

Ms. Jennifer Abbott-Kitchens
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
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

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Questions Presented (2)

Statement of the Case (3)

Argument

1: Court of Appeals dismissed Petitioner's appeal with prejudice
without any consideration that the Petitioner is a prisoner
under the jurisdiction of the D.D.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 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 this 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 the errors in accordance with the South Carolina Appellate Court Rules. On December 12, 2017, Petitioner filed a Motion for Reinstatement under Rule 231 (SCACR). The Clerk of Court informed Petitioner that the correct avenue was a Motion for a Rehearing and was due on December 20, 2017. Under equitable tolling; "Exceptional and Extraordinary Circumstances" must be shown to merit equitable tolling. Lombgell v. Bush, 306 F. Supp. 2d 459, 467 (S.D. N.Y. 2004). (Plaintiff met requirement of "exceptional circumstances" and diligence where he was ProSe and missed the deadline by three days.) In instance case, Petitioner missed by 7 beyond his control. The Petitioner bears the burden of proof in demonstrating he or she is entitled to equitable tolling. Rasberry 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 clocked and dated December 19, 2017.

ARGUMENT

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 filling 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#35245
Allendale Correctional Institution
Bamberg A41
1057 Revolutionary Trail
Post Office Box 1151
Fairfax, South Carolina 29827-1127

PROOF OF SERVICE OF NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT
Phillip Lenski; ADMINISTRATIVE LAW JUDGE

Case No: 2017-002336

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

PROOF OF SERVICE

I, William Leon Burnett, certify that I have served on Mr. Daniel E. Shearouse, Clerk of Court, Ms. Christina Cates Bigelow, Staff Attorney, Ms. Jennifer Abbott-Kitchens, Clerk of Court; and Honorable Phillip Lenski, A.L.J., the PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, by depositing each a copy in the United States Mail, postage prepaid, addressed to: South Carolina Supreme Court: 1231 Gervias Street, Post Office Box 11330, Columbia, South Carolina 29211-1330; South Carolina Department of Corrections: 4444 Broad River Road, Columbia, South Carolina 29221; South Carolina Court of Appeals: 1220 Senate Street, Post Office Box 11629, Columbia, South Carolina 29211-1629; South Carolina Administrative Law Court: Clerk of Court: Edgar A. Brown Building: 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201-3739 on February 15, 2018.

February 15, 2018

~~William Leon Burnett~~
William Leon Burnett, SCID #352645
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SC Court of Appeals

February 15, 2018

Ms. Jennifer Abbott-Kitchens
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, South Carolina 29211-1629

Re: William Leon Burnett v. South Carolina Department of Corrections
Appellate Case No: 2017-002336
Case No: 17-ALJ-04-0128-AP

Ms. Jennifer Abbott-Kitchens,
Please find enclosed a copy of the
Petition for a Writ of Certiorari To The Court of Appeals,
which has been filed with the Supreme Court. Rede in kind.

Respectfully Submitted,
William Leon Burnett
William Leon Burnett

cc: file
Mr. Daniel E. Shearouse
Clerk of Court
Honorable Phillip Lenski
Ms. Christina Catos Bigelow
Staff Attorney
South Carolina Department of Corrections

William Leon Burnett, SCID# 352645
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SC Court of Appeals

Ms. Jennifer Abbott-Kitchens
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South Carolina Court of Appeals
1220 Senate Street
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