

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JEREMY SESTAK-PETITIONER

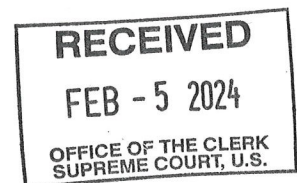
VS.

UNITED STATES OF AMERICA-RESPONDENT
MOTION FOR EXTENSION OF TIME TO FILE
THE WRIT FOR CERTIORAI

The Petitioner, Jeremy Sestak, Comes before this Honorable Court, respectfully prays leave of Court for an extension of time to file the Writ for Certiorari, for the following reasons.

The Tenth Circuit Court of Appeals entered its judgment on November 02, 2023. Sestak did not receive the notice until December 01, 2023. The notice, when delivered was not documented by prison officials at F.C.I. Englewood as it was processed as regular correspondence. When Sestak did receive the notice, the envelope containing the notice also had inside, the original envelope folded in half and placed inside. The folded envelope was post marked on November 02, 2023. The envelope containing the notice and original was post marked November 28, 2023 and Sestak did not receive it until December 01, 2023.

Although the date of judgment was November 02, 2023, Sestak was not given notice of the judgment until December 01, 2023 he



should be required to file the Writ for Certiorari by March 02, 2024.

Accordingly, due to the delay of delivery of the notice to no fault of Sestak, the extremely limited access to the "law library" due to staffing issues at F.C.I. Englewood, Sestak, in order to prepare the Writ for Certiorari, Sestak prays the Court to allow the additional time to file.

It is for the foregoing reasons that additional time is needed to file the Writ for Certiorari.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on: January 23, 2024



(signature)

Jeremy Sestak
F.C.I. 17437-091
9595 W. Quincy Ave.
Littleton CO 80123

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 2, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREMY LEE SESTAK,

Defendant - Appellant.

No. 23-8006
(D.C. No. 2:19-CR-00099-SWS-1)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **HARTZ**, and **MORITZ**, Circuit Judges.

Jeremy Lee Sestak, proceeding pro se,¹ appeals the district court’s order denying his motion to modify or terminate his supervised release conditions pursuant to 18 U.S.C. § 3583(e)(2).² We affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment 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 We liberally construe Mr. Sestak’s pro se filings, but we do not act as his advocate. See *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

² In the motion, the government’s response, and the district court’s order, Mr. Sestak’s last name is misspelled as “Sestek,” see, e.g., R., vol. V at 4, 13, 22, but we use the correct spelling in this decision.

In 2019, Mr. Sestak pleaded guilty to one count of distribution and attempted distribution of child pornography and one count of possession of child pornography. The district court sentenced him to 180 months' imprisonment followed by a ten-year term of supervised release. Mr. Sestak appealed from the district court's judgment, but we granted the government's motion to enforce the appeal waiver in his plea agreement and dismissed his appeal. *United States v. Sestak*, 794 F. App'x 799, 800 (10th Cir. 2020).

In 2022, Mr. Sestak filed a motion seeking to modify or terminate his term of supervised release pursuant to § 3583(e)(2). That statutory section provides that a court “may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration . . . of the term of supervised release.” § 3583(e)(2). In his motion, Mr. Sestak did not identify any specific conditions of supervised release he sought to have modified. Instead, he argued “the supervised release term [was] illegal” and violated the double jeopardy protections of the Fifth Amendment. *R.*, vol. V at 5. He asserted it “expos[ed] [him] to an unlimited number of prosecutions, penalties, or punishments originating from the same offense.” *Id.* He asked the court to declare his term of supervised release unconstitutional and to terminate it.

The district court denied the motion, concluding that § 3583(e)(2) does not authorize it to modify Mr. Sestak's supervised release based on the illegality or unconstitutionality of the imposed term. The court explained that a direct appeal or 28 U.S.C. § 2255 motion are the correct procedural vehicles for bringing such a

challenge to the constitutionality of a sentence. Mr. Sestak now appeals from the district's order.

He argues: (1) his supervised release conditions, as applied, violate double jeopardy protections; (2) supervised release is a separate sentence; (3) his supervised release conditions, as applied, are excessive; (4) his as-applied challenge to supervised release conditions is permissible under § 3583(e)(2); and (5) he did not need to show new or changed circumstances in his § 3583(e)(2) motion. Having reviewed the briefs, the record, and the applicable legal authority, we are not persuaded by Mr. Sestak's appellate arguments. Instead, we agree with the district court's well-reasoned and well-stated resolution of Mr. Sestak's motion.

Accordingly, we affirm for substantially the same reasons stated in the district court's order dated January 11, 2023. We grant Mr. Sestak's motion for leave to proceed on appeal without prepayment of costs or fees.

Entered for the Court

Nancy L. Moritz
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

November 02, 2023

Mr. Jeremy Lee Sestak
FCI - Englewood
9595 West Quincy Avenue
Littleton, CO 80123
#17437-091

RE: 23-8006, United States v. Sestak
Dist/Ag docket: 2:19-CR-00099-SWS-1

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of Court

cc: Timothy J Forwood
David A. Kubichek

CMW/klp

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JEREMY SESTAK-PETITIONER

VS.

UNITED STATES OF AMERICA-RESPONDENT

PROOF OF SERVICE

I Jeremy Sestak, do swear or declare that on this date, January 23, 2024, as required by Supreme Court Rule 29 I have served the enclosed Motion For Extension of Time To File The Writ For Certiorari on the party required to be served, by depositing an envelope containing the above documents in the United States mail with first-class postage prepaid.

The names and addresses of those served are as follows:

Solicitor General of the United States, Rm.5614 950 Pennsylvania Ave. N.W. Washington DC 20530-0001

Office of the Clerk, Supreme Court of the United States, Washington DC 20543.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on January 23, 2024


(signature)

Jeremy Sestak