

S. Ct. No.: 17A848

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SUPREME COURT, U.S.

IN THE  
UNITED STATES  
SUPREME COURT

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Daniel Castleman,  
Petitioner - Appellant;

v.

United States of America,  
Respondant - Appellee.

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PETITION FOR A WRIT OF CERTIORARI FROM  
DENIAL OF A CERTIFICATE OF APPEALABILITY  
FOR THE DENIAL OF 28 U.S.C. § 2255 IN  
THE ELEVENTH CIRCUIT COURT OF APPEALS

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ELEVENTH CIRCUIT COURT APPEAL NO.:

17-11878-F

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FOR THE HONORABLE JUSTICE CLARENCE THOMAS

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REQUEST FOR CLARIFICATION OR IN THE ALTERNATIVE  
MOTION FOR A EXTENSION OF TIME TO SUBMIT A  
PETITION FOR A WRIT OF CERTIORARI

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Daniel Castleman,  
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FOR THE HONORABLE JUSTICE  
CLARENCE THOMAS

S. Ct. Case:  

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App. Ct. No:  
17-11878-F

MOTION FOR EXTENSION OF TIME TO SUBMIT  
A PETITION FOR A WRIT OF CERTIORARI

## I. INTRODUCTION

COMES NOW Petitioner, Daniel Castleman ("Castleman"), pro se, an incarcerated person, to submit this Request For Clarification Or In the Alternative Motion For An Extension of Time To Submit A Petition For A Writ of Certiorari. Castleman requests an extension of sixty (60) days or otherwise until April 13, 2018.

## II. JURISDICTION

This Court has jurisdiction to entertain a Petition for a Writ of Certiorari to the Court of Appeal for the Eleventh Circuit pursuant to 28 U.S.C. § 1254(1) and this Motion pursuant to Supreme Court Rule ("S. Ct. R.") 13(5).

### III. REVIEW SOUGHT

Mr. Castleman seeks a Writ of Certiorari of the denial of his Application for a Certificate of Appealability ("COA") of his 28 U.S.C. § 2255.

#### IV. REQUEST FOR CLARIFICATION

##### a. Pertinent Procedural Background

Mr. Castleman timely filed his Notice of Appeal on April 20, 2017. District Court Electronic Case File ("ECF") 1262. Mr. Castleman appealed the denial of his 28 U.S.C. § 2255 ("2255"), requesting a COA.

Castleman requested an extension of time to submit his Application for a COA. The Court eventually granted the Motion.

Castleman timely filed his Application for a COA on June 20, 2017.

On November 13, 2017 the Eleventh Circuit denied Castleman a COA; denying as moot his Motion to proceed in forma pauperis and Motion to exceed page limit. Castleman received the denial on November 27, 2017.

On December 26, 2017 Mr. Castleman submitted a Petition for Hearing En Banc/Rehearing En Banc by Daniel Castleman.<sup>1</sup> On January 03, 2018, by way of letter, Castleman's Petition was returned, by the Clerk of Court, stating "Motion for Reconsideration construed from Motion for Rehearing filed by Daniel

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1. Castleman included a Certificate of Service which included a declaration of mailing by handing the Petition to the prison legal mail staff on December 26, 2017. Fed. R. App. P. 25(a).

Castleman is returned unfiled because this case is closed."<sup>2</sup> Letter from David J. Smith, Clerk of Court, to Daniel Castleman (January 3, 2018)(on file with Daniel Castleman). Castleman received this letter on January 12, 2018.

**b. Clarification of the Time to File His Petition for a Writ of Certiorari**

Mr. Castleman humbly requests this Court to Clarify his deadline for filing his Petition for a Writ of Certiorari ("Writ").

The Eleventh Circuit denied Castleman a COA on November 13, 2017. This started the clock for filing a Writ until February 11, 2018. Since February 11, 2018 is a Sunday -- the filing deadline is Monday, February 12, 2018.

