No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WARREN EVANS, JR.,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Steven R. Minor
ELLIOTT LAWSON & MINOR
110 Piedmont Ave., Suite 300
Bristol, VA 24201
Telephone: (276) 466-8400
Fax: (276) 466-8161
Email: sminor@elliottlawson.com
Counsel for Petitioner Warren Evans, Jr.

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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FILED: September 24, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4193
(5:15-cr-00020-MFU-1)

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

WARREN EVANS, Jr., a/k/a Charlie's brother,

Defendant – Appellant

ORDER

Warren Evans, Jr., seeks to appeal his convictions and sentence. The Government has moved to dismiss the appeal as untimely.

In criminal cases, the defendant must file the notice of appeal within 14 days after the entry of judgment. Fed. R. App. P. 4(b)(1)(A). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to 30 days to file a notice of appeal. Fed R. App. P. 4(b)(4); *United States v. May*, 855 F.3d 271, 275 n.3 (4th Cir. 2017). Although the appeal period in a criminal case is not a jurisdictional provision, but rather a claim-processing rule, *United States v. Urutyan*, 564 F.3d 679, 685 (4th Cir. 2009), "[w]hen the Government promptly invokes the rule in response to a late-filed criminal appeal, we must dismiss," *United States v. Oliver*, 878 F.3d 120, 124 (4th Cir. 2017).

The district court entered the judgment on June 16, 2016. The notice of appeal was filed on March 15, 2019.* Because Evans failed to file a timely notice of appeal or to obtain an extension of the appeal period, and the Government has promptly invoked the appeal's untimeliness, *see* 4th Cir. R. 27(f)(2), we grant the Government's motion to dismiss the appeal.

Entered at the direction of the panel: Judge Niemeyer, Judge Motz, and Judge King.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Case No. 5:15CR00020
	:	
WARREN EVANS, JR.	:	

REDACTED STATEMENT OF FACTS

This State of Facts briefly summarizes the facts and circumstances surrounding the defendant's, Warren Evans, Jr.'s, criminal conduct at issue in this case. …

Overdose death of R.F.L.

On March 19, 2014, Giles sold heroin to Scott Matthew Pierce, who had traveled from Winchester to Baltimore to purchase 3 grams of heroin and crack cocaine from Giles. Evans was with Giles at least half the time when Giles met specifically with Pierce at this time. After his return to Winchester, Pierce connected with Brandy Dawn Kelly, who arranged a heroin transaction with R.F.L. At approximately midnight

on March 19-20, 2014, Pierce and Kelly distributed 3 "bags" (approximately .1 g each) of heroin, which had come from Giles and Evans to R.F.L. for $100. …

Emergency medical personnel responded to R.F.L.'s residence in Winchester / Frederick County at approximately 7:18 am on March 20, 2014, in response to a 911 call. The emergency medical personally found R.F.L. deceased upon their arrival, with "fresh track marks" on her right arm. Law enforcement located a variety of syringes and drug paraphernalia at the residence, including a syringe in a purse in R.F.L.'s bedroom which also contained paperwork in R.F.L.'s name. R.F.L. was a periodic user of cocaine, but a much less frequent user of heroin. Three individuals indicated that R.F.L. had attempted but failed to get cocaine that evening, and had gotten heroin when she could not get the cocaine.

The assigned Medical Examiner determined R.F.L.'s cause of death as "Acute combined heroin and cocaine poisoning." The Medical Examiner's report noted: "Postmortem toxicological analysis of iliac

blood was positive for a lethal level of morphine. 6-Acetylmorphine was detected in the vitreous humor indicative of heroin. Also present and contributing to death was cocaine." … The Medical Examiner explained that the 0.23 mg/L level of morphine is considered a lethal level, and the 6-Acetylmorphine present in the Vitreous Humor shows this was an acute reaction, with R.F.L.'s injection with heroin occurring around the time of death. The Medical Examiner added that in her opinion, the level of morphine would surely be enough to cause at least serious bodily injury to a person.

