

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER A. PEREA — PETITIONER

vs.

Mrs. Burtlow, Fremont Correctional Facility Prison warden, and Philip J. Weiser, Attorney General of the State of Colorado. (D.C. No. 1:22-cv-00410-RM (D.Colo.) U.S.C.O.A.23-1356 (10th Circ.) - RESPONDENT(S)

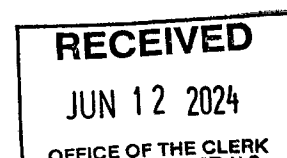
MOTION TO DIRECT THE CLERK OF THE COURT TO FILE OUT OF TIME.

Christopher A. Perea
Fremont Correctional Facility
Po Box 999
Canon City Colorado 81215

Statement of Facts

On May 20, 2024 Mr. Perea received a letter from this office of the Clerk Dated May 15, 2024. Stating that the above-entitled Petition for Writ of Certiorari was postmarked may 06, 2024, and received on May 14, 2024. The papers are returned for the following reason(s): The Petition is out of Time. The Date of the Lower Court Judgment, or order denying a timely Petition for rehearing was January 31, 2024.

Therefore the petition was due on or before April 30, 2024. Rules 13.1, 29.2 and 30.1. When the time to file a petition for Writ of Certiorari in a Civil Case (Habeas action included) has expired, the Court no longer has the power to review petition.



Note: Mr. Perea in the motion for writ of certiorari.

Dated May 1, 2024. Mr. Perea put in ^{the} motion, another added motion it was for clarification and/or explanation. In the motion, Mr. Perea states that Mr. Perea's deadline to file the writ of certiorari was April 30, 2024.

Although Mr. Perea was not able to go to the law library to make copies of certiorari due to the fact the prison was on facility lockdown. And Mr. Perea was not able to send out the writ of certiorari. Only the writ was sent and submitted on May 1, 2024. And Mr. Perea

asked for one day excusable neglect due to this lockdown. And also the table of contents was sent on May 5, 2024 due to the fact they got mixed up in the shutdown with his other legal work. (See: E.D.C. mail logs.) And letter that was sent stating both facts.

Mr. Perea's motion for writ of certiorari was put in the prison mailing system on May 1, 2024. It was not post-marked May 6, 2024. And the only reason it went out on the 1st of May was due to the lockdown/shutdown. The only thing was the Table of contents on May 5, 2024. (See logs) The writ of certiorari was placed in the mailing system May 1, 2024. Mr. Perea in the motion asked for excusable neglect. Because of this in the motion for clarification or explanation. Mr. Perea had no control over what CDOC did after it was placed in the mailing system!

is not Mr. Perea's fault, and should not be responsible for the writ of Certiorari being out of time (see doc mail logs). Mr. Perea does not know why it took so long, for CDOC to send out the mail on the 5th and received on the 14th of May 2024. This is CDOC fault, and the fault should not be on Mr. Perea.

Also on May 20, 2024 when Mr. Perea sent his Petition

back. Mr. Perea went to see his case manager, to get a letter stating the shake down/lockdown for April 30, 2024 and for the mail logs showing the date the Petition was sent. Mr. Perea was told that CDOC don't write letters as to shake downs and that the case manager Mrs. Gillespie would have to go through the mayor to get a letter. Mr. Perea was sent to the

mailroom. The mail room stated that, they no longer send copies of outgoing legal logs only incoming logs.

If I want incoming logs I would have to go through the mayor to receive these now. I put in a kite to

Mayor Warner, to receive the outgoing logs, and a letter stating the date of April 30, 2024 of the shake down lockdown. I received the mail logs. I am still

waiting for the letter ~~for the letter~~ from mayor Warner. I talked to the case manager Gillespie on

June 3, 2024 she said she was going to call and find out about the letter.

On January 24, 2024 Mr. Perea was moved from Limon Correctional Facility to Colorado State Penitentiary. Due to the fact, that Mr. Perea was involved in an altercation, several inmates were involved. Mr. Perea was put in Punitive Segregation pending write up, and management control review. On February 6th or 7th, 2024 Mr. Perea was placed in Management Control Unit. For a CLASS I Fighting and Facility disruption. On February 6th or 7th Mr. Perea put in a change of address, to the United States Court of Appeals for the Tenth Circuit. Because Mr. Perea was moved Permanently from Limon Correctional Facility From January 24, 2024 through February 6th or 7th 2024. Mr. Perea did not have any access to the Law Library or did Mr. Perea have his legal work. Due to fact Mr. Perea was in punitive segregation.

Colorado State Penitentiary is a 20hr a day lockdown. There is no physical access to the Law Library. Only through the kite system, can you gain access to the Law Library, and Legal case LAW, you cannot access your legal files, or copy your legal work.

The Law Library takes a week or more, for kites to be answered, and Legal case LAW is to be loaned only. It's on a Ten day loan each time, you ask to receive case LAW, and when you return it, you can check out another one, by resubmitting a kite.

On February 23, 2024, Mr. Perea's disciplinary report was dismissed, and CSP Management Control. Mr. Perea was moved to Fremont Correctional Facility. Mr. Perea was placed in Close Security. Due to this Mr. Perea only has physical access to the Law Library two times a week for two hours each session, giving Mr. Perea only 4 hrs of Legal Library a week.

Note: Mr. Perea was scheduled on April 30, 2024, so Mr. Perea could make copies of his Petition, although because of Facility Shutdown / Lockdown. Mr. Perea was not able to go to the Law Library on April 30, 2024. And was rescheduled for the next day on May 1, 2024. Mr. Perea copied the Petition and sent it out on this day.

Legal Authorities

Under ~~the~~ U.S.C.S. Claim Court Rules 6(b)(1)

In general. When an act may or must be done within a specified time. The court may, for good cause, extend the time:

- (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
- (B) on motion made after time has expired, if the party

Failed to act, because of excusable neglect.

(d) Additional Time after Certain Kinds of Service.

When a party may or must act within a specified time after being served is made under R.C.F.C. 5(b)

(2)(c) (mail), (D) (leaving with the clerk) or (F)

(other means consented to), 3 days are added after the period would otherwise expire. Under R.C.F.C. 6(a).

Under Rule 29.2. Filing and service of documents,

under 28 U.S.C. § 1746. Special notifications; Corporate listing.

Rule 29. (2) A document is timely filed if it is received by the clerk in paper form within the specified time for filing; or if it is sent to the clerk, through the United States Postal Service by First-Class mail (including express or ~~Priority~~ Priority mail) postage pre-paid, and bears a postmark, other than a commercial postage meter label, showing that the documents was ^{mailed} ~~sent~~ on or before the last day for filing; or if it is delivered on or before the last day for filing, and is accompanied by a notarized statement or declaration in compliance with 28 U.S.C. § 1746. Setting out the date of deposit, and stating First-class postage is pre-paid, if the post-mark is missing or not legible, or

the third-party commercial carrier does not provide date the document was received by the carrier, the Clerk will require the person who sent the document to submit a Notarized Statement or Declaration in compliance with 28 U.S.C. § 1746 setting out the details of the filing and stating that the filing took place on the particular date within the permitted time Rule (29.3) Any document required by these Rules to be served may be served personally, by mail, or third-party commercial carrier for delivery within 3 calendar days on each party to the proceeding at or before the time for filing. And (29.2) "If submitted by an inmate confined in an institution", a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing.

In compliance with 28 U.S.C. § 1746.

Under 28 U.S.C. § 2403.

§ 2403 Intervention by United States or a state; Constitutional question.

(a) In any action, suit or proceeding in a court of the United States or any agency, officer or employee is not a party, wherein the

Constitutionality of any act of Congress affecting the public interest is drawn in question, the Court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of Constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of facts and law relating to the question of Constitutionality.

Mr. Perera is asking the Clerk to please allow Mr. Perera DVE Process. As to the fact that Mr. Perera is incarcerated and has no control over CDC's mailing system. And Facility Shutdown/lockdowns. Which Mr. Perera was involved in. And U.S.C.S Fed. Rules Civ.P. Rule(7) Pleadings allowed; For motions and other Papers.

The Due Process Clause of the United States Constitution prohibits the government from depriving “any person of life, liberty or property with due process of law.” U.S. Const. amend. V, amend. XIV, § 1. The procedural guarantees of the Fifth and Fourteenth Amendments’ Due Process Clauses apply only when a constitutionally protected liberty or property interest is at stake. See *Ingraham v. Wright*, 430 U.S. 651, 672-73 (1977). A liberty interest can arise from the Constitution and from state law (subject to the limits of *Sandin v. Conner*, 515 U.S. 472 (1995)). See *Wilkinson v. Austin*, 545 U.S. 209, 221-22 (2005). When deciding whether the Constitution itself protects an alleged liberty interest, the court will consider whether the practice or sanction in questions “is within the normal limits or range of custody which the conviction has authorized the State to impose.” *Meachum v. Fano*, 427 U.S. 215, 225 (1976) and *Hewitt v. Helms*, 459 U.S. 460, 466-70 (1983), abrogated on other grounds by *Sandin v. Conner*, 515 U.S. 472 (1995).

