

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Peter Wilson — PETITIONER
(Your Name)

vs.

Daniel Paramo, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Peter Wilson
(Your Name)

Richard J. Donovan Correctional Facility
(Address) 480 Alta Road
San Diego, Ca. 92179
(City, State, Zip Code)

(Phone Number)

Vix

QUESTION(S) PRESENTED

United States Court of Appeals For the Ninth Circuit has entered a decision in conflict with the decision of the United States Court of Appeals For the Second Circuit, the Third Circuit, the Fifth Circuit, the Seventh Circuit, the Eighth Circuit, the Tenth Circuit, the Eleventh Circuit, and its own previous decision, and the decision of the United States Supreme Court on the same important federal law.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-20
REASONS FOR GRANTING THE WRIT	21-22
CONCLUSION.....	23

INDEX TO APPENDICES

APPENDIX A	Decision of the United States Court of Appeals for The Ninth Circuit for denying Certificate of Appealability (COA).
APPENDIX B	
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Rhines V. Weber, 544 U.S. 269, 161 L. Ed. 2d 440, 125 S.Ct. 1528 (2005)	6
Jones V. Davis, 2015 U.S. Dist. LEXIS 120213, 2:97 CV-2167-MCE-CMK	6
Jackson V. Roe, 425 F.3d 654, 661 (9th cir. 2005)	6
Kelly V. Small, 315 F.3d 1063 (9th cir. 2003)	6
Koon V. United States, 518 U.S. 81, 100, 116 S.Ct. 2035, 2048, 135 L. Ed. 2d 392 (1996)	8
Delhomme V. Ramirez, 340 F.3d 817 (9th cir. 2003)	9, 10, 11, 13, 16
Wall V. Kholi, 79 U.S. 4164, 131 S.Ct. 1278, 179 L. Ed. 2d 252 (2011)	9, 10, 11, 13, 19
Peterson V. Demski, 107 F.3d 92, 93 (2d cir. 1997)	14
Swager V. Chesney, 294 F.3d 506, 516-17 (3d cir. 2002)	14
Spotville V. Cain, 149 F.3d 374, 378 (5th cir. 1998)	
STATUTES AND RULES	
28 U.S.C.S. § 2244 (d)(1)	3, 16, 17, 18, 19, 20
28 U.S.C.S. § 2244 (d)(2)	3, 4, 5, 7, 8, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22

OTHER

Table of Authorities cited

Case	Page Number
Carter v. Litscher, 275 F.3d 663, 655 (7th Cir. 2001)	14
Nichols v. Bowersox, 172 F.3d 1068, 1077 (8th Cir. 1999)	14
Barnett v. Lemaster, 167 F.3d 1321, 1323 (10th Cir. 1999)	14
Guenther v. Holt, 173 F.3d 1328 (11th Cir. 1999)	14
Saffold v. Newland, 250 F.3d 1260 (9th Cir. 2000)	15
Tillema v. Miles, 253 F.3d 494 (9th Cir. 2001)	16
Biggs v. Terhune, 334 F.3d 910 (9th Cir. 2003)	17
Campbell v. Henry, 614 F.3d 1056 (9th Cir. 2010)	17
Jimenez v. Quarterman, 555 U.S. 113, —, 129 S.Ct. 681, 685, 172 L.Ed.2d 475, 482 (2009)	20
Duncan v. Walker, 533 U.S. 167, 175-178, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)	20
Williams v. Taylor, 529 U.S. 420, 431, 120 S.Ct. 1479, 164 L.Ed.2d 435 (2000)	20

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 4/23/2018.

☒ No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) establishes a one-year statute of limitation on the filing of federal habeas corpus petition. Under 28 U.S.C. § 2244 (d)(1)(A), state prisoners have one year from the date on which their convictions become final in which to initiate federal habeas corpus proceedings, that period of limitation is statutorily tolled, however, during the time in which a properly filed application by state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending. 28 U.S.C. § 2244 (d).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATEMENT OF THE CASE

A
Santa Clara County Superior Court

on 2/10/2002, I filed "Motion for collateral review of a judgment - to consider the validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)" at the Santa Clara County Superior Court, about 2-year before my petition for a certiorari, for 6 claims, on direct appeal, denied by the United States Supreme Court, and became final on 1/12/2004, the AEDPA's effective date.

On 4/4/2014, the Santa Clara County Superior Court denied my "Motion for collateral review of a judgment - to consider the validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)".

I
Statutory Tolling

Statutory tolling applies, when I filed pro se "Motion for collateral review of a judgment - to consider the validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)" in the Santa Clara County Superior Court on 2/10/2002, about 2-year before petition for Writ of certiorari, for 6 claims, on direct appeal denied by the United States Supreme Court, and became final on 1/12/2004, the AEDPA's effective date - and 1-year

Statement of the case

Statute of limitation under AEDPA is tolled.

B

United States District Court
Northern District of California

I

Motion to stay the federal petition
pending exhaustion of my state claim

On 2/10/2002, I filed "Motion for collateral review of a judgment—to consider the validity of conviction—under 28 U.S.C. § 2244(d)(2)" at the Santa Clara County Superior Court, about 2-year before my petition for a certiorari, for 6 claims, on direct appeal, denied by the United States Supreme Court, and became final on 1/12/2004, the AEDPA's effective date, that under 28 U.S.C. § 2244(d)(2), tolled the 1-year limitation period for filing a federal habeas petition.

