

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GREGORY FRANK SPEROW,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPLICATION TO JUSTICE KENNEDY
TO EXTEND TIME TO FILE PETITION FOR CERTIORARI
(Supreme Court Rule 13.5)

Gregory Frank Sperow,
Petitioner Pro Se
Reg. No. 52273-146
Federal Correctional Institution
Terminal Island
1299 S. Seaside Avenue
San Pedro, California 90731

RELIEF SOUGHT

Gregory Frank Sperow, Petitioner pro se, indigent and without benefit of counsel, requests that Justice Kennedy, Justice for the Ninth Circuit, extend the time for filing a petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit in the matter of United States of America v. Gregory Frank Sperow, Case No. 17-30006, for a period of forty-five (45) days, or from September 30, 2018, up to and including November 14, 2018.

GROUND FOR RELIEF

Judgments Below

On January 5, 2017, Petitioner received from the United States District Court for the District of Idaho a "Final Order of Forfeiture as to Santa Rosa Creek Road Property, Templeton, California" dated December 29, 2016, in Case No. CR-06-00126-BLW (Dkt. No 1257), See Exhibit "A", Final Order of Forfeiture as to Santa Rosa Creek Road Property, Templeton, California (Dkt. No. 1257) attached to Petitioner's "Declaration."

On January 9, 2017, Petitioner submitted a timely "Notice of Appeal" appealing Dkt. No. 1257 to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit granted the government's motion to dismiss in light of a valid waiver and denied Petitioner's appeal. A true and correct copy of the Ninth Circuit's "Order" dated February 26, 2018, is attached as Exhibit "B" to Petitioner's "Declaration."

On August 17, 2018, Petitioner received the Ninth Circuit "Order" dated July 2, 2018, denying Petitioner's petition for panel rehearing and rehearing en banc. A true and correct copy of the Ninth Circuit's "Order" dated July 2, 2018, and the envelope

it was received in is attached as Exhibit "C" to Petitioner's Declaration.

Jurisdiction

The Supreme Court will have jurisdiction over this matter because 28 U.S.C. § 1254(1) gives the Court jurisdiction over an appeal of a final judgment of a United States Court of Appeals.

Reasons Why Relief From Time Needed

Under Supreme Court Rule 13.1, time for filing of a writ of certiorari in this matter expires on September 30, 2018.

Petitioner, a prisoner proceeding pro se and without access to the court's electronic case filing system through Pacer, relies on the United States Mail and the prison mailroom staff for timely delivery of his legal mail. Petitioner did not timely receive the Ninth Circuit's "Order" (Exhibit "C") in the mail.

On August 15, 2018, Petitioner, through the assistance of his Unit Counselor, Nick Marquez, made a legal call to the clerk's office at United States Court of Appeals for the Ninth Circuit to check the status of his petition for panel rehearing and rehearing en banc. It was during this call that Petitioner learned that his petition had been denied on July 2, 2018. Petitioner requested the deputy clerk to please send him a copy of the order.

Petitioner received the Ninth Circuit's "Order" postmarked August 15, 2018, clearly stamped LEGAL MAIL, at the institution evening mail call on August 17, 2018. The proper procedure for the handling of a prisoner's legal mail was not adhered to in the instant matter. Petitioner did not receive the court's denial order for approximately 45 days after the date it was filed.

Petitioner's access to the prison law library is not unfettered. His time in the prison library to research and

prepare his petition for writ of certiorari is limited by the law library hours of operation, the hours he is required to work at his prison job, the numerous unscheduled closings of the Education Department, and institution and weather related lockdowns. Further, the prison law library has only ten (10) electric typewriters for approximately 1200 prisoners to prepare their legal pleadings on, additionally hindering Petitioner's ability to timely submit his petition for writ of certiorari.

Due to the late receipt of the Ninth Circuit's "Order" dated July 2, 2018, denying Petitioner's rehearing it would be almost impossible and highly improbable to complete a well written and researched petition within the remaining time allowed pursuant to Supreme Court Rule 13.1.

Need of Length of Extension Sought

Petitioner being unschooled in law and without counsel requires a full 90 days from receipt of the Ninth Circuit's "Order" to prepare and submit his petition.

The order denying a rehearing, a prerequisite to the filing of a petition for writ of certiorari, was not received by Petitioner until 45 days after it was filed in the appellate court on July 2, 2018.

