

18-8917

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 15 2019

OFFICE OF THE CLERK

GILBERT DEMETRIUS AGUILAR — PETITIONER
(Your Name)

vs.

TIMONTHY FILSON, et al, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GILBERT DEMETRIUS AGUILAR, #56067
(Your Name)

C.C.S.C.C, 1252, E. ARICA ROAD
(Address)

ELOY ARIZONA 85131.
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1). In light of MENDEZ V. KNOWLES, 535 F.3d 973 (9th Cir. 2008), 1 day late filing of habeas petition, and different courts may be more or less open to granting extensions under 28 U.S.C. Section 2107; Fed R.App.P. 4(a)(5)(A), to deny Aguilar's certificate of appealability under 28 U.S.C. Section 2107, 2253(c)(2) was it right of the 9TH Cir, Counsel never notified petitioner of denial in U.S. district court and he still has not received a copy of said denial of his petition on July 10TH, 2018, its now february 2019. "the content of an appeal is heavily controlled by counsel" as in Alston V. Garrison, 720 F.2d 812, 816 (4TH Cir. 1983), MARY LOU WILSON FAILED TO FILE TIMELY NOTICE OF APPEAL as in RESTREPO V. KELLY, 178 F.3d 634, 640-41 (2d Cir. 1999); WILSON WHO WAS APPOINTED UNDER STATUTE DID NOT PURSUE MY APPEAL TO SUPREME COURT as in Nnebe V United States, 534 F.3d 87 (2d Cir. 2008) ~~I HAVE~~ TO DO MY OWN APPEAL AND I AM NO LAWYER.

(2) EQUITABLE TOLLING SHOULD HAVE BEEN APPLIED IN MY CASE, COUNSEL KEPT telling me not to file a NOTICE OF APPEAL BECAUSE IT WAS NOT ~~PROPER PROCEEDURE~~ making me doubt myself and to what was even real! I DID NOT KNOW WHO TO TRUST, I THOUGHT FOR SURE COUNSEL WAS RIGHT, IT WAS INMATES WHO KEPT TELLING ME FILE THE NOTICE OF APPEAL I HAVE SHOWN NOTHING BUT DUE DILIGENCE THROUGH OUT THIS WHOLE CASE I FOUND OUT MY PETITION WAS DENIED BY MISTAKENLY FILING A SECOND OR SUUCCESSIVE PETITION IN U.S. DISTRICT COURT, PACE V. DiGuglielmo, 544 U.S. 408, 418, 125 S.Ct. 1807, 1814, 161 L.Ed.2d 669, 679 (2005) "Due Diligence 28 U.S.C. Section 2254(e)(2)(A)(ii) (2006); Should have been applied to my case in the ninth circuit Mackey V. Hoffman, 682 F.3d 1247, at 1253 (9TH Cir. 2012); Washington V. Ryan, 833 F.3d 1087, 1091 (9th); Brooks V. Yates, 818 F.3d 532 (9th) Under F.R.C.P. Rule 60(b)(6). I JUST RECEIVED THE denial the last week of Feb. 2019 from U.S. Dis.

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: **ADAM PAUL LAXALT, ATTORNEY GENERAL FOR THE ST**

ATE OF NEVADA et al; TIMOTHY FILSON, Substituted for Renee Baker

n 3/3/2017 and ATTORNEY GENERAL FOR THE STATE OF NEVADA.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was DEC 21 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JAN 28 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).;

HOHN V. UNITED STATES, 524 U.S. 236, 247, 118 S.Ct. 1969, 1975, 141, L. Ed 2d 242, 256 (1998).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was DEC 20 1999. A copy of that decision appears at Appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const.Amends.Fifth,.....	6, 8
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STATEMENT OF THE CASE

