IN THE SUPREME COURT OF THE UNITED STATES

Case No. 22-6011

In re:
DALE RICHARD PATE, PETITIONER,

v.

SECRETARY, FLORIDA DEPT. OF CORRECTIONS, et al., RESPONDENTS.

Supreme Court, U.S.
FILED
NOV 08 2022
OFFICE OF THE CLERK

PETITION FOR A WRIT OF HABEAS CORPUS
(IN AID OF APPELLATE JURISDICTION)

Dale R. Pate, 263121
Tomoka Correctional
Institution
3950 Tiger Bay Road
Dayton Beach, FL 32124

QUESTIONS PRESENTED

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JURISDICTIONAL STATEMENT

Petitioner, Dale Richard Pate, pursuant to 28 USC 1651(a) and 2254, petitions this Court, *pro se*, for a writ of habeas corpus. This Court's appellate jurisdiction was usurped by the respondent when it prevented him from exercising his statutory right to petition for a writ of certiorari, and this petition is intended to reinstitute (aid) that jurisdiction. Due to the respondent's actions and his exceptional circumstances, he asks this Court to do what it has repeatedly said (since 1970) it could do: Relax the time requirements of Rule 13.1. As grounds in support thereof, he further states the following:

1. Petitioner is a state prisoner in the custody of the respondent, serving sentences that were imposed in violation of his constitutional right to due process and the effective assistance of counsel. Below, he presents exceptional circumstances that warrant the exercise of this Court's discretionary powers. He has exhausted all state and federal court remedies, except invoking this Court's appellate jurisdiction by petitioning for a writ of certiorari, which the respondent prevented. There is absolutely no other means available to him, in any other court or forum, to reclaim his statutory right to petition this Court for certiorari and obtain relief.

STATEMENT OF CASE AND FACTS

2. In February 2007, petitioner was convicted in Pinellas County, Florida (State v. Pate, case no. CRC06-17820-CFANO) of kidnapping, misdemeanor assault, and grand theft. In April 2007, he was sentenced to the statutory maximums of life, time served, and thirty (30) years, respectively. At his sentencing hearing, the respondent prepared and presented

to the court, prosecutor, and his appointed counsel a presentence investigation report (PSI) that itemized his criminal history. At sentencing, the following relevant discussion took place:

> **THE COURT**: All right. Let's go over this prior record according to the PSI. And I'm not going to go over the ones that he was not found guilty of, just the ones that he was convicted of. In 1984, two counts of reckless driving, a fleeing and eluding and a DUI also in '84, leaving the scene of an accident, in '87, driving on a suspended license, '89 a petty theft and trespassing, in '91 for robbery, which according to the PSI he received two years community control for. Do we have any idea what the facts of that were?
>
> **THE [PROSECUTOR]:** Judge, I don't.
>
> **THE COURT:** All right. With that--
>
> **THE [PROSECUTOR]:** And I know there was no deadly weapon. I know it was a strong arm.
>
> **THE COURT:** Right. that obviously was a crime of violence.
>
> ***
>
> **THE COURT:** All right. And then we have a ['96] contempt of court, which I really don't know anything about. I don't know if that involved--
>
> **THE DEFENDANT:** It was involving the child custody stuff.
>
> **THE COURT:** All right. And then we have an interference with child custody in '96. Anyone have any idea what that was about? No.
>
> **THE [PROSECUTOR]:** Judge, I think--
>
> **THE COURT:** No, I don't think so.
>
> **THE [PROSECUTOR]:** -- that's the same, I think-- to be completely honest, in think that's exactly the same as the second one, the false imprisonment--
>
> **THE COURT:** All right. So he only has one interference with custody.

THE [PROSECUTOR]: And that's all I've scored.

THE COURT: Okay, So I'll cross that one out. then the interference with child custody, that involves James Costa. So originally [he was arrested for false imprisonment but] it was charged as [count one] kidnapping and [count two] interference with child custody, and count one, the kidnapping, got nol-prossed. And he received 18-months in the Department of Corrections for count two, which was the interference with custody in '97.

All right. Is there any reason why the sentencing cannot go forward at this time?

[DEFENSE COUNSEL]: No, Your Honor.

