

22A-_____

In The
Supreme Court of the United States

October Term 2022

Larry Warren,
Applicant/Petitioner,

v.

State of Indiana
Respondent.

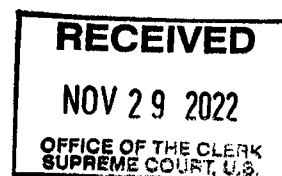
Application for an Extension of Time within Which to
File a Petition for a Writ of Certiorari to the Indiana
Court of Appeals

VERIFIED APPLICATION TO THE HONORABLE AMY CONEY BARRETT,
AS CIRCUIT JUSTICE

Larry Warren
D.O.C. 230853
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, Indiana 46064

November 7, 2022

pro-se Applicant/Petitioner
Larry Warren



APPLICATION FOR EXTENSION OF TIME

Pursuant to this Court's *Rule 13.5* and *28 U.S.C. § 2101(c)*, Applicant Larry Warren hereby requests a Sixty (60) day extension of time within which to file a *Petition for a Writ of certiorari*, to and including January 23, 2023.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The *Judgment* for which review is sought is *Larry Warren v. State of Indiana*, No. 21A-CR-1249;¹ (Ind. App. Feb. 18, 2022), a true and correct copy of which is attached as [Exhibit A]. A true and correct copy of the *Order* for the Indiana Supreme Court denying Applicant Warren a discretionary *Petition to Transfer* is attached as [Exhibit B] and is reported at *Larry Warren v. State of Indiana*, 195 N.E.3d 858, 2022 Ind. Lexis 550 (Ind. Sep. 22, 2022).

JURISDICTION

The Indiana Court of Appeals entered *Judgment*, in CR-1249, on February 18, 2022 [Exhibit A]. The Indiana Supreme Court entered its *Order* on September 22, 2022 [Exhibit B]. This Court's jurisdiction will rest on *28 U.S.C. § 1257(a)*. Under *Rules 13.1, 13.3, 30.1* and *30.2* of this Court, a *Petition for a Writ of certiorari* is due to be filed on or before November 21, 2022. In accordance with *Rule 13.5*, Applicant has filed this application more than ten (10) days in advance of that due date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a Sixty (60) day extension of time, to and including, January 23, 2023 within which to file a *Petition for a Writ of certiorari*

¹ Hereinafter ["CR-1249"].

seeking review of the decision of the Indiana Court of Appeals in CR-1249 [Exhibit A]. An extension is warranted because of the importance of the issues presented and undersigned Applicant's need for additional time to prepare a *Petition* that will assist this Court in deciding whether to grant *certiorari*.

1. This case concerns a final *Judgment* of an Indiana Appeals Court that dismissed Applicant Warren's Appeal therein, doing so on procedural grounds, *to wit*: failure to comply with an *Indiana Rule of Appellate Procedure*, *to wit*: *Rule 50(B) of the Indiana Rules of Appellate Procedure*. However, said *Rule 50(B)* was and is not firmly or regularly followed due to a compelling and intervening circumstance in this Case, *to wit*: COVID-19. *Cf. In Re Administrative Rule 17 Emergency Relief for Indiana Trial Courts relating to the 2019 Novel Coronavirus*, 141 N.E. 3d 389, 389-390 (Ind. March 23, 2020)²; *In Re Administrative Rule 17 Emergency Relief for Indiana Trial Courts relating to the 2019 Novel Coronavirus*, No. 20S-CB-123 and No. 205-CB-231, 2020 Ind. Lexis 515 (July 2, 2020).³

2. The foregoing has left the dismissal of Applicant Warren's Appeal in CR-1249 arbitrary and capricious; denying Applicant Warren his right to Appeal, established under Indiana Law, *to wit*: *Article 1, §§ 12 and 23 of the Indiana Constitution; Article 7, §§ 4 and 6 of the Indiana Constitution*;⁴ *Indiana Code 35-48-4-1(a)(1)* to a full and

² Hereinafter ["COVID Order 1"]. This Order altered any time limits set forth in *Rule 50(B)*.

³ Hereinafter ["COVID Order 2"]. This Order maintained any altered time limits set forth in *Rule 50(B)*, and is specifically relevant to this and any other Appeal during the time of Applicant Warren's Appeal pendency.

⁴ See, e.g., *Packard v. Shoopman*, 852 N.E.2d 927, 931 (Pursuant to *Article 7, §§ 4 and 6 of the Indiana Constitution*, appellate jurisdiction is established by the *Indiana Rules of Appellate Procedure* (e.g., *Rule 50(B)*), not by statute, and the judiciary (i.e., the Indiana Supreme Court) not the legislature, is the source of those Rules governing appellate jurisdiction).

fair Appeal, and his corresponding right to its protection by the *Equal and Due Process Clauses of the Fourteenth Amendment of the United States Constitution*. See *Lindsey v. Normet*, 405 U.S. 56, 77 (1972) where this Court stated in relevant part, *to wit*:

This Court has held that if a full and fair trial on the merits is provided, the Due Process Clause of the Fourteenth Amendment does not require a State to provide appellate review, *Griffin v Illinois*, 351 US 12, 18, [] (1956); *District of Columbia v Clawans*, 300 US 617, 627, [] (1937); *Ohio v Akron Park District*, 281 US 74, 80, [] (1930); *Reetz v Michigan*, 188 US 505, 508, [] (1903); *McKane v Durston*, 153 US 684, 687-688, [] (1894), and the continuing validity of these cases is not at issue here. When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the *Equal Protection Clause*. *Griffin v Illinois, supra*; *Smith v Bennett*, 365 US 708, [] (1961); *Lane v Brown*, 372 US 477, [] (1963); *Long v District Court of Iowa*, 385 US 192, [] (1966); *Gardner v California*, 393 US 367, [] (1969). *Cf. Coppedge v United States*, 369 US 438, [] (1962); *Ellis v United States*, 356 US 674, [] (1958).

(alterations added). See also, *Strube v. Sumner*, 385 N.E.2d 948 (Ind. App. 1978).⁵

⁵ In *Strube*, the Court of Appeals Stated in relevant part, *to wit*:

The standard of review which we apply was enunciated by our Supreme Court in *Sidle v. Majors* (1976), 264 Ind. 206 [51 Ind. Dec. 246, 249], 341 N.E.2d 763, 767: If neither a fundamental right nor a suspect classification is involved, the standard of review is that the classification not be arbitrary or unreasonable. *Dandridge v. Williams* (1970), 397 U.S. 471, [], and that a "fair and substantial" relationship exist between the classification and the purpose of the legislation creating it. *Johnson v. Robison* (1974), 415 U.S. 361, []; *Reed v. Reed* (1971), 404 U.S. 71, []; *Royster Guano Co. v. Virginia* (1920), 253 U.S. 412, []. See also *Gunther, The Supreme Court*, 1971 Term, Forward: In Search of Evolving Doctrines of a Changing Court: A Model for a Newer Equal Protection, 86 HARV. L. REV. 1 (1972). In reviewing the constitutionality of a rule or statute we must exercise judicial self-restraint in order to avoid, under the guise of limiting the legislature to its constitutional bounds, exceeding our own. We are not a "supreme legislature" nor do we have the right to substitute our convictions as to the desirability or wisdom of legislation for those of our elected representatives. We recognize that the legislature is vested with a wide latitude of discretion in determining public policy and, therefore, every statute stands before us with the presumption of constitutionality. In the deliberate process, the burden is upon the challenger to overcome such presumption, and all doubts are resolved against his charge. *Sidle* at 766.

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5. Undersigned Applicant respectfully submits that additional time is warranted because Applicant was only recently permitted access to the Pendleton Correctional Facility Law Library to prepare the *Petition*.

6. Applicant has been proceeding *pro-se*, with the assistance of another Offender in its preparation, *to wit*: Delmas Sexton, II D.O.C. 111153,⁷ within the bounds of applicable law.⁸ and undersigned Applicant needs additional time to review the *Record* in this case and prepare the *Petition*.

7. Applicant Warren is an incarcerated Offender serving an executed *Judgment of Conviction and Sentence* in the Indiana Department of Correction,⁹ *to wit*: *State of Indiana v. Larry Warren*, No. 49G06-1001-FA-001153.¹⁰

8. Applicant Warren has been denied and delayed from meaningful access to the Pendleton Correctional Facility Law Library due to the following, *to wit*: Staff shortages, COVID-19 protocols, Holiday Closures, *et al.*; as such is his only way to prepare his documents using a *Microsoft Word® Program*; due to Applicant Warren suffers severe hand and nervous system trauma, affecting his ability to write legibly, due to his military service in the United States Army.

⁷ Hereinafter [Offender Sexton"].

⁸ See *Webb v. State*, 274 Ind. 540, 542, 412 N.E.2d 790, 792 (1980) (citing *Johnson v. Avery*, 393 U.S. 483, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969) ([I]f a state provides no alternative to the assistance provided by other inmates in the preparation of post-conviction proceedings, the state may not constitutionally prohibit mutual assistance among inmates). See also *Ford v. State*, 570 N.E.2d 84, 86 (Ind. App. 1991) ("There are only two constitutional requirements imposed upon our state government regarding post-conviction petitioners: (a) a prisoner is entitled to access to the courts, *Spires v. Dowd* (7th Cir. 1959), 271 F.2d 659; and (b) the state may not validly enforce a regulation barring inmates from assisting other prisoners in the preparation of post-conviction relief, absent some reasonable alternative thereto, *Johnson v. Avery*, 393 U.S. 483, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969).").

⁹ Hereinafter ["IDOC"].

¹⁰ Hereinafter ["FA-1153"]. See also, *to wit*: www.in.gov.


9. Additionally, Applicant Warren suffers from severe post-traumatic stress disorder,¹¹ and long-term COVID; with chronic symptoms delaying participation in said preparation of his Petition to this Court and thereby affecting such preparation and service of his *Petition* upon this Court.

