

**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS**

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

**RECEIVED**

**OCT 30 2018**

**APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Benjamin H. Culbertson, Circuit Court Judge**

**S.C. SUPREME COURT**

**Opinion No. 2018-UP-275 (S.C. Ct.App. filed June 27, 2018  
Rehearing Denied August 16, 2018)  
(Appeal No. 2016-001063)**

**Supreme Court Case No. 18-001624**

**Ronald Jarmuth .....Petitioner**

**v.**

**The International Club Homeowners  
Association, Inc., Rosemary Toth, and  
K. A. Diehl & Associates.....Respondents.**

**MEMORANDUM OF LAW IN SUPPORT OF  
PETITIONER'S MOTION TO STRIKE  
RETURN OF RESPONDENT  
BECAUSE IT WAS FILED LATE  
AND WITH THE WRONG COURT**

**Ronald Jarmuth  
249 Pickering Drive  
Murrells Inlet, SC 29576  
843-314-4355  
Petitioner**

**McNair Law Firm  
Henrietta U. Golding and Alicia F. Thompson  
2411 Oak Street, Suite 206  
Myrtle Beach, SC 29578  
(843) 444-1107  
Attorneys for Respondents**

**MEMORANDUM OF APPLICABLE LEGAL PRECEDENT**

1.     Petitioner Ronald Jarmuth, Pro Se, Files a Supplement to Petitioner’s “Motion to strike the Return of the Respondent International Club Homeowners Association, Inc” to Jarmuth’s Petition for a Writ of Certiorari to provide the controlling legal precedent.

          The legal precedent stated by the United States Court of Appeals for the D.C. Circuit [1] and affirmed by the United States Supreme Court [2] is that a pleading is considered filed only when it comes into the hands of the clerk of the correct court. It is an undisputed fact that the Return of the Respondent came into the hands of the Clerk of the Supreme Court eight (8) days after the filing deadline and into the hands of the wrong court two (2) days after the filing deadline.

2.     Among the ground Jarmuth cited was that the HOA’s Return was filed beyond the thirty(30) day deadline to file the Return with the Supreme Court. The United States Supreme Court has ruled that a pleading is filed with the Court when it is actually **RECEIVED BY THE CLERK OF THE COURT TO WHICH FILING IS REQUIRED**, not when it is mailed. The Supreme Court agreed with the determination of the USCA-DC which upheld a decision by the USDC-DC. Case discussion further. This is determinative that the HOA missed it’s deadline to file its’ Return with the Supreme Court.

3.     To recap the controlling facts relevant to filing:

    a.     Jarmuth filed his Petition on September 7, 2018.

---

1 Kareem v. FDIC, 482 Fed. App’x 594 (D.C.Cir. 2012)

2 Hussain Kareem v. Federal Deposit Insurance Corp., et al., No. 13-5361, U.S. Sup.; 2013 U.S. LEXIS 6664.

b. The deadline to file the Return was thirty (30) days later, that being October 7, 2018 – extended by one day to October 8, 2018 because October 7, 2018 was a Sunday.

c. The letter of transmittal was addressed to the S.C. Court of Appeals and it used the caption of the case in that court, not the caption in the Supreme Court nor the case number assigned by the Supreme Court. The envelope containing the Return was also addressed to the Court of Appeals. It was dated October 8, 2018 per the letterhead. There was no postage nor postmark on the envelope to evidence the date of mailing. It appeared to be hand delivered to the Court of Appeals.

d. The Return was received by the Court of Appeals on October 10, 2018 and “clocked” that day. This was two (2) days after the deadline to file.

e. The Return was forwarded to the Supreme Court by the Court of Appeals and clocked at the Supreme Court on October 16, 2018. This was eight (8) days after the deadline to file the Return with the Clerk of the Supreme Court.

4. Legal Precedents which Control.

In proceedings between Hussain Kareem and the Federal Deposit Insurance Company (FDIC) the U.S. Supreme Court ultimately clarified that a pleading is filed only when it comes into the physical possession of the clerk of the court where it must be filed.

Hussain Kareem had an administrative claim against the FDIC because of issues with a bank that the FDIC had closed and taken over. Not being satisfied with the outcome, Kareem had 60 days to file a complaint with the U.S.D.C – DC.

His deadline was August 31, 2009. He mailed his complaint to that Court on August 31, but the Clerk of Court only received the Complaint on September 1, 2009. The FDIC filed a motion to dismiss because Kareem had not filed his complaint within the applicable 60 day filing deadline, stating that the complaint was filed one day late. The case was *Hussain Kareem v FDIC*, USDC-DC, Civil Action #09-1820.

In dismissing on July 27, 2010 the Court's Memorandum Opinion stated that "the complaint was filed after a statutory filing deadline" (opinion p1.). The order *Kareem v. FDIC*, 811 F. Supp. 2d 279 (D.D.C. 2011) District Court, District of Columbia, clarified further that

"the date the complaint is received by the clerk's office is the date the complaint is deemed filed for purposes of determining whether a complaint is timely filed Brooks v. Derwinski, 741 F. Supp. 963, 964 (D.D.C. 1990); Mwabira-Simera v. Howard University, 692 F. Supp. 2d 65, 72 (D.D.C. 2010). ... The law does not, as Kareem argues, see Opp'n ¶¶ 37-38, treat the postmark as the date of filing, or allow three days beyond the filing date to file by mail."