1 On August 30, 1996, a Grand Jury returned an Indictment charging Gilbert Aguilar and co-
2 defendant Dayomashell David Aguilar with the following charges: Count I - Conspiracy to
3 Commit Murder (Felony - NRS 199.480, 200.010, 200.030); Count II - Murder with use of a
4 Deadly Weapon (Felony - NRS 200.010, 200.030, 193.165); Count III - Attempt Murder with
5 use of a Deadly Weapon (Felony - NRS 200.010, 200.030, 193.330, 193.165); Count IV -
6 Possession of Firearm by Ex-Felon (Felony - NRS 202.360 as to Gilbert only); Count V and
7 Count VI- Discharging Firearm at or into Structure (Felony - NRS 202.285); Count VII and IX -
8 Discharging Firearm at or into Vehicle (Felony - NRS 202.285); Count VIII - Assault with use of
9 a Deadly Weapon (Felony - NRS 200.471). Exhibit 38. in 3:12-cv-00397-MMD-WGC.
10

11 The State filed a Notice of Intent to Seek the Death Penalty on September 11, 1996. Jury
12 trial began on September 30, 1997 and concluded on October 9, 1997, and a penalty phase began
13 on October 15, 1997 and concluded on October 20, 1997 in which Aguilar was represented by
14 William L. Wolfbrandt, Esq. and John B. Shook, Esq. Exhibits 23-30.3:12-cv-00397-MMD-

15 Penalty hearings were conducted on October 15, 1997 - October 20, 1997. Exhibits 31-34.

16 On October 20, 1997, the jury found the aggravating circumstances outweighed any
17 mitigation evidence and recommended verdicts of Life Without the Possibility of Parole for
18 Defendant Gilbert and Life with the Possibility of Parole for Defendant David.
19

20 On January 9, 1998 a Judgment was filed sentencing Aguilar to serve two consecutive terms
21 of Life in Nevada State Prison without the Possibility of Parole for the murder count, as well as
22 to terms totaling 40 to 100 years for the remaining counts. Exhibit 2. See [ECF No. 62]
23

24 Aguilar filed a Notice of Appeal on December 18, 1997 and his Opening Brief on August 7,
25 1998. Exhibit 3. in Case 3:12-cv-00397-MMD-WGC [ECF No. 62].
26

1 On December 20, 1999, the Nevada Supreme Court concluded the appeal lacked merit and
2 dismissed the appeal as to the following issues:

3 a. Whether the District Court Erred by admitting Evidence of an Altercation between Aguilar
4 and Another Man in the 7-Eleven Parking Lot.

5 b. Whether the District Court Erred in Admitting a Machete and Bayonet Found in
6 Defendant's Apartment after the Incident.

7 c. Whether the District Court Provided Jury Instructions That Adequately Distinguished
8 the Elements of Malice Aforethought From the Elements of Premeditation and
9 Deliberation.

10 d. Whether the District Court Erred by Rejecting the Proposed Jury Instruction Regarding
11 Premeditation.

12 e. Whether the District Court Erred in Admitting Evidence of the Second Pat Down
13 Search of Defendant David Aguilar.

14 f. Whether the Filing of the Notice of Habitual Criminality Was in Violation of NRS
15 207.010. Exhibit 5. ~~See [ECF No. 62]~~ Also Appendix D in this Writ

16 Remittitur issued on January 28, 2000. Exhibit 6. In 3:12-cv-00397-MMD-WGC

17 Aguilar filed a Petition for Writ of Habeas Corpus (Post-Conviction) on September 8, 2000.

18 Exhibit 7. In 3:12-cv-00397-MMD-WGC [ECF No. 62].

19 On December 6, 2000, the District Court took the matter off calendar with further
20 proceedings pending Gilbert's waiver of attorney/client privilege.

21 On January 26, 2007, Gilbert filed a proper person Petition for Writ of Mandamus with
22 the Nevada Supreme Court in which he challenged the District Court's decision to take his Post
23 Conviction Petition for Writ of Habeas Corpus off calendar. Exhibit 11. ~~See [ECF No. 62]~~

24 On April 16, 2007 the Nevada Supreme Court granted Gilbert's petition and directed the
25 District Court to place Aguilar's petition back on calendar. Exhibit 11. ~~See [ECF No. 62]~~

1 An evidentiary hearing was held on two separate days, September 7, 2007, and November 30,
2 2007, to address the issues of ineffective assistance of trial and appellate counsels as to both
3 Aguilar and his brother. Exhibit 35. In Case 3:12-cv-00397-MMD-WGC [ECF No. 62.]

