


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERRY EARL JOHNSON, AN
INDIVIDUAL,
Appellant,
vs.
ERIN MCREYNOLDS, AN
INDIVIDUAL,
Respondent.

No. 79532-COA

FILED

AUG 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jerry Earl Johnson appeals from a district court order dismissing a tort action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.


Johnson filed a complaint against respondent Erin McReynolds on April 11, 2019, alleging causes of action for defamation and intentional infliction of emotional distress related to statements made by McReynolds on February 10, 2017. McReynolds moved to dismiss due to the expiration of the two-year statute of limitations and the district court granted the motion over Johnson's opposition. This appeal followed.

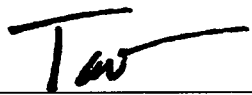
On appeal, Johnson does not dispute that his claims were subject to a two-year statute of limitations or that his complaint was actually filed after it expired. Instead he asserts that he was incarcerated and that he timely submitted the complaint in the prison mail system but that it was misplaced. He then argues that the "prison mailbox rule," which would deem the complaint filed on the date he submitted it to prison officials, should be applied to conclude his complaint was timely filed. But the Nevada Supreme Court declined to extend the prison mailbox rule to


the filing of pleadings commencing a civil action in a case that, like the instant matter, was subject to a two-year statute of limitations. *See Milton v. State, Dep't of Prisons*, 119 Nev. 163, 165, 68 P.3d 895, 896 (2003) (“[Appellant] asks us to extend [the prison mailbox rule] beyond notices of appeal to the filing of pleadings commencing any civil action. We decline his invitation to do so.”).

And while Johnson argues that whether the mail box rule applies should be determined on a case-by-case basis, in *Milton*, the supreme court only noted one exception to its decision not to extend the prison mail box rule to civil complaints, which is not applicable here. Notably, the supreme court held that a party could obtain relief by showing that the delay in filing was the result of “some mischief,” although relief would only be available if fraud was shown. *Id.* at 165 n.11, 68 P.3d at 896 n.11. But the court specifically stated that, if the delay was caused by the “vagaries” of the prison mail system, there would be no relief available. *Id.* And here, Johnson makes no allegations of “mischief” or fraud, and instead essentially asserts that the delay was caused by the vagaries of the prison mail system. *See id.* Based on the foregoing, we necessarily

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Jerry Earl Johnson
Douglas Crawford Law
Eighth District Court Clerk



1 **NEO**

DOUGLAS C. CRAWFORD, ESQ.

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3 DOUGLAS CRAWFORD LAW

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4 Las Vegas, Nevada 89146

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5 *Attorney for Defendant, Erin McReynolds*

6 **EIGHTH JUDICIAL DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 JERRY EARL JOHNSON, an individual;

9 Plaintiff,

10 v.

11 ERIN MCREYNOLDS, an individual;

12 Defendants.

Case No.: A-19-792817-C

Dept.: XV

13 **NOTICE OF ENTRY OF ORDER**

14 PLEASE TAKE NOTICE that an ORDER was entered in the above matter on
15 August 12, 2019 a true and correct copy of which is attached hereto.

16 DATED this 12th day of August 2019.

17 Respectfully submitted:
/s/ Douglas Crawford, Esq.

18

DOUGLAS C. CRAWFORD, ESQ.

19 Nevada State Bar Number: 181

20 1404 S. Jones Blvd.

Las Vegas, NV 89146

Email: doug@douglascrawfordlaw.com

21 *Attorney for Defendant, Erin McReynolds*

DOUGLAS CRAWFORD LAW



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of August, 2019, I served the foregoing Notice of Entry of Order to all interested parties as follows:

☒ **BY MAIL**

- **Jerry Earl Johnson**
HDSP #1178106
P.O. Box 650
Indian Springs, NV 89070

Steven D. Grierson

ORDR

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Attorney for Defendant, Erin McReynolds

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

JERRY EARL JOHNSON, an individual;

Plaintiff,

v.

ERIN MCREYNOLDS, an individual;

Defendants.

Case No.: A-19-792817-C
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**ORDER FROM AUGUST 5,
2019 HEARING**

The above-entitled matter having come before the Court on the 5th of August 2019 on Defendant's Motion to Dismiss; Plaintiff being absent and representing himself, pro se, and Defendant being represented on behalf of Tex J. Boonjue, Esq., of DOUGLAS CRAWFORD LAW, the Court having considered all pleadings and papers on file herein at said hearing, hereby orders as follows:

THE COURT HEREBY FINDS that even assuming the Plaintiff was correct regarding the mailing issue, the Court agreed with the Defendant's analysis of the

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

DOUGLAS CRAWFORD LAW



1 *McIntyre, Milton* and *Gonzalez* cases, and that pursuant to these cases, the “mailbox
2 rule” as cited by Plaintiff, does not apply to civil filings.

