



No. 19A416

**IN THE
SUPREME COURT OF THE UNITED STATES
THE HONORABLE
NEIL M. GORSUCH**

JEFFREY RAMIREZ - PETITIONER

vs.

JOE ALLBAUGH, Director ODOC - RESPONDENT

MOTION FOR EXTENSION OF TIME

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

Jeffrey Ramirez, #687887

Davis Correctional Facility

6888 E. 133rd Rd.

Holdenville, Okla. 74848

Justice Gorsuch, the Petitioner herein, Jeffrey Ramirez, is a prisoner in the State of Oklahoma, and does hereby submit a Motion For Extension Of Time to submit his Petition For Writ Of Certiorari. Petitioner has a matter of actual innocence that has been utterly neglected by the State Courts of Oklahoma, followed by the Federal Courts application of AEDPA time-bar that was initiated following the U.S. District Court of the Western District Of Oklahoma's ruling upon Rule 37(B) of the Seventh Judicial District, for Oklahoma County, State of Oklahoma.

Petitioner initially filed a state post conviction in excess of the allowed page limit by 3 pages, Nov. 5, 2015. This application for post conviction was returned as stricken from the record under Rule 37(E), Rules of the 7th and 26th Judicial Districts, Nov.17, 2015, for violation of Rule 37(B). November 30, 2015, in compliance with Rule 37(B), Petitioner filed a request to exceed the page limit. It was not until August 5, 2016 that the Oklahoma County district court denied Petitioner's motion to exceed, and had the filing stricken from the record per Rule 37 (E). By August 25, 2016, Petitioner resubmitted his application for post conviction within the page limit. Due to fact his previous submissions were stricken from the record, this was Petitioner's first application for post conviction, and the first opportunity the Oklahoma County district court allowed for Petitioner to exhaust his issues at a state level before presentation to the federal courts.

The Magistrate Judge for the Federal District Court of the Western District of Oklahoma recommended the court dismiss the petition as untimely filed [Document 9] of cv-00838-HE. Petitioner timely objected, with the Chief Judge, Joe Heaton, issuing an order 10/19/17 [Document '13], concluding that both equitable and statutory tolling were applicable in Petitioner's situation, and his petition was timely filed. Document 9 was not adopted the case re-referred to Judge Mitchell for further proceedings. Judge Mitchell ordered the respondent (State) to file an answer to the petition [Document 14]. The state responded with submission of a motion

to dismiss arguing application of time bar with the same reasoning as the Magistrate Judge had done in her initial assessment of the petition.

The state's only effort to address Petitioner's actual innocence claim was met with quotes from case law regarding actual innocence standard, but completely misses the fact that Petitioner's evidence was in fact new, had not presented at trial, and would have allowed that a reasonable juror would have found him innocent if they had been subjected to the evidence at trial. No mention of the evidence was made.

The Magistrate again recommended dismissal for time bar [Document 25], with no mention of the actual innocence claim. In a reversal of his prior decision the Chief Judge adopted the recommendation, dismissing the petition as non-timely [Document 27], also neglecting to address the actual innocence matter.

On appeal to the 10th Circuit, the court appointed counsel, and set a date for oral argument. Resulting submissions left Petitioner with no oral argument, and a denial of his habeas under a time bar. Petitioner submitted for a rehearing on basis of his actual innocence claim that no court beyond the district court of Oklahoma County addressed. (That court declaring it was not newly discovered due to fact the witnesses could have testified at trial, as Petitioner had argued under a separate claim of ineffective assistance of counsel, and determined that the jury without hearing this new evidence found cause to find Petitioner guilty. Though requested, no evidentiary hearing was granted.)

With the exception of his appeal to the 10th Circuit, this Petitioner has been representing himself since conclusion of his direct appeal, relying on guidance from another inmate to learn and follow the processes for appeal. He did however, submit his motion for rehearing to the 10th Circuit pro se. The court of appeals denied his motion for rehearing without providing him notice of the denial. The Court Clerk for the Tenth Circuit advised the Clerk of the Western District of

Oklahoma that the judgment issued July 25, 2019 in case no. 18-6127 took effect August 2, 2019. A copy of the order and the clerks notice was provided court appointed counsels, and on August 22, 2019 a copy with letter from counsel was sent to Petitioner. He received the information via the institutional legal mail service until August 26, 2019. (Attached)

The prison where Petitioner is housed was under a security lock down for an institutional shakedown of cells that lasted until September 2, 2019. Petitioner immediately wrote for the appropriate forms from the Clerk of The U.S. Supreme Court. These were received 9/9/19. A state wide lock down has been implemented as of 9/15/19, with directive from the Director of the Oklahoma Department of Corrections to indefinitely segregate the races from each other due to racial gang violence. Petitioner does not have a high school education or a G.E.D., and is dependent upon assistance from a caucasian (prisoner) legal assistant who has been working with him on his case from the time he initiated his appeal process.

Your Petitioner initially lost valuable time as result of the delay in the receiving of his order from the 10th Circuit court clerk's office via his federal indigent appointed attorneys, which has near immediately been followed by the segregated lock down procedures implemented by the Oklahoma Department of Corrections that continues to deprive and impede Petitioner from accessing the legal assistance he has relied upon and is dependent on just to submit to this Court a properly filled out "Petition For Writ Of Certiorari."

As result of these extenuating circumstances, beyond Petitioner's control or influence, he hereby requests the Court grant him the maximum time he can possibly obtain from this Court to prepare his submission. The due date is currently October 31, 2019. Petitioner was not able to begin work until September 23, 2019 as result and effect of the limitations placed upon him as stated above. At that he is limited to a total of 6 hrs. per week to interact with the only law clerk allowed to be in the facility law library to assist other inmates. The singular clerk's time must be

divided between himself and other inmates in the room and submitting to, and requesting paperwork from the law library. Therefore, Petitioner would request of the Court an extension of at least Sixty (60) days to present his Petition For Writ Of Certirari to the Court, or until December 30, 2019.

Petitioner does not seek this extension for any means other than that stated above, nor will the Respondent or this Honorable Court be encumbered in any manner by the Court's granting of this motion for extension until December 30, 2019.

Respectfully Submitted,

Jeffrey Ramirez, ODOC #687887
Davis Correctional Facility
6888 E. 133rd Rd.
Holdenville, Ok. 74848

Proof of Service

I, Jeffrey Ramirez, do swear or declare that on the 4th day of October, 2019, as required by Supreme Court Rule 29 I have served the enclose Motion For Extension Of Time on each party to the above proceeding or the party's counsel, and on every person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them as indicated below, and with first class postage prepaid, through the Legal Mail Service of the Davis Correctional Facility:

Mike Hunter, Oklahoma Attorney General
313 NE 21st St.
Oklahoma City, Ok. 73105

10-4-19
Date

Jeffrey Ramirez
Jeffrey Ramirez