



**Filed**

Supreme Court of Guam, Clerk of Court

**IN THE SUPREME COURT OF GUAM**

**FRANCISCO B. AGUON,**

Petitioner,

**v.**

**MICHAEL BECKRON, WARDEN,**

**USP Lee, U.S. Hwy 58 and Hickory Flats Rd., Pennington Gap, VA 24277,**

Respondent.

Supreme Court Case No.: WHC09-002  
Superior Court of Guam Case No.: CF0107-91

**OPINION**

**Cite as: 2020 Guam 7**

Argued and submitted on November 6, 2019  
Hagåtña, Guam

Appearing for Petitioner:

Stephen P. Hattori, *Esq.*  
Public Defender  
Public Defender Service Corporation  
779 Rte. 4  
Sinajana, GU 96910

Appearing for Respondent:

Marianne Woloschuk, *Esq.*  
Assistant Attorney General  
Office of the Attorney General  
Prosecution Division  
590 S. Marine Corps Dr., Ste. 706  
Tamuning, GU 96913

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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; ROBERT J. TORRES, Associate Justice.<sup>1</sup>

**CARBULLIDO, J.:**

[1] Petitioner Francisco B. Aguon, while serving his sentence at a federal correctional facility in Florida, filed a Petition for Writ of Habeas Corpus (“Petition”) with the court. Aguon’s Petition follows various attempts for post-conviction relief before the Superior Court of Guam and the federal courts. His incarceration at a federal correctional facility arises from a 1992 conviction in which a jury found him guilty of Aggravated Murder (as a First Degree Felony) with a Special Allegation of Possession of a Deadly Weapon in the Commission of a Felony. The matter is before us to determine threshold issues about jurisdiction and timeliness, not the merits of the petition. We find that while we do have jurisdiction, we deny the Petition for being untimely.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[2] This case’s complex background involves three Superior Court cases and multiple actions before the district courts and the Ninth Circuit Court of Appeals. A chronology and a table outlining the significant dates and events follows.

**A. The Conviction in CF0107-91**

[3] Aguon was indicted on June 6, 1991, on charges of Aggravated Murder (as a First Degree Felony) (both premeditated murder and felony murder), Kidnapping (as a First Degree Felony), and a Special Allegation of Possession of a Deadly Weapon in the Commission of a Felony. Following a trial in the Superior Court, Aguon was convicted by a jury of Aggravated Murder (as a First Degree Felony) (premeditated murder) with a Special Allegation of Possession of a Deadly

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<sup>1</sup> The signatures in this opinion reflect the titles of the justices at the time this matter was argued and submitted.

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Weapon in the Commission of a Felony. He was sentenced to life imprisonment without the possibility of parole for the murder conviction and a twenty-year sentence for the special allegation, to be served consecutively. The judgment entered on July 28, 1992, remanded Aguon to the custody of the Department of Corrections with the recommendation he be incarcerated at a federal correctional facility for a portion of his sentence because of threats to his security.

[4] Aguon appealed his conviction to the Appellate Division of the District Court of Guam. In his appeal, Aguon argued: (1) the trial court erred in instructing the jury on the lesser included offense of manslaughter and on self-defense; (2) the trial court erred in not replacing sleeping jurors; and (3) that testimony regarding his intoxication was so overwhelming that the jury lacked sufficient evidence to make a finding as to the premeditation element of the aggravated murder charge. On April 8, 1993, the Appellate Division reversed the judgment of the trial court and remanded the matter for a new trial based on instructional error. *People v. Aguon*, Nos. CR-92-00079A, S.C. CF0107-91, 1993 WL 128227, at \*1 (D. Guam App. Div. Apr. 8, 1993). The People of Guam (“People”) appealed the decision of the Appellate Division to the Ninth Circuit, which reversed, finding that the trial court had taken appropriate corrective measures that ensured the jury instructions as a whole were proper and not misleading. *Guam v. Aguon*, 21 F.3d 1115, at \*1 (9th Cir. 1994) (mem.). The Ninth Circuit further ordered that the verdict be reinstated. *Id.*

#### **B. Habeas Corpus Proceedings in the District Court and SP0075-00**

[5] After sentencing, Aguon was transferred to a state correctional facility in Oregon. There, he filed a federal habeas petition with the U.S. District Court of Oregon. He later returned to Guam, and the petition was transferred to the District Court of Guam. Without addressing the merits of the petition, the district court dismissed the matter for failure to exhaust territorial remedies.

