No. 20-6270

IN THE SUPREME COURT OF THE UNITED STATES

In re: Derrick Howell,

Petitioner.

PETITIONER FOR A WRIT OF MANDAMUS

to the United States Court of Appeals for the Eleventh Circuit

for the Northern District of Florida , Tallahassee Division

USCOA 11 No. 18-13858-J (Dist. Ct. No. 4:13-cr-00033-MW-GRJ-1)

Derrick Howell
UMS # 64482-019
F.C.I. Edgefield
P.O. Box 725
Edgefield, S.C. 29824
Pro Se Prisoner

ORIGINAL

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QUESTION PRESENTED FOR REVIEW

1. WHETHER MANDAMUS IS APPROPRIATE TO COMPEL A DISTRICT COURT TO EXTEND THE TIMELINESS OF AN APPEAL OF A 3582(c)(2) MOTION FOR AN ADDITIONAL 30 DAYS BASED ON EXCUSABLE NEGLECT, WHERE THE PETITIONER DID NOT RECEIVE THE COURT'S FINAL JUDGMENT UNTIL 32 DAYS AFTER THE EXPIRATION OF THE APPEAL PERIOD, BUT PROMPTLY FILED A MOTION FOR CLARIFICATION ?

RELIEF SOUGHT

Petitioner prays for a Writ of Mandamus directed to the United States District Court for the Northern District of Florida and the Honorable Judge Mark E. Walker, directing and commanding this Respondent, to EXTEND for an additional 30 days the time for Howell to appeal the Court's judgment of his § 3582(c)(2) Motion via his Motion For Clarification filed on October 30, 2017 with instructions to GRANT Howell LEAVE to proceed with his appeal on the merits and provide for any other and further relief as law and justice may require in this case.

UNAVAILABILITY OF RELIEF IN OTHER COURTS

No other Court can grant the relief sought by this petition because:

(1.) On November 16, 2017 the United States District Court for the Northern District of Florida denied Howell's Motion For Clarification for relief pursuant to 18 U.S.C. § 3582(c)(2), but failed to serve Howell a copy of the Court's judgment. (See notation at the bottom of Appendix E).

(2.) Because the District Court did not send Howell a notice of its judgment he filed a Motion For Clarification under Fed. R. Civ. P. 12(c) and the Court mischatacterized Howell's Motion as a second motion for relief pursuant to 18 U.S.C. § 3582(c)(2) then DENIED it and transferred it to the Eleventh Circuit Court of Appeals under 28 U.S.C. 1291. (Appendix F).

(3.) A Brief to Establish Policy Procedure for a sentence reduction under U.S.S.G. Amendment 782 filed with the United States Court of Appeals for the

Eleventh Circuit was DISMISSED by that Court on January 14, 2020. The Court deemed both Motions filed on October 30, 2017 and August 3, 2018 untimely to toll the appeal period by adhering to the District Court's opinion to dismiss Howell's § 3582(c)(2) appeal without harmonizing the Supreme Court's decision of Pioneer as presented in Howell's Motion To Reconsider. (Appendix C).

(4.) Howell filed a Response to the Government's Motion to dismiss his appeal challenging the timeliness of his appeal. A Motion To Reconsider Order of the mandate issued by the Circuit Court was summarily denied on March 19, 2020. (Appendix B).

(5.) The Eleventh Circuit Rule 27-2 dictates that the grant of dismissal of an appeal by a Court of Appeals to file any other outstanding motions shall be DENIED as MOOT and shall not be the subject of a petition for rehearing or a writ of certiorari.

UNSUITABILITY OF ANY OTHER FORM OF RELIEF

No other form of relief will be sufficient to address Howell's claim of the District Court's abuse of discretion in determining his sentence reduction under U.S.S.G. Amendment 782. At the time of Howell's § 3582(c)(2) proceedings the District Court made its determination of his sentence reduction based on the mistaken belief that the Court's discretion was limited, constituting a procedural error that required resentencing. (Doc. Nos. 242; 262). However, in the precedent case of United States v. Marroquin-Medina, 817 F.3d 1285 (11th Cir. 2016), the Eleventh Circuit instructs the District Court to use the explicit directive of the METHODOLOGY Approach to reach a comparably less sentence reduction authorized by the U.S. Sentencing Commission. According to the Fourth, Fifth, Seventh, and Ninth sister Circuits they are holding that the Court's " must " apply a reasonable method to calculate a comparable reduction under § 1B1.10(b)(2)(B), as long as the Court in a

§ 3582(c)(2) proceeding employs the same METHODOLOGY to calculate a reduction that it employed when calculating the degree of the 5K--1 departure. See Morris v. United States, 147 F. Supp. 3d 1349 (11th Cir. 2015). The Court narrowed the scope of its authority by not applying the correct policy statement to this case. The District Court set the wrong legal framework by skipping over a mandatory procedural requirement set for in Step - 1 in Dillion v. United States, 130 S. Ct. 2683 (2010), (applying the U.S.S.G. 5K--1 Manual § 1B1.10(b)(2)(B)). See also Molina -Martinez v. United States, 136 S. Ct. 1338 (2016).

