



Court of Appeals of Georgia

October 7, 2015

TO: Mr. Lonnie Whatley, Reg. No. 59541-019, United States Penitentiary - Atlanta, Post Office Box 150160, Atlanta, Georgia 30315

RE: **A15A1357. Lonnie Whatley v. The State**

CHECK RETURN

- Your check number _____ in the amount of _____ written on the account of your firm for the filing fee in _____ is enclosed. Please be advised that this Court is returning your check since the filing fee was already paid by _____.

~~CASE STATUS - DISPOSED~~

- The referenced appeal was dismissed on June 15, 2015. The remittitur issued on July 1, 2015, divesting this Court of any further jurisdiction of your case. The case is therefore, final. I am returning your documents to you.**

CASE STATUS - PENDING

- The above referenced appeal is pending in your name before this Court. The appeal was docketed in the _____ Term and a decision must be rendered by the Court by the end of the _____ Term which ends on or around _____.

APPLICATION FOR PERMISSION TO APPEAL A PROBATION REVOCATION

- To appeal a probation revocation, you will need to file a Discretionary Application with this Court. Rule 31 of the Rules of the Court of Appeals of Georgia describes a Discretionary Application and the items you would need to include with your application.

A Discretionary Application must be filed within 30 days of the stamped filed date on the order that you are appealing and the application must be accompanied by a proper Certificate of Service and a pauper's affidavit or the \$80.00 filing fee. You must also comply with all the other applicable rules of Court regarding filing with the Court of Appeals of Georgia.

Enclosed, please find a copy of the Rules of the Court of Appeals for your review.

FILED IN OFFICE

OCT 06 2015

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IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

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COURT OF APPEALS OF GA

2015 OCT -6 AM 11:01

RECEIVED IN OFFICE

LONNIE WHATLEY,
Appellant-Defendant.

Case: A-15A 13 57

v.

STATE OF GEORGIA,
Plaintiff-Respondent.

APPELLANT PRO SE MOTION IN RESPONSE TO COURT OF
APPEALS DENIAL OF APPELLANT NOTICE OF APPEAL

COMES NOW, Lonnie Whatley, Appellant-Defendant, pro se, and hereby submits Defendant's reply in response to this Court's dismissal of his Notice of Appeal. In support of this motion, Defendant avers as follows:

I. STATEMENT OF FACTS

Feb. 23, 2015, Defendant sent a timely Notice of Appeals to Douglas Superior Court by placing said motion to this Court by placing said motion in the prison mailbox here at U.S.P. Atlanta. (See Notice of Appeals, Certificate of Service).

On May 18, 2015, this Court dismissed Defendant's Motion For Appointment Of Counsel, but granted him (20) twenty more days to file his brief, which is initially due on April 2, 2015.

On June 5, 2015, Appellant filed a timely appeal to this Court. After not receiving a word on the Notice of Appeal brief, Appellant filed a letter to the Clerk of this Court, inquiring

into the status of the Notice of Appeals, and the Clerk never responded to the inquiry.

Appellant asserts that due in part of Appellant placing his Notice of Appeals brief in the care of the prison authorities on June 5, 2015, the motion is deemed timely/

1

Appellant's motion was timely filed pursuant to the "Mailbox" Rule being that it was placed in the prison mail system on June 2, 2015.

Under the relax prison mailbox rules relaxed filing standard, a pro se prisoner's complaint is deemed filed when it is handed over to prison officials for mailing to the court. See Houston v. Lack, 487 U.S. 266, 101 L.Ed.2d 245, 108 S.Ct. 2379 (1988). This Notice of Appeals brief is timely filed.

2

Pursuant to Rule 13 and 23(a), the Appellant was required to file his Notice of Appeals brief within (20) twenty days in which was initially due on April 20, 2015. This is the case at bar as Appellant attacking a verdict rendered in Douglas County.

3

Petitioner is currently a Federal prisoner, and does not enjoy the luxury of filing his motions/pleadings to this Court by walking into the Clerk of Court's Office at the convenience to perfect his filings in timely fashion. He has to rely on third party litigants and/or the prison internal mailing system and the United States

mail courier for assistance. That is exactly what Appellant did as evidenced by the certified mail return receipt from the United States Postal Service stamped June 5, 2015.

3

Appellant relies upon the "Mailbox" Rule in Houston v. Lack, 487 U.S. 266, 101 L.Ed.2d 245, 108 S.Ct. 2379 (1988). In Houston, the Supreme Court stated that once a filing is deposited in the prison mail system, it is considered filed. The Eleventh Circuit has spoken on the issue as well holding that Notice of Appeals, Section 1983 complaints, and §2255 motions to vacate "filed" when a pro se [like Appellant] prisoner delivers one of them to prison officials for mailing. (See Vanderberg v. Donaldson, 259 F.3d 1321, 1325 n.5 (11th Cir. 2001). Not only did Appellant here deliver the filing to prison authorities for mailing, he paid additional postage for extra precaution of it's mailing by sending it certified return receipt. (See Prince v. Poulos, 876 F.2d 30 (5th Cir. 1989)("Brief was filed on date of mailing where it was sent via certified registered mail since such is First Class mail...").

The Court of Appeals received Appellant's filing on June 5, 2015 as evidenced by the mail receipt. However, the Court did not timely docket Appellant's filing until June 9, 2015, by taking the Court's order as is, it penalizes the Appellant for being untimely. The Clerk should have perfected the filing on the date received, or in the alternative, the Court should have issued it's order nun pro tunc to June 9, 2015 instead of the actual placement

on the docket on June 9, 2015. (See Shearson Lahman Bros. v. M & L, Inc., 10 F.3d 1510 (10th Cir. 1993)(Date Clerk receives notice of cross appeal, rather than date to determine timeliness of notice.)).

CONCLUSION

It is clear that Appellant's Notice of Appeals brief was timely. He mailed it from his place of confinement by certified mail return receipt prior to the expiration of the status of limitations. It was received by the Court well before the statute of limitation expired. He has been punished for being untimely because the Court received late docketing.

The Appellant asks that this Court reverse the lower Court's order and remand the case back to the lower Court to consider on the merits.

This 2nd day of Oct 2015.



Lonnie Whatley
FCI Atlanta #59541-019
P.O. Box 150160
Atlanta, GA. 30315

CERTIFICATE OF SERVICE

I, Lonnie Whatley, do hereby certify under penalty of perjury [28 USC §1746] that I have this day mailed and served the attached: Motion in response to court of appeals denial of Appellant notice of appeal by depositing same in the prison legal mailbox with First Class postage affixed and addressed as follows:*

Done this 2 day of October, 2015.


59541-019
USP Atlanta
P.O. Box 150160
Atlanta, GA 30315

Copy sent to:
Douglas Co. DA Office
8700 Hospital Dr.
Douglasville, GA 30131

* This affirmation is intended to comply with Rule 4(c), Fed. R.A.P., with presumption of "mailbox" filing under Houston v. Lack, 487 U.S. 266 (1988).