No. ____________________

19-5149

IN THE

SUPREME COURT OF THE UNITED STATES

Luis Rojas-Marceleño — ~~PETITIONER~~
(Your Name)

FILED
JUN 27 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

U.S. Court of Appeals for The Tenth Circuit Et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals for The Tenth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Luis Rojas-Marceleño # 94492
(Your Name)

P.O. Box 1568
(Address)

Hutchinson, Kansas 67504
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1) In light Of This Court's Decisions About Equitable Tolling Being A Multi-faceted factual Inquiry With The Petitioner Bearing The Burden Of Proof, Should Evidentiary Hearings Be Granted In Circumstances Such As Those Here, Where It Was Undisputed That Petitioner's Post-Conviction Appellate Counsel Died After Commencing Petitioner's Post-Conviction Appeal?

2) Was It Error for The Tenth Circuit And The District Court To Deviate from The Time Calculations Under 28 U.S.C 2244(d) And Applicable Case Law, In Order To Try Avoiding Case Specific factual Record Development Of A Timeline That Would Dictate Equitable Tolling?

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: U. S. District Court, District Of Kansas.

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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 cA 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[✓] is unpublished.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[✓] is unpublished.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 ______ 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 April 30, 2019.

[✓] 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: ______________________, 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. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was ______________. A copy of that decision appears at Appendix ______.

[ ] 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

Kansas Statute 60-1507(f) And Kansas Supreme Court Rule 183(c)(4): You Must File Your "1507" Motion Back In Front Of Your Trial Judge Within One Year Of The Kansas Supreme Court Clerk's Office Issuing It's "Mandate".

28 United States Code Section 2244(d)(1): AEDPA Imposes A One-Year Statute Of Limitations For Filling A "2254" Application. Generally, This Limitation Period Begins On "The Date On Which The Judgement [Becomes] Final By Conclusion Of Direct Review Or The Expiration Of The Time For Seeking Such Review." "[A] Petitioner's Conviction Is Not Final And The One Year Limitation Period For Filling A Federal Habeas Petition Does Not Begin To Run Until After The United States Supreme Court Has Denied Review, Or, If No Petition For Certiorari Is Filed, After The Time For Filing A Petition For Certiorari With The Supreme Court Has Passed.

28 United States Code Section 2244(d)(2): The "2254" Clock Stops At Time During Which There Is A "Properly Filed Application For State Post-Conviction Or Other Collateral... Pending...

Kansas Supreme Court Rule 2.04(A): Unless And Until A "Docketing Statement" Is Filed In The Kansas Court Of Appeals, You Have No Appeal Pending.

Duncan V. Walker, 533 U.S. 167, 179, 121 S.Ct. 2120, 150 L.Ed. 2d 251 (2001): Supreme Court Has Stated That Policy Reasons Merit Treating The Days Between The Missed Deadline And The Subsequent Motion

To Cure The Error "Out Of Time" Against The Inmate To "Reduce The Potential for Delay On The Road To Finality.

~~Pace~~ Pace V. DiGulielmo, 544 U.S. 408, 413, 125 S. Ct. 1807, 161 L. Ed. 2d 669(2005): Expressing Concern About "Turning Section 2244(d)(2) In To A De facto Extension Mechanism, Quite Contrary To The Purpose Of AEDPA, And Opening The Door To Abusive Delay".

Streu V. Dormire, 557 F. 3d 960 (8th Cir. 2009): "Although Streo Later Sought Leave To Pursue An Appeal Out Of Time On March 3, 2006, Nothing Was 'Pending' Before A Missouri Court Between November 7, 2005, And March 3, 2006. We Thus Agree With The Conclusion Of Several Other Circuits That An Application Is Not 'Pending' Between The Expiration Of The Time for Appeal And The Filing Of A Petition for A Belated Appeal." However, Once The "Petition for A Belated Appeal" Is filled, The Clock Indeed Is Stopped Again.