4 On February 8, 2008, the District Court filed a Findings of Fact, Conclusion of Law and
5 Judgment and denied the Petition for Writ of Habeas Corpus (Post-Conviction). Exhibit 14.

6 An appeal followed to the Nevada Supreme Court in which Gilbert appealed the denial of the
7 Motion for the appointment of post-conviction counsel.

8 On September 5, 2008, the Nevada Supreme Court reversed and remanded finding that the
9 District Court abused its discretion by denying both Defendants' petitions without appointing
10 counsel pursuant to NRS 34.750. The Nevada Supreme Court also found that the evidentiary
11 hearing that was held did not fully address both Defendants' claims and remanded the case for
12 the appointment of counsel to assist Gilbert and David in the post-conviction proceedings.

13 Exhibit 16. In Case 3:12-cv-00397-MMD-WGC-; Appendix D. in this Writ.

14 The Supreme Court issued its Remittitur on September 30, 2008. On September 18, 2009 the
15 Court appointed counsel to represent Appellants, and set a supplemental briefing schedule and
16 hearing date. Exhibit 17. In Case 3:12-cv-00397-MMD-WGC- [ECF No. 62.]

17 On January 11, 2010 counsel for Appellants filed a joint Supplemental Points and Authorities
18 in support of the Petition for Writ of Habeas Corpus, restating and elaborating upon Defendant's
19 original claims.

20 On March 1, 2011 the Court denied the petition in its Findings of Fact, Conclusions of Law
21 and Judgment. Exhibit 18. In Case 3:12-cv-00397-MMD-WGC- [ECF No. 62.]

22 On October 14, 2011, Aguilar and his brother jointly filed an Opening Brief raising the
23 following grounds:

24 1. Gilbert and David were denied reasonable effective assistance of trial counsel and due process
25 of law and a fair trial as guaranteed by the Fifth and Fourteenth Amendments to the United
26 States.

1 States Constitution by trial counsel's failure to conduct adequate investigation and provide
2 evidence to the jury regarding Officer Brian Debecker's culpability in the crime by firing
3 the fatal shot into the chest of Mark Emerson.

4 2. Gilbert and David were denied their Sixth Amendment right to reasonable effective assistance
5 of trial counsel by counsel's failure to conduct adequate investigations and thus provide evidence
6 to the jury regarding Officer Brian Debecker's culpability in the crime by firing the fatal shot
7 into the chest of Mark Emerson.
8

9 3. Gilbert and David were denied their Sixth Amendment right to reasonable effective assistance
10 of counsel on their direct appeals in violation of the Sixth and Fourteenth Amendments to the
11 United States Constitution.

12 4. Gilbert and David were denied due process and the right to a fair trial by the erroneous
13 admission of tainted, unreliable prior suggestive extra-judicial and in-court suggestive
14 photographic lineup identification and testimony identification presented to the jury in violation
15 of the Sixth and Fourteenth Amendments to the United States Constitution.
16

17 5. Gilbert and David were denied due process and the right to a fair trial by not litigating the
18 warrantless police entry and search of Gloria Olivares' (Aguilar) residence in violation of the
19 Sixth and Fourteenth Amendment to the United States Constitution.

20 6. Gilbert and David were denied due process and the right to a fair trial by failing to prevent the
21 introduction of prior bad act evidence (prison pictures and mug shot lineup) which indirectly
22 informed the jury of David's prior criminal history in violation of the Sixth and Fourteenth
23 Amendments to the United States Constitution.
24

25 7. Gilbert and David were denied due process and the right to a fair trial by failing to prevent the
26 reading of a multiple count indictment in trial exposing the jury to evidence of Gilbert's prior
27 felony conviction for *Ex-felon in Possession of Firearm* in violation of the Sixth and Fourteenth
28 Amendments to the United States Constitution.

