

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE ,)
Appellant ,)
 -VS-)
THE STATE OF NEVADA)
)
)
Respondent .)

Case No. 69036

FILED

E.J.C. No. C250630

AUG 03 2016

Dept. No. XVII

J. Villani

TRACIE K. LINDEMAN
 CLERK OF SUPREME COURT
 BY Smaccari
 DEPUTY CLERK

SUPPLEMENTAL MOTION FOR NRCF
RULE 60 (b) RELIEF BASED ON
DUE PROCESS, SUBSTANTIVE RIGHTS

COMES NOW, Brian O'Keefe appellant pro se, to move this Court to recognize his substantive due process rights and the "Right of Access to Courts".

This Supplemental will clarify and manifest the "prison mailbox rule" undoubtedly is applied to his Motion to Stay Mandate... pending U.S. Certiorari of his Affirmance of direct-appeal no. 61631 mailed or handed to prison authorities on July 8, 2013 which was filed by your clerks on July 12, 2013.

This clearly would have barred the filing of the remittitur on July 23, 2013.

This application is supported by the following Points AND Authorities.

ACCORD HAINES v. KERNER, 404 U.S. 519 By: Submitted Respectfully,
 Dated July 30, 2016 pursuant NRS 208.165 Brian K. O'Keefe #90244
 and 28 U.S.C. § 1746

16-24101

RECEIVED
 AUG 03 2016
 TRACIE K. LINDEMAN
 CLERK OF SUPREME COURT
 DEPUTY CLERK

I.

STATEMENT OF CASE

INVOKING my right to file U.S. Certiorari in "pro se",
appellant filed his notice to this Court to stay remittitur
and giving legal "NOTICE" of my "INTENT" to seek certiorari.¹

This court clearly accepted and filed my notice
of appeal on July 12, 2013. (no. 01631; entry 13-20522)

On July 16, 2013, this was unfiled and remittitur was
issued on July 23, 2013.

This Court is overlooking
the legal fact that at the time of handing my
"Notice to Stay and Appeal," was deemed filed on this
date delivered to prison officials, here, July 8, 2013.

Additionally, my Petition for U.S. Certiorari was
handed over on August 15, 2013, denied on October 15, 2013.

II. POINTS AND AUTHORITIES / ARGUMENT.

● See 41 GEO. L.S. ANN. REV. CRIM. PROC. 1029 (2012)

Courts recognize prisoners face practical difficulties
in exercising their right of legal access and uphold the
prison mailbox rule when dealing with statute of
limitations and AEDPA. ● See Houston v. Lack, 487 U.S. 266, 276.

● See also Stillman v. LaMarque, 319 F.3d 1199, 1201 (9th Cir. 2003)

(... unless prisoner proceeds pro se and delivers legal materials
to prison authorities within limitations period.).

Appellant
points out his, "Notice of Appeal [MOTION TO STAY REMITTITUR] was
filed at the time petitioner delivered it to the prison authorities
for forwarding to the court clerk." see Houston v. Lack, supra.

1 The right to appeal this Court's AFFIRMANCE in
2 direct appeal no. 61631 is undisputed. The U.S. Supreme
3 Court Rule 13.1 gives (90) days to seek certiorari,
4 despite only a handful are taken annually.

5 Appellant timely filed a Motion to Stay the
6 remittitur pursuant NRAP 41(b)(3). The limitations
7 period to file u.s. certiorari had begun reminding
8 this was direct appeal still itself. Direct review
9 had not become final. • see Graham v. Borgen, 483 F.3d-
10 475, 477 (7th Cir. 2007) (year runs from date on which judgment
11 became final by closing of direct-review window).

12 Moreover,
13 this Court's AFFIRMANCE was the decision sought to be
14 reviewed by the U.S. Supreme Court; • see Clausey v. Cain, -
15 450 F.3d 601, 606-07 (5th Cir. 2006) (application for direct-review
16 considered "filed" when placed in prison mail system).

17 • see also Campbell v. Henry, 614 F.3d 1056, 1058-59 (9th Cir. 2010)

18
19 The collateral clock which triggered NRS 34.726(1) could
20 not be started. • see Summers v. Schiro, 481 F.3d 710, 717 (9th 2007)
21 (year runs from expiration of period for filing writ of Certiorari
22 from Supreme Court).

23 The unfiled of the Notice
24 to stay violated Mr. O'Keefe's substantive due process
25 rights under the 5th and 14th U.S. Constitutional Amendments
26 thereby now causing prejudice by stating my state
27 habeas collateral review is timebarred by NRS 34.726(1)
28 when a stay was filed and certiorari denied 10/15/2013.

III. CONCLUSION / PRAYER FOR RELIEF

Correctly apply equal protection of the law and give Mr. O'Keefe his entitled substantive and procedural due process of law according the 5th and 14th U.S. Constitutional Amendments, pursuant NRAP 41 and U.S.S.C. Rule 13.1.

Recognize the state and federal mailbox rule applies to direct review concerning Notices with Intent to Appeal especially concerning one seeking U.S. Certiorari pursuant U.S.S.C. Rule 13.1.

Mr. O'Keefe mailed his Notice to Stay on [NRAP 41] July 8, 2013. His U.S. Certiorari was also mailed on August 15, 2013. This Certiorari was denied on October 15, 2013 which only then concluded direct review becoming "FINAL".

This then would make my collateral petition due by October 15, 2014; [minus also tolling].

My Petition was filed on September 15, 2014 in both state and federal courts.

Reverse your Affirmance on June 22, 2016 and nunc pro tunc the remittitur date to October 15, ~~2013~~ 2013 making my petition timely resulting in reversal to Dept. XVII for all - timely claims to be heard.

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing
(check appropriate box)

☐ Opening Brief

☐ Reply Brief

☒ Motion: NRCP / FRCP Supplemental Motion FOR Rule 60(b) Relief.

☐ Petition: (5 pages total)

☐ Other: _____

to the below address(es) on this 1st day of August (Monday), 2016, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25: By Brass Slip No. 2000291

Supreme Court of Nevada
Office of the Clerk
201 S. Carson St.
Suite 201
Carson City, Nevada 89701

Attorney For _____

☒ and Notice to Clerk: All registered participants
of the electronic filing system, CM/ECF, will be served by the
clerk using same respective system, master list.

_____, Nevada 89_____

Brian K. O'Keefe
Brian K. O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Appellant In Pro Se

Pursuant NRS 208.165 and
28 U.S.C. § 1746.