

No. _____

IN THE
SUPREME COURT
OF THE UNITED STATES

RICHARD S. BENAVENTE,
Petitioner,

v.

USCA9 No. 18-16360

UNITED STATES OF AMERICA,
Respondent.

MOTION TO DIRECT THE CLERK TO FILE
AN OUT OF TIME PETITION

COMES NOW, Richard S. Benavente, petitioner herein, pro-se, moves this court seeking leave to file the enclosed Petition for Writ of Certiorari and Motion for Leave to Proceed In Forma Pauperis. These pleadings were originally filed with the court on July 5, 2019, the soonest petitioner was able to mail them at the time.

Due to unforeseen circumstances beyond the control of this incarcerated pro-se petitioner, he was not able to purchase legal materials, stamps, envelopes, etc. until July 3, 2019, as the inmate commissary had been closed for its regular off days plus inventory since June 21, 2019. The 4th of July holiday also fell into this time frame, making it impossible for petitioner to mail the material to this court until Friday, July 5, 2019. Petitioner was not able

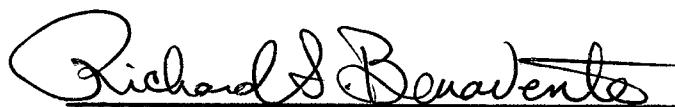
to purchase the necessary materials until July 3, the first possible day petitioner was able to do so after the commissary re-opened.

Petitioner, who is pro-se and incarcerated and not educated in matters of law in any way did not know that an extension of time motion or an out-of-time motion should have been filed as a result of these unforeseen circumstances until he received a letter from Supreme Court Clerk Scott S. Harris, by way of Susan Frimpong on August 3, 2019. This motion results from that letter.

Attached to this motion is the letter from the court and proof that the FCI Otisville commissary was closed and proof that the first available shopping day for petitioner, who resides in Unit G/A, was July 3, 2019 and prays the court direct the clerk to file the out-of-time Motion and Petition enclosed herein and excuse him from the normal 90 day filing limits as petitioner has exercised due diligence in attempting to get his pleadings filed on time to the best of his ability within the constraints of his place of incarceration.

Dated this 8 day of August, 2019.

Respectfully Submitted,


Richard S. Benavente
RICHARD S. BENAVENTE, Pro-se

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RICHARD SULLIVAN BENAVENTE,

Defendant-Appellant.

No. 18-16360

D.C. No. 1:18-cv-00014

District of the Northern Mariana
Islands,
Saipan

ORDER

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Before: SILVERMAN and CALLAHAN, Circuit Judges.

Appellant has filed a combined motion for reconsideration and motion for reconsideration en banc (Docket Entry No. 3).

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAN 28 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-16360

Plaintiff-Appellee,

D.C. No. 1:18-cv-00014

v.

District of the Northern Mariana
Islands,
Saipan

RICHARD SULLIVAN BENAVENTE,

ORDER

Defendant-Appellant.

Before: CANBY and GRABER, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**