1 8. Gilbert and David were denied due process and the right to a fair trial by failing to prevent
2 Annette O'Neal-Aguilar's extra-judicial police reports, and grand jury testimony at the jury trial
3 due to the police coercion and bad faith tactics used by the state to acquire such testimony in
4 violation of the Sixth and Fourteenth Amendments to the United States Constitution.

5 9. Gilbert and David were denied due process and the right to a fair trial by failing to prevent the
6 testimony of Annette O'Neal against her spouse, Gilbert Aguilar in violation of the Fifth, Sixth
7 and Fourteenth Amendments to the United States Constitution.

8 10. Gilbert and David were denied due process and the right to a fair trial by failing to prevent
9 unreliable evidence from being admitted in trial in violation of the Fifth, Sixth and Fourteenth
10 Amendments to the United States Constitution.

11 11. Gilbert and David were denied due process and the right to a fair trial by failing to prevent
12 the 7-11 videotape from being played at trial in violation of the Fifth, Sixth and Fourteenth
13 Amendments to the United States Constitution.

14 12. Gilbert and David were denied due process and the right to a fair trial by failing to prevent
15 the admission of irrelevant forensic scientific evidence (David's palm print on the Maadi) at trial
16 in violation of the Fifth, Sixth and Fourteenth Amendment to the United States Constitution.

17 13. Gilbert and David were also denied due process and the right to a fair trial by Appellant
18 counsel's failure to raise and argue to the Nevada Supreme Court each of the issues raised herein
19 and also in the Proper Person Petition filed by both Defendants in violation of the Fifth, Sixth
20 and Fourteenth Amendment to the United States Constitution. Exhibit 39.

21 The Nevada Supreme Court Affirmed the conviction in its order, filed May 9, 2012. Exhibit
22 21. In Case No. 3:12-cv-00397-MMD-WGC; **Appendix D. in this Writ.**

1 Aguilar filed an Amended Petition for Writ of Habeas Corpus §2254 in federal district court
2 on September 7, 2012. ECF No. 8. Respondents filed a motion to dismiss on October 22, 2012.
3 ECF No. 10. On May 13, 2013, this Court denied without prejudice respondent's motion to
4 dismiss and granted petitioner's motion for appointment of counsel. ECF No. 18. On May 15,
5 2013, this Court appointed counsel with the task of amending petitioner's petition. ECF No. 20.
6

7 On July 10, 2018 The United States District Court ORDERED AND AD
8 JUDGED THAT THE Second Amended Petition for Writ of Habeas Corpus
9 (ECF No.62)is denied.;IT IS FURTHER ORDERED AND ADJUDGED that Pet
10 itioner is denied a certificate of appealability;IT IS FURTHER OR
11 DERED AND ADJUDGED that judgment is hereby entered.
12

13 On August 20, 2018 Aguilar Filed a second or successive petition
14 mistakenly In The United States Distrc Court Case No.:2:18-cv-01
15 567-JAD-CWH, Trying to preserve GROUND OR CLAIM 3 BYFORD V.STATE, 1
16 16 nev.215(2000);CITED (MONTGOMERY V.LOUISIANA, 136 S.Ct.718(2016)
17 ;WELCH V.UNITED STATES, 136 S.Ct.1257(2016)THE NEW RULE OF LAW CAS
18 ES;It was through this mistake that Aguilar found out that his Wr
19 it of Hebeas Corpus was denied On July 10, 2018 He had written Mar
20 y lou Wilson letters of his intent to appeal this issue on his ow
21 n since she refused to do any thing in the state courts since she
22 was not being paid for that;yet the federal public defenders offi
23 ce was doing just that for his Co-Defend DAYOMASHALL DAVID AGUILA
24 R I HAVE SHOWN NOTHING BUT DUE DILIGENCE SINCE THE FILING OF THE
25 MANDAMAS, IN THE NEVADA SUPREME COURT Case NO. 48815, i have always
26
27
28

