

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

MICHAEL WAYNE ELLIS,

Petitioner,

v.

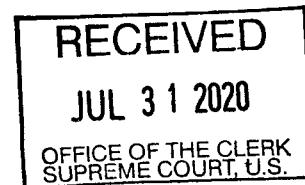
UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Tenth Circuit

MOTION TO DIRECT THE CLERK TO FILE OUT OF TIME

The Petitioner, Michael Wayne Ellis, by and through his court-appointed counsel, Benjamin C. McMurray, respectfully requests this Honorable Court to direct the Clerk to file his Petition for Writ of Certiorari out of time. Counsel filed the petition electronically on Friday, July 17, 2020, which would have been timely. An email response from the court said: "Your Petition for a Writ of Certiorari has been submitted with a submission date of Friday, July 17, 2020. It will be reviewed once the hard copy is received. If you are not expecting this email, please contact the Supreme Court Electronic Filing Support Group at



(eFilingSupport@supremecourt.gov).” Counsel understood this email to mean that the petition had been accepted for filing as of that date.

Additionally, counsel misunderstood Rule 29.2 to allow the paper copies to be received within three business days of the electronic filing. Because counsel and staff were working remotely due to COVID, the determination was made to submit the paper copies via UPS on Monday, July 20, 2020. The paper copies were received at the court on Tuesday, July 21, 2020.

On July 28, 2020, counsel received notice that the petition had been rejected as untimely because the paper copies were not postmarked by July 17. However, counsel substantially complied with the filing deadline by submitting a timely petition through the Court’s electronic filing system. In light of that substantial compliance, the confusion caused by the email, the challenges presented by submitting paper copies during COVID, and the immediate submission one business day later, Mr. Ellis asks the Court to direct the clerk to file his submission out of time.

Respectfully submitted,

/S/ Benjamin C. McMurray
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