Mandamus is warranted to EXTEND the time to appeal due to Excusable Neglect or Good Cause in this case via Fed. R. App. P. 4(b)(4) not only because Howell has exhausted every other available remedy, but the lower courts have refused to concede the 32 day delay was beyond Howell's control. Instead, the Courts stauchly continued to assert that Howell's appeal was untimely and therefore barred under Fed. R. App. P. 4(b)(1)(A), even though the Pioneer Court decision clarifies that the relevant factors are applicable presented by Howell in this case.

CERTIFICATE OF INTERESTED PARTIES

The Petitioner, Derrick LaShon Howell, who remains incarcerated at the Federal Correctional Institution located within the Territorial confines of the State of South Carolina, by virtue of a Judgment and Committment Order entered by the United States District Court for the Northern District of Florida in Case No. 4:13-cr-00033-MW-GRJ-1, is an interested party.

Warden Shannon Phelps by virtue of being Chief Executive Officer of the Federal Correctional Institution located in Edgefield, South Carolina - and thereby Petitioner's delegated custodian through the Authority of the Attorney General, is an interested party.

Attorney General William Barr, by virtue of the Executive Branch of the Government's delegated authority over United States citizens' convicted and ordered imprisoned for violating Federal Statutory Law, is an interested party.

Chief Distrcit Court Judge Mark E. Walker, by virtue of presiding over the Federal District Court of the Northern Florida, Tallahassee Division criminal and civil proceedings in Case Nos. 4:13-cr-00033-MW-GRJ-1 ; 4:15-cv-00049-MW-GRJ is an interested party.

All currently sitting Circuit Court Judges of the United States Court of Apppeals for the Eleventh Circuit.

Undersigned Counsel, Clyde M. Taylor Jr., by virtue of providing counsel of record to petitioner during the District Court proceedings underlying this case, in an interested party.

The United States Attorney's Office for the Northern District of Florida, by virtue of being the original prosecuting authority of this case, is an interested party.

TABLE OF AUTHORITIES

SUPREME COURT AUTHORITIES

CIRCUIT COURT AUTHORITIES

JURISDICTIONAL STATEMENT

This Court has jurisdiction to issue the request of Writ of Mandamus under the All Writs Act, 28 U.S.C. § 1651 and the Supreme Court Rule 20.

CITATIONS OF THE LOWER COURT DECISIONS

The decisions of the United States District Court for the Northern District of Florida, Tallahassee Division are set in the Written Orders attached to this petition in Appendixes D, E, & F as noted below.

The decisions of the United States Court of Appeals for the Eleventh Circuit are set out in the Written Orders attached to this petition in Appendixes A, B, & C as noted below.

CONTROLLING PROVISIONS, STATUTES, AND REGULATIONS

The Fifth Amendment of the United States Constitution guarantees the right to Due Process of Law in all civil and criminal proceedings. The Constitutional legislative powers enacts Amendment 782 to the People as codified under Title 18 U.S.C. § 3582(c)(2) provides that, where a defendant was sentenced to a term of imprisonment based on a sentencing range that subsequently was lowered by the sentencing Commission through an amendment, the District Court may reduce the defendant's sentence if such a reduction is consistent with the Commission's applicable policy statements. U.S. Sentencing Guidelines Manual § 2D1.1(c)'s Drug Quantity Table by 2 levels, which reduced the base offense level for most drugs. The First Amendment also guarantees the right to petition the Court to seek redress of grievances as codified under Fed. R. Civ. P. 59(e) to alter or amend the District Court Judgment no later than 14 days after the entry of a criminal judgment. Federal Rules of Appellate Procedure 4(b)(4) dictates upon finding EXCUSABLE NEGLECT or GOOD CAUSE, the District Court may - before or after the time has expired with or without motion and notice - EXTEND the time to file a period not to exceed 30 days from the expiration of the time that is otherwise prescribed by rule 4(b). In determining what constitutes Excusable Neglect or Good Cause, the Court must take account of all the relevant circumstances surrounding the party's ommission. Pioneer Inv. Sev. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 123 L. Ed. 2d 74 (1993). Four factors that are relevant are: (1) danger and unfair prejudice to the nonmoving party: (2) length of delay and potential impact on judicial proceedings: (3) reasons for the delay, including whether it was in the reasonable control of the movant: (4) whether the movant acted in good faith. This Court has clarified that in Houston v. Lack, 487 U.S. 266, 276, 108 S. Ct. 2379 2385, 1010 L. Ed.

