

IN THE
SUPREME COURT OF THE UNITED STATES

TIFFANY FRANKLIN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

MOTION FOR LEAVE OF COURT TO FILE OUT OF TIME

Petitioner Tiffany Franklin electronically filed her Petition for Certiorari on January 5th, 2023, but did not submit the paper copies to the Court via United States Postal Service until January 6th, 2023, one day later. Ms. Franklin respectfully requests that the Court accept the late filing of the paper copies. Undersigned counsel has not contacted the Solicitor General's office to inquire whether the United States has an opposition to this motion. On January 17, 2023, the Solicitor General waived filing a response to Ms. Franklin's petition. (Attached Exhibit D). The petition has

been distributed for conference of February 17, 2023, with a notation of its untimeliness in filing. (Attached Exhibit C & E). Out of an abundance of caution for the potential ramifications of the undersigned's error, undersigned counsel files this motion.

BACKGROUND

Ms. Franklin, a bank vault teller, was convicted and sentenced in the Middle District Court of Alabama. Her sentence included a 2-point enhancement for abuse of position of trust. In her Petition for Writ of Certiorari, Ms. Franklin has presented an issue of first impression and requested the Court to establish a bright line rule for the application of the enhancement. The United States Court of Appeals for the Eleventh Circuit denied Ms. Franklin's direct appeal in all respects on October 7th, 2022. Ms. Franklin's petition for writ of certiorari was due on January 5th, 2023.

On the afternoon of January 5th, 2023, at 2:40 p.m. undersigned counsel electronically filed Ms. Franklin's Motion for Leave to Proceed *In Forma Pauperis*, Petition for Writ of Certiorari, the Appendix, and the Certificate of Service. (Attached Exhibit A).

The Original and 10 paper copies, and service copy to the Solicitor General were assembled and mailed by a third-party E-Discovery Partners via United States Postal Service on January 6, 2023, at 11:35 a.m. (Attached Exhibit B).

By letter dated January 11, 2023, undersigned counsel was contacted by a Clerk of this Court who advised that the petition was filed out of time and would be forwarded with a notation of the filing's untimeliness. (Attached Exhibit C). For the following reasons, Ms. Franklin requests that the Court grant this Motion and allow for the filing of her Petition for Writ of Certiorari out of time.

ARGUMENT

Ms. Franklin is an indigent person. She is unable to advocate for herself and must rely on counsel's assistance. Here, a mistake was made by the undersigned. This error should not preclude Ms. Franklin from having this Court consider the last known opportunity she has for judicial review of her unconstitutional sentence. Undersigned counsel provided service of the documents via electronic mail to the Assistant Attorney General Justin D.

Roller. Undersigned counsel respectfully requests that this Court consider equity and the ends of justice when it reviews this motion.

Undersigned counsel, as a solo practitioner, relies on a third-party service provider to complete the copying, assembly, and mailings. With the mid-afternoon filing of the documents, communications with the Eleventh Circuit Clerk's office, a subsequent amendment to the certificate of service, insufficient time remained in the normal operations of the workday for the third-party service provider to complete the copying, assembling, and mailing of the documents until the morning of January 6th, 2023. It was a miscalculation on the part of the undersigned for her own deadlines as well as being non-compliant with this Court's rules. Thus, the paper copies were not placed in the mail until the next day of the electronic filing. Ms. Franklin seeks an equitable remedy from this Court.

In considering this Court's jurisprudence and the Federal Rules of Civil Procedure 60(b)(1), this Court should find excusable neglect exists here. Excusable neglect is generally an "equitable inquiry" based upon the particular circumstances of the case.

Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993). In *Pioneer*, the Court considered Rule 60(b)(1) and observed that “for purposes of Rule 60(b), ‘excusable neglect’ is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence.” *Id.* at 394. The ordinary meaning of “neglect” is “to give little attention or respect” to a matter, or, closer to the point for our purposes, “to leave undone or unattended to *esp[ecially] through carelessness*.” *Pioneer*, 507 U.S. at 388. (citing Webster’s Ninth New Collegiate Dictionary 791 (1983) (emphasis added)).

The Court identified four factors pertinent to the determination: “the danger of prejudice to the [opposing party], the length of the delay and its potential impact on the judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *Id.* at 395.