***

THE COURT: Okay. Sorry, 71, an elderly man, none the less. And I know we have the defendant's prior record which we've gone through, **prior crimes of violence, of course**, include that ['91] robbery **and include the ['97] false imprisonment and he did receive 18 months in the Department of Corrections on it.**

***

And the Court is going to find that the facts of this case are so horrendous and **when the Court also considers the [criminal] background of the defendant, the Court believes that there is only one proper sentence in this case and that is, on count one [kidnapping], the defendant will be adjudicated guilty. He will be sentenced to [the statutory maximum of] life in prison.**

On count two [misdemeanor assault], he will be adjudicated guilty and he will be sentenced to [the statutory maximum of] of time served.

On count three [grand theft], he will be adjudicated guilty and he will be sentenced to [the statutory maximum of] 30 years in the Department of Corrections which will be concurrent. So all the counts are concurrent with each other...***See Appendix, Exhibit 1, pgs. 4-8 (sentencing transcript)(emphasis added).***

3. The sentencing court violated petitioner's right to due process when it considered constitutionally impermissible sentencing factors as part of his punishment. Specifically, the court impermissibly considered:

a. An '89 petty theft charge that he was found "not guilty" of, which his PSI correctly reported, but the sentencing court erroneously considered a conviction:

> **THE COURT:** All right. let's go over this prior record according to the PSI. And I'm not going over the ones that he was not found guilty of, just the ones that he was convicted of...'89, a petty theft. ***Ibid.*** **Compare with Exhibit 2 (PSI)(1989:count one, petty theft: not guilty).**

b. A '96 contempt charge that had been vacated, which his PSI does not accurately reflect:

> **THE COURT:** All right. And then we have a ['96] contempt of court, which I really don't know anything about. I don't know if that involved--
>
> **THE DEFENDANT:** It was involving the child custody stuff. ***Ibid.***

c. A '97 arrest for false imprisonment, a violent felony, which his PSI correctly indicates was amended to kidnapping and interference with child custody, and the kidnapping was dismissed as part of a plea bargain. However, the sentencing court erroneously believed (even after the prosecutor corrected it) to be a valid conviction. ***See above paragraph 2***. The court specifically mentioned this erroneous and nonexistent violent conviction as one if the reasons for sentencing him to the statutory maximums:

> **THE COURT:**... And I know we have the defendant's prior record which we've gone through, prior crimes of violence, of course,.... include the ['97] false imprisonment and he did receive 18 months in the Department of Corrections on it.
>
> ***
>
> And the Court is going to find that the facts of this case are co horrendous and when the Court also considers the [criminal] background of the defendant, the Court believes that there is only one proper sentence in this case... he will be sentenced to life in prison. ***Ibid.*****(emphasis added)**

4. In 2008, he timely appealed his judgment and sentence to Florida's second district court

of appeals, which was per curiam affirmed. See Pate v. State, 988 So.2d 1022 (Fla. 2d DCA 2008).

5. During his postconviction challenge phase, he proceeded *pro se*.

6. On September 5, 2008, he filed his first motion for postconviction relief, which the trial court denied and was per curiam affirmed on appeal. See Pate v. State, 69 So.3d 286 (Fla. 2d DCA 2011) review dismissed, 75 So.3d 1245 (Fla. 2011). On February 27, 2012, he filed a petition for a writ of habeas corpus in the trial court, which was denied and affirmed on appeal. See Pate v. State, case no. 2D12-3034, 2012 WL 4040713 (Fla. 2d DCA 2012). In October 2014, he filed a successive motion for postconviction relief, which was dismissed. In 2017, he filed another successive motion for postconviction relief, specifically raising the issues contained in paragraphs 1 and 3 (above), which was denied and affirmed on appeal. See Pate v. State, 244 So.3d 1043 (Fla. 2d DCA 2018). He has exhausted all of his state court remedies on these issues.

