FILED
United States Court of Appeals
Tenth Circuit

September 8, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

KENNETH J. COX,

Petitioner - Appellant,

v.

ED CALEY, Warden of the Colorado Territorial Correctional Facility; THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents - Appellees.

No. 21-1201
(D.C. No. 1:20-CV-03272-LTB-GPG)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MATHESON**, **BRISCOE**, and **PHILLIPS**, Circuit Judges.

Kenneth J. Cox, a Colorado state prisoner proceeding pro se,[1] seeks a certificate of appealability ("COA") to challenge the district court's dismissal of his 28 U.S.C. § 2254 application for a writ of habeas corpus. He also seeks leave to proceed *in forma pauperis* ("*ifp*"). Exercising jurisdiction under 28 U.S.C. § 1291, we deny both requests and dismiss this matter.

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] Because Mr. Cox is pro se, we construe his filings liberally, but we do not act as his advocate. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

I. BACKGROUND

A jury convicted Mr. Cox in Colorado state court of 14 counts related to the sexual abuse of his stepdaughters. The court sentenced him to 24 years to life in prison on each of two of the fourteen counts, to run consecutively. His sentences on the remaining counts were to run concurrently. The Colorado Court of Appeals affirmed his conviction on direct appeal, and the Colorado Supreme Court denied certiorari.

After the mandate of the Colorado Court of Appeals issued, Mr. Cox filed a postconviction motion for reconsideration of his sentence under Colorado Rule of Criminal Procedure 35(b). The sentencing court granted his motion and reduced each of his consecutive sentences to 15 years to life.

Mr. Cox filed a 28 U.S.C. § 2254 application for habeas corpus in federal court on November 2, 2020. The state moved to dismiss the application as untimely under 28 U.S.C. § 2244(d)(1)(A), which provides that "[a] 1-year period of limitation . . . shall run from . . . the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review."

The magistrate judge found that Mr. Cox's conviction became final on January 11, 2016. He found the limitation period was tolled under 28 U.S.C. § 2244(d)(2) from February 16, 2016 to December 7, 2016, while Mr. Cox's Rule 35(b) motion was pending. The limitation period thus expired on November 3, 2017—three years before Mr. Cox filed his § 2254 application. The magistrate judge also concluded that equitable tolling was not available to Mr. Cox because he had not shown that he pursued his rights

diligently or that some extraordinary circumstance prevented timely filing. He recommended that the district court dismiss the application as untimely.

The district court adopted the magistrate judge's recommendation, dismissed Mr. Cox's application, and denied a COA. Mr. Cox appealed and filed an opening brief, which we construe as a combined brief and application for a COA. *See* 10th Cir. R. 22.1(A).

II. DISCUSSION

A. *COA Standard*

Before we may exercise jurisdiction over Mr. Cox's appeal, he must obtain COAs for the issues he wishes to raise. *See* 28 U.S.C. § 2253(c)(1)(A), (c)(3). Where, as here, the district court dismissed the § 2254 application on procedural grounds, we will grant a COA only if the applicant can demonstrate both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

B. *Analysis*

Mr. Cox has not made the showing required for a COA. The district court correctly dismissed his § 2254 application because it was filed outside the one-year statute of limitations provided in 28 U.S.C. § 2244(d)(1)(A). And Mr. Cox failed in his brief to address this ground for dismissal.

Subject to exceptions not applicable here, state prisoners must file their § 2254 applications within one year of the day "the judgment [of the state court] became final by

the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). This period is tolled while a state post-conviction petition is pending. *Id.* § 2244(d)(2).

The Colorado Supreme Court denied certiorari on Mr. Cox's direct appeal on October 13, 2015. Mr. Cox did not seek certiorari from the United States Supreme Court, so his conviction became "final" for purposes of § 2244(d)(1)(A) when his time to do so expired on January 11, 2016. *See Al-Yousif v. Trani*, 779 F.3d 1173, 1178 (10th Cir. 2015); Sup Ct. R. 13.1 (petition for certiorari must be filed within 90 days of entry of order denying discretionary review in state court of last resort).

The one-year limitation period was tolled, with 330 days remaining, when Mr. Cox filed a state post-conviction motion for sentence reconsideration on February 16, 2016. 28 U.S.C. § 2244(d)(2). The limitation period began to run again when the time for appealing the state court's order granting his motion for sentence reduction expired on December 7, 2016. The limitation period expired 330 days later, on November 3, 2017.[2] Mr. Cox's § 2254 petition, filed in November 2020, was therefore untimely.