In Light Of [The Appellate Case, Bishop V. Dormire, 526 F. 3d 382, 384 (8th Cir. 2008)] We Hold Streu's Motion To Reopen Post-Conviction Proceedings Was An "Application for State Post-Conviction Or Other Collateral Review" for Purposes Of AEDPA's Tolling Provision, Streu's Motion To Reopen Post-Conviction Proceedings And Bishop's Motion To Recall A Mandate Affirming The Denial Of Post-Conviction Relief Are Indistinguishable. Both Motions Alleged That Post-Conviction Counsel failed To Raise Certain Claims Attacking The Prisoner's Judgment Of Conviction. Neither Motion Would Have Set Aside The Judgment Of Conviction. But The Granting Of Streu's Motion Would Have Led To New Post-Conviction Proceedings In Circuit Courts, Just As

The Granting Of Bishop's Motion Would Have Led To New Post-Conviction Proceedings In The Court Of Appeals, And Both Were Designed To Further The Ultimate Goal Of Gaining Collateral Relief From The Judgment Of Conviction.

Gibson V. Klinger, 232 F. 3d 799, 807 (10th Cir. 2000): Mr. Gibson Allowed The Statutory Grace Period For Appeal To Lapse On May 25th, 1996, And Did Not Begin The Process That Resulted In His Actual Appeal Out Of Time Until November 12, 1996, When He Asked The State District Court For Leave To Appeal Out Of Time... Hence, Although Mr. Gibson Properly Used State Court Procedures To File A Post-Conviction Application For Leave To Appeal With The State District Court On June 13th 1996, Tolling The Entire Period Between This First Motion And His Second Motion On November 12, 1996, Would Be Contrary To Our Definition Of "Pending": Mr. Gibson Was Not Attempting To Exhaust State Remedies" During This Entire Period. Barnett, 167 F. 3d At 1323. We Therefore Hold That, After Mr. Gibson's 30 Days To Appeal Expired, The Limitations Period Was Not Tolled Until He Filed His Second Application For Leave To Appeal In The State District Court On November 12th 1996.

Lawrence V. Florida, 549 U.S. 327, 127 S. Ct. 1079, 1085, 166 L. Ed 2d 924 (2007): Supreme Court Indicated, If The One-Year Period In 28 U.S.C. § 2244(d)(1) Continues To Run While Motions To Re-Open State Court Appellate Proceedings Are Pending, Then Inmates Would Lack An Incentive To File Such Motions "As A Delay Tactic," Just "So They Receive Additional Time To File Their Habeas Petitions."

Martinez V. Ryan, 566 U.S. 1, 132 S.Ct. 1309, 182 L. Ed. 2d 272 (2012): When Appointed Post-Conviction Attorney Misses A Filing Deadline Which Costs An Inmate His Or Her Shot At Federal Post-Conviction Review Under 28 U.S.C. § 2254, The Missed Deadline Is Not The Fault Of The Inmate, And So His Or Her "2254" Clock Should Be "Equitably Tolled" Or Halted And The Time-Deadline Error Be Excused.

Trevino V. Thaler, 569 U.S. 413, 133 S.Ct. 1911, 185 L.Ed. 2d 1044 (2013): Ineffective Assistance Of Post-Conviction Counsel In Failing To Adhere To Procedural Rules Is Cognizable.

Murray V. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 91 L.Ed. 2d 397 (1986): When The State Provides An Attorney, But Fails To Provide An Effective One, The Attorney's Failures That Fall Below The Standard Set Forth In Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984), Are Chargeable To The State, Not To The Prisoner.

28 United States Code Section (d)(1)(B): Equitable Tolling for State Created Impediments That Prevent A Prisoner From Filing His Application, But Only If The Impediment Violates The Constitution Or Federal Law.

