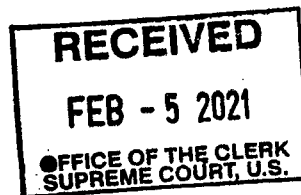


1 ROBERT BILLIE # BJ0919
2 84-124
3 P.O. BOX 5002
4 California, CA 92233
5 Petitioner in Pro Se

6 IN THE
7 SUPREME COURT OF THE UNITED STATES



8
9 ROBERT LEE BILLIE,
10 Petitioner,

Case No.
USCA. 19-55608

PETITIONER'S
MOTION TO DIRECT CLERK TO FILE []
OUT OF TIME PETITION

11
12 V.

Date: Under Submission
Time: Under Submission
Judge: Under Submission (Justice Kagan)

13
14 RALPH DIAZ,
Respondent.

15 TO: THE HONORABLE COURT AND CLERK

16
17 PLEASE TAKE NOTICE that petitioner is moving the clerk of the above-
18 entitled court to file his previously submitted, received and returned as
19 out-of-time petition for Certiorari, in the interest of justice based on the
20 good cause grounds presented below:

21 A. State ordered COVID-19 restrictions led to unanticipated Department
22 of Correction guidelines that severely encumbered petitioner's ability to file his
23 petition for certiorari - within time.

24 B. Petitioner construed this Court's order, 589 U.S., as permitting reasonable
25 extensions for Certiorari petitions to be filed, when he submitted applications.

26
27 The motion will be based on the motion, attached memorandum of points
28 and authorities, declaration in support of, and on any such documentary evidence

PETITIONER'S MOTION TO DIRECT CLERK TO FILE
OUT-OF-TIME PETITION

1 that may be presented at the time the motion is heard.

2
3 Dated: January 26, 2021

Respectfully Submitted,

4
5 Robert Billie

6 ROBERT BILLIE
7 Petitioner in Pro Se
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1 ROBERT BILLIE # BJ0919
2 P.O. Box 5002
3 Calipatria, CA 92233
4 Petitioner in Pro Se

5 IN THE
6 SUPREME COURT OF THE UNITED STATES

7
8
9 ROBERT LEE BILLIE, Petitioner,

Case No. USCA 19-55608
PETITIONER'S
MEMORANDUM OF POINTS AND
AUTHORITIES

10
11 V.

Date: Unassigned
Time: Unassigned
Judge: Unassigned (Justice Kagan)

12
13
14 RALPH DIAZ, Respondent.

15 MEMORANDUM OF POINTS AND AUTHORITIES

16
17 BACKGROUND

18 On May 15, 2020, the United States Court of Appeal for the Ninth Circuit
19 denies Petitioner's Request for Certificate of Appealability from a denial of his
20 Petition for Writ of Habeas Corpus by the Federal District Court of Central
21 California.

22 In July of 2020 Petitioner submits for filing an Application for Extension
23 of Time for him to file his Certiorari petition in the above-entitled court, complete
24 with proof of service. Petitioner does so because he would be unable to meet the
25 90 day deadline set forth in Rule 13.1, as there are many institutional impediments
26 at his prison affecting his power to do so. Petitioner is unaware of any new court
27 rules connected to the worldwide COVID-19 crisis.

28
PETITIONER'S MOTION TO DIRECT CLERK TO FILE
OUT-OF-TIME PETITION

1 Petitioner receives his application from the clerk of the above-entitled
2 court designated as returned "in light of the order 589 U.S.", which was attached to
3 the clerk's notice. Petitioner's returned application was stamped as Received on July, 24,
4 2020.

5 In September of 2020, petitioner submits another application for
6 Extension of Time based on his inability to meet the 150 day deadline for his
7 Centromani petition to be filed-provided for in the court's U.S. 589 order. COVID-19
8 restrictions, institutional problems and administrative indifference to a prisoners right
9 of access to the courts are the basis of the Application for Extension of Time.
10 Petitioner's review of the Court's U.S. 589 order does nothing to lead him to
11 believe Applications for Extension of Time would now be precluded or not favored.
12 In mid to late October of 2020 petitioner's Application for Extension
13 of Time is returned to him by the clerk of the Court stamped as received on October
14 6, 2020. The attached clerk's notice advised petitioner that his application was
15 returned for the reasons previously stated in prior correspondence. Despite that response
16 Petitioner completes his Petition for Centromani and mails it to the clerk's office
17 included with proof of service on November 10, 2020.

