

No.

19A493

IN THE SUPREME COURT OF THE UNITED STATES

FILED

OCT 26 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ERIK BILAL KHAN,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

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

APPLICATION TO EXTEND TIME TO FILE
PETITION FOR CERTIORARI

Erik Bilal Khan
Petitioner Pro Se
Inmate Register Number 66770-051
Federal Correctional Institution
Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

**Application To Extend Time to File
Petition for Writ of Certiorari
(S. Ct. R. 13.5)**

Relief Sought

Erik Bilal Khan, Petitioner Pro Se, requests that Hon. Justice Sonia Sotomayor, as Circuit-Justice for the Tenth Circuit, or any other Honorable Justice of the Supreme Court sitting as Circuit Justice, to extend the time for filing a petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit in the matter of United States v. Erik Bilal Khan, Tenth Circuit Docket Number 18-2099, for a period of 60 days, or from October 5, 2019 up to and including January 9, 2020.

Grounds for Relief

JUDGMENTS BELOW

1. On June 27, 2016, Petitioner was convicted of child pornography offenses in the United States District Court for the District of New Mexico, before the Honorable Robert C. Brack. A true and correct copy of the amended judgment issued is attached to this motion as Exhibit A.
2. On July 14, 2017, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255(a), (f)(1) alleging that, inter alia, he was deprived the effective assistance of counsel where his attorney misrepresented his options in pleading at the arraignment and otherwise interfered with Petitioner's stated choice of plea.
3. Following the District Court's denial of his motion, and a denial of a certificate of appealability, Petitioner applied to the Tenth Circuit Court of Appeals for a Certificate of Appealability seeking to appeal two issues. However, only one of those issues is relevant here. Petitioner sought to raise a question on appeal regarding counsel's duties to inform a defendant of his options at the arraignment and allow the defendant to plead as he wishes regardless of the attorney's strategies.
4. The United States Court of Appeals for the Tenth Circuit denied a certificate of appealability on April 25, 2019 and denied panel rehearing and rehearing en banc on August 6, 2019. A copy of the Tenth Circuit's opinion and denial of rehearing are attached as Exhibit B. Further, the Tenth Circuit's opinion can be found at United States v. Erik Bilal Khan, 2019 U.S. App. LEXIS 12644, ___ F.3d ___ (10th Cir. 2019)(unpublished).

JURISDICTION

5. 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 LIMIT NEEDED

6. Pursuant to Supreme Court Rule 13.1, the time for filing a Petition for a Writ of Certiorari in this matter expires on November 6, 2019 as the Tenth Circuit Court of Appeals denied rehearing and rehearing en banc on August 6, 2019.
7. Petitioner is incarcerated at the Federal Correctional Institution at Fort Dix in New Jersey and is not an attorney. Due to his incarceration, he believes that he will not be able to meet the 90-day time limit for filing his Petition.
8. The Bureau of Prisons provides inmates access to an electronic law library and allows them to type their legal documents on typewriters. However, despite this access, the Bureau of Prisons must first maintain the security and good order of the penal environment.
9. The duty to provide a safe environment necessarily causes unexpected "lockdowns" and closures of various services within the prison. FCI Fort Dix is not immune to these issues; indeed, FCI Fort Dix is overwhelmed with contraband problems by way of drones, smuggling. There have also been violent assaults involving homemade knives.
10. These problems have increased the number of closures at FCI Fort Dix and access to the inmate law library can, and does, become restricted during these times of institutional urgency.
11. Petitioner cannot say with any certainty that any other closures or lockdowns are likely to occur, but given past statistics, he is compelled to ask for more time to file his Petition for a Writ of Certiorari.
12. Petitioner does not make this application needlessly but has a good faith belief that these institutional concerns will inhibit his ability to meet the time limit to present his compelling question to the Court. Further, no party will suffer any prejudice in granting a delay for the filing of the Petition.

PERSUASIVE GROUNDS FOR THE GRANT
OF CERTIORARI IN THIS CASE


13. When a criminal defendant attends an arraignment, his presence is necessary for two reasons. First, he must be informed of the charges both by reading them to him and providing a copy of the charging instrument. See Fed. R. Crim. Proc. 10(a)(1), (2). Second, the defendant must be asked "to plead to the indictment or information." See Fed. R. Crim. Proc. 10(a)(3). It has long been held that counsel has a duty to inform his client of his options regarding (i) what plea to enter, (ii) to proceed by jury or judge, (iii) testify in his own behalf, or (iv) take an appeal. Florida v. Nixon, 543 U.S. 175, 187 (2004). These, as the Court has recently reaffirmed, are the defendant's objectives that an attorney cannot decide for the client. McCoy v. Louisiana, 138 S. Ct. 1500, 1508 (2018). But, when Khan wanted to

plead guilty at the arraignment, his attorney affirmatively prevented him by (a) misrepresenting to him his actual options and (b) entering a "not guilty" plea without Khan's assent. Thus, Khan wishes to ask the Court to explore the right to the effective assistance of counsel at the arraignment since Khan was severely prejudiced by counsel's error. The holding of the Tenth Circuit has effectively eroded the need for arraignments and nullified the need for a defendant to even be present since counsel has the authority to do as he pleases without the defendant's assent or consent.

14. Petitioner is presently serving a 240-months sentence.

Dated: October 26, 2019
Joint Base MDL, NJ 08640

Respectfully Submitted,



Erik Khan
Inmate Register Number 66770-051
Petitioner Pro Se
Federal Correctional Institution
Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640

DECLARATION OF ERIK KHA

DECLARATION OF ERIK KHAN

I declare, under the penalty of perjury, that the factual information contained in the foregoing Application To Extend Time to File Petition for Writ of Certiorari, is true and correct pursuant to 28 U.S.C. § 1746.

EXECUTED ON THIS 26 DAY OF October, 2019 BY:


Erik Khan
Inmate Register Number 66770-051
Petitioner Pro Se