

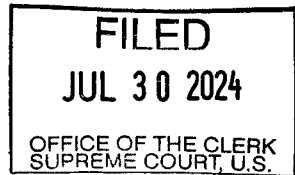
24-5238  
No.

ORIGINAL

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ROBERT CASTLE – PETITIONER

vs.

DANIEL AKERS, WARDEN, LEE ADJUSTMENT CENTER – RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI TO  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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## **QUESTION PRESENTED**

### **Introduction**

Mr. Castle filed for post collateral relief based on his finding of an uncommunicated written guilty plea offer from the Commonwealth. The start of his federal habeas corpus statute of limitations is governed by 28 U.S.C. §2244(d)(1)(D), the date on which the factual predicate of the claim was discovered. The only point of contention in the calculation of the timeliness of Mr. Castle's habeas petition is the date on which his post collateral motion is considered to be properly filed in the state trial court. Mr. Castle's state post collateral motion was handed to prison officials to be placed into the institution's legal mail system on July 9, 2020. It was not until July 27, 2020, eighteen (18) days later that his motion was entered into the Clerk's file. The answer to the following question will determine if Mr. Castle's habeas petition is considered timely filed or whether the statute of limitations has run out.

### **Question**

For purposes of establishing consistency in determinations of “properly filed” as required by 28 U.S.C. §2244(d)(2), should Federal Courts apply the prison mailbox rule announced in *Houston v. Lack*, 487 U.S. 266 (1988) to state post conviction pleadings to commence tolling of the AEDPA's one year statute of limitations governed by 28 U.S.C. §2244(d)(1)?

### 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

*Castle v. Akers*, Case No. 23-5945, U.S. Court of Appeals for the Sixth Circuit.  
Judgment entered May 21, 2024.

*Castle v. Akers*, Case No. 7:23-CV-00004-DCR-MAS, U.S. District Court for the Eastern District of Kentucky, Pikeville Division.  
Judgment entered September 14, 2023

*Castle v. Commonwealth*, Case No. 2022-SC-0194-D, Kentucky Supreme Court. Judgment entered September 14, 2022

*Castle v. Commonwealth*, Case No. 2021-CA-0709-MR, Kentucky Court of Appeals.  
Judgment entered April 29, 2022.

*Castle v. Commonwealth*, Case No. 17-CR-00043, Johnson Circuit Court.  
Denial of post-collateral RCr 11.42 motion – Judgment entered  
Final Judgment and Sentence – Judgment entered

## **TABLE OF CONTENTS**

OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE .....	3-5
REASONS FOR GRANTING THE WRIT .....	6
ARGUMENT IN SUPPORT OF GRANTING THE WRIT .....	6-11
CONCLUSION .....	11-12

## **INDEX TO APPENDICES**

APPENDIX A	Denial of Request for Certificate of Appealability by Circuit Judge Griffin. <i>Castle v. Akers</i> , Case No. 23-5945 (6 <sup>th</sup> Cir. May 21, 2024)
APPENDIX B	Denial of §2254 petition by District Court judge, Hon. Danny C. Reeves. <i>Castle v. Akers</i> , Case No. 7: 23-004-DCR (E.D. Ky. Sept. 14, 2023)
APPENDIX C	Report and Recommendation of §2254 petition by Magistrate Judge, Hon. Matthew A. Stinnett. <i>Castle v. Akers</i> , Case No. 7:23-CV-00004-DCR-MAS (Aug. 18, 2023)
APPENDIX D	Kentucky Supreme Court, denial of motion for discretionary review <i>Castle v. Commonwealth</i> , Case No. 2022-SC-0194-D (Ky. Sept. 14, 2022)
APPENDIX E	Kentucky Court of Appeals affirming trial court's denial of post-collateral motion <i>Castle v. Commonwealth</i> , Case No. 2021-CA-0709-MR (Ky. App. April, 29, 2022)

