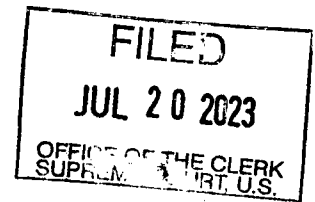


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23-6273



**IN THE  
SUPREME COURT OF THE UNITED STATES**

**EUGENE LUCAS-PETITIONER**

**VS**

**J.N.OTTINGER, et, al- RESPONDENT(S)**

**ON A PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS**

**PETITION FOR A WRIT OF CERTIORARI**

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INMATE'S INITIALS EQ

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## **QUESTION(S) PRESENTED**

Can a district Court negate the Prison mailbox rule by finding A prisoner did not show diligence in Following up on his filing to prison Authorities?

## **LIST OF PARTIES**

All parties do not Appear in the Caption of the Case on the Cover page. Alist of all parties to the proceeding in the Court Whose judgment is the Subject of this petition is as Follows:

A.Gupton  
J.N.Ottinger  
Unknown Supervisor

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**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**

The Opinion of the United States Court of Appeals Appears at Appendix A to the petition and is unpublished.

The Opinion of the United States District Court Appears at Appendix B to the petition and is unpublished.

**JURISDICTION**

The date on Which the United States Court of Appeals decided my case was 3/31/23.

A Timely petition for rehearing was denied by the United States Court of Appeals on the following date: 5/5/23, and A Copy of the order denying rehearing Appears At Appendix C.

The Jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. § 1254 (1).

## **STATEMENT OF THE CASE**

On January 12, 2011, Petitioner filed A 1983 Complaint against Jacksonville Sheriff office Agents.

On July 8, 2022, Petitioner Submitted An Inquiry/Leave to Amend his 1983 complaint to Add Additional defendants. Petitioner Also Attached A copy of the original complaint to his inquiry.

On July 7, 2022, Petitioner Learned the Court had no record of his Complaint filed on January 12, 2011.

On July 20, 2022, The Middle district court of Florida misconstrued the copy of the original complaint as A New filing and Subsequently Dismissed Petitioner's Complaint as time-barred.

On October 13, 2022, Petitioner, on a motion for Reconsideration to the Middle District Court of Florida, claimed that as evidenced by the date stamp on the Complaint, he was entitled to benefit from the prison mailbox rule even when the court never receives the filing.

On October 24, 2022, In it's Denial of petitioner's reconsideration motion, The Middle District Court of Florida, Accepted as true petitioner submitted a complaint for mailing on January 12, 2011, but relied on a ruling from the Ninth Circuit Which imposes a diligence Requirement, and found that petitioner, who had waited over a Decade was ineligible to receive the benefit of the mailbox rule because he had failed to Act with reasonable diligence in Following up on his 2011 filing.

On Appeal to the United States Court of Appeals, Petitioner Argued that According to Eleventh Circuit Law, The District Court Cannot negate the Prison mailbox rule by requiring a diligence requirement.

Petitioner's Appeal was Denied, Along with his reconsideration motion.

### **REASONS FOR GRANTING THE PETITION**

The Middle District Court of Florida and the United States Court of Appeals departed from the essential Requirements of Law, namely, the prison mailbox rule by imposing a Diligence Requirement in following up on his 2011 filing.

It is well established and clear Eleventh Circuit Law that under the “prison mailbox rule,” A prisoner's Complaint is deemed to be filed on the date it is delivered to prison officials for mailing. **Houston v. Lack**, 487 U.S. 266, 276, 108 S. Ct. 2379, 101 L. Ed. 2D 245 (1988); **United States v. Glover**, No. 12-10580, 686 F. 3d 1203, 2012 U.S. App Lexis 14194, 2012 WL 2814303, At \*2 (11<sup>th</sup> Cir. July 11, 2012); See **Garvey v. Vaughn**, 993 F.2d 776, 783 (11<sup>th</sup> Cir.1993) (extending the prison mailbox Rule to claims brought pursuant to 1983 and Federal Tort Claims Act). “Unless there is evidence to the Contrary, like prison Logs or other records we Assume that a prisoner's motion was delivered to prison Authorities on the day he signed it.” Glover, 2012 U.S. App. Lexis 14194 2012 WL 2814303 At \*2 See **Adams v. United States**, 173 F.3d 1339, 1341 (11<sup>th</sup> Cir.1999) (explaining that as a general rule, the date upon which a prisoner's Complaint is signed or executed constitutes “the earliest date on which the complaint could be considered filed). Furthermore, Under the prison mailbox Rule, the burden is on the party challenging the

timeliness of a prisoner's Legal filings to prove the date on which the prisoner delivered his Legal filings to be mailed. Ellis v. Hooks, 219 F. App'x 865, 867 (11<sup>th</sup> Cir.2007) (Citing Washington v. United States, 243 F.3d 1299, 1301 (11<sup>th</sup> Cir.2001); See Also Clay v. United States, No. 2.06-CV-09-RWS, 2007 U.S. Dist Lexis 90122, 2007 WL 4336356 At \*3 (N.D. GA. Dec 6, 2007).

Additionally, In Allen v. Culliver, 471 F.3d 1196 (11<sup>th</sup> Cir. 2006), the Eleventh Circuit found the district court erred in it's Assumption that A *pro se* prisoner delivered a timely notice of Appeal to the prison System for Legal mail when it did not examine whether the prisoner exercised diligence in Following up with court officials. Allen, 471 F.3d at 1198. The Eleventh Circuit remanded the Case to the district court with instructions to make a finding of fact whether the prisoner delivered the notice of Appeal to prison Authorities and when. In determining whether the prisoner delivered his filing to prison Authorities, the court explained that the district Court "may take into Account any and all relevant Circumstances, including any lack of diligence on the part of [the prisoner] in following up in a manner that would be expected of a reasonable person in his Circumstances. "The Eleventh Circuit further explained:

A District Court Cannot negate the prison mailbox Rule by finding a prisoner did not show diligence in following up on his filing if the prisoner Actually gave the filing to prison Authorities when it was dated.

Therefore, As the Eleventh Circuit recognized In Allen, The prison mailbox rule does not carry the due diligence requirement imposed by the district court.

It is also Clearly established Eleventh Circuit Law that "Unless there is evidence

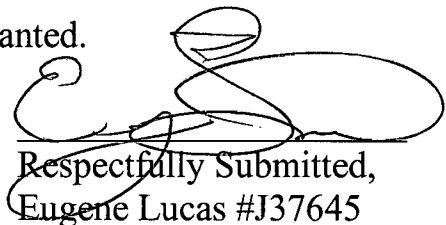


to the Contrary, like prison Logs or other records, We Assume that a prisoner's motion was delivered to prison Authorities on the day he signed it.”

In Conclusion The United States Court of Appeals for the Eleventh Circuit has entered a decision in Conflict with it's own prior decision in Allen v. Culliver, 471 F.3d 1198 (11<sup>th</sup> Cir.2006) on the Same important matter, Thereby departing from the Accepted and Usual Course of Judicial proceedings, resulting in irreparable harm to the petitioner

### CONCLUSION

The petition for A writ of certiorari should be granted.

A handwritten signature in black ink, appearing to read 'Eugene Lucas', is written over the typed name.

Respectfully Submitted,  
Eugene Lucas #J37645  
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