Procedural due process claims brought by incarcerated plaintiffs often involve placement in solitary confinement (sometimes referred to as “restrictive housing,” “administrative detention,” “disciplinary segregation,” “segregation housing unit (SHU)”, etc.). In *Sandin*, the Supreme Court considered whether a plaintiff’s sentence to thirty days in disciplinary segregation gave rise to a protected liberty interest. The Court held that “states may under certain circumstances create liberty interests which are protected by the Due Process Clause. These interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to ordinary incidents of prison life.” *Id.* at 483-84.

Once a liberty interest is established, the court must turn to the question of what process is due the incarcerated person; due process requirements must be “flexible and call[] for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481, (1972). The Supreme Court has generally declined to establish rigid rules and instead embraces a framework of three factors to evaluate the sufficiency of particular procedures. *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).

On May 20, 2024 Mr. Perea received From the Clerk a letter stating Mr. Perea's Petition was Filed out of time. Mr. Perea therefore has 20 days to File his motion For directing the Clerk to File out of time. The deadline is June 4, 2024.

20 day requirement of Rule 12(a).

The 20-day requirement of Rule 12(a), providing that defendant shall serve his answer within 20 days After service of summons, and Complaint upon him, applies, through Rules 7(a) and 12(h)(2) to motions to dismiss For Failure to state claim, since Rules require some response within 20 days.

Hines v. Delta Air Lines, Inc., 461 F.2d 576, 15 Fed. R. serv. 2d (Callaghan) 1363, 1972 V.S. App. Lexis 10788 (5th cir. 1972).

Also under Tate v. Wood, 963 F.2d 20.

The Court Found that the defendant's rights could have been violated because he was confined in segregation, throughout the 10-month period between plea and Application For Habeas corpus 2254. to be released From confinement to prepare his own defense.

see: Mr. Perea's excusable neglect reasons For not setting out the petition on the Time Frame. In this motion.

Conclusion

Mr. Perea therefore requests that this Clerk of the United States Supreme Court Please grant this Motion as timely and please file out of time due to the complication Mr. Perea had and under the due process of Law which should be considered Liberty interest due to incarceration.

*Also Mr. Perea sent a copy to the Attorney General
of the Table of Contents. And Mr. Perea sent his
original writ of certiorari and clarification
under penalty of perjury. Therefore Mr. Perea's
reasons and explanation should have been accepted.*

Respectfully submitted,

June 4,
This Day of ~~May 28~~, 2024

Christopher A. Perea

Signed

Chris Perea

Outgoing Restricted Inspection Mail Log

(Facility)

Living Unit 1

(Month / Year)

Offender Signature	Offender Name (Print)	DOC #	Date Received	Addressed To:	Date Mailed	DOC Employee Name	DOC Employee #
Chris Perea	Christopher Perea	69972	5/1/24	Colorado Attorney General Ralph L. Carr Judicial Center 1300 Broadway 10th floor Denver CO 80203		Holl-l	22425
Chris Perea	Christopher Perea	69972	5/1/24	United States Supreme Court 1 First Street N.E. Washington DC 20543		Holl-l	22423
Chris Perea	Chris Perea	69972	05/5/24	United States Supreme Court 1 First Street N.E. Washington, D.C. 20543		Gravril	32571

Restricted Inspection Mail Receipt Log

Forward to:

Cell House: 1

Sender	Offender Name	Offender Number	Offender Initial	Date Recieved	DOC employee, contract worker, and/or volunteer Initials/Badge #
OFFICE OF THE CLERK S WASHINGTON 20543	PEREA , CHRISTOPHER	69972	CP	5-20-24	DC 30420

Date: Monday, May 20, 2024

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Attachment B

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Restricted Inspection Mail Receipt Log

Forward to:

Cell House: 1

Sender	Offender Name	Offender Number	Offender Initial	Date Recieved	DOC employee, contract worker, and/or volunteer Initials/Badge #
[REDACTED]					
SUPREME COURT OF THE WASHINGTON DC 20543	PEREA, CHRISTOPHER	69972	CP	5-21-24	Mason 24339
[REDACTED]					

Date: Tuesday, May 21, 2024

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Attachment B

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