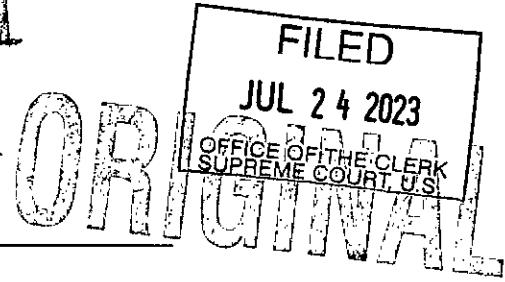


23-5471

No. _____



In The
SUPREME COURT OF THE UNITED STATES

Property located at 2504 US Hwy. 522 N., Lewistown, Mifflin County,
Pennsylvania, and \$140.00 in United States Currency,

SCOTT A. SHREFFLER, Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition for Writ Of Certiorari
To The Commonwealth Court of Appeals of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

SCOTT ALLEN SHREFFLER, #MZ-6267
SCI-Rockview
P.O. Box A; 1 Rockview Place
Bellefonte, PA 16823

Pro se Petitioner

QUESTION(S) PRESENTED

QUESTION I: WHETHER THE PENNSYLVANIA APPELLATE COURT ERRED IN DISMISSING THE PETITIONER'S APPEAL FOR UNTIMELY FILING OF NOTICE OF APPEAL, BASED ON PETITIONER'S ADMITTED CLERICAL ERROR OF MISDATING THE NOTICE OF APPEAL AS ONE DAY LATE, AND THEREBY USING PETITIONER'S CLERICAL ERROR AS A BASIS TO REJECT/NEGATE REASONABLY VERIFIABLE PROOF PRESENTED THAT THE NOTICE OF APPEAL WAS "ACTUALLY" FILED ON THE LAST DAY OF TIMELINESS, PURSUANT TO THE "PRISONER MAILBOX RULE", HOUSTON V. LACK AND IT'S PROGENY?

QUESTION II: WHETHER THE PENNSYLVANIA APPELLATE COURT ERRED IN DISMISSING PETITIONER'S APPEAL FOR UNTIMELY FILING OF NOTICE OF APPEAL WITHOUT REMANDING FOR AN EVIDENTIARY HEARING ON THE REASONABLY VERIFIABLE PROOF PRESENTED OF TIMELY FILING BY "PRISONER MAILBOX RULE", HOUSTON V. LACK AND ITS PROGENY?

LIST OF THE PARTIES

All parties appear in the caption on the cover page. As it is an In Rem forfeiture proceeding, in which the property is the defendant, the property is a party and the property owner SCOTT ALLEN SHREFFLER, is the pro se Petitioner.

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED.....	ii
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	5
REASONS GRANTING THE WRIT.....	10
CONCLUSION.....	16

INDEX TO APPENDICES

APPENDIX A - Pennsylvania Supreme Court *Per Curiam* order Denying Petitioner's Petition for Allowance of Appeal. Dated May 17, 2023.

APPENDIX B - Commonwealth Court of Pennsylvania order and opinion dismissing Petitioner's appeal as untimely filed. Dated August 25, 2022. Plus *Per Curiam* order denying application for reargument. Dated October 24, 2022

APPENDIX C - "Application To Address Timeliness Of Notice of Appeal & 1925 Statement, On The Merits And Modify/Supplement The Record To Incorporate Proof Documents(i.e. prison cash slips)", filed in the Commonwealth Court of Appeals on 11-1-21.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>United States Supreme Court</u>	
Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct 1756, 36 L.Ed 2d 656 (1973).....	9
Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed 2d 245 (1988).....	9-12,
.....	15-17
<u>Pennsylvania Courts</u>	
Com. v. Chambers, 35 A.3d 34 (Pa. Super. 2011).....	12
Com. v. Jones, 700 A.2d 423 (Pa. 1997).....	10
Com. Jordan, 182 A.3d 1046 (Pa. Super. 2018).....	12
Pettibone v. Pa. Bd. of Prob. and Parole, 782 A.2d 605 (Pa. Cmmw. 2001).....	9
Smith v. Penn. Bd. of Probation and Parole, 683 A.2d 278 (Pa. 1996).....	9
Spencer v. Varano, 2018 U.S. Dist. LEXIS 113632, 2018 WL 3352655, n.2 (M.D. Pa. July 9, 2018).....	15
STATUTES AND RULES	
U.S. Supreme Court Rule 10.....	16
42 Pa.C.S. § 5571 (a).....	11
Pa. R.A.P. 105.....	12
Pa. R.A.P. 121 (f).....	12
Pa. R.A.P. 902.....	5,11
Pa. R.A.P. 903.....	5,11
CONSTITUTION	
Amendment 5- Due Process (Fundamental Fairness).....	3,10,16
Amendment 14- Citizenship Right, Due Process, Equal Protection.....	3,16

