

CAUSE NO: _____

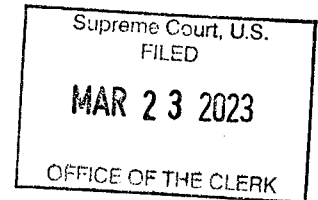
IN ²²⁻⁷³⁵⁶ THE
SUPREME COURT OF THE UNITED STATES

MICHAEL MOOSE
PETITIONER

VS.

BOBBY LUMPKIN, DIRECTOR

TEXAS DEPARTMENT OF CRIMINAL JUSTICE - INSTITUTIONAL DIVISION
RESPONDENT



PETITION
FOR
WRIT OF CERTIORARI
TO THE FIFTH CIRCUIT COURT
OF
APPEALS

PETITION FOR WRIT OF CERTIORARI

M.E. Moose
MICHAEL MOOSE
TDCJ-ID# 02186714
JOHN M. WYNNE UNIT
810 FM 2821
HUNTSVILLE, TEXAS 77349

QUESTIONS PRESENTED

DID THE FIFTH CIRCUIT COURT OF APPEALS DENY/DISMISS PETITIONER MOOSE' REQUESTED CERTIFICATE OF APPEALABILITY FOR BEING UNTIMELY/WANT OF JURISDICTION; IN CAUSE NO: 22-10961, CIVIL ACTION NO: 4:21-CV-1207-D.

PETITIONER MOOSE ALLEGES THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS-FORT WORTH DIVISION, PRESIDING JUDGE REED O'CONNOR DENIED PETITIONER'S CERTIFICATE OF APPEALABILITY IN JULY OF 2022 THE 18TH DAY THEREOF, IN A OPINION AND ORDER.

HOWEVER THE COURT GRANTED HIS APPLICATION TO PROCEED IN FORMA PAUPERIS, AFTER REVIEW OF HIS SUPPORTING DOCUMENTATION, SO ORDERED OCTOBER 3, 2022. THIS REQUEST FOR A CERTIFICATE OF APPEALABILITY WAS SUBSEQUENTLY FILED AFTER THE JULY 18, 2022 FINAL JUDGMENT WAS ENTERED. THE STATE HAS MAINTAINED THEREFORE THE FINAL DAY FOR FILING A TIMELY NOTICE OF APPEAL AND THE REQUESTED CERTIFICATE WAS AUGUST 17, 2022.

PETITIONER MOOSE AVER'S HE IMMEDIATELY FILED HIS MOTION FOR REHEARING/RECONSIDERATION TIMELY, THE COURT ULTIMATELY DENIED SAID MOTION DUE TO LACK OF JURISDICTION ON 11/9/2023. CAUSE NO: 22-10961, MANDATE ISSUED 11/17/2023.

MOOSE AGAIN CONTENDS TO GO FURTHER TO STATE HE TIMELY FILED HIS NOTICE OF APPEAL AND THE REQUESTED CERTIFICATE OF APPEALABILITY, HE GOES FURTHER TO ASSERT THE JOHN M. WYNNÉ UNIT'S MAILROOM HOLDS ALL MAIL INCLUDING LEGAL MAIL THREE (3) DAYS BEFORE DEPOSITING IN THE U.S. POSTAL SERVICES POST OFFICE AND FURTHER AVER'S THE UNIT'S MAILROOM DOES NOT FORWARD TO OFFENDER UNTIL THREE (3) DAYS LATER INCOMING MAIL. MOOSE IN ALL CERTAINITY STATES LOCAL POST OFFICES ARE INCREASINGLY FORWARDING THEIR MAIL RECEIVED TO ADDITIONAL POST OFFICES TO HANDLE/FORWARD AS FAR AWAY AS THE STATE OF LOUISIANA, TO BE ONCE AGAIN BE FORWARDED TO ITS FINAL DESTINATION CREATING FURTHER DELAYS, THIS BEING THE CASE AND CAUSE FOR PETITIONER MOOSE' UNTIMELINESS.

TABLE OF CONTENTS

FIRST AND FOREMOST PETITIONER MOOSE ASSERTS CERTAIN REQUESTED DOCUMENTATION/DOCUMENTS WERE NOT ATTAINABLE TO PRESENT WITHIN THIS/THIS TABLE OF CONTENTS, AND APOLOGIZES TO THIS HONORABLE COURT FOR ANY INCONVENIENCE IN THE MATTER...

