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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GILBERT DEMETRIUS AGUILAR, v. TIMOTHY FILSON, <i>et al.</i> , Respondents.	Case No. 3:12-cv-00397-MMD-WGC ORDER
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Petitioner Gilbert Demetrius Aguilar was previously represented by court-appointed attorney Mary Lou Wilson. On July 10, 2018, the Court denied Aguilar's habeas petition and denied him a certificate of appealability, and judgment was entered. (See ECF No. 79 (Order entered July 10, 2018); ECF No. 80 (Judgment).) On October 12, 2018, Aguilar, acting *pro se*, filed an untimely notice of appeal (ECF No. 81). On December 21, 2018, the court of appeals denied Aguilar's request for a certificate of appealability because his notice of appeal was untimely. (See ECF No. 84 (Order entered December 21, 2018).) The court of appeals stated:

The court admonishes Wilson for her failure to notice a timely appeal. Wilson's performance falls below the level expected of counsel appointed to represent defendants and petitioners under the Criminal Justice Act. We refer this matter to the CJA panel administrator for the District of Nevada for appropriate action, including whether attorney Wilson should remain on the CJA panel and whether replacement counsel should be appointed to assist Aguilar with any post-judgment motions.

(*Id.* at 2.)

On February 8, 2019, Wilson filed a motion requesting leave of court to withdraw from her representation of Aguilar "based upon the fact that counsel has resigned from the CJA panel." (See ECF No. 86 (Motion for Withdrawal of Counsel) at 1.) The Court

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1 granted that motion on February 13, 2019, and ordered Wilson discharged from her
2 representation of Aguilar. (ECF No. 87).

3 On February 15, 2019, Aguilar, acting *pro se*, filed a Motion for Relief from
4 Judgment (ECF No. 89).

5 On February 25, 2019, the Court appointed new counsel for Aguilar, and set a
6 schedule – a deadline of April 26, 2019 – for Aguilar, with counsel, to file any amended
7 motion for relief from judgment and/or any other appropriate motion, or a notice that
8 Aguilar will not make any new filing and will proceed with the motion for relief from
9 judgment filed on February 15, 2019. (See ECF No. 90 (Order entered February 25,
10 2019).) Aguilar's new counsel, Thomas Qualls, filed a notice of appearance for Aguilar on
11 March 12, 2019. (ECF No. 93).

12 On April 22, 2019, this Court received notice (ECF No. 94) that Aguilar filed a
13 petition for writ of certiorari in the United States Supreme Court on April 15, 2019.

14 On April 25, 2019, Aguilar, through counsel, filed a notice (ECF No. 95) that he will
15 not file an amended motion for relief from judgment, or any other motion, at this time, and
16 will proceed with the February 15, 2019, motion for relief from judgment.

17 Then, on April 26, 2019, Respondents filed a Motion for Clarification (ECF No. 96),
18 requesting a briefing schedule regarding Aguilar's February 15, 2019, motion for relief
19 from judgment, and expressing doubt that the Court has jurisdiction to adjudicate that
20 motion because the Court of Appeals has not issued a mandate with respect to Aguilar's
21 untimely appeal, and because of Aguilar's petition to the Supreme Court for a writ of
22 certiorari.

23 The Court will set a schedule for the briefing of Aguilar's February 15, 2019 motion
24 for relief from judgment. The parties should include in that briefing along with their
25 arguments regarding the merits of the motion for relief from judgment, their arguments
26 regarding whether either Aguilar's untimely appeal or his petition for writ of certiorari has
27 divested this Court of jurisdiction to adjudicate the motion.


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It is therefore ordered that Respondents will have 30 days from entry of this order to respond to Motion for Relief from Judgment (ECF No. 89). Aguilar will then have 15 days to reply.

It is further ordered that Respondents' Motion for Clarification (ECF No. 96) is denied as moot.

DATED THIS 29th day of April 2019.


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE