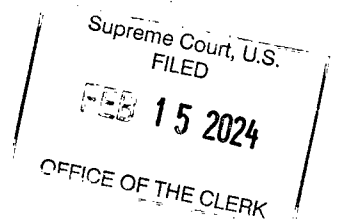


23-7596
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Andre T. Boone — PETITIONER
(Your Name)

vs.

Bryan Stirling — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Andre T. Boone
(Your Name)

4460 Broad River Road
(Address)

Columbia SC 29210
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Did the Courts make an error for dismissing the notice of appeal as jurisdictionally out of time?

Did the Courts make an error for not treating Petitioner's late notice as a motion for extension of time due to a finding of excusable neglect under Fed. R. App. 4(b)(4)

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

State v. Boone Court of Appeal of SC April 17, 2013
No: 2008-090386

Boone v. Stirling U.S. District Court District SC, April 11, 2023
No: 1:22-4551-JFA-SVH

Boone v. Stirling U.S. District Court District SC July 31, 2023
No: 1:22-4551-JFA-SVH

Boone v. Stirling U.S. Court of Appeals 4th Cir Feb. 6, 2024
No: 23-6895

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Houston v. Lack, Supreme Court of the United States June 24, 1988 No: 87-5428	(Page 6-10)
U.S. v. Quimby, United States Court of Appeals 5th Circuit February 2, 1981 No: 79-5572	(Page 6-10)
Fallen v. United States Supreme Court of the United States June 22, 1964 No: 210	(Page 5)
United States v. Clark, U.S. Court of Appeals 5th Circuit July 20, 2021 No: 20-10094	(Page 6-10)
U.S. v. Munoz, U.S. Court of Appeals 5th Circuit, March 20, 1995 No: 94-10309	(Page 6-10)
Bounds v. Smith Supreme Court of U.S. April 27, 1977 No: 75-915	(Page 5)
STATUTES AND RULES	
Federal Rule of Appellate Procedure 4(a)(1)	(Page 5-10)
Federal Rule of Appellate Procedure 4(b)	(Page 5-10)

OTHER

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 6, 2024.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Feb. 6, 2024, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was August 16, 2022.
A copy of that decision appears at Appendix _____.

☒ A timely petition for rehearing was thereafter denied on the following date: August 16, 2022, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A Constitutional Amendment 5
Due Process

U.S.C.A Constitutional Amendment 14
Due Process of Law

STATEMENT OF THE CASE

While incarcerated in a South Carolina prison Petitioner Andre Boone drafted a pro se notice of appeal from the United States District Court for the District of South Carolina judgement dismissing his pro se habeas corpus petition. Petitioner finished his notice of appeal days before his expiration date but due to not having access to the proper prison authorities was unable to get his notice of appeal notarized and mailed out on time. Petitioner is currently housed in a Restricted Housing Unit called Broad River Secure Facility, which means Petitioner is not allowed to leave his cell and must wait for the mailroom personal which is the proper prison authorities who controls all incoming and outgoing mail, to come to the Restricted Housing Unit (BR57) to collect mail. Also the mailroom personal is the same prison authorities who does notarics. The mailroom personal does not come to the Restricted Housing Unit (BR57) everyday of the week. Because she don't come everyday, this denies Petitioner equal access to the courts for days at a time. The day that Petitioner got his notice of appeal notarize was the earliest day he could have because the mailroom personal did not come days prior.

REASONS FOR GRANTING THE PETITION

Petitioner argue that his untimeliness in filing his notice of appeal should be excused because he "did all he could under the circumstances" as required by *Fallen v. United States*. Petitioner argue that he didn't have access to the mailroom personal who is the proper prison authorities in control of all outgoing and incoming mail. Also in control of notarizing legal documents. Petitioner is currently housed in a Restricted Housing Unit, meaning Petitioner is not allowed to leave his cell. Petitioner has to wait for the mailroom personal to come to the Restricted Housing Unit to pick up mail and notarize legal documents. The mailroom personal does not come to the Restricted Housing Unit (BR57) everyday of the week, which means Petitioner can only get his notice of appeal notarized when the mailroom personal decides to come. This limited Petitioner's access to the necessary requirements set forth by the Supreme Courts in *Bounds v. Smith* that stated "Prisoners have constitutional rights of access to the courts and must be provided with notarial services to authenticate them". Petitioner argue that he was denied daily access to the courts and daily access to notarial services due to the mailroom personal's failure to come to the Restricted Housing Unit on a daily basis.