CLERK'S COVER PAGE

COVER PAGE

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

QUESTIONS PRESENTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

TABLE OF APPENDIXES

OPINIONS BELOW

JURISDICTION

STATEMENT OF CASE

REASONS FOR GRANTING WRIT

CONCLUSION

TABLE OF AUTHORITIES CITED

MOORE-V- RUTH, 556 So2d 1059, 1061 (MISS 1990):

SANDERS-V- RYDER, 342 F3d 991, 999 (9th Cir 2003)

GRADY-V- UNITED STATES, 269 F3d 913, 916 (8th Cir 2001)

STOOT-V- CAIN, 570 F3d 669, 671 (5th Cir 2009)

28 U.S.C. SECTION 2101(e)

TABLE OF APPENDIXES

RESPONDENTS ANSWER W/BRIEF IN SUPPORT- 2/17/2022

U.S. DIST COURT-NORTHERN DIST OPINION AND ORDER-7/18/2022

U.S. DIST COURT-NORTHERN DIST- FINAL JUDGMENT-7/18/2022

U.S. DIST COURT-NORTHERN DIST- ORDER 10/3/2022

U.S. COURT OF APPEALS FIFTH CIRCUIT- DISMISSAL- 11/28/2022

U.S. COURT OF APPEALS FIFTH CIRCUIT- MEMORANDUM ORDER- 11/28/2022

U.S. COURT OF APPEALS FIFTH CIRCUIT- UNPUBLISHED ORDER 1/9/2023

U.S. DIST COURT-NORTHERN DIST ORDER- 2/6/2023

U.S. COURT OF APPEALS FIFTH CIRCUIT- GENERAL DOCKET- 2/7/2023

PETITION FOR WRIT OF CERTIORARI
TO THE FIFTH CIRCUIT COURT OF APPEALS

I, MICHAEL MOOSE, PETITIONER AND ACTING PRO-SE, RESPECTFULLY PRAY THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT AND OPINIONS ISSUED BY THE LOWER COURTS, AND BY THE FIFTH CIRCUIT COURT OF APPEALS IN DENYING PETITIONER'S RIGHT TO APPEAL AS UNTIMELY, WANT OF JURISDICTION.

PETITIONER ASK THIS COURT TO ADDRESS THE ISSUES/CLAIMS RAISED IN MOORE-V-RUTH, 556 S.2d 1059, 1061 (MISS 1990) AND ALSO IN SANDERS-V-RYDER, 342 F3d 991, 999, (9th Cir 2003) "QUOTE" FOR THE PURPOSES OF EXHAUSTION, PRO-SE PETITIONS ARE HELD TO A MORE LENIENT STANDARD THAN COUNSELED PETITIONS; "A PRO-SE PRISONER'S MISSTORIOUS CLAIMS MAY NOT BE IGNORED BECAUSE OF INADEQUATE DRAFTING..."

PETITIONER/MOOSE ASSERTS THE "MAILBOX RULE" DOCTRINE AS STATED IN GRADY-V-UNITED STATES, 269 F3d 913, 916 (8th Cir 2001) "QUOTE" PETITIONER'S PRO-SE NOTICE OF APPEAL TO BE "FILED" AT MOMENT IT IS DELIVERED TO UNIT'S MAILROOM FOR FORWARDING TO THE COURT... ALSO SEE: STOOT-V-CAIN, 570 F3d 669, 671 (5th Cir 2009). "QUOTE" PETITIONER'S PRO-SE MOTION DEEMED TO HAVE BEEN FILED ON THE DATE THE PETITIONER SUBMITTED THE PLEADING FOR MAILING...

OPINIONS BELOW

A COPY OF NOVEMBER 28, 2022, DISMISSAL FOR WANT OF JURISDICTION BY THE FIFTH CIRCUIT IN Cause No: 22-10961

THE UNPUBLISHED ORDER DATED 1/09/2023- FIFTH CIRCUIT COURT OF APPEALS.

ALSO THE OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF TEXAS-FORT WORTH DIVISION, DATED JULY 18, 2022-APPENDIX.

SUBSCRIPTION

THIS HONORABLE COURT INDURES SUBSCRIPTION ACCORDINGLY PURSUANT TO 28 U.S.C. SECTION 2101.(c).

STATEMENT OF THE CASE

THE PETITIONER MICHAEL E. MOOSE HAS BEEN DENIED HIS CONSTITUTIONAL RIGHT TO FILE HIS APPEAL BY THE (5TH CIR COURT OF APPEALS).

MOOSE/PETITIONER PROSE FILED HIS NOTICE OF APPEAL AND TO INCLUDE THE REQUIRED REQUEST FOR A CERTIFICATE OF APPEALABILITY DUE TO THE FEDERAL COURT/NORTHERN DISTRICTS, REQUEST THAT HIS CERTIFICATE NOT ISSUE WITH THE (5TH) CIRCUIT COURT OF APPEALS IN CAUSE NO: 22-10961. ALSO MOOSE CONTENTS HE MET THE REQUIREMENTS SET FORTH BY THE A.E.D.P.A.'S TOLLING PROCEDURES, AND FULLY CONTENTS BY ASSERTING HE ALSO SERVED RESPONDENTS THAT BEING THE OFFICE OF THE ATTORNEY GENERAL/JESSICA MICHELLE MANOSLOVICH, ADDRESSED AT P.O. BOX 12548, CAPITOL STATION, AUSTIN, TEXAS 78711-2548

