ORIGINAL

No. 20-5141

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL HAROLD WILLIFORD,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

On Petition for a Writ of Certiorari to

the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Pro Se

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QUESTIONS PRESENTED

1. The Securities Act of 1934, 15 U.S.C. §78, et seq., provides a broad but not all-inclusive definition of "security". This Court has previously recognized that promissory notes with a term of 90 days or shorter are not a security, nor are unique agreements negotiated one-on-one between private parties.

The question presented is: If a private individual gives an IOU for 90 days, or other private document, which details the terms of their agreement to his personal friend or relative, should such an agreement constitute a "security" for the purposes of the federal security laws and therefore be subject to the "family resemblance" test for securities or are such transactions excluded since they were not created nor intended for any sort of public use and rather subject to state statutes for fraud?

2. **The Appellate Courts are split** on whether equitable tolling should apply where an inmate litigant is prevented from timely filing a NOTICE OF APPEAL as a result of failure by prison authorities to deliver the District Court's Judgment to the inmate upon receipt by the prison authorities. In this case, the United States Court of Appeals for the Fourth Circuit did not apply equitable tolling and dismissed the appeal because of a lack of timeliness without consideration of the delays beyond the petitioner's knowledge or control. Other courts of appeal have

held that equitable tolling applies in similar situations.

The question presented is: Should equitable tolling apply where an inmate, claiming actual innocence, was not provided with a copy of the judgment from the District Court when it was received by prison authorities, thereby preventing the timely filing of a NOTICE OF APPEAL within the 14 days as required by court rules.

LIST OF PARTIES

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

RELATED CASES

- *United States v. Williford*, Case No. 3:13-cr-329, U.S. District Court for the Western District of North Carolina. Judgement entered October 27, 2015.
- *Williford v. United States*, Case No. 3:13-cv-751, U.S. District Court for the Western District of North Carolina, Judgement entered March 13, 2018.
- *United States v. Daniel Williford*, Case No. 19-7797, U.S. Court of Appeals for the Fourth Circuit. Judgement entered February 21, 2020. Petition for Rehearing Denied April 27, 2020.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court for the Western District of North Carolina appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Fourth Circuit decided my case was February 21, 2020.

A timely petition for rehearing was denied by the United States Court of Appeals for the Fourth Circuit on March 6, 2020, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Section 9

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 the laws.

FEDERAL STATUTORY LAW

Securities Exchange Act of 1934

15 U.S.C. § 78a. Short title

This chapter may be cited as the "Securities Exchange Act of 1934."

15 U.S.C. § 78b. Necessity for regulation (see full text in Appendix D)

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto,...

(1) Such transactions

> (a) are carried on in large volume by the public generally and in large part originate outside the States in which the exchanges and over-the-counter markets are located and/or are effected by means of the mails and instrumentalities of interstate commerce;

...

(3) Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities ...

15 U.S.C. § 78c. Definitions and application

(a) Definitions

When used in this chapter, unless the context otherwise requires—

...

(10) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

15 U.S.C. § 78j. Manipulative and deceptive devices (see full text in Appendix D)

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

...

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78ff. Penalties (see full text in Appendix D)

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd–1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as

provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding $25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(c) Violations by issuers, officers, directors, stockholders, employees, or agents of issuers

(1)

(A) Any issuer that violates subsection (a) or (g) of section 78dd–1 of this title shall be fined not more than $2,000,000.

(B) Any issuer that violates subsection (a) or (g) of section 78dd–1 of this title shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

(2)

(A) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who willfully violates subsection (a) or (g) of section 78dd–1 of this title shall be fined

not more than $100,000, or imprisoned not more than 5 years, or both.

(B) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates subsection (a) or (g) of section 78dd–1 of this title shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

28 U.S.C. § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

17 CFR § 240.10b-5 - Employment of manipulative and deceptive devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security. (Sec. 10; 48 Stat. 891; 15 U.S.C. 78j)

STATEMENT OF THE CASE

Petitioner incorporated his primary business, VeloceNet, Inc., on July 20, 1994. VeloceNet grew from serving four programming and network management clients to contracts for service for over 27,000 homes, businesses and schools. Petitioner invested all his family's savings from his work as a USAirways pilot (captain) into the business. The company built and operated the following until it failed in March, 2009 as a direct result of the shutdown in bank lending in the great recession of 2008-2010:

- fiber-optic networks in 18 neighborhoods located in North and South Carolina
- its own wireless network infrastructure covering five counties,
- a 15,000 sq.ft. data center in Charlotte, NC and
- Operated and expanded to five counties the service footprint of its regulated utility, Connect Communications, LLC, a North Carolina Competitive Local Exchange Carrier ("CLEC").