1 filed my NOTICE OF APPEALS WHEN PROCEEDING Pro-Se Since the court
2 ORDERS WERE MAILED TO ME 1ST on 12/11/07 2ND on 12/09/10 3RD on
3 12/23/10 in DISTRICT COURT CLARK COUNTY, NEVADA AND WHEN I DID NOT
4 KNOW HOW TO GET INTO FEDERAL COURT I FILED A NOTICE OF APPEAL
5 to THE UNITED STATES DISTRICT COURT 05/18/12 On May 31, 2012 THE
6 NEVADA SUPREME COURT issued a letter to me saying no action will
7 be taken on my document entitled: "NOTICE OF APPEAL" to the U.S.
8 District. I ~~FILED~~ ~~A~~ ~~NOTHER~~ ~~FAST~~ NOTICE OF APPEAL IN THE UNITED S
9 TATES DISTRICT COURT FOR THE DISTRICT OF NEVADA On JUN, 11, 2012
10 On July 2, 2012 THE SUPREME COURT OF NEVADA LAW LIBRARY wrote m
11 e letting me know what to do, I THEN WROTE THE COURT ON July 08T
12 H 2012 Letting them know i do want my appeal to move foward, Onc
13 e i was done exhausting the BYFORD V STATE, ISSUE GROUND OR CLAIM
14 3 in my petition in the U.S. DISTRICT COURT, IN THE EIGHTH JUDIC
15 IAL DISTRICT COURT I FILED ANOTHER NOTICE OF APPEAL On 08/13/15
16 that was the first time, the second time i went back to THE EIG
17 HTH JUDICIAL DISTRICT COURT TO EXHAUST WAS DO TO MONTGOMERY V. L
18 LOUISIANA, 136 S.Ct. 718 (2016) and WELCH V. UNITED STATES, 136 S.Ct
19 .1257 (2016). 2 OF THIS COURTS RULINGS, I AGAIN FILED A NOTICE OF
20 APPEAL On 08/14/2017. as this court can see had i received the O
21 RDER denying my petition on July 10, 2018 in the U.S. district C
22 ourt the NOTICE OF APPEAL WOULD HAVE BEEN FILED IN A TIMELY MAN
23 NER

24 Petitioner ask the court to review the record so he does not
25 flood this court with a too big of an appendix as dicussed in t
26 his court's rules.

27

28

1 Statement of the Facts

2 On August 7, 1996, Gilbert and David Aguilar were gambling in a local 7-11 when they
3 encountered what was described as a bald or clean shaven white guy with a potential "tail" of
4 hair at the back of his head, stepping on David's foot. At or between 10:43 p.m. and 10:45 p.m.
5 the unknown white male left 7-11. Both Aguilars followed shortly after. In the parking lot,
6 Gilbert had an altercation in which he was hit by a vehicle and thrown approximately 10-20 feet,
7 injuring him. Both brothers then left the area. Jury Trial Transcript (hereinafter referred to as
8 JTT), October 6, 1997, V.V, pp. 23-24. In Case 3:12-cv-00397-MMD-WGC-ECF # 62
9

10 At or around 11:04 p.m. and 11:05 p.m., 911 calls from the residential area around the 800
11 block of Mantis Way reported shots fired (about 200 yards from the 7-11 where the altercation
12 involving Gilbert occurred). Police responded shortly thereafter to find themselves surrounded
13 by gunfire.

14 Mark Emerson, a resident of the neighborhood, was fatally wounded from a gunshot as he
15 spoke on a mobile phone outside his Mantis Way apartment. One Officer Brown, reported being
16 fired upon. He took cover and returned fire. JTT, V. V, October 6, 1997, pp. 75-77.