[6] On March 8, 2000, Aguon, appearing *pro se*, petitioned for a writ of habeas corpus with the Superior Court. The Superior Court denied the petition for being defective and for failing to meet procedural standards for issuing a writ of habeas corpus. The court also addressed the merits of the petition and held that the jury instructions as a whole were proper and that failure of counsel to object to the instructions did not amount to ineffective assistance of counsel.

### **C. Aguon's Attempt to Recall the Mandate of the Ninth Circuit**

[7] After his unsuccessful petition in the Superior Court, Aguon retained counsel and filed a motion with the Ninth Circuit in April 2001 requesting they recall the mandate that reinstated the verdict in his underlying criminal case. In his motion, Aguon requested that the Ninth Circuit order the Appellate Division to consider the remaining issues from his initial appeal, namely, that it was error for the trial court not to replace sleeping jurors and that testimony of his intoxication was so overwhelming that the jury could not find sufficient evidence of premeditation. The Ninth Circuit summarily denied the motion on May 30, 2001.

### **D. Habeas Corpus Proceedings**

[8] On December 14, 2009, Aguon, at first appearing *pro se*, filed his petition before this court.<sup>2</sup> In the Petition, Aguon raised three grounds for habeas relief: (1) that his counsel's failure to object to purportedly improper jury instructions constituted ineffective assistance; (2) that evidence on his intoxication was so overwhelming that the jury could not have properly determined the premeditation element of the aggravated murder charge; and (3) that his interrogation did not follow the requirements of *Miranda v. Arizona*, 384 U.S. 436 (1966). When the Petition was filed,

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<sup>2</sup> Aguon's Petition was also inadvertently filed with the Superior Court, prompting the opening of Case No. SP0255-09. *See Aguon v. Warden*, SP0255-09 (Pet. Writ Habeas Corpus, Dec. 22, 2009). Aguon sent copies of his petition to the Chief of Police, who then forwarded the documents to the Clerk of the Superior Court. *See Aguon*, SP0255-09 (Dec. & Order, June 29, 2010). Realizing this error, the trial court assigned to SP0255-09 declared the petition moot. *Id.*

Aguon was confined at a federal correctional facility in Florida and initially named the warden of that facility as the respondent.<sup>3</sup> Since filing his petition, Aguon was appointed counsel and relocated to a federal correctional facility in Virginia where he continues to serve his sentence.

**Table 1: Significant Dates and Events**

<b>Date</b>	<b>Event</b>	<b>Source Document</b>
June 6, 1991	Aguon indicted in CF0107-91	Excerpts of Record (“ER”) at 91
June 15, 1992	Jury finds Aguon guilty of Aggravated Murder with a Special Allegation of Use and Possession of a Deadly Weapon in the Commission of a Felony	ER at 93
July 6, 1992	Aguon sentenced by Superior Court	ER at 94
July 15, 1992	Aguon files Notice of Appeal with District Court of Guam, Appellate Division	ER at 96-97
July 28, 1992	Judgment entered in CF0107-91 <i>nunc pro tunc</i> to sentencing date	ER at 93
Apr. 8, 1993	Appellate Division reverses Judgment and remands matter to Superior Court for retrial	ER at 129-135
Apr. 13, 1994	Ninth Circuit reverses decision of Appellate Division and reinstates Judgment and verdict	ER at 137-141
Nov. 7, 1994	While confined to a correctional facility in Oregon, Aguon, appearing <i>pro se</i> , petitions for writ of habeas corpus before the U.S. District Court of Oregon	ER at 39-45
In late 1994 – early 1995	Aguon returns to Guam, and his federal habeas petition is transferred to the District Court of Guam	ER at 46-47
Oct. 30, 1995	District Court of Guam dismisses federal habeas petition	ER at 46-47
4 years and 5 months pass with limited to no activity, i.e., no pending matters		
Mar. 8, 2000	Aguon, appearing <i>pro se</i> , files petition for writ of habeas corpus before the	<i>Aguon v. Sablan</i> , SP0075-00 (Pet.

