

SUPREME COURT OF WASHINGTON

State v. McLean

150 Wn. 2d 583 (2003) · Decided December 4, 2003

OPINION

FAIRHURST, J.

Fairhurst, J. Washington Court Rules mandate that a collateral attack on a judgment and sentence (judgment) in a criminal case must be made within one year after the judgment becomes final. Both Monti Carlstad and Brian McLean were in prison and acting pro se when they filed separate collateral attacks on their judgments. Carlstad filed a personal restraint petition (PRP), and McLean filed a motion to withdraw his guilty plea.

Each deposited the necessary pleadings with prison officials prior to the expiration date for their collateral attacks. In both cases, *586however, the pleadings were not received by the respective courts until after the expiration of the one-year time limit.

As a result, both the PRP and motion were dismissed as untimely. The issue presented is whether this court should adopt, through case law, the mailbox rule for pro se prisoners and consider the pleadings filed upon delivery to prison officials.

We decline to adopt the mailbox rule through case law. FACTS In the Matter of the Personal Restraint of Carlstad Monti Carlstad accepted a plea agreement and pleaded guilty to numerous burglary charges. He was sentenced to 136 months' confinement.

The judgment was filed on April 17, 2000. Carlstad received notice pursuant to RCW IONS. 110 that he had one year from April 17, 2000, in which to file a collateral attack on the judgment, subject to the limitations of RCW 10.73.090 and 10.73.100.

On Thursday, April 12, 2001, at 5:36 p.m., Carlstad handed his PRP to prison officials for mailing. The PRP arrived at the Court of Appeals on Wednesday, April 18, 2001 — one day after expiration of the statutory deadline.

The Court of Appeals dismissed his PRP because it was not timely filed. In re Pers. Restraint of Carlstad, 114 Wn. App. 447, 458, 58 P.3d 301 (2002). Carlstad appealed to this court and we granted discretionary review.

In re Pers. Restraint of Carlstad, 149 Wn.2d 1008, 67 P.3d 1097 (2003). State v. McLean Brian McLean pleaded guilty to charges of first degree assault, first degree robbery, and other charges. At sentencing, McLean moved to merge the first degree assault and first degree robbery convictions, contending that they encompassed the same criminal conduct.

The trial court denied his motion, the Court of Appeals affirmed, *State v. McLean*, noted at 96 Wn. App. 1011 (1999), and this court *587denied review. *State v. McLean*, 139 Wn.2d 1018, 994 P.2d 846 (2000). His judgment was entered on January 21, 2000.

On the evening of Thursday, January 18, 2001, McLean placed a motion to withdraw his guilty plea under the door of the prison law librarian's office. The librarian logged the motion into the prison log book on Friday, January 19, 2001.

The motion was postmarked Monday, January 22, 2001, and received at the Whatcom County Superior Court on Wednesday, January 24, 2001. The superior court dismissed the motion because it was not filed within one year of the judgment becoming final, and the Court of Appeals affirmed. *State v. McLean*, noted at 115 Wn. App. 1030 (2003). McLean appealed to this court and we granted discretionary review.

State v. McLean, 149 Wn.2d 1008, 67 P.3d 1097 (2003). ISSUE Should this court adopt, through case law, the mailbox rule for pro se prisoners and consider their collateral attacks on a judgment and sentence timely filed if delivered to prison officials on or before the one-year collateral attack time limit? ANALYSIS A. Federal Mailbox Rule Carlstad and McLean ask us to adopt a mailbox rule similar to that created by the United States Supreme Court in *Houston v. Lack*, 487 U.S. 266, 108 S. Ct.

2379, 101 L. Ed. 2d 245 (1988). In *Houston*, after the federal district court dismissed a pro se prisoner's writ for habeas corpus, the prisoner delivered a notice of appeal for mailing to the district court to prison officials prior to the statutory deadline for such appeals. *Id.* at 268.