17
18 Witnesses reported the description of the shooter (or man seen in the area carrying a gun)
19 as a bald white male with a pony tail. Officer Brown later identified Aguilar from the video
20 surveillance tape at 7-11 as the person shooting at him that morning, although he never saw the
21
22
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28

1 face of his shooter. JTT, V. V, October 6, 1997, pp. 91-92. Aguilar was also identified as being
2 seen in the area of the shooting on the night in question by a few trial witnesses. However, the
3 witnesses identified Aguilar from a photographic line-up including Gilbert wearing jail or prison
4 clothing. JTT, V. VII, October 8, 1997, pp. 131. Officer Franks admitted he prompted witnesses
5 to identify the shooter in the photograph and reminded at least one witness (who failed to pick
6 Gilbert) that hair styles could change, and to keep looking. Id. at pp. 132-133.

7 Police were led to the apartment of Gloria Olivares, girlfriend of David. Officers searched
8 Olivares' residence after obtaining her reluctant consent. JTT, V. VI, October 7, 1997, pp. 49-51.
9 The search revealed two rifles in Olivares' apartment. David's right palm print was recovered
10 from the butt end of a "Maadi" AK-47 rifle on the couch. Ballistics revealed that cartridge cases
11 located in the area of the shooting were traceable to both rifles. Two spent bullets fired from the
12 B-West rifle were located at the shooting victim's residence. The firearm expert could not
13 identify one bullet as having been fired from the Maadi rifle. Neither rifle was conclusively tied
14 to the gunshot wound causing Emerson's death. JTT, October 8, 1997, V. VII, pp. 108-110. One
15 of the two guns was owned by Las Vegas Metro police officer Brian Debecker who later
16

17 ~~reported the weapon had been stolen a year before the hearing.~~

18 The search of Olivares' apartment the day following the shooting also revealed a machete and
19 bayonet which the State admitted into evidence over objection by the defense. Surveillance
20 videos from inside the 7-11 and from the parking lot area were made available by the 7-11.
21 Because an incident occurred at the gas pumps, the tape inside the store was saved and the entire
22 week's feed was turned over to police. The tapes were given to the District Attorney's office
23 where the one recorded on the day of the murder was edited to 45 minutes and shown at
24 Aguilar's trial. Trial counsel never challenged the authenticity of the VHS introduced at trial,
25

1 never requested the entire 24 hour-long tape from the District Attorney (for the day of the
2 incident and condensed into the 45 minute segment played at trial) and never retained a forensic
3 expert to examine the video-tape's accuracy.

4 No defense witnesses were called to testify at the guilt phase of Aguilar's trial.

5
6 Petitioner has supplied this court with the exact STATEMENT OF
7 THE CASE , AND THE STATEMENT OF THE FACTS, PRESENTED IN THE U.S.
8 DISTRICT COURT In Case No. 3:12-cv-00397-MMD-WGC All Exhibits are
9 part of the record so petitioner did not flood the appendix in t
10 his court with them.

11 See "Appendix A;C" Court ORDER; and General Docket Sheet is in
12 Appendix A; Court ORDER IS IN Appendix C for all dates and every
13 thing that happened in the 9th Cir. Court of Appeals

14 On February 8,2019,Mary Lou Wilson Filed a MOTION FOR WITHDRAW
14 AL OF COUNSEL .

16 On February 15,2019, I Filed Pro Se MOTION FOR RELIEF FROM JUD
17 GMENT (See ECF No. 90) in the in forma Pauperis filed with this
18 Writ.

REASONS FOR GRANTING THE PETITION

1 As mentioned above in the question(s) Presented Page (2) of the
2 e pages that precede Page 1 of the form. I believe the 9th cir. wa
3 s wrong in denying my certificate of appealability, when it was h
4 umanly impossible to even file an extention under 28 U.S.C. Secti
5 on 2107 ; Fed.R.App.P.4(a)(5)(A).;28 U.S.C. Section 2253(c)(2) By
6 the time i found out My Writ of Habeas Corpus was denied by way o
7 f a Court ORDER IN Case NO.2:18-cv-01567-JAD-CWH In U.S. District
8 Court Rather it was dismissed without prejudice on 09/05/18 that
9 was day 56 in the 60 days allowed under the above mentioned Secti
10 ons; Fed.R.App.P.4(a)(5)(A) the court order was mailed to me on 09
11 /05/18 it took atleast 2 or 3 days to even get to arizona and thi
12 s facility can take weeks to get us our legal mail all kinds of o
13 ther cases are either delayed or late in filing thier motions, the
14 filing of this second or successive petition shows due diligence
15 since my lawyer would not do it because she was not getting paid
16 for it in state court. "the content of an appea
17 l is heavily controlled by counsel" Alston V Garrison, 720 F.2d 81
18 2,816 (4th Cir. 1983).

