

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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# GILBERT DEMETRIUS AGUILAR

Case No. 3:12-cv-00397-MMD-WGC

Petitioner,

## ORDER

v.

TIMOTHY FILSON, *et al.*,

## Respondents.

12 Petitioner Gilbert Demetrius Aguilar was previously represented by court-  
13 appointed attorney Mary Lou Wilson. On July 10, 2018, the Court denied Aguilar's habeas  
14 petition and denied him a certificate of appealability, and judgment was entered. (See  
15 ECF No. 79 (Order entered July 10, 2018); ECF No. 80 (Judgment).) On October 12,  
16 2018, Aguilar, acting *pro se*, filed an untimely notice of appeal (ECF No. 81). On  
17 December 21, 2018, the court of appeals denied Aguilar's request for a certificate of  
18 appealability because his notice of appeal was untimely. (See ECF No. 84 (Order entered  
19 December 21, 2018).) The court of appeals stated:

20 The court admonishes Wilson for her failure to notice a timely appeal.  
21 Wilson's performance falls below the level expected of counsel appointed  
22 to represent defendants and petitioners under the Criminal Justice Act. We  
23 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.

24 | (Id. at 2.)

25 On February 8, 2019, Wilson filed a motion requesting leave of court to withdraw  
26 from her representation of Aguilar “based upon the fact that counsel has resigned from  
27 the CIA 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.

6 DATED THIS 29<sup>th</sup> day of April 2019.

  
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE