

Theodore Ridgeway
Inmate No. FS – 3189
SCI – Albion
10745 Route 18
Albion, Pa 16475

IN THE SUPREME COURT OF THE UNITED STATES

THEODORE RIDGEWAY	:	
Petitioner	:	
v.	:	No. USCA3 – 16 – 3488
FOLINO, et al	:	
Respondent	:	

**PETITIONER’S MOTION DIRECTING THE CLERK OF COURT
TO FILE WRIT OF CERTIORARI OUT OF TIME**

TO THE HONORABLE CHIEF JUSTICE, AND JUSTICES OF THE SAID COURT:

COMES NOW, Petitioner, Theodore Ridgeway, pro se (hereinafter Ridgeway) respectfully files this motion directing the clerk of this court to file writ of certiorari out-of-time based on the following reasons:

1. In this case, subjudice, after granting certificate of appeal, the Third Circuit Court of Appeals entered an order summarily dismissing Ridgeway’s writ of habeas corpus petition on August 13, 2018. However, the Third Circuit Court order was not mailed to Ridgeway until August 21, 2018. **See Exhibit 1, Letter with Court Order, 8/21/18.**
2. Consequently, on August 21, 2018, the same day the Third Circuit Court order was mailed to Ridgeway, the Pennsylvania Department of Corrections (“DOC”) privately announced a contract worth \$376,000 a month, or close to \$16 million over three years, and under the contract and new policy – the first of its kind in a state prison system in Pennsylvania, incoming mail must

be addressed to Smart Communications located in Florida, from there its scanned, and digitally forwarded to printers at each state prison and stored indefinitely for ongoing surveillance purposes. The DOC also implemented a controversial policy regarding incoming legal mail to stamp out drug smuggling by mail. **See Exhibit 2, Philadelphia Inquirer News Article.**

3. 8 days later on August 29, 2018, the DOC initiated a statewide lockdown of all state prisons due to increased drug smuggling of synthetic drugs known as fentanyl and k-2, where numerous inmates became ill from ingesting and/or exposure the drugs, including several SCI Albion staff members who were hospitalized. Additionally, during the 12 day lockdown which ended on September 11, 2018, all inmate movement was restricted as well as all outgoing and incoming regular and legal mail.

4. Thus, SCI Albion did not provide Ridgeway with the Third Circuit Court order until the week of September 11, 2018 – some 30 days after it was entered which actually deprived Ridgeway of being afforded a true 90 day deadline to file writ of certiorari and left him with less than 60 days to put-forth a cohesive writ of certiorari to this court. Further, because SCI Albion's law library does not furnish applicable In Forma Pauperis forms ("IFP") used by the Supreme Court of the United States, Ridgeway had to write to the clerk and request IFP forms. Subsequently, when the clerk mailed the IFP forms to SCI Albion, due to the new contract and policy regarding incoming legal mail to restrict drug smuggling, SCI Albion made copies of the IFP forms, however, some of the pages were missing which caused further delay forcing Ridgeway to file a grievance with the prison in order to obtain a complete copy of the IFP forms where a complete copy was eventually provided on or around November-2018. **See Exhibit 3, Grievance No. 764780, 10/8/18.**

5. As such, the facts and circumstances detailed above establish good cause to excuse Ridgeway's untimely writ of certiorari, where: (1) external factors clearly caused delay in the

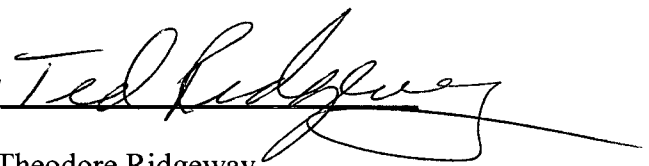
writ of certiorari being filed timely; and (2) DOC Secretary John Wetzel has acknowledged that there has been delay's in mail delivery and met with the Administration Office of Pennsylvania Courts to seek special accommodations for inmates who may have missed legal deadlines. **See Exhibit 2 at paragraph 17.**

6. Accordingly, Ridgeway hereby request that he permitted to file writ of certiorari out-of-time based on the foregoing reasons.

7. Accordingly, Ridgeway request that the writ of certiorari be filed as "timely" where it was originally postmarked November 16, 2018 – then returned by the clerk and received again by the clerk on January 2, 2019. -----

WHEREFORE, Mr. Ridgeway respectfully request that this Learned Court enter a per curiam order directing the clerk to file the writ of certiorari out-of-time.

