

**IN THE SUPREME COURT OF APPEALS OF THE UNITED STATES
WASHINGTON, D.C.**

Michael S. Sites
Petitioner

v.

Civil Action No.: 16-0437
Underlying No.: 15-F-19

State of West Virginia
Respondent

MOTION FOR EXTENSION OF TIME TO FILE A CERTIORARI

Comes now, Michael S. Sites, hereinafter petitioner, acting *pro se*, and moves this Court via Chief Justice John G. Roberts, Jr., Circuit Justice for the Fourth Circuit, to GRANT a sixty (60) day extension of time pursuant to Rule 13(5) of the 2017 Rules of the Supreme Court of the United States to file Petitioner's Certiorari.

Petitioner is indigent and is in the custody of the State of West Virginia.

A copy of the West Virginia Supreme Court Decision "affirming" the lower Court's order and the West Virginia Supreme Court ORDER denying "the petition for rehearing" is enclosed.

Pursuant to Rule 13(5) of the Supreme Court rules, this motion was to be filed later than ten (10) days in advance of the due date of the Certiorari. However, due to circumstances beyond the petitioner's control, explained below, petitioner is sending this motion to this Court on the 8th day of July, 2019 and is "overnighting" it by placing it in the Institutional Mail System.

I. RELEVANT FEDERAL PROCEDURAL FACTS

1. April 11, 2016, petitioner was sentenced by the Circuit Court of Grant County to one (1) count of First Degree murder; one (1) count of holding a hostage to defile; and two (2) counts of possession of a controlled substance with intent to deliver.

2. January 25, 2017, the West Virginia Supreme Court of Appeals remanded the case “for the limited purpose of establishing the record on issues related to the assignment of error of whether petitioner’s rights were violated when the circuit court answered a series of questions for the jury outside the presence of petitioner or his counsel.”
3. February 7, 2019 - Direct Appeal was affirmed, however, the West Virginia Supreme Court noted throughout the decision that the appellate counsel made several errors by not submitting or completely arguing grounds.
4. April 12, 2019 - Motion for Rehearing was denied.
 - a. The Motion for Rehearing tried to correct the errors originally posited by appellate counsel.
5. July 14, 2019 - Writ of Certiorari is due in the United States Supreme Court.

II. GROUNDS FOR AN EXTENSION

1. Petitioner is confined in the West Virginia Mount Olive Correctional Complex prison at One Mountainside Way; Mt. Olive, WV 25185.
2. Petitioner is extremely restrained to the rules and limitations of prisoner’s access to the law library.
 - a. The Commissioner of Corrections affords Petitioner limited access to the Institutional Law Library pursuant to Policy Directive 329 (Institutional Law Libraries). Policy Directive 329 cites West Virginia Code § 25-1-5; § 62-13-4; and ACA Standard 4-4276.
 - b. Due to the library size and other reasonable security considerations, the institution limits the number of inmates permitted to use the Law Library at any given time,

or even close the library pursuant to security consideration.

- c. The Respondent, Donald Ames, Superintendent, affords inmates limited access to the Institutional Law Library pursuant to Operational Procedure 5.07 which cites Policy Directive 329 and 506; ACA Standards 4-4078; 4-4268; 4-4269; 4-4273; 4-4274; 4-4276; 4-4481; 4-4505; and 4-4508 through 4-4511.
 - d. One group of housing units has access one day and then the next day, the other group has access.
- 3. Although the limitations to access to the Law Library is one problem, the major problem affecting access is the Law Library closure rate.
 - 4. In April 2018, the Senior Correctional Specialist (Head Librarian) quit thereby making the Assistant Correctional Specialist (Assistant Librarian) to work alone.
 - 5. The Assistant Correctional Specialist, however, retired on June 29, 2018, leaving only volunteers to open the Library.
 - 6. In November 2018, the prison hired an Assistant Correctional Specialist, however, he was the ONLY person running the Library. The main position (Head Librarian) was not filled, which the Law Library was still at the mercy of volunteers to open.
 - 7. In the latter part of June, the prison hired a Head Librarian, which will start on July 8, 2019.
 - 8. During the month of May 2019, due to an Institutional Lockdown, holidays, and vacations, the Law Library only worked one weekend and was closed for a minimum of twelve (12) days.
 - 9. Petitioner was going to mail this motion on July 1, 2019, however, the Law Library was

closed the whole week due to the Assistant Librarian going on vacation and a July 4th holiday, and a declared holiday on July 5th by the Governor of West Virginia.

10. The Law Library was also closed on the weekend of July 6th and 7th due to a lack of staff.
11. The Law Library opened on July 8th with a full staff (first time in over a year) and barring any unforeseen circumstances, should be opened regularly.
12. The petitioner is overnighting this motion to the person(s) on the Certificate of Service by placing it in the Institutional mail system on July 8, 2019.
13. The Legal Aide has not had the time to complete the petitioner's Certiorari due to other deadlines.
14. There are currently five (5) Legal Aides to assist over 1000 inmates. The Legal Aides are literally "swamped" with deadlines but cannot get caught up due to the Law Library closures.

III. REQUEST FOR RELIEF


1. Petitioner's petition for rehearing was denied on April 12, 2019. Petitioner received notice of the denial from the lawyer with a letter dated April 17, 2019. Petitioner did not receive the letter and notice of denial until April 19, 2019. Pursuant to Rule 13(3) of the Rules of the Supreme Court, Petitioner has ninety (90) days in which to file a Certiorari, which the deadline would be July 14, 2019.
2. Pursuant to Rule 13(5), Petitioner may petition this Court for an extension of time to file a Certiorari for up to sixty (60) days.
3. Petitioner is indigent and has been declared so by the lower Courts.
4. The Petitioner has a valid question of law concerning the Constitutionality of the attorney

and defendant being present when the jury asks questions of the Judge.

5. A copy of the denied Affirmed West Virginia Supreme Court decision and the Denial of the Motion for Rehearing and the Mandate is enclosed.
6. THEREFORE, in the interest of justice, Petitioner humbly requests an extension of time for a period of sixty (60) days to perfect an already started Certiorari to this Honorable Court.

Respectfully submitted,

DATE: July 8, 2019



Michael S. Sites, *pro se*


VERIFICATION

I, **Michael S. Sites**, Petitioner, do swear, under the penalty of perjury, and attest the Facts and Statements contained herein are True and Correct. As to those Statements based upon information of others, of Facts represented by others or founded upon their testimonies, I believe same to be True and Correct and do so represent to this Court the same as True and Correct and True in Representation as believed by me under penalty of perjury. All information in this Petition is set forth thereby as Truth. All documents represented and set forth are True and accurate as presented. The Document has been sent to the parties listed on the Certificate of Service. It is so Sworn.

Additionally, Petitioner does swear, under the penalty of perjury, that he placed the enclosed documents in the Mt. Olive Correctional Complex's Institutional Mail Box on the **8th** day of **July, 2019**.

Respectfully Sworn and Attested

Date: **July 8th, 2019**


Michael S. Sites, *pro se*.

Signed, Sealed, and Subscribed before me this **8th** day of **July, 2019**.

Fayette County, WV


Notary Signature

