

22-5885

Docket No.

IN THE SUPREME COURT of the UNITED STATES

Christopher Surles, Petitioner

v.

United States, U.S. Circuit Judge Rosenbaum, U.S. Circuit Judge Grant, and U.S.
Circuit Judge Luck, Respondents"On Petition for Writ of certiorari to the United States Court of
Appeals for the Eleventh Circuit"

Petition for Writ of Certiorari

Christopher Surles, Soli Juris
c/o Donaldson Correctional Facility
100 Warrior Lane.
Bessemer, Alabama [35023]

Questions Presented for Review

- By the U.S. District Judge R. David Proctor being a respondent in the Notice of Appeal (Appendix F), does that make the United States a party to the appeal?
- Is U.S. District Judge R. David Proctor an agent of the United States?
- What is the time limit for the filing of a Notice of Appeal when the United States or an agency of the United States is a party?
- Is the time between 2/18/2022 thru 3/30/2022 approximately 28 days (without counting the weekend)?
- Was the Notice of Appeal (Appendix F), filed in a timely manner?
- Does the U.S. Appeals Court for the 11th Circuit have jurisdiction to entertain the Notice of Appeal (Appendix F) and Supplement (Appendix G)?
- Is there an equitable tolling exception for the filing of a Notice of Appeal?

3.

Corporate Disclosure Statement

- (1) Christopher Surles, Plaintiff
- (2) U.S. Attorney General
- (3) U.S. Appeals clerk for the 11th Circuit
- (4) U.S. Circuit Judge Grant
- (5) U.S. Circuit Judge Luck
- (6) U.S. Circuit Judge Rosenbaum
- (7) U.S. Supreme Clerk

Related Cases

U.S. Appeals Court for the 11th Circuit; Appeal No. 22-11108-J; Christopher Surles, Petitioner v. Alabama Attorney General, Respondents; 05/25/2022

U.S. Appeals Court for the 11th Circuit; Appeal No. 22-11108-C; Christopher Surles v. Warden, et al.; 4/14/2022

U.S. District Court for the Northern District of Alabama; Case No. 5:21-cv-1236-RDP-JHE; Christopher Surles, Petitioner v. Warden Deborah Toney, et al, Respondents; 09/17/21

U.S. District Court for the Northern District of Alabama; Case No. 5:21-cv-1236-RDP-JHE; Christopher Surles v. Warden Deborah Toney, et al; 02/18/2022

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Appendix H: Supplemental; Appeal No. 22-11108; 6/27/2022; p. 1-3

Appendix I: Table of Authorities Cited

Citations

Christopher Surles v. Alabama Attorney General, Appeal No. 22-11108, 05/25/2022

Christopher Surles v. Warden, et al, Appeal No. 22-11108, 4/14/2022

Christopher Surles v. Warden Deborah Toney, Case No. 5:21-cv-1236-RDP-JHE/09/17/2021

Christopher Surles v. Warden Deborah Toney, Case No. 5:21-cv-1236-RDP-JHE, 02/18/2022

Christopher Surles v. Warden Deborah Toney, Case No. 5:21-cv-1236-RDP-JHE, 01/18/2022

Basis for Jurisdiction

28 USC 1254 (1)

05/25/2022 (the date the judgement sought to be reviewed) (Case No. 22-11108-c)

Table of Authorities

- (1) Article B of the U.S. Constitution; Appendix F, p. 3
- (2) *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938); Appendix F, p. 3
- (3) Fed. R. Cr. P. Rule 3.13(a) and (b); Appendix F, p. 2
- (4) Fed. R. Evid. Rule 103(a) (1) (2), and (c); Appendix G, p. 2
- (5) *Hogans v. Levine* 415 U.S. 533; Appendix F, p. 3
- (6) *Herrera*, 500 U.S. at 464, 113 S. Ct. 853, 132 L. Ed. 2d 203 pp. 398-400, 185 L. Ed. 2d, et; Appendix H
- (7) *Joyce v. U.S.* 474 2d, 215; Appendix F, p. 3
- (8) *Schlup*, 513 U.S. at 327, 115 S. Ct. 851, 130 L. Ed. 2d, 808; Appendix H, p. 2
- (9) *Black v. McDaniel*, 589 U.S. 473, 474 (2000); Appendix G, p. 3
- (10) *Williamson v. Berry*, 3 How. 545, 540, 12, L. Ed. 1170, 1159; Appendix G, p. 2
- (11) 4th amendment of the U.S. Constitution; Appendix F, p. 4
- (12) 5th amendment of the U.S. Constitution; Appendix F, p. 4
- (13) 6th amendment of the U.S. Constitution; Appendix F, p. 4
- (14) 28 USC 2254 (a); Appendix F, p. 3
- (15) 28 USC 2254 (b) (1) (B) (i); Appendix F, p. 3
- (16) 28 USC 2241; Appendix F, p. 3
- (17) 28 USC 2254 (c) (1); Appendix G, p. 1
- (18) 28 USC 2254 (c) (2) (B); Appendix G, p. 3
- (19) 28 USC 2253 (c) (2); Appendix G, p. 3
- (20) Fed. R. App. P. 4 (1) (B) (i) (ii)
- (21) 28 USC 1234 (1)

Statement of the Case

• On March 30th, 2022, the Applicant Christopher Surles served a Notice of Appeal (Appendix F), upon the U.S. District Clerk for the Northern District of Alabama. (Appeal No. 22-11108-J)

• The Notice of Appeal is from the Final Judgement (Appendix D), made by U.S. Magistrate R. David Proctor on 2/18/2022, in a Habeas Corpus Proceeding.

