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Supreme Court, U.S.
FILED

JUN 01 2022

OFFICE OF THE CLERK

NO. **21-8114**

IN THE SUPREME COURT OF THE
UNITED STATES

FN re Jordan Cordell Hudson,
Petitioner

PETITION FOR WRIT OF HABEAS CORPUS

Jordan Cordell Hudson, Pro se
PO. Box 2349
Blythe, CA 92226

PETITION FOR WRIT OF HABEAS CORPUS

ORIGINAL

RECEIVED

JUN - 9 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the clerk of the Supreme Court is authorized by 28 V.S.C. §2101(d) and/or Supreme Court Rule 13 to refuse to file a petition for writ of certiorari as jurisdictionally out of time by statute and/or rule.

2. Whether COVID-19; threats to petitioner's safety, and quarantine brought about COVID19 is cause to waive the late-filing as the ends of justice so require.

RELIEF SOUGHT

Petitioner prays this court to issue a writ of mandamus directing Scott S. Harris, clerk of Supreme Court of the United States, to file and docket the petition for writ of certiorari that was tendered for filing originally on Oct. 5, 2021, but was rejected on the sole basis that it was out of time by statute and rule.

UNAVAILABILITY OF RELIEF IN OTHER COURTS

No other court can grant the relief sought by this petition because

1. On March 9, 2020, the United States District Court for the Eastern District denied my ~~motion~~ petition for writ of habeas corpus stating appellate counsel was effective. A copy of this order is attached in the Appendix, p. 4-5.

2. On February 9, 2021, the United States Court of Appeals for the Ninth Circuit denied my Certificate of Appealability. A copy of this order is attached in the appendix, p. 3.

3. On October 5, 2021, the clerk of the United States Supreme Court refused to file my petition for writ of certiorari on the basis that it was jurisdictionally out of time. A copy of that letter is listed in the appendix, p. 1-2.

4. There is no other court that could compel the Clerk

1 of the United States Supreme Court to perform the
2 ministerial duties prescribed by law.

3
4 5. As the body that ~~promulgated~~ understands U.S.C.
5 28 § 2101(d) and promulgated Supreme Court rule 13, this
6 court should construe its terms and/or meaning to determine
7 whether the clerk was mistaken in its ability to file
8 the Cert. petition initially tendered to the clerk's office
9 on Oct. 5, 2021 under Statute and rule.

10
11 UNSUITABILITY OF ANY OTHER
12 FORM OF RELIEF

13 no other form of relief will be sufficient to protect ~~at~~ ~~out~~
14 the rights of petitioner or preserve the ability to seek review
15 of the the lower court decision in this court because there
16 is no other form of relief justified by law when the clerk
17 of the Supreme Court refuses to file paperwork. The issue
18 of the clerk's refusal is essentially small and nothing on
19 the ~~smaller~~ scale of a order by the Supreme Court itself
20 has been issued withholding any ability to pursue larger
21 forms of relief such as a common-law writ or
22 successive petition.

~~because there is no other form of relief other than the court's ability to compel the clerk to file the petition for writ of certiorari by way of mandamus.~~

LIST OF PARTIES IN COURT BELOW

1. Jordan Cordell Hudson;
2. Warden, CVSP - Chuckawalla Valley State Prison;
3. Attorney General of California, Counsel for warden.

TABLE OF CONTENTS

	<u>Page No.</u>
Questions presented For Review	2
Relief Sought	3
Unavailability of Relief in Other Courts	3
Unsuitability of Any Other Form of Relief	4
List of Parties in Court Below	5
Table of Authorities Cited	6
Jurisdictional Statement	8 7
Citations of Lower Court Decisions	8 8
Controlling Provisions, Statutes, and Regulations ...	9
.....	
Statement of the Case and Governing Facts	7, 10
.....	

ARGUMENT

I. Reasons for Issuance of the writ

1. Mandamus lies to compel performance of

1	ministerial duties prescribed by Rule 13...	12
2	II. The Writ Will be In Aid OF THE COURT'S	
3	Jurisdiction...	14
4	III. Exceptional Circumstances Warrant exercise	
5	of the Court's Discretionary Power...	14
6	IV. Section 2101(d) And Supreme Court Rule	
7	13 Do Not State Certiorari Petitions are	
8	Jurisdictional.....	16
9	V. The clerk's error should be rectified	
10	without delay....	18
11		
12	Conclusion.....	18
13	Appendix.....	APPX. 1-9

TABLE OF AUTHORITIES CITED

Page No.