<sup>3</sup> The named respondent has since been substituted to the current warden of the federal correctional facility where Aguon is confined in Virginia.

	Superior Court; matter designated as SP0075-00	Writ of Habeas Corpus, Mar. 8, 2000)
Aug. 24, 2000	Superior Court denies petition in SP0075-00	ER at 67-69
Apr. 2001	Aguon files a Motion to Recall Mandate before the Ninth Circuit	ER at 70-84
May 30, 2001	Ninth Circuit denies Aguon's motion	ER at 85
8 years and 7 months pass with limited to no activity, i.e., no pending matters		
Dec. 14, 2009	While confined to a correctional facility in Florida, Aguon, appearing <i>pro se</i> , files Petition with this court	Supplemental Excerpts of Record at 1-16

## II. JURISDICTION

[9] A petition for writ of habeas corpus invokes the court's original jurisdiction.<sup>4</sup> *See* 48 U.S.C.A. § 1424-1(a)(1) (Westlaw through Pub. L. 116-140 (2020)); 7 GCA § 3107(b) (2005); *see also Borja v. Bitanga*, 1998 Guam 29 ¶ 11 (“Section 3107 provides the Supreme Court of Guam with original jurisdiction over matters generally characterized as writ proceedings, including mandamus, prohibition and injunction. While a habeas corpus proceeding is not specifically enumerated, the ‘similar’ remedies language . . . provides this court with the basis to hear habeas proceedings using its original jurisdiction.”). The particular jurisdictional issue confronting the court, which will be explained below, is whether we are deprived of jurisdiction when a petitioner convicted and sentenced in the local court system files a habeas corpus action while serving their sentence at a correctional facility outside Guam.

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<sup>4</sup> Aguon does not appeal from the denial of his Petition for Writ of Habeas Corpus before the Superior Court in SP0075-00. If he had proceeded in that manner, we have discretion to treat the appeal of the denial as an original petition for writ of habeas corpus. *See Ignacio v. People*, 2012 Guam 14 ¶ 5; *May v. People*, 2005 Guam 17 ¶¶ 7-8; *White v. Klitzkie*, 1998 Guam 31 ¶ 13; *Borja*, 1998 Guam 29 ¶¶ 14-15.

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### III. ANALYSIS

[10] The matter is before us to determine threshold issues about jurisdiction and timeliness of the petition. Each will be discussed below. While the parties do not contest our jurisdiction to issue a writ of habeas corpus or to consider the merits of the petition, we feel it necessary to explain why we are ordinarily not deprived of jurisdiction to hear habeas actions brought by a local inmate transferred to a correctional facility outside Guam.

#### A. The Court Has Jurisdiction to Issue a Writ of Habeas Corpus

##### 1. Aguon's transfer to a federal correctional facility does not deprive this court of subject matter jurisdiction

[11] Under 9 GCA § 90.45, the Director of the Department of Corrections (“DOC”) may contract with the Attorney General of the United States for the transfer of local inmates to federal correctional facilities if costs and expenditures to house such individuals are reimbursed to the federal government. *See* 18 U.S.C.A. § 5003 (1988) (corresponding federal statute authorizing contracts between federal government and states for transferring state inmates to federal correctional facilities). Contracts for prisoner transfers under 9 GCA § 90.45 and its corresponding federal statute, 18 U.S.C.A. § 5003, were enacted to respond to the lack of state or territorial institutional capacity as they relate to the custody, treatment, and training of inmates after their convictions.<sup>5</sup> *See Howe v. Smith*, 452 U.S. 473, 484-85 (1981) (describing legislative intent behind 18 U.S.C.A. § 5003). Such agreements were not meant to and do not expand or confer federal criminal jurisdiction over a state or territorial inmate. *See Blango v. Thornburgh*, 942 F.2d 1487, 1490-91 (10th Cir. 1991) (per curiam); *Joyner v. Henman*, 755 F. Supp. 982, 985 (D. Kan. 1991) (acknowledging that sending state does not lose jurisdiction when inmate is transferred under

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<sup>5</sup> Contracts made under 18 U.S.C.A. § 5003 are administered by the Director of the Federal Bureau of Prisons in coordination with the Attorney General of the United States. *See Howe v. Smith*, 452 U.S. 473, 485 (1981).

