

No. _____

In the
Supreme Court of the United States

DIMAS DELEON RIOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

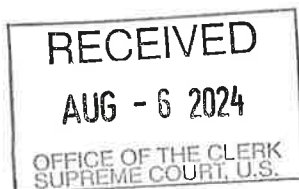
**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

**MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI**

DIMAS DELEON RIOS

Pro se

Reg. No. 08752-479
FCI Victorville Medium II
PO Box 3850
Adelanto, CA 92301
No Phone



Petitioner

To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and as Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Petitioner Dimas Deleon Rios respectfully requests that the time for a petition for writ of certiorari in this matter be extended for 62 days to and including Tuesday, October 15, 2024 (the 60th day being a Sunday and the 61st day being Columbus Day, a federal holiday).

The Court of Appeals issued an order denying Petitioner a certificate of appealability (COA) on June 16, 2024 (see Appendix A, *infra*).

Petitioner's petition for relief from this Court therefore would be due on August 14, 2024, absent an extension. Petitioner is filing this application at least ten days before that date.

The Court has jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Petitioner was convicted in the U.S. District Court for the Southern District of Texas on a guilty plea to one count of conspiracy to possess with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a) and (b)(1)(A), and 846. He was sentenced to 180 months in prison on September 23, 2021. (Judgment in a Criminal Case, ECF 1066.) Consistent with his plea agreement, I did not appeal.

Petitioner filed a timely Motion to Vacate, Set Aside, or Correct Sentence Filed by A Person in Custody Pursuant to 28 U.S.C. § 2255 (“§ 2255 Motion”), arguing *inter alia* that defense counsel was ineffective for failing to investigate, interview and advocate at sentencing that the statements made by a Government

witness and co-defendant Carlos Oyervides relied upon in setting my Guidelines range were unreliable due to his out-of-court claims; that prior statements of witness Mario Solis were false; and that Petitioner was involved in a kidnapping.

The district court ruled that even if Petitioner's allegations were true, he was not entitled to relief; that his attorney performed "as required by the Sixth Amendment"; and that the claims were not really that counsel as ineffective, but rather that the court erroneously calculated Petitioner's Guideline total offense level (a claim not cognizable in a § 2255 proceeding). Memorandum Opinion and Order in Case No. 22-cv-3186.

Petitioner timely filed a notice of appeal to the U.S. Court of Appeals for the Fifth Circuit, and filed an application for a certificate of appealability. Case No. 23-20434. The application was denied. See Appendix A.

The time to file a petition for a writ of certiorari should be extended for 90 days for the following reasons:

1. Petitioner is an incarcerated *pro se* litigant and thus requires more time than a trained legal practitioner with the freedom to devote full attention to the matter through the application of such resources as he desires to bring to the question.
2. The issues raised are several: First, Petitioner argues that the district court erred by denying Petitioner an evidentiary hearing on evidence that clearly established a genuine issue of material fact, and which – if true – would have entitled him to relief. The issue calls for a long-needed sharpening of

the standards for an evidentiary hearing under 28 U.S.C. § 2255 established in *Machibroda v. United States*, 368 U.S. 487 (1962).

3. Second, Petitioner raises an issue relating to the extent of a defendant's right to adduce evidence that generally impeaches a cooperating defendant's testimony being relied upon at sentencing. The issue calls for exploration of the extent of protection that *Giglio v. United States*, 405 U.S. 150 (1972) provides a defendant at sentencing.
4. Finally, Petitioner raises a substantial issue of ineffective assistance of counsel, and what rights a defendant has to expect counsel to adduce relevant evidence affecting his advisory Guidelines sentencing range.
5. By extending the date for the petition in this case, the Court is more likely to have the benefit of the rulings in other cases when deciding whether to grant Petitioner's petition. The Court also may have certiorari petitions in those other appeals that it could consider along with Petitioner's petition.
6. An extension will not prejudice Respondent. Petitioner is currently incarcerated and will continue to serve his sentence. Furthermore, the judgment served as the mandate of the Court of Appeals. (See Appendix A, *infra*).

For the foregoing reasons, the Court should extend the time to file a petition for a writ of certiorari in this appeal 62 days to and including October 15, 2024.

Executed August 2, 2024


Dimas DeLeon Rios
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PO Box 3850
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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

May 16, 2024


MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-20434 USA v. Deleon Rios
USDC No. 4:22-CV-3186

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: Rebecca L. Leto, Deputy Clerk
504-310-7703

Mr. Dimas Deleon Rios
Ms. Carmen Castillo Mitchell
Mr. Nathan Ochsner

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 16, 2024

Lyle W. Cayce
Clerk

No. 23-20434

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DIMAS DELEON RIOS,

Defendant—Appellant.

Application for Certificate of Appealability
the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-3186

ORDER:

Dimas DeLeon Rios, federal prisoner # 08752-479, moves this court for a certificate of appealability (COA) to challenge the district court's denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his 180-month below-guideline sentence for conspiracy to possess with intent to distribute more than five kilograms of cocaine. He contends that defense counsel rendered ineffective assistance at the sentencing hearing.

To obtain a COA, DeLeon Rios must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where a district court has rejected a

No. 23-20434

claim on the merits, a movant “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 484.

DeLeon Rios has not made the requisite showing. *See id.* Accordingly, his request for a COA is DENIED.



EDITH BROWN CLEMENT
United States Circuit Judge

No. _____

In the
Supreme Court of the United States

DIMAS DELEON RIOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PROOF OF SERVICE

I, DIMAS DELEON RIOS, DO SWEAR OR DECLARE THAT ON THIS DATE, AUGUST 2, 2024, AS REQUIRED BY SUPREME COURT RULE 29, I HAVE SERVED THE ENCLOSED *PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI* ON EACH PARTY TO THE ABOVE PROCEEDING OR THAT PARTY'S COUNSEL, AND ON EVERY OTHER PERSON REQUIRED TO BE SERVED, BY DEPOSITING AN ENVELOPE CONTAINING THE ABOVE DOCUMENTS IN THE UNITED STATES MAIL PROPERLY ADDRESSED TO EACH OF THEM AND WITH FIRST-CLASS POSTAGE PREPAID.

THE NAMES AND ADDRESSES OF THOSE SERVED ARE AS FOLLOWS:

MICHAEL A. HYLDON
ASSISTANT UNITED STATES
ATTORNEY
1000 LOUISIANA STREET
HOUSTON, TEXAS 77002

SOLICITOR GENERAL OF THE
UNITED STATES
ROOM 5614
DEPARTMENT OF JUSTICE,
950 PENNSYLVANIA AVE., N.W.,
WASHINGTON, D. C. 20530-0001

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON AUGUST 2, 2024.



DIMAS DELEON RIOS

Pro se

Reg. No. 08752-479

FCI Victorville Medium II

PO Box 3850

Adelanto CA 92301

Petitioner