Cases

1. Connecticut Nat'l bank v. Germain, 281 U.S. 206, 218
50 S. Ct. 320, 74 L. Ed. 809 (1930)
2. Kozminsky v. Williams, 126 Cal. 26, 58 P. 310, 311 (1899)
3. McClellan v. Garland, 262 U.S. 200, 208-209, 43 S.
Ct. 580, 67 L. Ed. 219 (1923)
4. Reves v. Ernst & Young, 71 U.S. 170, 113 S. Ct. 1163, 122
L. Ed. 437 (1866)
5. ~~Sanabria v. United States, 507 U.S. 170, 113 S. Ct.~~
~~1163, 122 L. Ed. 2d 525, 535 (1993)~~

1 ~~6. Schacht v. United States,~~

2 5. Sanabria v. United States, 437 U.S. 54, 98 S. Ct.
3 2170, 57 L. Ed. 2d 43, 1978 U.S. LEXIS 108 (1978)

4 6. Schacht v. United States, 398 U.S. 58, 90 S. Ct.,
5 1555, 26 L. Ed. 2d 44, 1970 U.S. LEXIS 39 (1970)

6 7. Tagliaretti v. United States, 394 U.S. 316, 39 S. Ct.,
7 1099, 22 L. Ed. 2d 302, 23 A.F.T. L. 2d (RIA) 995, 1969-
8 1 U.S. Tax Cas. (CCH) 9295, 69-1 U.S. Tax Cas. (CCH)
9 9295, 1969 U.S. LEXIS 3283 (1969)

10 8. The State of Mississippi v. Johnson, 507 U.S. 170, 113 S.
11 Ct. 1163, 122 L. Ed. 2d 525, 535 (1993)

12 9. Wilbur v. United States, 503 U.S. 249, 253-254, 112 S.
13 Ct. 1146, 117 L. Ed. 2d 302 (1992)

14 10. Work v. United States, 217 U.S. 268, 280, 30 S. Ct.
15 501, 54 L. Ed. 762 (1910)

16 17 Readings, Text, Other Sources

18 Pender's Federal Practice Forms. Rules of the Supreme Court
19 Part III. Jurisdiction on Writ of Certiorari. Supreme
20 Court Rule B.

21 22 JURISDICTIONAL STATEMENT

23 This Court has jurisdiction under 28 U.S.C. § 1651(a) to
24 issue an extraordinary writ compelling the clerk of this
25 Court to file the certiorari petition that was tendered
26 for filing on Oct. 5, 2021 - Feb. 16, 2022.

27 28 STATEMENT OF THE CASE

~~William Ronald Haddock~~
~~August 2017~~

CITATION OF LOWER COURT DECISIONS

The decisions of the United States District Court for the Eastern District of California are set out in the written order attached to this petition on pages 4-5 of the appendix.

The decision of the United States Court of Appeals for the Ninth Circuit are set out in a written order attached to this petition on page 3.

The letters from the Clerk of the United States Supreme Court are listed on pages 1-2 of the appendix.

STATUTES AND RULES INVOLVED

Section 1651(a) of Title 28 of the United States provides:

The Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of the respective jurisdictions and agreeable to usages and principles of laws.

Section 2101(d) of the Title 28 of the United States Code provides:

The time for appeal or application for a writ of certiorari to review judgment of a state court in a criminal case shall be prescribed by rules of the Supreme Court.

Rule 13 of the Supreme Court provides

The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time.

Rule 20 of the Supreme Court provides:

Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary power and that adequate relief cannot be obtained in any other form or court.

1 The first of several civil actions was filed in the United
2 State District Court for the Eastern District on March
3 9, 2020. This civil action was in the form of a federal
4 habeas corpus petition claiming insufficient evidence
5 and ineffective assistance of counsel. Following a denial
6 the next of these civil actions was a petition for
7 a Certificate of Appealability. Following a denial
8 was a petition for a writ of certiorari which was
9 refused filing for being out of time by statute and rule.
10 The Certificate of Appealability was denied February 9, 2020
11 and the cert. was refused October 5, 2021. All are listed
12 in the appendix on page 1-5.

13 I. Attempts to have Supreme Court file certiorari
14 petition.

15 An original petition for writ of certiorari was tendered
16 to the Clerk of Supreme Court for filing on Oct. 5, 2021
17 together with proof of service as prescribed by rule 33.2.
18 along with a pro se application as prescribed by rule
19 39. Instead of placing the case on the docket, the
20 Clerk of the Supreme Court refused to file the petition.
21 The reasons for the Clerk's actions are identified in
22 a letter written by an Assistant Clerk. It stated:

23 On March 19, 2020, the Court extended
24 the deadline to file petitions for writs
25 of certiorari in all cases due on or after
26 the date of that order to 150 days from
27 the date of ~~that~~ the lower court judgment
28 order denying discretionary review... (see Appx pg. 1)

1 when I received word that the cert. petition had been
2 rejected I made the observations in a letter which was
3 directed to the clerk stating that according to
4 legal material in the law library the court treats
5 petitions based upon criminal convictions as rule-based
6 citing Schacht. In addition if a petitioner can't file
7 a cert. petition for reasons beyond his control with
8 due diligence then the time can be waived in the
9 interest of justice also citing Schacht.

