

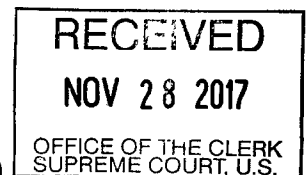
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Webster Douglas Williams, III PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Webster Douglas Williams, III

(Your Name)

Low Security Correctional Institute
Post Office Box 999

(Address)

Butner, NC 27509

(City, State, Zip Code)

No phone available

(Phone Number)

Questions presented for review

1. Does it violate a defendant's right to due process and equal protection of the law if a court circumvents Federal Rule of Civil Procedure Rule 6 and Federal Rule of Criminal Procedure Rule 45 by permitting the Government to untimely file a response to the defendant's habeas motion when that defendant timely files a motion to strike for reason of untimely filing, and the court makes no finding of excusable neglect?
2. Does it prejudice a defendant's right to receive a full and fair hearing when the court applies its rules to a defendant, but does not apply them to the prosecution?

Parties To The Proceeding

United States of America, Plaintiff

Webster Douglas Williams, III, Defendant

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I. THE FOURTH CIRCUIT WOULD CIRCUMVENT THE RULES BY ISSUING A DISPOSITIVE DECISION IN THIS MATTER. THE FEDERAL RULES OF CRIMINAL PROCEDURE RULE 45 AND FEDERAL RULES OF CIVIL PROCEDURE ARE UNAMBIGUOUSLY WORDED SO AS TO PROHIBIT SUCH A FINDING AS HAS BEEN ISSUED.	
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STATUTES

28 USCS § 2810(c)

28 USCS § 1254(1)

28 USCS § 2101(c)

28 USCS § 1291

28 USCS § 1292

Federal Rules of Civil Procedure, Rule 6

Federal Rules of Criminal Procedure, Rule 45

APPENDIX

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Docket Number text 331

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(Order denying pro se motion to strike untimely filed attorney affidavit.)

Docket Number text 332

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(Order denying pro se motion to strike untimely filed attorney affidavit.)

Docket Number text 334

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(Shows government's response on May 19, 2017 was to a stale habeas motion (Docket entry 194 and not the current motion, docket entries 291 and 296) and providing the government an additional 15 days after their untimely filed response of May 19, 2017. The response eventually arrived on June 22, 2017, or 38 days beyond the deadline set by the original court order, without any finding of excusable neglect. See docket entry number 342, page 19-1.)

Denial of en banc rehearing

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TABLE OF AUTHORITIES

CASES

Lujan v. National Wildlife Federation, 497 US 871, 111 L. Ed. 2d 695, 110 S. Ct. 3177 (1990)

United States v. Koziel, 954 F.2d 831, 2nd Circuit Court of Appeals, New York, (1992)

Burnside v. Eastern Airlines, Inc., 519 F.2d 1127, 5th Circuit Court of Appeals, Florida, (1975)

Bowles v. Russell, 551 US 205, 168 L. Ed. 2d 96, (2007)

Golden v. Perry, 2014 U.S. Dist. LEXIS 178657, 4th Circuit, (2014)

Gonzalez v. Thaler, 132 S. Ct. 641, 656, 181 L. Ed. 2d 619 (2012)

United States v. Edwards, 90 FRD 391, (1981)

Cohen v. Beneficial Indus. Loan Corp., 337 US 541, 545-46 (1949)

United States v. Roberts, 978 F.2d 17, 20, 1st Circuit (1992)

Dread v. Maryland State Police, 1994 U.S. App. LEXIS 11244, 4th Circuit Court of Appeals (1994)

Strickland v. Washington, 466 US 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment 14, Section 1

United States Constitution, Amendment 5

In The
Supreme Court of the United States

No. _____

Webster Douglas Williams, III
Petitioner

v.

United States of America
Respondent

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

Webster Douglas Williams, III, now humbly comes before this Honorable Court with a petition for a writ of certiorari to review the judgement of the United States Court of Appeals for the Fourth Circuit, which judgement affirmed the denial by the Fourth District Court, Florence, SC, of this petitioner's MOTION TO STRIKE for reason of UNTIMELY FILING the U.S. Attorney's response, and the attorney affidavit of Thomas C. Brittain, Sr., which the court received untimely in response to this petitioner's motion under 28 USCS § 2255. A finding in this petitioner's favor would not cause his sentence to be vacated, but would allow the court to reach findings on

the merits (or the lack thereof) of the issues without undue influence caused by the two untimely filed responses.

