

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Quamine Jones,

Petitioner-Appellant,

vs.

Tony Mays, Warden,

Respondent-Appellee.

On petition for a writ of certiorari to

United States Court of Appeals for the Sixth Circuit,
Case No. 19-5874

Petition for Writ of Certiorari

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QUESTION PRESENTED

Whether the Sixth Circuit Court of Appeals enter a decision in conflict with the decision of the Ninth Circuit Court of Appeals on the matter of application of the grace period for which an Appellant may take advantage of Rule 4(a)(5) of the Federal Rules of Appellate Procedure?

List of Parties

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

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- Jones v. Holloway, United States District Court, W.D. Tennessee, Western Division. September 22, 2017 Not Reported in Fed. Supp. 2017 WL 6811990. **Appendix G**
- Jones v. Lebo, United States Court of Appeals, Sixth Circuit, February 8, 2018, Case No. 17-6418. **Appendix F**
- Jones v. Hutchison, United States Court of Appeals, Sixth Circuit. July 26, 2018 Not Reported in Fed. Rptr. 2018 WL 499816. **Appendix E**
- Jones v. Holloway, United States District Court, W.D. Tennessee, Western Division. July 22, 2019, Case No. 14-cv-02501-JMP-tmp. **Appendix D**
- Jones v. Mays, United States Court of Appeals, Sixth Circuit, October 18, 2019, Case No. 19-6084. **Appendix C**
- Jones v. Mays, United States Court of Appeals, Sixth Circuit, January 8, 2020, Case No. 19-5874. **Appendix B**
- Jones v. Mays, United States Court of Appeals, Sixth Circuit, April 1, 2020. Case No. 19-5874. **Appendix A**

Jurisdiction

The date on which the United States Court of Appeals decided my case was January 8, 2020. A petition for rehear was timely filed in my case on January 18, 2020. A timely petition for rehearing was denied by the United States Court of Appeals on April 1, 2020, and a copy of the order denying rehearing appears at Appendix J. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

What follows is a set-out verbatim recital of the following statutory provisions which are addressed in this appeal: 23 U.S.C.A § 2107; Rule 3 of the Federal Rules of Civil Procedure; and Rule 4 of the Federal Rules of Civil Procedure.

28 U.S.C.A. § 2107: Time for appeal to court of appeals.

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

(1) the United States;

(2) a United States agency;

(3) a United States officer or employee sued in an official capacity; or

(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in the connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order or decree is entered or files the appeal for that officer or employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bring appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced, the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

Rule 3 of the Federal Rules of Civil Procedure

Rule 3. Appeal as of Right—How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as “all plaintiffs,” “the defendants,” “the plaintiffs A, B, et al.,” or “all defendants except X”;

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer’s spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1, in the Appendix of forms is a suggested form of a notice of appeal.

Rule 4 of the Federal Rules of Civil Procedure

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and (4)(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney’s fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment’s alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be *ex parte* unless the court requires otherwise. If the

motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a);

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under

Federal Rules of Civil Procedure 79(a) and when the earlier of these events occurs;

- The judgment or order is set forth on a separate documents, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed: or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order—but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribe by this rule 4(b).

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under Rule 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rules of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate 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 and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746—
or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp)
showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the
later filing of a declaration or notarized statement that satisfies Rule
4(c)(1)(A)(i)

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court docketed the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or criminal case is mistakenly filed in the court of appeals, the

clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

The application of Rule 3(d) and Rule 4(a)(5) are the statutory provisions involved in this case.

Statement of the Case

On June 26, 2014, Appellant Quamine Jones (Jones) filed a petition pursuant to 28 U.S.C. § 2254 in the United States District Court, Western District, Western Division. On September 22, 2017, the Court dismissed said petition. Jones filed an untimely notice of appeal on October 30, 2017. The district court determined that the notice of appeal was due to be filed on or before October 23, 2017. On February 8, 2018, the United States Court of Appeals dismissed Jones' appeal and indicated that the court of appeals did not have jurisdiction. On September 18, 2018, Jones filed a Rule 60(b) motion for relief from judgment in the district court asking the court to vacate and reinstate the judgment previously entered by the district court. In the Rule 60(b) motion, Jones cited to Federal Rules of Civil Procedure, Rule 4(a)(5)'s thirty-day grace period and alleged that external circumstances preventing him from seeking an extension of time before Rule 4(a)(5)'s grace period expired. On July 22, 2019, the district court denied Jones' Rule 60(b) motion. Jones appealed the denial of his motion to the Sixth Circuit Court of Appeals and on January 8, 2020, the court of appeals denied relief. On January 18, 2020, Jones filed a timely petition for rehearing En banc in the Sixth Circuit and was denied relief on April 1, 2020. Jones now appeals to this Honorable Court for relief.

