

No. 18-35490

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SUPREME COURT OF THE UNITED STATES

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JAMES ARTHUR ROSS – PETITIONER

VS.

STEVE FRANKE, et al. - RESPONDENT(S)

MOTION DIRECTING COURT CLERK TO FILE WRIT OF CERTIORARI OUT-OF-TIME

The petitioner respectfully requests that the court clerk file the attached writ of certiorari out-of-time for the following reason(s):

The Ninth Circuit Court of Appeals issued its original decision dismissing this action on August 23<sup>rd</sup>, 2018. The mandate in this case was issued on September 14<sup>th</sup>, 2018. The petitioner filed this writ of certiorari on December 11<sup>th</sup>, 2018. Between January 14<sup>th</sup>-25<sup>th</sup>, 2019, petitioner received back, from the court clerk of this court, his writ of certiorari with an accompanying letter dated January 14<sup>th</sup>, 2019, stating that his writ of certiorari was time barred. The court clerk listed November 21<sup>st</sup>, 2018 as the proper timeline in which the petitioner had to file his writ of certiorari. On January 25<sup>th</sup>, 2019, the petitioner attempted to re-file his writ of certiorari with the court clerk citing some facts as to why his writ of certiorari should be timely.

Then, recently, the petitioner received back again, from the court clerk of this court, his writ of certiorari with an accompanying letter dated February 26<sup>th</sup>, 2019, citing a couple of reasons and stating “If he wishes, petitioner may resubmit his petition as soon as possible with a motion directing the clerk of this court to file it out-of-time.”

Petitioner was not responsible for the failure to file a timely writ of certiorari for the following

reason(s):

As stated above, the petitioner originally tried to file his writ of certiorari on December 11<sup>th</sup>, 2018, which under normal circumstances, would have been untimely. However, the missing key here is that the petitioner had filed a Petition for Re-Hearing with Suggestion for Re-Hearing En Banc with the Ninth Circuit Court of Appeals.

The problem that the petitioner came across was that time had passed with no response from the Ninth Circuit. Thus, the petitioner became worried and decided to go forward and file the writ of certiorari with this court. The petitioner simply figured that in the worse case scenario, the high court would simply tell him that he could not file his writ of certiorari until after the decision was rendered on his petition for re-hearing.

Obviously, that is not what has happened here. Instead, as stated above, the writ of certiorari was sent back to the petitioner with the accompanying letter dated January 14<sup>th</sup>, 2019, stating that his writ of certiorari was time barred.

However, quite ironically, the petitioner also received, almost at the same time, an ORDER from the Ninth Circuit Court of Appeals, construing the Petitioner's petition for re-hearing as a "Motion for Reconsideration" and dismissing it as untimely. The petitioner has no idea why the Ninth Circuit construed his petition for re-hearing as a motion for reconsideration nor why it took so long to inform him that it was being construed as such and dismissed as untimely.

Therefore, the petitioner does not understand what more he could have done or could have been expected to do, especially as an incarcerated, indigent, layman, pro se and untrained in the law to be able to preserve his constitutional rights and present his case to this Honorable High Court.

Finally, this case does involve issues of a Constitutional magnitude that is affecting several pro se, incarcerated and indigent litigants across this country with contradictory, different and varying opinions across the country. Thus, the petitioner prays that this Honorable Court will allow this writ of certiorari to proceed.

For the fore mentioned reason(s), the petitioner respectfully directs the clerk of this court to file the attached writ of certiorari out-of-time in the best interests of justice.

DATED this 21<sup>st</sup> day of March, 2019.

Respectfully Submitted By:



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James Arthur Ross, Pro Se'  
S.I.D.#12599830  
Two Rivers Correctional Institution  
82911 Beach Access Rd.  
Umatilla, OR 97882

Supreme Court of the United States  
Office of the Clerk  
Scott S. Harris, Clerk  
Washington, DC 20543-0001

January 25, 2019

Re: James Ross v. Franke, et al.  
USCA9 No. 18-35490

Dear Mr. Harris:

I just received my petition for certiorari back from you with an accompanying letter dated January 14, 2019, stating that my petition was time barred. It states that the last Order from the lower Courts made a deadline date of November 21, 2018, for me to file my petition.

Therefore, I am asking you to please listen to my plea, look at the documents again and reconsider that position or better help me understand as to why my petition is untimely.

Basically, after I received the Ninth Circuit's Order dismissing my case dated August 23, 2018, I filed a petition for "re-hearing with suggestion for re-hearing en banc". I was waiting for a response back from the Court when I received the Mandate dated September 14, 2018.

Still, having no other word from the Ninth Circuit on my petition for "re-hearing", I wrote a letter to the Court with inquiry as to what was going on and why I had not received a response to my petition for "re-hearing".

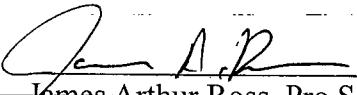
Again, not hearing nothing and concerned about the wording in the mandate, I ultimately filed my petition for certiorari. Then, as I previously stated and as you know, I received my petition back from you.

However, just a few days before I received your letter and my petition back from you, I received an Order from the Ninth Circuit Court of Appeals dated January 02, 2019, stating that "We treat Ross's "Motion for Rehearing" (Docket Entry No. 10) as a motion for reconsideration. The motion for reconsideration is denied as untimely. See 9<sup>th</sup> Cir. R. 27-10. No further filings will be entertained in this closed case".

Therefore, I am extremely confused here. First, I do not know why my petition for re-hearing was treated as a motion for reconsideration, but also, if the "mandate" is not the controlling, then, would not the last decision be the above mentioned Order and, thus, make my petition timely?

Finally, I want to apologize in advance as I am not an attorney and am doing my best to understand all of this and bring my issues to the High Court. I have enclosed my petition again and am hoping that it will be processed as timely, thank you.

Sincerely,



James Arthur Ross, Pro Se  
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Two Rivers Corr. Inst.  
82911 Beach Access Rd.  
Umatilla, OR 97882

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cc: File.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JAN 2 2019

JAMES ARTHUR ROSS,

Plaintiff-Appellant,

v.

STEVE FRANKE; et al.,

Defendants-Appellees.

No. 18-35490

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

D.C. No. 2:18-cv-00240-YY  
District of Oregon, Pendleton

ORDER

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

We treat Ross's "motion for rehearing" (Docket Entry No. 10) as a motion for reconsideration. The motion for reconsideration is denied as untimely. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

Exhibit #2

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

AUG 23 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JAMES ARTHUR ROSS,

Plaintiff-Appellant,

v.

STEVE FRANKE; et al.,

Defendants-Appellees.

No. 18-35490

D.C. No. 2:18-cv-00240-YY  
District of Oregon, Pendleton

ORDER

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

The district court certified that this appeal is not taken in good faith. *See* 28 U.S.C. § 1915(a). On June 7, 2018 the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and response to the court's June 7, 2018 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 5) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

**DISMISSED.**

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