

No. 128077

IN THE

## SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 1-20-1016.
	)	
Respondent-Appellee,	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois , No.
-vs-	)	95 CR 11734.
	)	
	)	Honorable
JOHNNY ENGLISH,	)	Timothy Joseph Joyce,
	)	Judge Presiding.
Petitioner-Appellant.	)	

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**REPLY BRIEF FOR PETITIONER-APPELLANT**

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E-FILED  
12/21/2022 1:02 PM  
CYNTHIA A. GRANT  
SUPREME COURT CLERK

**ARGUMENT**

**Pursuant to the prison mailbox rule, Johnny English's *pro se* notice of appeal was timely-filed where a postage meter stamp on the envelope containing the notice of appeal indicated it was mailed prior to the requisite 30-day deadline.**

The record contains clear evidence that Johnny English mailed his notice of appeal in a timely manner. (C. 219) In his opening brief, English argued that even though he did not include the requisite certificate of proof of service, the postage meter stamp on the envelope containing the notice of appeal established that English mailed his notice of appeal on September 1, 2020, twenty-nine days after the circuit court denied his motion for leave to file a successive post-conviction petition. Pursuant to the mailbox rule, this Court should find that English's notice of appeal was filed timely.

In response, the State argues that because English failed to provide a certification of service in compliance with Rule 12, his notice of appeal was untimely. (St. Br. 5) The State maintains that a postmark cannot prove timely mailing, as a certificate is the only acceptable method of proving the mailing date. (St. Br. 5-8) According to the State, the plain language and amendment history of Rules 12 and 373 show that this Court intended a certificate of service to be the sole method for establishing the date of mailing. (St. Br. 8-15)

Initially, it should be noted that the State does not acknowledge or contest English's argument that this Court should treat postage meter stamps as equivalent to postmarks. As discussed in detail in English's opening brief, the prison mailbox rule covers both postage meter stamps and postmarks. (Op. Br. 13-20) A postage meter stamp on the envelope containing English's *pro se* notice of appeal is dated

“Sep 1 2020,” and, as detailed in his opening brief, establishes that English mailed his notice of appeal in a timely manner. (C. 219); (Op. Br. 13-30)

As to the merits of the State’s brief, the State’s central argument is that English failed to include a certificate of service in compliance with Rule 12, and as this is the sole method of proving the mailing date, his notice of appeal was untimely. (St. Br. 5) First, the State notes that although English included a “Notice of Mailing/Filing” with a mailing date of August 20, 2020, he did not include the requisite certificate of proof of service. (St. Br. 6-7) English acknowledged that he did not include a certificate of proof of service. However, he did include with his *pro se* notice of appeal, a “Notice of Mailing/Filing” indicating that he placed his document in the prison mail drop box on August 20, 2020. (C. 218) Together with the postage meter stamp, there is sufficient evidence to establish that English deposited his notice of appeal on a timely date. (Op. Br. 30-32) Even though, as the State notes, the notice of mailing references a successive postconviction petition and not a notice of appeal, this misstatement from a *pro se* incarcerated petitioner should not prevent this Court from considering the notice of mailing along with the postage meter stamp to conclude that English mailed a timely notice of appeal. Considering the postage meter stamp along with the notice of mailing to find English deposited his notice of appeal in the prison mail system timely ensures access to the courts for *pro se* prisoners and is consistent with this Court’s equitable, pro-mailing policy. (Op. Br. 30-32)

The State emphasizes that pursuant to the plain language of Rules 12 and 373, it is clear that timely mailing is to be proven by a certificate of service, without exception. (St. Br. 8-11) According to the State, as Rule 373 states that “[p]roof

of mailing *shall* be as provided in Rule 12,” the certificate is mandatory and the mailing date cannot be proven by a postmark or any other evidence. (St. Br. 9) However, as the State acknowledges, “courts may depart from an enactment’s plain language when it produces absurd results that the drafter clearly ‘could not have intended.’” (St. Br. 16); *Evans v. Cook Cnty. State’s Att’y*, 2021 IL 125513, ¶ 35. This includes avoiding a great injustice, such as here where English was denied his right to an appeal because he did not include a certificate of service, even though a postage meter stamp on the envelope containing his notice of appeal indicated that it was mailed timely. To rely solely on the lack of a certificate and to ignore the postage meter stamp date to deny English his constitutional right to appeal produces an absurd result. Under the Illinois Constitution, the right to appeal is fundamental. Ill. Const. 1970, art. VI, § 6; *People v. Abdullah*, 2019 IL 123492, ¶ 19; *People v. Lyles*, 217 Ill. 2d 210, 215-16 (2005). Also, incarcerated individuals have a constitutional right of access to the courts in order to challenge violations of their constitutional rights. *Bounds v. Smith*, 430 U.S. 817, 822 (1977), *rev’d* on other grounds. Thus, requiring timely mailing to be proven by a certificate of service, without exception, and ignoring the timely postmark on English’s envelope led to an absurd and unconstitutional result in denying English access to the courts and to the right to an appeal.

