

No _____

In The
Supreme Court of the United States

CHARLES POINTER,

Petitioner

V.

ALLIED UNIVERSAL AND THE STATE OF
MISSOURI Respondent

On Petition for a Writ of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

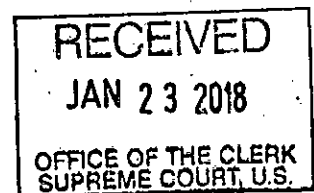
PETITION FOR A WRIT OF CERTIORARI

Charles Pointer (PROSE)

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QUESTIONS PRESENTED

1 Can a litigant file a late notice of appeal using 81.07 but is refused because they said unemployment claims cannot qualify even though the law is giving him 6 months to file a late notice of appeal for civil claims and 12 months for criminal claims which appellant is requesting the honorable court to review because all the circuits have different laws for late notice of appeals which conflicts with each other?

List of Parties

(X) 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:

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THIS COURT SHOULD RESOLVE THE SPLIT AMONG THE CIRCUITS TO WRITE A LAW FOR ALL THE STATES TO FOLLOW IN GRANTING LATE NOTICES OF APPEAL BECAUSE SOME CIRCUITS GRANT THEM AND SOME CIRCUITS DO NOT. IN EACH STATE THE REQUIREMENTS ARE ALL DIFFERENT FROM EACH OTHER IN GRANTING LATE NOTICES OF APPEAL.

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Opinions Below

The Eighth Circuit Court of Appeals reported this case as No: 17-1603 and was appeal from U.S. District Court for the Eastern District of Missouri-St. Louis (4:17-cv-00830-JAR) and is located at Appendix A.

The Eighth Circuit No.4:17-CV-830JAR United States District Court Eastern District of Missouri Eastern Division reported this case as and is located in appendix B

Jurisdiction

The 8th District Court of Appeals said In Accordance with the judgment of 09/07/2017, and pursuant to the provisions of federal Rule of Appellate Procedure 41(A) the formal mandate is hereby issued in the above styled manner. Dated October 25, 2017

PETITION for rehearing by panel by filed Appellant Mr. Charles Pointer w/service 09/18/2017 (45799941) (17-1600)

This court has jurisdiction under U.S.C. section 1254(1) to review the circuit courts decision on a writ of certiorari.

Constitutional and Statutory Provisions Involved

Missouri Statue 81.07

Right in the Missouri Appellate Court and sustained in the Eighth Circuit District Court and appellate court who agreed with the Missouri Court of Appeals. Petitioner's 14th Amendment rights were violated because he could file a late notice appeals within 6 months in civil criminal cases. The law did not say unemployment claims were excluded in this process.

Statement of the Case

Petitioner filed for a late notice of appeal after he filed his notice of appeal on November 2, 2016 when it was due on October 27, 2016. Petitioner under Missouri wrote a letter explaining why he was filing a late notice of appeal under Missouri Statue 81.07 but was dismissed by the Missouri Appellate Court with Judge Hess presiding. Petitioner later filed his case in the Eighth Circuit federal court with a cause of action for du-process violation because 81.07 gave him the right to file a late notice of appeal but he had to get a special order from the appellate court to get it by explaining why he filed a late notice of appeal on November 2, 2016 when it was due on October 27th 2016. Petitioner wrote a letter indicating why he filed a late notice of appeal using 81.07 but was dismissed by the Missouri Appellate Court with Chief Judge Hess presiding. Petitioner filed his case in federal court on the grounds of du-process because Missouri 81.07 gave him the right to file a late notice of appeal. Petitioner was on dialysis and could not file his appeal in a timely manner which he explained to the court. Dialysis made Petitioner very weak and he rested in bed a lot. Violations of the Americans with Disabilities Act was ignored by the Missouri Appellate Court and Eighth Circuit Federal Court and Appellate Court. Relying on the jurisdiction of 81.07 gave Petitioner six months in a civil case to file a late notice of appeal and 12 months for criminal cases. Petitioner indicated the law did not say in expressed writing unemployment claims did not qualify for a late notice of appeal. Trial court injected law into 81.07 which was not in the actual law itself. Review is necessary because 81.07 for late notices of appeal did not specify which criminal or civil laws applied to this law and it should be unconstitutional because there are no

exclaimers in it saying unemployment claims cannot be considered for late notices of appeal. Within its self this is implied law which litigants should be given notice of this. There are too many criminal and civil laws to cram them into this law. Trial court said the Missouri Court of Appeals showed cause as to why Petitioner 's should be dismissed as untimely noting it was a statutory proceeding and there was no provision for late notices of appeal. See Dunlap v Division of Employment. Missouri statute law 81.07 does not have the term statutory proceeding in it. Respondent cannot say this term is in 81.07. To make a just ruling the term statutory proceeding must be written into the law alerting Petitioner and other litigants if it is involving unemployment claims or not and it should be in writing.

