

ORIGINAL

SUPREME COURT OF THE UNITED STATES

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UNION CORRECTIONAL INSTITUTION
MAY 05 2021
BY: [Signature]
FOR MAILING

JIMMY LEE TOLIVER,

Petitioner

V.

USCA11 No. 20-11530

MARK INCH, Secretary

Florida Department of Corrections, et al.

**MOTION TO EXCEPT PETITION FOR WRIT OF
CERTIORARI AS TIMELY FILED**

On March 29, 2021, this Court received my original Petition for Writ of Certiorari and the Exhibits to the petition.

On April 12, 2021, this court sent me a letter stating that my petition was “out of time” and that the Court no longer had the power to review the petition. The reasons given were that the September 17, 2020 date that the 11th Circuit denied my Certificate of Appealability was the starting date for the time to file the Certiorari petition. However, this was a mistake because of the “Extraordinary Circumstances” of this case.

On April 27, 2021, the Petition for Writ of Certiorari was resubmitted with a letter of explanation as to the reasons for the tardiness of the petition and again this office returned the petition with directions to submit a Motion to the court for consideration of the “Timeliness” of the petition. The reasons are again set forth here.

On August 25, 2020, the entire dorm where petitioner is housed, here at Union Correctional Institution, was placed on “Quarantine” because of the Covid-19 pandemic. Therefore, on September 23, 2020, six days after the 11th Circuit denied the COA, petitioner submitted a handwritten “Motion for Extension of Time” (See Attached Exhibit-“A”) to the 11th Circuit requesting additional time in order to file a “Motion for Reconsideration” which was ultimately filed on October 29, 2020. (See Exhibit “E” of Certiorari petition).

In fact, petitioner’s daughter contacted the Warden’s office here at Union C.I. in regards to her father’s legal mail and the limited time that he had to respond and was answered by the Tifani Knox, Assistant Warden at Union C.I. (See Attached Exhibit-“B”).

The 11th Circuit never acknowledged or addressed the Motion for Extension of Time, but instead, on November 5, 2020, acknowledged receiving the “Motion for Reconsideration but stated “No action will be taken because it is untimely” (See Exhibit “F” of Certiorari petition).

The 11th Circuits ignoring the Motion for Extension of Time is the only reason that the “Petition for Writ of Certiorari” can be deemed untimely! This is no fault of petitioner and petitioner should not be held accountable for the circumstances that are out of his control, like the Covid-19 pandemic and a Courts failure to issue any type of orders on pending motions.

The Petition for Writ of Certiorari, pages 11-12, and the Exhibits to that petition clearly shows that petitioner has done everything required of him to present his viable claims in a timely and orderly fashion, and as such, petitioner should not be penalized and denied access to this Honorable Court for reasons out of his control.

In *Hibbs v. Winn*, 542 US 88, 159 L. Ed. 2d 172, 124 S. Ct. 2276 (2004) this court stated that “If the Supreme Court were to read Supreme Court Rule 13.3 as the sole guide, so that only a rehearing petition filed by a party could have reset the statute's 90-day count, the Supreme Court would have lost sight of the congressional objective, underpinning 2101(c), that an appellate court's final adjudication would mark the time from which the period allowed for a certiorari petition began to run.

However, as in *Hibbs*, This case did not follow the typical course, as shown above, the 11th Circuits ignoring the Motion for Extension of Time and the extraordinary circumstances of the Covid-19 pandemic that was the cause of the institutional quarantine lock-down was the only reason that the petition can be deemed untimely.

These circumstances were all out of petitioner's hands, and as such petitioner should not be penalized and denied access to this court due to no fault of his own.

Wherefore, based on the foregoing facts, petitioner respectfully requests that this court reevaluate and reconsider the timelines of the petition based on the facts and extraordinary or exceptional circumstances surrounding this case.

Respectfully Submitted,

Jimmy Lee Toliver
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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11530-D

JAMES L. TOLIVER,

Petitioner-Appellant,

versus

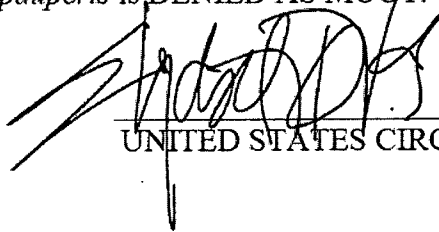
SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Appellant's motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Appellant's motion for leave to proceed *in forma pauperis* is DENIED AS MOOT.



UNITED STATES CIRCUIT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**