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contract to serve prison sentence at federal correctional facility). “Criminal jurisdiction over a state’s inhabitants remains with the respective states and territories under whose jurisdiction the prisoners were originally sentenced.” *Blango*, 942 F.2d at 1490.

[12] Guam is also a signatory to the Western Interstate Corrections Compact (“WICC”), which authorizes interstate prisoner transfers. *See* Guam Pub. L. 13-185 (Sept. 2, 1976); 9 GCA §§ 90.50–90.66 (2005). The WICC permits the transfer of local inmates to correctional facilities in other states and territories that are also parties to the compact. Guam law adopting the WICC specifically addresses the jurisdiction of transferred inmates: “Inmates confined in an institution pursuant to the terms of this Compact *shall at all times be subject to the jurisdiction of the sending state* and may at any time be removed therefrom for transfer to a prison or other institution . . . .” 9 GCA § 90.52 art. IV(c) (emphasis added). The law also affords an inmate transferred under the WICC with the right to participate in any action or proceeding in which the inmate could have participated if confined in the sending state. *See id.* art. IV(e) (“The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.”). The compact, therefore, by its plain language was not intended to deprive local authorities of jurisdiction over transferred inmates regarding “hearings to which an inmate confined pursuant to [the WICC] may be entitled by the laws of the sending state,” *id.* art. IV(f), such as habeas proceedings.

[13] Various appellate courts around the country have upheld their ability to address habeas proceedings brought by petitioners serving their sentence at a correctional facility in another state or territory. *See Barrett v. Peters*, 383 P.3d 813 (Or. 2016) (en banc) (exercising jurisdiction in habeas action over Oregon state inmate transferred under intrastate agreement to state correctional facility in Florida); *Dwyer v. State*, 449 P.2d 282 (Alaska 1969) (exercising jurisdiction in habeas

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action over Alaska state inmate transferred to federal correctional facility in California); *Boatwright v. Dir., Dep't of Prisons*, 849 P.2d 274 (Nev. 1993) (per curiam) (exercising jurisdiction in habeas action over Nevada state inmate transferred under WICC to state correctional facility in Arizona). These authorities further support the position that territories and states generally do not lose jurisdiction over habeas actions involving inmates transferred to a state or federal correctional facility outside the original jurisdiction.

[14] We therefore hold that local authorities, including the court and the DOC, retain jurisdiction over an inmate transferred to another state or federal correctional facility under an agreement based on 9 GCA § 90.45 or under the WICC. *See* 9 GCA § 90.56 (stating that local courts shall do all things appropriate and within their jurisdiction to effectuate purposes and intent of WICC); *Blango*, 942 F.2d at 1490. As Aguon is confined to a federal institution—under a locally imposed sentence—and has been admittedly transferred through an intergovernmental agreement between the DOC and the Federal Bureau of Prisons, we retain subject matter jurisdiction over his petition.

**2. The court has personal jurisdiction over Respondent and may issue a writ of habeas corpus**

[15] Besides subject matter jurisdiction, we must also assess whether we have personal jurisdiction over the named respondent. “[I]n habeas corpus litigation, the crucial element of personal jurisdiction does not refer to the court’s jurisdiction over the person whose liberty is sought, but rather to the court’s jurisdiction over the *custodian* whose act of restraint is being challenged.” *Harvey v. Antrim*, 160 P.3d 673, 674 (Alaska Ct. App. 2007). Here, Aguon initially named the warden of the federal correctional facility where he was committed at the time of filing as the respondent. While we recognize that the initial respondent in the Petition is no longer proper

because Aguon has since been transferred to another facility, such a party was appropriate for personal jurisdiction at the time of filing because he was Aguon's immediate custodian.

