

09-5327 HOLLAND V. FLORIDA

DECISION BELOW:539 F.3d 1334

LOWER COURT CASE NUMBER: 07-13366

QUESTIONS PRESENTED:

In determining that Petitioner was not entitled to equitable tolling to excuse the late filing of his habeas petition, the Eleventh Circuit determined that the reason for the late filing was the "gross negligence" on part of Petitioner's state-appointed collateral attorney's failure to file the petition in a timely fashion despite repeated instructions from the Petitioner to do so. However, under the new test announced by the Eleventh Circuit in Petitioner's case, no allegation of attorney negligence or failure to meet a lawyer's standard of care, in the absence of bad faith, dishonesty, divided loyalty, or mental impairment, could ever qualify as an exceptional circumstance warranting equitable tolling.

This Court should grant certiorari to the Eleventh Circuit to determine whether "gross negligence" by collateral counsel, which directly results in the late filing of a petition for a writ of habeas corpus, can qualify as an exceptional circumstance warranting equitable tolling, or whether, in conflict with other circuits, the Eleventh Circuit was proper in determining that factors beyond "gross negligence" must be established before an extraordinary circumstance can be found that would warrant equitable tolling.

CERT. GRANTED 10/13/2009