- On December 18, 2013, Petitioner was indicted on one count each of securities fraud and wire fraud and five counts of money laundering "**in connection with the sale of securities, to wit: the Velocenet investment contracts.** All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5," as stated in the BILL OF INFORMATION (*United States v. Williford*, WDNC Case No. 3:13-cr-329).

- Each of the so-called Velocenet investment contracts was negotiated personally by Petitioner on separate occasions in separate one-on-one discussions with each individual and each note was a unique agreement between Petitioner's companies and the individual.
- No contract was ever marketed to the public nor intended for any public offering, but rather each contract was created after an agreement was reached with the individual and each document was created to memorialize the understanding as good business practice dictates.
- Each individual was personally known by Petitioner through prior personal, business, religious or other personal civil relationships; in fact, many relationships had existed for over 15 years.
- In pre-plea discussion, Petitioner's defense attorney indicated that it was his opinion that Petitioner's contracts were "securities" under the federal securities law. Based on this counsel, Petitioner agreed to a guilty plea.
- In the Factual Proffer only the results of Petitioner's actions and the effects of his actions on the investors were addressed; no recitation was made of the particular circumstances under which the agreements were reached nor when and how they were created.
- On Jul 22, 2014, the United States District Court for Western District of North Carolina (hereafter, WDNC) accepted the Factual Proffer as the basis of Petitioner's admission of guilt in conjunction with his plea agreement without investigation into the nature of the underlying agreements. The

District Court assumed the subject agreements were "securities" and subject to the Federal Securities Law.

- Petitioner was sentenced on October 27, 2015, to 110 months prison and three years supervised release for one count of Security Fraud under U.S.C. 15:78j(b) and 15:78ff, and remanded to the custody of McKean Federal Correctional Institution (hereafter, McKean FCI) located in Pennsylvania.
- Petitioner filed a 28 U.S.C. § 2255 Motion Seeking to Vacate Sentence on October 20, 2016, by depositing the motion via special mail at McKean FCI **claiming actual innocence** as Ground One because of (1) a lack of factual basis for Petitioner's guilty plea pursuant to the definition of "security" under the Federal Security Laws and (2) ineffective assistance of counsel violative of the Sixth Amendment (*Williford v. United States*, WDNC Case No. 3:13-cv-751)
- Petitioner was relocated from McKean FCI to the Federal Prison Camp Bennettsville, South Carolina (hereafter, FPC Bennettsville), departing McKean FCI on August 31, 2017 and arriving in Bennettsville on October 4, 2017.
- On March 18, 2018, the WDNC issued an ORDER Denying the 2255 Motion to Vacate (WDNC No. 3:13-cv-751-MOC). The Court declined to issue a certificate of appealability. The order was signed by District Judge Max O. Cogburn, Jr on 3/13/2018.

- As a pro se litigant, Petitioner was served by US Mail at McKean FCI after Petitioner's transfer from McKean FCI, and instead of being forwarded to FPC Bennettsville the legal mail was returned to the Clerk of the WDNC as "undeliverable" since Petitioner was no longer at that facility. The result was that Petitioner never received the ORDER and Civil Case 3:16-cv-00751-MOC was closed.
- On November 11, 2019, Petitioner wrote the Clerk of Court for WDNC, requesting an update on Case 3:13-cr-00751-MOC. Request received November 14, 2019.
- On November 14, 2019, the Clerk of Court for WDNC responded with a docket sheet and a copy of the ORDER by the Court and JUDGMENT IN CASE dated March 13, 2018. This information was received by Petitioner on November 20, 2019.
- On November 24, 2019, Petitioner placed his NOTICE OF APPEAL in the Inmate Mail System at the FPC Bennettsville; the notice was received by the Clerk of WDNC on December 3, 2019.
- On December 10, 2019, Petitioner received the "Informal Preliminary Briefing Order" from the United States Court of Appeals for the Fourth Circuit (designated Case #19-7797)(hereafter, Fourth Circuit).
- On December 30, 2019, Petitioner mailed the INFORMAL BRIEF for his appeal to the Clerk of the Fourth Circuit and it was received by the Clerk on January 2, 2020 (*United States v. Daniel Williford*, Case No. 19-7797).