3 **THE COURT FURTHER FINDS** that in *McIntyre v. Chief of Police, Reno*,
4 127 Nev. 1159, 373 P.3d 941 (Table)(Sep. 5 2011), the Nevada Supreme Court
5 upheld dismissal on statute of limitations grounds because “the prison mailbox rule
6 does not apply to the filing of pleadings commencing a civil action.” *Id.*, citing
7 *Milton v. State Dep’t of Prisons*, 119 Nev. 163, 165, 68 P.3d 895, 896 (2003).

8 **THE COURT FURTHER FINDS** that in *Gonzalez v. State*, 118 Nev. 590,
9 53 P.3d 901 (2002), the Nevada Supreme Court declined to extend the mailbox rule
10 to post-conviction petitions for writs of habeas corpus. *Gonzalez* distinguished
11 between the need to apply the “mailbox rule” to notices of appeal (which carry a 30-
12 day deadline) versus a petition for post-conviction relief, which has a one-year
13 deadline, which, itself, can be excused by a showing of good cause and prejudice.

14 **THE COURT FURTHER FINDS** that in *Milton, supra*, the court held that
15 the injured party had two years from the date of his injuries within which to file his
16 lawsuit and that, as in *Gonzales*, the Court found no compelling policy reason to
17 create a blanket “mailbox rule” for the filing of complaints for personal injuries.

18 **THE COURT FURTHER FINDS** that Plaintiff had two (2) years to file suit.
19 That is an abundance of time. As *Gonzalez*, noted, there is a substantial difference
20 between a one-year statute of limitations (for a post-conviction filing to which the
21



1 “mailbox rule” does not apply) and a 30-day deadline for a Notice of Appeal (for
2 which the “mailbox rule” does apply).

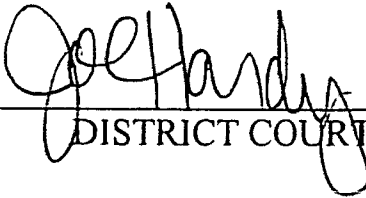
3 **THE COURT FURTHER FINDS** that while the Court accepted all of the
4 allegations as pled in the Complaint as true, the actions alleged in the Complaint
5 occurred more than two years prior to the filing of the Complaint. Therefore, the
6 Plaintiff’s Complaint in the instant case is time-barred by the Nevada statute of
7 limitations.

8 **THE COURT ORDERS** that the Complaint in the instant case is hereby
9 Dismissed with Prejudice pursuant to NRCP 12(b)(5) for failure to state a claim
10 upon which relief may be granted.



1 **THE COURT FURTHER ORDERS** that Attorney Boonjue shall prepare
2 the order and submit it directly to the Court.

3
4 Dated this 8th day of August, 2019

5
6 
DISTRICT COURT JUDGE BM

7 Submitted by

8 DOUGLAS CRAWFORD LAW

9 
10 T. J. BOONJUE, ESQ.

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Attorney for Defendant, Erin McReynolds

DOUGLAS CRAWFORD LAW

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY EARL JOHNSON, AN INDIVIDUAL,
Appellant,
vs.
ERIN MCREYNOLDS, AN INDIVIDUAL,
Respondent.

Supreme Court No. 79532
District Court Case No. A792817

FILED

OCT 01/2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: September 18, 2020

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. Joseph Hardy, Jr., District Judge
Jerry Earl Johnson
Douglas Crawford Law

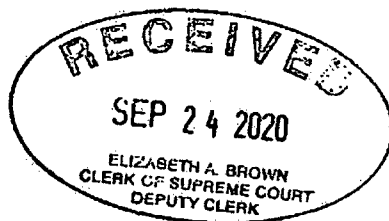
RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on SEP 21 2020:

[Signature]
Deputy District Court Clerk

RECEIVED
APPEALS
SEP 21 2020

CLERK OF THE COURT



IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY EARL JOHNSON, AN INDIVIDUAL,
Appellant,
vs.
ERIN MCREYNOLDS, AN INDIVIDUAL,
Respondent.

Supreme Court No. 79532
District Court Case No. A792817

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 24th day of August, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
September 18, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

STATE OF NEVADA
DEPARTMENT OF CORRECTIONS
INMATE ACCOUNT TRANSACTION
REQUEST

Date: 1-17-19 NC 1720052

To: Inmate services

I hereby authorize my account to be charged in the amount
of \$ 600.00 (.....Dollars).

Please pay to POA

Signature [Signature]

Print name Tracy E. Thomas

ID No. 117114 Institution MC 2

Approved by

Transfer	Purchase Order	Postage <u>600.00</u>	Other
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White
Canary
Pink

Inmate Services
Institution Copy
Inmate

DOC 509 (Rev.2/06)

JAN 17 2019

Jerry E. Johnson #1178106
Also P.O. Box 650
Indian Springs NV, 89470

1728852

Legal mail

Clerk
8th St
200 Lewis Ave
Las Vegas NV. 89155

RECEIVED

JAN 17 2019

HIGH DESERTS
LAW LIBRARY
NISON