[16] Under the Guam Rules of Appellate Procedure, a petition for writ of habeas corpus must comply with the requirements for habeas proceedings outlined in Title 8, Chapter 135 of the Guam Code Annotated. Guam R. App. P. 25. These statutes require that habeas petitions state the "officer or person by whom the [petitioner] is so confined or restrained." 8 GCA § 135.12(a) (2005). The court shall issue the writ to the person with custody of the petitioner. *Id.* § 135.18. While custody may include both actual and constructive custody, in habeas challenges to present physical confinement, the person with custody is generally understood as the person having physical custody over an inmate and who can produce the body of the inmate in his custody according to the command of a writ, i.e., the immediate custodian. *See id.* § 135.26; *see also Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004) (noting that while custody in habeas proceedings can mean either physical or legal custody, the proper respondent to habeas challenges to present physical confinement is the warden of facility where inmate is being held); *Barrett*, 383 P.3d at 820 (stating that habeas action must ordinarily be brought against individual having physical custody); *In re Smiley*, 427 P.2d 179, 182 (Cal. 1967) (acknowledging that habeas actions are not restricted to situations in which applicant is in physical custody).

[17] To issue a writ of habeas corpus and entertain a habeas petition for present physical confinement, a court must also normally have personal jurisdiction over the respondent, i.e., the inmate's immediate custodian. *See Harvey*, 160 P.3d at 677. This, however, does not always require the inmate's immediate custodian be physically present within a court's geographical jurisdiction. Rather, "the requisite jurisdiction can be established by service of process if, because of agency or otherwise, the custodian has sufficient contacts with the court's territorial

jurisdiction.” *Id.*; see also *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484 (1973) (affirming that district court had jurisdiction in habeas action over out-of-state warden that was immediate custodian of inmate via an agency relationship); *Strait v. Laird*, 406 U.S. 341 (1972) (suggesting that agency relationship may establish personal jurisdiction in habeas corpus litigation in certain circumstances).

[18] As established, the DOC is allowed by statute to contract for the transfer of local inmates to state and federal correctional facilities. See 9 GCA §§ 90.52 art. IV(a), 90.45 (2005). These agreements, combined with the continuing authority the DOC holds over transferred inmates, create an agency relationship and establish sufficient contacts for personal jurisdiction over the immediate custodian. See *Braden*, 410 U.S. at 498-99; *Harvey*, 160 P.3d at 677-78. Under the circumstances, the warden of the federal correctional facility housing Aguon had immediate custody over him (when the Petition was filed) and confined him on behalf of the DOC through operation of an intergovernmental agreement regarding prisoner transfers. Because of this relationship, the warden had sufficient contacts with our jurisdiction. We therefore could issue a writ of habeas corpus requiring that he produce Aguon under the commands of a writ. We may also issue a writ of habeas corpus to any successor prison official with immediate custody over Aguon because of the possibility he may be transferred to another correctional facility under the prisoner transfer agreement in operation. See Guam R. App. P. 23(c)(2) (“When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer’s successor is automatically substituted as a party.”); see also 9 GCA §§ 90.45-90.47.03, 90.52 art. IV(a).

[19] While the DOC does not have physical custody of Aguon, it, too, could have been named as a respondent in this habeas action because it has legal custody and jurisdiction over him. While

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the default rule for habeas challenges based on present physical confinement requires that the respondent in a petition for writ of habeas corpus be the warden of the facility where the inmate is being held, courts have determined that the rule does not always apply for inmates transferred under a prisoner transfer agreement. *See Barrett*, 383 P.3d at 820 (determining that director of correctional facility for home state of petitioner in habeas action was proper defendant even if transferred inmate was serving sentence at correctional facility in a different state under prisoner transfer agreement); *see also In re House*, 352 P.2d 131, 135 (Alaska 1960) (stating that in habeas actions by state inmates serving their sentence at a federal correctional facility, “a writ directed to the State official with directive power to order his return and release by his Federal jailers” would be appropriate). This is because prisoner transfer agreements alter traditional habeas corpus jurisdictional analysis of an inmate’s immediate custodian. *See Hundley v. Hobbs*, 2015 Ark. 70, 456 S.W.3d 755 (acknowledging that interstate agreement for prisoner transfers supplements ordinary habeas jurisdictional analysis of inmate’s immediate custodian). And as explained in the discussion above about prisoner transfers, Aguon remains subject to the jurisdiction of local authorities, namely the DOC, no matter where he is serving his local sentence. *See* 9 GCA § 90.52 art. IV(c). Thus, the DOC may have Aguon committed to another correctional facility or transferred back to this jurisdiction to continue serving his sentence. With this power and authority, the DOC also can produce Aguon before the court according to the command of any writ we may issue. Therefore, despite not having physical custody over Aguon, the DOC may also be named as a respondent.<sup>6</sup>

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<sup>6</sup> We recommend that in future cases, petitioners who are sentenced under the laws of this jurisdiction but later transferred to and confined at another state or federal correctional facility, name or join the DOC and other relevant local officials as respondents. In so doing, they may avoid any confusion that may arise over jurisdiction or service.