The Order dismissing (Docket #39) filed September 15, 2011 stated that

"According to Federal Rule of Civil Procedure 5, a motion is filed when it is delivered to the clerk of the Court. Fed. R. Civ. P. 5(d)(2)(A). Therefore, when a non-prisoner plaintiff mails a motion to the Court, the filing date is the date on which the motion was received, not the date on which the motion was sent. See, e.g., Reed v. Gulf Coast Cmty. Coll., No. 5:09-c-v237, 2010 WL 2926556, at \*3 (N.D. Fla. June 29, 2010).

citing to Houston v. Lack, 487 U.S. 266, 270-71 (1988) in discussing the inapplicability of the prisoner mailbox rule,

The Court addressed the confusion regarding what the date of mailing applies to, clarifying that "Fed. R. Civ. P. 5(b)(2)(F) ... applies only to service of papers" on opposing parties, not to the filing of those same papers with the court (at page 5).

Kareem appealed to the USDC-DC. The U.S. Court of Appeals (DC)

affirmed (Kareem v. FDIC, 482 Fed. App'x 594 (D.C.Cir. 2012)) Hon. Judge (now Justice) Kavanaugh writing

“The district court properly dismissed appellant’s complaint as untimely because it was filed more than 60 days after his administrative claim was deemed disallowed. See 12 U.S.C. § 1821(d)(6); see also Freeman v. FDIC, 56 F.3d 1394, 1400 (D.C. Cir. 1995). Appellant is not entitled to the benefits of the ‘mailbox rule’ because he is not a prisoner. See Houston v. Lack, 487 U.S. 266 (1988) ... a paper is filed by “delivering it” to the Clerk.”

In Houston (op.cit.) the Court wrote

“The general rule (is) that receipt by the court clerk constitutes filing, .. (which is) appropriate for most civil (cases)”.

Kareem appealed to the U.S. Supreme Court for a Writ of Certiorari.

In its’ decision the U.S. Supreme Court affirmed the decision of the Court of Appeals holding that Kareem’s complaint was “time barred”, Hussain Kareem v. Federal Deposit Insurance Corp., et al., No. 13-5361, U.S. Sup.; 2013 U.S. LEXIS 6664.

5. The U.S. Supreme Court’s affirmation of the interpretation by the U.S. Court of Appeals for the D.C. Circuit is binding on both state and federal courts below.

This interpretation of the law was upheld by the USCA-DC and by the USSC. The federal and state rules defining filing are substantially the same.

The federal rule reads:

FRCP Rule 5(d)(2) How Filing Is Made—In General. A paper is filed by delivering it:

- (A) to the clerk; or
- (B) to a judge

The state rule reads:

“5(e) Filing With the Court Defined.

The filing of pleadings and other papers with the court as required by these

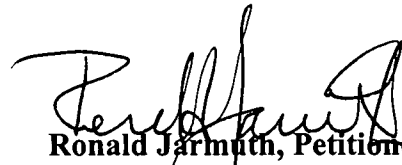
rules shall be made by filing them with the clerk of the court ... except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk”

6. “Three Days Added by Mail” concept, even if applicable to the determination of the filing deadline, , does not defeat the failure to meet the filing deadline.

Even incorrectly assuming that the deadline to file the Return with the Clerk of the Supreme Court had been extended to October 10, 2018 [3] the Return was still filed six (6) days late with the Clerk of the Supreme Court.

CONCLUSION

7. Conclusion. Whether or not a “3 days extension for mail service” is added to determine the filing deadline, the Return was still not filed with the Clerk of the Supreme Court until well after the filing deadline and must be lodged, not filed.

  
Ronald Jarmuth, Petitioner Pro Se  
249 Pickering Drive  
Murrells Inlet, SC 29576  
843-314-4355  
October 29, 2018

RECEIVED

OCT 30 2018

S.C. SUPREME COURT

RECEIVED

OCT 30 2018

S.C. SUPREME COURT

---

3 Service of the Petition having been made on September 7, 2018, thirty (30) days later is October 7, 2018. Add three days for mail service, the deadline to file with the Clerk of the Supreme Court is October 10, 2018, not October 16, 2018, the date the Clerk of the Supreme Court came into possession of the Return – still six (6) days late.

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM HRRY COUNTY  
Court of Common Pleas  
Benjamin H. Culbertson, Circuit Court Judge

---

Opinion No. 2018-UP-275 (S.C. Ct.App. filed June 27, 2018  
Rehearing Denied August 16, 2018)  
(Appeal No. 2016-001063)

---

Supreme Court Case No. 18-001624

---

Ronald Jarmuth .....Petitioner

v.

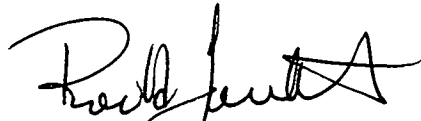
The International Club Homeowners  
Association, Inc., Rosemary Toth, and  
K. A. Diehl & Associates.....Respondents.

---

PROOF OF SERVICE

I certify that on October 29, 2018 I Served Petitioner's "Memorandum of Law in support of Petitioner's Motion to Strike Respondent's Return", on Respondents through Respondent's counsel, Henrietta Golding; McNair Law Firm, P.A.; 2411 Oak Street; Suite 206; Myrtle Beach, SC 29578-3164 by mailing it to same by first class mail, postage pre-paid.

October 29, 2018



Ronald Jarmuth  
249 Pickering Drive  
Murrells Inlet, SC 29576  
843-314-4355  
Petitioner, Pro Se

RECEIVED

OCT 30 2018

S.C. SUPREME COURT