

IN THE SUPREME COURT
OF THE UNITED STATES

JAMES MCINTOSH,) USCA NO. 172825
Appellant/Petitioner,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)

APPELLANT'S MOTION REQUESTING CLERK TO
FILE OUT OF TIME MOTION FOR WRIT OF
CERTIORARI OF MARCH 14, 2019,
PURSUANT TO 28 U.S.C. 2101(c)

TO: THE HONORABLE JUDGES OF THE ABOVE SAID COURT

I. INTRODUCTION

NOW COMES James McIntosh, a pro-se Appellant, requesting that this Honorable Court Order the Clerk of this Court to file Appellant's out of time petition for Writ of Certiorari of March 14, 2019.

Appellant has attached to this motion a prior Letter/Motion to this Honorable Court written on May 9, 2019, along with attached Exhibits 1 to 7, which the Clerk received on May 17, 2019, stating Appellant's reasons why Appellant's Motion for Writ of Certiorari was timely filed on March 14, 2019. The Clerk, however, never filed Appellant's above attached Letter/Motion, with Exhibits 1 to 7, as a motion for this Honorable Court to

review, as well as answer. (See Letter/Motion of March 9, 2019 - Exhibit 1.) Instead, the Clerk sent Appellant a letter stating that Appellant may resubmit his petition, along with a Motion Directing the Clerk to File a Petition Out of Time. (See Exhibit 2.)

The Clerk cited Rules 13.1, 29.2 and 30.1 as being applicable to Appellant's petition as untimely. This assessment by the Clerk is totally in error because the Clerk's assessment conflicts with 28 U.S.C. § 2101(c), which states in part, "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action suit or proceeding before the Supreme Court for review shall be taken or applied for within 90 days after entry of such judgment or decree."

In Hibbs v. Winn, 542 U.S. 88 (2004), this Honorable Court states, "Were this Court to read Rule 13 as the sole guide so that only a party's rehearing could reset the statute 90 day count, the Court would lose sight of the congressional objective underpinning, 28 U.S.C. 2101(c), Appellate Courts final adjudication Congress indicated in which marks the time from which the filing period begins to run."

In addition, this Court also stated, "that 28 U.S.C. 2101 takes priority over the procedural rules adopted by the U.S. Supreme Court for orderly transaction of its business." This Court also stated, "When Court-created rules fail to anticipate

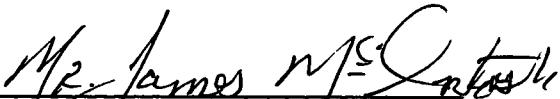
unusual circumstances that fit securely within a federal statute compass, the statute controls the Court's decision."

II.

CONCLUSION

Wherefore, Appellant humbly requests that this Honorable Court Order that the Clerk, Scott S. Harris, file Appellant's out of time Writ of Certiorari filed on March 14, 2019, pursuant to 28 U.S.C. § 2101(c), so that this Honorable Court may rule on it with a proper finding of facts to bring forth a proper conclusion of law in the interest of justice.

Respectfully submitted,


James McIntosh
Reg. No. 50931-066
Fairton FCI
Post Office Box 420
Fairton, NJ 08320-0420

Dated this 24th day of October, 2019.

CLD-022

October 26, 2017

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-2825**

JAMES MCINTOSH, Appellant

VS.

WARDEN FAIRTON FCI, ET AL.

(E.D. Pa. Civ. No. 2-17-cv-02666)

Present: CHAGARES, GREENAWAY, Jr., and GREENBERG, Circuit Judges

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

MMW/PJC/jw/jk

ORDER

Appellant's request for a certificate of appealability is denied. See 28 U.S.C. § 2253(c); Slack v. McDaniel, 529 U.S. 473, 484 (2000). Jurists of reason would not debate that Appellant's habeas petition was properly dismissed by the District Court as an unauthorized second or successive petition under 28 U.S.C. § 2254 that it lacked jurisdiction to consider. See 28 U.S.C. § 2244(b); Burton v. Stewart, 549 U.S. 147 (2007); Robinson v. Johnson, 313 F.3d 128, 139 (3d Cir. 2002). To the extent Appellant seeks to pursue claims based on new evidence of his innocence, he should file an application in this Court for leave to file a successive petition under 28 U.S.C. § 2244(b).

By the Court,

s/Michael A. Chagares
Circuit Judge

Dated: February 13, 2018

JK/cc: James McIntosh



A True Copy:

Patricia S. Dodsweat

Patricia S. Dodsweat, Clerk
Certified Order Issued in Lieu of Mandate

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