

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO.:
L.T. CASE NO.: 4D18-0785

UGUR TATLICI,

Petitioner,

v.

MEHMET TATLICI,

Respondent.

**MOTION TO CORRECT THE INCORRECT DISMISSAL OR IN THE
ALTERNATIVE TO DIRECT THE CLERK TO FILE PETITION
FOR WRIT OF CERTIORARI OUT OF TIME**

The Petitioner, UGAR TATLICI, by and through his undersigned counsel hereby file this, his Motion to Correct the Incorrect Dismissal or in the Alternative to Direct the Clerk to Accept the Filing of the Petition for Writ of Certiorari Out of Time and in support thereof states as follows:

Background

On February 1, 2024, Florida's Fourth District Court of Appeal entered an Order affirming the Trial Court's \$750,000,000.00 judgment against the Petitioner, UGAR TATLICI. The Order Affirmed the decision below without a written Opinion. In Florida, a per curiam decision prevents any review by the same District Court of Appeal and also by the Florida Supreme Court. Consequently, the February 1, 2024 Order would have been final except the finality was tolled by a timely Motion for a

Written Opinion on February 15, 2024, pursuant to Florida Rules of Appellate Procedure 9.330.

The Motion for a Written Opinion tolled the rendition of the February 1, 2024 Order, and until the issue of the Motion for a Written Decision was denied on February 28, 2024 stopped the clock. As a result of the stoppage of the clock, the Fourth District Court of Appeal could not, and did not, issue its Mandate until after the February 28, 2024 decision.¹

It was upon the entry of the February 28, 2024 Order denying the Motion for Written Opinion that rendered the February 1, 2024 Order and ultimately foreclosed the Supreme Court of Florida's jurisdiction over this matter. This left the Petitioner with the singular option of petitioning the U.S. Supreme Court for a Writ of Certiorari to redress the \$750,000,000.00 judgment entered against him and in his absence.

The Petitioner filed his Petition for Writ of Certiorari on May 28, 2024. On May 30, 2024, Counsel for the Defendant Ugur Tatlici, received an email ("Letter") from the Clerk of the Court of the Supreme Court of the United States rejecting the Petition for Writ of Certiorari on the grounds that "the petition is out-of-time." The Clerk in its Letter bases its assertion of lack of timeliness on the idea that the February 1, 2024, Order Affirming the Trial Court's Judgment is the final and therefore operative order. The Letter specifically stated:

¹ The Mandate is not the instrument which starts the 90-day clock. It is mentioned as the delay of the Mandate reinforces that the filing of the Motion for Written Decision stops the clock and tolls the rendition of the Order denying the appeal.

The date of the lower court judgment or order denying a timely petition for rehearing was February 1, 2024. Therefore, the petition was due on or before May 1, 2024. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

In other words, while the Clerk was correct that the February 1, 2024 Order was the determinative Final Order, the 90-day clock did not start on February 1, 2024. The filing of the Motion for Written Opinion tolled the rendition of that February 1, 2024 Order until February 28, 2024 when the Order denying the Motion for Written Opinion was entered.

The filing of a Motion for Written Opinion operates in the same manner as a timely Motion for Rehearing. Each motion stops the clock. The petitioner's filing of the Motion for a Written Decision stopped the proverbial clock, and the actual clock, and no Mandate could be issued until after the Motion for Written Decision was decided.

When the Motion for Written Decision was denied, the clock started to run again, leaving the Petitioner with a per curiam order affirming the trial court's decision without a written opinion. The Supreme Court of Florida does not have jurisdiction to review a per curiam order without a written opinion.

Pursuant to Rules 13.1 and 13.3 of this Court, the Petitioner had 90 days "after entry of the order denying discretionary review." The February 1, 2024, order was not rendered until February 28, 2024, thereby starting the 90-day clock and making May 28, 2024 the day by which a Petition for Writ of Certiorari could be

timely filed.

In the alternative, if this Court should determine that the final date was May 1, 2024, this Court should permit the filing of a late Petition for Writ of Certiorari as the miscalculation was understandable and excusable neglect.

Memorandum

The Petitioner timely filed his Petition for Writ of Certiorari. A Petition for Writ of Certiorari is timely filed when it is filed with the Clerk within 90 days of the Order granting the United States Supreme Court with jurisdiction. The filing must conform with U.S. Supreme Court Rule 29.