2d 245 (1998), pro se prisioners' notice of appeals are deemed filed at the moment of delivery to prison authorities for fowarding to the District Court. This Honorable Court reasoned that pro se prisoner litigants have no control over delays in the prison authorities' processing of legal mail and that a prisoner's failure to act promptly cannot bind them. Id. at 2385. Under U.S. Sentencing Guidelines 5K-1 Manual 2014 Version § 1B1.10(b)(2)(B), grants the sentencing court in a § 3582(c)(2) proceeding, the discretion to comparably reduce a defendant's sentence where the defendant previously received a U.S. Sentencind Guideline 5K-1 departure at his original sentencing. If a sentencing court chooses to exercise its discretion and make a comaprable reduction, it is bound to use a specific approach or method to calculate the comparable reduction. Rather, the court may use any of the reasonable methods that were available to calculate the original 5K-1 departure, so long as they result in a comparable reduction.

STATEMENT OF THE CASE AND GOVERNING FACTS

On February 13, 2013, Howell and 4 others were charged in an 8 Count indictment with various control substance and weapons offenses. (Doc. No. 24). Howell entered a Plea of Guilty pursuant to a written Plea Agreement and Statement of Facts on May 10, 2013. (Doc. Nos. 73; 75).

On January 28, 2014, Howell was sentenced to 180-months to the F.B.O.P. on Counts 1,2,7, & 8 followed by a consecutive 48 months for Count 3. (Doc. Nos. 183; 184). At that time the Government filed a 5K-1 Motion and the Court accepted it and applied a downward departure from the low end of the guideline equaling a 31% reduction. (Doc. No. 176).

On May 15, 2015, the District Court notified Howell by Order, that he was eligible for relief pursuant to 18 U.S.C. § 3582(c)(2) under 2D1.1 Drug Guideline applying Amendment 782. (Doc. No. 241). The Government filed a

Response Motion on May 29, 2015, vehemently opposing any further redcution of Howell's sentence under Amendment 782. (Doc. No. 242). After Howell moved that the District Court dismiss 2 consecutive assigned attorneys due to conflicts of interests (Doc, Nos. 244; 245), Howell was assigned Cylde M. Taylor Jr. as counsel to represent him for a sentence reduction under Amendment 782. (Doc. No. 265).

On April 1, 2016, the Eleventh Circuit resolved the issue of selecting one of three permissible methods and the extent which to calculate a comparable substantial assistance departure reduction under U.S. Sentencing Guideline § 5K-1 Manual 2014 Version § 1B1.10(b)(2)(B). On June 8, 2016 counsel filed a Motion pursuant to 18 U.S.C. § 3582(c)(2) with supporting documents to reduce Howell's sentence under Amendment 782. (Doc. No. 262). Importantly, counsel failed to cite any case law or the applicable policy statement § 1B1.10(b)(2)(B) to correctly calculate the extent of Howell's reduction.

On August 17, 2017, Howell was transferred from Ashland F.C.I. to Atlanta D.C.U. awaiting transfer to Edgefield F.C.I. (Appendix I). While Howell was temporarily housed at Atlanta D.C.U., the District Court on August 20, 2017 entered and mailed the Order (Doc. No. 263) DENYING Howell's § 2255 and the Order reducing his sentence by 24 months in light of Amendment 782. (Appendix D - Pg. 6). Howell did not receive any mail during the 7 days that he was at Atlanta D.C.U. Howell arrived at Edgefield F.C.I. on August 24, 2017 from Atalnta D.C.U. (Appendix I).

Howell immediately began his Due Diligence after arriving to Edgefield, and on August 29, 2017 he emailed his wife Kimberly Howell to forward to his attorney, to inform him of Howell's new location and also to seek the status of his § 3582(c)(2) Motion. (Appendix J - Pg. 2). Counsel responded by

letter on September 29, 2017 which verifies that Howell had not yet received the Court's order. (Appendix D - Pg. 8).

On October 6, 2017, Howell finally received the Court's Orders. (Doc. Nos. 263;265). Also included in Howell's mail were 2 back dated letters from counsel informing Howell of the Court's decisions. In counsel's first letter dated August 21, 2017, he attempted to notify Howell that he did not see any basis for further legal efforts to obtain relief, concluding that he would be closing Howell's files shortly. (Appendix L). In counsel's secong letter dated September 26, 2017, he attempted to notify Howell that the Court may have made an " error " in interpreting his request for relief and suggested Howell to file a Motion To Clarify the Order. (Appendix D Pg. 8). Counsel failed to suggest the option of appealing the Court's

Howell timely filed his Notice of Appeal for his § 2255 on October 16, 2017, according to the date (October 6th) that he received the Orders (Doc. No. 263; 265). In that Notice Howell states the reason why he was filing at that time (October 16th), in which the Government accepted with no objections. (Doc. No. 266 - Pg. 2). Under the advice of counsel and with the help of a prison law library clerk and his discovery of the relevant case law in § 1B1.10(b)(2)(B), Howell promptly filed a Motion For Clarification on October 30, 2017. (Appendix D - Pgs. 1-5).