First, the Department of Justice was served with all the pleadings on January 5th, 2023, and not be prejudiced by the Court accepting those pleadings as timely. Second, the length of the paper

copy filing delay was minimal; less than 24 hours after the January 5th, 2023. Third, Ms. Franklin submits that the reason for the delay was one far beyond her control. A misrepresentation made to and reasonably relied upon by her counsel should not be attributable to Ms. Franklin because this Court should, as Congress contemplated in the Federal Rules of Civil Procedure that the lower courts could, accept late filings caused by inadvertence, mistake, or carelessness. Here, given the circumstances where counsel, a solo practitioner, misjudged an unexpected delay from the time of electronic filing to providing the necessary documents to a third-party service provider for completion of service, the undersigned asks this Court to consider the mistake as excusable. Finally, Ms. Franklin, at all times, has acted in good faith, having timely electronically filed and timely served the documents at issue.

CONCLUSION

For the foregoing reasons, Ms. Franklin respectfully requests this Court grant the Motion and allow for the filed Petition for Certiorari out of time.

Respectfully submitted January 26th, 2023,

/s/Karen H. Jackson

Karen H. Jackson*

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Montgomery, Alabama 36104

Telephone: 334.491.1102

Email: khjlawoffices@gmail.com

**Counsel of Record*

khjlawoffices@gmail.com

From: no-reply@sc-us.gov
Sent: Thursday, January 5, 2023 2:40 PM
To: khjlawoffices@gmail.com
Subject: Your Electronic Filing record has been submitted.

Your Petition for a Writ of Certiorari has been submitted. It will be reviewed once the hard copy is received. If you are not expecting this email, please contact the Supreme Court Electronic Filing Support Group at eFilingSupport@supremecourt.gov.

khjlawoffices@gmail.com

From: Bert Morris <bert.morris@discoverepartners.com>
Sent: Tuesday, January 24, 2023 1:32 PM
To: Karen Jackson
Subject: Fwd: USPS eReceipt

Sent from my iPhone

Begin forwarded message:

From: DoNotReply@ereceipt.usps.gov
Date: January 6, 2023 at 11:35:48 AM CST
To: Bert Morris <bert.morris@discoverepartners.com>
Subject: USPS eReceipt

GREEN LANTERN 2901 MCGEE RD MONTGOMERY, AL 36111-9998 (800)275-8777			
01/06/2023		11:35 AM	
Product	Qty	Unit Price	Price
First-Class Mail® Package Washington, DC 20530 Weight: 0 lb 8.90 oz Estimated Delivery Date Mon 01/09/2023 Tracking #: <u>9500 1124 2076 3006 3994 52</u>	1		\$6.55
Priority Mail® Med FR Box Washington, DC 20543 Flat Rate Expected Delivery Date Mon 01/09/2023 Tracking #: <u>9505 5124 2076 3006 3994 62</u> Insurance Up to \$100.00 included	1		\$17.05
Total			\$17.05

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

January 11, 2023

Scott S. Harris
Clerk of the Court
(202) 479-3011

Ms. Karen Haiden Jackson
Law Offices of Karen H. Jackson
1124 E. Main Street
P.O. Box 681801
Prattville, AL 36068

Re: Tiffany Franklin
v. United States
No. 22-6520

Dear Ms. Jackson:

The petition for a writ of certiorari in the above entitled case was filed on January 6, 2023 and placed on the docket January 11, 2023 as No. 22-6520.

A form is enclosed for notifying opposing counsel that the case was docketed.

The petition for a writ of certiorari, sent January 6, 2023, was due January 5, 2023; therefore the petition was filed with a notation as to its untimeliness.

Sincerely,

Scott S. Harris, Clerk

by 

Clayton Higgins
Case Analyst

Enclosures

khjlawoffices@gmail.com

From: no-reply@sc-us.gov
Sent: Tuesday, January 17, 2023 6:44 PM
To: khjlawoffices@gmail.com
Subject: Supreme Court Electronic Filing System

A new docket entry, "Waiver of United States of America of right to respond submitted." has been added for Tiffany Franklin, Petitioner v. United States.

khjlawoffices@gmail.com

From: no-reply@sc-us.gov
Sent: Thursday, January 19, 2023 10:13 AM
To: khjlawoffices@gmail.com
Subject: Supreme Court Electronic Filing System

A new docket entry, "DISTRIBUTED for Conference of 2/17/2023." has been added for Tiffany Franklin, Petitioner v. United States.