

28250-045
NO. _____

FILED
FEB 14 2024

OFFICE OF THE CLERK
SUPREME COURT U.S.

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

In re Craig Michael Ralston
Petitioner,

vs.

UNITED STATES OF AMERICA
Respondent,

PETITION FOR WRIT OF MANDAMUS

PETITION FOR WRIT OF MANDAMUS

Craig Ralston
Pro Se Petitioner
28250-045
PO Box 1000
Marion IL 62950

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QUESTIONS PRESENTED

Is a certified mail receipt and date-stamp from the United States Postal Service along with the Prison Mailroom time-stamp enough to meet the requirements for timely filing set forth by this Court in Houston v. Lack 487 US 266, 108 S.Ct. 2379 (1988). and the requirements of Federal Rule of Appellate Procedure 25(a)(2)(A)(iii)?

Is it the responsibility of the Eighth Circuit Court of Appeals to correct their own clerical error which bars access to their court and The United States Supreme Court when there is opportunity to remedy it?

RELIEF SOUGHT

- 1) Mandate that the Eighth Circuit Court of Appeals accept the Petition for Panel Reconsideration as timely.
- 2) Recall the Mandate of the Eighth Circuit's ORDER from May 16, 2023.

PARTIES TO THE PROCEEDINGS

The Petitioner is Craig Michael Ralston. He was an appellant in the Eighth Circuit Court of Appeals.

The Appellate Clerk of the Eighth Circuit Court of Appeals.

Only the Supreme Court of the United States has jurisdiction over the Eighth Circuit Court of Appeals.

With only one opportunity to bring a habeas, since the ruling in Jones v. Hendricks, if Appellate Court misconstrues a filing date, through no fault of the Petitioner, this superior court alone has the power to ORDER the correction of the record and ORDER the filing of petitioner's brief.

RELATED PROCEEDINGS

Craig Michael Ralston v. United States, No. 23-1641 (8th Cir. App. 2023).

-Application for COA: Judgment- May 16, 2023

-Petition for Panel Rehearing: ORDER- August 16, 2023

-Motion to Reopen Case: ORDER- August 30, 2023

-Motion to Recall Mandate: ORDER- January 5, 2024

Craig Michael Ralston v. United States, USAP 8 No. 23-1641. United States Supreme Court Applicant for Certiorari.

-Application returned for being out of time: Clerk Letter- November 21, 2023.

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No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

In re CRAIG MICHAEL RALSTON

v.

UNITED STATES OF AMERICA, RESPONDENT

=====

PETITION FOR WRIT OF MANDAMUS

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TO THE CLERK OF THE UNITED STATES SUPREME COURT AND TO THE
HONORABLE BRETT KAVANAUGH, ASSOCIATE JUSTICE OF THE UNITED
STATES SUPREME COURT, AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT
COURT OF APPEALS.

Petitioner Craig Michael Ralston respectfully petitions for
a writ of mandamus to be issued to the Eighth Circuit Court of
Appeals.

OPINIONS BELOW

Relevant judgments and ORDERS are attached in the
appendices. There has been no explanations or published opinions
referring to the timeliness of filings.

JURISDICTION

28 U.S.C. §1651(a): "The Supreme Court and all Courts established by ACT of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages."

Supreme Court Rule 20.1: "Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. §1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Supreme Court Rule 20.1: "The Petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other Court."

Federal Rules of Appellate Procedure 25(a)(2)(A)(iii): "If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of Rule 25(a)(2)(A)(iii). Under that subsection, a paper not filed electronically by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by either (1) a

declaration in compliance with 28 U.S.C. §1746 or a notarized statement setting out the date of deposit and stating that first class postage is being prepaid; or (2) evidence, such as a postmark or date stamp, showing that the paper was deposited and that postage was prepaid. The Court of Appeals may exercise its discretion to permit the later filing of a declaration or notarized statement that satisfies Appellate Rule 25(a)(2) (A)(iii)."

United States Department of Justice Federal Bureau of Prisons Program Statements OPI: CPD/CPB Number: 58001.16 Date: April 5, 2011. Subject: Mail Management Manual. 3.9 IN/OUT Processing Requirements for Special and Legal Mail: "Special/Legal Mail will be time-stamped, or a handwritten note will be on the envelope, to show date and time received in the mailroom."

Federal Rules of Appellate Procedure 40(a)(1)(A): "In a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is the United States."