On November 2, 2017, just 24 hours after his Mother's Death, Howell once again showed Due Diligence and wrote his counsel requesting all documents pertaining to his case to continue relief on his own and counsel responded to him by letter. (Appendix M).

On November 16,2017 the District Court DENIED Howell's motion but did not serve him a copy of the Order and " strangely ", the Court stated at the

bottom of the Order that it would not send Howell a copy unless he contacted the Clerk's Office and paid for it. (Appendix E). As sworn Howell never received a copy of the order until November of 2019. (Appendix H - Pg. 3 ln. 16).

After not receiving any response from the District Court about his Motion (Doc. No. 272), Howell in late November of 2017 called his wife and asked her to call the Clerk's Office to see if it has even received his motion. The Clerk at that time told her that the court had not received such motion from Howell. (Appendix H - Pg. 2 ln. 10). Howell wrote the District Court on December 4, 2017, requesting a Docket Sheet for Case No. 4:13-cr-00033-MW-GRJ-1 to check on the status of his motion (Doc. No. 272). Eleven days later, Howell received a Civil Docket Sheet with all LOCKED entries and was under the impression that it was the correct docket sheet at that time. Due to Howell's layman knowledge, he did not know that he actually needed a Criminal Docket Sheet to verify the Court's docket entries of his case. (Appendix H - Pg. 2 ln. 11). Howell again had his wife to call the Clerk of Courts on or about December 15, 2017 to see if there was any record of the Court receiving his Motion (Doc. No. 2727). The clerk stated to her that there was no record showing that Howell filed a motion at that time. (Appendix K - Pg. 1 ln. 6).

On or about March 18, 2018 Howell emailed his wife and asked her to check with the Clerk of Courts again to see what the status was of his motion (Doc. No. 272) and she was informed that there was nothing showing in the system for his motion. (Appendix H - Pg. 3 #15; Appendix K - Pg. 2 #7). After coming off of several institutional lockdowns in the past 90 days , Howell emailed his wife on March 23, 2018 to forward to his counsel asking him to look over a Motion For Status that Howell had prepared to

submit to the Court, but counsel never responded. (Appendix J). On or about March 29, 2018, Howell submitted a Motion For Status in which the Court never responded as sworn in the record. (Appendix H - Pg. 3- ln.15).

Howell went months without being able to verify if the District Court had ever received and/or made a decision on his Motion For Clarification. By the Courts not sending Howell a Notice, made it impossible for him to know if any decision had been made. Desperately, and cautiously due to the sensitive nature of Howell's substantial assistance to the authorities frowned upon in the prison environment, Howell with the advice of the prison's law library clerk filed another Motion For Clarification pursuant to Fed. R. Civ. P. 12(c). (Doc. No. 280). The District Court DENIED the Motion (Doc. No. 281) on August 9, 2018 for any further relief, and failed to even mention the facts of receiving Howell's first motion (Doc. No. 272) or denying it (Doc. No. 273), although Howell clearly inquired about if the court had received it in that motion. (Appendix F). Howell timely filed a Notice of Appeal that was forwarded to the Court of Appeals. (Doc. No. 282).

On February 14, 2019, the United States Court of Appeals for thr Eleventh Circuit GRANTED Howell In Forma Pauperis for Case No. 18-13858-J. (Appendix C) Howell submitted an Opening Brief to Establish The Policy Procedure to the Eleventh Circuit, for a sentence reduction under Amendment 782 § 1B1.10(b)(2)(B) on or about October 10, 2019. [CA No. 18-13858]. The Government filed a Motion To DISMISS Howell's appeal as untimely on October 23, 2019 [CA No. 891393-1]; this was the first time that Howell was aware of the Court even receiving or denying his Motions (Doc. Nos. 272;273). Howell filed a Response Motion on December 9. 2019. [CA No. 8970803-1]. Howell's wife retrieved her

email user account as further evidence to verify his efforts, and on December 17, 2019 Howell filed a Motion To Modify the record pursuant to Fed. R. App. P. 10(e); 8(a)(2). [CA No. 8970803-2]. (Appendix J). On January 14, 2020 the Eleventh Circuit GRANTED the Government's Motion To Dismiss Howell's appeal as untimely. [CA No. 8913930-2]. On February 12, 2020, Howell filed a Motion To Reconsider for the Circuit's Mandate to Dismiss. [CA No. 9007756-1]. On March 19, 2020 the Eleventh Circuit DENIED Howell's Motion to Reconsider [CA No. 9007756-2]. On April 1, 2020, Howell notified the Supreme Court that due to the COVID-19 Pandemic the F.B.O.P. went on a National Lockdown with restricted movement and that he needed an Extension of Time to file his Writ of Mandamus. On August 17, 2020, Howell received a notice from this Court to make the necessary additions and corrections to his petition. On or about July 27, Howell tested positive for COVID - 19 and was admitted into quarantine and once he got the chance wrote this Court and asked for an Extension.

