

IN THE
SUPREME COURT OF THE UNITED STATES

Deandre Armour,

Petitioner,

v.

Case No.

(Seventh Cir. No. 18-1831)

United States of America,

Respondent.

MOTION FOR LEAVE TO FILE
PETITION FOR A WRIT OF CERTIORARI

Comes Now Deandre Armour, pro se, "Petitioner" hereinafter, and for his instant Motion for Leave to File Petition for a Writ of Certiorari, states:

1. Petitioner was unable to deposit in the prison mail system at the United States Penitentiary, Terre Haute, Indiana, his Petition for Rehearing with Suggestion for Rehearing en banc, until February 5, 2019, one day after such was due on February 4, 2019, due to "an institutional emergency" that prevented Petitioner's compliance with the time limitation. Federal Bureau of Prisons Case Manager A. Vaughn drafted a memorandum, dated February 13, 2019, confirming that the one-day delay in mailing was not the fault of the Petitioner. See the copy of Vaughn's memorandum attached hereto.

2. Assuming that the Petitioner timely filed his Petition for Rehearing with Suggestion for Rehearing en banc on February 5, 2019, due to the said prison lockdown, the correct due date for the Petitioner to file his Petition for a Writ of Certiorari would have been, and is, ninety days after the Seventh Circuit Court of Appeals denied Petitioner's Petition for Rehearing with

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SUPREME COURT, U.S.

Suggestion for Rehearing en banc on February 15, 2019. See copy attached as APPENDIX D to Petition for a Writ of Certiorari, and compare copy attached hereto.

3. For the reasons set forth heretofore, paragraphs 1 and 2, the correct due date for the Petitioner to timely file his Petition for a Writ of Certiorari was, and is, May 14, 2019, ninety days after the Seventh Circuit Court of Appeals denied the Petitioner's Petition for Rehearing with Suggestion for Rehearing en banc on February 15, 2019. On April 25, 2019, the Appellant timely mailed his Petition for a Writ of Certiorari to the Clerk of the Supreme Court about nineteen days prior to the date required for filing on May 14, 2019.

Therefore, premises considered, the Petitioner prays for the Supreme Court to grant him leave to file his Petition for a Writ of Certiorari as timely delivered to prison officials at the United States Penitentiary, Terre Haute, Indiana, for mailing to the Clerk of the Supreme Court on April 25, 2019, about nineteen days prior to the date for filing on May 14, 2019, as law and justice so require.

ARGUMENT

PETITIONER TIMELY SUBMITTED HIS
PETITION FOR A WRIT OF CERTIORARI
TO PRISON OFFICIALS FOR DELIVERY
AND FILING WITH THE COURT

In Houston v. Lack, 487 U.S. 266, 270 (1988), this Court explained, in relevant part:

"The Supreme Court concluded, 'In other words, in such a case the jailer is in effect the clerk of the District Court within the meaning of Rule 37.' Ibid.

We conclude that the analysis of the concurring opinion in Fallen applies here and that petitioner thus filed his notice within the requisite 30-day period when, three days

before the deadline, he delivered the notice to prison authorities for forwarding to the District Court."

Reaffirmed, in principle, McNeil v. United States, 508 U.S. 106, 113 (1993)(citing Houston v. Lack, 487 U.S. 266 (1988)(pro se petitioner's notice of appeal deemed filed at time of delivery to prison authorities"); Dusenberry v. United States, 534 U.S. 161, 179 (2002)(J. Ginsburg, with J. Stevens, J. Souter, and J. Breyer, dissenting and citing Houston v. Lack, 487 U.S. 266, 271 (1988) ("... Court, therefore held that pro se prisoner's notice of appeal must be regarded as 'filed' when delivered to prison authorities for mailing")

Here, the fact that Petitioner promptly delivered his Petition for Rehearing with Suggestion for Rehearing en banc to prison officials at the United States Penitentiary, Terre Haute, Indiana, on February 5, 2019, after being prevented from doing so on the due date of February 4, 2019, as a result of "an institutional emergency," proven by the attached memorandum of Case Manager A. Vaughn, triggers the equitable rule announced in Houston v. Lack, 487 U.S. at 270, supra, which tolls the time for Petitioner to have submitted his Petition for a Writ of Certiorari to the Supreme Court. See also McNeil v. United States, 508 U.S. at 133; and Dusenberry v. United States, 534 U.S. at 179, supra. (same in principle).