APPENDIX F	Trial Court order denying post-collateral (RCr 11.42) motion. <i>Castle v. Commonwealth</i> , Case No. 17-CR-00043, entered Johnson Circuit Court.
APPENDIX G	Trial Court final judgment of Conviction and sentence <i>Castle v. Commonwealth</i> , Case No. 17-CR-00043, Johnson Circuit Court.
APPENDIX H	Commonwealth's offer on plea of guilty for a total of fifteen (15) years Form: AOC-491.1, Rev. 11-95 Offered on February 23, 2017
APPENDIX I	Report by Dr. Eric Y. Drogin, J.D., Ph.D, ABPP Dated 12 December 2017 Filed on December 15, 2017
APPENDIX J	28 USC § 2244
APPENDIX K	Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project Section 6. Registration and Responsibilities of eFilers.
APPENDIX L	Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project Section 8. Electronic Filing.

## **TABLE OF AUTHORITIES**

### **CASES**

### **PAGE NUMBER**

<i>Adams v. Lemaster</i> , 223 F.3d 1177, 1181-82 (10 <sup>th</sup> Cir 2000) .....	7, 8, 10
<i>Anthony v. Combra</i> , 236 F.3d 568, 575 (9 <sup>th</sup> Cir. 2000) .....	9
<i>Causey v. Cain</i> , 450 F.3d 601, 605-06 (5 <sup>th</sup> Cir. 2006) .....	9
<i>Fernandez v. Artuz</i> , 402 F.3d 111 (2 <sup>nd</sup> Cir. 2005) .....	6, 7, 9, 10, 11
<i>Fernandez v. Artuz</i> , 175 F. Supp.2d 682, 685 (S.D. Ny. 2001) .....	6, 7, 10
<i>Foreman v. Dretke</i> , 383 F.3d 336 (5 <sup>th</sup> Cir. 2004) .....	10
<i>Giles v. Beckstrom</i> , 826 F.3d 321, 325-26 (6 <sup>th</sup> Cir. 2016) .....	8n.2
<i>Howard v. Quarterman</i> , 507 F.3d 840, 844 (5 <sup>th</sup> Cir. 2007) .....	8, 9
<i>Israfil v. Russell</i> , 276 F.3d 768, 771 (6 <sup>th</sup> Cir. 2001) .....	7, 8
<i>Ray v. Clements</i> , 700 F.3d 993, 1003 (7 <sup>th</sup> Cir. 2012) .....	9
<i>Richards v. Thaler</i> , 710 F.3d 573, 578-79 (5 <sup>th</sup> Cir. 2013) .....	8, 9
<i>Roberts v. Cockrell</i> , 319 F.3d 690, 694-95 (5 <sup>th</sup> Cir. 2003) .....	10
<i>Saffold v. Newland</i> , 224 F.3d 1087, 1091 (9 <sup>th</sup> Cir. 2000) .....	9
<i>United States v. Moore</i> , 24 F.3d 624, 625 (4 <sup>th</sup> Cir. 1994) .....	11
<i>Villegas v. Johnson</i> , 184 F.3d 467, 470 (5 <sup>th</sup> Cir. 1999) .....	6

### **STATUTES AND RULES**

28 USC § 2244(d)(1) .....	2, 9, 10
28 USC § 2244(d)(2) .....	2, 6, 10
28 USC § 2254 .....	4, 5

Fed. R. Civ. P. 5(d)(3)(A) .....	11
Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project,	
Section 6(1) .....	11n.8
Section 8(2) .....	11n.6
Section 8(2)(d) .....	11n.7

## **OTHER**

U.S. Constitution, Fourteenth Amendment, Section 1 .....	2
Black's Law Dictionary, 7 <sup>th</sup> ed., abridged pg. 642 .....	7

**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 judgments below.

**OPINIONS BELOW**

☒ For cases from federal courts

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is:

☐ reported at \_\_\_\_\_; or

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is:

☐ reported at \_\_\_\_\_; or

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

**JURISDICTION**

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 12, 2023.

☒ 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: \_\_\_\_\_, 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).



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. Constitution, Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor 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 the laws.

28 USC § 2244(d)(1)\*

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 USC § 2244(d)(2)\*

The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

\* Complete copy of 28 USC § 2244 is located at Appendix J.

