

No. _____

N.M.S.Ct.No. D-202-CR-2005-02141

IN THE

SUPREME COURT OF THE UNITED STATES

RALPH CASTILLO - Petitioner,

v.

HECTOR RIOS, Warden,¹

STATE OF NEW MEXICO - Respondent(s).

APPLICATION FOR EXTENSION OF TIME TO FILE WRIT OF
CERTIORARI FROM THE NEW MEXICO SUPREME COURT TO
THE SUPREME COURT OF THE UNITED STATES

Comes Now, Petitioner, Ralph Castillo, pro se, and layman of
the law, who humbly requests that he be allowed an extension
of time to file Writ of Certiorari from the New Mexico Supreme
Court to the United States Supreme Court.

JURISDICTION ON WRIT OF CERTIORARI

The jurisdiction of this Court is invoked under 28 U.S.C. § 1253;
28 U.S.C. § 1257(b).

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. 28 U.S.C. § 1253.

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States. 28 U.S.C. § 1257(a).

A petition for Writ of Certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the State Court of last resort is timely when it is filed with the clerk within 90 days after entry of the order denying discretionary review as required in Rule 13.1 of the Rules of the Supreme Court of the United States.

For good cause, a justice may extend the time to file a petition for writ of certiorari for a period not exceeding 60 days.

This application must be filed with the clerk no later than 10 days prior to the date the petition for writ of certiorari is due, which is May 17, 2023.

PARTY TO THE APPLICATION FOR EXTENSION OF TIME TO FILE WRIT OF CERTIORARI

The parties to the application for extension of time to file writ of certiorari are:

- New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
- New Mexico Attorney General
Real Party In Interest
P.O. Drawer 1508
Santa Fe, New Mexico 87501-1508

BASIS FOR JURISDICTION

The New Mexico Supreme Court is a court of last resort which has decided an important federal question in a way that conflicts with

the decision of another state court of last resort or of the United States Court of appeals as required in Rule 10(b) of the Rules of the Supreme Court of the United States.

JUDGMENT SOUGHT TO BE REVIEWED

Petitioner's conviction for Criminal Sexual Penetration in the First Degree, which carries a basic sentence of eighteen (18) years, was aggravated to a term of twenty-three (23) years, contrary to the requirements of Section 31-18-15.1 (1993, amended 2009) NMSA 1978.

Petitioner entered into a plea agreement on July 24, 2007 in which he pled No Contest to a number of charges, including Count 1, Criminal Sexual Penetration in the First Degree, at issue in this claim. The plea agreement contained a sentencing agreement that "Count 1 shall be aggravated to a term of 23 years."

Petitioner was sentenced on August 8, 2007 consistent with the plea agreement. No specific findings were made in the plea agreement or judgment and sentence stating the reasons for aggravating the sentence.

At the time petitioner entered the plea, Section 31-18-15.1 (A) (1993, amended 2009) NMSA 1978, stated:

The Court shall hold a sentencing hearing to determine if mitigating or aggravating circumstances exist and take whatever

evidence or statements it deems will aid it in reaching a decision. The Court may alter the basic sentence as prescribed in Section 31-18-15.1 NMSA 1978 upon a finding by the judge of any mitigating or aggravating circumstances surrounding the offense or concerning the offender. If the Court determines to alter the basic sentence, it shall issue a brief statement of reasons for the alteration and incorporate that statement in the record of the case.

As an initial matter, it should be noted that in January 2007, prior to petitioner's plea, the United States Supreme Court decided Cunningham v. California, 549 U.S. 270 (2007), which struck down a California statute that similarly to the version of Section 31-18-15.1 in place at the time of petitioner's plea, placed sentencing-elevating fact-finding within the judge's province. The Supreme Court determined that depriving the defendant the right to have such a fact finding made by a jury rather than a judge was in violation of the Sixth and Fourteenth Amendments.

Petitioner argues that his aggravated sentence is contrary to his Sixth Amendment right and the requirements of Section 31-18-15.1 (1993, amended 2009) NMSA 1978. Petitioner specifically claims that his sentence was aggravated in violation of his Sixth Amendment right to have a jury determine whether aggravating circumstances existed and whether the sentence complied with the procedural requirements of the version of 31-18-15.1 in place at the time of petitioner's sentence.

SPECIFIC REASON(S) WHY AN EXTENSION OF TIME IS JUSTIFIED

Petitioner understands that an application to extend time to file a petition for a writ of certiorari is not favored, petitioner states however, that due to the existing schedule of the facility law library, petitioner is granted very limited time to research caselaw and rules which govern petitions for writ of certiorari to the United States Supreme Court as well as caselaw that would assist in his certiorari.

Petitioner has been diligent in filing his petitions and researching what is necessary for his writ of certiorari. Petitioner has been denied access at times to the facility law library due to, but not limited to, staff shortage, facility activities for staff (e.g., death of staff members and closure of law library to allow staff members to mourn the loss of their coworkers). These are situations that are outside of the petitioner's control.

An extension of time will allow petitioner to have additional needed time to create and present a meritorious petition to this Court. Denying this application for extension of time would create an additional burden upon petitioner to have to create and file a petition that may have to be done in a haphazard manner which is non conducive to his petition or to this Court.

WHEREFORE, PETITIONER RESPECTFULLY PRAYS that this Honorable Court grant petitioner's leave to proceed in forma pauperis and to extend his time to file a writ of certiorari to the United States Supreme Court.

Respectfully Submitted,

Ralph Castillo

Ralph Castillo
10 McGregor Ranger rd.
Chaparral, New Mexico

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28 U.S.C. § 1746. Unsworn declarations under penalty of perjury.

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

- (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 22, 2023. Ralph Castillo"
- (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state), under penalty of perjury that the foregoing is true and correct. Executed on March 22 2023, Ralph Castillo"

DECLARATION UNDER PENALTY OF PERJURY

I, Ralph Castillo, declare under penalty of perjury that I am the plaintiff in the above action, that I have read the above petition and that the information contained herein is true and correct. 28 U.S.C. § 1746, 18 U.S.C. § 1621.

Executed at Otero County New Mexico at the Otero County Prison Facility in Chaparral, New Mexico on March 22, 2023.

Ralph Castillo
Ralph Castillo
10 McGregor Ranch Rd.
Chaparral, New Mexico
88081

1. FOOTNOTE

Richard Martinez, Warden has been replaced by Hector Rios as Warden