

In THE Supreme Court of the United States

Eugene Lucas
Petitioner

CASE NO.: 23-6273

V

J.N. OTTINGER, ET AL.
Respondent(s)



MOTION FOR LEAVE TO FILE Petition FOR REHEARING
COMES NOW, petitioner Eugene Lucas, Pro Se, And
moves this Honorable Court to Allow petitioner to file A
petition for rehearing out of time Under Rule 44(1)
Consecutive out of time petitions, In Support petitioner
provides:

"Predecessor to Rule 44 which barred Consecutive out
of time petitions for rehearing, did not prohibit motions
to recall Judgment for the purpose of Correcting An
error in remanding rather than to Court of Appeals." *Cahill v.*
New York, N.H. And H.R. Co., 351 U.S. 183, 76 S. Ct. 758, 100
L. Ed. 1075 (1956)

Even though order denying petition for Certiorari in
income tax Case had upon denial of petition for rehearing,
become final Under predecessor to Rule 44, And petitions
for rehearing were out of time, were not received, Supreme
Court might vacate order Sua Sponte so that Case might
be disposed of Consistently with other Cases then pending
And presenting the Same question. *United States v. Ohio*
Power Co., 356 U.S. 98, 77 S. Ct 1 L. Ed. 2d 683, 137 Ct. Cl. 930,
1957-1 C.B. 523, 51 A.B.

(P-H) 12, 1957-1 U.S. Tax Cas. (CCH) 9537 reh'g denied,
353 U.S. 977, 77 S. Ct. 1053, 1 L. Ed. 2d 1139 (1957),

GROUND

The Judgement rendered by this Court on 2/20/24,
Conflicts With A Prior Decision in : *Allen v. Culliver*, 471
F. 3d 1196, 1198 (11th Cir. 2006).

CERTIFICATION

I HEREBY CERTIFY, that the motion for Rehearing
is presented in Good faith and not for delay.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, That I placed this document in the hands of mailroom personnel At Santa Rosa C.J., 5850 East Milton Road, Milton, Florida 32583 For mailing to the Supreme Court of the United States 1 First Street N.E. Washington DC, 20543, Via First Class mail on this 27th Day of March.

Attachment: Motion For Petition For Rehearing.

X 
RESPECTFULLY Submitted
Eugene Lucas
J37645
Santa Rosa C.J.
5850 E. Milton Rd
Milton, FL 32583

IN THE SUPREME COURT OF THE UNITED STATES

Eugene Lucas
Petitioner

Case no.: 23-6273

V.

J.N. OTTINGER, Et AL.
Respondent(s)



PETITION FOR REHEARING

COMES NOW, Petitioner Eugene Lucas, Pro Se, and moves this Honorable Court to Recall its decision rendered on February 20th, 2024 Under Rule 44(1) Consecutive out of time Petitions.

PROCEDURAL HISTORY

On January 12, 2011, Petitioner filed A 1983 Complaint Against Jacksonville Sheriff Office Agents. However, On July 7th, 2022 petitioner Learned that the middle District Court of Florida had no record of the Above mention Complaint.

Petitioner then resubmitted his Complaint Arguing that even though the time of limitations had passed he had in fact delivered his Complaint timely on January 12, 2011 well within the Statute of limitations.

The middle District Court of Florida Accepted As True, Without finding, that petitioner in fact delivered the Complaint on January 12, 2011, but then Concluded That

he 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.

Petitioner Appealed to the Middle District Court of Florida, The United States Court of Appeals, Along With this Court, Arguing that based on the Middle District Court's Acceptance as True that petitioner delivered A 1983 Complaint to the prison mailing System, both Houston and Rule 4(c)(1) mandate A holding that the Complaint was timely filed as of the date of delivery to prison Authorities, And the Middle District Court of Florida erred by requiring Extra due diligence.

Judgement Conflicts With A Prior Decision

Petitioner relies Solely on The United States Court of Appeals for the Eleventh Circuit Decision in Allen v. Culliver, 471 F.3d 1196, 1198 (11th Cir. 2006). And Fed R. App.P. 4(c)(1)

In Allen v. Culliver, Allen filed A motion for the District Court to Accept as timely his belated Appeal from the denial of his petition for A Writ of Habeas Corpus, Arguing that, Although he was now outside the Applicable Window to Appeal, he had in fact delivered A timely notice of Appeal to prison Authorities for mailing on An earlier date, (Which it was undisputed the district Court never received). Id At 1198. The District Court Assumed, (Without finding, That Allen in fact delivered the notice of Appeal on That earlier date, but then Concluded that he was not entitled to benefit from the mailbox rule because he had failed to act With due diligence. 2020 U.S. App. LEXIS 73 In Inquiring to the

Status of his Appeal. Id. On Appeal, the Court of Appeals for the Eleventh Circuit explained that based on the district Court's Assumption that Allen delivered A timely notice of Appeal to the prison's mailing System, "both Houston and [Rule 4 (c)(1)] mandate A holding that the NOA Was timely filed As of the date of delivery to the prison Authorities." Id At 1198. The Court of Appeals then held that the district Court Abused its Discretion in imposing A due diligence Requirement, As "there is no room, either in Houston or in [Rule 4 (c)] for the operation of [Such] A Requirement." Id. Finally, the Court of Appeals for the Eleventh Circuit noted that, on remand, the district Court had the discretion to inquire further Concerning the Alleged delivery of the notice of Appeal and make A factual finding As to the issue, and that the burden of proof was on the government, provided that "Allen had Satisfied the requirement of Fed. R. App. P. 4. (c)(1) (timely filing may be Shown by A declaration in Compliance With 28 U.S.C. § 1746 or by A Notarized Statement....)

