

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

2010-CA-00087

TIMOTHY GRIFFIN, APPELLANT

VERSUS

CHRISTOPHER EPPS, APPELLEE

BRIEF FOR APPELLANT

APRIL 2010

Timothy Griffin K0848  
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MISS. ANN CODE § 47-5-807

MISS. ANN CODE § 47-7-3

MISSISSIPPI RULES OF CIVIL PROCEDURE - RULE 6(a)

### **STATEMENT OF ISSUE**

1. Whether trial court erred in dismissing petition as untimely where evidence of notary seal demonstrated petition was delivered to the notary public, who was prison staff, within the time required by law; since the petitioner has no control over the mail or mailing schedule the document was filed in a timely manner under the prison mailbox rule which only requires the document be delivered to prison staff by the filing deadline.

### **STATEMENT OF FACTS**

2. Timothy Griffin filed a petition for Order directing respondents comply with the law and sentencing order or, in the alternative, for an Order to Show Cause with Sunflower County Circuit Court in late September 2009, which was deferred to Rankin County Circuit Court, where it was later dismissed as untimely. Mr. Griffin hopes this appeal will lead to a reversal which compels the Rankin County Circuit Court to judge the Order on its merit.
3. On or around August 5, 1999 Timothy Griffin was arrested and held. He was indicted in December 1999 on three counts, two counts of attempted armed robbery and one count of house burglary. A plea agreement was arranged, where twenty (20) years were offered and accepted for two counts. Mr. Griffin's attorney assured him, he would only serve ten (10) years.
4. June 28, 2000 Timothy Griffin pled guilty to one count of attempted armed robbery and one count of house burglary in Rankin County Circuit Court. During the sentencing phase, the court stated the first ten years of the sentence were mandatory and the defendant's attorney interjected to add for the first ten years. The court agrees and adds

the rest [of the sentence] will be subject to the eighty-five percent rule. This information contradicts Miss. Code Ann § 47-7-3, which changed in October 1994 to make armed robbery and attempted armed robbery mandatory crimes. The prosecution did not object to the implication that Timothy Griffin would be eligible for parole after ten years or object to the inaccuracy of the information being provided.

5. Mr. Griffin also had a prior non-violent conviction from another county, where he was sentenced to three (3) years for a total of twenty three (23) years of confinement. Griffin was upgraded to trusty status and started receiving thirty (30) days of earned time for every thirty (30) days completed. While it is thoroughly understood that earned time is a privilege and not a requirement, Mr. Griffin had a potential release date anywhere from late 2010 to late 2012 with earned time, education credits, proper computation of pre-trial time and changes in the law.
6. In November 2008, most of the earned time received was revoked and the tentative release date changed to May 2022. After corresponding with the records department, Griffin was told an error was made in the computation of his time. He learned the earned time was removed in accordance with Miss. Code Ann § 47-7-3, which stated attempted armed robbery was a mandatory crime; hence he was ineligible for parole or earned time on the mandatory portions of his crimes Miss. Code Ann § 47-5-138 and 139.
7. Between March and August 2009, Timothy Griffin exhausted the Administrative Remedy Program as required by Miss. Ann Code § 47-5-801 through § 47-5-805, where he requested the earned time be returned because he believed he was eligible to receive it. He was denied relief at every step.

8. August 20, 2009, the last step of the ARP was denied, so he proceeded to file an Order with the Circuit Court in accordance with Miss. Ann Code § 47-5-807. By this time, Timothy Griffin had been moved to Central Mississippi Correctional Facility. The 30 day filing period should have ended September 20, 2009, but it was a Sunday. Monday September 21, 2009 became the deadline in accordance with Rule 6(a) of Mississippi Rules of Civil Procedure.
9. Between late August and early September 2009, Timothy Griffin was moved to Parchman. Little effort was made by prison administration to honor early requests to have the document notarized. It was finally notarized and submitted September 21, 2009, the final day of the 30 day filing period. However, the document was not received by the Sunflower County Circuit Clerk's office until September 28, 2009. It was later sent to Rankin County for a ruling since the complaint was related to convictions in that court's jurisdiction.
10. Rankin County Circuit Court dismissed the Order December 9, 2009 after deeming the document untimely based on the date it was received by the Sunflower County Circuit Clerk's office. The appeal process began shortly after.
11. March 20, 2010, Timothy Griffin made a formal request to Parchman administrators for a copy of the mail log for legal mail from September 21, 2009 to support his claim and it was dismissed 2 days later without explanation.