7. In 2013, he timely filed a federal petition for a writ of habeas corpus in the middle district of Florida (DC). In Ground-Ten, he specifically raised the violation of due process claim, and a sub-claim of ineffective assistance of counsel (IAOC), which is based upon the same facts[1]. This sub-claim was stated in such language as to be glaringly obvious to a lay person:

> "...**Counsel** allowed the trial court to have the unfettered belief at sentencing that he had previous convictions for, among other things, false imprisonment, contempt, interference with child custody. **Counsel** was advised of these errors... **Counsel was ineffective**." ***See Exhibit 1 (emphasis added).***

[1] The district court failed to address Ground-Ten's IAOC sub-claim. At the time, this was an unexhausted sub-claim. However, this sub-claim could have been addressed under Martinez v. Ryan, 132 S. Ct. 1309 (2012). Nevertheless, it is now exhausted because it was presented to the state courts in 2017, which was affirmed on appeal.

8. The DC denied the due process claim (Ground-Ten) because it wasn't properly raised in the state court, and therefore procedurally barred from federal review. Yet, the DC went on to consider the claim's merits. However, it failed to explicitly consider the separate and distinct sub-claim of IAOC, which was exempted from the aforementioned procedural bar under Martinez v. Ryan, 132 S.Ct. 1309 (2012). The DC declined to issue a certificate of appealability (COA). ***See Appendix, Exhibit 4; See also, Pate v. Sec.'y, Dept. of Corr., 2012 U.S. Dist. LEXIS 144568, at 28-30 (M.D. Fla. 2012).*** Furthermore, while discussing Ground-Ten's merits, the DC specifically addressed the sentencing court's review of his criminal history:

a. The DC recounted several traffic offenses, the '89 petty theft mentioned above (failing to understand that he was actually found "not guilty"), and a trespassing conviction. His PSI clearly shows that he was found "not guilty" of the '89 petty theft, and the sentencing transcript clearly shows the court considering it. Obviously, the DC did not give his claim anything near the scrutiny one would expect because it concluded that:

> "there is nothing in the record to indicate that these convictions are incorrect... Pate fails to demonstrate that his due process rights were violated by the consideration of these convictions." ***Ibid.*** **(emphasis added).**

b. The DC's findings were based upon an unreasonable determination of the facts, in light of the evidence (sentencing transcript and PSI) presented to it. In Ground-Ten, he didn't verbatim state that the sentencing court erroneously considered, as part of his sentence, the '89 petty theft because it was so obvious. He did state that, "Counsel

allowed the trial court to have the unfettered belief at sentencing that he had previous convictions for "among other things." ***See Appendix, Exhibit 3 (Ground-Ten) (emphasis added)***. At most, this is nothing more than an expansion of the facts of how the sentencing court violated due process and how counsel was ineffective. The DC itself called this issue to the table when it said it was a valid conviction.

c. When discussing his claim that his '96 contempt conviction was vacated and thus impermissible, the DC cited his contemporaneous explanation to the court that it involved "*child custody stuff*" was proof that it was a valid conviction. In no way, whatsoever, did he admit or convey to the sentencing court that this was a valid conviction. Rather his response that it involved "*child custody stuff*" was made in direct response to the sentencing court saying that it did not "*know what [the contempt charge] is about.*" ***See paragraph 3(b) above.*** The DC's findings which inferred that he "admitted" to this incorrectly reported conviction was just objectionable and unreasonable. This contempt conviction was vacated in February 1996. His PSI is inaccurate. The DC's reasoning entirely sidestepped his claim.

d. The DC correctly noted that the sentencing court was initially confused about his '97 arrest for false imprisonment.[2] However, the DC stated that he wasn't prejudiced by the sentencing court's confusion because as part of a plea bargain, he pled guilty to interference with child custody, was sentenced to 18-months in prison, and in

[2] According to the PSI, in 1997, he was arrested for false imprisonment. The state prosecutor chose to file a criminal information charging him with kidnapping and interference with child custody. Legally, the amended charges nullified the original charge of false imprisonment. As part of a plea agreement, the state nol-processed the violent felony charge of kidnapping, and in exchange he pled "no-contest" to interference with child custody, a non-violent third degree felony, After waiting almost 15-months in jail, he was sentenced to 18-months prison as part of the agreement. In other words, he only served approximately an additional 3-months for this charge.

exchange the state nol-processed the kidnapping charge. This is objectively unreasonable. As he has shown above, despite the court's "initial confusion" and despite being corrected by the prosecutor, the sentencing court remained confused. The contemporaneous correction given to the court was wasted breath. Just prior to expressing that "*there is only one appropriate sentence*" **(See paragraph 3(a) above)** and sentencing him to the statutory maximums of life and 30-years, the court specifically stated that he had a prior violent felony conviction for false imprisonment and that he was sentenced to 18-months in prison for it. The sentencing transcript clearly shows, in black and white, that the court erroneous believed that he had a prior conviction for false imprisonment, which is a lesser included charge of kidnapping, the crime he was being sentenced to the maximum for.

