

UNITED STATES SUPREME COURT

Anthony Prescott
petitioner,

R.E. 5th Cir. Ct. of
Case No. 21-20151

V.

**John Doe, Byrd unit food service manager; Jhon Doe, Byrd unit officer;
Bryan Collier, Dir. Of Texas Dep't. of Corrections; Steven Miller, Head
warden of Byrd unit.**

Motion for leave to file untimely writ of certiorari and Petition seeking expansion of time

Respectfully, to the highly esteemed panel of United States Supreme court justices.

**Humbly, now comes pro “se petitioner Anthony Prescott, now appearing in the above
styled civil action seeking leave to file out of time writ of certiorari application, pursuant to
28 u.s.c 2101 (c), (f).**

**In all honesty and sincerity, the petitioner presents each request premised on the following
exceptional circumstances with intent to prospectively present writ application question
concerning public safety policy, of a nature which supersedes any difference of opinion or
interpretation of what the law requires.**

Question: Does involuntary exposure to any non-medically necessary medication, steroid, chemical cleaning compound, schedule to drug, toxin or any unidentified substance that is intentionally concealed within a food item to cause injury, provided through a food service program of a public entity constitute a forcible administration and a form of use of force.

The petition will present a critical question to this judiciary of which the lower courts have repeatedly refused to address and without a clear statement from this highly esteemed court, I fear the courts under your ultimate authority will continue to misperceive the complete gravity and scope of the risk to public safety solely based on the hazard impacting U.S. citizens, diminished by the taint of a criminal conviction. The constitutional protections this country was founded on have seeming been nullified and are of no effect behind the prison walls far from the public view. I respectfully appeal to this court to utilize its supervisory authority in this matter and find good cause to allow the petitioner to complete and file the application for writ of certiorari out of time.

- The merits of the case extend far beyond beyond my own personal interest and protected right and pertain to a significant public safety issue currently placing both, the short and long-term health, well being and, safety of the entire current inmate population and future detainees within any of the state's detention centers, jails and or the Texas Dep't. of Justice, at risk for sustaining systemic injuries like those alleged in the case at bar.
- The petitioner appears pro'se, suffers from mental illness and possesses no prior formal legal training or equivalent experience which would provide the petitioner with the skill set to navigate the complexities surrounding civil law, federal rules of civil, or the 5th circuit local rules and appropriately apply applicable provisions as required. The petitioner's additional confusion involved with his mistaken belief that the courts refusal to hear a petition considered untimely, and that order serving as the final resolution of the case and thereby the starting date of the applicable 90 -day period allotted for writ application submission was based on the court issuing its refusal in an order versus the traditional clerks response indicating a missed deadline.
- Case in point: the petitioner served a five and a half prison sentence, just recently released on June 7th, 2022. As a prisoner, without the assistance of a trained paralegal, or internet access the petitioner was afforded little to no guidance in the traditional sense, coupled with the fact that access to legal resources was extremely limited. As a result, the petitioner heavily relied on the legal materials within reach, such as Fed. R. App. P rules when calculating deadlines. More specifically, rules 4(c)1, 25(a)(2)(a)(ii), 25(A),25(a)2(A)(iii), 26, (a) and rule 13(a)(2), which extends the filing deadline based on filing by mail.

- As a prisoner, one lacks control over the processing of both, in and outgoing mail. For instance, the date that the appellate court entered judgment, refusing to even hear the timely filed appellate brief was April 5th, 2022. The petitioner received the order on approx. April 11th, 2022. The petitioner is now aware that there currently is no other provision to recover the time lost regarding the 14-day deadline for rehearing other than the 3 day extension referenced above. The petitioner was also eligible for use of the “prison mailbox rule established by this court. Despite the petitioners limited understanding and best efforts, the appellate courts calculation indicates that the petition for rehearing was filed one day late.
- Additionally, the petitioner humbly request that this honorable court intervene based on the injustice involved with the appellate courts refusal to hear the appeal on the erroneous grounds that, “The petitioner failed to brief the specific reasons for the district courts dismissal.” It is not clear if the courts failure to perceive that each of the district courts arguments were addressed in detail, is clerical error, accidental oversight, or a personal view masquerading as assessment of what the law requires. In either case the petitioner was denied his right to due process, encompassing the petitioners right to be fully heard on this matter.