Petitioner Contends his Case is on All Fours With The Court of Appeals for the Eleventh Circuit Decision in Allen.

In the instant Case, petitioner, As in Allen, filed A Motion for the District Court to Accept As timely his 1983 Complaint Arguing that Although he Was past the Statute of limitations, he had in Fact delivered A timely 1983 Complaint on an earlier date As evidenced by the date Stamp on his 1983 Complaint. The middle district Court of Florida, As in Allen, Accepted As true petitioner Submitted A Complaint to prison Authorities for mailing

On January 12, 2011, but Concluded that he was not entitled to benefit from the mailbox rule because he had failed to act with reasonable diligence in following up on his 2011 filing.

Petitioner contends that based on the Middle District Court's Acceptance as true that petitioner Submitted A timely 1983 Complaint to the prison's mailing System, both Houston And Rule 4 (c)(1) mandate A holding that the Complaint was timely filed as of the date of delivery to prison Authorities.

Lastly, Petitioner Argues, Same As the Court of Appeals for the Eleventh Circuit ruled in Allen, that The Middle District Court of Florida Abused its discretion in imposing A due ~~due~~ diligence requirement as there is no room, either in Houston or in Rule 4(c), for the operation of Such A requirement.

SUPPORTING CASE LAW

Petitioner points to A few Cases for Support that it is Clear And Well established law that the Eleventh Circuit has rejected A Due Diligence Showing they required in the instant Case.

In United States v. Garcia, 2012 U.S. Dist. LEXIS 201720 (S.D. Tex., July 31 2012)

This Court Stated "Other Circuits have Addressed this diligence requirement more directly. The Ninth Circuit requires diligence, Allowing A prisoner the benefit of the mailbox rule So long As he diligently follows up

Once he has failed to receive A disposition from the Court After A reasonable period of time. *Huizar v. Carey*, 273 F.3d 1220, 1223 (9th Cir. 2001).

The Eleventh Circuit rejected this Added diligence requirement, holding that once there has been A finding of fact that A timely notice of Appeal was in fact delivered to the proper prison Authorities (proper postage prepaid) for mailing to the district Court, there is no room... for the operation of A diligence requirement. *Allen v. Culliver*, 471 F.3d 1196, 1198 (11th Cir. 2006)."

Also, in *Valley v. Jones*, 2017 U.S. Dist. LEXIS 93931 (S.D. Fla., June 16, 2017).

That Court Stated "While the Eleventh Circuit has rejected A due diligence Showing, the Court has Stated that to determine whether A document was delivered to prison Authorities, The district Court may take into Account Any And All relevant Circumstances, including Any lack of diligence on the part of the prisoner on following up in A manner that would be expected of A reasonable person in his Circumstances, in deciding whether the notice was delivered to prison Authorities."

Lastly, In *Tran v. Ground*, 2011 U.S. Dist. LEXIS 139025 (C.D. Cal., Dec 1, 2011)

That Court Stated, "There is, however A Circuit Split As to this requirement. Compare *Huizar*, 273 F.3d At 1223, With *Allen v. Culliver*, 471 F.3d 1196, 1198 (11th Cir. 2006) (Declining to impose A diligence requirement)."

Conclusion

Petitioner Concludes that he has Set forth facts And Law of A Strongly Nature That his Case And Allen V. Culliver Are Identical in Circumstances And points of Law, And The Middle District Court of Florida (11th Circuit) erred by requiring A Showing of Diligence. Also, that This Court's Decision rendered on February 20th 2024 Conflicts With Allen V. Culliver.

RELIEF SOUGHT

Petitioner prays this Court reverses its judgement And remand his Appeal to the District Court for the limited purpose of resolving the factual question of When the filing was provided to prison Authorities for Mailing. See Fed. R. App. P. 4(A)(1)(A), 4 (C)(i); Washington V. United States, 243 F. 3d 1299, 1301 (11th Cir. 2001); Sanders V. United States, 113 F. 3d 1287, 1290 n.2 (11th Cir. 2009).

CERTIFICATE

I HEREBY CERTIFY, that the grounds are limited to
Intervening Circumstances of Substantial or Controlling
effect.

CERTIFICATION

I HEREBY CERTIFY that the motion for Rehearing
is presented in Good faith And Not For Delay.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I placed this document in the hands of mailroom personnel At Santa Rosa C.I., 5850 East Milton Road, Milton Florida 32583, for mailing to the Supreme Court of the United States, 1 First Street N.E. Washington DC, 20543, VIA First Class mail on this 29th day of March.

Respectfully Submitted,
X 

Eugene Lucas

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