10. In addition, undersigned Applicant Warren has additional obligations that would make it difficult to complete a *Petition for certiorari* by the current deadline. Those obligations include a *Petition for Panel Rehearing* to be filed on November 21, 2022 in, *to wit: Larry Warren v. Dennis Reagle*, No. 22-01456, (7th Cir. Docketed

CONCLUSION

For these reasons, Applicant Warren respectfully requests an extension of Sixty (60) days, to and including January 23, 2023, within which to file a *Petition for a Writ of certiorari* in this case.

Respectfully submitted,



Larry Warren
D.O.C. 230853
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, Indiana 46064

November 7, 2022

pro-se Applicant/Petitioner
Larry Warren

¹¹ Hereinafter ["PTSD"].

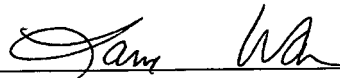
CERTIFICATE OF FILING AND SERVICE

I, Larry Warren, under the penalties of perjury, pursuant to 28 U.S.C. §1746; do hereby allege and say that the foregoing document, *to wit: Application for an Extension of Time within Which to File a Petition for a Writ of Certiorari to the Indiana Court of Appeals*; has been filed manually upon the following, *to wit:*

- A. The Honorable Scott S. Harris, Clerk of the United States Supreme Court, 1 First Street, N. E., Washington, D.C. 20543;
- B. The Honorable Richard Pachmyr, Clerk of the Supreme Court, Court of Appeals, and Tax Court of Indiana, Room 217 State House, 200 West Washington Street, Indianapolis, Indiana 46204, and
- C. The Honorable Theodore Rokita, Deputy Indiana Attorney General, Office of the Indiana Attorney General, Indiana Government Center South, fifth floor, 302 West Washington Street, Indianapolis, Indiana 46204;

pursuant to the *Prison Mailbox Rule* of the following judicial precedent, *to wit: Houston v. Lack*, 487 U.S. 266, 270, 276 (1988); and *Thomas v. Gish*, 64 F.3d 323, 324-25 (7th Cir. 1995); on this 7th day of November, 2022.

Respectfully Submitted,



Larry Warren,
D.O.C. 230853
Affiant/Petitioner *pro-se*
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, Indiana 46064

IN THE
COURT OF APPEALS OF INDIANA

Larry Warren,

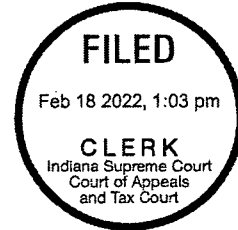
Appellant,

v.

State of Indiana,

Appellee.

Court of Appeals Cause No.
21A-CR-1249



Order

- [1] On December 17, 2021, this Court issued an order directing Appellant to file an amended Brief and a corrected Appendix by January 3, 2022 or the appeal would be subject to dismissal. Appellant has not filed a corrected Appendix.
- [2] Having reviewed the matter, the Court finds and orders as follows:
1. Because Appellant has not filed a corrected Appendix as directed by this Court in its December 17, 2021 order, this appeal is dismissed with prejudice.
 2. The Clerk of this Court is directed to send this order to the parties, the trial court, and the Marion Circuit and Superior Courts Clerk.
 3. The Marion Circuit and Superior Courts Clerk is directed to file a copy of this order under Cause Number 49G06-1001-FA-1153 and, pursuant to Indiana Trial Rule 77(D), the Clerk shall place the contents of this order in the Record of Judgments and Orders.
- [3] Ordered: 2/18/2022

A handwritten signature in black ink, appearing to read "Cheryl Brubaker". The signature is written in a cursive style and is positioned above a horizontal line.

Chief Judge

[Exhibit B]

In the
Indiana Supreme Court

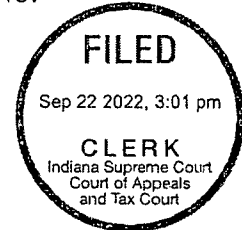
Larry Warren,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
21A-CR-01249

Trial Court Case No.
49G06-1001-FA-1153

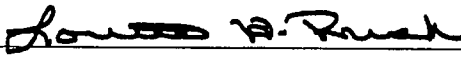


Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 9/22/2022.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

[Exhibit B]

THURSDAY, MARCH 19, 2020

ORDER

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 a writ of certiorari:

IT IS ORDERED that the deadline to file any petition 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. See Rules 13.1 and 13.3.

IT IS FURTHER ORDERED that motions for extensions of time pursuant to Rule 30.4 will ordinarily be granted by the Clerk as a matter of course if the grounds for the application are difficulties relating to COVID-19 and if the length of the extension requested is reasonable under the circumstances. Such motions should indicate whether the opposing party has an objection.

IT IS FURTHER ORDERED that, notwithstanding Rules 15.5 and 15.6, the Clerk will entertain motions to delay distribution of a petition for writ of certiorari where the grounds for the motion are that the petitioner needs additional time to file a reply due to difficulties relating to COVID-19. Such motions will ordinarily be granted by the Clerk as a matter of course if the length of the extension requested is reasonable under the circumstances and if the motion is actually received by the Clerk at least two days prior to the relevant distribution date. Such motions should indicate whether the opposing party has an objection.

IT IS FURTHER ORDERED that these modifications to the Court's Rules and practices do not apply to cases in which certiorari has been granted or a direct appeal or original action has been set for argument.