Supreme Court Rule 13.1: "Unless otherwise provided by law, a petition for writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States Court of Appeals is timely when it is filed with the Clerk of this Court within 90 days after the entry of the judgment."

STATEMENT OF THE CASE

-Petitioner's 28 U.S.C. §2255 petition was denied after an evidentiary hearing in District Court. No COA was issued.

-Petitioner appealed to the Eighth Circuit Court of Appeals requesting a COA and was denied on May 16, 2023 (Appx A).

-According to Fed. R. App. P. 40(a)(1)(A), Petitioner has 45 days to file a Motion for Panel Reconsideration.

-Therefore, the last day to file a Petition for Panel Reconsideration was June 29, 2023.

-A Petition for Panel Reconsideration was filed before the deadline on June 27, 2023, as per Fed. R. App. P. 25(a)(2) (A)(iii) and Houston v. Lack. (See Appx B,C,D, and E).

-In error, the Petition was denied as untimely on August 16, 2023, (See Appx. F).

-Immediately, a letter was sent showing due diligence and timely filing. This included documentation showing:

- a) postmark on the date it was filed, 6/27/23 , as per the Prison mailbox rule 25(a)(2)(A)(iii). (Appx B).
- b) certified mail tracking sheet showing when the petition left the prison mailroom on 6/27/23 at 2:53 pm (Appx C).
- c) A notarized affidavit per 28 U.S.C. §1746 showing timeliness (Appx E).
- d) certificate of compliance showing timeliness (Appx D).
- e) certificate of mailing/filing showing timeliness (Appx D)
- f) certificate of timely filing and due diligence (Appx D)
- g) photocopy of the original Petition for Panel Reconsideration (Appx J).

-Regarding the evidence of timely filing, The Eighth Circuit Court of Appeals denied the Motion to Reopen the Case with no explanation (Appx G).

-Petitioner filed an Application for Extension of Time to file a Petition for Writ of Certiorari in the United States Supreme Court.

-The United States Supreme Court rendered the Application out of time because "The August 16, 2023 order is not an order denying a timely filed petition for rehearing." (Appx H).

-Access to the United States Supreme Court was blocked by the Eighth Circuit Court of Appeals' error.

-Petitioner filed a Motion to Recall Mandate issued on May 16, 2023, which would remedy the Eighth Circuit Court of Appeals error (Appx K).

-Motion to Recall Mandate was denied on January 5, 2024, with no explanation (Appx L).

REASONS FOR GRANTING THE WRIT

A writ of mandamus "issues to remedy a wrong, not promote one; to compel the performance of a duty which ought to be performed...Although classified as a legal remedy, its issuance is largely controlled by equitable principles." Duncan Townsite Co v. Lane 245 U.S. 308, 312.

Supreme Court Rule 20 - Procedure on a Petition for an Extraordinary Writ: "To justify the granting of any such writ, the petition must show that the writ will be in aid of the court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the court's discretionary powers, and that adequate relief cannot be obtained in any other form or

from any other court." This petition meets all three criteria.

A) The petition will aid the Court's Appellate Jurisdiction.

As seen above:

-The Petition for Panel Reconsideration was filed on time.

-It was denied as untimely.

-While preparing the Motion for Panel Reconsideration and while it was being processed and incorrectly denied, time expired to petition the Supreme Court for a Writ of Certiorari.

The Supreme Court Clerk's Office declared to not have jurisdiction because of the untimeliness of the Petition for Panel Reconsideration. Had the Petition for Panel Reconsideration been filed correctly by the Eighth Circuit's Clerk, The Supreme Court would have had jurisdiction to process the Application for a Writ of Certiorari. (Rule 13.1).

"When the time to file a petition for a writ of certiorari in a civil case has expired...The Court no longer has power to review the petition or to consider an application of time to file a petition. The August 16, 2023 ORDER is not an order denying a timely filed petition for rehearing." (Appx H).

Therefore, mandating that the Eighth Circuit accept the Petition for Panel Rehearing as timely--since it was filed on time-- would be "in aid of the Court's appellate jurisdiction," (Rule 20.1).by extending the date an application for a Writ of Certiorari would be due.

Appellate jurisdiction would also be aided by mandating the Eighth Circuit Court of Appeals Recall the Mandate of the May 16, 2023's, ORDER. This would remedy the Eighth Circuit's

clerical error and allow for timely filing of a Writ of Certiorari.

B) Exceptional Circumstances warrant the use of the Court's discretionary powers.