- On February 21, 2020, the Fourth Circuit issued its JUDGMENT dismissing Petitioner's appeal (Case No. 19-7797) of the ruling from the WDNC in Case 3:13-cr-00751-MOC for lack of jurisdiction because the notice of appeal was not timely filed. Petitioner received a copy of this judgement on March 2, 2020.
- On March 3, 2020, Petitioner mailed a timely filing of his **Petition for Rehearing** which was received by the Clerk and filed on March 6, 2020. A STAY OF MANDATE under Fed R. App. P. 41(d)(1) was issued on March 6, 2020.
- On April 27, 2020, the Fourth Circuit denied the petition for rehearing at the direction of the panel consisting of Judge Motz, Judge Harris, and Judge Quattlebaum.

REASONS FOR GRANTING THE WRIT

ARE PRIVATE PARTY FINANCIAL AGREEMENTS SUBJECT TO ANTI-FRAUD PROVISIONS OF THE SECURITY LAW?

Without the Court's review and correction, all private parties entering into any financial arrangements mortalized by private agreements are subject to prosecution by the Government under the anti-fraud provisions of §10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j.(b)). The Court's review is needed to clarify the application of the federal security laws to standard forms of contract normally used by private parties to memorialize financial agreements negotiated between the parties. Since the threshold issue in any securities case is whether the underlying transactions and agreements comprise a "security" within the meaning of the federal securities laws, by granting this Petition, the Court can emphasize to the Government, the Courts and Defense Attorneys its long standing (but overlooked) guidance on the importance of examining the context of transactions underlying a potential securities fraud action to ensure they meet the required threshold.

EXCLUSIVELY PRIVATE, UNIQUE TRANSACTIONS PROSECUTED

Each of the Petitioner's transactions had the following characteristics typical of private agreements and transactions:

- Each person was known personally by Petitioner prior to the negotiation.

- Each transaction was negotiated personally, one-on-one, by the individuals.
- The unique agreement they negotiated was not designed nor intended to be traded publicly.
- The notes were created at the conclusion of the negotiations as a record of the particulars reached between the individuals.

NO REGARD GIVEN TO THE CONTEXT OF THE TRANSACTIONS

"When used in this chapter, unless the context otherwise requires—" are the beginning words under "(a) Definitions" of 15 U.S.C. § 78c. The context is all-important for the definition of the term "security" under 15 U.S.C. § 78c.(a)(10). Because a "security" is defined in the statute as "any note, stock, ...certificate of interest or participation in any profit-sharing agreement... investment contract..." the Government, the Defense Attorney and the District Court all assumed the related agreements were securities because they all looked past the fact that this definition for "security" only applies within the context of the Securities Exchange Act of 1934. The intent of Congress and the purposes of the statute are clearly stated in 15 U.S.C. § 78b and focuses on "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets". It is improper to apply these statutes to any other transactions outside the intended scope of Congress as specifically stated in the statute itself. This intent was further affirmed by Congress when it amended the Securities Exchange Act of 1934 with

the "Small Company Capital Formation Act of 2011" enacting subsection (b)(5) (15 U.S.C. § 78c.(a)(40)), which specifically exempted even *public equity offerings* of less than $50 million from the broad regulations of the Securities Exchange Act of 1934 (hereafter, the '34 Act). Applying the '34 Act in a vacuum (i.e., without consideration of the purposes and context of the particular transactions and documents in the case at bar -- private, personal, unique, negotiated one-on-one, etc.) and focusing exclusively on the actions of the Petitioner, led to the following errors:

- The Government over-broadly used the federal securities law to prosecute Petitioner even though his transactions fell outside the intent of Congress when they enacted the Securities Exchange Act of 1934, the definition of "security" contained in the '34 Act and the opinion of this Court, particularly in Marine Bank v. Weaver, 455 U.S. 551 (1982).
- The Defense Attorney rendered Constitutionally deficient advice during pre-plea discussions when he failed to analyze and recognize Petitioner's transactions did not meet the threshold to be securities and improperly advised Petitioner that the transactions were subject to federal securities law, inducing Petitioner to seek a plea agreement. This failure went to the heart of the defense and constituted ineffective assistance of counsel in violation of Petitioner's Sixth Amendment rights.
- The Record contains no examination of the transactions, but rather, only a listing of Petitioner's actions in relation to the investors.

- The District Court committed plain error when it accepted the guilty plea from Petitioner because the District Court failed to investigate and consider whether the transactions occurred "in connection with the purchase or sale of any security". Since Petitioner's transactions do not meet the threshold to be a "security", Petitioner's plea lacked the factual basis required for security fraud and his sentence was without legal basis.