Due to the filing of a Motion for a Written Decision in Florida, the February 1, 2024 Order was not rendered until February 28, 2024, when the Order denying the Motion for a Written Decision was entered thereby divesting the Supreme Court of Florida of its jurisdiction, and invoking the jurisdiction of the U.S. Supreme Court.

I. Rule 29.2

Rule 29.2 of the Rules of the U.S. Supreme Court states “a document is timely filed if it is received by the Clerk in paper form within the time specified for filing.” According to the Letter, the “petition for a writ of certiorari was hand delivered May 28, 2024 and received May 30, 2024.” Therefore, the Petitioner complied with Rule 29.2 of the Rules of the U.S. Supreme Court.

II. Rule 13. 1 of the U.S. Supreme Court and *Entry* of the Order

The second clause of Rule 13.1 of the U.S. Supreme Court holds that: “A

petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after *entry* of the order denying discretionary review.” (emphasis added).

The filing of the Motion for Written Opinion tolled the *entry* of the February 1, 2024 Order until the motion was resolved. The final order denying discretionary review, the February 1, 2024 Order was therefore not rendered until February 28, 2024.

a. The February 1, 2024 Order was not rendered until February 28, 2024.

Florida Rules of Appellate Procedure defines “Rendition of an Appellate Order” in 9.020(i): “[i]f a timely and authorized motion under rule 9.330 or 9.331 is filed, the order shall not be deemed rendered as to any party until all of the motions are either withdrawn or resolved by the filing of a written order.”

The Petitioner timely filed his Motion for Written Opinion pursuant to Fla. R. App. P. 9.330(a)(2)(D) tolling the entry of the February 1, 2024 Order. The February 1, 2024 Order was therefore, not “rendered” until the February 28, 2024 Order “resolved” the Petitioner’s pending Fl. R. App. P. 9.330 Motion for Written Opinion. Fla. R. App. P. 9.330 governs post-decision appellate motions of Rehearing, Reconsideration, Certification, and Written Opinion.

As the Supreme Court of Florida recently held in *Dodgen v. Grijalva*, 331 So. 3d 679, 683 (Fla. 2021), “a motion for written opinion filed under rule 9.330(a)(2)(D) tolls rendition of an appellate order... A district court’s order is not rendered until

there has been a disposition of all motions relative to that order." (Emphasis added.)(Internal quotations omitted.)

The Florida Supreme Court determined that "rendered" and "entered" are synonymous in 1975. In *Williams v. State*, 324 So. 2d 74 (Fla. 1975) the court stated:

Thus, it must be realized that for appellate purposes the use of the terms "rendered, render or rendition" and "enter or entered" are synonymous and their respective use in the appellate rules is to be considered to be the definitional equivalent...

Rule 13.1 of the U.S. Supreme Court Rules clearly states that a "petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after **entry of the order** denying discretionary review."

(emphasis added)

And Rule 13.3 of the U.S. Supreme Court, holds that:

The time to file a petition for certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, ... the time to file the petition for writ of certiorari for all parties ... runs from the date of the denial for rehearing or, if rehearing is granted, the subsequent entry of judgment.

The Petitioner timely filed his Fla. R. App. P. 9.330 Motion for Written Opinion thereby tolling the rendition of the February 1, 2024 Order pursuant to Fla. R. App. P. 9.020(i) until February 28, 2024 when the Motion for Written

Opinion was denied.

Accordingly, the final Order entered on February 1, 2024, tolled by way of timely filing of the Fla. R. App. P. 9.330 Motion for Written Opinion was not rendered until February 28, 2024, thereby making the May 28, 2024, filing of the petition timely.

III. Should the Court deny this Motion it Should Allow Petitioner to File a Late Petion Based Upon the Good Cause

The Petitioner, in the alternative, requests, that should the Court decide that the February 1, 2024 Order was not tolled, that this Court allow for the Petition for Writ of Certiorari to be filed late. Under U.S. Supreme Court Rule 13. 5 “For good cause, a Justice may extend the time to file a petition for a writ of Certiorari for a period not exceeding 60 days.”²

A. Good Cause

Good cause has been defined by the 11th Circuit as:

A liberal and mutable standard, and one that varies from situation to situation. Courts generally consider various factors, such as whether the default was culpable or willful, whether setting it aside would prejudice the adversary, and whether the defaulting party presents a meritorious defense. *Houchins v. Weiss*, No. 21-81046-CIV-MATTHEWMAN, 2022 U.S. Dist. LEXIS 217903 (S.D. Fla. Nov. 30, 2022) citing to *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1337 n.7 (11th Cir. 2014)

a. The Default Was Not Culpable, nor Willful

² This is codified by 28 U.S.C.S. § 2101 (LexisNexis, Lexis Advance through Public Law 118-62, approved May 13, 2024) sub section (c) “Any other appeal or or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.”