18 The Centromani Petition is eventually returned to petitioner by the
19 clerk, who notifies him that his petition is deemed out-of-time. Moreover, that
20 that an "otherwise untimely petition being filed by an inmate confined in an institution
21 may not be docketed unless it was" properly mailed employing institutional mail
22 and accompanied by a notarized statement or declaration verifying such. Petitioner
23 does so and re-mails his petition with attached declaration and exhibits on December
24 16, 2020, complete with proof of service.

25 Petitioner's Petition for Centromani, and attached Declaration with
26 exhibits are returned to him in January of 2021, by the Clerk of the Court. Notice
27 is included advising his petition is still considered out-of-time and if he intends
28 to "move forward with the petition, a motion to direct the clerk to file an out-of-

time petition must accompany" it.

I.
INTRODUCTION

Petitioner's motion here to have the clerk of the court file his out-of-time petition should be granted for several reasons, which cumulatively affected his opportunity at meeting deadlines severely. First, the law "librarians" at petitioner's prison are not trained in the law and are apathetic towards prisoners' right of access to the courts. Second, after the national COVID-19 crisis appeared - the State Department of Corrections sought to bind individual prison personnel to a generally basic power to aid legal researchers that ultimately was convoluted. Third, irrespective of the plan developed by CDCR and its subordinate wardens including their personnel, a prisoner's right of access to the court was and continues to be relegated frequently as a favor. Fourth, in spite of petitioner's several attempts to protest the breaches to his first amendment rights, in addition, correct the mistakes and failures - the prison administrators and their subordinates refuse to accommodate his pleas for aid in preparing and submitting his Petition for Certiorari - amongst other petitions. Nonetheless, petitioner has remained highly diligent in working with the court in seeking to overcome the multitude of social, institutional and constitutional encumbrances before him in respect to timely file his Petition for Certiorari. Therefore, the court, and or the clerk's office should grant petitioner's motion and file his out-of-time petition in the interest of justice.

II.
PETITIONERS OUT-OF-TIME CERTIORARI PETITION SHOULD BE FILED IN THE INTEREST OF JUSTICE BASED ON GOOD CAUSE

Even before the State of California's Department of Corrections and Rehabilitation's March 18, 2020, administrative memoranda was issued - there were impediments petitioner was forced to deal with when seeking to access his right of Access to the Courts. Yet, utilizing logic and foresight he was able to overcome

PETITIONER'S MOTION TO DIRECT CLERK TO
FILE OUT-OF-TIME PETITION

these hurdles over time, however, COVID-19 spun those unreliable and dilatory parameters into further prejudicial nuances. Below Petitioner will show the adverse effects in total, that caused his Petition for Certiorari to be out-of-time, furthermore, the other impactful circumstances.

a. CALIFORNIA STATE PRISON'S RESPONSE TO THE WORLDWIDE COVID-19 CRISIS IN RESPECT TO PETITIONER'S ACCESS TO HIS RIGHT TO PETITION HAS BEEN IMPROPER

California State Prison. Petitioner's place of confinement, maintains a law library(s) offering research computers, a copy machine, and Direct legal mail services for prisoners' use. However, during the covid-19 crisis these prime research tools and Ancillary services necessary for the preparation and presentation of legal arguments, pleadings and briefs connected to prisoners' legal actions have either been withheld from them in part, in total or severely obstructed. Below, Petitioner will tender the numerous factors exacerbating the already difficult institutional problems based on coronavirus modifications. Such as:

- California State Prison Law Library Technicians are not trained in the law.
- Petitioner had to ultimately teach the current Technician how to aid him and other prisoners in requests for shepardizing because the tech was not aware of what shepardizing was, nor how to use that function to fulfill prisoners requests. This occurred in or about August of 2020.
- Physical access to the prisons law library was stopped in March of 2020 without prisoners' knowledge.

- Law Librarians/Technicians would not visit prisoners' housing/buildings to pick up written requests for legal documents or paging.
- When, after complaints were submitted against librarians/technicians for failing to keep stacks of necessary forms for paging requests and other critical forms for prisoners' use in each building - a librarian begins to make visits to housing buildings only to inquire about priority legal users)

PETITIONER'S MOTION TO DIRECT CLERK TO
FILE OUT-OF-TIME PETITION

needs.