e. False imprisonment is a violent felony while interference with child custody is not. Again, more importantly, it is a lessor included charge of kidnapping. The sentencing court's impermissible misunderstanding played a significant role in his maximum sentence.

f. The DC's order denying Ground-Ten, expressed that "there is nothing in the record to indicate that these convictions are incorrect... Pate fails to demonstrate that his due process rights were violated by the consideration of these convictions." **See Appendix Exhibit 4**. The sentencing court violated Townsend v. Burke, 68 S.Ct. 1254 (1948). For example, *see the concurring opinion of Judge Martin in U.S. v. Rainey, 537 Fed. Appx. 836, at 840 (11th Cir. 2013):*

"It is my understanding that a sentencing court cannot rely on false

assumptions without violating the due process clause; at least in some circumstances."

g. The sentencing court's erroneous understanding that he: had been previously convicted of false imprisonment, petty theft and contempt were nothing but constitutionally impermissible false assumptions.

h. Furthermore, the DC was also required to address his separate and distinct sub-claim of IAOC. See Clisby v. Jones, 960 F. 2d 925 (11th Cir. 1992) (announcing rule that when a district court fails to address all claims in a 2254 petition, the judgment will be vacated and remanded for consideration of all unresolved claims). The 11th circuit's Clisby rule is derived from this courts admonition that courts are to avoid "piecemeal" litigation by ruling upon all habeas claims, at one time. See Coleman v. Thompson, 111 S.Ct. 2546, at 2554-55 (1991); McCleskey v. Zant, 111 S.Ct. 1454, at 1468-70 (1991); Penry v. Lynaugh, 109 S.Ct. 2875, at 2883 (1989); Duckworth v. Eagan, 109 S.Ct. 2875, at 2883 (1989); Teague v. Lane, 109 S.Ct. 1060, at 1072-75 (1989);h. In ref., Blodgett v. U.S., 112 S.Ct. 674 (1992).

i. The plain language of Ground-Ten was sufficient enough to make the DC aware of his IAOC sub-claim, particularly the last sentence ("Counsel was ineffective.") For example, see Dupree v. Warden, 715 F. 3d. 1295, at 1299 (11th Cir. 2013)(recognizing that "two sentences found in the middle of a 15-page memorandum" was sufficient to raise claim of IAOC). Despite the DC's unfavorable resolution of his due process violation claim, it was required to

address the separate and distinct IAOC sub-claim. For example, see Murray v. U.S., 2017 U.S. App. LEXIS 14850 (11th Cir. 2017)(vacating and remanding because the district court "did not explicitly address the claims made."); Puiatti v. McNeil, 626 F.3d. 1283, at 1307 (11th Cir. 2010)(Generally, an unresolved claim constitutes a Clisby error regardless of the reason the claim was not resolved).

9. In June 2013, while the Eleventh Circuit considered his application for a COA, the respondent transferred him to the Graceville Correctional Facility (Graceville), a privately operated prison, without his legal materials which the respondent demanded that it store on his behalf, under the treat of disciplinary action. His stored legal materials consisted of, among other things, the entire record on appeal, postconviction motions, orders and appeals. He immediately utilized the respondent's administrative grievance procedures in order to obtain them. (See below).

10. His application for a COA was denied in 2013. Even that court failed to recognize that the DC had committed a Clisby error. According to Rule 13.1, he had 90-days thereafter to file his petition for certiorari with this Court.