The Court has specifically expressed the importance of recognizing the context of the definition of "security" and its application to unique private transactions, such as the Petitioner's, in Marine Bank v. Weaver (455 U.S. 551)(1982). In this unanimous opinion, This Court recognized the intent of Congress in the federal securities laws to regulate the public markets, not private transactions.

CASE LAW

While the Court has examined various transactions since the enactment of the Securities Exchange Act of 1934, the Court dealt with the application of the security law to private transactions in Marine Bank v. Weaver, 455 U.S. 551 (1982). This Court granted certiorari to decide whether two instruments, a conventional certificate of deposit and a business agreement between two families, could be considered securities under the antifraud provisions of the federal securities laws. The Court rejected the view that a private agreement, even if it gave a share of profits was not a "certificate of interest or participation in any profit-sharing

agreement" or an "investment contract" subject to the security laws because no prospectus was distributed to the parties involved or to other potential investors and the unique agreement they negotiated was not designed to be traded publicly. Because of this understanding, the Court found "Whatever may be the consequences of these transactions, they did not occur in connection with the purchase or sale of "securities". Marine Bank v. Weaver, However, the District Court in its denial of the Petitioner's 2255 Motion did not reference Marine Bank v. Weaver, rather it looked past the threshold issue of context and examined the agreements on the basis that they were representing financial transactions. Because of this, the District Court inappropriately applied the Court's "family resemblance" test to the transactions (Reves v. Ernst & Young, 494 U.S. 56, 67 (1990))(quoting Exchange Nat. Bank of Chicago v. Touche Ross & Co., 544 F.2d 1126, 1137-38 (2d Cir. 1976)) when it specifically quoted, "A note is "presumed to be a 'security,' and that presumption may be rebutted only by a showing that the note bears a strong resemblance ... to one of the enumerated categories of instrument." Id." (See WDNC Williford v. United States, No. 3:13-cv-751). But the Petitioner's agreements fell outside the intended scope of the security laws so the effect was to use the securities laws as a broad federal remedy for all fraud contrary to the intent of congress (Great Western Bank & Trust v. Kotz, 532 F.2d 1252, 1253 (CA9 1976); Bellah v. First National Bank, 495 F.2d 1109, 1114 (CA5 1974)). **So, the issue is not whether fraud was committed, as emphasized by the District Court, but whether the private agreements such as the ones underlying this Petition**

fall under the scope of the federal security laws. As This Court has stated a court must look further and analyze the transaction "on the basis of the content of the instruments in question, the purposes intended to be served, and the factual setting as a whole." Marine Bank v. Weaver, 455 U.S. 551, 560 n. 11, 71 L. Ed. 2d 409, 102 S. Ct. 1220 (1982). The Government, attorneys and courts need to be reminded of this important threshold issue in security cases to prevent the miscarage of justice as has occurred in the Petitioner's case.

ADDITIONAL ISSUE RAISED AS A RESULT OF THE CASE:

A CONFLICT EXISTS AMONG THE FEDERAL COURTS OF APPEAL ON THE QUESTION OF WHETHER EQUITABLE TOLLING IS TO BE APPLIED TO A DELAY IN FILING CAUSED BY THE ACTION OR INACTION OF PRISON OFFICIALS WHICH AFFECTS THE ACCESS OF PRO SE INCARCERATED PRISONERS TO THE COURTS.

This Court has often emphasized the fundamental importance of the writ of habeas corpus in our constitutional scheme (United States Constitution, Section 9), and Congress has demonstrated its solicitude for the vigor of the Great Writ. The Court has steadfastly insisted that "there is no higher duty than to maintain it unimpaired." Brown v. Johnson, 306 U.S. 19, 26 (1939). Since the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom, it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed; however, the Petitioner has experienced obstruction to the appeals court due to the actions of prison officials not ensuring legal mail they received was delivered to the incarcerated pro se inmate Petitioner. Since the Government prevents prisoners from having access to the court's electronic system (PACER) and instead requires them to rely on the mail for the status of his case as an incarcerated pro se litigant, the Court should resolve this issue by addressing the issue of timeliness caused by INBOUND mishandling handling of legal mail by prison officials.