- PLU Prisoners are accorded expedited legal research services. Petitioner was not on PLU status because administrators stick to a strict 30 day approval of PLU requests prior to a court imposed deadline or a statutory deadline. Therefore, Petitioner's 90 day, then, 150 day deadline pursuant to Supreme Court Rule 13.1, and, U.S. 589 order respectively, were treated as minor proceedings that would necessitate General Legal User (GLU) research services.
- GLU research status accorded to most prisoners allows librarians to take up to 16 days for paging requests to be fulfilled once received. Consequently, it may take approximately 20 days for Petitioner to be provided case law requested. Additionally, a prisoner may only ask for up to 3 items of inquiries (e.g. Three case law queries) at a maximum of 15 pages for each separate case.
- When Librarians commenced visiting housing buildings - complaints about the lack of legal research resources are, and will continue to harm prisoners' ability to meet deadlines. The librarian advises petitioner and all other prisoners' seeking to access their right of access to the court that the State Supreme court and all federal courts had issued emergency orders extending continuances for a year based on COVID-19 health and safety concerns. The librarian also assured prisoners such as petitioner that these orders protected them from any prejudice.
- Petitioner was eventually furnished these court orders after several weeks and found the librarian was wrong. The court (COVID) emergency orders did not effect The U.S. Supreme court and Certiorari petitions.
- Petitioner was forced on GLU status after not being able to meet his 90 day deadline as he was unaware U.S. 589 order had been issued by the U.S. Supreme court.

PETITIONER'S MOTION TO DIRECT CLERK TO
FILE OUT-OF-TIME PETITION

- 1 - After learning U.S. 589 orders existence petitioner sought a PLU status longer
2 than 30 days based on exceptional circumstances - which was granted but
3 shortly thereafter denied by the librarian based on the warden's command to
4 obey a strict observance to the 30 day PLU status prior to a court deadline.
- 5 - GLU paging was altogether suspended for several weeks by the librarians
6 based on their own unilateral decision - which is unconstitutional
- 7 - Petitioner is granted PLU status 30 days prior to his October 2020 deadline.
- 8 - Petitioner teaches the librarian how to properly operate the Sheppardize
9 function on her computer through virtual instruction (verbal).

10
11 b. PETITION HAS BEEN DILIGENT IN SEEKING TO FILE HIS CERTIORARI PETITION

- 12 - In July of 2020 petitioner urged the U.S. Supreme Court to extend his time
13 to file Certiorari by submitting an Application for Extension of Time for
14 30 additional days.
- 15 - After learning of this court U.S. 589 order and not being able to meet the
16 150 day deadline for Certiorari petitions to be filed, petitioner submits another
17 Application for Extension of Time requesting an additional 30 days after the
18 first Application was returned unfilled.
- 19 - After that Application was returned by the Clerk unfilled based on that offices
20 notice of his application was returned because of the same reasons outlined
21 in the first returned applications notice, i.e. Returned in light of the order 589
22 U.S..
- 23 - Irrespective of the petitioner's second returned Application he submits his
24 completed Petition for Certiorari by mailing it to the Clerk of the above-
25 entitled court complete with proof of service.
- 26 - Petitioner's Petition for Writ of Certiorari is returned to him by the Clerk of
27 the court as deemed out-of-time and lacking a verified declaration of proper
28 mailing through institutional mail. He is also noticed that in order to file

PETITIONER'S MOTION TO DIRECT CLERK TO FILE
OUT-OF-TIME PETITION

1 an out-of-time petition it must be accompanied by a motion to direct the clerk to file the
2 untimely petition.

3
4 C. LAW LIBRARY TECHNICIANS NOR ANY OTHER PRISON PERSONNEL WILL AID PRISONERS
5 SUCH AS PETITIONER IN MAKING REQUIRED COPIES OF LEGAL DOCUMENTS FOR
6 FILING AND OR PROOF OF SERVICE UNLESS THEY SURRENDER THEIR RIGHT TO
7 CONFIDENTIALITY

8 Since librarians will not visit housing buildings for any legal research
9 purpose assistance - prisoners are expected to turnover and legal documents for
10 copying to correction officers unsecured at institution / regular mail pick up.
11 Then allow those documents to be rerouted several times through several hands
12 and not be returned to the prisoner for up to seven days.

13 Prison administration claim COVID-19 it is not possible for prison
14 law librarians / technicians to perform hand to hand, "face to face" document
15 transfers based on COVID-19 health and safety concerns. However, that position
16 is belied by administration's actions in respect to their ordering education department
17 personnel to make bi-weekly physical visits to housing buildings, and, conduct hand
18 to hand work assignment document transfers. The prison distributes new N95
19 masks to prisoners weekly and teachers are provided PPE, therefore it is
20 clear a prisoners' right to confidentiality is an afterthought. As a result petitioner
21 has been unable to obtain copies of any petitions, motions and applications connected to
22 these proceedings.