11. On November 12, 2013, due to the respondent's failure to supply him his needed stored legal materials, he sought to extend his deadline, which Justice Thomas granted on December 11, 2013. His deadline was extended to March 3, 2014. See Pate v. Sec.'y, Dept of Corr., case no. 13-10078 (2013); ***See Appendix, Exhibit 17.***

12. He continued to utilize the respondent's administrative grievance procedures, the only avenue available to him to obtain his stored legal materials. It was utterly impossible for

him to draft a petition for certiorari without these legal materials, and it's wholly unreasonable for anyone, in hindsight, to expect otherwise:

a. On June 21, 2013, he filed his 1st grievance. ***See Appendix, Exhibit 6.***
b. On July 23, 21013, filed his 2nd grievance. ***See Appendix, Exhibit 7.***
c. On October 7, 2013, he filed his 3rd grievance. ***See Appendix, Exhibit 8.***
d. On October 23, 2013, he filed his 4th grievance. ***See Appendix, Exhibit 9.***
e. On November 14, 2013, he filed his 5th grievance. ***See Appendix, Exhibit 10.***
f. On December 16, 2013, he filed his 6th grievance. ***See Appendix. Exhibit 11.***
g. On January 17, 2014, he filed his 7th grievance. ***See Appendix, Exhibit 12.***

13. As this Court can see, he filed numerous administrative grievances concerning his unavailable stored legal materials.

14. Because the respondent still failed to supply him his legal materials, on February 6, 2014, (27-days before his extended deadline) he mailed a timely second request to extend his March 3, 2014 deadline and a motion for a show cause order based upon the respondent failing to supply his legal materials. ***See Appendix, Exhibit 13 (2/6/14-outgoing prison mail log).***

15. On Thursday, February 20, 2014, the respondent mailed his legal materials to him at Graceville, via United Parcel Service (UPS)- Ground service. ***See Appendix, Exhibit 14 (USP shipping label, dated 2/20/14).*** He assumes respondent's counsel, in response to his motion for a show cause order, intervened and caused his legal materials to be supplied to him.

16. On or about, Thursday, February 27, 2014, -two business days before the expiration of his deadline- staff at Graceville delivered to him his legal materials (32 lbs.). However, receiving his legal materials two business days before the expiration of his deadline was not enough time to draft a petition for certiorari, and it is patently unreasonable for

anyone to think otherwise[3]. Graceville required him to store these materials in its law library, which was closed that weekend (March 1-2). His extended deadline expired on Monday, March 3, 2014, leaving him part of Thursday (Feb. 27th) and Friday (Feb. 28th) to review 32 lbs. of legal materials, conduct research, draft and prepare his petition with exhibits, and mail it on Monday (March 3rd) morning. No one could have done this.

17. On March 10, 2014, he mailed an inquiry to case analyst, "Redmond Barnes", asking the status of his two aforementioned motions[4]. ***See Appendix, Exhibit 15 (3/10/2014)- outgoing prison mail log).*** He never received any acknowledgment or reply from Mr. Barnes and assumed his motions were being considered and pending.

18. On April 1, 2014, he mailed an inquiry to the Court's Clerk, asking the status of his two motions.[5] ***See Appendix, Exhibit 16 (4/1/2014- outgoing prison mail log).*** Again, he received no acknowledgment or reply. Eventually, he assumed his motions were denied and anything filed after his extended deadline was a waste of time. He was literally at a loss of what to do.

19. In a moment of curiosity, and the willingness of his prison classification officer at Graceville, Jessie Durance, on April 19, 2017 (see date printed on Exhibit 17), he was supplied a printout of this Court's online docket for case number 13-10078. The docket indicates that this Court never received his timely second motion to extend his deadline,

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[3] He has no proof (respondent may) that he received his legal materials on this day, however, it's a very reasonable assumption. First, the UPS- Ground shipping label was printed by the respondent on Thursday, February 20, 2014 (see date printed on the bottom of Exhibit-14). UPS does not ship ground packages over the weekend, unless the shipping label indicates "weekend" delivery, which costs extra. Second, it's further reasonable to assume that it took a few days to reach Graceville, and that prison officials did not immediately give them to petitioner-assume it took one day, which brings us to Thursday, February 27, 2014. His extended deadline was Monday, March 3rd.

[4] This Court's online docket does not reflect receiving this, but outgoing prison mail logs recorded him mailing it.