I) The law is clear and unambiguous--acting contrarily to it is exceptional.

-Fed R App P 25(a)(2)(A)(iii), the prison mailbox rule, is clear that a court document is filed when a pro se inmate forfeits control of a document to the prison mail room. The prison staff is, in effect, the clerk of court.

-The Eighth Circuit has published, "Pro se prisoner filings are considered filed when delivered to prison authorities for forwarding to the clerk." Voglesang (8th Cir App 1990).

-FBOP Program Statement 58001.16 provides the mail room staff date stamped the petition when they received it from the inmate.

Mandamus "is traditionally proper only to command official to perform act which is positive command and which is so freely prescribed as to be free from doubt." Smith v. Grimm 534 F.2d 1346 (9th Cir 1976).

II) Petitioner clearly followed the law, rules, and precedent. A denial is exceptional.

-Petition for Panel Reconsideration due by 6/29/23.

-Filed in the prison mailroom per Fed R App P 25(a)(2)(A)(iii) on 6/27/23.

-Filing is documented by certified mail postmark, notarized affidavit, certified mail tracking document, and

certificates of: compliance, mailing/filing, timely filing, and due diligence (Appx B,C,D,E).

"Mandamus relief is available to compel federal official to perform duty owed Plaintiff where Plaintiff's claim is clear and certain and duty of officer is ministerial and so plainly prescribed to be free from doubt." Tagupa v. East-West Center, Inc. 642 F.2d 1127 (9th Cir 1980).

III) Eighth Circuit Court of Appeals violated the law, disregarded precedent, and broke their own court rules.

Redundantly, the prison mailbox rule, the Voglesang Case and others, and the FBOP program statement make it clear that a petition is filed when stamped by the mailroom.

When indisputable proof of timeliness was presented, access to the Court was still denied by denying the motion to reopen the case (Appx G).

This denial blocked access to the United States Supreme Court to bring a Writ of Certiorari (Appx H). This error is obvious, egregious, and "exceptional" (Rule 20.1).

"Mandamus may lie where there has been action taken by government official contrary to law and so plainly prohibited as to be free from doubt." Lawrence v. United States Interstate Commerce Com 629 F. Supp 819 (E.D. Pa. 1985).

C) The Supreme Court alone has jurisdiction over the Eighth Circuit Court of Appeals. Adequate relief cannot be obtained in any other form or from any other Court.

The Eighth Circuit acted in error and contrary to the law

and precedent. This leaves the United States Supreme Court the only authority able to administer justice.

The only proper remedy is to mandate the petition for panel rehearing be accepted as timely for it was and has always been timely. This Supreme Court may ORDER the Eighth Circuit to Recall the Mandate of May 16, 2023, to allow refiling of the petition.

The Eighth Circuit's error blocked access to the Supreme Court. The Eighth Circuit Court of Appeals refused to remedy their error. But for the Eighth Circuit's illegality, access would be granted to the Supreme Court. Therefore, mandamus is the only vehicle by which "adequate relief" can "be obtained" (Rule 20.1).

The Prison Mailbox Rule

"Although the prison mailbox rule was first applied to Notices of Appeal...the rule applies to all...petitions for federal writs of habeas corpus." Taylor v. Brown 787 F.3d 851, 859 (7th App. 2015). Citing Jones v. Bertrand 171 F.3d 499, 501 (7th Cir. 1999).

"In Houston v. Lack 487 US 266, 270, 108 S.Ct. 2379, 101 L.Ed. 2d 245 (1988), The Supreme Court established the Prison Mailbox Rule as an exception to the general rule that a document is filled when the clerk of court receives it.

The prison mailbox rule was created to address[] a prisoner's inability to control delay between the prisoner's delivery of complaint to prison officials for mailing to the court, and the prison's mailing it to the court. Houston 270-71" Carr v. Giron 752 Fed Appx 434 (9th App. 2018).

Pro Se prisoners are in a unique position in litigation. They can not actively monitor a pending case nor drive to the courthouse to ensure their filings are timely received. They have no access to the mail carrier to be sure a parcel has left on schedule, and can not freely track their mailings via constant communication with the court. Once a filing leaves their hands, they lose control over its processing. They have no way to determine if a delay was caused by prison staff, slow mail service, or a Court Clerk's failure to stamp the date on a petition when it is received. Ray v. Clements 700 F.3d 993, 1002 (7th App. 2012).

