

**IN THE
UNITED STATES SUPREME COURT**

GERALD W. DAHLEM

LASC: 18-KH-0105

VERSUS

NO: _____

5TH DISTRICT CIR.

STATE OF LOUISIANA, ET AL.

DEC. 17, 2019

**MOTION FOR FILING
“OUT OF TIME”**

NOW INTO COURT, comes Movant, Gerald w. Dahlem, who respectfully request for the Clerk of this Honorable Court, to file this *Motion* along with *Motion for Leave to Proceed in Forma Paupers* and the attached *Petition for Writ for Certiorari*.

Movant avers that on September 17, 2019, Jacob Levitan, in the course and performance of his duties as Clerk for this Court returned the *Petition for Writ of Certiorari*, which was sent by U.S Postal Service, on September 13, 2019, citing that the “petition is out of time.”

Mr. Levitan cites that “[t]he date of the lower court judgment or order denying a timely filed petition for rehearing was February 25, 2019.”¹ In support of this contention, Mr. Levitan cites Rules 13.1, 29.2 and 30.1.²

Movant further avers that Mr. Levitan was correct that the decision of the Louisiana Supreme Court was handed down on February 25, 2019; however, Movant’s request for a rehearing was denied on August 12, 2019.³

In support of this motion, Movant asserts that the rule used by the Louisiana Supreme Court, in rehearing application decision, as “not considered,” due to Rule IX, § 6, is “duplicitous” and “ambiguous.”

¹ See, Exhibit “P-1- *In Globo*”-Judgment of Louisiana Supreme Court

² See, Exhibit “P-2- *In Globo*”- Letter from Mr. Levitan concerning timeliness of filing.

³ See, Exhibit “P-3 – *In Globo*”-Judgment on Rehearing from the Louisiana Supreme Court.

As the rule cited by the Louisiana Supreme Court states in pertinent part:

“Rule IX, § 6. An Application for rehearing will not be considered when the court has merely granted or denied an application for writ of certiorari or a remedial or other supervisory writ.”

Now, Movant is acting *pro-se*, and the word merely, as defined in the Webster’s Dictionary clearly states: “being nothing more than, only, simply.

Therefore, when Movant received the Louisiana Supreme Court ruling on February 25, 2019, that constituted a one page denial with an attached *per curiam*, stating that movant had failed to meet his burden of proof and failed to show that he was subjected to ineffective assistance of counsel, this constituted to movant, to be more than simply a denial, more than only a denial, and obviously more than a one page denial.

To a *pro-se* litigant, this denial decision with the *per curiam*, would tend to make him think, that he could provide the courts with documentation that would in fact sustain his claims, and relieve his burden of proof.

Movant is arguing / litigating “plain error” and / or “structural defect” in the State Court proceedings, of the lower courts, elements that affected the whole trial and several of Movant’s United States Constitutional rights, being tried by a six-person jury when a twelve-person jury was required, by State Statutory Law and State Constitutional Law.

Movant further avers that based upon the decision of August 12, 2019, which was made pursuant to a timely filed request for a rehearing, should not divest this Honorable Court of jurisdiction in this matter, thereby giving this Honorable Court the authority to hear the merits of this case. Timeliness of the rehearing application was not in question, because it was filed within the fourteen day time limitation.

Movant filed a subsequent motion for leave, to file a *Writ of Certiorari*, into this Court and the Clerk again returned the filings, Clara Houghteling, stating that the document from the Supreme Court of Louisiana, dated August 12, 2019; does not appear to be an order denying a timely petition for rehearing.⁴

Therefore, Movant has provided as evidence, a reformatted copy of the actual motion for a rehearing that was filed into the Louisiana Supreme Court.⁵ Movant has also provided as evidence, a copy of the receipt for mailing, provided for indigent inmates from the Department of Public Safety and Corrections, Correctional Services.⁶

As evidenced, on the receipt, the Motion for Rehearing under Dkt. No. 2018-KH-0105, was sent out by the Department of Corrections on March 8, 2019. The original ruling from the Louisiana Supreme Court was on February 25, 2019, therefore, a timely motion for rehearing was filed before the fourteen day deadline, which would have been on March 11, 2019, and as evidenced in footnote 3, is the document that was received from the Louisiana Supreme Court.

Clearly, this ruling dated August 12, 2019, is an order, due to the fact that it evidences seven of the Louisiana Supreme Court Justices' initials on it, and in Louisiana proceedings, a reconsideration is the same as a rehearing. Movant has also provided in the attached envelope to this motion, all original rulings from the Louisiana Supreme Court, Original Receipt of mailing, and an original Motion for Rehearing that was filed.

Furthermore, Movant has now filed this Motion for Leave, directed to Associate Justice, Samuel A. Alito, who resides over the Fifth Circuit District, where this case arises.

⁴ See, Exhibit "P-4 – *In Globo*" Letter from Mrs. Clara Houghteling.

⁵ See, Exhibit "P-5 – *In Globo*" Motion for Rehearing filed into the Louisiana Supreme Court.

⁶ See, Exhibit "P-6 – *In Globo*" Receipt for mailing from Department of Corrections.

Once again, Movant's filings were returned by Clara Houghteling, Clerk for this Honorable Court, and advised Movant to file this instant motion, directing the Clerk to file pleadings "out of time."⁷

Movant again reiterates that the definition of the word, "**merely**," as used in the Louisiana Supreme Court ruling, citing **Rule IX, § 6**, is clearly defined in Webster's II., College Dictionary, Third Edition, pg. 702: merely – "nothing more than."

WHEREFORE, Movant humbly prays that this Honorable Court grant this instant *Motion for filing Out of Time*, thereby allowing Movant's *Petition for Writ of Certiorari*, to be filed and pleadings to be ruled on the merits of such.

Respectfully Submitted,
GERALD W. DAHLEM, No. 384259
Raymond LaBorde Corr. Cent. H-B2
1630 Prison Road
Cottonport, LA. 71327

Gerald W. Dahlem #384259

CERTIFICATE OF SERVICE

I, hereby certify that on the 17th Day of December, 2019, that a copy of this motion and all filings attached with exhibits, was sent by way of U.S. Postal Service, properly addressed with necessary postage prepaid, to all parties with an interest in this matter.

Gerald W. Dahlem #384259

⁷ See, Exhibit "P-7 – *In Globo*"- Letter from Clerk of this Court. Clara Houghteling.

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2018-KH-0105

VS.

GERALD W. DAHLEM

IN RE: Gerald W. Dahlem; - Defendant; Applying For Supervisory
and/or Remedial Writs, Parish of Washington, 22nd Judicial District
Court Div. G, No. 12-CR8-115995; to the Court of Appeal, First
Circuit, No. 2017 KW 1124;

February 25, 2019

Denied. See Per Curiam.

MRC

BJJ

JLW

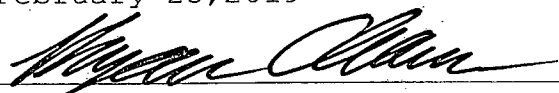
GGG

JDH

SJC

JTG

Supreme Court of Louisiana
February 25, 2019



Deputy Clerk of Court
For the Court

P.1

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