[5] This Court's online docket does not reflect receiving this, but outgoing prison mail logs recorded him mailing it.

his motion for a show cause order, or his inquiries to Mr. Barnes or the Clerk. ***See Appendix, Exhibit 17.***

20. Based on the discovery of this Court's online docket, he mailed another "Application To Extend Deadline" which was, again, never answered or acknowledged.[6] ***See Appendix, Exhibit 18 (motion).*** This motion was premised upon this Court's online docket not reflecting receipt of his motions and the regularly practiced legal principal that the statute of limitations is tolled while timely made motions to extend them are resolved. For example, *See DeCenzi v. Rose, 419 F.3d 493, at 498 (6th Cir. 2005)("[A] motion for delayed appeal, even it granted, does not restart the statute of limitations, but if properly filed, it does toll the statute during the time the motion was pending."); See also, Cannon v. Sloan, 2016 U.S. Dist. LEXIS 105544 (N.D. Ohio 2016)(the statute of limitations was tolled the day Cannon filed his second motion for delayed appeal).*

21. In October 2018, this petitioner sought recourse in the Eleventh Circuit (case no. 18-14303-Q) by filing an application for an extraordinary writ, which it treated as a petition for a writ of mandamus, calling it "frivolous" and denying it. ***See Appendix, Exhibit 19 and 20 (petition and order);*** Pate v. Sec.'y, 2019 U.S. App. LEXIS 10685 (11th Cir. 2019).

22. In February 2020, he was working on a "Belated Petition for a Writ of Certiorari" to this Court.[7] ***See Appendix, Exhibit 21 (Belated Petition).*** But the COVID19 pandemic occurred, and the respondent quarantined him on and off for the next 18 months, and it severely restricted usage of the prison's law library (only those with documented

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[6] He is no longer at Graceville and unable to provide an outgoing mail log. Perhaps, the respondent can provide it if needed. This document was included in a petition for an extraordinary writ (11th Cir.) in 2018 (3 years ago). See Appendix, In ref: Pate v. Sec.'y, Dept. of Corr., 2012 U.S. App. LEXIS 10685 (11th Cir 2019).

[7] This is a draft composed on an email editor supplied by the respondent. He purchased a copy of it, and the respondent printed it and delivered it to him, It's dated 2/8/20. He never finished it because he became aware that the Clerk is directed to not file obviously untimely petitions for certiorari ("Belated" is obviously untimely).

deadlines). He abandoned this draft because of Rule 13.2, which directs the Clerk to not file any petition that is "jurisdictionally" out of time, and because of 28 USC § 2101 (c).

DID RESPONDENT USURP THIS COURT'S APPELLATE JURISDICTION?

23. Through no fault of his, the respondent usurped this Court's appellate jurisdiction. He was entitled to one full round of the review process, which includes the statutory right to petition this Court for certiorari ***(see 28 USC § 1257).*** He believes that because the DC failed to consider the IAOC sub-claim, and because the sentencing court did consider impermissible sentencing factors, this Court would have granted his petition.

24. Again, through no fault of his, respondent prevented him from invoking this Court's appellate jurisdiction. Granting this petition would reinstate (aid) this Court's appellate jurisdiction.

IS USURPATION OF APPELLATE JURISDICTION AN EXCEPTIONAL CIRCUMSTANCE THAT WARRANTS THE EXERCISE OF THIS COURT'S DISCRETIONARY POWERS?

25. This issue goes beyond this petitioner, alone. Will this Court allow the State of Florida to act as this Court's gate keeper, preventing an unrepresented prisoner form timely knocking on this Court's door, something he was entitled to do by federal statute? Under the threat of disciplinary punishment (confinement), the respondent demanded that it store his legal materials, which he needed to draft his petition, and then failed to timely supply them to him for nine months. Take particular note of his administrative grievance ***(see Appendix, Exhibit 10)*** where he pleads with the respondent to give him his stored legal materials. He was utterly helpless and had to rely upon the whims of the prison

system and its administrative grievance procedures, which necessitated in him asking this Court to extend the time to file his petition, twice. The second motion went unanswered.

26. Respondent eventually supplied him with his legal materials two business days before his extended deadline of March 3, 2014. Under the best of circumstances, he could never have reviewed 32 lbs. of documents and delivered a petition in two days. More importantly, neither could anyone.