Respectfully submitted,

/s/ 
Theodore Ridgeway

Petitioner, pro se

Date: February 5, 2019

VERIFICATION

I, Theodore Ridgeway, Petitioner, hereby verify that the foregoing statements are true and correct to the best of my knowledge, information, and belief and that false statements are subject to the penalties of perjury.

CERTIFICATE OF SERVICE

I, hereby certify that the foregoing motion and writ was mailed to the individuals and in the manner indicated (Via First Class Mail):

Office of the Clerk
Supreme Court of the United States
Washington , DC 20543 – 0001

District Attorney's Office
Federal Litigation Division
3 South Penn Square
Phila, Pa 19107

BY: /s/ Theodore Ridgeway
Theodore Ridgeway

Date: February 5, 2019

EXHIBIT

(1)

Letter with Court order, 8/21/18

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

August 21, 2018

Ms. Kate Barkman
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street
Room 2609
Philadelphia, PA 19106

RE: Theodore Ridgeway v. Superintendent Greene SCI, et al
Case Number: 16-3488
District Court Case Number: 2-12-cv-05092

Dear District Court Clerk,

Enclosed herewith is the certified copy of the order in the above-captioned case(s). The certified order is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified order is also enclosed showing costs taxed, if any.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: *Timothy McIntyre*
Timothy McIntyre, Case Manager
267-299-4953

cc: Ryan Dunlavey

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-3488

THEODORE RIDGEWAY,
Appellant

v.

SUPERINTENDENT GREENE SCI;
ATTORNEY GENERAL PENNSYLVANIA;
DISTRICT ATTORNEY PHILADELPHIA

(E.D. Pa. Civ. No. 2-12-cv-05092)

SUR PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO,
BIBAS, and SCIRICA,¹ *Circuit Judges*

The petition for rehearing filed by Appellant THEODORE RIDGEWAY in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Joseph A. Greenaway, Jr.
Circuit Judge

Dated: August 13, 2018
tmm/cc: Theodore Ridgeway
Ryan Dunlavey, Esq.

¹ Judge Scirica's vote is limited to panel rehearing only.

ELD-017

March 1, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 16-3488

THEODORE RIDGEWAY, Appellant

v.

SUPERINTENDENT GREENE SCI; ET AL.

(E.D. Pa. Civ. No. 2-12-cv-05092)

Present: AMBRO, GREENAWAY, JR. and SCIRICA, Circuit Judges

Submitted are

- (1) By the Clerk for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6; and
- (2) Appellees' response in support of summary affirmance.

in the above-captioned case.

Respectfully,

Clerk

ORDER

We summarily affirm the District Court's order denying relief to Ridgeway on his claim that appellate counsel performed ineffectively by failing to challenge the sufficiency of the evidence supporting his conviction concerning the robbery of Benjamin Bess. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. As the District Court ruled, Ridgeway failed to raise this claim in his direct appeal or amended PCRA petition. Therefore, Ridgeway did not exhaust this claim, see O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999), and because it would now be too late for him to return to state court to present the claim, see 42 Pa. Cons. Stat. § 9545(b), it is procedurally defaulted, see Whitney v. Horn, 280 F.3d 240, 252 (3d Cir. 2002). While we previously granted a certificate of appealability to Ridgeway on this claim, the order depended on our conclusion that

"jurists of reason could debate whether . . . the holding of Martinez v. Ryan, 132 S. Ct. 1309 (2012), can and should be extended to a claim that post-conviction counsel was ineffective for failing to raise a claim of ineffectiveness of appellate counsel." While this was an open question at the time we granted the certificate of appealability, the Supreme Court has since answered it adversely to Ridgeway. See Davila v. Davis, 137 S. Ct. 2058, 2063 (2017). Accordingly, Ridgeway cannot establish any basis to overcome his procedural default, and we summarily affirm the District Court's order. See 3d Cir. I.O.P. 10.6 (providing that the Court may take summary action if "subsequent precedent or a change in circumstances warrants such action").

By the Court,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: June 21, 2018
tnm/cc: Theodore Ridgeway
Ryan Dunlavey, Esq.
Max C. Kaufman, Esq.



Teste: Justin A. Dodge
Clerk, U.S. Court of Appeals for the Third Circuit

**Additional material
from this filing is
available in the
Clerk's Office.**