Reasons for Granting the Petition

Whether the Sixth Circuit Court of Appeals enter a decision in conflict with the decision of the Ninth Circuit Court of Appeals on the matter of application of the grace period for which an Appellant may take advantage of Rule 4(a)(5) of the Federal Rules of Appellate Procedure?

The district court clerk's office in the instant Appellant's case, after receiving the notice of appeal from the denial of Jones' petition pursuant to 28 U.S.C. § 2245, processed his appeal without realizing that the notice of appeal was late. Appellant found out it was late on December 6, 2017, well after the grace period for which Appellant could have taken advantage of Rule 4(a)(5) of the Federal Rules of Appellate Procedure.

Within his pleadings before the district court as well as the court of appeals, Jones referred to *Washington v. Ryan*, 833 F.3d 1087 (9th Cir. 2016), which presents an *exact circumstances* to Jones'. See pages 6 through 8 of the appealed from Motion to Grant Certificate of Appealability for the arguments made by him in this matter. Jones' arguments are identical to those found in *Washington v. Ryan*. Like *Washington*, Jones filed before the district court a motion under Federal Rule of Civil Procedure, Rule 60(b) asking the district court to vacate and reenter its judgment so that his appeal could be deemed timely. *Washington*, on appeal relied on Rule 60(b)(1)'s "mistake and excusable neglect" as entitling him to relief. Jones likewise argued on appeal that he too, relied on Rule 60(b)(1)'s "mistake and excusable neglect" as entitling him to relief in the form of reversal and remand for the district court to vacate and reenter its judgment *nunc pro tunc* as of September 22, 2017.

Before the Sixth Circuit Court of Appeals, Jones specifically made the same arguments as were made in *Washington*. Those arguments are as follows:

Rule 4(a)(5) states that, “The district court may extend the time to file a notice of appeal if: (i) a party do moves no later than 30 days after the time prescribed by this Rule 4(a) expires.” On the 8th day of February 2018, the Sixth Circuit Court of Appeals identified the relevant filing periods for Appellant’s notice of appeal as follows:

“In this case, the district court entered its judgment on September 22, 2017. Any notice of appeal was due to be filed on or before October 23, 2017. The notice of appeal, with an October 25, 2017 certificate of service date, and stamped “OUTGOING OCT 26, 2017 WTSP MAILROOM,” was filed in the district court on October 30, 2017. The notice of appeal is late.”

Jones was notified by the Sixth Circuit of Appeals on **December 6, 2017** that his NOA was late. Notification on December 6, 2017 was well after the grace period for which he could have taken advantage of Rule 4(a)(5) of the Federal Rules of Appellate Procedure. Had the district court timely notified Jones that the NOA was untimely, then he would have had time to file a timely motion for extension of time pursuant to Rule 4(a)(5). Jones had plenty of time to file a motion seeking additional time under Rule 4(a)(5), however, due to the court clerks failure to return the untimely notice of appeal, he did not receive notice that his notice of appeal was late until December 6, 2017. Therefore, he was not made aware of the fact that he needed an *extension of time* in time to file a motion for extension of time.

In the Sixth Circuit Court’s February 8, 2018 Order on this matter, the court noted, “Section 2107(c) provides the possibility of an extension of time to file a notice of appeal in two circumstances, but a party seeking such an extension must file a motion asking for more time. See § 2017(c); *Martin v. Sullivan*, 876 F.3d 235, 237 (6th Cir. 2017).” Appellant was not

afforded the opportunity to make a timely motion pursuant to either Rule 4(a)(5) or § 2017(c) because he was not notified until well after the grace period identified in the rule and statute. Notification was served by the Court of Appeals in its December 6, 2017 Order.

Washington v. Ryan, 833 F.3d 1087 (9th Cir. 2016), also cites to the Sixth Circuit Court of Appeals' decision in *Tanner v. Yukins*, 776 F.3d 434 (6th Cir. 2015), *Tanner* has many similarities to Jones' circumstances. The 9th Circuit Court in *Washington* referred to *Tanner* as follows:

Finally, notwithstanding Rule 4(a)(1)'s jurisdictional time limit, the Sixth Circuit held in *Tanner* that the district court had authority to vacate and reinstate its denial of habeas petition pursuant to Rule 60(b). 776 F.3d at 441. This afforded a new thirty-day window to file an appeal. *Tanner* was nearly illiterate but she managed to prepare an appeal from the denial of her habeas petition with the assistance of a prison writ-writer. *Id.* at 436. She wound up filing it one day late because her prison unit was placed on lockdown, and prison guards threatened to put her in solitary confinement if she left her cell to meet her filing deadline. See *id.* The district clerk's office processed the appeal, not realizing that it was late¹. *Id.* at 436-37. By the time the circuit court received the NOA, the thirty-day period for requesting an extension had expired, and *Tanner's* appeal was dismissed for lack of jurisdiction. *Id.* at 437. *Tanner* responded by filing a successful 42 U.S.C. § 1983 lawsuit against the guards who interfered with her constitutionally guaranteed access to the court *id.* Armed with a judgment recognizing the unconstitutional nature of the guards' actions, *Tanner* sought relief in her habeas case under Rule 60(b)(6). *D.* As the district court did in *Washington's* case, the district court in *Tanner* denied relief because it concluded that Rule 4(a)(1)'s time limit is jurisdictional and that granting relief under Rule 60(b) would impermissibly circumvent the rule's jurisdictional limits. See *id.* at 437-38.

The Sixth Circuit reversed. In doing so, the court recognized that Rule 60(b) dates back to the earliest promulgation of the Federal Rules, that the rule "is simply the recitation of preexisting judicial power." *Id.* at 438 (quoting *Plaut*, U.S. at 234-35, 115 S.Ct. 1447), and that the amendments to the Federal Rules have limited this authority only where the reason for a late filing is lack of notice of judgment. See *id.* at 441-43. The Sixth Circuit remanded *Tanner's* case with instructions to vacate and reenter judgment. *Id.* at 444. Its

¹ The district court clerk's office in Jones' case also processed his appeal without realizing that it was late. Jones found out it was late in December 6, 2017.

decision is consistent with the mandatory nature of the filing deadline in Rule 4(a)(1), and the relief we grant Washington today.

Like the circumstances found in *Tanner*, the Sixth Circuit Court of Appeals recognized Jones' pleadings concerning interference by the State officials at the prison as it related to Jones gaining access to the district court. The Sixth Circuit Court of Appeal's February 8, 2018 Order (Case Number: 17-6418) reads in relevant part as follows:

In response to show-cause order, Jones asks this court "to show some compassion and accept [his] notice of appeal" because he has been in segregation since October 6, 2017, "waiting to be transferred to another facility." He states that he received the district court's decision on September 27, 2017, five days after the decision. He appears to argue that the appeal period started upon receipt of the judgment. He indicates that he has no access to the prison law library and that his library forms gets lost, thrown away, or does not make it to the library or legal aide "due to the carelessness of some staff members in the segregation unit." He indicates that there is no notary in the segregation unit, that it takes a week to two weeks to receive legal materials from the library or legal assistance, and that, "he has no choice but to be patience [sig] and wait for the library staff, legal aide, notary, etc... to respond to his request form."

In the pleadings before the Court of Appeals, Jones identified what amounted to the unconstitutional nature of the institution's actions in the prison in which he was confined. Jones' confinement in segregation clearly played a role in the untimely filing of the NOA. Jones has maintained in previous pleadings before the courts below that the NOA was believed by him to be timely filed when he forwarded the NOA to the institutional staff to be notarized before the Rule 4 time limit actually expired. Jones was confined in a cell in segregation when he gave the NOA to the prison staff. Once the NOA was given to the prison staff, it was completely out of Jones' control as to when they actually notarized and place the NOA into the institutional mail system.

The Sixth Circuit Court of Appeals overlooked or misapprehended information as it related to the Court's assertion that Jones, "did not allege that the district court's September 22, 2017, judgment was a result of "mistake, inadvertence, surprise, or excusable neglect."

On page 8 of Jones' pleadings before the Sixth Circuit, under the third question presented for review, he specifically stated, "Petitioner now contends that his appeal was **mistakenly** dismissed as untimely." Further, Jones—in a similar fashion as *Tanner* and *Washington*, above referenced—ask the Court of Appeals to exercise its authority to recall the mandate or alternatively to vacate and reinstate the district court's judgment in order to allow him to pursue a timely appeal of his case and to allow him to address the merits of his issues. Jones cited to the United States Supreme Court's decision in *Calderon v. Thompson*, 523 U.S. 538, 118 S.Ct. 1489, 140 L.Ed.2d 728 (1998), and ask the Sixth Circuit to address what amounted to the unforeseeable circumstances which implicate the justice of the judgment previously rendered. *Calderon*, U.S. at 549, 118 S.Ct. 1489. See bottom of page 8 and top of page 9 of his pleadings before the Sixth Circuit.

Conclusion

Wherefore, in consideration of the forgoing, Appellant Quamine Jones hereby moves this Honorable Court for an Order granting this writ of certiorari.

Respectfully submitted,

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