27. If the respondent had timely supplied his legal materials, he would have exercised his statutory right to petition this Court for certiorari review, and this Court would have had an opportunity to review it or not. Instead, respondent's actions caused this Court's appellate jurisdiction to be circumvented. Black's Law dictionary (2018) defines the word "exceptional" as anything liable to objection, and these are certainly objectionable circumstances by any spectrum of definition which warrant the exercise of this Court's discretionary power. In fact, this Court has granted similar relief under similar circumstances. *See Schacht v. U.S., 90 S.Ct. 1555 (1970)(expressing the view of eight members of the Court, that the Court could wave its own requirement that petitions for certiorari in criminal cases be filed within 30 days of judgment).* This Court has repeatedly stated that it could, in fact, relax the time requirements of Rule 13.1.

CAN ADEQUATE RELIEF BE OBTAINED IN ANY OTHER FORM OR FORUM?

28. There is absolutely no other avenue, in any court, to obtain relief. He has already petitioned the Eleventh Circuit for an extraordinary writ based upon the foregoing facts (***See Exhibit 19***), which it deemed "frivolous" and denied. The state courts have all given their answers. Only the Federal court system has yet to give him one full round of review.

The DC failed to consider his sub-claim of IAOC contained in Ground-Ten of his § 2254 petition. He cannot petition this Court for a belated appeal because the Clerk is directed to not file obviously untimely petitions for certiorari. In order to exercise his statutory right to petition this Court for certiorari review, his only option is to file a petition for a writ of habeas corpus in aid of appellate jurisdiction. Only this Court can assert its appellate jurisdiction.

HAS PETITIONER'S EXERCISED DUE DILIGENCE?

29. The answer is an unequivocal, yes. It has been almost eight years since the expiration of his March 3, 2014, deadline to file his petition for certiorari. He timely mailed a second motion to extend his deadline, and a motion for a show cause order, both of which remain unanswered and technically pending. after waiting a month, he mailed inquires to the assigned case analyst and the Clerk, never receiving an acknowledgment or reply. Thirty-six months later, on April 19, 2017, he learned that this Court's online docket didn't reflect receiving his two motions, or inquiries. In 2017, he mailed another motion to extend his deadline, which the Court's online docket does not reflect receiving either.
30. In 2017, he sought successive postconviction review of the aforementioned impermissible sentencing factors and the associated IAOC claim.
31. In 2018, he filed a petition for an extraordinary writ in the eleventh circuit, explaining all of the above. That court chose to treat his pleading as a petition for a writ of mandamus, something he was not seeking, and denied it.
32. In February 2020, he was working on a "Belated Petition For a Writ of Certiorari" when the COVID19 pandemic hit and the prison system shut down. ***See Appendix, Exhibit 21.***[7]

[7] This is a draft composed on an email editor supplied by the respondent. He purchased a copy of it, and the

33. In March 2022, he was transferred to a prison in Daytona Beach without his stored legal materials, again. This time it took approximately 90-days to get them. ***See Appendix, Exhibit 22 (grievance).***

34. It has taken a long time for petitioner to realize that any pleading, or inquiry, that he mailed to this Court with case number 13-10078, was likely thrown away by this Court's Clerk. It is either that or Graceville never mailed any of his pleadings or inquiries, which is unlikely. The only way to get before this Court was to obtain a new case number, sans this petition. He has exercised due diligence. This has happened before. Consider Huizer v. Carey, 273 F. 3d 1220 (9th Cir. 2001). Huizer was found diligent after waiting 28-months before he figured out that the court never received his petition (it took this petitioner 36-months). Having received no response from the court after he sent his petition, Huizer wrote the court but heard nothing back:

> "[P]risoners cannot take the steps other litigants can take to monitor the processing of their [documents] and to ensure that the court clerk receives and stamps them before the applicable deadlines. Moreover, prison officials may have an incentive to delay prisoners' court filings and prisoners will have a hard time proving that officials did so. A private party, especially a prisoner, will be at a loss for what to do, other than wait, if a court fails to respond to such an inquiry. So Huizer waited an additional twenty-one months, not an unusually long time to wait for a court's decision. He then sent another copy of his petition to the court. He still received no reply from the court after waiting another five months. Whether or not the petition is actually placed in the mail, delivered to the court or filed once it arrives there, are all matters beyond the prisoner's control.'A prisoner who delivers a document to prison authorities gets the benefit of the prison mailbox rule, so long as he diligently follows up once he has failed to receive a disposition from the court after a reasonable period of time.'"Huizer, at 1223-24 (quoting Houston v. Luck, 108 S.Ct.