ARGUMENT

1. Whether Howell is entitled to Mandamus Relief to Compel the District Court to EXTEND the time to file his appeal of the Court's Judgment of Howell's § 3582(c)(2) Motion for an additional 30 days, that the delay with which to respond was beyond Petitioner's control and cannot be fairly used in computing time for which to appeal, in order to prevent a miscarriage of justice and where it appears there is no other remedy at law available.

In deciding whether Mandamus is an appropriate remedy in this case, Howell submits the Court has set forth various conditions for its issuance. Among these are " the party seeking issuance of the Writ has no other means to attain the relief desired ", Kerr v. United States for Northern District, 426 U.S. 394 (1976), and the petitioner satisfy " burden of showing that

[his] right to issuance of the Writ is clear and disputable'". Bankers Life & Cas. Co., v. Holland, U. S. 379, 384 (1967). Even where these two requisites are met, the issuing court, in exercising its discretion must be satisfied that the writ is appropriate under the circumstances. These hurdles, however demanding, are not insuperable. Moreover, the law does not put litigants in the impossible position of having to exhaust alternative rememdies before petitioning for mandamus while also having to file a mandamus petition at the earliest possible moment to avoid laches. Cheney v. United States Dist. Court, 124 S. Ct. 2576 (2004). However, the Court has stated that it will only issues a writ of mandamus directly to a Federal District Court where a question of public importance is involoved; or the question is of such nature that it is particularly appropriate for the Court to issue the writ. Hollingsworth v. Perry, 130 S.Ct. 705 (2010).

A. Whether Petitioner has any other adequate means of relief.

Howell submits that he has no other adequate means of relief in this case because the District and Circuit Courts have refused to correct an injustice attributable to principles of fundamental fairness pursuing the right to appeal of the underlying § 3582(c)(2) proceeding pursuant to a Motion For Clarification. Ultimately, the lynchpin of Howell's request for Mandamus turns on when did he receive the District Court's Final Judgment Order, whether the delay in responding was due to excusable neglect or good cause and did Howell respond promptly.

In this context, as evidence in not only one but both of Howell's motions submitted to the District Court, he asserts that the prison staff at Edgefield F.C.I. negligently handled his incoming legal mail, and as a result, Howell did not receive the Court's Final Judgment order until October 6, 2017, " after the expiration of the appeal period.

(Appendix D - Pgs. 3-4: Doc. No. 266). In both of Howell's motions, he gave the legitimate explanation as to why he was filing the motions at that time which was October 20th & 30th. (Doc. Nos. 266;272). Howell also included in his motion all the elements to inform the court of his intent to challenge the Court's decision. (Appendix D - Pgs. 1-5). Howell did everything in his layman ability to show the Courts according to the record, the exact date that he received the District Court's Order, " in spite of " it not performing its ministerial responsibilty. However, notwithstanding the Supreme Court's Houston and Pioneer clarification of the lower courts previous analyses of prison delay and excusable neglect or good cause, the panel that decided Howell's Appeal as untimely deliberately overlooked the instructions of the Houston and Pioneer Courts concurrance explaining how to weigh the eveidence and make a factual determination concerning rare and extraordinary circumstances to determine timeliness of appeals.

Most troubling in this context, is both the District and Circuit Courts selectively ignored the fact that Howell conclusively established the date that the prison officials transmitted the Court's notice to him. Indeed, on the one hand , the District Court for the first time in the course of proceedings underlying Howell's § 3582(c)(2) Motion, acknowledged that " had Howell filed his motion by September 5, 2017 he might have received an extension of 30 days to appeal the Court's decision." See [Government's Motion To Dismiss - CA No. 8913930-1, Pg. 9 ¶¶]. Also the District Court failed to serve Howel a copy of the Court's DENIAL of his motion that included a very odd notation at the end of the Order that stated " to the extent Defendant seeks copies, he must contact the Clerk's Office and pay for copies. " (Appendix E). Yet on the other hand, the District Court asserts that Howell did not file a notice of appeal or any other pleading for the Court's August

20, 2017, order for over two months. The critical question that puzzle's Howell is, " How could this have been procedurally possible, when the Court deemed Howell untimely, an entired month before he actually received the Court's Order?" The Circuit Court submits that both of Howell's motions for clarification, deemed filed on October 30, 2017 and August 3, 2018, were not timely to toll the appeal period. But how could Howell possibly even know of the Court's decision without being served a copy of the Court's Order.

