

**In The Supreme Court  
Of The United States of America**

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Michel Albert,

Petitioner - Pro Se

**RULE 13(5)  
APPLICATION  
FOR AN  
EXTENSION OF  
TIME TO FILE A  
WRIT OF  
CERTIORARI**

v.

**THE PEOPLE OF THE STATE OF NEW YORK**

Respondent.

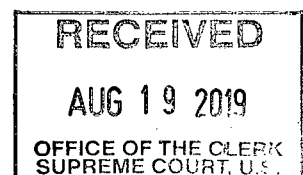
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To Circuit Justice for the Second Circuit

The petitioner, Michael Albert, request that the time for petitioning be extended to an including October 30, 2019.

This application is submitted more than 10 days prior to the scheduled filing date for the petition. The pertinent dates are:

04/26/19      The date that the Appellate Division, Fourth Department issued it order holding that, amongst other things: (a) I was not entitled to a hearing to explore the reasons for the People's over six-year delay in procuring the indictment, (b) although a private citizen was acting as a police agent at the time she recorded defendant's statements about murder, the private citizen did not make any statements or engage in any conduct that created a substantial risk that defendant might falsely incriminate



himself, and (c) the prosecutor's reasons for striking prospective jurors were sufficiency race-neutral to rebut Batson claims (see Exhibit B). However, two justices of the Appellate Division (Centra, J. and DeJoseph, J.), dissented and voted to reverse.

- 05/02/19      The date that my appellate counsel filed her discretionary leave application with the Appellate Division, Fourth Department (see Exhibit C), despite their being a new directive by the Chief Judge of the Court of Appeals demanding that such applications be filed solely in the Court of Appeals (see Exhibit F)
- 05/30/19      The date The Honorable John V. Centra, of the Appellate Division, Fourth Department, denied leave (see Exhibit A).

Based on Rule 13(1), a petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with this Court within 90 days after entry of the order denying discretionary review (see Rule 13).

Here, as indicated above, The Honorable John V. Centra denied my appellate counsel's application for leave on 05/30/19 (see Exhibit A). This means that I until August 28th, 2019 to file my petition for a writ of certiorari. However, due to circumstances beyond my control, I cannot meet the August 28<sup>th</sup> deadline to file my petition for certiorari, and therefore would like to request a 60-day extension of time to file my petition, which would make my new deadline date October 27<sup>th</sup>, 2019.

### **GOOD CAUSE FOR ALLOWING THE EXTENSION OF TIME**

There are 4 reasons that establish "good cause" for the granting of my request for a 60-day extension of time to file my petition for certiorari.

First, I am a novice when it comes to matters of the law, and I have to rely on Clinton Correctional Facility's Legal Assistance program to help me put this application

together. Because the inmate law clerks are presently overwhelmed with other assignments, I have to wait my turn until my assigned inmate clerk -- who was recently assigned about a month or so ago -- reads my extensive transcripts, my briefs and the documents associated with my case. This is the only way that he can assist me with the complicated subjects contained in my direct appeal.

Second, Clinton Correctional Facility has undergone some serious security upgrades since the escape of Richard Matt and David Sweat. Chief amongst which is a strict rule stating that inmates may only attend the law library during their non-program hours (see Exhibit D). When you couple this with the fact that Clinton Correctional Facility's Law Library only has 25 available spots for each program module, but there are at least about 35-40 inmates vying for those spots, an inmate generally attends law library sessions one or two times per week. Each session is about two hours long, and in that time we must research, write and type our submissions.

Third, there is an issue as why my appellate attorney would file a leave application with an Appellate Judge, instead of the Court of Appeals. This issue derives from a recently discovered investigative article revealing that the Chief Judge of the Court of Appeals has directed appellate judge's not to issue certificates for leave to appeal to the Court of appeals, as they wanted to control their own docket (see Exhibit E). A direct contravention to the legislative allowance for such discretion under CPL § 460.20 (see Exhibit F).

This was particularly troubling in my case because I had a two-judge dissent directing that my conviction be reversed (see Exhibit B, but when my appellate counsel went back to the same judge who penned the dissent (see Exhibit C), he refused to grant leave to appeal (see Exhibit A). These circumstances provide circumstantial proof that Judge Centra's refusal to grant leave -- after writing at length for reversal -- was the direct result of Chief Judge DiFiore's directive that forbade appellate judge's from

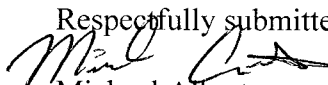
exercising their discretion enacted under CPL § 460.20 (compare Exhibit E with Exhibit E). This somehow has to be worked into the fabric of my certiorari application.