**STATEMENT OF FACTS RELEVANT TO THE GRANTING OF MR. CASTLE'S  
PETITION FOR CERTIORARI**

On February 15, 2017, Robert Castle (Mr. Castle) was indicted in Johnson County, Kentucky on sixteen felony counts. Along with discovery the Commonwealth gave defense counsel a written plea offer<sup>1</sup> for a total sentence length of fifteen (15) years, which counsel failed to communicate. (See Appendix E, at pg. 5). Ultimately, Mr. Castle accepted the Commonwealth's later offer of twenty years and was sentence accordingly on December 18, 2017. (See Appendix E, at pg. 2).

During the pendency of the prosecution counsel had Dr. Eric Y. Drogin, J.D., Ph.D, ABPP, perform two psychological testing sessions with Mr. Castle. The first test determined Mr. Castle was not faking his cognitive deficiencies and rendered a diagnosis of intellectual disability – formerly termed “Mental Retardation.” (See Appendix I, at pg. 1-2). The second session assessed Mr. Castle as having a logical reasoning equivalent to a nine (9) year old child, a word recognition equal to a child at eleven (11) years of age, and an overall IQ score of 67. (Id.).

A couple of years later, an inmate assisting Mr. Castle review counsel's file discovered the Commonwealth's original fifteen (15) year plea offer. The same inmate assisted Mr. Castle with filing a motion to modify his sentence to reflect the uncommunicated 15 year offer. The circuit court granted an evidentiary hearing at which Mr. Castle was represented by appointed counsel. The circuit court found Mr. Castle satisfied the first prong of Strickland when counsel failed to convey the initial plea offer. (See Appendix E, at pg. 5-6). However relief was denied by the court finding Mr. Castle had not shown a reasonable probability that the trial court would have accepted, and implemented, the agreement. (Id., at pg. 9). The Kentucky Court of Appeals agreed

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<sup>1</sup> See Appendix H.

and affirmed the circuit court's denial. (See Appendix E). Mr. Castle completed exhaustion of his state remedies when the Kentucky Supreme Court denied his request for discretionary review on September 22, 2022. (See Appendix D).

Believing the state courts arbitrarily determined the fifteen year plea offer was not made with amended charges, Mr. Castle submitted a habeas petition pursuant to 28 USC §2254. The magistrate judge never ruled on the merits of Mr. Castle's claim, finding the petition was untimely filed, (See Appendix C, at pg. 14); and the district court adopted and incorporated the report and recommendation (R & R) by reference. (See Appendix B, at pg. 5).<sup>2</sup>

The date on which the factual predicate (the uncommunicated plea offer) was discovered established the beginning of the limitations period for Mr. Castle to file state and federal claims. The date of November 16, 2019, was the date used throughout state proceedings and by Mr. Castle in his §2254 petition. (See Appendix C, at pg. 7-8). In response, Warden Akers was unwilling to concede the date of discovery, but did not offer a specific date in opposition. (Id., at pg. 7). The court concluded November 16, 2019, was the day the statute of limitations began to run. (Id., at pg. 9). Warden Akers did not dispute the court's finding.

The date on which Mr. Castle filed his post collateral motion was not an issue during state proceedings. However under the AEDPA's one year limitations period the determination on when Mr. Castle's motion became "properly filed" was determinative of the timeliness of his §2254 petition. Mr. Castle handed his state post collateral motion to prison officials on July 13, 2020, but it was not filed by the clerk's office until eighteen (18) days later on July 27, 2020. (See Appendix C, at pg. 9 and 9n.2). Turning to state law, the court concluded the motion was

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<sup>2</sup> Due to the court's incorporation of the R & R into its own findings, Mr. Castle will refer to both the Magistrate Judge's R & R, and the District Court's order as findings by the court.

properly filed when it was entered into the record on July 27, 2020. (See Appendix C, at pg. 10). This made Mr. Castle's §2254 petition untimely by seven (7) days. (Id., at pg. 11). Had the prison mailbox rule been applied, Mr. Castle's §2254 petition would have been timely filed with nine (9) days remaining. (See Appendix C, at pg. 13).