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**B. Based on the Factors set Forth in *Ignacio*, Aguon’s Petition was Untimely<sup>7</sup>**

[20] The next issue we must address is whether Aguon’s Petition was untimely. In *Ignacio v. People*, we adopted a reasonable delay standard “for the purposes of determining what justifies a significant delay” in bringing forth a petition for writ of habeas corpus. 2012 Guam 14 ¶ 15. The standard requires consideration of these factors:

1. [W]hether the facts on which the claim is based, although only recently discovered, could and should have been discovered earlier;
2. whether the factual basis for a claim was unknown to the petitioner and the petitioner had no reason to believe that the claim might be made;
3. or where the petitioner was unable to present his claim, whether it was pursued reasonably prompt[ly] upon discovery;
4. where the claim is based upon a change in the law which is retroactively applicable to final judgment is promptly asserted and if application of the former rule is shown to have been prejudicial.

*Id.* (citing *In re Clark*, 855 P.2d 729, 745 (Cal. 1993) (in bank)).

[21] Besides the *Ignacio* factors, a petitioner seeking habeas relief must justify and explain any significant delay with specificity. See *In re Clark*, 855 P.2d at 753; *In re Stankewitz*, 708 P.2d 1260, 1262 n.1 (Cal. 1985) (stating that in a habeas corpus proceeding, the petitioner “must point to particular circumstances sufficient to justify substantial delay” in seeking relief); *In re Shipp*, 399 P.2d 571, 576 (Cal. 1965) (in bank) (“The cases clearly hold that petitioner must not only allege with particularity the facts upon which he would attack the final judgment but likewise his reasons for the delayed presentation of such facts.”). The requirement that petitioners justify any significant delay of their habeas petitions with specificity “respects the importance of finality of

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<sup>7</sup> The timeliness issues concern the period between reinstatement of the verdict and judgment in CF0107-91 and the filing of this habeas action before the court. Issues concerning delay by Aguon’s counsel in litigating this matter or any other delay are not relevant in determining whether the Petition was untimely.

judgments to the state, and recognizes the difficulty of retrial in the event that a judgment is set aside on habeas corpus many years after [a] conviction.” *In re Clark*, 855 P.2d at 753.

[22] It appears this matter implicates only the third *Ignacio* factor, whether—for whatever reason—Aguon could not present his claim and whether it was pursued reasonably promptly upon discovery. Consideration of the first, second, and fourth factors is unnecessary because Aguon does not contend, argue or imply that the basis for his Petition was due to either facts or evidence recently discovered or a retroactive change in the law that, if applied, would have been prejudicial. Also, Aguon alleges no new facts previously unknown to him as the basis for his claims.

[23] Aguon argues that he could not timely file his petition because he was confined at a federal correctional facility outside this jurisdiction; he lacked access to legal materials or an attorney; he did not speak or read English; and he relied on erroneous information. Pet’r’s Br. at 6-7 (Aug. 19, 2019). These broad assertions are not sufficiently documented and explained in the record, and even if true, do not alone justify a combined delay of almost thirteen years.

[24] In California, courts have been somewhat sympathetic to habeas petitioners who have sufficiently shown diminished mental capacity, limited access to counsel, unawareness of legal procedures, or a combination of similar factors. *See In re Saunders*, 472 P.2d 921, 922-26 (Cal. 1970) (in bank) (excusing five-year delay for petitioner who had only a ninth-grade education level, had slight brain damage, and did not have any experience or education in the law); *In re Perez*, 418 P.2d 6, 7-8 (Cal. 1966) (in bank) (excusing three-year delay for petitioner who left school before completion of seventh grade and was not knowledgeable about legal procedures). The petitioners in these cases, however, timely sought the assistance of counsel, provided evidence as to their low educational levels or mental capacity, and documented with specificity their efforts

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to pursue diligently their habeas claims. *See In re Saunders*, 472 P.2d at 925-26; *In re Perez*, 418 P.2d at 8.

