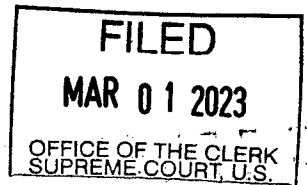


22-7020

No. 22A553



IN THE  
SUPREME COURT OF THE UNITED STATES

Tiwian Laquinn Skief — PETITIONER  
(Your Name)

vs.

Bobby Lumpkin, Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tiwian Laquinn Skief #1769917

(Your Name)

2661 FM 2054

(Address)

Tennessee Colony, Tx. 75884

(City, State, Zip Code)

N/A

(Phone Number)

### **QUESTION(S) PRESENTED**

Did the Fifth Circuit misrepresent facts in this case that caused them to deny Petitioner's COA?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

Skief v. Dir., TDCJ-CID, No. 3:18-cv-226-M-Bn, U.S. District Court for the Northern of Texas Dallas Division Judgment entered November 12, 2021

Skief v. Lumpkin, No. 22-10315, U.S. Court of Appeals for the Fifth Circuit, Judgment entered Oct. 3, 2022

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3,4
STATEMENT OF THE CASE .....	5,6
REASONS FOR GRANTING THE WRIT .....	7,8,9
CONCLUSION.....	10

## INDEX TO APPENDICES

APPENDIX A     UNITED STATES COURT OF APPEALS DECISION

APPENDIX B     UNITED STATES DISTRICT COURTS DECISION

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

In Re West Tex. Mktg, Corp., 12 F.3d 497,503(5th Cir.1994)	7.
Haines v. Kerner, 404 U.S. 519, 520-21	8.
Holland v. Florida, 560 U.S. 631,645(2010)	4.
Davis v. Johnson, 158 F.3d 806,811(5th Cir.2000)	4.
Fisher v. Johnson, 174 F.3d 710,713(5th Cir.1999)	4.

### STATUTES AND RULES

Federal Rule of Civil Procedure 60(b)	3.
Mailbox Rule Fed. R. App. P. 4(c)	3,4.
Equitable Tolling 28 U.S.C.S. §2244(d)(1)	4.
Fed. R. App. P. (a)(5), (6)	7.
28 U.S.C. §2107	7.
28 U.S.C. § 2253(c)(2)	8.

### OTHER

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10-3-22.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including March 02, 2023(date) on December 21, 2022(date) in Application No. 22 A 553.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Rule 60. Relief from a Judgment or Order**

(a) **Corrections Based on Clerical Mistakes; Oversights and Omissions.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On Motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) **Timing and Effect of the Motion.**

(1) **Timing.** A motion under Rule 60(b) must be made within a reasonable time and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) **Effect on Finality.** The motion does affect the judgment's finality or suspend its operation.

Federal Rule of Civil Procedure 60(b)

### **Mailbox Rule Fed. Rule App. P. 4(c)**

Mailbox rule for prisoners, inmate must establish timely filing under prison mailbox rule by either alleging and proving that he or she made timely use of prison's legal mail system if satisfactory system is available, or if legal system is not available, then by timely use of prison's regular mail system

in combination with notarized statement or declaration under penalty of perjury of date on which documents were given to prison authorities and attesting that postage was prepaid.

### **Equitable Tolling**

The AEDPA'S one-year statutory deadline is not a jurisdictional bar and can, in appropriate exceptional circumstances, be equitably. Holland v. Florida, 560 U.S. 631, 645(2010); Davis v. Johnson, 158 F. 3d 806, 811(5th Cir. 2000)(recognizing that only "rare and exceptional circumstances" warrant equitable tolling). "The doctrine of equitable tolling preserves a [party's] claims when strict application of the statute of limitations would be inequitable." Davis, 158 F.3d at 810 (quoting Lambert v. United states, 44 F.d 296, 298 (5th Cir. 1995)). It "applies principally where [one party] is actively misled by the [other party] about the cause of action or is prevented in some extraordinary was from asserting his rights." A habeas petitioner is entitled to equitable tolling only if he shows that: (1) "he has been pursuing his rights diligently," and (2) some extraordinary circumstance prevented a timely filing. Courts must examine each case in order to determine if there are sufficient exceptional circumstances tolling. Fisher v. Johnson, 174 F.3d 710, 713(5th Cir. 1999).



## STATEMENT OF THE CASE

Petitioner Tiwian Laquinn Skief, A Texas Prisoner, was convicted of murder and sentenced to fifty years in prison. *Skief v. State*, No. 05-12-00223-CR, 2013 WL 2244336, at \*1 (Tex. App.-Dallas May 21, 2013, pet. ref'd), aff'g *State v. Skief*, No. F10-35936-L(Crim. Dist. Ct. No. 5, Dall. Cnty., Tex. Feb. 10, 2012). After his criminal judgment was affirmed on direct appeal, the Texas Court of Criminal Appeals (the CCA) refused Petitioner's petition for discretionary review, see *Skief v. State*, PD-0655-15 (Tex. Crim. App. Nov. 4, 2015), and the United States Supreme Court denied his petition for a writ of certiorari, see *Skief v. Texas*, 137 S. Ct. 62 (2016).