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

All opinions of the state appellate courts in this case are unpublished. A copy of the per curiam order from the Pennsylvania Supreme Court (No. 566 MAL 2022), denying the Petition for Allowance of Appeal, dated May 17, 2023, is attached at Appendix A.

The orders and opinions of the Commonwealth Court of appeals dismissing the appeal as untimely on August 25, 2022, at 2022 Pa. Cmmw. Unpub. LEXIS 362; 285 A.3d 348 (Pa.Cmmw. 2022), and denying reargument on October 24, 2022, at 2022 Pa. Cmmw. Unpub. LEXIS 450 (Pa. Cmmw. 2022), are attached at Appendix B.

The December 16, 2019 order of the Mifflin County Court of Common Pleas, granting the Commonwealth's petition for forfeiture at No. CP-44-CV-850-2016, is not pertinent, because the instant petition deals only with the appellate courts dismissal of the appeal for untimely filing and the "prisoner mailbox rule."

JURISDICTION

The date on which the Pennsylvania Supreme Court decided my case was May 17, 2023. A copy of that order appears at Appendix A.

The Constitutional challenges preserved in the instant petition have been properly presented to the state/commonwealth courts at every stage during direct appellate review. This Honorable Court has jurisdiction to review the instant petition pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US CONSTITUTIONAL AMENDMENTS

Amendment 5- Due Process (Fundamental Fairness)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service or in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

Amendment 14- Citizenship Right, Due Process, Equal Protection

SECTION. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Untied States; **or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws.**

PENNSYLVANIA STATUTORY PROVISIONS

42 Pa. C.S. § 5571 (a)

(a) General rule -- The time for filing an appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for review of a quasi-judicial order, in the Supreme Court, the Superior Court or the Commonwealth Court shall be governed by general rules. No other provision of this subchapter shall be applicable to matters subject to this subsection.

Pa. R.A.P. 902. Manner of Taking Appeal

An appeal permitted by law as of right from a lower court to an appellate court shall be taken by filing a notice of appeal with the clerk of the lower court within the time allowed by rule 903 (time for appeal). Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but it is subject to such action as the appellate court deems appropriate, which may include, but is not limited to, remand of the matter to the lower court so that the omitted procedural step may be taken.

Pa. R.A.P. 903 (a)

(a) General rule. Except as otherwise provided by this rule, the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken.

Pa. R.A.P. 105. Waiver and Modification of Rules.

(b) Enlargement of time-- An appellate court for good cause shown may upon application enlarge the time prescribed by these rules or by its order for any act, or may permit an act to be done after the expiration of such time, **but the court may not enlarge the time for filing a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, a petition for review, or a petition for specialized review.**

Pa. R.A.P. 121. Filing and Service

(f) **Date of filing for incarcerated persons.**-- A *pro se* filing submitted by a person incarcerated in a correctional facility is deemed filed as of the date of the prison postmark or the date the filing was delivered to the prison authorities for purposes of mailing as documented by a properly executed prisoner cash slip or other reasonable verifiable evidence.