OPINIONS BELOW

The opinions of the Court of Appeals and the District Court are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 22, 2017. Petitioner subsequently asked the Court for an en-banc rehearing, which was denied/dismissed on October 24, 2017.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This petition is timely filed pursuant to 28 U.S.C. § 2101(c).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution provides for due process and equal protection of the law. In relevant part, it states: "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 within it's jurisdiction the equal protection of the laws.

The Fifth Amendment of the United States Constitution states in relevant part that no person shall be "deprived of

life, liberty, or property, without due process of law".

Petitioner has a belief that he was denied equal protection of law because the U.S. Attorney was allowed to file an untimely response and the Fourth Circuit Court failed to sua sponte extend the time to file before the deadline imposed by order. Further, the U.S. Attorney failed to request an extension for time to file before the time to file expired. The Court Rules do not permit a sua sponte extension to be granted after a deadline expires without a finding of excusable neglect, and no such finding occurred, nor was a hearing held to determine if, in fact, there was any excusable neglect.

The petitioner further believe that denying him equal protection of law also denies him procedural due process in violation of the due process clause of the Fifth and Fourteenth Amendments.

STATEMENT

On June 16, 2016, the Honorable Judge R. Bryan Harwell dismissed this defendant's first habeas filing without prejudice, allowing him to file a second habeas motion after restoring his right to direct appeal. Judge Harwell cited ineffective assistance of counsel because this defendant's counsel failed to file an appeal as directed by him, concerning the motion to suppress.

The Fourth Circuit Court of Appeals dismissed this petitioner's direct appeal without reaching the merits citing a lack of jurisdiction. This denial allowed the petitioner to

file a second motion under 28 USC § 2255 because Judge Harwell reset the date of final judgement to June 16, 2016, thus this petitioner's second habeas motion was timely filed on March 1, 2017.

On March 7, 2017, the Honorable Judge Harwell ordered the U.S. Attorney to file an answer or other pleading within 20 days. (See docket entry #297.)

On March 13, 2017, U.S. Attorneys Beth Drake and William E. Day, III, filed a motion with the Fourth Circuit District Court asking for a 30 (thirty) day extension to allow this petitioner's attorneys to file affidavits, and for an additional 30 (thirty) days beyond that date to permit the U.S. Attorney's office to formulate a response.

On March 16, 2017, the Honorable Judge Harwell granted the motion extending the time for the U.S. Attorney's office to file by writing an ORDER specifying a 60 day extension. The extension was specified by the number of days. This made the deadline to file May 15, 2017.

Petitioner's co-counsel, John S. Simmons filed his attorney affidavit on April 12, 2017, thus was timely (the deadline for attorney affidavits was, by ORDER, April 15, 2017, which was a saturday, so the last day an affidavit to be filed was April 14, 2017, by close of the business day).

Petitioner's attorney, Thomas C. Brittain, Sr. and his son (who was not retained by this petitioner) filed affidavits on April 17, 2017, thus were untimely, and should have been rejected. T. Casey Brittain never was this petitioner's

attorney, but this issue is beyond the scope of this petition.

The date for the U.S. Attorneys Office to respond was 30 (thirty) days following April 15, 2017, or May 15, 2017. Because the ORDER issued by the Honorable Judge Harwell was specified in days, Fed. R. Crim. P. Rule 45(a)(1)(B) states that every day counts, including Saturdays, Sundays, and holidays. The response from the U.S. Attorneys Office was dated May 19, 2017, and it was "clocked" as having been received by the court on that date. Because it was 4 (four) days late, it was, as a matter of law, untimely filed.

When this petitioner failed to receive a copy of the U.S. Attorney's Office's response by May 22, 2017 (the petitioner does not have access to PACER, and must rely on the United States Postal Service for service of process), the petitioner timely filed a MOTION TO STRIKE any response received by the court from the U.S. Attorney's Office in response to the ORDER issued on March 16, 2017. At approximately 4:00PM on the afternoon of May 22, this petitioner received a copy of the untimely filed response of the U.S. Attorney's Office.

Because Judge Harwell had not sua sponte granted any extension concerning the time to file to the U.S. Attorney's Office, and the U.S. Attorney's Office requested no extension before the deadline to file passed, their response fails the tests of both Fed. R. Civ. P. Rule 6 and Fed. R. Crim. P. Rule 45 concerning timely filing.

The petitioner received a response from the Honorable

Judge Harwell denying the striking of the U.S. Attorney's untimely filed response.