Accordingly, the additional extension of 45 days sought to file Petitioner's writ of certiorari will allow him 90 days from receipt of the order.

Persuasive Grounds for Certiorari in This Case

The district court's final order of forfeiture (Dkt. No 1257) raises a grave constitutional question concerning the Fifth Amendment to the Constitution of the United States right to due

process which reaches far into our changing times.

The Ninth Circuit's panel decision in this case conflicts with decisions, not only of the Supreme Court, but also of its sister circuits.

Other compelling reasons for certiorari in this case involve several questions of exceptional importance: Does the Fifth Amendment's due process guarantee of fundamental fairness require that a plea agreement be honored by the government?; In recognition of the particular dangers posed by a prospective waiver of the right to challenge errors that have not yet occurred, whether enforcement of the waiver work a miscarriage of justice?; and When the government subsequently breaches a plea agreement seven and one-half years after sentencing is defendant's waiver of his right to appeal enforceable in light of the newly discovered governmental breach?

CONCLUSION

Therefore, due to Petitioner's late receipt of the Ninth Circuit's "Order" denying his "Petition for Panel Rehearing and Rehearing En Banc" dated July 2, 2018, and received on August 17, 2018, he respectfully requests this application to extend time to file petition for certiorari by 45 days be granted and that he be allowed to file his writ of certiorari with the United States Supreme Court on or before November 14, 2018.

This "Application" is supported by the appended "Declaration of Gregory Frank Sperow" and attached exhibits. See Appendix "A".
Dated: August 23, 2018


Gregory Frank Sperow
Petitioner pro se

DECLARATION OF GREGORY FRANK SPEROW

I, Gregory Frank Sperow, declare:

1. My name is Gregory Frank Sperow. I am over 18 years of age. I am incarcerated at the Federal Correctional Institution Terminal Island located 1299 S. Seaside Avenue in San Pedro, California. I am fully competent to make this Declaration and I have personal knowledge of the facts stated in this Declaration. To my knowledge, all of the facts stated in this Declaration are true and correct.

2. I am the defendant/appellant in the courts described below, which are the same as those listed in my application to to extend time to file petition for certiorari.

3. I am the Petitioner proceeding pro se, indigent and without benefit of counsel, in this matter. I make this Declaration in support of my "Application to Justice Kennedy to Extend Time to File Petition for Certiorari."

4. On January 5, 2017, I received the district court's (USDC for the District of Idaho) "Final Order of Forfeiture as to Santa Rosa Creek Road Property, Templeton, California" dated December 29, 2019, in Case No. CR-06-00126-BLW (Dkt. No. 1257). See Exhibit "A", attached hereto.

5. On March 1, 2018, I received an order from the Ninth Circuit in Case No. 17-30006 dismissing my appeal. The order was filed on February 26, 2018. See Exhibit "B", attached hereto.

6. On August 15, 2018, through the assistance of my Unit Counselor, Nick Marquez, I made a legal call to the Clerk's Office of the Ninth Circuit inquiring about the status of my petition for panel rehearing and rehearing en banc. The clerk

informed me that my petition (Docket Entry No. 31) had been denied on July 2, 2018. I requested the clerk to please send me a copy of the order immediately because I had yet to receive the court's order.

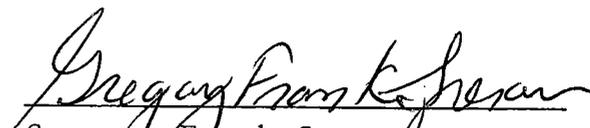
7. On August 17, 2018, I received the Ninth Circuit's "Order" dated July 2, 2018, denying my petition for panel rehearing and rehearing en banc at the institution evening mail call. The envelope containing the Ninth Circuit's "Order" was postmarked August 15, 2018, and clearly stamped LEGAL MAIL. The order was not processed, handled, or delivered in accordance with the Bureau of Prisons Program Statement 5265.14 and 28 CFR § 540.19 (the procedure for delivery of legal correspondence). See Exhibit "C", attached hereto.

8. Due to the late receipt of the Ninth Circuit's "Order" denying my petition the requested 45 day extension of time is necessary for me to adequately prepare and file my petition for writ of certiorari and is not sought for purposes of delay.

9. Lengthening the time by 45 days for the submission of my writ of certiorari is in the interest of justice and should not prejudice any other party in this case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of August, 2018, in San Pedro, California.


Gregory Frank Sperow,
Petitioner pro se

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