CONCISE STATEMENT OF THE CASE

The instant Petition for Allowance of Appeal comes from the following procedural history in the above captioned case:

In July of 2016, the Commonwealth filed a Petition for Forfeiture of Petitioner's real property (home) listed above, based on violations of the Pa. Controlled Substance, Drug, Device and Cosmetic Act, that occurred in the residence. The trial court issued an order granting forfeiture in June of 2017. On October 23, 2018 the Commonwealth Court vacated the trial court's order and remanded for reconsideration of Appellant's Excessive Fines Clause, instrumentality and proportionality challenges, pursuant to Com. v. 1997 Chevrolet, 160 A.3d 153 (Pa. 2017).

After holding video hearings in September and October of 2019, the trial court once again granted the forfeiture petition, by order dated 12-16-19. Pursuant to Pa. R.A.P 902 and 903, Petitioner had til **1-15-20** to file a timely notice of appeal.

The morning of 1-13-2020, at SCI-Smithfield, Petitioner was ordered by prison staff to pack up his property and take it to the Property Room for processing. The morning of 1-14-2020, Petitioner was transferred to SCI-Rockview, and locked in a nine man holding cell til the end of the following day

on 1-15-2020. At that time, Petitioner was released to his assigned housing unit and received his transferred property, including legal materials. Petitioner had one line movement to place a notice of appeal in the mailbox, for timely filing pursuant to the "prisoner mailbox rule". Petitioner quickly hand wrote a notice of appeal and certificate of service, making his copies with carbon paper, and placed it in the mailbox for timely filing.

Unbeknowst to the Petitioner at that time, while quickly scribbling the notice of appeal in haste, instead of correctly dating it 1-15-20, he mistakenly dated it 1-16-20. When Petitioner received the docketing statement from the Appellate Court, he filled out the question for date of notice of appeal, by referencing his copy of the notice of appeal and reiterated the clerical error of "1-16-20 by Prisoner Mailbox Rule", in his answer. The following day Petitioner obtained an In Forma Pauperis petition/packet of forms and mailed them with an official approval timestamped cash slip dated 1-16-20, to follow up his notice of appeal.

The Commonwealth filed an Application to Quash based on the fact that Petitioner's notice of appeal was dated 1-16-20 and that date was reiterated for date of notice of appeal on the docketing statement. Specifying that 1-16-20 is thirty-one days from the trial court's order and therefore untimely.

On 11-1-21 by mailbox rule, Petitioner filed a pleading labeled

"APPLICATION TO ADDRESS TIMELINESS OF NOTICE OF APPEAL & 1925 STATEMENT ON THE MERITS AND MODIFY/SUPPLEMENT THE RECORD TO INCORPORATE PROOF DOCUMENTS(ie. prison cash slips), (**herinafter, Application for Timeliness**). That pleading and its attached proof document (exhibits) can be found in **Appendix C**.

Petitioner's timeliness application, end of page one to page two addressed how he made the clerical error of dating his notice of appeal as one day late 1-16-20, and provided proof that it was actually placed in the prison mailbox on the last day of timeliness 1-15-20. Because Petitioner's notice of appeal was only two pages, weighing less than one ounce, it went out as one of the eight free envelopes prisoners get to send monthly, requiring no account deduction or cash slip. see: DC-ADM 803 § 1 (A) (7): (7) Each inmate will be permitted, without cost, to mail eight, one ounce, first class letters per month.

Fortunately the IFP petition/packet of forms Petitioner procured and mailed the next day (1-16-20), did weigh more than an ounce requiring a prison postage cash slip. **Attached to Petitioner's timeliness application at exhibit six, is the timestamped prison cash slip dated 1-16-20, used to mail the IFP forms**, with the postage amount of \$1.15 matching the weight fee for the package of forms.

Petitioner's **timeliness application attached exhibit seven** is the pertinent page of the trial court docket entries showing that Petitioner's **In Forma Pauperus petition was docketed on 1-27-20**. That same docket entry page (**exhibit 7**) also shows that Petitioner's **notice of appeal was docketed three days earlier on 1-24-20**.

Petitioner asserted that there is no way his notice of appeal could have reached the docket three days earlier than the IFP petition, without being mailed at least one day earlier than the IFP petition. This is reasonably verifiable proof that Petitioner's notice of appeal was placed in the mailbox on 1-15-20, and therefore timely filed by "Prisoner Mailbox Rule".

