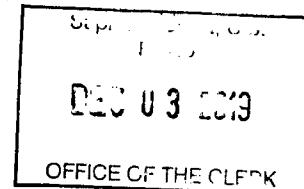


No. 19A614

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

EmBerry J. McBRIDE,
PETITIONER,



v.

WALTER BERRY, WARDEN
RESPONDENT,

MOTION FOR EXTENSION OF TIME

COMES NOW PETITIONER EmBerry 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 20th 2019, AND THE MOTION FOR RECONSIDERATION WAS DENIED ON SEPTEMBER 10th 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 CERTIORARI 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, AUDITORY STATE PERSON STOPPED
ISSUING OUT CHANNEL PAPER PERIOD, DESPITE
THE FACT THAT THE STANDARD OPERATING
PROCEDURE (S.O.P.) TO ACCESS TO COURT
SPECIFICALLY STATES IN PARAGRAPH: "CHANNEL PAPER
IS TO BE ISSUED."

6).

PETITIONER ASSERTS THAT AUDITORY STATE PERSON
DOES NOT MAKE COPIES OF PETITIONER LEGAL
DOCUMENTS OR PLEADINGS PERIOD,

7).

PETITIONER ASSERTS ON NOVEMBER 4th 2019,
PETITIONER TOOK THE PETITION FOR A WRIT OF
CERTIORARI IN A MANILA ENVELOPE OPERATED TO THE
MAILROOM, PER S.O.P 227.06 PAGE 9 OF 18 1(A)(ii)

8).

PETITIONER ASSERTS ON NOVEMBER 4th 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 4th 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 15th, 2019, PETITIONER DISCOVERED THAT THE ORIGINAL PETITION FOR WRIT OF CERTIORARI AND THE COPIES WAS RETURNED BACK TO THE SENDER FREDERICK MUHAMMAD,

12).

PETITIONER ASSERTS ON NOVEMBER 18th, 2019, MONDAY, PETITIONER SPOKE WITH THE LEAD 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 LEAD MAILROOM PERSONNEL, THAT PETITIONER IS UNDER A DEADLINE, BUT THIS 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 10TH 2019 THE ELEVENTH CIRCUIT COURT OF APPEALS DENIED PETITIONER'S MOTION FOR RECONSIDERATION (SEE: APPENDIX "01" ATTACHED),

16).

PETITIONER ASSERTS THAT ON JUNE 20TH 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 FOLLOWING 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 COPIY 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 MISCHARGE 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

No. 19-10816-J

David J. Smith
Clerk

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.¹

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

¹ 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