Despite the Lower Court's contradictory reasoning, under Fed. R. App. P. 4(b)(4) the District Court should have construed Howell's Motion (Doc. No. 272) as a motion for relief, then notify him extending his time to appeal upon excusable neglect or good cause. In determining what constitutes excusable neglect, the Court mus[t] " take account of all the relevant circustances surrounding Howell's omission. Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship., 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993). Each of the four factors weigh in favor in finding execusable neglect in Howell's case; (1) There was no prejudice to the Government if the District Court granted Howell an extension to pursue his appeal as of right. (2) The length of delay of Howell's filing his motion (Doc. No. 272) was not excessive (according to the date he received it) and the delay did not adversely impact the judicial proceedings. (3) Edgefield's prison authorities negligently handled Howell's incoming legal mail, and as a result he did not receive the District Court's Final Judgment Order until 32 days after the expiration of the appeal period. (4) There was no evidence that Howell acted in bad faith or purposefully delayed his response motion to cause any disadvantage to the Government. Id., See United States v. Torres, 372 F.3d 1159, 1162 (10th Cir. 2004)(concluding that Pioneer factors " appl[y] to the term ' excusable neglect " as it is used in Federal Rule Appellate Procedure 4(b)),

Howell acknowledges that his appeal is " technically " out of time, but argues that he has proffered a compeling justification for his late filing, because he had no control over the government's actions, nor could he communicate with the Clerk of Court's directly. Distinctly, relating to Pioneer's third factor, Howell points to the Supreme Court's adoption of the " prison mailbox rule " to provide the foundation to support this context and is the catalyst of Howell's argument. See Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988). Howell claims that the prison through its own negligence, opened his legal mail without Howell being present, (mail stamped " open only in the presence of the inmate "), and delivered it to him during normal mailcall in his dorm, 32 days after the expiration of the time to appeal. Indeed , the Code of Federal Regulations provides that Edgefield's prison Staff should mark the envelope of Howell's incoming legal mail then dated and timed the letters when delivered to him and opened them in his presence, with the signature of the staff member who delivered the letters. This applies to Howell as specified in § 540. 18. 28 C.F.R. § 540.19(a). Howell requested documentation to show the date and time that the mailroom received both of his notices (Doc. Nos. 263; 265), but was told that it was no record of them in the log book. Furthermore, Howell alleges that the Bureau Of Prisons failed to comply with its own policy of tracking incoming legal mail by logging the date of the mail delivery to the intended recipient. Under Houston, the prison mailroom is essentially " an adjunct of the clerk's office, " and Edgefield F.C.I. obstructed Howell's judicial process with a jurisdictional document that had a time limitation in which to file an appeal. Howell argues that it would be unfair to hold him responsible for the prison's negligence and prayerfully request that this Honorable Court grant him the opportunity to have his appeal heard.

Howell in this case was faced with a situation too similar to be meaningfully distinguishable from Houston . Like the appeallant in Houston, Mr. Howell also lost control over the timeliness of his appeal, and had no choice but to depend on prison authorities to deliver to him the notice of the entry of the Final Judgment in Howell's case. In addition, Howell's federal incarceration barred him from contacting the Clerk's Office personally at that time to inquire about the status of his case, therefore leaving Howell with no knowledge that his appeal time was already tolling. Indeed, the facts of Howell's instant Motion for Clarification, a criminal case, presents even more compelling argumnents of his intent to appeal and for prison delay. (Appendix D - Pgs. 3-4). Accordingly, as the appeallant in Houston, Howell filed his Motion For Clarification within the requisite 30 day period, seven days before the deadline (from the delivery date of October 6th). Because the respective actions of Howell would have been filed timely within the operative statutes of limitations had the dates of delivery to Howell from prison authorities been used by the Courts, his case should have been reinstated for adjudication on the merits in the District Court. Howell asserts that even the " slightest " delay could compromise his right to appeal and severely prejudiced him. In this case, the total delay was 47 days that haulted Howell's effort unjustifiably beyond his control.

The Supreme Court demonstrated in Houston its particular solicitousness of the need to preserve the rights of Mr. Howell to appeal where the impediment to " timely " filing arises from the process of transmitting mail from the prison over which the prisoner has no control. The teaching of Houston is that prison delay beyond Howell's control cannot be fairly used in computing time for which to appeal, (appyling Grana, 864 F.2d 312 (3rd Cir. 1989) that there is " no difference " between delay in transmitting a

prisoner's papers to the Court and transmitting the Court's Final Judgment to a litigant so that he may prepare his appeal. In keeping with the teachings of Houston , and the desire to avoid creating technical pitfalls .

to hearing on the merits, sister circuit all agree that in computing the timeliness of an appeal, any prison delay in transmitting a notice of the District Court's Final Judgment should be excluded from the computation of an appellant's time to file an appeal.