Baggett V. Bullitt, 377 U.S. 360, 375, 84 S.Ct. 1316, 12 L.Ed. 2d 377: A "Petitioner" Is "Entitled To Equitable Tolling" If He Shows (1) That He Has Been Pursuing His Rights Diligently (Reasonable Diligence; Not "Maximum Feasible Diligence," Which Is Not Required), And (2) That Some Extraordinary Circumstance Stood In His Way" And Prevented Timely Filing. Pace V. DiGuglielmo, 544

U.S. 408, 418, 125 S.Ct. 1807, 161 L.Ed.2d 669. Such "Extraordinary Circumstances" Are Not Limited To Those That Satisfy The Eleventh Circuit's Test Courts Must Often "Exercise Their Equity Power... On A Case-By-Case Basis

Holmberg V. Armbrecht, 327 U.S. 392, 396, 66 S.Ct. 582, 90 L.Ed 743: Demonstrating "Flexibility" And Avoiding "Mechanical Rules", In Order To Relieve Hardships... Arising From A Hard And Fast Adherence" To More Absolute Legal Rules.

Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) A Defendant Must Demonstrate That Counsel's Representation Fell Below An Objective Standard Of Reasonableness, (2) A Defendant Must Show That There's A Reasonable Probability That, But For Counsel's Unprofessional Errors, The Results Of The Proceedings Would Have Been Different.

STATEMENT OF THE CASE

On September 21st 2012, I Lost My Kansas Supreme Court Appeal, The Mandate Was Handed Down On October 15th 2012.

According To Kansas Statute 60-1507(f) And Kansas Supreme Court Rule 183(C)(4), I Had Until October 15th 2013 To File My K.S.A. 60-1507 Motion.

I Filed My "1507" Motion On September 20th 2013, 25 Days Early. So There Were No Time Deadline Problems.

Mean While, Since There Was No "Petition for Certiorari" Filed After I Lost My Direct Appeal, With Accordance To 28 United States Code Section 2244(d)(1) 90 Days After October 15th 2012, My Federal "2254 Clock" Began Ticking, On Monday, January 14th 2013, With 365 Days To Start.

On September 20th 2013, When I Filed My K.S.A. 60-1507 Motion, My Federal Clock Stopped, Under 28 United States Code Section 2244(d)(2), I Thus Lost 249 Days Off Of My "2254 Clock" Leaving Me With 116 Days.

On January 5th 2015, I Lost My "1507" Motion, The Next Day, January 6th 2015, My Attorney Filed A "Notice Of Appeal" In Lyon County District Court, But, No Follow-Up On My Appeal In The Kansas Court Of Appeals.

My Attorney Had 21 Days From January 6th 2015 To January 27th 2015, To File A "Docketing Statement" On My Behalf With The Kansas Court Of Appeals.

As Set Forth In Kansas Supreme Court Rule 2.04(a) Which States (Unless And Until A "Docketing Statement" Is Filed In The Kansas

Court Of Appeals, You Have No Appeal Pending).

The Supreme Court In Dicta, Has Stated That Policy Reasons Merit Treating The Days Between The Missed Deadline And The Subsequent Motion To Cure The Error "Out Of Time" Against The Inmate, "To Reduce The Potential For Delay On The Road To Finality." See -

Duncan V. Walker, 533 U.S. 167, 179, 121 S. Ct. 2120, 150 L. Ed. 2d 251 (2001); Also See
Pace V. DiGuglielmo, 544 U.S. 408, 413, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005).

Since My "Docketing Statement" Was Not Filed, I Had Nothing Pending In The Courts, According To 28 United States Code Section 2244(d)(2) Which States That The "2254 Clock" Stops Any Time During Which There Is A "Properly Filed Application For State Post-Conviction Or Other Collateral... Pending..."

My Clock Stopped On September 20th 2013, And Began Ticking Again On January 27th 2015, When My Attorney Failed To File My Docketing Statement.

On May 25th 2015 My Federal Clock Had Expired, (I Was Not Aware Of This)

On January 26th 2016, Over A Year Later, My Attorney Filed A "Motion For Permission To Docket Appeal Out Of Time."

On February 8th 2016, My Appeal Out Of Time Was Granted, But It Does Not Excuse My Federal Time Clock.

