

IN THE
SUPREME COURT OF THE UNITED STATES
NO. _____

VICTOR GAVILLAN MARTINEZ
Petitioner,

PROVIDED TO
OKALOOSA CI

MAY 23 2023

FOR MAILING
RECEIVED BY

v.

**SECRETARY
FLORIDA DEPARTMENT OF CORRECTION
Defendant.**

**ON THE PETITION FOR CERTIOARY TO THE ELEVENTH CIRCUIT
COURT OF APPEALS**

MOTION FOR COURT ORDER DIRECTING CLERK TO FILE PETITION FOR
WRIT OF CERTIORARI OUT OF TIME

Victor Gavillan Martinez
Okaloosa C.I.
Colonel Greg Malloy Rd
Crestview, FL 32539-6705

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MAY 31 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Petitioner Victor Gavillan-Martinez respectfully moves this Honorable Supreme Court of the Untied States for an order to direct the Clerk of this Court to file Petition for a Writ of Certiorari out-of-time Petitioner offered to this Honorable Court that there is excuse for his “three days” late filing of his Petition for Certiorari. Petitioner humble request to this Honorable Court to conceded a day in this Court. Petitioner assert that when-a-litigant has pursue his right diligently but for extraordinary circumstances prevent him from bringing a timely action the court is permit to pause the statutory time. Also, limiting circumstances exist for his late filing when Petitioner proceed as “pro se”. Petitioner is a lay person a naive to navigate through the law procedure and do not possess the education, the knowledge or the experience and is totally untrained in the art of juries prudence, and he is entirely dependent upon assistance in preparing and typing the petition document in this cause of action.

Petitioner is at the mercy of the respondent and is faced with limited access to the law library to do proper research and obtain legal supplies for the preparation of and mailing out legal documents, institution security reasons, as lock down and the many other limitation which Petitioner is actually presented with in his daily activities in the institution environment and even other circumstances beyond the Petitioner's control which a non-incarcerate pro se litigant is not subject. It is appropriate to consider the risk

of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process.

Petitioner avow that despite all the above limiting circumstances Petitioner has diligently peruse his right. For instance, there is evidence that on November 1, 2022. the United States District Court Northern District of Florida, Pensacola Division., Honorable Zachary C Bolitho Magistrate Judge ordered the Petitioner to Amend his civil Right Complaint and provide thirty days(30) to do so. Petitioner haste to comply with the court order to amend his complaint, in case no 3:22-CV-5734-LC-ZCB Meanwhile, On November 8 2023 the Eleventh Circuit Court of Appeal submitted its order which triggered the ninety (90) days to file the Petitioner's petition for a Writ of Certorari in this court.

When the thirty (30) days time was about to expire Petitioner moves the District Court and request thirty(30) more days in which to file his Third Amended Complaint, which the Magistrate Judge granted, and on December 27, 2022 Petitioner did file his Third Amended Complaint which was entered in the District Court Docket on December 30, 2022. (see Court Docket Exhibit)(Third Amended Complaint Exhibit)

Petitioner continue occupied by drawing the Declaration as well as put together the exhibit to accompanied and support the Third Amended Complaint, and was sent to be typed. All the while Petitioner was ensuring a Motion for Relief from Judgment to be

filed in a case No.:16-2019-CA-2329 in the Fourth Judicial Circuit for Duval Co. Florida. That effort was postponed to scramble together, “as an emergency” a Petition for Writ of Certiorari to be filed in this court.

When Petitioner became aware that the ninety (90) days was about to expire, Petitioner did everything in his power an incarcerated inmate to file “at least” a hand written Petition in this court on February 6, 2023 which was not possible. On the 7th and 8th Petitioner secure copies and envelopes to mail out the Petition for a Writ of Certiorari and mailed the petition on February 9th 2023.

Petitioner, implore please, for one opportunity to present his case to this Honorable Court because, as Petitioner state in his reason for grant the petition”, the Florida Department of Correction is stonewall Petitioner, and who know how many other thousands of inmate in the same situation as Petition which ultimate affect our families the community as a whole and future generation come, from legal records recorded in digital format contained in CD'S/DVD'S

The Respondent justification to prohibit Petitioner from receive his legal record CD'S is enacted in Chapter 33-210-102(b)(6)1. Which state that inmate are not allowed to receive non-paper item through legal mail or routine mail neither. The Respondent content that CD'S/DCD'S item can be fashioned in to a stabbing kind of weapon and therefor CD'S/DVD'S are prohibit from introduction in to correction Institution. This assumption and superstition amount only to that because First, the record is full of

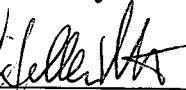
respondent contradiction and discrepancy in his line of defenses after the Respondent wrong doing in commit perjury in the District Court was expose by first hand information of the use of CD'S/DVD'S in the Faith Base and Character program the Respondent turn around his position of defenses and now alleged that "Plaintiff is correct that inmates are provided with education and entrainment using CD-ROM and DVD". Respondent allegation now is that CD'S/DVD'S are under tight control by correctional Officer and staff member and are storage out side of the compound where not in use. The Respondent even go far and argument that because of the thousand and thousands of CD'S/DVD's inside the institutions and not enough officers to supervise the inmates, inmates keep the CD'S/DVD'S in their personal lockers. The Respondent has commit perjury in this cause of action.

Neither the Magistrate Court or The District Court nor the Circuit Court of Appeal has taken judicial notice of this contradictions and discrepancies on the Respondent part. Their opinion are about what Petitioner did or failed to do. The Eleventh Circuit of Appeal even rule that prison authorities do not need to present evidence of links between a prison policy and indicant of violence" That is, reinstall the "hands off" doctrine.

This is a gross injustice Respondent keep us away from our legal records so we cannot find meritorious claim of ineffective assistance of counsel, with held of exculpatory evidence or government wrong doing even after the proper motion for Post-

Conviction relief has been filed. The legal records are contained in CD'S/DVD'S which the respondent prohibit to get access. At the same time the institution are over-flowed with CD'S/DVD'S for religious, education, and entertainment purpose, and this injustice can be easily remedied if this Honorable Court concluded a day to Petition to present his case in this court. (see Appendix D).

Respectfully Submitted,

/s/ 

Victor Gavillan Martinez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this motion was furnished by placing into the hands of an institutional official for mailing through pre-paid U.S. postage on this 23day of May to the following:

Attorney General
The Capitol PL-01
Tallahassee, FL 32399

Respectfully Submitted,

/s/ 

Victor Gavillan Martinez
Okaloosa C.I.
Colonel Greg Malloy Rd
Crestview, FL 32539-6705