Castleman filed his Petition for Hearing En Banc/ Rehearing En Banc on December 26, 2017. Within the time prescribed by Fed. R. App. P. 40(a) and 11th Cir. R. 40-3 (2007) or otherwise within forty-five (45) days of the Circuit Court's denial. If the Clerk of Court ("Clerk") had filed Castleman's Petition for hearing En Banc/Rehearing En Banc as intended, and labeled, it would have been timely and would have reset the clock for filing his Petition for a Writ, if necessary. However, the Clerk construed the Petition as a Motion for Reconsideration. The Clerk then determined that Castleman had twenty-one days to have filed the construed Motion.<sup>3</sup> The Clerk refusing to file the Petition -- "return[ing it] unfiled" as being time barred. Letter

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2. Castleman disputes the construing of his Petition for Hearing En Banc/Rehearing En Banc as a "Motion for Reconsideration" -- his Rehearing En Banc was filed within forty-five (45) days. Fed. R. App. P. 40(a), Cir. R. 40-3 (2007).
  3. The Clerk cited no Rule to support his conclusion.

from David J. Smith (January 3, 2018), *supra* (brackets added).

Castleman has found no authority which allows a Clerk to reconstrue, an otherwise clearly labeled, Petition. In fact Fed. R. App. P. 45(b)(1) states that the Clerk "must record all papers filed with the clerk and all process, orders, and judgments." Nor can Castleman locate a local rule authorizing the Clerk to reconstrue Clearly labeled Petitions in which it would time bar a Petitioner.<sup>4</sup>

Ultimately Castleman requests -- since the Clerk denied his Petition for a hearing En Banc/Rehearing En Banc, does the clock to file a Writ of Ceritorari begin from that day or otherwise ninety days from January 03, 2018? If so, then the following request for an extension of time becomes moot.

Or does his deadline to file a writ remain at February 12, 2018, as if he never filed a Petition for Hearing En Banc/Re-hearing En Banc? Which then requires consideration of the Motion for an Extension of Time.

#### V. REQUEST FOR EXTENSION OF TIME

Mr. Castleman requires the extension of time so that he may compile and present his Petition for a Writ of Certiorari.

Castleman's Application for a COA was timely submitted. His Application was denied on November 13, 2017, which was received by him on November 27, 2017. As stated *supra*, Castleman timely filed his Petition for Hearing En Banc/Rehearing En Banc on Dec-

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4. Unless rules of United States Court of Appeals for Veterans Claims 45(i) somehow applies in the instant case. Further this rule requires the clerk to "liberally construe the Rules."

ember 26, 2017. The Clerk of Court returned it unfiled on January 3, 2018; and Castleman received it on January 12, 2018. This provides Castleman with less than thirty (30) days to compile, write and present the Writ.

Castleman presently has a prison job in which he works Monday, Tuesday, Friday, and Saturday. Leaving him Wednesday, Thursday and Sunday to work on legal material.

The prison has five (5) law computers for approximately 1400 prisoners in the law library and has no hard copy publications for use. There is one (1) law computer in his housing unit which serves approximately 128 prisoners. As one can see, access to a law computer can be very competitive and difficult.

Castleman requires this extension of time to formulate, present and type the issues for the Writ of Ceriorari. Castleman continues to apply himself for the completion of the Petition for a Writ of Certiorari without undue delay.

The Government will not be harmed by this extension of time; however Castleman will be irreparably harmed without it.

Castleman does not seek the extension of time to unnecessarily delay any proceeding, nor harass or annoy any party including the Court.

#### VI. CONCLUSION AND PRAYER

Therefore for the foregoing reasons, Mr. Castleman requests the Honorable Justice to Clarify his filing deadline or in the Alternative to GRANT this extension of time to file his Petition

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for a Writ of Certiorari for sixty (60) days or otherwise until April 13, 2018.

Respectfully Submitted,

January 24 2018

Date

Daniel Castleman  
Daniel Castleman  
Petitioner - Appellant  
Pro Se

Mr. Castleman declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that his factual assertions made herein are true and correct to the best of his knowledge and belief.

January 24 2018

Date

Daniel Castleman  
Daniel Castleman

Mr. Castleman certifies and declares that he handed this Motion to the Prison Legal Mail Staff on this 26 day of

January, postage prepaid, first class mail

addressed to: Supreme Court Building  
Justice Clarence Thomas  
One 1ST ST NE  
Washington, DC 20543  
United States

January 26, 2018

Daniel Castleman

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 17-11878-F

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DANIEL CASTLEMAN,  
a.k.a. "Chingachgook",

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Florida

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ORDER:

Daniel Castleman's motion for a certificate of appealability ("COA") is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

His motion for leave to file an application for a COA in excess of the page limitation and motion for leave to proceed *in forma pauperis* ("IFP") are DENIED AS MOOT.

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/s/ William H. Pryor Jr.  
UNITED STATES CIRCUIT JUDGE