

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS

RECEIVED

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

FEB 26 2018

S.C. SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Phillip Lenski; ADMINISTRATIVE LAW JUDGE

Case No: 2017-002336

South Carolina Department of Corrections..... Respondent,
v.
William Leon Burnett..... Petitioner,

PETITION FOR A WRIT OF CERTIORARI

William Leon Burnett, SID# 352645
Allendale Correctional Institution
Bamberg A41
1057 Revolutionary Trail
Post Office Box 1151
Fairfax, South Carolina 29827-7127

Other Counsel of Record:
Ms. Christina Cates Bigelow
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221

Ms. Jennifer - Abbott - Kitchens
 Clerk of Court
 South Carolina Court of Appeals
 1620 Senate Street
 Post Office Box 1629
 Columbia, South Carolina 29211-1629

South Carolina Administrative Law Court
 Clerk of Court
 ATT: Phillip Lenski - A.L.J.
 Edgar A. Brown Building
 1205 Pendleton Street
 Suite 224
 Columbia, South Carolina 29201-3739

INDEX

Questions Presented (2)
 Statement of the Case (3)
 Argument (3)
 1: Court of Appeals dismissed Petitioner's appeal with prejudice and
 without any consideration that Petitioner is a prisoner under the
 jurisdiction of the D.O.C. Administration in which filing timely can be
 a burden when notices aren't returned to Petitioner in a timely
 manner. (3)
 Conclusion (4)

Question Presented:
 I: Did Court of Appeals ~~fail~~^{fail} fail and err in ^{not} accepting Petitioner's
 Motion for a Rehearing under EQUITABLE TOLLING??

Statement of the Case:

On December 7, 2017, Ms. Jennifer Abbott-Kitchens, Clerk of Court, mailed an epistle to inform Petitioner that "The Proceed In Forma Pauperis" without Cost and Payment was received and needed to correct errors. The deadline was December 20, 2017. Petitioner didn't receive the notice until December 19, 2017, at which time every effort was made to be in compliance with the Court's instructions. It was corrected and sent back on December 27, 2017.

He alleges:

On January 11, 2018, the case was dismissed for failing to correct errors in accordance with the South Carolina Appellate Court Rules. On December 12, 2017, Petitioner file a Motion for Reinstatement under Rule 231 (SCACR). The Clerk of Court informed Petitioner that the correct avenue was a Motion for Rehearing and was due on December 20, 2017. Under equitable tolling; "Exceptional and Extraordinary Circumstances must be shown to merit equitable tolling." Liangella v. Bush, 306 F. Supp. 2d 459, 467 (S.D.N.Y. 2004). Plaintiff met requirement of "exceptional circumstances" and diligence, where he was Pro Se and missed the deadline by three days.) In instance case. Petitioner missed by 7 days beyond his control. The Petitioner bears the burden of proof in demonstrating that he or she is entitled to equitable tolling. Basherry v. Garcia, 448 F.3d 1150, 1153 9th Cir. 2006. Petitioner has met the burden of proof by a showing of the formal epistle dated December 7, 2017 and the outside of the envelope checked and dated December 19, 2017.

ARGUMENT

1: Court of Appeals dismissed Petitioner's appeal with prejudice without any consideration that Petitioner is a prisoner under the jurisdiction of the D.C. Administration which ~~time~~ ^(B) filing a timely can be a burden when notices aren't returned to Petitioner in a timely manner.

CONCLUSIONS

For the reasons stated, ask the Court to grant petition for a writ of certiorari on REMAND.

February 15, 2018

Respectfully Submitted,
William Leon Burnett
William Leon Burnett, SDC# 352645
Allendale Correctional Institution
Bamberg A1
1057 Revolutionary Trail
Post Office Box 1151
Fairfax, South Carolina 29827-1127

THE DEPARTMENT OF CORRECTIONS HAS
NOT INSPECTED ON PRISON HIS ITEM
THEREFORE, THE DEPARTMENT IS NOT
ASSUME RESPONSIBILITY FOR THE CONTENTS.
S.C. DEPARTMENT OF CORRECTIONS

William Leon Burnett, sccc# 358645
Allendale Correctional Institution
Bamberg A41
1057 Revolutionary Trail
Post Office Box 1151
Fairfax, South Carolina 29827-1151

RECEIVED
FEB 21 2018
MAILROOM
ACI

LEGAL MAIL

Mr. Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
1231 Gervais Street
Post Office Box 11330
Columbia, South Carolina 29211-1330