23 d. PETITIONER HAS SUBMITTED MULTIPLE INSTITUTIONAL GRIEVANCES SEEKING TO
24 REMEDY THE AFOREMENTIONED PROBLEMS TO NO AVAIL

25 Over the course of the past seven months petitioner has attempted to remedy
26 the problems presented above. yet, prison official continue to deny any redress. Officials
27 are not sympathetic towards petitioner's articulation of his shortened Certiorari proceedings
28 and their seriousness.

PETITIONER'S MOTION DIRECTING CLERK TO FILE
OUT-OF-TIME PETITION

2. U.S. 589 ORDER DOES NOT CONTAIN LANGUAGE PRECLUDING APPLICATIONS FOR
EXTENSIONS OF TIME TO FILE CERTIORARI PETITIONS

Order 589 U.S. provides in relevant part that:

"In light of the ongoing public health concerns relating to
COVID-19, the following shall apply to cases prior to a
ruling on a petition for writ of certiorari:

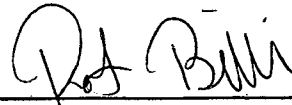
IT IS ORDERED that the deadline to file any petitions for
a writ of Certiorari due on or after the date of this order
is extended to 150 days from the date of the lower court
judgment, order denying discretionary review, or order
denying a timely petition for rehearing."

This court's order does not expressly bar applications for extensions of time and if
petitioner's second application would have been entertained and granted - the immediate
need for aid wouldn't be necessary.

CONCLUSION

The court and clerk should grant petitioner's motion and file his out-of-time
petition in the interest of justice based on the 'numerous institutional, and constitutional
encumbrances coalesced with the social safety and health crisis' connected to
Worldwide COVID-19 risks.

Dated: January 26, 2021


ROBERT

PETITIONER'S MOTION TO DIRECT CLERK TO FILE
OUT-OF-TIME PETITION

1 ROBERT BILLIE # B10919
2 BH-124
3 P.O. BOX 5002
4 Calipatria, CA - 92233
5 Petitioner in Pro Se

6 SUPREME COURT OF THE UNITED STATES

7
8
9 ROBERT LEE BILLIE,
10 petitioner,

11 V.

12
13 RALPH DIAZ,
14 Respondent.

Case No. USCA.

PETITIONER'S
DECLARATION IN SUPPORT OF
MOTION TO DIRECT CLERK TO
FILE OUT-OF-TIME PETITION

Date: Unassigned
Time: Unassigned
Judge: Unassigned (Justice Kagan)

15 I, Robert Billie, declare:

16 1. I am a prisoner confined in the California Department of
17 Corrections and Rehabilitation, more particularly, Calipatria State Prison.

18 2. I am the petitioner in this case and I am representing myself.

19 3. The facts outlined in the memorandum of points and authorities,
20 attached hereto, are true and accurate accounts of the impediments I endured
21 while seeking to meet the deadline for Petitions for Certiorari to be filed.
22 here at Calipatria State Prison. (Pg. 6: Lines 15-27; 7: 1-28; 8: 1-9)

23 4. After reading the Court's 589 U.S. order given to me by the clerk
24 of this court I saw nothing to lead me to construe applications for extensions
25 of time to be precluded.

26 5. I have tried several times to have the prison's law librarians visit
27 my housing building(s) in order to receive my legal documents; such as this
28

PETITIONER'S MOTION TO DIRECT CLERK TO FILE
OUT OF TIME PETITION

1 motion and my petition for certiorari, for copying, in order to preserve my
2 constitutional right to confidentiality. Since September of 2020 librarians have
3 refused to do so, as I've been instructed to disclose my precious original
4 documents to correction officers' unsecured and allow my documents to be routed
5 and handled for several days before I'm supposed to receive my documents
6 in return. I've used this "legal service" before and I've felt retaliatory
7 acts by prison personnel, furthermore, it took 7 or 8 days for my documents
8 to be returned.

9 6. I've submitted numerous Institutional Grievances protesting the prison's
10 administrative practices, and prison personnels' knowing and willful obstruction
11 of my right of access to the courts. When in contrast the same officials provide
12 provide direct in-person services for prisoners' who voluntarily and involuntarily
13 are enrolled in education programs. e.g. GED classes. Prison officials deny my
14 attempts at administrative remedy.

15 I declare under the penalty of perjury under the laws of the State of
16 California and the United States of America that the foregoing is true and
17 correct and executed on January 26, 2021, at Calipatria, California.

18
19 

20 ROBERT BILLE
21 Petitioner in Pro Se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 15 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROBERT LEE BILLIE,

Petitioner-Appellant,

v.

BILL BROWN, Sheriff,

Respondent-Appellee.

No. 19-55608

D.C. No. 2:18-cv-09218-SK
Central District of California,
Los Angeles

ORDER

Before: CANBY and CALLAHAN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

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