On August 25, 2023 the Commonwealth Court dismissed petitioner's appeal as untimely. The last ¶ of the Court's opinion (**Appendix B**) at page four states "**Notwithstanding Shreffler's assertion that January 16, 2020 was a clerical error, it falls thirty-one days after entry of the trial court's order.**" The Commonwealth Court failed to consider/rejected the proof presented, of timely filing, predicated upon Petitioner's clerical error.

That same paragraph of the Commonwealth Court's opinion, when addressing the timeliness of Petitioner's 1925 statement, stated "**there is no way for this court to know when Shreffler handed it to prison officials or placed it in the prison mailbox.**" (**Appendix B**). In Petitioner's "Application to Address

Timeliness", at **exhibits one and two (Appendix C)**, are two prison cash slip receipts with official approval timestamps of 3-4-20 on each, addressed to the clerk of court and judges chambers, both stamped with weight postage fee of \$1.40. This is verifiable proof the 1925 statement was timely filed before the 3-5-20 deadline. More importantly, although not a basis for their dismissal, it is further illustrative that **the Commonwealth Court gave no consideration whatsoever to the proof provided for the 1925 statement, nor the notice of appeal**, in direct contradiction of Houston v. Lack and its progeny.

Petitioner filed an "Application for Rehearing/Reargument En Banc" to the Commonwealth Court, which was denied on 10-24-22. **Appendix B.**

On November 22, 2022 Petitioner filed a Petition for Allowance Of Appeal, to the Pennsylvania Supreme Court, which was denied by per curiam order on May 17, 2023. **Appendix A.**

Petitioner now files the instant Petition for Writ of Certiorari to this Honorable Court, within ninety days of the Pennsylvania Supreme Court's denial of discretionary review.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

Thirty five years ago this Honorable Court held that under the "mailbox rule" a pro se prisoner's habeas petition is considered filed on the date the prisoner delivers the complaint to prison authorities for filing. **Houston v. Lack**, 487 U.S. 266, 108 S.Ct 2379, 101 L. Ed. 2d 245 (1988).

This Honorable court has stated that fundamental fairness is the touchstone of due process, **Gagnon v. Scarpelli**, 411 U.S. 778, 93 S.Ct. 1756, 36 L.ed 2d 656, (1973). Like the interests at stake in Scarpelli, "at the heart of the prisoner mailbox rule are the constitutional norms of due process and fundamental fairness." **Pettibone v. Pa. Bd. of Prob. and Parole**, 782 A.2d 605, 608 (Pa. Cmmw. 2001). Specifically in light of the fact that, like the right to counsel, without the mailbox rule prisoners pleadings would often not be heard at all.

In **Smith v. Pennsylvania Board of Probation and Parole**, 546 Pa. 115, 683 A.2d 278 (Pa. 1996), the Pennsylvania Supreme Court took notice of the special circumstances of pro se incarcerated appellant's at the time of appeal. They found the following language of this Honorable Court instructive:

The situation of prisoners seeking to appeal without the aid of counsel is unique. Such prisoners cannot take the steps other litigants can take to monitor the processing of their notices of appeal before the 30-day deadline. Unlike other litigants, pro se cannot personally travel to the courthouse to see that the notice is stamped "filed" or to establish the

date on which the court received the notice. Other litigants may choose to trust their appeals to the vagaries of the mail and the clerk's process for stamping incoming papers, but only the pro se prisoner is forced to do so by his situation. And if other litigants do choose to use the mail, they can at least place the notice directly into the hands of the United States Postal Service (or a private carrier); and they can follow its progress by calling the court to determine when the notice has been received and stamped, knowing that if the mail goes awry they can personally deliver notice at the last moment or that their monitoring will provide them with evidence to either demonstrate excusable neglect or that the notice was not stamped on the date the court received it. Houston v. Lack, 487 U.S. 266, 270-71, 108 S.Ct. 2379, 2382, 101 L. Ed. 2d 245, 251-52 (1988).