Next, the State contends that the amendment history of Rule 373, which eliminated postmark evidence as an acceptable method of proof of mailing, confirms that this Court intended to require *pro se* litigants to file a certificate and not be able to rely on a postmark to invoke the mailbox rule. (St. Br. 11-15) However, the State overlooks that the underlying purpose of these amendments was to

aid *pro se* incarcerated petitioners and ensure their access to the courts. As discussed in English's opening brief, the rule was amended to alleviate problems caused by delayed or illegible postmarks. (Op. Br. 27-30) Postmarks were dropped in favor of certifications not to limit a *pro se* litigant's access to the courts, but to prompt litigants to supply proof of mailing that could withstand an illegible or delayed postmark, and thus to protect the rights of *pro se* litigants. (Op. Br. 27-30) The State's position requires courts to ignore uncontroverted evidence of timely mailing and leads to denying *pro se* litigants access to the courts, which is the very result the amendments were trying to avoid. *People v. Huber*, 2014 IL 117293, ¶13.

Both parties agree that there can be problems with postmarks and that postmarks can be delayed or illegible. (St. Br. 18) However, the fact that there can be problems with postmarks does not mean that a court should ignore the postmark if it is visible and confirms that a document was mailed timely. The reason for taking out the language regarding postmarks and requiring a certificate of service was to provide a way for *pro se* incarcerated litigants to show the mailing date and ensure they were not denied access to the courts simply due to a delayed or illegible postmark. (Op. Br. 27-30)

To clarify, English does not argue that Rule 12 or Rule 373 should be changed to eliminate the certification requirement. Any *pro se* litigant who does not include a certificate takes a risk that his document will not be timely filed. Yet courts should not ignore postmark evidence that establishes the date of mailing, and should look at the totality of the circumstances to ensure *pro se* incarcerated litigants are not denied access to the courts. The State asserts that allowing postmark evidence of mailing date would lead to unnecessary litigation and that a bright-line

certification requirement promotes judicial economy. (St. Br. 18-19) This is not true. To allow courts to consider postmark evidence would not be a burden on judicial resources or lead to unnecessary litigation. Courts would only have to look at limited evidence in the record as to the mailing date. In this case, it would involve the court considering one additional piece of paper - the envelope with the postmark. In contrast, the State's suggestion that English and others in his position could file motions for supervisory relief, would be a burden on judicial resources. (St. Br. 20); *See McDunn v. Williams*, 156 Ill. 2d 288, 301-02 (1993) (discussing how the Court's supervisory authority is unlimited and undefined). Having *pro se* litigants seek supervisory relief would use more judicial resources than allowing a court to consider a postmark as evidence of timely mailing.

Finally, the State argues that the certification requirement for incarcerated litigants is easy to comply with, further noting that, in the past, English filed certificates of service and complied with other, more complex procedural requirements. (St. Br. 19-20) While English may have included certificates in the past and filed other *pro se* pleadings, he is still an incarcerated petitioner with limited access to legal documents and limited legal knowledge. As mentioned previously, he did include a "Notice of Mailing/Filing" along with his notice of appeal, indicating that he attempted to provide some sort of document as to the date of mailing, just not the correct certificate.

Further, the record indicates that when the trial court informed English that it had denied him leave to file, it did not provide specific directions as to how to properly file a notice of appeal. (C. 206) Rather, a notice sent to English, along with a copy of the court's order, stated that "[t]o preserve your right to appeal

you must file a notice of appeal in the trial court within 30 days from the date the order was entered.” (C. 206) There is no indication in the record that English was ever provided with any specific instructions such as how a certificate pursuant to Rules 12 and 373 must be included. (C. 206) Indeed, Rule 605 does not include any language directing trial courts to inform defendants of such certification requirements. Ill. Sup. Ct. R. 605.

In sum, the postage meter stamp on the envelope containing English’s notice of appeal is sufficient evidence that it was mailed on a timely date. Even though English did not include a certificate of proof of service, pursuant to the mailbox rule his notice of appeal was filed timely. Ignoring the postage meter stamp would lead to English, a *pro se* incarcerated petitioner, to be denied access to the courts and denied his right to an appeal. Therefore, this Court should vacate the appellate court’s order dismissing English’s appeal for lack of jurisdiction and remand the matter for consideration as to whether the circuit court erred in denying him leave to file a successive post-conviction petition.

**CONCLUSION**

For the foregoing reasons, Johnny English, petitioner-appellant, respectfully requests that this Court find the evidence sufficient to establish English mailed his notice of appeal on a timely date and remand to the appellate court for consideration of whether English set forth the requisite showing of cause and prejudice to file a successive post-conviction petition.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 7 pages.

/s/Therese Bissell  
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JOHNNY ENGLISH,	)	Timothy Joseph Joyce,
	)	Judge Presiding.
Petitioner-Appellant.	)	

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**NOTICE AND PROOF OF SERVICE**

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 21, 2022, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Piper Jones

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