In his brief on appeal, Mr. Cox does not address the timeliness of his application. He has not challenged the district court's finding that his application was untimely or attempted to demonstrate that any exceptions to the one-year time bar apply. Instead, he makes various arguments concerning the merits of his § 2254 application for relief. He

[2] Mr. Cox also filed a second state post-conviction motion on February 5, 2018, which was denied. But that did not toll the limitations period under § 2244(d)(2) because the period had already expired.

has therefore waived any challenge to the district court's conclusion that his application should be dismissed as untimely. *See Toevs v. Reid*, 685 F.3d 903, 911 (10th Cir. 2012) (The rule that "[a]rguments not clearly made in a party's opening brief are deemed waived" applies "even to prisoners who proceed pro se and therefore are entitled to liberal construction of their filings.").

Mr. Cox has not shown that reasonable jurists would debate the correctness of the district court's decision. He therefore is not entitled to a COA.

III. CONCLUSION

We dismiss this matter. We also deny Mr. Cox's request to proceed *ifp*.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-03272-LTB-GPG

KENNETH J. COX,

Petitioner,

v.

ED CALEY, *Warden of the Colorado Territorial Correctional Facility*, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

JUDGMENT

Pursuant to and in accordance with the Order entered by Lewis T. Babcock, Senior District Judge, on May 17, 2021, it is hereby

ORDERED that Judgment is entered in favor of Respondents and against Petitioner.

DATED at Denver, Colorado, May 17, 2021.

FOR THE COURT,

JEFFREY P. COLWELL, Clerk

By: s/E. Van alphen
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Gordon P. Gallagher, United States Magistrate Judge

Civil Action No. 20-cv-03272-LTB-GPG

KENNETH J. COX,

Petitioner,

v.

ED CALEY, *Warden of the Colorado Territorial Correctional Facility*, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter comes before the Court on the *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254* filed *pro se* by Petitioner Kenneth J. Cox on November 2, 2020. (ECF No. 1). Because Petitioner is *pro se*, the Court liberally construes his filings, but will not act as an advocate. *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013). Respondents have filed a *Motion to Dismiss* the application as untimely. (ECF No. 7).The matter has been referred to this Court for recommendation (ECF No. 19).[1]

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1 Be advised that all parties shall have fourteen (14) days after service hereof to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. Fed. R. Civ. P. 72(b). The party filing objections must specifically identify those findings or recommendations to which the objections are being made. The District Court need not consider frivolous, conclusive or general objections. A party's failure to file such written objections to proposed findings and recommendations contained in this report may bar the party from a de novo determination by the District Judge of the proposed findings and recommendations. *United States v. Raddatz*, 447 U.S. 667, 676-83 (1980); 28 U.S.C. § 636(b)(1). Additionally, the failure to file written objections to the proposed findings and recommendations within fourteen (14) days after being served with a copy may bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted or adopted by the District Court. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Moore v. United States*, 950

The Court has reviewed the filings to date, considered the entire case file, the applicable law, and is advised of the premises. For the reasons that follow, the Court respectfully recommends dismissing Petitioner's § 2254 application as untimely.

I. BACKGROUND

Petitioner brings this § 2254 action to challenge a criminal conviction entered against him by the Teller County District Court in case number 09CR108. (ECF No. 1 at 2). In addressing his recent postconviction appeal, the Colorado Court of Appeals recounted the events leading to Petitioner's convictions, and the subsequent postconviction proceedings, as follows:

> In 2010, a jury convicted Cox on fourteen counts related to the sexual abuse of his two stepdaughters, including, as relevant here, sexual assault on a child as part of a pattern of abuse (count 1) and sexual assault on a child-position of trust (count 8). For each of these counts, the district court sentenced Cox to twenty-four years to life in prison. It then ordered the sentences on those counts to be served consecutively, with the remaining sentences to run concurrently.
>
> Cox appealed his convictions and a division of this court affirmed. *See People v. Cox*, (Colo. App. No. 10CA2238, Nov. 20, 2014) (not published pursuant to C.A.R. 35(f)).
>
> After the mandate issued, Cox filed a motion under Crim. P. 35(b), requesting a reduced sentence. The court granted the motion and reduced the sentence to fifteen years to life for count 1 and count 8 respectively, again to run consecutively. The remaining sentences were unchanged.
>
> Eight years after his trial, Cox filed the postconviction motion now at issue. In it, he raised various contentions related to his convictions, the jury trial, and his sentence. He asked the district court to appoint counsel, "reverse his convictions," and "remand" for a new trial.
>
> The district court denied Cox's postconviction motion without a hearing.