Recognizing in Smith that pro se prisoners in the Commonwealth have the same obstacles as pro se prisoners in federal prisons, they adopted the approach announced in Lack. Smith at 122, 683 A.2d at 281. Although Smith was decided in the context of Pa. R.A.P. 1514, appeals from agency decisions, a year later the Pennsylvania Supreme Court extended the mailbox rule to all prisoner appeals. Com v. Jones, 549 Pa. 58, 700 A.2d 423, 426 (Pa. 1997) (The language of Pa. R.A.P. 903 is amenable to an exception for pro se prisoners. Therefore, the "prisoner mailbox rule" is extended to all appeals by pro se prisoners.)

In relevant part, 42 Pa. C.S. § 5571(a) of the Pennsylvania Judicial Code delegates the time for filing appeal to the appellate courts, to the general rules. Pa. R.A.P. 903, Time for Appeal, sets forth the general rule that notice of appeal required by Rule 902 shall be filed within 30 days after the entry of the order from

which the appeal is taken. Pa. R.A.P. 105(b) specifically states that a court may not enlarge the time for filing a notice of appeal.

In 2008, Pa. R.A.P. 121 (f) was amended to reflect the "prisoner mailbox rule", i.e., a pro se filing by a prisoner is deemed filed on the date the filing is delivered to the prison authorities for purposes of mailing or is placed in the prison's mailbox. **Com. Jordan**, 182 A.3d 1046, 1048 n.3 (Pa. Super. 2018). The date, however, is preserved only if there is evidence of a properly executed prisoner cash slip *or some other reasonable verifiable evidence of the date the prisoner deposited the filing with prison authorities*. **Com. v. Chambers**, 35 A.3d 34 (Pa. Super. 2011)

There is no question as to the mailbox rule's applicability in the instant case.

THE QUESTION PRESENTED IS WHETHER A COURT CAN DISREGARD/REJECT REASONABLY VERIFIABLE PROOF PRESENTED OF "ACTUAL" TIMELY FILING BY PRISONER MAILBOX RULE, ON THE BASIS OF A PETITIONER MISTAKENLY MISDATING HIS NOTICE OF APPEAL AS ONE DAY LATE?

In Lack, this Honorable Court noted the "well-developed procedures at federal prisons that record the date and time of prisoner submissions, making reference to prison mail logs a "straightforward inquiry". *Id.* at 27. Here, the process is not so straightforward because Pennsylvania prisons do not keep outgoing mail logs. Prisoners must rely on inmate postage cash slips, timestamped by the unit corrections officer, for which a receipt is supposed to be

returned by institutional mail.

In summation from the statement of facts, due to a prison transfer Petitioner was without his property, including legal materials, for the last three days to timely mail his notice of appeal. At the end of the last day for timely filing (**January 15, 2020**), Petitioner was given his property and released to his assigned housing unit. Having one remaining line movement to reach the mailbox, Petitioner scribbled a quick notice of appeal and made copies with carbon paper. Doing so in haste, Petitioner erroneously misdated it as one day late **1-16-20**, instead of the correct date **1-15-20**, that would have been timely. There was no time to procure and process a timestamped postage cash slip. Even had Petitioner filled out a postage cash slip, because it was only two pages, weighing less than one ounce, the cash slip would have been voided and the mailing counted as one of the eight free envelopes prisoners get to mail each month. See: DC-ADM 803 § 1 (A) (7).

However, the next day, **1-16-20**, Petitioner procured an in forma pauperis packet of forms and mailed them to the clerk of courts. Because the IFP form packet weighed more than one ounce, Petitioner attached an inmate postage cash slip, timestamped **1-16-20**, by the housing unit officer. See: (**Appendix C**), "Application to Address Timeliness", filed in the Commonwealth Court of Appeals,

with attached **Exhibit six**, the aforementioned cash slip.

That same "Application to Address Timeliness" at **Exhibit seven, (Appendix C)**, is the pertinent page of the trial court docket entries showing that Petitioner's **IFP packet of forms was docketed on 1-27-20**. That same docket entry page (exhibit 7) also shows that the **notice of appeal was docketed three days earlier on 1-24-20**. Therefore providing "reasonably verifiable proof" that although misdated 1-16-20, Petitioner's notice of appeal was "actually" mailed at least one day earlier (1-15-20), still within the thirty days for timely filing by way of "prisoner mailbox rule".