This petitioner appealed the denial to the Fourth Circuit Court of Appeals, who denied based on the decision found in Cohen v. Beneficial Indus. Loan Corp., 337 US 541, 545-46 (1949), however, the decision omitted part of the case which would specifically have benefitted the petitioner, which states that § 1291 and § 1292 "do not disallow an appeal from a decision which finally determines claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated".

The petitioner believe the instant case is precisely the type of issue deserving of a review and opinion because the issue of whether or not a court may sua sponte extend the time to file to the U.S. Attorneys Office in a criminal case after the deadline has passed has not come up for review.

The petitioner believes the court abuses it's judicial discretion by extending the time to file to the prosecution in a criminal case when the prosecution has neither asked for an extension, nor filed within the period specified by order, once the deadline to file has passed. Judge Harwell's order concerning this petitioner's MOTION TO STRIKE acknowledges that the government's response was late because the order states "even if it was late, it was, at best, only a couple of days late".

A district court abuses it's discretion when "a relevant factor deserving of significant weight is overlooked, or when an improper factor is accorded significant weight, or when the court considers the appropriate mix of factors, but commits a palpable error of judgement in calibrating the decisional scales". United States v. Roberts, 978 F.2d 17, 20, 1st Circuit, (1992). In Roberts, a district court summarily granted the defendant's motion... after the government failed to timely file an opposition, missing the deadline by several days. The government moved for reconsideration, explaining it had misinterpreted the local rule governing filing deadlines. The court concluded that the circumstances constituted neither "good cause" nor "excusable neglect" for the late filing. The petitioner believes the same should apply in his case.

Courts consider timely filing issues "mandatory and jurisdictional". If an appellant were to file untimely, or fail to obtain an extension of time to file, it would deprive the court of jurisdiction to consider the case. See Dread v. Maryland State Police, 1994 U.S. App. LEXIS 11244, 4th Circuit Court of Appeals, (1994) when the appellant filed two days late. It only is fair and equitable to apply the law equally and fairly by applying the Fourteenth Amendment's equal protection clause in this petitioner's case to strike the untimely filed response by the U.S. Attorney's Office so that the petitioner receives due process of law as provided by the Fifth and Fourteenth Amendments.

Further, "the courts have no authority to create equitable exceptions to jurisdictional rules". See Bowles v. Russell, 551 US 205, 168 L. Ed. 2d 96 (2007).

The petitioner is not asking this Honorable Court to render a decision concerning his habeas motion under 28 USC § 2255. He is asking only that the Court render a decision concerning the admission of the UNTIMELY FILED response filed by the U.S. Attorneys Office, i.e., should the court have stricken the response from the record, which would allow the petitioner's habeas motion to be properly heard without any influence of the untimely filed response, and without any influence from the untimely filed attorney affidavits.

The petitioner is asking for a review of the finding by the district court in which the response was admitted, even though it was untimely, no motion was filed to extend the time to file, and the sua sponte decision to allow the response occurred after the deadline had passed. Also, that the Fourth Circuit Court of Appeals denied enforcement of the court's rules under Fed. R. Civ. P. Rule 6 and Fed. R. Crim P. Rule 45, which denied the petitioner due process and equal protection of law as provided by the Fifth and Fourteenth Amendments.

The petitioner hereby incorporates into this motion that all statements contained are true under penalty of perjury.

REASONS FOR GRANTING THE PETITION

The statements contained in this petition are supported

by applicable case law, and by the Court's own Rules. Because timely filing requirements are incorporated into the Court's Rules, the petitioner believes that his right to equal protection of law is violated when he asserts this right, and it is denied by the district court and court of appeals.

If the government failed to apply it's own laws to it's own practices and procedures, the exception would swallow the rule, and invite intrusions against the United States Constitution.

There is no doubt but that the U.S. Attorney's office's response and call for summary judgement were untimely filed, as even Judge Harwell's own order concedes this. At question is what rights a defendant has when the government chooses to overthrow it's own rules codified by the Court when it is plainly beneficial for the government to do so, and damaging to one of it's citizens who seeks a fair and equal footing in which to defend his case.

Refusing certiorari in this case would deny fairness in the justice process. Strickland v. Washington, 466 US 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) succinctly stated the base issue at hand in this case: "In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of a particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results". Surely, such a breakdown occurs when the district court, and also the

court of appeals; does not enforce the applicable rules, even when invoked by a defendant.

A remand in this case concerning the timely filing issue would promote fairness in the courtroom process. If a hearing on this issue must be held, the government should have the burden of proving that it is fair to eviscerate their own rules out of convenience. Burdens should not shift because a district court refuses to enforce it's own rules.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Webster Douglas Williams, III

Pro-se petitioner

Date:

2/27/16