However, the district court stamped the notice "filed" one day after the statutory deadline and dismissed his appeal as untimely. *Id.* at 268-69. The United States Supreme Court interpreted the *588Federal Rules of Appellate Procedure and determined that a notice of appeal would be considered filed at the moment a pro se prisoner delivers it to prison officials.

Id. at 268. The Court determined that the applicable statute, 28 U.S.C. § 2107,¹ did not define when a notice of appeal had been "filed," nor did it indicate with whom it must be filed. *Houston*, 487 U.S. at 272. The Court then turned to the Federal Rules of Appellate Procedure, which required "filing" with the clerk of the court within 30 days.² The Court noted that while it was undisputed that the notice had to be delivered to the clerk of the district court, the question remained as to how to determine at what moment a "filing" had occurred.

Houston, 487 U.S. at 272-73. The Court, while acknowledging the general rule that the court clerk's receipt of the pleadings was usually considered the moment of filing, found that the general rule should not apply to pro se prisoners. *Id.* at 275. Whereas a civil litigant may choose to risk tardiness by mailing a notice of appeal, a pro se prisoner's only option for filing papers with a court is by handing them over to prison officials to mail.

Id. The Court noted that a pro se prisoner “has no choice but to entrust the forwarding of his notice of appeal to prison authorities whom he cannot control or supervise and who may have every incentive to delay.” Id. at 271.

The Court recognized that, although the mailbox rule had been rejected in other contexts because it would increase disputes and uncertainty over when a filing occurred, pro se prisoners could avoid such disputes because prison officials had well-developed procedures for recording the date and time *589at which they received papers for mailing. Id. at 275.

In *Houston*, the Court adopted the mailbox rule for pro se prisoners.³ B. Previous Washington Decisions Addressing the Mailbox Rule After *Houston*, and before the appeals in these cases, two Court of Appeals divisions reached different conclusions regarding adoption of the mailbox rule.

In *State v. Robinson*, Division One of the Court of Appeals rejected the mailbox rule. *State v. Robinson*, 104 Wn. App. 657, 17 P.3d 653 (2001). In *Robinson*, the defendant argued that her motion to withdraw guilty plea was timely filed because it was mailed three days before the one-year deadline. Id. at 660.

The *Robinson* court turned to CrR 8.4, which states: “CR 5 shall govern service and filing of written motions (except those heard ex parte) in criminal causes.” Id. at 665. CR 5 is entitled: “Service and Filing of Pleadings and Other Papers.” The court then noted that while CR 5(b)(2) (A) provides that “service shall be deemed complete upon the third day following the day upon which they are placed in the mail...,” CR 5(e) contains no such provision for “filing” with the court.

Id. Instead, it simply states: The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court.... CR 5(e). The court rejected the mailbox rule, impliedly reasoning that filing occurs upon receipt of the papers by the clerk of the court. *Robinson*, 104 Wn. App. at 665. Several months later, Division Three of the Court of Appeals, citing *Houston v. Lack*, approved the mailbox rule for a pro se prisoner who delivered a motion to withdraw *590guilty plea to prison officials for mailing before the one-year deadline, but it was received by the court after the deadline.

State v. Hurt, 107 Wn. App. 816, 27 P.3d 1276 (2001). The *Hurt* court, believing there was no Washington case directly on point (and not mentioning *Robinson*), turned to analogous federal collateral attack time limitation law for guidance, finding it to be highly persuasive. Id. at 822-23.

The court reiterated that prisoners have no choice but to deposit their appeals in the hands of prison officials, who may not mail them in a timely fashion. Id. at 823. The court acknowledged that there is a strong public interest in finality of judgment, but that it was difficult to see how those interests would be affected by adding a few days to the timeliness of only a handful of cases.