(Continued On Following Page)

The courts held that Houston does not create an exception for a pro se inmate to evade time requirements, but states an equitable standardized method for measuring time restrictions so that Requisite time limitations for filing do not preclude the incarcerated Petitioner's equal access to the courts. Petitioner argues that he was not rewarded the equal access to the court that an attorney would have or an incarcerated inmate with the freedom to work to the mailroom Monday through Friday. Petitioner argues that he did all he could under the unique circumstances and was at the mercy of the mailroom personnel to decide when they would come to the Restricted Housing Unit to pick up mail and notarize Petitioner's notice of appeal. In Houston the courts held that a pro se prisoner has no choice but to entrust the forwarding of his notice of appeal to prison authorities whom he cannot control. Petitioner argues that he had no control over when the mailroom personnel came to the Restricted Housing Unit and shouldn't be at fault for his untimely filing of his notice of appeal. Petitioner argues that on the day that he got his notice of appeal notarized was the earliest opportunity in which he could have had it done because the mailroom

personal didn't come days prior which denied Petitioner the opportunity to have his notice of appeal notarized and mailed out on time. Petitioner also couldn't have placed his notice of appeal in the mailbox because it still needed to be notarized and Petitioner didn't have access to a debit form that is required in order to mail out legal mail. Petitioner had to hand his mail over to the mailroom personal with instructions that she had Petitioner's permission to fill out the debit form for him because one didn't have any debit forms on her but had some in her office. Petitioner has attached a copy of the debit form that was filled out and signed by the mailroom personal. Petitioner signature isn't on the form because like he stated above he didn't have access to the form and gave permission to the mailroom personal to fill out. Petitioner also attached copies of Request to Staff form that is proof from other prison authorities that the mailroom personal does not come to the Restricted Housing Unit (Broad River Secure Facility) every day of the week. For the reasons above Petitioner ask the Court to excuse his late notice of appeal under these unique circumstances he has been placed under which violate Petitioner 14th Amendment.

Petitioner argue that he was lulled into thinking that his notice of appeal was timely by the District Court granting of Petitioner's motion to proceed in forma pauperis and the briefing schedule. Because of that Petitioner didn't move for an extension of time withing the 30 day grace period outlined in Fed. Rule App. Procedures 4(A)(5).

The District Court nor Respondent suggested that the notice of appeal might be untimely. But instead granted Petitioner's motion of leave to proceed in forma pauperis. Petitioner attached a copy of the motion with this petition of writ of certiorari. Petitioner further argue that if he was made aware of the untimely notice of appeal that he would of had ample enough of time to file a motion of extension of time but because of the granting of the motion to proceed in forma pauperis, Petitioner was under the assumption that his notice of appeal was filed timely and a motion of extension of time was not necessary.

Petitioner ask the Supreme Court to treat his late notice as a motion for extension of time due to a finding of excusable neglect. Petitioner argues that the Court's held in *U.S. v. Quimby* 636 7.2d 86, 89 (5th Cir. 1981) The requirement of Rule 4(b) is jurisdictional. *Sanchez v. Board of Regents* 625 7.2d 521 523 (5th Cir. 1980) Upon a showing of excusable neglect, the District Court may, with or without motion and notice, extend the time for filing a notice of appeal. Although the Court did not explicitly state it was making a finding of excusable neglect for extending the time for filing a notice of appeal, we conclude its ruling on the motion to appoint counsel and allowing appeal in forma pauperis constituted such a finding. The Courts also held in *United States v. Clark* 853 7 Fed. Appx. 955 (5th Cir 2021) that the granting of Clark's motion to proceed in forma pauperis was considered as making an implicit finding of excusable neglect. Also in *U.S. v. Munoz* 51 7.3d 1041 (5th Cir. 1995) the Courts held that because the district court granted leave to appeal in forma pauperis, that order is tantamount to a finding of excusable neglect, conferring jurisdiction of Rojo's appeal upon this court. Petitioner ask the Court's to make the same finding in Petitioner's case, recognizing the Court's granting of Petitioner motion of leave to proceed in forma pauperis as a finding of excusable neglect.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andre Boone

Date: May 16, 2021