MR MOOSE WAS CONVICTED OF THE CONTINUOUS SEXUAL ABUSE OF A CHILD, VICTIM UNDER 14, IN THE 415TH JUDICIAL DISTRICT COURT OF PARKER COUNTY, TEXAS COUNT ONE - INDECENCY WITH A CHILD BY SEXUAL CONTACT, COUNT TWO, IN CAUSE NO: CR11-0365, PLEA NOT GUILTY, TRIAL BY JURY SENTENCED BY THE COURT AFTER BEING PRONOUNCED GUILTY ON BOTH COUNTS AND SENTENCED TO SIXTY-FIVE AND TWENTY YEARS OF INCARCERATION, RESPECTIVELY, ON MARCH 29, 2018.

PETITIONER CLAIMS HE WAS NEVER AWARDED ANY DOCUMENTATION IN RESPECT TO FULFILLING ANY TYPE OF FUTURE APPELLATE PROCEEDINGS, IMPEDING HIS APPELLATE PROCEDURAL FILLINGS. HE HAS ALSO BEEN DENIED A FULL AND FAIR IMPARTIAL "EVIDENTIARY HEARING" AT BOTH THE STATE/FEDERAL LEVELS...

REASONS FOR GRANTING WRIT

HERE IT IS, PLAIN AND SIMPLE, FOR ALL TO SEE.

MR MOOSE HAS BEEN DENIED THE RIGHT TO ANY TRIAL RECORDS IN ORDER FOR HIM TO PURSUE HIS CLAIMS DILIGENTLY, THEREFORE ANY ATTEMPT AT DOING SO WAS IMPERED ANY TYPE OF APPELLATE STRATEGY TO PROVE HIS INNOCENCE CLAIMS.

IT WOULD INDEED BE A COMPLETE MIS-CARRIAGE OF JUSTICE FOR THIS VERY COURT NOT TO REMAND THIS CASE TO THE SECOND COURT OF APPEALS OF TEXAS TO RESOLVE ANY ISSUES UNRESOLVED AND CLAIMED BY MOOSE/PETITIONER.

CONCLUSION

FOR THESE REASONS SET FORTH ABOVE, A WRIT OF CERTIORARI SHOULD ISSUE TO REVIEW THE JUDGMENT AND OPINIONS OF THE FIFTH CIRCUIT COURT OF APPEALS

RESPECTFULLY SUBMITTED,

M E Moose

MICHAEL E. MOOSE

TOCS-10 # 02186714

JOHN M. WYNNÉ UNIT

810 FM 2821

HUNTSVILLE, TEXAS

77349

CERTIFICATE OF SERVICE

23 I, MICHAEL E. MOOSE, PETITIONER, DO HEREBY STATE THAT ON THIS THE DAY OF MARCH 2023 PLACED IN THE U.S. MAILBOX OF THE JOHN M. WYNNÉ UNIT'S MY PETITION FOR WRIT OF CERTIORARI TO THE CLERK: MR SUTTER HARRIS OF THE UNITED STATES SUPREME COURT, @ 1st STREET, N.E. WASHINGTON, DC, 20543. DO1 AND RESPECTFULLY REQUESTED MR HARRIS AFFORD RESPONDENT JESSICA MICHELLE MANOSLOVICH A TRUE AND CORRECT COPY OF SAID PETITION DUE TO PETITIONER'S UNABILITY TO DUPLICATE SAID DOCUMENTS, AT EMAIL: JESSICA.MANOSLOVICH @ ag.texas.gov.

M E Moose
Pro-Se

United States Court of Appeals
for the Fifth Circuit

No. 22-10961

United States Court of Appeals
Fifth Circuit

FILED

November 28, 2022

Lyle W. Cayce
Clerk

MICHAEL MOOSE,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,
Correctional Institutions Division,*

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CV-1207

Before HAYNES, ENGELHARDT, and OLDHAM, *Circuit Judges.*

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.

In this habeas corpus case filed by a state prisoner, the final judgment was entered and certificate of appealability was denied on July 18, 2022. Therefore, the final day for filing a timely notice of appeal was August 17,

problem here ↗

problem
here b

No. 22-10961

2022. Petitioner filed two *pro se* notices of appeal. One notice is dated September 19, 2022 and stamped as filed on September 26, 2022. The other notice is dated September 12, 2022, and stamped as filed on September 23, 2022. Neither notice could not have been deposited in the prison's mail system within the prescribed time. *See* FED. R. APP. P. 4(c)(1) (prisoner's *pro se* notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing). When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v. Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988).

Accordingly, the appeal is DISMISSED for want of jurisdiction.

we informed
lower court's.
And Attorney
General.
H