19 Mary Lou Wilson failed to file my NOTICE OF APPEAL ON TIME no
20 t me fact she had her Paralegal trying to talk me out of filing a
21 NOTICE OF APPEAL all these cases deal with just that issue in the
22 9th Circuit MACKEY V. HOFFMAN, 682 F.3d 1247, at 1253 (9th Cir.2012)
23 Washington V. Ryan, 833 F.3d 1087, 1091 (9th Cir.2016); Brooks V. Ya
24 tes, 818 F.3d 532 (9th Cir. 2016).."when a federal habeas petition
25 er has been inexcusably and grossly neglected by his counsel in a
26 manner amounting to attorney abandonment in every meaningful sens
27 e that has jepardized the petitioner's appellate rights, a distric
28 t court may grant relief pursuant to Rule 60 (b) (6) MACKEY, 682 F.

1 3d 1247,at1253 See also Washington,833 F.3d 1087,at1091(holding t
2 hat "[R]ule 60 (b) permits the district court to vacate and reent
3 er judgment to restore the right to appeal in limited circumstanc
4 es") I have shown,Reasonable diligence"as in Brooks,818 F.3d at:5
5 32 Reasonable diligence"requires the effort that a reasonable per
6 son might be expected to deliver under his or her particular circ
7 umstances"id.supra at 536.

8 I FILED A MOTION FOR RELIEFE FROM JUDGMENT PURSUANT TO F.R.C.P
9 .Rule 60 (b) (6), ON FEB 15 2019 counsel has been appointed in U
10 .S. District Court Case No. 3:12-cv-00397-MMD-WGC See attached OR
11 DER IN THE in forma pauperis.,(see ECF No.90)ORDER APPOINTIG COUNS
12 EL, i am filing this writ of CERTIORARI, NOW BECAUSE I DON'T WANT
13 MISS another dead line as in the NOTICE OF APPEAL ,with Mary Lou
14 Wilson, EVEN THOUGH counsel Thomas L. Qualls 720 Tahoe Street Reno
15 Nevada 89509 was appointed on 02/25/19,I want to Proceed Pro se,
16 until this court either appoints Thomas L. Qualls to represent me
17 in this court or another Lawyer. I am only a Mexican American bor
18 n and raised in casa grande arizona i have no law training just b
19 ooks i have read,I want my Appeal rights all the way to this cour
20 t and thats my prayer for relief. THANK YOU! for all your time an
21 d consideration in this very serious legal matter.

22 NO OTHER AMERICAN BORN CITIZEN SHOULD EVER FEEL CHEATED OUT O
23 F HIS OR HER APPEAL RIGHTS,LIKE I DO RIGHT NOW, THIS IS THE NATIO
24 NAL IMPORTANCE OF HAVING THE SUPREME COURT DECIDE THE QUESTIONS I
25 NVOLVED,EVERY ONE SHOULD HAVE THEIR RIGHT TO APPEAL WITH OUT A LA
26 WYER CHEATING THEM OUT OF HIS OR HER RIGHT TO APPEAL THE ISSUES I
27 N THE CASE.

28

CONCLUSION

I HAVE SHOWN DUE DILIGENCE; I ALWAYS PURSUE MY RIGHTS, MARY LOU WILSON FAILED TO FILE MY NOTICE OF APPEAL SHE CONTROLLED MY APPEAL. The petition for a writ of certiorari should be granted.

Respectfully submitted,


GILBERT DEMETRIUS AGUILAR #56067.

Date: APRIL, 11TH, 2019.