The Petitioner's appeal to the United States Court of Appeals for the Fourth Circuit was dismissed "for lack of jurisdiction because the notice of appeal was not timely filed." This lack of timeliness was a direct result of the Government's lack of affirmative action regarding the Petitioner's legal mail which it received from the District Court but failed to ensure this mail was actually delivered to the prisoner. However, the United States Appeals Court for the Fifth Circuit recently excused a 21-month delay in filing because of the failure of the state to notify a petitioner that his state habas petition was denied. This Court has established beyond doubt prisoners have a constitutional right to the courts (Ex parte Hull, 312 U.S. 546)(1941). The Court stated "the state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus." Id., at 549 (also see Cochran v. Kansas, 316 U.S. 255)(1942). Moreover, this Court has consistently affirmed that the Fourteenth Amendment obligates a State "to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process." Pennsylvania v. Finley, 481 U.S. 551, 45565 (1987) (quoting Ross v. Moffitt, 417 U.S. 600, 616(1974)). The Court has addressed the need for "equitable tolling" when delays in sending inmate legal filing are delayed by prison officials actions beyond the control of the inmate. Holland v. Florida, 560 U.S. 631 (2010). But what of the opposite situation, **where the actions of prison officials in screening inbound mail prevent a pro se inmate litigate from receiving a copy of a judgement sent from a court and these actions cause the inmate to be unaware of a court judgement which**

requires his timely response? Should not the Government in its own prisons have an affirmative obligation to insure the mail it receives from a court for a pro se prisoner is actually delivered into the prisoner's possession? The Fifth Circuit says yes, but the Fourth Circuit said no to the Petitioner.

WITHOUT THE PETITIONER'S OWN INQUIRY HE WOULD NEVER HAVE KNOWN OF THE JUDGMENT IN HIS CASE.

After coming to the realization that his conviction for federal security fraud was unlawful, Petitioner filed a 2255 Motion to Vacate his sentence claiming actual innocence. Petitioner waited patiently until another pro se inmate litigant who had also filed a 2255 Motion about the same time in the WDNC (and which was being reviewed by the same judge as rendered Petitioner's sentence), received a judgment. Having received nothing from the WDNC, Petitioner wrote the Clerk of the WDNC asking for the status of his case. It was then he discovered a judgment had been issued over a year before. Petitioner immediately filed a NOTICE OF APPEAL with the Clerk of the WDNC and followed up with an INFORMAL BRIEF with the Fourth Circuit. The Fourth Circuit denied Petitioner's appeal, citing lack of timeliness.

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT APPLIED EQUITABLE TOLLING IN A SIMILAR CASE.

In the recent case, Jackson v. Davis, 933 F.3d 408 (5th Cir. 2019), the U.S. Court of Appeals for the Fifth Circuit ruled the "state-created" delay was not something to be held against the appellant and equitable tolling should be applied to the delay in

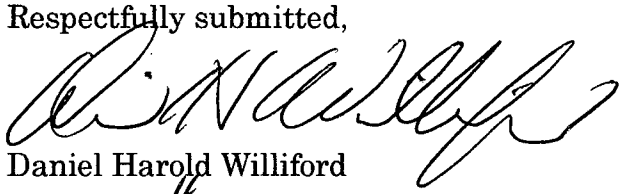
filing his petition. In Jackson, the Fifth Circuit found the district court failed to "adequately account for Jackson's diligence before and after the delay in receiving notice". The court quoted Holland v. Florida, 560 U.S. 631 (2010), pointing out "The diligence required for equitable tolling is reasonable diligence, not maximum feasible diligence." Accounting for the fact that Jackson never got TCCA's denial notice, his actions before and after filing his state habeas petition showed he was diligent during the 21 month delay.

The Court's opinion is needed to protect the constitutional right of access for incarcerated pro se litigants to the courts when delays in receiving notices of court action through the mail are beyond the control of the inmate or are caused by prison or other federal or state officials.

CONCLUSION

The fundamental issue before the Court with this petition is whether private financial transactions between persons who know each other personally and deal directly with each are subject to the federal securities laws. Considering small businesses (i.e., firms with fewer than 500 employees) drive the U.S. economy by providing jobs for over half of the nation's private workforce, the issue before the Court in this Petition affects a broad cross section of citizens all across the United States. .Should Petitioner's prosecution and conviction for security fraud be allowed to stand, every individual in the United States who creates a promissory note or other contractual agreement immortalizing a financial arrangement with those they know personally is potentially subject to prosecution for security fraud, contrary to the intent of Congress and the prior interpretation of this Court. In addition to this, the basic constitutional guarantee of the Sixth Amendment right to access the courts for prisoners who are claiming innocence has and is being infringed upon by the indifference of government officials. For both these important reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,



Daniel Harold Williford

This 18th day of July, 2020.

APPENDIX A

The opinion of the United States Court of Appeals for the Fourth Circuit follows.