Trial court is making up their own law on this issue when the law itself did not say Respondent could not file a late notice of appeal for unemployment claims. Petitioner wrote the court and apologized for using the following: his case arises under an act of congress regulating interstate commerce. Petitioner indicated he used a form letter and did not realize that particular phrase was part of it. The print was so small he could not make out what it was saying. Another cause of action is trial court said this was a Workman's Compensation claim. Petitioner did not get injured or the job and was applying for unemployment benefits. Misrepresentation took place and trial court in the Eighth Circuit violated petitioners 14th Amendment rights to a fair trial.

Reasons for Granting the Writ

Petitioner's supervisor displayed outrageous behavior when she spoke to him so he left the job because of this. Petitioner first appealed to his supervisor Brandon Morgan to see if he could make her speak to him in a professional manner but instead of getting two sides of the story he fired Petitioner and did not talk to his assistant. He said he was coming over to his posts to make him sign suspension papers which is a violated of Title V11. Petitioner felt this was, coercion. The supervisor at the main office held a meeting with Brandon Morgan and Petitioner but did not invite his assistant to the meeting and made a decision to fire Petitioner without getting Brandon's assistant an account of what took place violating Petitioner's 14th Amendment rights .Petitioner transferred his case to the Eighth Circuit District Federal Court who said his compensation case was about Petitioner trying to get his unemployment benefits. Respondent never made an entry of appearance when the case was transferred to the Eighth Circuit.

Court and they were notified of the transfer. Trial court dismissed the case without hearing both sides of the causes of action in violation of the 14th Amendment. Petitioner was denied his unemployment benefits, and it brought great hardship on him because his gas was turned off leaving him to live in a cold house and plus he was on dialysis at the same time. Petitioner needed a roof and many repairs done on his house and increases in medical medications and had about five operations on his arm because of trouble with his fistula at Barnes Jewish Hospital which amounted to thousands of dollars. Under 81.07 it gave Petitioner six months to file a late notice of appeal for civil cases and twelve months in a criminal case. This conflicts on requirements for late notices of appeal must be cleared up by the court because each circuit have their own law for late notices of appeal and a ruling on late notices of appeals will clear up the dispute for all the circuits to follow precedent in granting late notices of appeals. Some circuits do not allow late notices of appeal such as the state of Utah. The Missouri Statue 81.07 is a United States Supreme Court written law, which stated the party in a civil case who requests a special order must make a showing by affidavit or otherwise the delay was not due to the applicant's acceptable negligence and attach a copy of the final judgment in the motion. This must be done within 6 months of the final judgment in accordance with Supreme Court Rule 3003 the party in a criminal case must request a special order within twelve months of the final judgment and for good cause which shows the court of appeals in its discretion may issue a special order in civil and criminal cases. There were no disclaimers saying unemployment claims do not apply to this Missouri statute 81.07. The law did not say which criminal and civil causes qualified and which ones did not qualify under this law. Petitioner is requesting the honorable court to write a late notice of appeal law which all the states can follow because much confusion takes place in the circuits because there is no uniformed law all the states can follow because each of them have their own state laws governing late notices of appeals. The perfect example would be MacDonnell Douglass v. Green 411 U.S 792 where the justices laid out the guidelines for hiring and firing of employees in which that law took precedents for all the circuits to follow.

Petitioner was not allowed to file a late notice but in Weif v. Dougherty Plaintiff was allowed to file a late notice of appeal using 81.07. Winston v. State 533 ,it stated Post –conviction movant's appeal from denial of his motion to vacate sentence was dismissed as court lacked jurisdiction to hear it. Notice of appeal was filed beyond six months from the date of order denying the motion which was a final judgment.