Mr. Castle argued that if he was not entitled to statutory the court should apply equitable tolling for the eighteen days it took the state court to receive the motion and enter it into the record. (Id., at pg. 11). The court found the amount of time qualified as an extraordinary circumstance. (See Appendix C, at pg. 10). However, the court found Mr. Caste did not demonstrate the required diligence necessary for equitable tolling. (See Appendix C, at pg. 12-13). The district court also denied granting a certificate of appealability (COA). (See Appendix B, at pg. 5).

Mr. Castle then requested the Sixth Circuit to issue a COA. The court agreed that state law controls when a motion is considered “properly file” and Mr. Castle's petition was untimely. (See Appendix A, at pg. 3). Additionally, addressing Mr. Castle's intellectual disability the court found he had “not shown a causal link between such mental deficiencies and his untimely filing. Nor could he.” (See Appendix A, at pg. 5).

Mr. Castle now presents his reason and argument in support of granting his petition.

## **REASONS FOR GRANTING THE PETITION**

Petitioner's compelling reason for granting review is when determining "properly filed" under 28 USC §2244(d)(2) there is a split among the Federal Circuit Courts in whether or not to apply the prison mailbox rule to state post conviction pleadings to begin statutory tolling of the AEDPA's one year limitations period. This is a question of Federal Law critical to review for habeas petitioners across the Country, which has not been, but should be settled by this Court.

Petitioner believes the following argument explains why the Court should grant review of his petition.

## **ARGUMENT IN SUPPORT OF GRANTING THE PETITION**

When creating the AEDPA Congress utilized the term "properly filed" in 28 USC §2244(d)(2) to set the point at which tolling of the limitations period would commence.

But how is "properly filed" defined?

"As a matter of statutory construction the words properly filed do not, in and of themselves have a plain meaning." *Fernandez v. Artuz*, 175 F. Supp.2d 682, 685 (S.D. Ny. 2001) Aff'd 402 F.3d 111 (2<sup>nd</sup> Cir. 2005). Adding to the confusion neither the AEDPA nor its legislative history explain what qualifies as properly filed to provide guidance on how to make a determination. *Fernandez*, 402 F.3d at 114 quoting *Villegas v. Johnson*, 184 F.3d 467, 470 (5<sup>th</sup> Cir. 1999).

Looking to the definition is of no help. “File” is defined as:

1. To deliver to court clerk or record custodian for placement into the official record;
- or
2. To record or deposit (something) in an organized retention system or container for preservation and future reference.

Black's Law Dictionary, 7<sup>th</sup> ed. (1999), at pg. 642.

Making a determination of properly filed based on the first definition would be when handed over / tendered (the mailbox rule) or received at the clerk's office. Following the latter definition properly filed would be completed only after both being received and entered into the record, which could occur on the same date or several days apart.<sup>3</sup>

Without guidance from Congress or this Court the lower courts have either applied the prison mailbox rule or have interpreted “properly filed as synonymous with filed under state law and then looked to state law” for making a decision. *Fernandez*, 402 F.3d at 114. Because federal statutes, such as the Federal Tort Claims Act, Section 1983, and others are often unclear and lack guidance as how to determine when pleadings and other papers have been received and are considered filed that the federal mailbox rule under common law developed as a standard evidentiary presumption. *Fernandez*, 175 F. Supp.2d at 685-86.

Rejecting the mailbox rule the Sixth and Tenth Circuits have determined the timeliness of state filings are governed by state law. *Israfil v. Russell*, 276 F.3d 768, 771 (6<sup>th</sup> Cir. 2001); *Adams v. Lemaster*, 223 F.3d 1177, 1181-82 (10<sup>th</sup> Cir 2000). The holdings by the Sixth and Tenth Circuits rest on the principle of comity. *Id.* This principle “requires federal courts to defer to a

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<sup>3</sup> Mr. Castle is unsure if the handling by prison officials, the clerk's office, or a combination of both is responsible for the 18 days it took for his state post collateral motion to be entered into the record.

state's judgment on issues of state law and more particularly, on issues of state procedural law.” *Israfil*, 276 F.3d at 771.<sup>4</sup>

However, turning to state law possess its own set of challenges. As demonstrated by the Court in *Adams* “**having conducted a futile search** of New Mexico law for references to when a state habeas petition is deemed properly filed **we must endeavor to predict** what the New Mexico Supreme Court would do if faced with the question. *Adams*, 223 F.3d at 1182.