The appellate court premised its refusal to hear the case on *Brinkmann v. Dallas Cnty. Sheriff Abner*, 813 F.2d 744, 748 (5th cir. 1997), suggesting that the petitioner abandoned his claim. This is patently false and had the effect of derailing a creditable claim.

- Supreme court order list: 589 U.S., Thursday, March 19, 2020, order indicates the “the deadline to file any petition for a writ of certiorari due on or after this order is extended to 150 days from the date of the lower courts judgment, order denying discretionary review, or denying a timely petition for rehearing.” See attached order. The petitioner was unable to locate any subsequent order rescinding this allowance.

This court has indicated that , “we have repeatedly held that filing deadlines ordinarily are not jurisdictional; indeed, we have described them as “quintessential claim-processing rules.” *Henderson*, 562 U. S., at ____ (slip op., at 6); see also *Scarborough v. Principi*, 541 U. S. 401, 414 (2004) (filing dead- line for fee applications under Equal Access to Justice Act);

DEAL v. CINCINNATI BOARD OF EDUCATION , 402 U.S. 962 (1971)

It is true that this petition arrived one working day after a time extension granted by Mr. Justice White expired. Unlike some types of cases where the time for filing is prescribed by our rules,¹ Congress has stated that 'any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree.

A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.' 28 U.S.C. 2101(c). (Italics added.) The question here is whether a petition arriving at the Clerk's Office one day after the statutory period expires is jurisdiction-ally barred from a determination on the merits. Mr. Justice BLACK has pointed out that early cases under the predecessor sections to 2101 (c) 'made clear that this Court had power to waive the time requirement of these provisions under appropriate circumstances.' *Teague v. Regional Commissioner of Customs*, 394 U.S. 977, 982 (dissenting opinion). And in *Ray v.*

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Pierson (No. 94, October Term, 1966), 386 U.S. 547d 288, we decided on the merits a cross-petition for certiorari that was substantially out of time under 2101(c).² We offered no explanation. [Footnote 3] Even under the companion sections to 2101(c) our practice has not been consistent. We have dismissed for failure to file appeals in the time set by Congress, e. g., *Ward v. Winstead*, 400 U.S. 1019d 630, while not always dismissing for untimely docketing under our rules even though the time limitations were also set by Congress, e. g., *United Public Workers v. Mitchell*, 330 U.S. 75, 84-86.

Naturally, past inconsistencies are no justification for overturning a congressional bar if one exists. But one does not exist in this case. The statute states a petition 'for review shall be taken or applied for' within certain specified times. That phrase is not free from ambiguity. What constitutes applying for review? A majority of the Court apparently feel it is receipt of the petition for certiorari by the Clerk's Office. *Teague*, *supra*. Yet I can see no reason why mailing or other transmission to this Court shall not be construed as an application for relief [402 U.S. 962 , 964]

A petitioner requesting equitable tolling must show that (i) "he has been pursuing his rights diligently"; and (ii) "some extraordinary circumstance stood in his way." *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005) (citation omitted).

The petitioner pleads that extraordinary circumstances were presented that were completely beyond the petitioner's abilities to control. Both in and out of custody. The ramped, in-custody meal based, physical attacks, threats intimidation and psychological torture, have now out of custody converged into a continuing campaign, directly connected to the allegations set out in the case at bar, undertaken by various state actors acting as a unit to impede and prevent the petitioners truthful reporting and diligent efforts to preserve his constitutional rights.

The long-standing initiative is adversely impacting the petitioner's ability to leverage technology. ie., electronic devices, (Pervasive digital hacking) affecting phones, tablets and laptops, significantly increasing the time required to draft and submit court filings.

"As a general rule, equitable tolling operates only in rare and exceptional circumstances where it is necessary to preserve a plaintiff's claims when strict application of the statute of limitations would be inequitable." *Fierro v. Cockrell*, 294 F.3d 674, 682 (5th Cir. 2002) (alteration, citations, and internal quotation marks omitted). "Equitable tolling thus applies principally where the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights." *Id.* (citations and internal quotation omitted)

A statutory writ of certiorari is within this courts power to hear out of time when....

-4- the state acted illegally, and (4) there is no other avenue of review or adequate remedy at law." *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 533, 79 P.3d 1154 (2003),

For each of the above reasons, the petitioner humbly request that this highly esteemed institution of justice grant this motion.

Respectfully Submitted,

Anthony Prescott