The CCA then denied Petitioner's state habeas application without written order on the trial court's findings without a hearing. See *Ex parte Skief*, WR-82,496-02 (Tex. Crim. App. Dec. 20, 2017). On December 29, 2020, the United States Northern District Court Dallas Division entered judgment denying his pro se 28 U.S.C. § 2254 habeas petition. See *Skief v. Dir.*, TDCJ-CID, No. 3:18-cv-226-M-BN, 2020 WL 7753726 (N.D. Tex. Oct. 14, 2020), rec. accepted, 2020 WL 7711376 (N.D. Tex. Dec. 29, 2020). The United States Court of Appeals for the Fifth Circuit dismissed Skief's related appeal for want of prosecution (for not paying the \$505.00 filing fee/or filing motion for In Forma Pauperis) on July 7, 2021. See *Skief v. Lumpkin*, No. 21-10517 (5th Cir. July 7, 2021) [Dkt. No. 35].

Citing the 5th Circuit's denying his request to reinstate his appeal on November 4, 2021, Petitioner returned to the United States Northern District Court Dallas Division in January 2022 to move this Court to fix the problem that caused the court to dismissed his 28 U.S.C. § 2254 under Federal Rule of Civil Procedure 60(b), to reenter the December 2020 judgment to re-instate his appeal. Dkt. No. 39.

Petitioner's case was then referred to United States magistrate judge David L. Horan for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference from Chief Judge Barbara M.G. Lynn. And the magistrate judge enters these findings of fact, conclusions of law, and recommendation the the Court should deny Petitioner's motion, this was handed down February 9, 2022. Petitioner then petitioned the United States Court of Appeals for the 5th Circuit for a Certificate of Appealability (COA) but was affirmed stating; COA denied as unnecessary; motion to proceed IFP denied on October 03, 2022.

After the 5th Court of Appeal denied COA, Petitioner then filed a extension of time to file a meaningful Writ of Certiorari. The due for said writ is March 02, 2023.

(2) Fifth Circuit did not look into the facts of the case which they are required to do, they just followed what the district court said.

**B. Reason(s) Petitioner was seeking the Fifth Circuit to issue COA**

(1) Petitioner, proceeding in prose and invoking the Supreme Courts controlling doctrine of *Haines v. Kerner*, 404 U.S. 519, 520-21 moved the Fifth Circuit to issue a Certificate of Appealability. He was seeking the issuance of a COA, pursuant to 28 U.S.C. § 2253(c)(2), authorizing him to appeal from the district court's March 29, 2022, order to dismiss his appeal (No. 21-10517) for failure to pay \$505.00 filing fee or/ filing a motion to proceed in forma pauperis.

**C. Facts of Case that can be find in the Records**

On May 14, 2021, Petitioner filed his Notice of Appeal with the district court but did not file Motion to proceed in forma pauperis until June 3, 2021. The reason for delay was because of the need for a 6 month Inmate Trust Fund Account report needed as a attachment to his said motion. Than on June 08, 2021, Petitioner requested from the clerk of the district court to issue ROA. Once Petitioner received notification from the court that the Fifth Circuit dismissed his appeal because they did not receive his motion for in forma pauperis, immediately tried to contact the Unit Law Library and Unit mailroom to get affidavits stating that he mailed the motion and the 6 month statement on June 03, 2021. The delay was because of staffing problems here in the Coffield Unit and TDCJ.that Petitioner did not receive the Affidavits from the Law Library and the mailroom. On August 20, 2021, Petitioner finally received said affidavits and made them exhibits in his 60(b) motion to show that he did indeed file Motion for In Forma Pauperis in a timely fashion and that the district court made a mistake.

**Reason for Delay**

The reason for delay was NOT produced by any act or omission from Petitioner, and the records clearly shows that the Motion and the 6 month statement were and delivered for mail services in a timely fashion and that that he handed his mail to a prison employee for delivery.

**Act of Good Faith**

Petitioner "acts in good faith" requesting only to be allowed to exercise his right to appeal and for this Court to grant the excusable neglect in this instants.

## **II. Granting Writ of Certiorari**

Petitioner believes that he has shown this court that the 5th Circuit has erred in their decision to deny his COA on this subject and that it misrepresented the facts in this case that cause him to be prejudiced in his appeal.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

T. S. Kil

Date: March 01, 2023