Courts which favor deferring to state law over use of the prison mailbox rule project:

This reasoning could lead to an obvious absurdity in many states with filing deadlines for state petitions a state court determination that a state petition was untimely, and the federal courts tolling the federal statute of limitations for the same petition because it was “properly filed.” This approach contravenes common sense, the clear language of the statute, and our precedent.

*Adams*, 223 F.3d at 1181 (footnote omitted).

This argument has two flaws: first, if the language of the statute was clear all courts would be in agreement and the split among the circuits would not exist. Second, if the state court relies on a regularly followed state law and denies the claim based on timeliness federal tolling will be inconsequential because the claim will be procedurally defaulted for failure to exhaust and precluded from federal review. Thus promoting the comity explicitly stated in the AEDPA in which exhaustion is an abundantly clear prerequisite.

The turning to state law can and has caused further complications. From inception of the AEDPA until 2013 following state law caused an internal split in the Fifth Circuit. See *Howard v. Quarterman*, 507 F.3d 840, 844 (5<sup>th</sup> Cir. 2007) overruled by *Richards v. Thaler*, 710 F.3d 573,

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<sup>4</sup> While the Sixth Circuit defers to state law to decide when tolling of the statute of limitations will begin, it rejects the state law on finality and turns to Supreme Court Rule 13.3 to determine when the tolling period will end. See *Giles v. Beckstrom*, 826 F.3d 321, 324-25 (6<sup>th</sup> Cir. 2016).

578-79 (5<sup>th</sup> Cir. 2013). At the time *Howard* was decided Texas did not recognize the prison mailbox rule and following state law the Fifth Circuit would not apply it for tolling purposes. *Howard*, 507 F.3d at 844-45. But as also described in *Howard*, because Louisiana had adopted the mailbox rule a different panel of the Fifth Circuit applied it to toll the AEDPA statute of limitations. *Id.*, citing *Causey v. Cain*, 450 F.3d 601, 605-06 (5<sup>th</sup> Cir. 2006). As a result, the Fifth Circuit had contemporaneous antagonistic opinions that were controlling and binding precedent.

On the other hand application of the prison mailbox rule does not interfere with comity and promotes conservation of judicial resources – a stated goal of the AEDPA. While the Sixth and Tenth Circuits are steadfast in their belief not to extend the prison mailbox rule to state pleadings the Ninth Circuit is on the other end of the spectrum. It is the custom and practice of the Ninth Circuit to apply the prison mailbox rule “with equal force to the filings of state as well as federal petitions.” *Anthony v. Combra*, 236 F.3d 568, 575 (9<sup>th</sup> Cir. 2000). The Ninth Circuit has reasoned application of the mailbox rule is appropriate “because at both times, the conditions that led to the adoption of the mailbox rule are present; the prisoner is powerless and unable to control the time of delivery of documents to the court.” *Id.*, quoting *Saffold v. Newland*, 224 F.3d 1087, 1091 (9<sup>th</sup> Cir. 2000). The Seventh Circuit has echoed this belief. *Ray v. Clements*, 700 F.3d 993, 1003 (7<sup>th</sup> Cir. 2012) (“Because no matter how far in advance the pro se prisoner delivers his notice to the prison authorities, he can never be sure that it will ultimately get stamped filed on time, the mailbox rule renders this matter inconsequential in the interest of justice.”).

In addition to the Ninth and Seventh Circuits, controlling precedent requires the Second and Eleventh Circuits to apply the mailbox rule to state post conviction filings for the tolling of §2244(d)(1)'s limitation period. See: *Fernandez v. Artuz*, 402 F.3d 111, 115n.3 (2<sup>nd</sup> Cir. 2005)



(“Application of the rule evinces no disrespect for the competence of state courts, their procedures, or the stability of state verdicts. Applying the mailbox rule merely grants the full statute of limitations for pro se prisoners attempting to reach the courts.”); *Adams v. United States*, 173 F.3d 1339, 1341 (11<sup>th</sup> Cir. 1999) (“For the same reasons that this Court has applied the mailbox rule to other filings by pro se prisoners, this Court holds that a pro se prisoner's motion to vacate is deemed filed the date it is delivered to prison authorities for mailing.”).