The Eighth Circuit Court

Statement Of The Case Cont'

And The Tenth Circuit Court Have Both Ruled That The Second The Inmate Files The Motion To Re-Instate The Appeal "Out Of Time", The "2254 Clock" Stops Ticking Again. See

Streu V. Dormire, 557 F. 3d 960 (8th Cir. 2009). On Pages 966-967 Of The Published Decision In The Law Books, The Court Of Appeals Wrote, "Although Streu Later Sought Leave To Pursue An Appeal "Out Of Time" On March 3rd, 2006, Nothing Was Pending Before A Missouri Court Between November 7th, 2005 And March 3rd, 2006. We Thus Agree With The Conclusion Of "Several" Other Circuits That An Application Is Not Pending Between The Expiration Of The Time For Appeal And The Filing Of A Petition For A Belated Appeal."

How Ever, Once The "Petition For A Belated Appeal" Is Filed, The Clock Indeed Is Stopped. In Light Of [The Appellate Case,

Bishop V. Dormire 526 F. 3d 382, 384 (8th Cir. 2008)]

The Tenth Circuit Court Of Appeals Has Reached The Same Conclusion About The "2254" Clock In

Gibson V. Klinger, 232 F. 3d 799, 807 (10th Cir. 2000). Specifically Concluding That The Time Between A Notice Of Appeals In A State Post-Conviction Proceeding And Then Subsequent Application To Re-Instate That State Appeal Counts Against The "2254" Clock, Because During That Time Frame, There Is No "Application Pending Due To The Error Of Missing The Time Deadline For "Docketing."

There Are No

Provisions In Federal Case law Which Allows District Judge Sam Crow To Ignore The Period Between My Attorney's January 6th, 2015 "Notice Of Appeal" Filed After The Loss Of My "1507" Case And The Kansas Court Of Appeals Acceptance Of My "Docketing Statement," "Out Of Time," On February 8th, 2016, Over A Year Later.

There Are A Number Of Federal Case Precedents Which All Say That The Time Delay In Between The "Notice Of Appeals In State Post-Conviction Proceedings, And The Day The State Appellate Court Accepts Proper Docketing Materials "Out Of Time" Is A Period Which Counts Against The "2254" Petitioner's Time Clock, See

Duncan V. Walker, 533 U.S. 167, 179, 121 S. Ct. 2120, 150 L. Ed. 2d 251 (2001). See Also,
Pace V. DiGuglielmo, 544 U.S. 408, 413, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005) (Expressing Concern About "Turn[ing] § 2244(d)(2) In To A De Facto Extension Mechanism, Quite Contrary To The Purpose Of A.E.D.P.A. And Open[ing] The Door To Abusive Delay");
Lawrence V. Florida, 549 U.S. 327, 127 S. Ct. 1079, 1085, 166 L. Ed. 2d 924 (2007);
Streu V. Dormire, 557 F. 3d 960, 965-67 (8th Cir. 2009);
Gibson V. Klinger, 232 F. 3d 799, 807 (10th Cir. 2000).

My Calculation For My "2254" Time Clock Is Precisely, Based On Federal Case Law And Should Have Been Accepted Under The Doctrine Of "Equitable Tolling," Due To The "Ineffective Assistance" Of My State Post-Conviction Counsel.

When Appointed

Post-Conviction Attorney Misses A Filing Deadline Which Costs An Inmate His Or Her Shot At Federal Post-Conviction Review Under 28 United States Code Section 2254, The Missed Deadline Is Not The Fault Of The Inmate, And So His Or Her "2254" Clock Should Be "Equitably Tolled" Or Halted, And The Time-Deadline Error Be Excused,

Martinez V. Ryan, 566 U.S. 1, 132 S.Ct. 1309, 182 L.Ed. 2d 272 (2012)

(Ineffective Assistance Of Post-Conviction Counsel In Failing To Adhere To ~~[illegible]~~ Procedural Rules Is Cognizable)

Trevino V. Thaler, 569 U.S. 413, 133 S. Ct. 1911, 185 L.Ed. 2d 1044 (2013).