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respondent printed it and delivered it to his, It's dated 2/8/20. He never finished it because he became aware that the Clerk is directed to not file obviously untimely petitions for certiorari ("Belated" is obviously untimely).

2379 (1988)).

DID HIS DEADLINE TO FILE A WRIT OF CERTIORARI TOLL WHEN HE TIMELY MOVED TO EXTEND IT?

35. In Holland v. Florida, 130 S.Ct. 2549 (2010), this Court stated that a litigant is entitled to equitable tolling of a statute of limitations if he establishes that he pursued his right diligently and some extraordinary circumstance stood in his way and was prevented from timely filing. The 90-day time period (technically not a statute of limitations, but a closely hewed Rule, nonetheless) in which to file his petition for certiorari was tolled the day he timely mailed his second request to extend his deadline and a motion for a show cause order which appears to not have been received by this Court. Outgoing prison mail logs show him mailing them to this Court on the date he claims. The mailbox rule established by this Court applies. For example, *see Gracey v. U.S., 131 Fed. Appx. 180, at 181 (11th Cir. 2005)(The mailbox rule applies even when the motion is never received or filed by the Court.* In addition, its a widely and regularly applied legal principle that timely made motions to extend the statute of limitations (belated appeal) in which to file a pleading is tolled until the motion is ruled upon. Under his circumstances, this should apply to the 90-day window to file a petition for certiorari. *See example, DeCenzi v. Rose, at 498. See also, Cannon v. Sloan. This Court has granted similar relief in Schacht v. U.S.*; see also Bowles v. Russell, 127 S.Ct. 2360 (2007)(quoting Schacht v. U.S.)

REASON WHY THIS COURT SHOULD GRANT RELIEF?

36. Rule 20.1 states that to justify the granting of any extraordinary writ, it must be shown that: 1) the writ will be in aid of the Court's appellate jurisdiction; 2) that exceptional

circumstances warrant the exercise of the Court's discretionary powers; and, 3) that adequate relief cannot be obtained in any other form or forum. He respectfully suggests that he meets this criteria.

37. Taken together, these errors have undermined the principle of fairness of the judicial process. Petitioner's particular circumstances, presented herein, more closely reflect a comical, but consequential nonetheless, rendering of *Dante's Inferno* than it does a fair process. Can one realistically deem being sentenced in part, for a crime he was found "not guilty" of, vacated, or nol-processed, as fair? How else could one describe, except as unfair, the State of Florida insisting that it store its prisoner's legal materials, under the threat of punishment (in other words, he had no choice), and then essentially refuse to produce them for 9-months, and he misses his deadline? What about his timely made motion to extend his deadline, or his inquires concerning it? Doesn't equitable tolling (a principle of fairness) apply? And, let's not forget two federal courts ignoring his sub-claim of IAOC? Turning a blind eye to these circumstances by refusing to grant this petition will affect the integrity and public reputation of the judicial system. Just like any other American citizen, he is entitled to his day in court and due process, which has escaped him thus far. The legal process here has been seriously flawed, worthy of this Court's correction. If this Court chooses not to uphold the principles it espouses, how can it look at petitioner and expect him to do so?

38. Furthermore, it would be an affront to the judicial system to allow the respondent to virtually get away with what it has done. For the entire 9-month period that he filed administrative grievance after administrative grievance, respondent had his legal

materials in its possession. Take particular note of his 7th grievance ***(See Appendix, Exhibit 12)*** filed on January 17, 2014, where he pleads with the respondent to supply him with those legal materials:

> **[Petitioner]:**"[I]f I miss my deadline [,] irreparable harm will occur to me by my petition [for a writ of certiorari] being dismissed,"
>
> **[Respondent's reply]:** "This grievance is not accepted as a grievance of an emergency nature."

39. The things he has complained of are meritorious and contravene this Court's previous rulings on the very same issues.

CONCLUSION

40. He respectfully asks that this Court grant this petition, vacate his sentence, and order that he be resentenced with instructions concerning the '89 petty theft, '96 vacated contempt, and the '97 false imprisonment charges. Exceptio in factum.

Respectfully Submitted,

DRP 10/28/22

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SERVICE

Pursuant to Rule 20.2(b), this petition is ex parte.