The assigned forensic toxicologist who certified the results of the toxicology has similarly explained that the 0.23 mg/L level of morphine is consistent with a lethal dose of heroin, and that this is at the high end of levels of morphine that her office has ben seeing in lethal overdoses. She stated that the office regularly sees levels of cocaine in drivers that match the level found in R.F.L.'s toxicology, and that those levels were consistent with R.F.L.'s having used cocaine in an earlier part of the day rather than close in time to her death – which was

consistent with witness statements. She added that, in her opinion, without the morphine found in the submission, R.F.L. would have had, at the least, a much better chance of being alive. …

I have reviewed the above Statement of Facts with my attorney and I agree that it is true and accurate. I agree that had this matter proceeded to trial, the United States would have proven the facts outlined above beyond a reasonable doubt.

1/27/16	/s/ Warren Evans
Date	Warren Evans, Jr.
	Defendant
1-27-16	/s/ R. Darren Bostic
Date	R. Darren Bostic, Esq.
	Attorney for Defendant

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case No. DVAW515CR00020-001

WARREN EVANS, Jr.

Russell Darren Bostic
Defendant's Attorney

THE DEFENDANT:

[x] pleaded guilty to count(s) 1 & 2

The defendant is adjudged guilty of these offense:

Title & Section	Nature of the Offense	Offense Ended	Count
21 U.S.C. § 846	Conspiracy to Distribute 1000 grams or more of Heroin, 280 grams or more of Cocaine Base; & a quantity of Cocaine Hydrochloride	October 2014	1

21 U.S.C. § 846	Conspiracy to Distribute Heroin, the Use of Which Resulted in the Serious Bodily Injury and Death of R.F.L.	October 2014	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. …

June 15, 2016
Date of Imposition of Judgment

/s/ Michael F. Urbanski
Signature of Judge

Michael F. Urbanski, United States District Judge
Name and Title of Judge

06-15-2016
Date

…

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Lewis F. Powell, Jr., United States Courthouse Annex
1100 East Main Street., Suite 501
Richmond, VA 23219-3517
www.ca4.uscourts.gov

Patricia S. Connor
Clerk

Telephone
(804) 916-2700

March 22, 2019

Julia C. Dudley, Clerk
U.S. District Court
Western District of Virginia
116 North Main Street, Room 314
Harrisonburg, VA 22802

Re: USA v. Evans
5:15-cr-00020-MFU-1

Dear Ms. Dudley:

The enclosed document was received by this court on March 21, 2019, and is construed as a notice of appeal.

In accordance with Rule 4(d) of the Federal Rules of Appellate Procedure, the document has been date stamped and is being forward to your court for appropriate disposition. See FRAP 4(d) ("If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court

of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.").

If the district court has already transmitted a notice of appeal as to the issues contained in the attached, it is unnecessary to transmit notice of the appeal a second time.

Yours truly,

/s/ Patricia S. Connor

Patricia S. Connor

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

WARREN EVANS, Jr.,
Movant,

v. Case No. 5:15-cr-00020-MFU-1

UNITED STATES OF AMERICA,
Respondent,

MOTION REQUESTING TO FILE BELATED DIRECT APPEAL BECAUSE OF PETITIONERS ATTORNEY FAILURE TO DO SO AFTER PETITIONER REQUESTED HIM/HER TO DO SO WHICH IS A ROE v. FLORES-ORTEGA, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed 985 (2000) VIOLATION OF PETITIONERS RIGHTS

COMES NOW, the Petitioner, Warren Evans, Jr., (hereinafter) referred to as the defendant, pro-se, in the above styled and captioned cause and respectfully submit this Motion Requesting to File A Belated Direct Appeal Because of petitioners Attorney failure To Do So after Petitioner Requested Him/Her To Do So which is a Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000) violation of petitioner Rights.

JURISDICTION

This Honorable Court is vested with the jurisdiction and the discretionary authority to address ad grant the requested relief sought.