Post-conviction movant's appeal from denial of this motion to vacate sentence was dismissed as court lacked jurisdiction to hear it, notice of appeal was filed beyond six months from the date of filing was filed beyond six months from the date of order. Motion which was a final judgment. The court dismissed the appeal for lack of jurisdiction. Notwithstanding the court's prior order granting movant additional time to file his notice of appeal. The court was compelled to dismiss the appeal on grounds the notice of appeal was not finally filed. On May 7, 1974, counsel requested additional time to file a notice of appeal. Further, it was not until February 25, 1975 that the court granted the motion to file a late notice of appeal. The six month period from the date of the order, overruling ground cognizable under rule 27.26. Later and after two attorneys were appointed and were permitted in Rice v Wallace 2014 US the attorney was allowed to file a late notice of appeal. In Berger v. Cameron S.W.3d 639. The insured motion for special order to file a late notice of appeal was timely filed under Mo Sup CT 86.07.

In the state of Nevada you could not file within 45 days. Some notices of appeals cannot be filed late. The Ohio Supreme court will refuse to file your document and return them to you. If you did not file within the time limit you must ask the Ohio Court to permit you to file a late notice of appeal. You must file a motion for leave to file a delayed appeal explaining why supreme rule 311 allows a litigant to file a late notice of appeal in the state of Illinois. A late notice of appeal was granted in Richard S Mener appellant v .State of Missouri respondent, MO SC95451. In Fuller pp.US 2016. v.State MO clarifying that Rule 30.33 twelve months window 485n S.W.3d 768,771 to seek a special permitting the late filing of a notice of appeal applies to Rule 29.15 post-conviction motions instead the six months window applicable to civil proceedings as provided in Rule 81.07. In Gale Prizvoits, Plaintiff v. Indiana Bell Telephone Company, Defendant No 951813. District refused to grant a motion due to Rule (6b) of the rules of civil procedure and rule 59(e) may not be extended Prizvoits lawyers won and argued and got an extension to file their case in court. Rule 4(a (5) of the Rules of appellate procedure empowers the district court within a 30 day period for filing the notice of appeals to grant a brief extension up to ten days after the entry of the order granting the extension upon a showing of excusable neglect or good cause as the committernate in the 1991 Amendment explains good cause was added to take care of the situation in which the appellant asks for the extension before the original 30 days are up.

Late Notices of Appeals are not accepted in California which said the following: Filing the notice of appeal on time is essential. Unless the Notice of Appeal is timely filed, the court of appeals will not have jurisdiction to hear or decide the appeal. The court has no authority to extend the time for filing or to

excuse a tardy filing. The timely filing of a notice of appeal is not jurisdictional but rather is a matter of procedure Johnson v. Smith Ky. 885 S.W.2d 944(1994) Nevertheless, the supreme court squarely held in Johnson that the timely filing of a notice of appeal in compliance with CR 73.02 is the method by which the jurisdiction of the appellate court is invoked and that automatic dismissal of an appeal is the penalty for late filing of such a notice 885 S.W.2d at 950. Stewart v. Kentucky Lottery Corp., was because of excusable neglect. Petitioner looked at cases where litigants used excusable neglect as a reason for filing late notices of appeals. Some circuits were not on the same page on how to judge excusable neglect on a consistent basis and ruled differently on granting late notices of appeal. Petitioner requested to file a late notice of appeal based on medical reasons from being tired and sick after dialysis treatments but was ignored by the Missouri Appellate Court under the leadership of Judge Hess, chief judge who kept putting red X's on his pleadings when they were turned into the court. Under late notices of appeal Rule 30.30 allows movement to seek leave to file a notice of appeal out of time within 12 months of the judgment becoming final Fuller v State 485 S.W. 3d 761 2016 reclassifying that rule 30.30 twelve month window to seek a spe 8771 MO App WD cial order permitting the late filing of a notice of appeal applies to Rule 29.15 post-conviction motions instead of the six month window applicants to civil proceedings as provided in 81.07.

In some cases late notices of appeals were denied for example in Wesley Anglin appellant v. Justice and Public Safety Catrine, MO2014 CA-00, 1914 M-R appellant filed his case late. The court said there was no provision for a late notice of appeal. Conflicts on this issue continued in Gale Prizovolts appellant v. Indiana Bell Telephone Confidant appellee NO 95-1813 refused to grant 6 months due to late (6B) of the rules of civil procedure and Rule 59(e) may not be extended. Prizovolt's lawyers won and argued and got an extension to file their case in court. The notice of appeal was formalized.