Most revealing in this context, is that Howell began immediately placing a Good Faith effort in the pursuit of Equitable Tolling by its standard just " 5 days " after arriving at Edgefield F.C.I. and continued his efforts for the next 7 months seeking the status of his motion for clarification. (Appendix J- Pg.2). Unaware of the District Court's first denial of Howell's Motion (Doc. No. 273) even existed, Howell diligently made every effort to get the Court to respond to his inquiries by him and his wife which he argued in his Response to Govenment's Motion To Dismiss his appeal. Once Howell received a copy of the Court's Final Judgment Order, he began his legal research and "promptly" responded with all intentions of appealing the Court's decision. (Appendix D - Pgs. 3-4). The Court should have construed Howell's actions as an intention of dilatory motives.

Judicial effenciency and finality are important values, and Howell realizes that the power of the Supreme Court should not be exercised for [m]ere convenience. But dry formalism should not sterilize procedural resources which Congress has made available to the Lower Courts. The Eleventh Circuit in its summary affirmance of this case, relied on the Government's primary argument instead of evaluating the factors appyling Pioneer as Howell presented in his Motion To Reconsider to the Eleventh Circuit [CA No. 9007756-1]. Yet under the Government's formulation, a prisoner would be

entitled to the benefit of Houston if his custodians simply delayed delivering his mail for a fews days, but would be deprived of the benefit of Houston if those custodians took 47 days to deliver a Notice from the Courts. Houston itself was primised upon the fairness " and " stands for the principle that it is unfair to permit prisoner's freedom to ultimately hinge on either the diligence or good faith of his custodians.

The District and Circuit Courts' actions surely constitute an abuse of discretion and Howell should not be denied his constitutional right to perfect his appeal under Fed. R. App. P. 4(b)(4). A ("4(b)") rule that strips Howell of his right to pursue his appeal, where the circumstances underline his lack of notice (" in a timely manner beyond his control ") of the final disposition of his case, violates principles of fundamental fairness and Due Process. As it now stands, Howell is " procedurally " stuck between a rock and a hard place ", with a question of contradiction that therefore arises before this Honorable Court: How to settle the issue of strict jurisdictional time limitations while exercising legal traditions that reflect a certain solicitude for Howell's rights? And that is precisely why Mandamus is warranted here.

The answer to this conundrum is consequential for Howell because, as he susmits, the issue of whether there was ever a merit of determination of the abuse of discretion claim in Howell's § 3582(c)(2) proceeding, determines whether he ultimately recieves a fair and just opportunity to appeal the District Court's Judgment or spend an additional 33 months in prison for an amended guideline sentence reduction he could no longer receive in the Eleventh (Fourth, Fifth, Seventh, & Ninth) Circuits. Cf. United States v. Vicaria, 963 F.2d 1412-14 (11th Cir. 1992)(explaining that to timely toll the appeal period, a post-judgment Motion For Reconsideration

in a criminal case must be filed within the 14- day period alloted for filing a notice of appeal; Lopez, 562 F.3d 1313 (11th Cir. 2009)). The Court however, appeared to anticipate this situation and even admitted that Howell's rights may be denied, but asked the Eleventh Circuit for summary disposition because " time was of the essence " therefore side--stepping the issue that could have provided Howell a greater sentence reduction. See [Government's Motiom To Dismiss 8913930-1, Pg. 10 ¶].

In any event, the Courts primary concern focusing on the " date " Howell filed his Motion For Clarification -- is misplaced. While it may be true at the end of the day that if Howell's extension is GRANTED, and his § 3582(c)(2) Judgment is rendered VACATED for abuse of discretion -- that his case may be REMANDED for resentencing, that concern should not abate the true underlying issue here: that Howell did not get a fair opportunity to appeal the Court's Judgment from his § 3582(c)(2) proceedings and present his abuse of discretion claim for the first time from his Motion For Clarification because its head was severed by an injustice (prisoner held responsible for a notice that was delivered 32 days after the expiration of the appeal period) that must be repaired in further proceedings. Howell respectfully requests of this Honorable Court to make a nunc pro tunc determination to address the Excusable Neglect issue and in support of the fact that the District Court failed to provide service of a Court Order for petitioner to respond to. Due to Howell being unaware of the Court's decision he was crippled from filing immediate pleadings because in spite of his many inquiries of the status of his Motion For Clarification the Court neglected to inform Howell of its status. Might Howell remind this Court that is was only after receiving a copy of the Government's Motion To Dismiss Howell's Brief in October of 2019 that Howell " for the first time"

became aware of the District Court's decision (Doc. No. 273). Howell then had to write the Clerk's Office in November of 2019 requesting a copy of his Criminal Docket Sheet to verify the Government's allegation of the District Court's DENIAL. See (Appendixes O & P).

Accordingly, based on the above, Howell has no other adequate means of relief available, and Mandamus is warranted to compel the Eleventh Circuit and the District Court of North Florida, Tallahassee Division to prevent an injustice and process Howell's Motion For Clarification as a request for an extension of time for 30 days to appeal under Fed. R. App. P. 4(b)(4).