For that reason, after the Seventh Circuit denied Petitioner's timely filed Petition for Rehearing with Suggestion for Rehearing en banc on February 15, 2019, the Petitioner also timely mailed his Petition for a Writ of Certiorari to the Supreme Court on April 25, 2019, about nineteen days prior to the date required

for filing on May 14, 2019.

Therefore, Petitioner respectfully moves the Court for leave to file his Petition for a Writ of Certiorari as law and justice so require.

Executed: 5-29-19

Respectfully Submitted,


Deandre Armour, pro se

#11606-028

United States Penitentiary
P.O. Box 33
Terre Haute, IN 47808

SERVICE

I, the undersigned, hereby request that the Clerk of Court electronically serve the United States Attorney, Josh J. Minkler, 10 West Market Street, Suite 1200, Indianapolis, IN, 46204-3048, and Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C., 20530-0001, a copy of the foregoing Motion For Leave to File Petition for a Writ of Certiorari via PACER as law and justice so require.

Executed: 5-29-19


Signed,


Deandre Armour

DECLARATION

I, the undersigned, hereby declare under the pains and penalty of perjury, Title 28 United States Code, Section 1746, that the foregoing is true and correct to the best of my knowledge.

Executed: 5-29-19


Signed,


Deandre Armour



U.S. Department of Justice
Federal Bureau of Prisons

Federal Correctional Complex

Terre Haute, Indiana

February 13, 2019

To Whom It May Concern,

This correspondence is regarding Deandre Armour, a federal inmate incarcerated with the Bureau of Prisons (BOP). We are providing information to verify a legal mail claim.

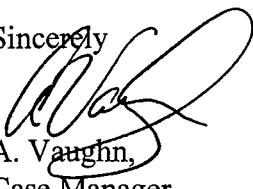
Mr. Deandre Armour, Federal Register Number 11606-028, is currently confined at the United States Penitentiary Terre Haute (USP Terre Haute). His address is:

Deandre Armour, Federal Register Number 11606-028,
USP Terre Haute
P.O. Box 33
Terre Haute, IN 47808

Due to an institutional emergency, Mr. Armour was not able to send legal mail out at the regular scheduled time on Monday February 4, 2019. To my understanding his legal correspondence was processed on the next available time on Tuesday February 5, 2019. We try to ensure all legal timelines are met although institutional needs take precedence. If you need any other verification, I will do my best to accommodate you.

I trust this information will assist you processing Mr. Armour's request.

Sincerely


A. Vaughn,
Case Manager

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 12, 2018
Decided December 21, 2018

Before

DIANE S. SYKES, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 18-1831

DEANDRE ARMOUR,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District
Court for the Southern District of Indiana,
Indianapolis Division.

No. 1:17-cv-00613-SEB-TAB

Sarah Evans Barker,
Judge.

ORDER

Deandre Armour has filed a notice of appeal from the denial of his motion under 28 U.S.C. § 2255 and an application for a certificate of appealability. We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

February 15, 2019

By the Court:

No. 18-1831	DEANDRE ARMOUR, also known as DEANDRA ARMOUR, Petitioner - Appellant v. UNITED STATES OF AMERICA, Respondent - Appellee
Originating Case Information:	
District Court No: 1:17-cv-00613-SEB-TAB Southern District of Indiana, Indianapolis Division District Judge Sarah Evans Barker	

Upon consideration of the PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC, which the court construes as a motion to file a belated petition for rehearing, filed on February 14, 2019, by the pro se appellant,

IT IS ORDERED that the motion is DENIED.

form name: c7_Order_BTC(form ID: 178)

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