10
11 Rather than filing my cert. petition the clerk issued
12 a duplicate copy of the letter stating the same.

13
14 In order to ensure the clerk was not mistaken and
15 no fault could be brought to myself, I sent several
16 letters to the clerk explaining the situation as far
17 as statute and rule, and why my petition should be
18 filed. All this material was marked as received by
19 the clerk.

20 21 II. Questions Presented By Rejected certiorari Petition

22
23 One question was presented for review by the petition
24 for writ of certiorari the clerk refused to file:

25
26 1. Whether the appellate counsel satisfied the effective
27 assistance requirement under the Sixth and Fourteenth
28 Amendments in failing to challenge, on direct appeal,

the sufficiency of evidence supporting all four (4) offenses versus a sentencing error, or one (1) offense, or multiple punishment while evidence proven on the record to be false, needed and used, for convictions), and exculpatory material evidence precisely eliminate the finding(s) of the essential elements required by proof beyond a reasonable doubt under the Fifth and Fourteenth Amendments.

ARGUMENT

I. Reasons For Issuance of the Writ

1. Mandamus lies to compel performance of ministerial duties prescribed by Supreme Court Rule 13

Supreme Court Rule 13 prescribes the procedure in the case for a writ of certiorari. While the rule does state the requirements Schacht and Sanabria which can be found in the annotation section of the rule state that the rule based petitions are not jurisdictional and can be waived by the courts if the petitioner is diligent and delay is brought about by circumstances beyond the petitioner's control as justice may require. It leaves no doubt that when the requirements for a waiver have been met; in addition to the fact that the petition is based on rule, there is no room for the clerk to refuse filing. Rather the clerk and clerk's staff must do what is required by law, perform the ministerial duties of filing the Cert.

petition and docketing the case.

In cases like this one when the clerk has refused to perform these duties mandamus is the proper remedy.

"Mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its chief use."

See generally Wilbur v. United States, 231 U.S. 206, 218, 50 S. Ct. 320, 74 L. Ed. 809 (1930); cf. Kozminsky v. Williams, 126 Cal. 26, 58 P. 310, 311 (1899) (court clerk compelled by mandamus to file affidavit and undertaking on a attachment properly delivered to him on tender of fees.)

The fact that the clerk is bound to perform tender of a 2101(d) petition depends on Supreme Court Rule 13 and case law, the terms of which the clerk must, in some degree, construe to form a judgment regarding the duty to perform, does not alter the nature of those acts or make them non-ministerial. See generally Work v. United States, 262 U.S. 200, 200-209, 43 S. Ct. 500, 67 L. Ed. 949 (1923).

Because the clerk's duty to file the rejected cert. petition was a simple, definite duty arising under conditions that are virtually undisputed and indisputable, mandamus is proper means of rectifying the error.

See The State of Mississippi v. Johnson, 71 U.S. (4 Wall.) 475, 496, 18 L. Ed. 437 (1866) ("A ministerial duty, the

1 duty, the performance of which may, in proper cases,
2 be required of the head of a department, by judicial
3 process, is one in respect which nothing is left to discretion.
4 It is a simple definite duty, arising under conditions
5 admitted or proved to exist, and imposed by law.")

6 7 II. THE WRIT WILL BE IN AID OF THE COURT'S JURISDICTION

8
9 If the court declines to exercise its jurisdiction
10 under 28 U.S.C. § 1651(a) to compel the clerk to file
11 the rejected certiorari petition, petitioner will be unable
12 to invoke appellate jurisdiction at a later date to
13 review questions presented via that petition. Therefore
14 the writ sought by this and the rejected cert. petition
15 will be in aid of the court's appellate jurisdiction pursuant
16 to Supreme Court Rule 20.1.

17 18 III. EXCEPTIONAL CIRCUMSTANCE WARRANT EXERCISE OF 19 THE COURT'S DISCRETIONARY POWER

20
21 If the clerk was erroneously concluded that § 2101(d)
22 and Supreme Court Rule 13 state that cert. petitions
23 are jurisdictionally out of court time, there are exceptional
24 circumstances warranting exercise of the court's
25 discretionary powers.