F.2d 656, 659 (10th Cir. 1991).

(ECF No. 7-15 at 2-3).

On November 4, 2020, the Court ordered Respondents to file a pre-answer response limited to addressing the procedural defenses of timeliness and exhaustion of state remedies. (ECF No. 3). In response, Respondents requested leave to file a motion to dismiss, which the Court granted. (*See* ECF Nos. 6, 7, 8).

Respondents' *Motion to Dismiss* contends the application should be dismissed as untimely under the one-year statute of limitations found in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). (ECF No. 7). Petitioner filed a response to the motion, contending the application should be considered timely. (ECF No. 14). The Court now addresses whether the § 2254 application is timely.

II. DISCUSSION

A. Accrual

Respondents argue the application is barred by AEDPA's one-year limitation period, 28 U.S.C. § 2244(d). That statute provides as follows:

> (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-
>
> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been

newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d). Petitioner does not allege he was prevented by unconstitutional state action from filing this action sooner, he is not asserting any constitutional rights newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review, and there are no allegations to show the factual predicate for his claims could not have been discovered through the exercise of due diligence before the state proceedings concluded. *See* 28 U.S.C. § 2244(d)(1)(B) - (D). As a result, the one-year limitation period began to run on the date Petitioner's judgment of conviction became final. *See* 28 U.S.C. § 2244(d)(1)(A).

Finality occurs on "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review[.]" 28 U.S.C. § 2244(d)(1)(A). Here, the Colorado Supreme Court denied certiorari review of Petitioner's direct appeal on October 13, 2015. (ECF No. 7-4). Because Petitioner did not file a petition for certiorari in the United States Supreme Court, his direct appeal concluded when the time for filing a certiorari petition in the United States Supreme Court expired. *See Gonzalez v. Thaler*, 565 U.S. 134, 150 (2012) (if a defendant directly appeals to the state's highest court, the conviction is final on the expiration of the 90-day period for seeking certiorari in the United States Supreme Court); *see also* S. Ct. R.

13.1. Therefore, Petitioner had until January 11, 2016 to seek certiorari in the United States Supreme Court—90 days after the Colorado Supreme Court's October 13, 2015 denial of certiorari. Since he did not seek such review, his state judgment of conviction became final on January 11, 2016, and the AEDPA statute began to run the following day, January 12, 2016. *See Holland v. Florida*, 560 U.S. 631, 635 (2010); *Al-Yousif v. Trani*, 779 F.3d 1173, 1178 (10th Cir. 2015).

B. Statutory Tolling

Section 2244(d)(2) allows for a properly filed state-court postconviction motion to toll the one-year limitation period while the motion is pending. The issue of whether a state-court postconviction motion is pending for the purposes of § 2244(d)(2) is a matter of federal law, but "does require some inquiry into relevant state procedural laws." *See Gibson v. Klinger*, 232 F.3d 799, 806 (10th Cir. 2000). The term "pending" includes "all of the time during which a state prisoner is attempting, through proper use of state court procedures, to exhaust state court remedies with regard to a particular post-conviction application." *Barnett v. Lemaster*, 167 F.3d 1321, 1323 (10th Cir. 1999).

Furthermore, "regardless of whether a petitioner actually appeals a denial of a post-conviction application, the limitations period is tolled during the period in which the petitioner *could have* sought an appeal under state law." *Gibson*, 232 F.3d at 804. In Colorado, a party has 49 days from a court's written order to file an appeal. Colo. App. R. 4(b)(1). But unlike a direct appeal, "the statute of limitations is tolled only while state courts review the [postconviction] application." *Lawrence v. Florida*, 549 U.S. 327, 332 (2007). "The application for state postconviction review is therefore not 'pending' after the state court's postconviction review is complete, and § 2244(d)(2) does not toll the 1–

year limitations period during the pendency of a petition for certiorari [in the United States Supreme Court]." *Id.*

Here, 35 days elapsed between the time Petitioner's conviction became final and when Petitioner filed a postconviction motion for sentence reconsideration on February 16, 2016. (ECF No. 7-1 at 23). The sentencing court granted the motion, reducing Petitioner's sentence, on October 19, 2016. (ECF No. 7-5). The order was not appealed. Thus, that filing tolled the statute of limitations from February 16, 2016 until December 7, 2016, which is when the time for appealing the state court's order expired. From there, 330 days (365–35 = 330) remained on the AEDPA clock, meaning Petitioner had until November 3, 2017 to file his § 2254 application.[2] Petitioner did not initiate this habeas action until November 2, 2020, so it is time-barred unless Petitioner establishes a basis for excusing the delay.