In the Eaton v 2014 US Dist. Lexis16356. In Chian v. Exon Pictures Aha n INC the appellate court ruled against District Court for not granting and extension of time. The district court denied extension of time.

A judge cannot dismiss Petitioner's case saying it was about workman's compensation when it was about the state of Missouri denying him unemployment benefits. Petitioner was not hurt on the job to make a claim for unemployment benefits which was a case of misrepresentation on trial court's part in handling the case which the court should take judicial notice of the facts surrounding this misrepresentation. Petitioner did not ask for workman's compensation in his petition filed in the 8th

Circuit federal court. Petitioner did research into the state of New York's procedure on late notices of appeals CPL-460.30 Extension of Time For Taking Appeals which said Fortunately the criminal procedure law (CPL) anticipates that mistakes sometimes happen provides a statutory mechanism for filing late notices of appeals . CPL section 460.30. The state requires that a defendant seeking an extension of time to appeal demonstrates that the failure to timely file was the result of (a) improper conduct of a public servant improper conduct death or disability of the defendants attorney or (b) in ability of the defendant and his attorney to have communicated in person or by mail concerning whether an appeal should be taken,

New York Crim Pro Law 460.30(1) McKinney 2005 The statute further requires that the motion be made with diligence after the time for taking of such appeal has expired and in any case not more than one year after.

In Indiana, a court may sustain a motion for a belated appeal if the defendant can show sufficient cause to excuse the delay in noting the appeal State ex rel, Casey v, Murray, 231 Ind.74, 106N.E.2d 911(1952)

The California Supreme Court has liberally construed its rule which confers on the appellate courts power to grant relief from late filing Cal R of .31(a Cr) The appellant must provide information to the court proving he did not intend to waste the court's time applying for a late notice of appeal. In New York thirty days is allowed to file a late notice of appeal and thirty more days if the lawyer dies when filing for one. If the attorney becomes physically incapacitated the court may in its discretion, honor the application for a late appeal. Michael J. Schimberg

In the state of New Mexico it stated the following for late notices of appeal: you must file an appeal from the district court within 30 days after the court files the final, written order in the case. In some cases, you may be able to get an extension of time from the district court to file your appeals. It is very important that you file your appeal on time. If you file your appeal late, you may lose your right to appeal for ever. Because the deadline for an appeal is so important, you must be sure you understand whether you are trying to appeal a decision from a lower to a district court to the court of appeals because the time for filing each kind of appeal is different. Here: There is no mention of filing a late notice of appeal for litigants who may need additional time to file their petition late for reasons which they could not control. Petitioner could not file his late notice of appeal because of the effects of the treatment he received from dialysis. Petitioner indicated he had a disability in that he was on dialysis but

denied the right to file a late notice of appeal. The following case: NOTICE OF APPEAL OF FEMA DECISION. The client filed her FEMA application even though it was submitted late and her attorney and her caseworker helped her fill it out. The client was a person with a disability 42U.Sec12102. She suffered from memory and cognitive impairments due to a traumatic brain injury.

Conclusion

Petitioner is requesting the honorable court to rule in his favor because he was given the right to file a late notice of appeal using Missouri Statute 81.07 giving him 6 months in a civil case and 12 months for criminal cases but the court said unemployment claims could not be included. The law did not say unemployment cases were excluded in filing a late notice of appeal. Petitioner should have been given notice of this because it was not in the statute. This was the only remedy offered in the ABC book on Appellate Procedure given to Petitioner for relief to get his unemployment benefits back. A disclaimer should have been written in 81.07 saying which civil and criminal laws were excluded. This would have alerted Petitioner not to use this statute. Petitioner is saying the court should write a law which could be used by all the states for late notices of appeals because some states provide late notices of appeal and some states do not. One law written by the court would establish a precedent that all fifty states could follow giving litigants the right to file a late notice of appeal because some things occur which keeps them from filing their cases on time. In petitioner's case it was because of illness which kept him from filing his notice of appeal on time but he was ignored by the Missouri Court of Appeals.

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