PRELIMINARY STATEMENT OF FACTS & PROCEDURAL HISTORY

Movant's conviction arises from an incident that occurred on March 20, 2014. On [illegible] of July 6, 2015, a arrest warrant was issued for movant …. On June 24, 2015, Movant was Arrested, and charged with the above stated charges in which one was the Death of one of his drugs sales.

Petitioner brings to this Honorable Court a violation of his Constitutional Rights because his then Attorney; R. Darren Bostic, Esq. failure to file a Direct Appeal after he was requested to do so by petitioner.

It is clearly stated in Motemoino v. United States, 68 F.3d 416 (11th Cir. 1995) stating; (failure to file Notice of Appeal after requested by defendant), also Martin v. United States, 81 F.3d 1083 (11th Cir.

1996) stating; (counsel failed to file a Notice of Appeal when requested to do so by the defendant). By petitioners Attorneys failure to file a timely appeal violates petitioners due process right to the court because his actions alone cause petitioner case to end where his Attorney left him at.

Although petitioners Attorney withdrew after the case ended caused the due process violation. Due Process does require that a pro-se defendant have access to legal resources. See Bounds v. Smith, 430 U.S. 817, 828 (1977). ("[T]he fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries of adequate assistance from persons trained in the law."); see United States v. Kind, 194 F.3d 900, 905 (8th Cir. 1999)(defendant as due process right of access to legal resources). Be[ca]use of petitioners counsel failure to file his Notice Appeal, and also knowing that petitioner was leaving to go to Federal prison to start his Federal prison sentence.

Petitioner continued to argue with his Attorney; R. Darren Bostic, Esq. concerning the Autopsy Report, and why was it taking so long for the report to come back.

After receiving the requested records from my Attorney; R. Darren Bostic, Esq., we spoke about the contents of the report, and this was in the month of August 2017.

In the month of August, 2017, I received a letter from my Attorney R. Darren Bostic, in response to the letter I had wrote to him concerning a copy of the Autopsy Report, and after reading over the letter that's when I notice that it was a mixture of drugs that took the life of the victim in this case.

When petitioner contacted his Attorney R. Darren Bostic petitioner ask within his letter if his Attorney was award of Burrage v. United States, 134 S.Ct. 881, 187 L.Ed.2d 715 (2014), in which petitioner ask him why didn't he use this case to argue his case?

Petitioner also ask his Attorney if he was award of Tiofila Sentillana v. Jody Upton, 846 F.3d 779; 2017 U.S. App. LEXIS 747. See

Exhibit (A) of this Motion which is the response letter from my Attorney which mention that it was a second Autopsy report that I had no knowledge of until I receive this letter. This letter was sent August 13, 2017.

Also, I would like for you to review the second letter, and reports that my Attorney sent to me June 17, 2018, in which it contain copies of the autopsy report, and it proves that my Attorney didn't inform me of this until this time, see Exhibit (B).

Because of petitioners counsels failure to file his Notice of Appeal, and also knowing that petitioner was going to Federal prison left petitioner with (No) Federal resources.

The actions of petitioners Attorney is clearly a Roe v. Flores-Ortega, 528 U.S. 470, 483-84 (2000) (prejudice presumed where defendant demonstrates reasonable probability that but for Coun[s]el's deficient failure to consult defendant about an appeal, counsel would have timely appealed) also Smith v. Robbins, 528 U.S. 259, 287 (2000) (3 categories of cases in which prejudice is presumed: (1) denial of

counsel; (2) where counsel is burdened by an actual conflict of interest; and (3) various kinds of State interference).

In another very important Supreme Court case; United States v. Crowder, 466 U.S. 648, 657 (1984) (prejudice presumed where "counsel entirely fails to subject the prosecutor's case to meaning adversarial testing.").

It's clearly shows that petitioners counsel fail to file a Notice of Appeal as he was requested to do, and now the petitioner is now requesting this Honorable Court to allow him to file a Belated Notice of Appeal. A lawyer disregards a defendant's specific instructions to file an appeal acts in a manner that is professionally unreasonable, satisfying the first prong of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) test citing out of Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). In Campusano v. United States, 442 F.3d 770 (2006) (holding that "where counsel does not file a requested Notice of Appeal and fails to file an adequate

Anders brief [arguing that an appeal would be frivolous], courts may not dismiss the hypothetical appeal as frivolous on collateral review.").