Petitioner argues that his sentence did not become "final" for AEDPA purposes until the state court imposed a legal sentence—in other words, until the sentencing court ordered Petitioner's sentence reduced on October 19, 2016. (ECF No. 14 at 4-12). But for the reasons discussed above, Petitioner's judgment became final under AEDPA on January 11, 2016. And, as Respondents argue, a state court's resentencing does not

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2 Petitioner did file letters for a copy of the record (and possibly transcripts) on November 18 and 23, 2016; a letter regarding the balance of restitution on June 21, 2017; and a second postconviction motion under Colo. R. Crim. P. 35(a) on February 5, 2018. But the letters do not toll the AEDPA statute of limitations because they did not challenge the conviction. *May v. Workman,* 339 F.3d 1236, 1237 (10th Cir. 2003) (postconviction motions for transcripts do not toll the one-year time bar); *Hodge v. Greiner,* 269 F.3d 104 (2d Cir. 2001) (concluding that a discovery motion does not toll the statute because it "d[oes] not challenge [the] conviction," but merely seeks "material that might be of help in developing such a challenge"). Nor does Petitioner's motion filed on February 5, 2018 act to toll the statute of limitations because it was filed after the statute already expired. *See Clark v. Oklahoma*, 468 F.3d 711, 714 (10th Cir. 2006) (stating that postconviction motions toll the one-year limitation period under § 2244(d)(2) only if they are filed within the one-year limitation period).

reset the one-year limitations period for bringing a § 2254 application. *Burks v. Raemisch*, 680 F. App'x 686, 691 (10th Cir. 2017) (unpublished) (finding that "resentencing did not renew the limitations period for [petitioner's] § 2254 claims.") (citing *Prendergast v. Clements*, 699 F.3d 1182 (10th Cir. 2012)).

More than that, even if the clock did not start to run until after Petitioner's sentence was reduced on October 19, 2016, the limitations period would have been tolled until December 7, 2016, which is when the time for appealing the state court's resentencing order expired under Colo. App. R. 4(b)(1). Giving Petitioner the benefit of his argument that the clock did not start running until he was resentenced, he then would have had 365 days (or until December 8, 2017) to file a § 2254 application. Because Petitioner did not file another postconviction motion until February 5, 2018, which was after the statute expired under Petitioner's theory, this action filed in November of 2020 would still be untimely.

C. Equitable Tolling

Petitioner also contends that equitable tolling should apply because he proceeds *pro se*, has been "without resources to hire counsel and without knowledge or ability to prepare [a] timely and adequate habeas petition brief." (ECF No. 14 at 2). Additionally, Petitioner says he "has been earnest in all his efforts to pursue his post conviction appeals[.]" (*Id.*). Respondents counter that Petitioner has not pursued his rights diligently and does not point to any extraordinary circumstance that prevented his timely filing of this action. (ECF No. 16 at 3-6). The Court agrees with Respondents.

Equitable tolling is available to Petitioner "only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his

way and prevented timely filing." *Holland*, 560 U.S. at 649 (quotations and citation omitted). "An inmate bears a strong burden to show specific facts to support his claim of extraordinary circumstances and due diligence." *Yang v. Archuleta*, 525 F.3d 925, 928 (10th Cir. 2008) (brackets and quotations omitted).

Petitioner makes no showing of specific facts to establish he has pursued his rights diligently and that some extraordinary circumstance prevented timely filing. Petitioner's claim of diligence in pursuing postconviction appeals does not trigger the application of equitable tolling. As discussed above, AEDPA itself tolled the statute of limitations while Petitioner properly pursued postconviction relief. Equitable tolling requires more than a showing that Petitioner diligently pursued postconviction remedies. Regarding the suggestion that equitable tolling applies because Petitioner is *pro se*, "it is well established that ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing." *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000) (citation and quotation omitted). As such, equitable tolling does not save this untimely application.

III. RECOMMENDATIONS

For these reasons, this Court respectfully recommends:

- **Granting** Respondents' *Motion to Dismiss* (ECF No. 7); and
- **Denying** the *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254* (ECF No. 1) and **dismissing this action with prejudice as untimely**.

DATED March 1, 2021.

