

AUG 20 2019

OFFICE OF THE CLERK

THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

UNITED STATES OF AMERICA,

Appellee / Respondant

v.

No. 17-1197

RANDE BRIAN ISABELLA,

Appellant / Petitioner, pro se

APPLICATION FOR EXTENSION TO FILE

WRIT OF CERTIORARI TO THE SUPREME COURT

Before THE HONORABLE JUSTICE FOR THE TENTH CIRCUIT

Comes now, Rande Isabella, Appellant / Petitioner, pro se, in application to the Circuit Justice for the Tenth Circuit Court of Appeals, pursuant to Supreme Court Rule 22, and in accordance with Rules 33.2 and 29, Fed. R. App. Proc., to enter an order extending the time for applying for a writ of certiorari to the Supreme Court of the United States of America.

Jurisdictional Statement

Upon rendition of judgment, the Supreme Court has jurisdiction to review cases in the Court of Appeals by Writ of Certiorari, pursuant to 28 U.S.C. §1254(i), with authority to affirm, modify, vacate, set aside, or reverse any judgment lawfully brought before it for review, pursuant to 28 U.S.C. §2106. The time for applying for such writ of certiorari may be extended for a period not exceeding sixty days by a Justice of the Supreme Court for good cause shown, pursuant to 28 U.S.C., chapter 133, section 2101, sub-section (c). Sub-section (f) further permits the Justice of the Supreme Court to grant a stay allowing a petitioner reasonable time to obtain a writ of certiorari.

Judicial Orders and Proceedings

Judgment was entered in the U. S. District Court of Colorado on May 24, 2017. Following appeal of the Judgment with Oral Arguments, the Tenth Circuit Court of Appeals affirmed the District Court's Judgment on March 12, 2019.

On April 30, 2019, the Tenth Circuit granted attorney Ron Gainor's Motion to Withdraw as attorney of record on this case, leaving the Petitioner to proceed pro se. Exhibit A.

After denying a petition for rehearing, the mandate was issued on May 20, 2019, recalled on May 22, 2019 then "reissued" on June 4, 2019 leaving some question as to the precise deadline, estimated to be September 1, 2019.

See Exhibit B.

In support of this application it would be shown unto the Court the following:

1. The incarcerated Petitioner had been granted permission to file in forma pauperis and intends to request same from this Court. All requests for a copy of the record were denied by the Court of Appeals. Two letters to former trial and appellate attorney, Ron Gainor, went unanswered consuming valuable time. A third letter resulted in a USB "thumb drive" being sent to Frank Isabella, Jr. of Santa Ana, California (Petitioner's brother) this past week. The drive is expected to contain the defense counsel's copy of the record on appeal. Should this be the case, it would require conversion to DVD-ROM then mailed to the Petitioner in Pennsylvania for supervised viewing sessions at FCI-Loretto. The record on appeal comprises 5,045 pages and would cost \$2,500 to make a hard copy. This remains a potentially prohibitive barrier by time and money to the Petitioner being heard by the nation's highest court. See Exhibit C.
2. That the soonest the Petitioner expects to receive the record on appeal on DVD in Pennsylvania is August 20, 2019. Pages cannot be printed from DVDs at the prison. So once relevant pages are identified by the Petitioner, an order must then be placed with family in California, who must identify, print and mail the pages back to the Petitioner in Pennsylvania. Since the Loretto prison has recently been forced to move all postal servicing to the town of Cresson, PA due to non-delivery issues, mail is regularly delayed by between 4 and 14 days. So, while it is fortunate that the Petitioner is about to receive a copy of the record on appeal, there is not enough time left to process and apply the necessary information by the current deadline.

3. That the Petitioner humbly requests a sixty day extension for purposes of accessing and applying the record on appeal and to prepare a writ of certiorari to the Supreme Court. Such an extension is lawful under the rules in the above stated Jurisdictional Statement and "for good cause shown," under Penry v Texas, 515 US 1304 (1995). This application is not for purposes of delay, but to draw the Court's attention to significant legal questions and an important federal question concerning a split recognized by multiple circuit courts with briefing adhering to the Court's requirement for accuracy, brevity and clarity.
4. That the Petitioner has experienced malicious destruction of completed motions and exhibits, research and work product on a periodic basis at the correctional institution, adding to the complexity and frustration of preparing legal briefing. Justice Ginsburg noted in Halbert v Michigan, 545 US 605, 112 L Ed 2d, 125 S Ct 2582 (2005), that the state court concluded that "a pro se defendant seeking discretionary review is "adequately armed" with transcripts, "counsel's framing of the issues" and prior rulings. at 619. But following sentencing, all trial transcripts, court documents, boxes of case law, legal books and the Petitioner's legal work product destined for Pennsylvania were "destroyed" by government representatives in Colorado. Exhibit D. This left the Petitioner to assist counsel strictly from memory. The Court in Halbert noted that indigent appellants are "particularly handicapped as self-representatives." at 620.

5. Since no written instructions were provided by counsel on procedures for pro se post-conviction proceedings, and Petitioner has no access to either the internet or email, preparing the writ is exceedingly challenging and requires more time to meet all requirements of the Court. Despite the Petitioner having owned businesses and achieved the academic level of Assistant Professor, the processes involved in self-representation while incarcerated are replete with unforeseen obstacles and complexities. Unscheduled lockdowns, staff shortages, department closings, etc. frustrate the most diligent and determined of pro se petitioners. Motions must be written on first come first served 1980's Swintec typewriters using disposable ribbons at \$7.75 each and print wheels at \$26.00. Photocopies are limited to 100 per week at \$12.70 and case law is printed at \$0.15 per page. By contrast, full-time prison employment pays about \$7. per month.
6. To properly file a writ of certiorari, with all of the documentation required by Supreme Court Rule 22, will not only require additional time to prepare, but time enough to save and budget money to pay for the preparation of documents. The Court in Halbert recognized such difficulties among incarcerated indigent pro se appellants, stating "[o]ur decisions in point reflect both equal protection and due process concerns..." relating to the "legitimacy of fencing out would-be appellants based solely on their inability to pay core costs..." and to "essential fairness." at 610-11.

WHEREFORE, the Petitioner, pro se, respectfully requests the Circuit Justice to grant this application and extend the time period for filing a writ of

certiorari to the Supreme Court in forma pauperis under Rule 39 and as rules allow.

Respectfully submitted,

Rande Isabella

Petitioner, pro se

Dated: August 16, 2019