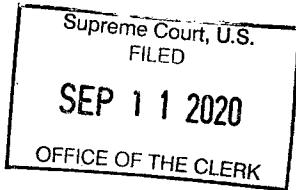


No. 20 M 30



IN THE SUPREME COURT OF THE UNITED STATES

Derry Sykes, Pro Se,
Petitioner,

against:

New York State Office of Children And Family Services; New York City
Administration for Children Services; State of New Jersey Department of
Family Services Div. of Child Protection And Permanency.

Defendants.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT
FOR THE SECOND CIRCUIT

MOTION TO FILE OUT OF TIME WRIT OF CERTIORARI

Derry Sykes, Pro Se Litigant
70 east 115th Street, Apt. 6H
New York, New York 10029
(813) 471-8241
sykesderry@yahoo.com

RECEIVED

SEP 23 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOTION TO FILE OUT OF TIME WRIT OF CERTIORARI

Petitioner Derry Sykes, appearing pro se, in this proceeding pursuant to the United States Supreme Court Rule 30.4, in the above captioned referenced matter respectfully, submit this Motion for permission to File Out of Time Writ of Certiorari to this Clerk Office of the United States Supreme Court for the purpose of requesting petitioner be allowed to file a late Writ of Certiorari extending through the September 8, 2020 deadline from Order of Dismissal of petitioner appeal from the Second Circuit Court of New York dated March 11, 2020, on the following reasons petitioner respectfully pray to persuade for the relief be granted as follows:

1. Petitioner filed his writ of certiorari to this Supreme Court postmarked August 26, 2020, and received on September 4, 2020, which was deemed timed barred by the Supreme Court Rule 13.1 that requires submission be received within 90 days from entry of judgment /order of the sought to be reviewed, as correspondence from this Clerk Office dated September 5, 2020, indicates.
2. Also, the correspondence from the Clerk Office dated September 5, 2020, directs petitioner to file an motion directing this Clerk office to file the writ of certiorari as "out of time" pursuant to this United Stated Supreme Court Order List: 589 U.S., dated Wednesday, April 15, 2020,

and the Court Clerk indicated must be any such relief must be presented pursuant to Supreme Court Rule 30.4.

3. Pursuant to United States Supreme Court Rule 30.4, the relief requested herein, maybe presented in the form of a letter to the Clerk Office setting out specific reasons why an extension of time to file out of time writ of certiorari is justified. This motion maybe acted on the Clerk Office in the first instance and, any party aggrieved by the Clerk's Office action may request that the motion be submitted to a Justice or to this Court.
4. This is petitioner's first request for an extension of time to file an out time writ of certiorari.
5. Pursuant to the United States Supreme Court Rule 30.4, the Clerk's Office has the authority to grant the additional time and relief requested herein, to file an out of time writ of certiorari.
6. Petitioner request an extension of time to file an out of time writ of certiorari based on the following meritorious reasons set forth in Supreme Court Rule 30.4:
 - a. Due to the fact surrounding clerical errors petitioner did not receive notification of the entry of the Order of the Second Circuit Court of Appeals dismissing petitioner's appeal dated March 11, 2020, until May 21, 2020, in violation of Federal

Rules of Appellate Procedure Rule 4[a][5][A][B][i][ii]; Rule 36[b]; and Rule 45[c].

- b. Because petitioner was not given timely notice of entry of the Order of the Second Circuit Court of Appeals until May 21, 2020, and considering the fact that petitioner was sent the an erroneous case cite of someone else dismissal of a civil appeal creates additional fatal prejudicial error that proved harmful to petitioner and deprivation of petitioner's Fourteenth Amendment United States Constitutional, Due Process and Equal Protection of Law Clause.
- c. As consequences of these clerical errors, negligence, and mistakes made by the Clerk of the Second Circuit Court of Appeals affected and resulted in he denial of petitioner's writ of certiorari being denied by this Supreme Court on September 5, 2020, as being time barred by Supreme Court Rule 13.1., and this failure to give Constitutionally required timely notice pursuant to the Federal Rules Appellate Procured stated in the above fails to comply with the due process standards enumerated in the Fourteenth Amendments of the United States Constitution.
- d. Due to the precautions implement by this United States Supreme Court in response to the COVID 19 pandemic Order