The Eighth Circuit, where this petition was improperly denied as untimely, has published, "Pro Se prisoner filings are considered filed when delivered to prison authorities for forwarding to the clerk." Voglesang v. Patterson Dental Co. 904 F.2d 427 (8th App. 1990).

The remaining Circuits seem to agree with the Eighth Circuit's precedent. A petition is 'filed' on the date a prisoner necessarily loses control and contact with his petition by delivering it to the prison authorities or prison mailroom and not when the clerk receives it. See Delong v. Dickhaut 715 F.3d 382, 385-86 (1st Cir. 2013); Fernandez v. Artuz 402 F.3d 111, 114-16 (2nd Cir. 2005); Henderson v. Frank 155 F.3d 159, 163-64 (3rd Cir 1998); Richards v. Thaler 710 F. 3d 573, 573-79 (5th Cir. 2013); Tanner v. Yukins 776 F.3d 434, 443 (6th Cir.

2015); Saxon v. Lashbrook 873 F.3d 932, 936-37 (7th Cir. 2017); Harris v. Dinwiddie 642 F.3d 902, 906 n.6 (10th Cir. 2011); Espinosa v. Sec'y Dept of Corr 804 F.3d 1137, 1140 (11th Cir. 2015).

"A pro se...petition is 'filed' when it is given to prison authorities for forwarding to the court or placed directly into the prison mail system." 49 Geo. L.J. Ann. Rev. Crim. Proc. (2020) (p.1112). "In such a case the jailer is in effect the clerk of [] court within the meaning of [the rule]." Houston at 270.

In another case, the Eighth Circuit has stated, the mailbox rule is not available when the petitioner provides no evidence of the date in which it was mailed. see Henderson-El v. Maschner 180 F.3d 984, 985-86 (8th Cir. 1999). 49 Geo. L.J. Ann. Rev. Crim. Proc. (2020). (p.1112 Fn. 2860). This indicates that the mailbox rule is available, in the instant case, where the petitioner has supplied proof that he filed his petition on time with the prison mailroom. (Appx B,C,D,E,I,J,K)

SUMMATION

The filing deadline cannot be debated and it is a fact that the petition was date-stamped in the prison mailroom and left timely by certified mail. However, the petition was received as untimely. This was a clerical error for it was, most certainly, timely.

"It was premature to deny inmate's motion without first completing basic factual inquiry; prison mailbox rule should have applied if inmate mailed his petition before end of applicable

limitations period; inmate satisfied his initial burden of proof establishing exception of statute of limitations by submitting declarations under 28 USCS §1746, rendering him eligible for the prison mailbox rule." (Rules Governing Section 2255 Proceedings Rule 3. Filing the Motion. Inmate Filing. Annotations. Notes to Decisions (1.) Service of Pleadings.)

CONCLUSION

1) Mandamus must lie because the Eighth Circuit Court of Appeals error is blocking access to the United States Supreme Court. The only remedy belongs to The Supreme Court to mandate The Eighth Circuit accepts the Petition for Panel Reconsideration as timely because it was timely.

2) Mandating that the Eighth Circuit Court of Appeals Recall the Mandate of May 16, 2023, will allow refiling of the Petition for Panel Reconsideration which will cure the Eighth Circuit's clerical error.

Recalling the mandate is appropriate "to avoid a miscarriage of justice." Calderon v. Thompson 523 US 538, 558, 118 S.Ct. 1489 (1998). Motion to Recall Mandate "may be granted to correct clerical error." Northern Cal Power Agency v. NRC 393 F. 3d 223-225 (D.C. Cir. 2004). In "most extraordinary circumstances" (Kashner Davidson Sec. Corp. v. Mscisz 601 F.3d 19, 22-23 (1st Cir 2010)), a court can recall the mandate to "prevent a miscarriage of justice." Thompson v. Bell 373 F.3d 668, 691-92 (6th Cir 2004).

Perhaps it would be appropriate for The Supreme Court to review the Eighth Circuit's process for applying the Prison Mailbox rule to see if this is an isolated or systemic failure. The system failed this citizen, and the stakes could not be higher.

Prayer

Wherefore, The Petitioner does hereby humbly pray that this Honorable Supreme Court of the United States does GRANT this petition for a Writ of Mandamus to mandate the Eighth Circuit Court of Appeals accept the Petition for Panel Reconsideration as timely and/or Recall the Mandate of May 16, 2023.

Respectfully Submitted


Craig M. Ralston
Pro Se

2-14-'24