



OFFICE OF THE CLERK

Supreme Court of Wisconsin

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April 22, 2022

To:

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You are hereby notified that the Court, by its Clerk and Commissioners, has entered the following order:

No. 2020AP951-CRState v. Sir Jordan Cosby L.C.#2017CF312

In a decision dated July 1, 2021, the court of appeals affirmed a judgment, entered upon a jury's verdict, convicting defendant-appellant, Sir Jordan Cosby, of substantial battery of a fellow prisoner. Attorney Steven Roy represented Mr. Cosby on appeal. On August 3, 2021, remittitur occurred. The appellate docket shows that on August 11, 2021, the clerk of courts rejected an electronic copy of a no-merit petition for review on the ground that the clerk's office had not received a paper copy of the no-merit petition for review. See "In re Interim Court Rule Governing

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Electronic Filing in the Supreme Court,” S. Ct. Order 19-02A and 20-07A, 2021 WI 62 (issued June 15, 2021, effective July 1, 2021), Revised Interim Rule at 6 n.5 (“[A] petition for review that has not been accepted as part of the pilot project is not considered filed until a paper copy is physically received.”)

On March 25, 2022, Mr. Cosby, pro se, filed a one-page document titled “809.62 Rule (Petition For Review),” in which he asked this court to review his case.

By order of April 5, 2022, this court required Attorney Roy to file a letter explaining his efforts to file a petition for review on Mr. Cosby’s behalf. In a letter filed April 18, 2022, Attorney Roy explains that he “electronically filed the [no-merit] petition on August 2, 2021”—the deadline for the petition for review—“and mailed copies to this Court and to Mr. Cosby.” Attorney Roy further states: “I filed Mr. Cosby’s petition under my mistaken belief the temporary mailbox rule created by this Court’s April 13, 2020 [sic] was still in effect. While this Court’s June 18, 2021 order was posted to www.wicourts.gov, I have never received a copy of this order. Had I realized my belief was mistaken, I would have hand-delivered the petitions [sic] to the court to ensure they [sic] were filed timely.”

As a point of clarification for Attorney Roy, the court notes that at all times, including during the terms of orders addressing appellate court operations during the COVID-19 pandemic, petitions for review filed by non-incarcerated individuals have been considered filed for purposes of the appellate rules only upon actual receipt by the clerk of this court. The very order cited by Attorney Roy as purported justification for his late filing—this court’s April 13, 2020 order (“In re the Matter of Filing of Court Documents in Circuit and Appellate Courts (Temporary Mailbox Rule)”), which expired on June 30, 2021—clearly stated the requirement of timely, actual receipt of a non-incarcerated individual’s petition for review by the clerk’s office:

Filing deadlines for documents that confer jurisdiction.

Litigants may not rely on the Temporary Mailbox Rule if their filing is required to confer jurisdiction on any Wisconsin court. The filing dates for those documents remain as stated in the statute or rule that confers jurisdiction. Litigants should ensure that these documents are received by the appropriate clerk’s office by the date required by law.

Order at 3 (footnote omitted); see also State ex rel. Schmelzer v. Murphy, 201 Wis. 2d 246, 253–54, 548 N.W.2d 45 (1996) (noting that the 30-day deadline for filing a petition for review is “jurisdictional and non-extendable”).

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As a further point of clarification for Attorney Roy, a petition for review “is not considered filed until a paper copy is physically received.” See “Interim Court Rule Governing Electronic Filing in the Supreme Court,” *supra*.¹

Given Attorney Roy’s admission that he missed the filing deadline due to his misunderstanding of the appellate rules,

IT IS ORDERED that Mr. Cosby’s pro se March 25, 2022 filing and Attorney Roy’s April 18, 2022 letter are construed as a petition for writ of habeas corpus, see State ex rel. Schmelzer v. Murphy, 201 Wis. 2d 246, 548 N.W.2d 45 (1996);

IT IS FURTHER ORDERED that the petition for writ of habeas corpus is granted, and that, as relief, Attorney Roy shall either file a petition for review on behalf of Mr. Cosby within 30 days of the date of this order or, if Attorney Roy determines it appropriate, shall file a no-merit petition for review pursuant to Wis. Stat. § 809.32(4) within 30 days of the date of this order;

IT IS FURTHER ORDERED that if Attorney Roy files a no-merit petition for review, then Mr. Cosby may, within 30 days of the date that no-merit petition for review is filed, file a supplemental petition satisfying the requirements of Wis. Stat. § 809.62(2)(a), (b), (c), & (e); and

IT IS FURTHER ORDERED that the plaintiff-respondent, State of Wisconsin, shall within 20 days of the filing of a petition for review or a no-merit petition for review and supplemental petition for review, file its response. The parties will thereafter be notified in due course of this court’s disposition of the petition for review.

Sheila T. Reiff
Clerk of Supreme Court

¹ There is an exception, not applicable here, for cases that have been accepted as part of the court’s electronic filing pilot project.