

027

IN THE SUPREME COURT OF FLORIDA

CASE NO. 77,132

JAMES J. HAAG,

Petitioner.

vs.

STATE OF FLORIDA,

Respondent.

FILED
 SID J. WHITE
 APR 4 1991
 CLERK, SUPREME COURT
 By _____
 Deputy Clerk

RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the defendant and appellant and Respondent was the prosecution and the appellee in the criminal division of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida and the Fourth District Court of Appeal, respectively.

In the brief, the parties will be referred to as they appear before this Honorable Court of Appeal, except Respondent may also be referred to as the State.

The following symbol will be used:

"R" Record on Appeal

STATEMENT OF THE CASE AND FACTS

The State accepts the Petitioner's statement of the case and facts as substantially true and correct.

SUMMARY OF ARGUMENT

The question certified by the Fourth District Court of Appeal as being one of great public importance, should be answered in the affirmative. A pro se prisoner has two years from the time his judgment and sentence becomes final in which to file a motion for post-conviction relief.

A bright line filing rule which dictates that the date the clerk stamped the motion as filed would streamline filing procedures and reduce the voluminous amount of litigation over timeliness questions. Two years - or 730 days is surely ample time in which to allow a pro se petitioner to file his motion with the court clerk.

ARGUMENT

POINT

**A PRO SE PRISONER'S MOTION FOR POST-
CONVICTION RELIEF SHOULD BE CONSIDERED
FILED ONCE STAMPED BY THE COURT CLERK.**

The Fourth District Court of Appeal certified the following question to be one of great public importance:

Does the rule 3.850 provision which states that with certain exceptions "no other motion shall be filed or considered pursuant to this rule if filed more than two years after the judgment and sentence become final" prevent consideration of such a motion which was turned over to prison authorities for mailing within the prescribed time limit but was stamped in by the court clerk after that time period had run?

This Honorable Court should answer the foregoing question in the affirmative.

Rule 3.850, Fla.R.Crim.P. imposes a two year limit on all motions for post-conviction relief. This limit begins to run immediately after the judgment and sentence become final. And, absent certain exceptions, an untimely motion will not be considered. As Petitioner's motion for post-conviction relief does not fall within any exception, it should be denied as untimely.

Rule 3.030(a), Fla.R.Crim.P. defines "filing with the court" to mean the date pleadings are actually filed with the clerk. Petitioner's motion was physically filed with the clerk on October 20, 1989, four days after the two year deadline had expired.

The fact that petitioner delivered the motion to prison officials on October 11, 1989, 5 days prior to the deadline--while compelling--does not mitigate the clear language of the rule. Petitioner should not be rewarded for waiting 725 days to hand his motion to prison officials. A two year period is more than adequate to allow a prisoner to prepare his motion and physically file it with the clerk of the court.

Unlike the cases Petitioner relies on in his brief, the instant case does not involve a notice of appeal that was not received within the 10 to 30 days allotted. See, *Fallen v. U.S.*, 378 U.S. 1391 (1963); *Houston v. Lack*, 487 U.S. 266 (1988). Rule 3.850 provides 730 days -- or two years in which to file a motion for post-conviction relief. Surely, such a generous time limit would allow for nearly every possible contingency.

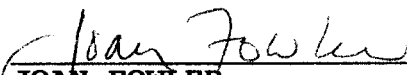
Petitioner's plea for a bright line filing rule could as easily provide that a pro se petitioner's motion be filed when received by the Clerk of the Court. This bright line approach would equally streamline the procedure so that only those motions actually filed with the Court within the two year limit will be reviewed. This might even eliminate some of the voluminous administrative efforts of prison officials in logging the mail, as well as eliminate protracted litigation over timeliness questions.

CONCLUSION

WHEREFORE, based on the foregoing this Court should affirm the denial of Petitioner's motion for post-conviction relief and answer the certified question in the affirmative.

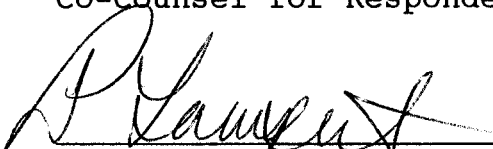
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Brief of Respondent on the Merits" has been forwarded by United States Mail to: NANCY A. DANIELS, ESQUIRE, Leon County Courthouse, Fourth Floor, North, Tallahassee, Florida 32301, this 1st day of April, 1991.



Of Counsel

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