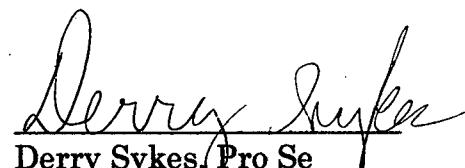
List: 589 U.S., dated March 19, 2020, and April 15, 2020, petitioner was never made aware until about early August 2020, and these Supreme Court Orders were not made aware to petitioner the Second Circuit Court or by any other means of notifications.

- e. This is the first such relief requested by petitioner for an motion to file out of time writ of certiorari to this United States Supreme Court pursuant to Rule 30.4, with respect to Second Circuit Court of Appeals case no. 19-cv-3360.

Based on the foregoing, respectfully prays for an Order granting submission of his motion to file out time writ of certiorari pursuant to Rule 30.4, in light of petitioner's position of be deprived of his right to a timely entry of judgment/order from the Second Circuit Court of Appeals, and other relief deemed equitable.

Dated: September 11, 2020.

Respectfully Submitted,



Derry Sykes, Pro Se
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New York, N.Y. 10029
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No._____

IN THE SUPREME COURT OF THE UNITED STATES

Derry Sykes, Pro Se,
Petitioner,

-against-

New York State Office of Children And Family Services; New York City
Administration for Children Services; State of New Jersey Department of
Family Services Div. of Child Protection And Permanency.
Defendants.

**PETITIONER'S AFFIDAVIT IN SUPPORT OF MOTION TO FILE OUT OF
TIME WRIT OF CERTIORARI FOR THE SECOND CIRCUIT PURSUANT
TO UNITED STATES SUPRME COURT RULE 30.4**

1. Derry Sykes, appearing pro se, being duly sworn, deposes and says:
2. That I am the petitioner in the above captioned referenced matter and respectfully submit this Motion "To File Out of Time Writ Of Certiorari" pursuant to United States Supreme Court Rule 30.4, as directed by this Court Clerk's correspondence dated September 5, 2020, upon denying submission of petitioner's writ of certiorari as being time barred pursuant to Supreme Court Rule 13.1, from the date of Order of Dismissal of petitioner appeal for the Second Circuit Court of Appeals of New York, dated March 11, 2020, Docket No. 19-cv-3360. (See, Petitioner's Exhibit "A")
3. Subsequently, petitioner's was returned and directed to file an motion for out of time review of his writ of certiorari as indicated in the Supreme Court Clerk's Office correspondence dated September 5, 2020, that petitioner if

wish may resubmit a petition for a writ of certiorari with a motion directing the Clerk of this Court to file it out-of-time, pursuant to Supreme Court Rule 30.4. (See, Petitioner's Exhibit "B")

4. Petitioner contends that due lack of timely notification of entry of the Second Circuit Court of Appeals Order of Dismissal of his appeal some 42 days later constitutes a major deprivation of his due process of law under the Fourteenth Amendment of the United States Constitution, Equal Protection Clauses, warrant that this Clerk's Office by law governing the equal due process protection grant the relief sought in this pleading allowing petitioner to resubmit his writ of certiorari due the pure prejudicial clerical errors, negligence and mistakes made by the Second Circuit Court of Appeals.

5. In addition, the Federal Rules of Appellate Procedures (F.R.A.P.), dictates that the Second Circuit Court of Appeals violation of F.R.A.P. Rule 4[a][5][6][A][B][I][ii]; Rule 36[b]; and Rule 45[c], renders the petitioner failure to timely notice to entry of judgment of dismissal of his appeal (See, Exhibit "A") according to these Rules a defective and a nullity.