### **SUMMARY OF THE ARGUMENT**

12. The order was not untimely because it was submitted by the filing deadline to prison officials in accordance with the prison mailbox rule, regardless of the date filed by the

Circuit Clerk. The order clearly showed the date in which the document was notarized; however it was difficult to provide more sufficient evidence because prison officials refused to provide the mail log from the date in question.

### **ARGUMENT**

#### **Was Timothy Griffin's Order untimely?**

13. Timothy Griffin made several requests, at least 7-10 days prior to the September 21, 2009 deadline to have his document notarized. Like all pro se petitioners, Griffin was at the mercy of prison administrators. In Maze v MDOC 854 So.2d 1090 (Miss. App. 2003), the court decided the prison mailbox rule applies to all appeals; hence the document was set in motion on September 21, 2009 when it was submitted to officials to be notarized and mailed. In addition, Clay v Epps 953 So.2d 264 (Miss. App. 2007) elaborates on the timeliness issue, when the court rules if the last day falls on a Saturday( in this case a Sunday), the claim will be due on the next day the court is open, also in accordance with Rule 6 of the Mississippi Rules of Civil Procedure. It was unclear why it took 7 days for the document to reach the Sunflower County Circuit Clerk's office about 35 miles away.
14. In late October, Rankin County received the Order, where it was later dismissed based on the date it was received by the Sunflower County Circuit Clerk's office. It was noted by the court that the document was submitted 38 days after the final administrative decision, outside of the time allotted by Miss. Ann Code § 47-5-807. It was stamped filed on September 28, 2009 by Sunflower County. In Easley v Roach 879 So.2d 1041(Miss. 2004), the court ruled a motion was considered filed when mailed and not when it was

received by the circuit clerk. The motion was filed September 21, 2009 according to the date it was notarized.

15. While it has been determined the notary date or certificate of service was not sufficient to definitively show the date the document was submitted to officials, whereby a prison mail log of legal mail was more reliable found in Sykes v State 757 So.2d 997 (Miss. 2000) and Gaston v State 817 So.2d 613 (Miss.App. 2002), it should still be noted, the document was notarized and submitted to officials by the 30<sup>th</sup> day of the filing period.
16. It was also determined, in Gaston v State 817 So.2d 613 (Miss.App. 2002) and Easley v Roach 879 So.2d 1041(Miss. 2004), 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. Those cases were reversed in part because the state failed to prove when the documents were submitted to officials for mailing. Per discussion from Gaston v State 817 So.2d 613 (Miss.App. 2002), the court says “despite the absence of evidentiary support for petitioner’s allegation, where state as movant requesting dismissal for untimeliness, likewise provided no evidence that motion papers had been untimely delivered to prison officials.”
17. Mr. Griffin submitted a formal request for the prison mail log of legal mail on March 20, 2010 and it was denied March 22, 2010. In this case the administrators at Parchman refused to make the mail log available for September 21, 2009 which would substantiate or disprove Mr. Griffin’s claim that his document was submitted for mailing on the date in question.
18. The information presented in this appeal strongly supports a reversal of the lower courts decision to dismiss Griffin’s Order for being untimely. In this case, the Order



clearly shows it was notarized on September 21, 2009. Although, it was not a definitive date of submission, it does show Mr. Griffin made an attempt to file the order within the 30 day time limit.

19. The lack of assistance from prison officials throughout the process, in addition to the mere fact that Timothy Griffin was moved twice and still able to submit the document by the deadline shows he made every attempt to get the document filed in a timely manner.
20. Parchman administrator's refusing to make the prison mail log available from the date in question suggests the state is violating Mr. Griffin's right to due process.
21. In addition, the Parchman administrator's refusal to produce the mail log limits the state's ability to argue the timeliness of the Order. Mr. Griffin hopes this element alone would be enough to have the lower court's decision reversed.

### **CONCLUSION**

22. 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. 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 Brief for Appellant, have been served, by United States Postal Service upon: Ms. Jane Mapp, Special Assistant Attorney General, P. O. Box 220, Jackson, Mississippi 39205; 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 7th day of April 2010

Respectfully submitted,

BY: Timothy Griffin  
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