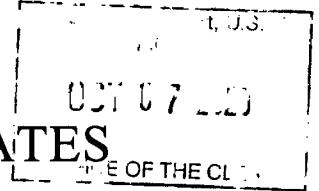


20-6039

IN THE  
SUPREME COURT OF THE UNITED STATES



EARL MCBRIDE, JR - PETITIONER  
VS.  
LORIE DAVIS, DRI. - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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EARL MCBRIDE, JR  
PETITIONER PRO SE  
TDCJ-ID #00315371 RAMSEY UNIT  
1100 FM 655, ROSHARON, TEXAS 77583

## QUESTIONS PRESENTED FOR REVIEW

Does United States Postal Service Form 3811 Domestic Certified Returned Receipts demonstrating properly and timely filing of State and Federal Habeas Petitions meet the 28 U.S.C. SECTION 2244 evidentiary standard to afford equitable tolling to prevent denial of habeas relief on the basis of procedural grounds?

Did a violation of the Due Process Clause occur when State Parole Board changed parole certification achievement status without conducting a parole revocation hearing process?

## LIST OF PARTIES

All parties appear in the Caption on the cover Page . A list of all parties to the proceedings in the courts whose judgment is the subject of the PETITION FOR WRIT OF CERTIORARI is as follows;

Petitioner, Earl McBride Jr., is a Texas state prisoner incarcerated at the Ramsey Unit of the Texas Department of Criminal Justice Institutional Division (TDCJ-ID). Petition is herein after referred to as "McBride".

Respondent Lorie Davis is Director of TDCJ-ID. Respondent is herein after referred to as the Respondent. TDCJ-ID business address is TDCJ-ID -Parole Board/Division P.O. Box 99, Huntsville Texas 77340

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No. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 TWO OPINIONS of the United States Court of Appeals appear at APPENDIX A to this PETITION. The FIRST OPINION is unreported but was published as McBride v. Davis, 722 F.App'x 366, 367 (5<sup>th</sup> Cir 2018). The SECOND OPINION is unpublished.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its Final Opinion in this case on July 7<sup>th</sup>, 2020. Petitioner filed timely MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING which was denied without any consideration for the incremental operations limiting access to the prison law library due a widely reported COVID-19 outbreak at TDCJ-ID Ramsey Unit. Petitioner received no acknowledgment of his Petition For Rehearing. This COURT'S Jurisdiction is invoked under 28 U.S.C SECTION 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the FOURTEENTH AMENDMENT, SECTION 1 Clause 3 OF THE UNITED STATES CONSTITUTION which provides;

“Nor shall any State deprive any person of life, liberty or property without due process of law”...

This case also involves 28 U.S.C. SECTION(S) 2253(c)(2) AND 2244:

SECTION 2253 (C ) (2) " A certificate of appealability may issue... only if the applicant has made a substantial showing of the denial of a constitutional right."

SECTION 2244 (d)(1) A 1-year period of limitation shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgment of a State court. (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward and period of limitation under this subsection.

This case also involves RULE 56 of Federal Rules of Civil Procedure which appears in APPENDIX B p. 56.1-3.

#### STATEMENT OF THE CASE

Facts Material To Consideration Of Questions Presented  
1st Question - Relevant Facts:

#### BOARD OF PARDONS AND PAROLES MINUTES

NAME	DATE MO DAY YEAR	BOARD ACTION	REASON AND /OR INSTRUCTIONS
McBride Earl Jr		TDC 315371	SID 02151517
5 27 14		IMPOSE SISP AND WITHDRAW *T IF PREVIOUSLY IMPOSED.	SEARCHED INDEXED SERIALIZED FILED MAY 20 2014 WOM
5 30 14		PAROLE PLAN OF 521-14 APPROVED, ISSUED PAROLE CERTIFICATE LE	S, SISP, V, O- Gaufle employment.

Texas state prisoner Earl McBride achieved "parole status on May 14 2014, after statutory completion of Texas "Extraordinary Vote Requirement Process" conducted in compliance with applicable Texas Administrative Policy , BPP Directive SECT. 145.301, and his PAROLE CERTIFICATE ISSUED May

30,2014 as shown above. McBride was informed by a Board employee on August 6<sup>th</sup>,2014 that his “parole status achievement” had been changed without a revocation hearing process.

2nd Question - Relevant Facts:

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature <i>Arthur Simpson</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X B. Recipient's Name <i>ARTHUR SIMPSON</i> C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p><i>BARBARA A. WARDAN</i> <i>JUN 30 2015</i></p> <p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>1. Article Addressed to:  <i>CLRS Daniel-Clerk Harris County, District Clerk's OFFice P.O. Box 4651 Houston, Texas 77210-4651</i></p>		<p>2. Article Number (Transfer from service label) <i>7009 2820 0002 9554 9208</i></p>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-144

On June 22, 2015 McBride properly filed State Habeas Corpus Application.

On July 6,2015 McBride received Notice by way of USPS FORM 3811 DOMESTIC RETURN RECEIPT (GREEN CARD) that his application was “Post Marked June 30,2015 – Stamped and signed as received by the State Court Clerk’s Office as shown above.

On June 16, 2016 Texas Court of Criminal Appeals denied McBride’s State Habeas Corpus Application. (Pursuant to 28 U.S.C. SECTION 2244 Statutory Tolling - 39 days remained!)

On July 1, 2016 exactly 16 days later McBride [timely] filed his SECTION 2254 Habeas Petition with the Federal District Court as shown above.

## COURT PROCEEDINGS BELOW

On May 14, 2018 the United States Court of Appeals ORDERED Remand Proceedings to determine validity of “McBride’s claim of parole certification status” stating;

This Court granted a Certificate of Appealability as to “whether the District Court correctly dismissed [McBride’s] claims as predicated on a denial, rather than a revocation of parole … Denial parole and revocation of parole are subject to different constitutional standards, see Morrissey v. Brewer, 408 U.S. 477, 482-84 (1972)… The District Court did not analyze McBride’s claim under the standard applicable to revocation of parole and the limited record does not conclusively establishes McBride’s parole status… Accordingly, we conclude that the District Court misconstrued the basis of McBride’s constitutional claims… p2”

On Remand the District Court Ordered Respondent to file Summary Judgment Motion. McBride properly filed opposing factual and documental material presentation and provided additional documents and Affidavits directly related to his claims in his Rule 56 Responses to Summary Judgment. On September 10, 2019 the district court granted the Motion for Summary Judgment and enters final judgment incorrectly stating “because McBride filed his [federal] petition too late”.

On October 4, 2019 McBride file REQUEST TO FILE APPLICATION FOR COA. On July 7, 2020 the Second Panel of the United States Court of Appeals denied COA without allowing the filing of Brief to explain argument in support of application for COA.

## REASONS FOR GRANTING THIS PETITION

### A. CONFLICTS WITH SUPREME COURT DECISIONS, ALL OTHER CIRCUIT COURT DECISIONS AND EVEN PRIOR FIFTH CIRCUIT DECISIONS

(1) There is a direct conflict with the Supreme Court’s “due process of law” principle announced in Morrissey v. Brewer 408 U.S. 471, 482-84 (1972). The Fifth Circuit panel has delivered a baseless opinion denying COA without allowing

briefing where “perspicuous change in “parole achievement status has occurred without due process of a revocation hearing”. Indisputable evidence in the form of Parole Board records of ”parole certification achievement status” and “subsequent change without revocation hearing” clearly and concisely demonstrates “a substantial showing of denial of a constitutional right. Morrissey 408 U.S. 482.

(2) Even under the AEDPA standard of heighten scrutiny the Decision is in direct conflict with the tolling clause of SECTION 2244's one-year statute of limitations period; In light of USPS Form 3811 Certified Return Receipts with State and federal court clerk offices showing timely filing of State and Federal Habeas Petitions. The Decision also conflicts with the Supreme Court principle in Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). In a Federal Rules of Civil Procedure , Rule 56 Summary Judgment proceedings the non-moving indisputable evidence in the form of U.S. Postal Service Form 3811 Certified Return Receipt “ undeniably showing timely filing of federal habeas petition clearly demonstrates incorrectness of the district court’s denial of relief based on procedural grounds. In this case, no evidence exists to support the grant of a “time-barred affirmative (statute of limitations) defense” pursuit to the AEDPA or Rule 56 of Federal Rule of Civil Procedure.

## **B. IMPORTANCE OF QUESTIONS PRESENTED**

This case presents a nationally important question : whether a State parole Board can change parole certification achievement status without providing revocation hearing process? (i.e., Does the Supreme Court due process principle announced in Morressey 480 U. S. 471, 482 still have precedent?).

Every Circuit and the Supreme Court recognizes and accepts post marked dated, stamped and signed for United States Postal Service Form 3811 Certified Domestic Certified Return Receipts (Green Cards) as valid proof of service establishing the date of delivery and to whom mail was delivered pursuit to Federal Rules of Civil Procedure, Rules 5, 6 and 56.

## **C. EXPLANATION OF EXTREME DEPARTURE: UNMISTAKABLE NEED FOR SUPREME COURT AUTHORITY**

Observable extreme departure from prior Supreme Court holdings and authority have occurred in this case. Even though, objectively discernable evidence in the form of Parole Board's Records unquestionably demonstrates that McBride achieved parole certification status; The decision shows clear disregard by the courts below for Supreme Court announced and established principle long adopted in every circuit. Change in parole certification status without affording revocation hearing is violation of due process clause. The Fifth Circuit's Decision in this case runs afoul with Supreme Court authority.

Again, objectively discernable evidence in form of United States Postal Service FORM 3811 Certified Mail Return Receipt coupled with State and Federal Court Clerk records showing timely filing dates of habeas petitions meets non-movant's summary judgment and Section 2244 (a) (1) evidentiary standard to defeat bare allegations. The decision below disregards Federal Rules of Civil Procedure Rule 56 (c) and 28 U.S.C. Section 2244 tolling Clause; Makes an extreme departure from well established Supreme Court Principle: "Court must take all the facts and evidence in light most favorable to the non-moving party where there exist no presented evidence to support judgment as a matter of law"

## CONCLUSION

In view of the above, a Petition For Writ of Certiorari should be granted in the case.

Respectfully submitted,



Earl McBride Jr.,

Petitioner

October 6 , 2020