Id. at 826-27. The court also noted that concern for a pro se prisoner's equal protection rights also compelled its decision. Id. at 827. C. Carlstad and McLean Carlstad and McLean filed different types of collateral attacks on their judgments. Carlstad filed a PRP, while McLean filed a motion to withdraw his guilty plea. A PRP is filed in the Court of Appeals, and a motion to withdraw guilty plea is filed in superior court.

1. Carlstad PRP. PRPs are special proceedings over which the Court of Appeals has original jurisdiction (concurrent with the Supreme Court) and are governed by the Rules of Appellate Procedure. RAP 1.1(e), 16.3(c), 16.17. A PRP attacking a judgment must be filed within one year of the petitioner's judgment becoming final. RCW 10.73.090(1). Carlstad's judgment was final on April 17, 2000.

Therefore, the one-year deadline for him to file his PRP was April 17, 2001. RAP 18.6 determines when a PRP may be considered "filed." RAP 18.5, which applies to service and filing of PRPs, states that "[p]apers required or permitted to be filed in the appellate court must be filed with the clerk." RAP 18.5(c).

Although the mailbox rule is available for the filing of some documents, it is not available when filing a PRP: *591A brief authorized by Title 10 ["Briefs"] or Title 13 ["Review by the Supreme Court of Court of Appeals Decision"] is timely filed if mailed to the appellate court within the time permitted for filing. Except as provided in rule 17.4 ["Filing and Service of Motion — Answer to Motion"], any other paper, including a petition for review, is timely filed only if it is received by the appellate court within the time permitted for filing.

RAP 18.6(c) (emphasis added). Carlstad filed his PRP alleging unlawful restraint pursuant to RAP 16.4 (b) and (c). Because the filing of his PRP is not based on Title 10, Title 13, or RAP 17.4, under the plain language of RAP 18.6(c), his PRP is "timely filed only if it is received by the appellate court within the time permitted for filing." Carlstad's PRP was not stamped received by the Court of Appeals until April 18, 2001, one day after the "time permitted for filing." Here, the Court of Appeals specifically rejected the Hurt decision that adopted the mailbox rule.

Carlstad, 114 Wn. App. at 453-54. The Court of Appeals first noted that Hurt was inapposite because it did not involve RAP 16.17 and RAP 18.6(c), which specifically preclude application of the mailbox rule for PRPs. Id. at 456.

The Court of Appeals relied on its Robinson reasoning and noted that Hurt mentioned neither CrR 8.4 nor CR 5(e). Id. at 456-57. Carlstad's PRP was not timely according to the plain language of the Rules of Appellate Procedure.

We, therefore, affirm the Court of Appeals' dismissal of Carlstad's PRP. 2. McLean motion to withdraw guilty plea. A motion to withdraw guilty plea is filed in superior court and, if filed after the judgment is final, is governed by CrR 7.8. CrR 4.2(f).

To obtain relief from the judgment, a defendant must make a motion stating the grounds upon which relief is requested. CrR 7.8(c)(1). The superior court may transfer the motion to the Court of Appeals for consideration as a PRP “if such transfer would serve the ends of justice.” CrR 7.8(c)(2). *592 Like a PRP attacking a judgment, a motion to withdraw a guilty plea must be filed within one year after the judgment becomes final.

RCW 10.73.090; CrR 7.8(b). McLean’s judgment was final on January 21, 2000. The deadline for his motion to withdraw guilty plea was January 21, 2001. Because January 21, 2001 fell on a Sunday, his deadline was extended to Monday, January 22, 2001. CrR 8.1; CR 6(a). McLean asserts that CR 5(e) defines where a paper should be filed (“with the clerk of the court”), but, unlike RAP 18.6(c), it does not define when a filing occurs.

McLean contends that CR 5(e) is almost identical to the federal rule at issue in *Houston v. Lack*. But the court rule analyzed in *Houston* differs from the court rule at issue in *McLean*. The *Houston* Court based its decision on the fact that the federal rules did not set forth “criteria for determining the moment at which the ‘filing’ has occurred.” *Houston*, 487 U.S. at 273.