6. Petitioner's deprivation of his procedural due process of rights to timely notification was a crucial factor in petitioner not being able to prepare and a submit a timely submission of his writ of certiorari to this Supreme Court under the strict filing requirements of Supreme Court Rule 13.1, unjustly resulting in the denial of submission of his writ of certiorari on September 5, to this Supreme Court (See, Petitioner's Exhibit "B")

7. Petitioner is a 61 years old Black American cancer survivor who only completed an 8th grade education and having no training at law and the disadvantages and challenges he faces legally, technically and financially navigating these Federal Court Appellate Procedures are unequal then to plague and saddle petitioner with further un-necessary and unlawful abuses of law is unconstitutional according to the Fourteenth Amendment of the United States.

8. For example, petitioner had to prepare and submit a motion to the Second Circuit of Appeals to vacate and Void the Order of Dismissal of his appeal dated March 11, 2020, Docket No. 19-cv-3360, on ground that the lack of timely entry of judgment runs a foul of both the Federal Rules of Civil Procedures and the Federal Rules of Appellate Procedures, as raised in his motion to Second Circuit Court to Vacate and Void the Order of Dismissal of his civil appeals on meritorious grounds raised in that pleading. (See, Petitioner's Exhibit "C")

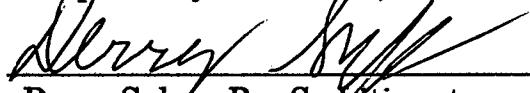
9. It's petitioner's fundamental due process of law rights to for an opportunity to be notified in a timely, and opportunity to be heard in an timely manner absence any hindrances or interference with these rights that violates the Constitutional protections post judgment remedies doctrines of the Fourteenth Amendment of the United States Constitution, Equal Protection of Law Clauses, requires by all applicable Supreme Court rulings and Federal Statutory Provisions and Regulations to safeguard petitioner's equal

access to the Courts for to seek rightful adjudications of his claims. It can not be concluded that petitioner was given fair and lawful treatment by the Second Circuit Court of appeals lack of timely notice of entry of their Order of Dismissal dated March 11, 2020, Docket No. 19-cv-3360, required an opportunity for petitioner to be able to resubmit his writ of certiorari absent these variances and obstacles outside the scope of Federal Rules Appellate Procedure and Federal Rules of Civil Procedure relied here by petitioners as authorized and prevailing law to allow the relief sought in this proceeding.

Based on the foregoing reasons, petitioner respectfully prays for an Order from this Supreme Court Clerk's Office granting this proceeding to allowing petitioner to resubmit his writ of certiorari to seek review of the Second Circuit Court of Appeals Order of Dismissal of his civil appeal dated March 11, 2020, Docket No. 19-cv-3360, as justice so requires.

Dated: September 11, 2020.

Respectfully Submitted,



Derry Sykes, Pro Se Litigant
70 east 115th Street, Apt. 6H
New York, New York 10029
(813) 471-8241
sykesderry@yahoo.com

Sworn to before me this
11 day of September 2020


Notary Public

LYNN YOUNG
Notary Public, State of New York
No. 01Y06212220
Qualified in New York County, 2021
Commission Expires October 13, 2021

EXHIBIT “A”

MANDATE

United States Court of Appeals
FOR THE
SECOND CIRCUIT

S.D.N.Y. - N.Y.C.
18-cv-8309
Woods, J.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of March, two thousand twenty.

Present:

Reena Raggi,
Denny Chin,
Richard J. Sullivan,
Circuit Judges.

Derry Sykes,

Plaintiff-Appellant,

v.

19-3360

New York State Office of Children and Family Services, et al.,

Defendants-Appellees.

Appellant pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



Catherine O'Hagan Wolfe

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit



Catherine O'Hagan Wolfe
MANDATE ISSUED ON 06/17/2020