The Florida Fourth District Court of Appeal entered a per curiam order on February 1, 2024, which upon filing immediately divested the Florida Supreme Court of its Jurisdiction. Counsel for the Petitioner did not file a Motion for Rehearing, but rather filed a timely Motion for Written Opinion.

Both a Motion for Rehearing and a Motion for Written Opinion are found within the Fla. R. App. P. 9.330 which governs post-decision motions. The Petitioner did not willfully neglect the 90-day time-period found in U.S. Supreme Court Rule 13.1. The Petitioner's Petition for Writ of Certiorari was filed within 90-days of February 28, 2024. Instead based the timing for filing the Petition for Writ of Certiorari based upon the issuance of the Order denying the Motion for Written Opinion, which rendered the February 1, 2024 Order. The confusion lies in the use of the language of the U.S. Supreme Court and the language of the Florida Rules of Appellate Procedure as to "Rehearing" and "Motion for Written Opinion." However, there was not intentional or culpable action by the Petitioner in not filing his Petition within 90-days of February 1, 2024.

b. No Prejudice Would Befall the Adversary if the Petition was Filed Late

The Petitioner seeks review of a \$750,000,000.00 judgment entered against him and in his absence. The Respondent would not be prejudiced by a late filed Petition. The Respondent already holds a large judgment in his favor. The Petitioner on the other hand, has already lost his day in court, and has turned now to this Honorable Court for redress of a violation of his due process rights. Allowing for a late petition based upon good cause would have no harmful effect on the

Respondent.

B. Excusable Neglect

The Southern District Court of Florida explained in *Houchins v. Weiss*, that:

Excusable neglect has been defined as the failure to take the proper steps at the proper time, not in consequence of the party's own carelessness inattention or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hinderance or accident... Excusable neglect... is an equitable inquiry turning on all relevant circumstances, and the relevant factors include the danger of prejudice to the opposing party, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

The Petitioner did not abandon the matter. Nor did the Petitioner intentionally or willfully disregard the process of the Court. Due to inadvertence the Petitioner used the February 28, 2024, date of the order Denying the Motion for Written Opinion as the date from which the 90-day clock of U.S. Supreme Court Rule 13.1. There was no gamesmanship, carelessness, or inattention to detail.

Excusable neglect requires an equitable inquiry, a balance between the potential harm of allowing the late Petition on the non-movant, and the potential harm of not allowing the late Petition on the movant. There is no harmful prejudice to the Respondent by granting a late Petition for Writ of Certiorari, to the non-movant Respondent. He already holds a judgment of \$750,000,000.00. On the other hand, there would be great harm in denying the late Petition to the movant Petitioner who has no other court to turn to for redress.

The delay was de minimis. The Petition was due either on May 1, 2024 or May 28, 2024, a difference of 27 days. Furthermore, the Petitioner complied with the 90-day rule, albeit from the wrong date. The Petitioner also complied with the U.S. Supreme Court rules.

The case was not forgotten about. It was being prosecuted albeit, from the possible wrong date of the motion.

The confusion around the date of the entry of the February 1, 2024, Order and whether or not the filing of the Motion for Written Opinion tolled the rendition of the February 1, 2024 Order is “good cause,” and certainly can be considered excusable neglect.

There was excusable neglect by the Petitioner in basing the timeliness of filing on the February 28, 2024, Order. It was not intentional, nor culpable, and the Court should grant a late Petition so that the Petitioner has an avenue to redress the \$750,000,000.00 judgment that was awarded against him in his absence.

Conclusion

Therefore, and pursuant to, Rules 13.1, 13.3 and 29.2 of the U.S. Supreme Court, the Petition for Writ of Certiorari was required to be filed within 90 days from February 28, 2024 when the Fourth District Court of Appeal entered its Order denying the Motion for Written Opinion; and 90 days from the issuance of that Order is May 28, 2024, which was per the letter, when the Petition for Writ of Certiorari was timely filed.

Respectfully submitted on June 18, 2024

/s/ Peter Ticktin
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