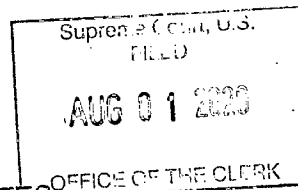


20-5422 ORIGINAL
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

ERIC MILLER pro se — PETITIONER
(Your Name)

vs.

JAMES DEAL, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tattnall County Superior Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ERIC MILLER - GDC No. 1156126
(Your Name)

300 1st Avenue South
(Address)

Reidsville, Georgia 30453
(City, State, Zip Code)

(912) 557-7301
(Phone Number)

QUESTION(S) PRESENTED

- (1) Is the date "April 12, 2019" stamped on the petition the date of receipt from the post office?
- (2) Did the clerk record or affix a date for the petition once receiving it from the post office, or before forwarding it to the judge for signature?
- (3) Was the date impeding Petitioner from filing the petition before January 18, 2019 created by state action?
- (4) Was the petition post mailed to the clerk by prison authorities on January 7, 2019, after being placed in the U.S. Mail/prison mailbox on January 3, 2019?
- (5) Did the presiding judge include the 'date' petition was either mailed to the court or received by the court, in the judge order granting *forma pauperis* on April 10, 2019?
- (6) Did prison authorities post mail the petition 11 days before the four year toll became final on January 18, 2019?
- (7) Is the petition timely under the prison mailbox rule?

LIST OF PARTIES

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

☐ All parties ~~do not appear in the caption of the case on the cover page.~~ A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	10

INDEX TO APPENDICES

APPENDIX A : *State habeas order*

APPENDIX B : *Ga. Supreme Court denying discretionary review*

APPENDIX C : *Ga. Supreme Court denying rehearing*

APPENDIX D : *Ga. Supreme Court denying stay remittitur*

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

PAGE NUMBER

CASES

<i>In re Piper Aircraft Distribution Systems Antitrust Litigation</i> , 551 F.2d 213, 216, n7 (CA8 1977).	7
<i>AMOCO v. McCluskey</i> , 116 Ga. App. 706, 158 S.E.2d 431 (1967).	7
<i>Da'Ville v. Wise</i> , 470 F.2d 1364, 1365, and n2 (CA5 1973).	8
<i>Drew v. Dept. of Corr.</i> , 299 F.3d 1278, 1286 (11th Cir. 2006).	9
<i>Houston v. Lack</i> , 108 S.Ct. 2378.	7-8
<i>Houston v. Lack</i> , 487 U.S. 266, 101 L.Ed.2d 245, 108 S.Ct. 2378 (1988).	6
<i>Williams v. McNeil</i> , 129 S.Ct. 2747, 144 L.Ed.2d 279, 2009 U.S. LEXIS 4000 (U.S. JUNE 1, 2009).	8
<i>Williams v. McNeil</i> , 557 F.3d 1287, 1290 n.2 (11th Cir. 2009).	8

STATUTES AND RULES

Uniform Superior Court Rule 36.2.	8
Ga. Supreme Court Rule 13(2).	8
U.S. Supreme Court Rule 28.2.	6
D.C. G. A § 1-3-1(d).	6-9
D.C. G. A § 9-14-42(c).	6 and 8
D.C. G. A § 9-14-42(c) — (c)(4).	6
D.C. G. A § 9-14-42(c)(2).	7
D.C. G. A § 9-14-42(c)(2) and (c)(4).	6
D.C. G. A § 9-14-45.	9
D.C. G. A § 15-6-65.	8

OTHER

Ga. Const. 1983, art. 1, sec. 1, par. XV.	7
U.S. Const. art. 1, sec. 9.	7
1st. § 14th. Amendment of the U.S. Const.	6-8

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

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the state habeas order of Tattnall county superior court appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☒ For cases from state courts:

The date on which the highest state court decided my case was May 18, 2020.
A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: June 16, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. D.C. G.A. § 9-14-42(c) : Any action brought pursuant to this article shall be filed within one year in the case of a misdemeanor, except as otherwise provided in Code Section 40-13-33, or within four years in the case of a felony, other than one challenging a conviction for which a death sentence has been imposed or challenging a sentence of date. [R-APPENDIX A, pg. 1].

STATEMENT OF THE CASE

After notary 'Tracy Scott Hilton' notarized each petition and affidavit of poverty on January 3, 2019 IR-Plaintiff's Original Petition, pg. 9; Affidavit of Poverty I. Petitioner placed three petition's in separate envelopes addressed to (1) 'Cathelene "Tina" Robinson/Clerk of Superior Court'; (2) 'Charles Henry Frier/Attorney at Law'; (3) 'Christopher M. Carr/Georgia Department of Law' IR-Plaintiff's Original Petition, pg. 11 I, and had the correctional officer in administrative segregation place each envelope in the U.S. Mail/prison mailbox with attached indigent postage form on January 3, 2019 IR-Exhibit A-2 Petitioner Response to Respondent's Motion To Dismiss Petition As Untimely I. Prison authorities post mailed each envelope on January 7, 2019 IR-Exhibit A-2 Petitioner Response to Respondent's Motion To Dismiss Petition As Untimely; Exhibit D-1 I.

Attorney Frier wrote Petitioner regarding the petition on January 18, 2019 IR-04-033 Exhibit C-3 I. The clerk 'Lisa McReyes' of Fulton County Superior Court notified Petitioner that petition was waiting on judge signature for pauperis on February 12, 2019 IR-Exhibit A-1, pgs. 1-5 Petitioner Response to Respondent's Motion To Dismiss Petition As Untimely I.

Judge Belinda E. Howard directed the clerk of Fulton County

Superior Court to file the petition in office on April 10, 2019 IR- Order Granting Forma Pauperis I. Fulton County Superior Court clerk filed the petition in office on April 12, 2019 IR- Plaintiff's Original Petition I. Judge Emily K. Richardson signed a order to transfer case to Tattnall County Superior Court on July 12, 2019 IR- order of transfer I. Transfer clerk transferred the case to Tattnall County Superior Court on July 19, 2019 IR- 03-060 Exhibit B-14 I.

Judge D. Jay Stewart of Tattnall County Superior Court filed a order to dismiss petition as untimely and successive on August 9, 2019 IR- Appendix A I. Petitioner filed a notice of appeal on August 28, 2019 IR- Notice of Appeal I.

Petitioner filed a Habeas Corpus- Certificate of probable cause to appeal on August 25, 2019 IR-03-015 I. Petitioner filed a Application-supplement on September 3, 2019 IR-03-045 I. Petitioner filed a Application-brief in support on January 24, 2020 IR- 03-107 I. Judge Charles J. Bethel J. denied petitioner discretionary review on May 18, 2020 IR- Appendix B I. Petitioner filed a Motion for Reconsideration / Rehearing on May 26, 2020 IR-04-033 I, along with a Motion to Stay Remittitur on May 26, 2020 IR-04-041 I. Judge Charles J. Bethel J. denied Petitioner rehearing review on June 16, 2020 IR- Appendix C I, along with denying Petitioner motion to stay remittitur on June 16, 2020 IR- Appendix D I.

REASONS FOR GRANTING THE PETITION

Judge D. Jay Stewart order that the petition be dismissed as untimely under O.C.G.A. § 9-14-42 (c) on August 9, 2019 IR-ORDER; Appendix A I, due to the stamped date of "April 12, 2019" being recorded on the petition IR-Plaintiff's Original Petition I. Construing the judge common intelligence and obligations to diligently search the records regarding "dates", since the 'Certificate of Service' indicates that the petition was deposit in the U.S. Mail addressed to 'Cathelene "Tina" Robinson / Clerk of Superior Court' on January 3, 2019 IR-Plaintiff's Original Petition, pg. 11; Date Petitioner signed indigent postage form - Exhibit A-2 Petitioner Response to Respondent's Motion to Dismiss Petition As Untimely I. ("providing that a document can be deemed "filed" at the moment it is deposited in the mail for delivery to the Clerk of the Court") U.S. Supreme Court Rule 28.2; 1st. and 14th. Amendment of the U.S. Const. Because the date "April 12, 2019" stamped on the petition is not the date of receipt from the post office. See, Houston v. Lack, 487 U.S. 266, 101 L. Ed 2d 245, 108 S.Ct. 2398 (1988); O.C.G.A. § 1-3-1 (d); 1st. & 14th. Amendment of the U.S. Const. Raising speculative tevelts that Petitioner was prevented from filing the petition before the four year toll became final on January 18, 2019, due to state action, in order to consider if the petition will meet the requirements under O.C.G.A. § 9-14-42 (c)(2) and (c)(4), to modify and remove the date stamped on the petition when deciding the merits under O.C.G.A. § 9-14-42(c) - (c)(4).