[25] Such is not the case here. Other than broad and conclusory assertions outside the record, Aguon and his counsel have made little to no effort to document with specificity—by declaration or affidavit—any reasons for delay. The record is also devoid of any evidence about his educational or mental capacity, lack of access to legal materials or counsel, erroneous information he relied on by his counsel, and his diligence in pursuing the claims in the Petition. *See In re Clark*, 855 P.2d at 745 (“A petitioner will be expected to demonstrate due diligence in pursuing potential claims.”). With no evidence to support these assertions, we cannot conclude that the substantial delay here was reasonable or justified.

[26] The substantial delay is further problematic because Aguon appears to have known the factual basis for the claims he is pursuing in the Petition since trial, or soon after. In his appeal to the Appellate Division, to the Ninth Circuit on his Motion to Recall Mandate, and in his habeas proceedings before the District Court in 1994 and Superior Court in 2000, Aguon raised similar claims regarding instructional error and the overwhelming evidence of his intoxication as a basis to challenge the jury’s determination of premeditation. The only new claim Aguon raises in the Petition relates to the purportedly unconstitutional interrogation he endured by law enforcement officials before his indictment in 1991. For this claim, Aguon provides no reason for its delayed presentation, including facts or documentary evidence to support when he learned of the legal basis to support the claim, why it was not raised sooner, or any due diligence in pursuing or investigating the claim. The factual basis for the claim, also, has been known to Aguon since before his trial. As Aguon has not shown or justified why this claim was not brought within a reasonable time after the facts were known to him, the substantial delay was unreasonable.

[27] We also do not believe Aguon diligently pursued his claims, even when he had some access to counsel during portions of the substantial periods of inactivity. After his appeal in 1995 and until June 1999, Aguon appeared to be represented by court-appointed counsel and was physically in this jurisdiction. *See Aguon v. Warden*, CF0107-91 (Notice of Court Appointed Counsel, Dec. 11, 1996). No action was filed by Aguon in the local court system even after he was informed by the District Court of Guam in October 1995 that he needed to exhaust territorial remedies before seeking post-conviction relief with the federal courts. He also retained private counsel in 2001 for his motion to recall the mandate of the Ninth Circuit. Despite the failure of the motion in May 2001 and the dismissal of his habeas action in the Superior Court, Aguon, again, failed to petition or pursue post-conviction relief in this court. Rather, he waited another eight years and seven months before filing the instant petition.

[28] For the combined period of almost thirteen years, there was little to no activity by Aguon, and he offers no justification for the substantial delay other than the broad conclusory assertions in his brief. *See May v. People*, 2005 Guam 17 ¶¶ 28-29 (finding twenty-four year delay to be strong evidence of a lack of reasonable diligence in pursuing post criminal conviction remedies); *see also In re Douglas*, 132 Cal. Rptr. 3d 582, 586-89 (Ct. App. 2011) (determining a twelve-year delay in filing habeas claim to be untimely when petitioner offers no justification other than his mistaken belief of legal processes). As Aguon has not diligently pursued his claims, we find the significant delay in bringing forth the Petition to be unreasonable and unjustified under the standards in *Ignacio*. As a result, we deny the Petition for being untimely.<sup>8</sup>

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<sup>8</sup> We recognize there are extraordinary circumstances that could warrant consideration of an otherwise untimely petition for writ of habeas corpus. *See In re Reno*, 283 P.3d 1181, 1207-08 (Cal. 2012) (citing *In re Robbins*, 959 P.2d 311, 338 (Cal. 1998)). While Aguon fails to make those arguments in his brief, our ruling here does not foreclose him from seeking habeas relief before us in the future should circumstances warrant them.

**IV. CONCLUSION**

[29] We hold that while we have jurisdiction over Aguon and may issue a writ of habeas corpus here to the named respondent, or his or her successor, the Petition was untimely under the standards in *Ignacio*. The Petition is therefore **DENIED**.

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/s/  
F. PHILIP CARBULLIDO  
Associate Justice

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/s/  
ROBERT J. TORRES  
Associate Justice

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/s/  
KATHERINE A. MARAMAN  
Chief Justice