAL PETITION FOR WRIT OF HABEAS AND THE COPIES WAS RETURNED BACK TO THE SENDER FREDERICK MUHAMMAD,

12).

PETITIONER ASSERTS ON NOVEMBER 18<sup>th</sup> 2019, Monday, PETITIONER SPOKE WITH THE HEAD MAILROOM PERSONNEL, AND PETITIONER WAS TOLD THAT SHE MAILED IT BACK AND SHE CLAIMED TO NOT HAVE SEEN FREDERICK MUHAMMAD NAME AS A FRIEND AS ONE OF MY APPROVED VISITORS,

13).

PETITIONER ASSERTS THAT PETITIONER TRIED TO EXPLAIN TO THE HEAD MAILROOM PERSONNEL, THAT PETITIONER IS UNDER A DEADLINE, BUT THAT PERSON SAID, "OH, WELL" AND I WILL NOT BE ABLE TO GET IT UNTIL THE LEGAL OFFICE CONFIRM THAT FREDERICK MUHAMMAD IS NOT PART OF THE DEPARTMENT OF CORRECTIONS OR A VOLUNTEER,

14).

PETITIONER ASSERTS THAT THE LEAD PERSONNEL OF THE MAILROOM STATED, PETITIONER MIGHT NOT GET IT THEN,

15).

PETITIONER ASSERTS THAT ON SEPTEMBER 10<sup>th</sup> 2019 THE ELEVENTH CIRCUIT COURT OF APPEALS DENIED PETITIONER'S MOTION FOR RECONSIDERATION (SEE: APPENDIX "01" ATTACHED),

16).

PETITIONER ASSERTS THAT ON JUNE 20<sup>th</sup> 2019 THE ELEVENTH CIRCUIT COURT OF APPEALS DENIED PETITIONER'S CERTIFICATE OF APPEALABILITY. (SEE: APPENDIX "02" ATTACHED),

17).

PETITIONER ASSERTS UNDER THE PENALTY OF PERJURY 28 U.S.C. § 1746 THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF PETITIONER'S OWN PERSONAL KNOWLEDGE.

### CONCLUSION

WHEREFORE, PETITIONER PRAY THAT THIS COURT WILL GRANT THIS MOTION FOR EXTENSION OF TIME NOT TO EXCEED SIXTY (60) DAYS, AND ISSUE AN ORDER TO RESPONDENT TO PROVIDE PETITIONER WITH CARBON PAPER OR ACCESS TO A COPY MACHINE TO MAKE COPIES OF ANY AND ALL LEGAL DOCUMENTS. ISSUE AND ORDER STATING PETITIONER'S ACCESS TO THE COURTS IS BEING HINDERED, OBSTRUCTED, DELAYED AND DENIED, PETITIONER WILL SUFFER IRREPARABLE INJURY AND A MISBRINGING OF JUSTICE IF SUCH MOTION IS NOT GRANTED.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUN 20 2019

David J. Smith  
Clerk

No. 19-10816-J

EMBERY J. MCBRIDE,

Petitioner-Appellant,

versus

WARDEN,

Respondent-Appellee.

Appeal from the United States District Court  
for the Middle District of Georgia

ORDER:

Embery J. McBride, a Georgia prisoner, moves for a certificate of appealability ("COA") in order to appeal the district court's denial of his *pro se* 28 U.S.C. § 2254 petition, challenging his 1982 Georgia convictions for rape and aggravated assault. He received a total sentence of five years' imprisonment for the 1982 convictions, although it appears that he may have been released early. In 1986, McBride was convicted on new charges for crimes that occurred in 1985: rape and aggravated sodomy. He remains incarcerated on those 1986 convictions.<sup>1</sup>

To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), by demonstrating "reasonable jurists would find the

<sup>1</sup> McBride has filed federal habeas petitions, pursuant to § 2254, challenging his 1986 convictions, including a petition which the district court denied, and this Court affirmed in 1994. See *McBride v. Sharpe*, 25 F.3d 962 (11th Cir. 1994).

PETITIONER'S  
APPENDIX "02"

district court's assessment of the constitutional claims debatable or wrong" or that the issues "deserve encouragement to proceed further," see *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). McBride has not done so here.

Reasonable jurists would not debate the district court's conclusion that it was without jurisdiction to consider McBride's challenge to his 1982 convictions because he was not "in custody" pursuant to those convictions, as the five-year term of imprisonment imposed for those convictions has expired. See *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989). See also *id.* at 492 ("Once the sentence imposed for a conviction has completely expired, the collateral consequences of a conviction are not themselves sufficient to render an individual 'in custody' for purposes of a habeas attack upon it."). Reasonable jurists would also not debate the district court's conclusion that, even if it liberally construed his petition as challenging his 1986 convictions, it was also without jurisdiction because McBride had already filed at least one federal habeas petition challenging those 1986 convictions, and he had not received authorization from this Court to file a successive habeas petition. See *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003) (holding that the district court lacks jurisdiction to consider a second or successive petition absent authorization from this Court).

Because McBride has not satisfied the *Slack* test, his motion for a COA is DENIED.

/s/ Adalberto Jordan  
UNITED STATES CIRCUIT JUDGE