The Supreme Court established a three-step analytical framework to be applied assessing ineffective assistance of counsel claims predicated upon counsel's failure to file a notice of appeal on the defendant's behalf. Under Flores-Ortega, courts first must establish whether a defendant requested that his attorney file a notice of appeal.

If such a request was made and disregarded, then counsel acted in a manner that was per se professional unreasonable.

If, however, the defendant neither instructs counsel to file an appeal nor asks that an appeal not be taken, courts must then determine whether counsel "consulted" with the defendant about an appeal.

In this context, the term "consult" means "advising the defendant about the advantages and disadvantages of taking an appeal, and making a reasonable effort to discover the defendant's wishes."

If counsel had consulted with the defendant ... "then counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal."

If however, counsel fails to consult with the defendant, then "the court must in turn ask a second, and subsidiary, question: whether counsel's failure to consult with the defendant itself constitutes deficient performance." In this final category of cases, the Court "reject[ed] a bright-line rule that counsel must always consult with the defendant regarding an appeal." Rather, the Court held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to thing either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." See Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). Well, petitioner thought that he was doing right by

requesting his Attorney toile an Appeal on his behalf, and that his Attorney would follow his request to appeal

The Supreme Court has rejected attempts to explain this "actual or constructive assistance of counsel "category to resume prejudice where (`1) counsel failed to file notice of appeal without defendant's consent, Flores-Ortega, 528 U.S. at 484, and (2) counsel neglected to file a merits brief for appeal, Robbins, 528 U.S. at 288-89.

In both instances, the Court has required satisfaction of both the performance and prejudice prongs to sustain an ineffective assistance claim See Flores-Ortega, 628 U.S. at 484; Robbins, 528 U.S. at 288-89.

PRESENTENCE REPORT RELIEF

See United States v. Daniels, 821 F.2d 76, 80 (1st Cir. 1987) and United States v. Blackner, 721 F.2d 703, 708 (10th Cir. 1983).

There cannot be an entry of a plea with specificity without a complete understanding of the impact of the (PSI Report) and its content, in sentencing Presentence Report and Presentence Investigation can not be use as evidence, specific finding in the (PSI-

PSR) are use only for the background history of a convicted felon. In petitioners case here, he made a plea in court, but not knowing that there was two (2) different autopsy reports in which it clearly shows that the victim had more than one drug within her body.

Petitioner ask his Attorney about two (2) very important cases in which explain the correct way of dealing with a problem such as this; see Burrage v. United States, 134 S.Ct. 881, 187 L.Ed.2d 715 (2014) and Tiofila Santillana v. Jody Upton,. 846 F.3d 779, 2017 U.S. App. LEXIS 747.

This information should have been file within this Honorable Court for review before given to the Probation Officer after the court made a ruling concerning the issue.

Petitioner would like to cite this last United States Supreme Court case which hopefully will cover all of the mistakes that may be within this motion. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972);

> pro-se litigants are to be construed liberally and held to a less stringent standard then formal pleadings drafted by lawyers; if the court can reasonably read pleadings to state a

> valid claim on which litigant could prevail it should do so despite failure to cite proper legal authority, confusion of legal theories, poor theories, poor syntax. and sentence construction, or litigant's unfamiliarity with (legal) pleading requirements; Hughes v. Rose, 449 U.S. 5 (1980); Hall v. Bellmon, 935 F.2d 1106, 1120 (10th Cir. 1991).

CONCLUSION

Because of the violations that was done to petitioner concerning his Attorneys failure to file a Notice of Appeal, petitions Prays that this Honorable Court will grant this request and give him the opportunity to be heard in the United States Court of Appeals For the Fourth Circuit.

/s/ Warren Evans, Jr.

3/5/19
Date