In dismissing Petitioner's appeal as untimely filed, the Commonwealth Court merely parroted the Commonwealth's contention that Petitioner dated his notice of appeal 1-16-2020, making it thirty-one days and untimely filed. Predicated on the misdating clerical error, the lower court completely disregarded this "reasonably verifiable proof" that the notice of appeal was "**actually**" timely filed.

The last paragraph of the Commonwealth Court's opinion (**Appendix B**) at page four states "**Notwithstanding Shreffler's assertion that January 16, 2020 was a clerical error, it falls thirty-one days after entry of the trial court's order.**" This shows the Commonwealth Court failed to give any consideration of the proof presented, predicated upon the Petitioner's clerical error.

That same paragraph of the Commonwealth Court's opinion, when

addressing the timeliness of Petitioner's 1925 statement, states "**there is no way for this court to know when Shreffler handed it to prison officials or placed it in the prison mailbox.**" In Petitioner's "Application to Address Timeliness", at **exhibits one and two (Appendix C)**, are two prison cash slip receipts with official approval timestamps of 3-4-20 on each, addressed to the clerk of court and judges chambers, both stamped with weight postage fee of \$1.40. This is verifiable proof the 1925 statement was timely filed before the 3-5-20 deadline. **More importantly**, although not a basis for their dismissal, it is further illustrative that the Commonwealth Court gave no consideration whatsoever to the proof provided for the 1925 statement **nor the notice of appeal**, in direct contradiction of Houston v. Lack and its progeny.

"When applying the prisoner mailbox rule, Pennsylvania courts have used the date the documents were signed as the presumed delivery date when there is no clear record of delivery to prison officials." **Spencer v. Varano**, 2018 U.S. Dist. LEXIS 113632, 2018 WL 3352655, n.2 (M.D. Pa. July 9, 2018).

Pennsylvania courts have simply used the prisoners signing date in the above liberal construction of the rule, **when there is no other evidence of the date of delivery to prison officials.** However, neither this Honorable Court, nor the courts below, have ever used a document **misdated** by one day, as untimely, to dismiss an appeal, where there is evidence to the contrary. Specifically, where the court uses the clerical error as a basis to disregard/reject that evidence of "actual"

timely filing in accordance with the "prisoner mailbox rule."

CONCLUSION

Petitioner asserts, the case *sub judice* provides this Honorable Court with compelling reasons to grant a writ of certiorari, consistent with its **Rule 10** Considerations Governing Review on Certiorari.

The state court decision has decided an important federal question in a way that conflicts with this Honorable Court's principles established in Houston v Lack and its progeny, as well as other states and its own court of last resort decisions based on Lack. The state court decision has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory powers. Such exercise is necessary to prevent erosion of the Due Process and Equal Protection rooted principle of "fundamental fairness" established in the "prisoner mailbox rule", without which, many prisoners claims would never be heard, at all.

The state court decided an important question of federal law with its contradictory extension of Lack, in a way that has not been, but should be, settled by this Court, as extensive research has revealed it to clearly be an issue of **first impression**.

Therefore, Petitioner asserts the case *sub judice* presents a scenario that contravenes this Court's precedents, requiring a grant of Writ of Certiorari to provide guidance to the lower courts in like scenarios. Additionally, to further

solidify the equal protection to, as well as fundamental fairness of prisoners' ability to timely litigate in the courts established in **Houston v. Lack**.

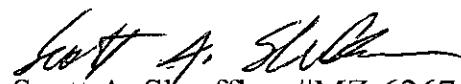
RELIEF REQUESTED

1. Grant of writ of *certiorari*.
2. Alternatively, a *Per Curiam* Order be issued, remanding to the state court for reconsideration in light of **Houston v. Lack** and its progeny.

WHEREFORE, Petitioner prays this Honorable Court grant the aforesaid relief requested in the fair administration and interests of JUSTICE.

Respectfully Submitted,

Date: July 22, 2023


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