And fourth, the issues (i.e. not being provided with a hearing to explore the reasons for the People's over six-year delay in procuring the indictment, allowing a Private citizen to act as a police agent at the time she recorded defendant's statements about murder, but not allowing a voluntariness charge as to that statement, and the Prosecutor's insufficient reasons for striking prospective jurors to rebut Batson claims, etc.) are of nationwide importance, and need to be addressed to prevent other courts from utilizing the text of the Appellate Division decision to circumvent other defendants' constitutional rights.

Based on the foregoing, I am requesting that I be granted until October 27<sup>th</sup>, 2019 to file my writ of Certiorari, and for any other and further relief as to this Court may deem just and proper.

***Statement Pursuant to 28 U.S.C. § 1746, I Declare, under the Penalty of Perjury under the laws of the United States of America, that the foregoing is True and Correct.***

***Signed this 7<sup>th</sup> Day of August, 2019***

Respectfully submitted  
  
Michael Albert

Sworn to before me this

\_\_\_ Day of August 2019

*No Notary Available*

\_\_\_\_\_  
NOTARY PUBLIC

**AFFIDAVIT OF SERVICE**

State of New York  
County of Clinton) ss.:

I, Michael Albert, first being duly sworn, deposes and says that on the 7<sup>th</sup> Day of August, 2019, I did in fact give the attached **Rule 13(5) Application For An Extension of Time to File a Writ of Certiorari** to an officer at Clinton Correctional Facility to be duly carried to the following parties:

**Original and Copy**

Clerk  
United States Supreme Court  
1 First Street, N.E.  
Washington, D.C. 20543

**Copy**

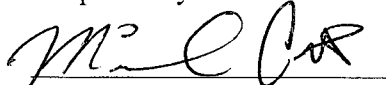
Monroe County District Attorney  
47 S. Fitzhugh Street  
Rochester, New York 14614

NYS Attorney General  
The Capital  
Albany, New York 12224

***Statement Pursuant to 28 U.S.C. § 1746, I Declare, under the Penalty of Perjury under the laws of the United States of America, that the foregoing is True and Correct.***

***Signed this 7<sup>th</sup> day of August, 2019***

Respectfully Submitted



Michael Albert

Sworn To Before Me This

\_\_\_\_ Day of August, 2019

*No Notary Available*

# Rule 13(5) Application for an Extension of Time to File a Writ of Certiorari

EXHIBITS TABLE OF CONTENTS			
EXHIBIT	DATE	# PAGES	DESCRIPTION
<b>A</b>	<b>05/30/19</b>	<b>01</b>	The Honorable John V. Centra's Order (Appellate Division, Fourth Department) Denying Leave To Appeal, Pursuant To CPL § 460.20, To The Court Of Appeals, After Penning The Dissent Urging For Reversal Of Conviction
<b>B</b>	<b>04/26/19</b>	<b>09</b>	The Date that the Appellate Division, Fourth Department stated that, amongst other things: (a) I was not entitled to a hearing to explore the reasons for the People's over six-year delay in procuring the indictment, (b) Private citizen was acting as a police agent at the time she recorded defendant's statements about murder, (c) Private citizen did not make any statement or engage in any conduct that created a substantial risk that defendant might falsely incriminate himself, and (d) Prosecutor's reasons for striking prospective jurors were sufficiency race-neutral to rebut Batson claims. However, two justices of the Appellate Division (Centra, J. and DeJoseph, J.), dissented and voted to reverse.
<b>C</b>	<b>01/07/19</b>	<b>13</b>	My Appellate Counsel's discretionary leave application with the Appellate Division, Fourth Department
<b>D</b>	<b>05/22/19</b>	<b>02</b>	Overview of Clinton Main's Law Library Services
<b>E</b>	<b>11/27/19</b>	<b>04</b>	Hamilton, Desantis, <i>DiFiore Presses Appellate Judges to Send Fewer Appeals to High Court</i> , NYLJ, 11/27/18
<b>F</b>	<b>**</b>	<b>04</b>	Text Of CPL § 460.20 Which Places Both Appellate Judge's And Court Of Appeals Judge's On Equal Footing When It Comes To Deciding To Grant Leave To Appeal To The Court Of Appeals