• The Final Judgement is consistent with the Memorandum opinion (Appendix D), made by U.S. Magistrate John England III on 2/18/2022.

• On 4/29/2022 "Affidavit for Supplement of Notice of Appeal" (Appendix G), was served upon the U.S. Appeals Clerk for the 11th Circuit.

• The ruling made by the U.S. District Court in the Memorandum opinion and Final Judgement (Appendix D), is in want of jurisdiction, being plain error, which is prejudice to the substantial rights of the Applicant, guaranteed by the Due Process Clause of the U.S. Constitution 5th amendment and Fed. R. Evid. Rule 103 (a) (1) (2) and (e).

• On 5/25/2022, an order of Dismissal was made by U.S. Circuit Judge's Rosenbaum, Grant, and Luck (Appendix A), which states "This appeal is dismissed sua sponte, for lack of jurisdiction. Christopher Surles seeks to appeal from the District Court's Feb. 18th 2022 memorandum opinion and Final Judgement dismissing his habeas corpus petition. The timely filing of a Notice of Appeal

in a civil case is a jurisdictional requirement, and we cannot entertain an appeal that is out of time."

- The order of dismissal (Appendix A), also states that "A Notice of Appeal was due on March 21st, 2022 See 28 USC 2107 (a) (providing that a Notice of Appeal is due 30 days after entry of the judgement; Fed. R. App. P. 4 (a) (1) (A), 2 (b) (a) (providing that if the last day of the period falls on a weekend or holiday, the time period runs from the next day that is not a weekend or holiday. Surles Notice of Appeal was dated March 29th, and his motion for leave to appeal in forma pauperis including a certificate of service stating that his notice of appeal and IFP Motion were mailed on Mar. 30th."

- According to the perpetual calendar 1808-2080 the time frame between Feb. 18th, 2022 thru Mar. 30th, 2022 is approximately 28 days. (The World Almanac) (Not counting the weekends).

- If the Applicant's, Notice of Appeal was due 30 days from 2/18/2022 (Date of Final Judgement) (Appendix D), April 1st, 2022 would be the 30 day time limit (not counting the weekend), which is prima facie evidence to make the Notice of Appeal, filed timely.

- On 6/8/2022, the "Affidavit to Vacate" (Appendix H), was served upon the U.S. Appeals Clerk for the 11th circuit.

- Based on the merits of the Affidavit to Vacate (Appendix H), the Applicant Christopher Surles, challenge the jurisdiction of the state of Alabama, the U.S.

District Court for the Northern District of Alabama, and pray with good faith that the U.S. Appeals Court issue the Notice of Appeal and Supplement.
(Appendix F) (Appendix G)

- On 6/28/2022, the Applicant, Christopher Surles sent by U.S. via mail, 1 copy of the Supplemental Affidavit to Vacate (Appendix H), to be served upon the U.S. Appeals clerk for the 11th Circuit.
- According to Fed. R. App. P. 4 (1) (B) (i) (ii), the Notice of Appeal may be filed by any party within 60 days after entry of judgment or order appealed from if one of the parties is the United States or a United States Agency.
- The respondents (parties) in the Supplemental Notice of Appeal (Appendix G) is Christopher Surles, Petitioner v. United States, U.S. Magistrate R. David Proctor, Respondent
- According to Fed. R. App. P. 4 (1) (B) (i) (ii), the Notice of Appeal (Appendix F), was filed on time, which gives the U.S. Appeals Court jurisdiction to entertain the appeal, which hereinafter shall be Granted.
- The Writ of Habeas Corpus was filed under the jurisdiction of U.S. Constitution Article 3, 28 USC 2254 (a) and (b) (1) (B) (ii) and 28 USC 224 (1) (a), in the U.S. District Court for the Northern District of Alabama (Appendix B) (the basis for federal jurisdiction in the court of first instance).

Argument Reason for Writ to be Granted

- If determining if the Notice of Appeal was filed on time by the factor of 28 USC 2107 (a), Fed. R. App. P. 4 (a) (1) (A), 2 (b) (a), the Notice of Appeal (Appendix F) was filed timely during the 30 day limit.
- Due to the fact that the United States is a party in the Notice of Appeal (Appendix F), the Notice of Appeal was filed on time within the 60 day time limit pursuant to Fed. R. App. P. 4 (1) (B) (i) (ii).
- If the Notice of Appeal (Appendix F) was due 30 days from 2/18/2022 (Date of Final Judgement case No. 5:21-cv-1236-RDP-JHE), April 1st, 2022 would be the 30 day time limit (not counting the weekends).
- If the Notice of Appeal (Appendix F) was due 60 days from 2/18/2022 (Date of Final Judgement case No. 5:21-cv-1236-RDP-JHE), May 13th, 2022 would be the 60 day time limit (not counting the weekend).
- The Applicant, Christopher Surles served the Notice of Appeal (Appendix F) on March 30th, 2022, upon the U.S. District clerk for the Northern District of Alabama pursuant to Fed. R. App. P. 4 (1) (B) (i) (ii).
- Based on the plain error made by the U.S. Appeals Court (shown in the Supplemental Affidavit to Vacate) (Appendix H), the Applicant pray that the order of dismissal (Appendix A) be set aside / vacated and the foregoing Writ of Certiorari be Granted.