The AEDPA is a federal act which only impacts federal litigation. See *Fernandez*, 175 F. Supp.2d at 686. The one year limitations period is established by §2244(d)(1), and the running of the limitations period begins by any of the four circumstances set forth in subsections (A) – (D). Moreover the tolling provisions of the limitations period are dictated by §2244(d)(2). When the running of the limitations period is initiated following the conclusion of direct review of a state judgment or expiration of the time for seeking such review (§2244(d)(1)(A)), comity is not offered to the states finality determination. Rule 13(3) of the Rules of the Supreme Court of the United States; see also *Foreman v. Dretke*, 383 F.3d 336 (5th Cir. 2004):

we confirmed that AEDPA, not state law, determines when a judgment is final for federal habeas purposes. In *Roberts v. Cockrell*, we held that the petitioner's judgment became final when the time ran out for him to file a PDR, not the later date when the appeals court issued its mandate. Although under Texas law the judgment was not final until the court issued its mandate, we concluded that the Texas rules did not control AEDPA review. Thus, the petitioner's conviction became final for AEDPA purposes before his conviction was final under state law. We noted that we did not look to state law to make this decision because AEDPA provides its own definition of finality.

*Id.*, at 339, citing *Roberts v. Cockrell*, 319 F.3d 690, 694-95 (5th Cir. 2003).

Since the AEDPA and federal law determine when tolling of the limitation period ends

consistency and uniformity requires the beginning of the tolling period defer to a federal mailbox rule rather than to be decided by state law.

Rules in both federal<sup>5</sup> and state<sup>6</sup> court allow and/or require electronic filing. In Kentucky the eFiling system is designed to accept filings 24 hours a day.<sup>7</sup> However pro se litigants are prohibited from accessing the eFiling system.<sup>8</sup> The inability of pro se prisoners to electronically file pleadings or file pleadings in person puts them at a great disadvantage. Kentucky prisoners must handover their pleadings to prison officials sufficiently far enough in advance to ensure they are placed into the mail, received by the Clerk's Office, and entered into the record prior to the expiration of any limitations period or deadlines. As a result pro se prisoners are not able to utilize the full limitations period enjoyed by other litigants. Applying the mailbox rule would level the playing field and afford pro se prisoners to use the full limitations period. *Fernandez*, 402 F.3d at 115n.3. Stated best by Judge Hall of the Fourth Circuit:

*Houston* itself was premised upon fairness; indeed, the theme runs throughout Justice Brennan's majority opinion. If *Houston* stands for nothing else, it stands for the principle that it is unfair to permit a prisoner's freedom to ultimately hinge on either the diligence or the good faith of his custodians. . . . We have previously extended the rule in *Houston* to govern complaints in civil rights actions mailed from prison[.] It would indeed be perverse to hold that *Houston* applies to maintain an action for civil damages, but does not apply when a prisoner's freedom is at stake.

*United States v. Moore*, 24 F.3d 624, 625 (4<sup>th</sup> Cir. 1994).

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<sup>5</sup> Fed. R. Civ. P. 5(d)(3)(A)

<sup>6</sup> Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project, Section 8(2) (effective January 15, 2015).

<sup>7</sup> *Id.*, Section 8(2)(d).


<sup>8</sup> *Id.*, Section 6(1).

### CONCLUSION

The Federal Circuit Courts across the country largely disagree on how “properly filed” is defined. Consequently the point at which statutory tolling of the limitations period commences is determined and applied differently. Prisoners in California benefit from use of the entire length of the AEDPA's limitations period, while prisoners in Kentucky do not. In the interest of justice and consistency the prison mailbox rule should be applied to state post conviction motions.

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

  
Robert Castle, pro se

Date: 7-30-2024