

20-6229 ORIGINAL
No. _____

FILED
OCT 23 2020

OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Jerry Earl Johnson — PETITIONER
(Your Name)

vs.

Erin McReynolds — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Nevada Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jerry Earl Johnson
(Your Name)

HDSP - P.O. Box 650
(Address)

Indian Springs, Nv. 89070
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

In a state Court Civil Proceeding does the mailbox Rule apply to filing of the Complaint, When the pro-se [incarcerated] litigant, Submits the Civil Complaint to the prison Law Library to be mailed via U.S. Postal mail, for filing approximately 30⁺ days Prior to the Statute of limitations running out, and the prison fails to mail out the Complaint?

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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

[] 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[] is unpublished.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[] is unpublished.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 C 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 is unpublished.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 Nevada Appellate Court 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 is unpublished.

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 9-18-20.
A copy of that decision appears at Appendix C.

[] A timely petition for rehearing was thereafter denied 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. § 1257(a).

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:

RELATED CASES

Johnson-v-McReynolds, Docket No. 79532
Nevada Supreme Court

Johnson-v-McReynolds, No. 79532 - COA
Nevada Appeals Court

8th Judicial District Court - A-792817
Johnson-v-McReynolds

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioners right to access the Courts and the due process Attendant with the right to access the Courts has been violated.

There is a special rule for pro-se prisoner litigants who file legal papers by mail. The Supreme Court held that a pro-se Prisoner's notice of appeal is deemed filed on the day it is delivered for mailing to Prison authorities, rather than applying the usual rule that it is file the day it arrives at Court. Since the litigant loses control over the notice as soon as he turns it over to prison personnel.

Houston-v-Lack, 487 U.S. 266, 273-76, 108 S. Ct. 2379 (1988); Stoot-v-Cain, 570 F.3d 669, 671-72 (5th Cir. 2009).

The lower federal Courts have generally applied this "Prison mailbox" rule to other civil litigation deadlines as well, including the filing of the Complaint.

As to complaints, see Douglas-v-Noelle, 567 F.3d 1103, 1106 (9th Cir. 2009); Price-v-Philpot, 420 F.3d 1158, 1164 (10th Cir. 2005); Richard-v-Ray, 290 F.3d 810, 813 (6th Cir. 2002); Dory-v-Ryan, 999 F.2d 679, 682 (2d Cir. 1993), modified on other grounds, 25 F.3d 81 (2d Cir. 1994).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED CONTINUED.

As to other documents, see, e.g., Edwards -v- U.S., 266 F.3d 756, 758 (7th Cir. 2001) (all pro-se prisoner filings absent exceptional circumstances); Tapia -v- Doe, 171 F.3d 150, 152 (2d Cir. 1999) (Per Curiam) (Prison mailbox rule applied to administrative claim under FTCA); Farle -v- Upjohn Co., 988 F.2d 985, 988 (9th Cir. 1993) (Discovery responses); Dunn -v- White, 880 F.2d 1188, 1190 (10th Cir. 1989) (filing of Objections to magistrate's report and recommendation); Smith -v- Evans, 853 F.2d 155, 161-162 (3d Cir. 1988).

Courts have applied this rule to Civil detainees as well as persons under Criminal Confinement.

Jones -v- Blanas, 393 F.3d 918, 926 (9th Cir. 2004) (Mailbox rule applies to "Civil detainee confined in state hospital as Sexually Violent Predator").

STATEMENT OF THE CASE

This action arises under state tort Law for the alleged Intentional torts ① Defamation and ② Intentional infliction of emotional distress. The Cause of action was dismissed for exceeding the Statute of limitations, which is 2 years in the state of Nevada.

The alleged torts occurred on or about 2-10-2017.

Petitioner filed the Civil Complaint, by submitting a true and correct copy to the prison law library for mailing on 01-17-19.

Petitioner has proof that the Complaint was submitted to the prison law library on 1-17-19. See Appendix D.

The legal mail containing the Civil Complaint were re-routed back to Petitioner on 3-29-2020.

Petitioner immediately and without delay re-sent the Civil Complaint and Summons.

The Civil Complaint was finally filed on 4-11-2019.

However the trial and Appellate Courts dismissed the action as untimely.

REASONS FOR GRANTING THE PETITION

The Petition should be granted because Petitioner submitted the Civil Complaint on 1-17-19, 24 days before the Statute of limitations Run.

The law library seems to have lost and re-routed the Civil Complaint back to Petitioner.

Petitioner being incarcerated, deprived of his liberty must rely on the prison to deliver the Complaint to the Court.

This is why the Federal Courts Created the mailbox Rule, because the process in prison mail rooms is inherently un-reliable.

Petitioner Respectfully request's this Court apply the Federal Mailbox Rule to state Court filings, to ensure that Due Process of Law is respected.

Petitioner prays the Court will reverse the state Courts dismissal of action on the basis the Pleading was time barred, and hold the papers as being filed the day Petitioner submits them to the prison.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: 10-11-2020