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**IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI**

**2010-CP-00087**

**TIMOTHY GRIFFIN  
APPELLANT**

**VERSUS**

**CHRISTOPHER EPPS  
APPELLEE**

**FILED**

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SUPREME COURT  
COURT OF APPEALS**

**REPLY BRIEF FOR APPELLANT**

**Timothy Griffin K0848  
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P.O. Box 1057  
Parchman, MS 38738**

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## **SUMMARY OF THE ARGUMENT**

1. The appellee argues that the record was insufficient to determine whether the lower court erred in dismissing Griffin's petition as untimely. Since the issue was timeliness, the state should be forced to produce substantial evidence to prove the document was in fact submitted after the deadline. However, the lack of cooperation by the state has limited their argument and should ultimately work in the favor of Mr. Griffin.

## **ARGUMENT**

1. When applying the prison mailbox rule, submission of the petition by the filing deadline to prison officials begins the motion to file. Griffin submitted the document by September 21, 2009, which was the filing deadline. However, the date and notary seal was the only proof available to substantiate his argument. The most reliable proof available was the prison mail log that Parchman officials refused to make available. The burden of proof lies with the state and they refused to produce the most definitive evidence to support either argument.
2. Many cases related to the timeliness of appeals and the application of the prison mailbox rule are based on Fallen v United States 378, U.S. 139 (1964) and Houston v Lack 487, U.S. 266 (1988). While the circumstances were different, each case revolves around the timely submission of documents to prison officials that were not received by the proper authority by the deadline. In *Fallen*, the document was received but not mailed in time. In *Houston*, prison officials received and held the document causing the delay and a missed deadline. Both cases allowed the court to use some flexibility when applying the rules of civil procedure as it relates to *pro se* petitioners.

3. The lower court in this instance simply looked at the date the document was stamped by the circuit court without considering the date in which the document was received by prison officials. Maze v MDOC 854 So.2d 1090 (Miss. App. 2003) establishes the use of the prison mailbox rules for all appeals, allowing petitions to be filed when it was given to prison officials. Since *pro se* petitioners have no control over petitions once they were filed, it was the responsibility of the prison officials to complete the process in a timely manner, in addition to maintaining accurate records.
4. In many of the case cited here, where the prison mailbox rule was applied, the burden of proof fell on the state to show whether the documents were filed by the deadline. For example, Gaston v State 817 So.2d 613 (Miss.App. 2002) and Easley v Roach 879 So.2d 1041(Miss. 2004), affirm the burden of proof falls on the state to show the offender did not put forth reasonable effort to get the document submitted on time. While reasonable effort was not defined, submitting the document by the filing date should be sufficient.
5. The court has the discretion to be flexible and show leniency to *pro se* offenders, especially when it appears they put forth reasonable effort. In this case Timothy Griffin was able to overcome circumstances that were beyond his control and still get the Order submitted to prison officials by the deadline. In Houston v Lack, 487 US 266 (1988), the court contends the moment of filing should be the moment when the *pro se* prisoner necessarily loses control over his notice: the moment of delivery to prison authorities for forwarding..., since such authorities keep detailed logs for recording the date and time at which they receive papers for mailing, and can readily dispute a prisoner's contrary assertions.

6. Griffin submitted a formal request for the prison mail log for September 21, 2009 on March 21 of this year and the request was denied March 23.
7. Although Sykes v State 757 So.2d 997 (Miss. 2000) and Gaston v State 817 So.2d 613 (Miss.App. 2002), support the idea that a legal mail log is more reliable, in this instance Parchman administrators refused to supply the legal mail log, making it impossible for Griffin to provide more reliable evidence to support his argument.
8. Without the mail log, Griffin cannot definitively show the petition was filed for forwarding September 21, 2009 and the state cannot definitively prove he did not.
9. Several documents were dated and notarized September 21, 2009 including the Affidavit of Poverty, Verification of Applicant and Petition. While the Certificate of Service was not dated, each document was part of the Order. Unless it was the policy of the Mississippi Department of Corrections to return documents to offenders, there should be no question about the date of filing. Sunflower County Circuit Clerk, which was less than 50 miles away, stamped the document received September 28, 2009. However, mail likely leaves Parchman daily. Based on the distance, there was no reason for it to take a full week for the document to reach the circuit court, unless they were held for several days by prison officials or the circuit court delayed stamping the document received. In either case, once Griffin turned over his documents they were out of his control. Again from *Houston*, relying on the date of receipt..., raises questions as to whether prison officials, the Postal Service or court clerk [was] to blame for any delay.
10. Whether the notary stamp was insufficient proof or not, without the mail log, the state could not contradict Griffin's argument about the timeliness of his petition.

11. Since the issue here was the timeliness of the document, the state bears the burden of proof. While the notary stamp may be insufficient, so is the use of the date stamped as received by the circuit clerk, Easley v Roach 879 So.2d 1041(Miss. 2004). In the least, there were documents available with the date and official notary seal to show when they were filed. However, the state has refused to make the definitive proof available limiting their argument about the timeliness of the Order.

### **CONCLUSION**

12. Appellant Griffin respectfully submits, based on the authorities cited herein and in support of his brief, that this Court should grant relief, reverse and remand this case to the trial court for additional proceedings. Since Griffin submitted his document to prison officials for mailing within the allotted period, the Order was not untimely filed if the prison mailbox rule was applied. In addition, the state has refused to provide the reliable proof needed for either party to support their cases. This case should be remanded to the trial court for an evidentiary hearing.



**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing Reply Brief for Appellant, has been served, by United States Postal Service upon: Ms. Jane Mapp, Special Assistant Attorney General, MSB#9618 510 George Street, Suite 212, Jackson, Mississippi 39202; Ms. Kathy Gillis, Clerk Court of Appeals, P.O. Box 249, Jackson, Mississippi 39205; Honorable Samac Richardson, Rankin County Circuit Court Judge, P. O. Box 1885, Brandon, Mississippi 39403.

This the 21 day of July 2010

Respectfully submitted,

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