The *Houston* Court analyzed Fed. R. App. P. 3(a), which defines “appeal” without defining “filing.” This case concerns CR 5(e), which is the definition of “filing.” Filing occurs when the papers are filed with the clerk of the court, not when papers are sent to the clerk of the court. Elsewhere in CR 5, a version of the mailbox rule is explicitly adopted for the service of papers.

CR 5(b)(2)(A). That mailbox rule could just as easily have been adopted for filing papers with the court, but it was not. Interpreting CR 5(e) in conjunction with CR 5(b)(2)(A) leads us to the conclusion that the mailbox rule for pro se prisoners would be inconsistent with our court rules.⁴ The Court of Appeals in *McLean* rejected the *Hurt* decision as well. *McLean*, noted at 115 Wn.

App. 1030, 2003 WL 264749, at *2. The court agreed with Carlstad’s analysis “that CR 5(e), particularly considered in context with CR 5(b)(2)(A), provides a definition of filing inconsistent with *593 the federal mailbox rule.” *Id.* Although both *Hurt* and *McLean* addressed motions to withdraw a guilty plea, the *McLean* court ultimately rejected *Hurt* because it failed to consider CrR 8.4, CR 5, and *Robinson*.

Id. We agree with the Court of Appeals and affirm the dismissal of *McLean*’s motion to withdraw his guilty plea because it was not timely filed. D. Equitable Tolling After rejecting the mailbox rule, the Court of Appeals in *Carlstad* noted that the equitable tolling doctrine still provides pro se prisoners potential relief. *Carlstad*, 114 Wn. App. at 458. Equitable tolling is a remedy that “permits a court to allow an action to proceed when justice requires it, even though a statutory time period has nominally elapsed.” *State v. Duvall*, 86 Wn.

App. 871, 874, 940 P.2d 671 (1997). Equitable tolling is generally used only sparingly, when the plaintiff exercises diligence and there is evidence of bad faith, deception, or false assurances by

the defendant. *Id.* at 875. This court has yet to decide if equitable tolling is available in criminal cases. *State v. Littlefair*, 112 Wn. App. 749, 760, 51 P.3d 116 (2002), review denied, 149 Wn.2d 1020, 72 P.3d 761 (2003) (noting that at least three Court of Appeals criminal cases have applied equitable tolling).

Both Carlstad and McLean seek equitable tolling as an alternative to adoption of the mailbox rule. We need not decide that issue now because equitable tolling would be unavailable for either Carlstad or McLean because neither has demonstrated that prison officials acted with bad faith, deception, or false assurances. CONCLUSION Neither RAP 18.6(c), which governs the timely filing of a PRP, nor CR 5(e), which governs the timely filing of a motion to withdraw guilty plea, allows for the mailbox rule.

Appellants have also shown no misfeasance on the part of *594prison officials to warrant application of the doctrine of equitable tolling. Accordingly, we affirm the Court of Appeals in both Carlstad and McLean. *Johnson, Madsen, Ireland, Bridge, Chambers, and Owens, JJ., concur.* “[N]o appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.” 28 U.S.C. § 2107(a).

Former Fed. R. App. P. 3(a) (1986) provided: “An appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4.” Former Fed. R. App. P. 4(a)(1) (1979) provided: “In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from....” The Federal Court Rules were amended to incorporate the *Houston* decision, so that notices of appeal are considered timely when prisoners deposit them in the institution’s mail system on or before the last day for filing.

Fed. R. App. P. 4(c); see also *Smith v. Conner*, 250 F.3d 277, 279 n.11 (5th Cir. 2001) (noting that Fed. R. App. P. 4 was amended to incorporate *Houston* mailbox rule). We note that if a mailbox rule for pro se prisoners is desirable, the rule should be adopted through the normal rule-making process. That process enables all interested and affected parties to participate in creating the rule.

Foisting the rule upon courts and parties by judicial fiat could lead to unforeseen consequences.