BY THE COURT:

Gordon P. Gallagher
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-03272-LTB-GPG

KENNETH J. COX,

Petitioner,

v.

ED CALEY, *Warden of the Colorado Territorial Correctional Facility*, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge filed March 1, 2021. (ECF No. 20). On April 5, 2021, Petitioner filed timely written objections to the Recommendation. (ECF No. 23). With the objections, Petitioner also filed a notice of appeal and motion for certificate of appealability. (ECF Nos. 24, 26). As such, an appeal was docketed in the United States Court of Appeals for the Tenth Circuit. (ECF No. 28). The Tenth Circuit dismissed the appeal and issued its mandate on May 13, 2021 (ECF Nos. 29, 30). Now that Petitioner's appeal has been dismissed, the Court has reviewed the Recommendation *de novo* in light of the file and record in this case. On *de novo* review the Court concludes that the Recommendation is correct for the reasons stated therein.

Accordingly, it is

ORDERED that Petitioner's written objections (ECF No. 23) are OVERRULED. It is

FURTHER ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 20) is ACCEPTED AND ADOPTED. It is

FURTHER ORDERED that Respondents' Motion to Dismiss (ECF No. 7) is GRANTED. It is

FURTHER ORDERED that the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) is DISMISSED WITH PREJUDICE as untimely for the reasons stated in the Recommendation. It is

FURTHER ORDERED that no certificate of appealability will issue because Petitioner has not made a substantial showing of the denial of a constitutional right. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is DENIED WITHOUT PREJUDICE to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this dismissal would not be taken in good faith. It is

FURTHER ORDERED that all pending motions are DENIED AS MOOT.

DATED at Denver, Colorado, this 17th day of May, 2021.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, DC 20543-0001

RE: 21-1201 Cox v. Caley
USCA 10 No.21-1201
Dist/AG docket: 1:20 CV 03272-LTB-GPG
September 8,2021

Kenneth J. Cox

Petitioner / Appellant

v.

Respondents / Defendants

Eddie Caley, Warden of C.T.C.F. et al.

PETITION FOR WRIT OF CERTIORARI

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comes now: Kenneth J. Cox, Pro Se State Prisoner #151621 give notice in above named case from final judgment and request Petition for writ of certiorari from final judgment of the United States 10th., Circuit Court of Appeals. Case No. 12-1201. as follows,

1) Mr.Cox request writ of certiorari as the use of conviction was without counsel (re: Judge Colt's Audit) making it unconstitutional 14th. Amendment violation to try for a felony in a State Court without legal representation, denial of assistance of counsel guaranteed by the 6th. Amend., subsequently to be charged to a legal statute and the right to a legal sentence (rehearing) on audit changes.

2) Mr.Cox request SCOTUS grant his petition for writ of certiorari for right to equitable tolling, right to be charged with a legal Colorado Statute,(legal sentence) right to redress District Court Judge Colt's Audit (enhancer vs. predicate) offense.

3) Mr.Cox request SCOTUS grant writ of certiorari to appeal from final judgment and grant 6th. Amend. right to-be represented by counsel as he has established a fundamental right to be heard.

4) Mr.Cox is unfamiliar to SCOTUS's rule of law and procedure, thus left without aid of counsel, Mr.Cox is unable to support he was convicted of improper charges, that he was convicted of a faulty indictment, subsequently Mr.Cox lacks both the skill and knowledge to adequately prepare and perfect his request to establish his innocence.

CERTIFICATE OF SERVICE

This is to certify that I, Kenneth J. Cox Pro Se State Prisoner #151621 have served this motion request for writ of certiorari to the Supreme Court of the United States, and with respect to the Clerk of this court, submitt copys' of same upon all parties herein by depositing copy's of same via. delivered (ECF) Electronic Court Filing;

United States Court of Appeals
for the Tenth Circuit
Office of the Clerk
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257

Colorado Attorney General Office
c/o Ellen E. Michaels
1300 Broadway, 9th. Floor
Denver, Colorado 80203

Eddie Caley, Warden C.T.C.F.
c/o Adrienne Jacobson
Colorado Department of Corrections
Office of Legal Affairs

sig. Kenneth J. Cox
date. 11/28/2021

I Kenneth J. Cox the undersigned affirm under penalty of purjury that the forgoing statements are true and correct to the best of my ability.
Wherefore; Mr.Cox request Supreme Court of the United States (SCOTUS) grant writ of certiorari and grant counsel to represent Petitioners pending review[s].
Respectfully submitted this 28 day of November 2021.

sig. Kenneth J. Cox