B. Whether the right to Mandamus is Clear and Indisputable.

To establish a right to Mandamus as clear and indisputable in the context of Rule 4(b)(4) would appear at first virtually impossible due to the apparent jurisdictional and discretionary nature of the rule itself. But then, what Howell is truly seeking by way of Mandamus is intrinsically rooted in the Due Process Clause of the Fifth Amendment to the United States Constitution and the First Amendment: an absolute right to petition the Court to seek redress of grievances and to be afforded a Notice of a Court's Final Judgment delivered to him in a " timely " manner without having his appeal overlooked and thereafter indefinitely procedurally barred: Moreover, it is clearly established that the grant or denial of a Motion For Clarification is subject to review for abuse of discretion.

The lower courts have often held that to show a right to issuance of the writ as " clear and indisputable, " a petitioner must demonstrate that there has been a " usurpation of judicial power " or clear abuse of discretion ". See In re U.S. Dept. Of Homeland Sec., 459 F.3d 565, 571 (5th Cir. 2006); In re Steinhardt Partners, (F.3d 230, 233 (2nd Cir. 1993)(same); In re Wilson, 451 F.3d 161, 169 (3rd Cir. 2006)(same);

In re Qwest Commc'ns Int't Inc., 450 F.3d 1179, 1184 (10th Cir. 2006)(same).

Howell submits he has a Due Process Right to a merits - based determination of his abuse of discretion claim in his Motion For Clarification. Indisputably, the District and Circuit Court barred his abuse of discretion claim as untimely. Howell vehemently resisted this " injustice " at all subsequent levels of review, but both Courts staunchly held to their positions that his Motion For Clarification was untimely. This Court clarified in Houston and Pioneer and demonstrated the errors of prior panel analysis of a delay due to Excusable Neglect and the prison mailbox rule -- including the line of cases in other Circuits (Grana, 864 F.2d 312 (3rd Cir. 1989) to affirm Howell's claim.

To determine whether the lower courts in this case abused their discretion in ruling on an Extension for time to appeal again turns on whether when viewed objectively, did Howell have any control over receiving the District Court's Final Judgment 32 days after the expiration of the appeal period. See supra, at (6 - 15). Thus, whether the District and Circuit Courts decisions not to EXTEND Howell's time to appeal for 30 days was an abuse of discretion should compel the Court to review carefully the circumstances presented and the decision making process of the lower courts. The answer to this question, the right to Mandamus here is clear and indisputable.

Accordingly, when viewed in the framework of the above facts, it would appear that the actions of the lower courts constitute an abuse of discretion requiring intervention of the Supreme Court by way of Mandamus to direct the lower courts to revisit the issue and provide relief as law, justice, scire decisis and United States Supreme Court precedent requires.

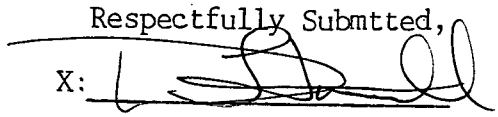
CONCLUSION

WHEREFORE, for all the foregoing reassons, and in the interests of fundamental fairness and justice, Mr. Howell respectfully requests of this Honorable Court to issue a Writ of Mandamus to Compel the United States District Court of North Florida , Tallahassee Division to EXTEND for 30 days Howell's time to appeal, direct the District Court to withdraw the October 23, 2019 Motion and Judgment dismissing Howell's Motion (Doc. No. 272) and Appellate Pleading as untimely, retaining its jurisdiction and exercise the Court's inherent authority to GRANT relief as law and justice requires in this case.

DECLARATION

I, Derrick LaShon Howell, the Petitioner in this cause of action do hereby Declare under the Pains and Penalties of perjury pursuant to Title 28 U.S.C. § 1746, that all of the factual statements and procedural history represented herein is true and correct based on my personal knowledge, information and belief to which I am competent to testify in a court of law. Date on this 20 day of October 2020.

Respectfully Submtted,

X: 

Derrick LaShon Howell
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CERTIFICATE OF SERVICE

I, Derrick LaShon Howell, the Petitioner in this Application for Mandamus do hereby Declare under the pains and penalties of perjury pursuant to 28 U.S.C. § 1746, that I have cause to be forwarded to the listed parties below and duplicate copy of a Petition for Writ of Mandamus as follows:

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

Office of the Attorney General
Mr. William Barr
Washington D.C. 20530

Office of the United States Attorney
Mr. Jason R. Coody
4th Floor
Tallahassee, Fla. 32301

United States Distrcit Judge
Mark E. Walker
Chambers
111 N. Adams St.
Tallahassee, Fla. 32301

by placing said copies in a First Class postage prepaid envelope addressed to the above into the hands of prison authorities at the Mailroom of E.C.I. Edgefield on this 8 day of October 2020 for forwarding and filing with the Court pursuant to the Prisoner Mailbox Rule, articulated in Houston v. Lack, 487, U.S. 266 (1988).

Respectfully Submitted,

X: _____

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