26
27 One such circumstance turns to fact that ruled that
28 this court prescribed the conduct of its business are to

he "consistent with the Acts of Congress," 28 U.S.C. 2071(a). If Congress did not establish a jurisdictional time limit for filing cert. petitions under § 2101(d) and Supreme Court Rule 13 or authorize the Court to do so under, it could not have intended to delegate such power to the Supreme Court clerk or allow that clerk unfettered discretion in this area. Were the Court to permit the clerk's erroneous construction of statute and/or Rule to go uncorrected or unreviewed, it would be tantamount to judicial repeal of mandatory language found in 28 U.S.C. § 2071(a).

Added to this, according to Sanabria v. United States, the time requirement of predecessor to Supreme Court Rule 13 for filing a petition for writ of certiorari was not jurisdictional.

According to Schacht v. United States, Supreme Court would waive predecessor to Rule 13 where petition for certiorari was supported by unchallenged affidavits showing that petitioner acted in good faith and delay was brought about by circumstances largely beyond his control: Evidence that I was diligent and circumstances largely beyond my control were responsible for the late filing and prove a waiver is required as the ends of justice demands. Specifically COVID-19 (which the world has never seen), threats to health and safety brought about by other inmates (see Appx. 4-7),

and quarantine brought about by COVID-19.

II. SECTION 2101(d) AND SUPREME COURT RULE 13 DO NOT STATE CERTIORARI PETITIONS ARE JURISDICTIONAL

The clerk's repeated refusal to file the cert. petition is based on an erroneous reading construction of one statute, 28 U.S.C. § 2101(d), and one court rule Supreme Court Rule 13. None of these provisions (and for that matter Schacht and Sanabria provide additional support) prescribes a jurisdictional time limit for filing petitions for writs of certiorari.

1. Applicability of Subsection 2101(d) and Supreme Court Rule 13

In General

28 U.S.C. § 2101(d) make the certiorari petition rule based and Supreme Court Rule 13. In addition Schacht and Sanabria explain that rule-based petitions are not jurisdictional and the time limits can be waived. This conclusion is apparent from the plain language of the statute and rule alike. See generally Reves v. Ernst & Young, 507 U.S. 110, 113 S. Ct. 1163, 122 L. Ed. 2d 525, 535 (1993) ("In determining scope of a statute, the Court looks first to its language, which, if unambiguous, most ordinarily be regarded and conclusive absent a clearly expressed legislative intent to the contrary; Connecticut Nat'l

Bank v. Germain, 503 U.S. 249, 253-254, 112 S. Ct. 1146, 117 L. Ed. 2d 392 (1992) ("Courts must presume that a legislative says in a statute what it means in a statute what it says there when the words of a statute are unambiguous, this first canon is also the last, judicial inquiry is complete." (citations omitted))

Certiorari petitions that are criminal in nature cannot be jurisdictional. Therefore the Subsection 2101(d) does not prescribe a jurisdictional time limit for cert. petitions. The clerk's reliance on jurisdiction and rule being the reason for refusing to file the cert. petition is clearly misplaced.

The Court should not, under any circumstances presented by this or any other case, stand by in silence and permit its 2101(d) jurisdiction to be defeated by the unauthorized action of its clerk. cf. McClellan v. Garland, 217 U.S. 268, 280, 30 S. Ct. 501, 54 L. Ed 762 (1910) ("where a case is within the appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below.")

Given the plain language of Subsection 2101(d) and Supreme Court Rule 13, it is difficult to understand how the clerk could conclude that there was authority to refuse to receive petitioner's cert. petition that the clerk stated the petition was jurisdictionally out of

time by rule and statute cannot be allowed.

II. THE CLERK'S ERROR SHOULD BE RECTIFIED WITHOUT DELAY

The clerk's persistent refusal to file the tendered certiorari petition in the face of legitimate explanation and authority that undermines rather than supports actions taken by the clerk's staff left petitioner with no recourse other than to seek the issuance of a writ of mandamus compelling the clerk to file the cert. petition that was tendered to the clerk's office originally on Oct. 5, 2021.

By issuing the writ sought by this petition, the court may rectify, without delay, refusal to file a cert. petition and a constitutional denial of rights guaranteed by the U.S. constitution.

CONCLUSION

For the reasons set forth above, the petitioner submits that the court should decide the questions presented for review and issue a writ of mandamus directing the clerk of U.S. Supreme Court to file and docket the petition for writ of certiorari that was tendered for filing originally on Oct. 5, 2021 and notify respondents of the date their response to that petition is due.

Dated: May 26, 2022

1 Respectfully Submitted ,

2
3 *JH Ae*

4
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8
9 Petitioner, pro se