The Constitution forbids the writ of habeas corpus from being suspended or dismissed when delay is attributable to the clerk of court rather than to prose prisoners. See, AMORO v. McClusky, 116 Ga. App. 706, 158 S.E. 2d 431 (1967); Ga. Const. 1983, art. 1, sec. 1, par. XV.; U.S. Const. art. 1, sec. 9; 1st and 14th Amendment of the U.S. Const.; O.C.G.A. § 9-14-42(c)(2); O.C.G.A. § 1-3-1(d). Because Petitioner's lack of freedom bars Petitioner from delivering the petition to the clerk of court personally, and have no control over delays. See, Houston v. Lack, 108 S.Ct. 2378; O.C.G.A. § 1-3-1(d).

The presiding judge Betinda E. Howard of Fulton County Superior Court where the petition was originally filed at, fail to include the 'date' petition was either mailed to the court or received by the court, once directing the clerk to proceed with filing the petition, in the judge order granting forma pauperis on April 10, 2019 I R-Order Granting Forma Pauperis I. Violating Petitioner's 1st. & 14th. Amendment of the U.S. Const. rights, and leaving it open for party to prove that clerk received the petition on a date earlier than recorded on it. See, In re Piper Aircraft Distribution System Antitrust Litigation, 551 F.2d 213, 216, n7 (CA8 1977); O.C.G.A. § 1-3-1(d).

The clerk of Fulton county superior court fail to record or affix a 'date' of receipt for the petition before forwarding it to the presiding judge for signature to determine if Petitioner file pauperis, once

receiving it from the post office pursuant to Uniform Superior Court Rule 36.2; O.C.G.A § 15-6-65; 1st. § 14th. Amendment of the U.S. Const. ("refusing to hold [petition] untimely when the court clerk practice created a strong possibility that the [petition] was not stamped when received") Da'Ville v. Wise, 470 F.2d 1364, 1365, and n2 (CA5 1973); O.C.G.A § 1-3-1(d); 1st. § 14th. Amendment of the U.S. Const.

Prison authorities at Smith State Prison post mailed the petition to Cathelene "Tina" Robinson / Clerk of Superior Court on January 7, 2019 [R-Exhibit A-2, Petitioner Response To Respondent's Motion To Dismiss Petition As Untimely; Exhibit C-2, pg. 12 of 19, Motion For Reconsideration]. "That is the date Petitioner mailed his petition, which is the date it is deemed file under the prison mailbox rule." Williams v. McNeil, 551 F.3d 1287, 1290 n.2 (11th Cir. 2009); Houston v. Lack, 108 Sct. 2379; Ga. Supreme Court Rule 13(2); 1st. § 14th. Amendment of the U.S. Const.

The petition was post mailed 11 days before the four year toll under O.C.G.A § 9-14-42(c) became final on January 18, 2019, after Petitioner had the correctional officer in administrative segregation place three separate envelopes ("petition's") in the prison mailbox with attached indigent postage form on January 3, 2019 [R-Exhibit A-2 Petitioner Response To Respondent's Motion To Dismiss Petition As Untimely; Plaintiff's Original Petition, pg. 14]. "Under the prison mailbox rule a pro se prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." Williams v. McNeil, 129 Sct. 2747, 174 L. Ed 2d 249, 2009 U.S. LEXIS 4000 (U.S. JUNE 1, 2009); 1st. § 14th. Amendment of the U.S. Const.

By a copy of the petition being post mailed to Attorney General Carr, and Attorney Frier on January 7, 2019 IR-Exhibit A-2 Petitioner Response To Respondent's Motion To Dismiss Petition As untimely; Exhibit D-1; Plaintiff's Original Petition, pg. 11 I. Petitioner had complied with D.C.G.A § 9-14-45, and caused Attorney Frier to write Petitioner regarding the petition on January 18, 2019 IR-04-033 Exhibit C-3 Motion for Reconsideration I. Which is irrefutable facts that the clerk had to have the petition in office before January 18, 2019. And, even with addressing the fact that the clerk notified Petitioner — that the petition was waiting on the judge signature to file pauperis on February 12, 2019, after Petitioner had wrote the clerk concerning the docketing date and number IR-Exhibit A-1, pg. 1-5 Petitioner Response To Respondent's Motion To Dismiss Petition As untimely I. "is extraordinary circumstances beyond the Petitioner control and unavoidable even with diligence". Drew v. Dept. of Corr., 299 F.3d 1278, 1286 (11th Cir. 2006); D.C.G.A § 1-3-1(d).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

by ERIC MILLER auth. rep.

Date: August 10, 2020