Had My "1507" Appeal Been Handled Properly, My "2254 Clock" Would Have Started Ticking Again On December 22nd 2017, And My Filing Deadline For My "2254" Would Have Been April 17th, 2018, Not March 2018 Which The District Court Would lead You To Believe And The Fact That The District Court Could Not Give A Date In March Shows Judge Crow Did Not Actually Calculate The Time frame.

And Judge Crows Order To Show Cause Also Shows He Didn't Give Any Consideration To my "2254" Motion, Had He looked In My "2254" Motion, Judge Crow Would Not Have Needed To File An "Order To Show Cause" Because I Put The Timeline In My Brief On Page 2, Along With Supporting Facts And Case law.

The District Courts Argument That I filed My "2254" On January 15, 2019 Is Irrelevant To The FactS Of The Case, Which Are,

On February 2018, When

I First Found Out My Federal Clock Had Expired, My Federal Clock Had Been Expired For Over Two Years, The Fact That I Filed My "2254" Regardless Of My Attorney's Failure Should Show The Courts That I'm Not Giving Up My Fight.

And The Fact That I've Have Met Every Deadline With The Exception Of My "2254" Is Evidence That I Have Been Pursuing My Rights Diligently And My Counsels Death Is Extraordinary Circumstance, Combined With Counsel Filing My Docketing Statement Over A Year Later.

At The Very least, I Should Be Allowed An Evidentiary Hearing, In Light Of The Lower Courts Decision About "Equitable Tolling," My Underlying Claims Under 28 U.S.C. 2254 Were Never Reached, And These Are The Following.

1) The District Court Erred In Denying My Motion For A New Trial Based On Newly Discovered Evidence.

2) The Was Insufficient Evidence For A Reasonable Person To Find Me Guilty Beyond A Reasonable Doubt.

3) The District Court Erred In Not Providing A Limiting Instruction.

4) Cumulative Trial Error Substantially Prejudiced Me And Denied Me A Fair Trial.

5) Insufficient Evidence To Support A Conviction.

6) Ineffective Assistance Of Counsel.

7) Court Erred In Denying My Motion Pursuant To K.S.A. 60-1507.

My Attorney Did Not Comply With The Rules Set Out Under 28 United States Code Section 2244 (d)(1) And I'm Left With The Burden Of His Mistake.

Had He Filed On Time, There Would Not Have Been The Need For Me To Look Up Case Law On "Equitable Tolling", Gather The Information On My Time Line, Or Seek An Attorney's Assistance On How To Proceed.

I Would Have Filed My "2254" Before My April Deadline.

One More Fact I'd Like This Court To Consider Is, Under My 60-1507 Petition, I Sent A Brief To My Attorney, The Judge, And Lyon County Clerk. In Said Brief I Brought Up The Issue Of Perjury Which My Lawyer Was Suppose To Argue In The Court But Failed To.

In The Transcripts And States Exhibits 26 And 50 There's Empirical Evidence That The Alleged Victim Committed The Crime Of Perjury, Under Oath, On The Stand In Front Of Judge, Jury, And Court And Was Allowed To Get Away With It.

I've Maintained My Innocence For 10 Years And Will Continue Until I'm Dead, But If Perjury Is A Crime, Shouldn't Some Thing Be Done To Fix That Injustice? Please Consider This When Deciding My Fate.

REASONS FOR GRANTING THE PETITION

The Tenth Circuit And The District Court, By Applying The InCorrect Calculation Of The Statute Of Limitations Under <u>28 U.S.C. 2244(d)</u>, Deprived Me Of My Statutory And Constitutional Right To A Full Analysis Of My "Equitable Tolling" Claim, Which Was Based In Part On My Kansas Post-Conviction Lawyer Irving Shaw's Death, Which No Individual Or Court Personnel Communicated To Me Until It Was Too Late And My Attorney Jerry Well's Ineffective Assistance Of Counsel, In Filing My Kansas "1507" Appeal Far Out Of Time By Over A Year, Failing To Comply With The Rules For "Docketing Statements" Set Forth In <u>Kansas Supreme Court Rule 2.04(a)</u> And Causing My Federal Clock To Tick Away And Expired On 5/25/15 According To The Rules Under <u>28 United States Code Section 2244(d)(2)</u>, While I Was Still Stuck In The Kansas Court Of Appeals Where I Was Unable To Learn About These Problems With My Case, Or File A "2254" Petition To Keep My Rights Alive.

As Previously Stated In My Statement Of The Case, Both The Eighth And Tenth Circuit Courts Have Ruled That The Second An Inmate Files The Motion To Re-Instate The Appeal "Out Of Time," The "2254" Clock Stops Ticking Again.

[redacted]

<u>Streu V. Dormire, 557 F. 3d 960 (8th Cir. 2009)</u>

<u>Bishop V. Dormire, 526 F. 3d 382, 384 (8th Cir. 2008)</u>

<u>Gibson V. Klinger, 232 F. 3d 799, 807 (10th Cir. 2000)</u>

Which Means, Since My Attorney Filed My Appeal Over A Year Later "Out Of Time," My 2254 Clock Had Expired, A Fact That The Lower Court Can Not Ignore.

When The State Provides An Attorney, But Fails To Provide An Effective One, The Attorney's Failures That Fall Below The Standard Set Forth In Strickland V. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), Are Chargeable To The State, Not To The Prisoner. See Murray V. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986).

28 United States Code Section 2244(d)(1)(B) Expressly Allows Tolling For State-Created Impediments That Prevent A Prisoner From Filing His Application, But Only If The Impediment Violates The Constitution Or Federal Law.

The AEDPA Statute Of Limitations Defense Is Not "Jurisdictional." It Does Not Set Forth An Inflexible Rule Requiring Dismissal Whenever Its Clock Has Run.

A "Petitioner" Is "Entitled To Equitable Tolling" If He Shows "(1) That He Has Been Pursuing His Rights Diligently ("Reasonable Diligence," Not "Maximum Feasible Diligence," Which Is Not Required), And (2) That Some Extraordinary Circumstance Stood In His Way" And Prevented Timely Filing.

Pace V. DiGuglielmo, 544 U.S. 408, 418, 125 S.Ct. 1807, 161 L. Ed. 2d 669.

Such "Extraordinary Circumstances" Are Not Limited To Those That Satisfy The Eleventh Circuit's Test, Courts Must Often "Exercise [Their] Equity Power... On A Case-By-Case Basis," Baggett V. Bullitt, 377 U.S. 360, 375, 84 S.Ct 1316, 12 L.Ed. 2d 377, Demonstrating "Flexibility" And Avoiding "Mechanical Rules," Holmberg V. Armbrecht, 327 U.S. 392, 396, 66 S. Ct. 582, 90 L. Ed. 743, In Order To "Relieve Hardships... Arising From A Hard And Fast Adherence"

Reason For Granting The Petition Con't

To More Absolute Legal Rules.
Strickland Test (1) Counsels Representation Fell Below An Objective Standard Of Reasonableness By Filing A 21 Day Time Frame By More Then A Year. (2) Counsel's Unprofessional Error Resulted On My Federal Time Clock To Expire Two Years Before My Petition For Review Was Rejected On December 22, 2017 By The Kansas Supreme Court.

Had My Appeal Been Properly Handled, My "2254" Petition Would Have Been Timely Filed.

CONCLUSION

I Pray The Court Consider These Facts, And Remand My Case To The District Court For An Evidentiary Hearing. Also I'd Like To Request Appointment Of Counsel.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Luis Rojas-Marcelino

Date: 6 / 18 / 2019

Subscribed And Sworn To Before Me On This 18TH Day Of JUNE, 2019

ROBERT J. HURT
Notary Public - State of Kansas
My Appt. Expires 7-27-2021

My Appointment Ends 7 / 27 / 2021

Notary Public