While my first post conviction or collateral review, for substantial claim of violation of a constitutional right at trial, that wasn't part of direct appeal, was pending in the Santa Clara County Superior Court, that, under 28 U.S.C. § 2244(d)(2), tolled the 1-year limitation period for a filing a federal habeas petition, on 2/17/2006 I filed pro se petition for writ of habeas corpus, for 6 claims, on

Statement of the Case

direct appeal, in the United States District Court, Northern District of California, and asked the court to hold my federal petition in abeyance, while I exhausted my first state post conviction or collateral review. See *Rhines v. Weber*, 544 U.S. 269, 161 L. Ed. 2d 440, 125 S. Ct. 1528 (2005).

on 9/20/2007, the United States District Court, Northern District of California denied my petition for writ of habeas corpus, for 6 claims, on direct appeal, as untimely. on 10/19/2007, I filed it in the court for rehearing, but, on 5/28/2008, the court denied it.

The United States District Court For the Eastern District of California in *Jones v. Davis*, 2015 U.S. Dist. Lexis 120213, 2:07-cv-2167-MCE-CMK, previously held that, when a stay-and-abeyance motion is filed, there are two approaches for analyzing the motion, depending on whether the petition is mixed or fully exhausted. See *Jackson v. Roe*, 425 F.3d 654, 661 (9th Cir. 2005). if the petitioner seeks a stay-and-abeyance order as to a mixed petition both exhausted and unexhausted claims, the request is analyzed under the standard announced by the supreme court in *Rhines v. Weber*, 544 U.S. 269, 125 S. Ct. 1528, 161 L. Ed. 2d 441 (2005). See *Jackson*, 425 F.3d at 661. if, however, the petition currently on file is fully exhausted, and what petitioner seeks is a stay-and-abeyance order to exhaust claims not raised in the current federal petition, the approach set out in *Kelly v. Smull*, 315 F.3d 1063 (9th Cir. 2003), overruled on other grounds by

Statement of the case

Robbins, 481 F.3d 1143, applies. See Jackson, 425 F.3d at 661. Under Kelly, the district court is required to ".... consider the option of holding the exhausted petition in abeyance so that the petitioner would be able to exhaust his claims in state court before attempting to amend his federal petition to include the newly exhausted claims."

Jackson, 425 F.3d at 661 (citing Kelly, 315 F.3d at 1070). Whether to exercise this option is within the discretion of the district court. See Kelly, 315 F.3d at 1070. However, the Ninth Circuit has recognized the ".... clear appropriateness of stay when valid claims would otherwise be forfeited." Id. However, a stay under such circumstances promotes comity by deferring the exercise of federal jurisdiction until after the state court has ruled.

II

Error of law and abuse of discretion

The United States District Court, Northern District of California, erred as a matter of law, my first "Motion for collateral review of a judgment - to consider the validity of conviction - under 28 U.S.C. § 2244 (d)(2)", filed in the Santa Clara County Superior Court on 2/10/2002, was pending in the state courts from 2/10/2002 to 1/27/2016, that, under 28 U.S.C. § 2244 (d)(2), tolled the 1-year limitation for filing a federal habeas petition for writ of habeas corpus,

Statement of the Case

for 6 claims, on direct appeal, in the United States District Court, Northern District of California, on 2/17/2006, to hold it in abeyance pending my first post conviction or collateral review in state courts, in failing to decide the issue of whether to hold the petition abeyance, and by erroneously telling me in its findings and conclusions, on 9/20/2007, that my petition for writ of habeas corpus, for 6 claims, on direct appeal, was untimely, and it abused its discretion when it made an error of law. See *Koon v. United States*, 518 U.S. 81, 100, 116 S.Ct. 2035, 2048, 135 L. Ed. 2d 392 (1996).

The United States District Court, Northern District of California, erred as a matter of law, my first post conviction or collateral review was pending in the state courts from 2/10/2002 to 1/27/2016, that, under 28 U.S.C. § 2244 (d)(2), tolled the 1-year limitation for filing a federal habeas corpus, when I filed petition for writ of habeas corpus, for 6 claims, on direct appeal, in the United States District Court, Northern District of California, on 2/17/2006, to hold it in abeyance pending my first post conviction or collateral review in state courts, in failing to decide the issue of whether to hold the petition abeyance, and by erroneously telling me in its findings and conclusions, on 9/20/2007, that, my petition for writ of habeas corpus, for 6 claims, on direct appeal, was untimely, and it abused its discretion when it made an error of law. See *Koon v. United States*, 518 U.S. 81, 100, 116 S.Ct. 2035, 2048.

Statement of the case

135 L. Ed. 2d 392 (1996).

The United States District Court, Northern District of California, ruled, my federal habeas corpus petition, for 6 claims, on direct appeal, filed in the United States District Court, Northern District of California, on 2/17/2006, wasn't untimely, when my first post conviction or collateral review filed in the Santa Clara county superior court on 2/10/2002, and it was pending in the state courts for 12-year, it denied by the California supreme court on 1/27/2016, that, under 28 U.S.C. § 2244(d)(2), tolled the 1-year limitation period for filing a federal habeas petition. See Delhomme v. Ramirez, 340 F.3d 817 (9th Cir. 2003); Wall v. Kholi, 79 U.S. 4164, 131 S.Ct. 1278, 179 L. Ed. 2d 252 (2011).

III incorrect procedural ruling and denial of constitutional right

United States District Court, Northern District of California, ruled as a matter of law, my "motion for collateral review of a judgment—to consider the validity of conviction—under 28 U.S.C. § 2244(d)(2)", filed in the Santa Clara county superior court on 2/10/2002, was pending in the state courts from 2/10/2002 to 1/27/2016, that under 28 U.S.C. § 2244(d)(2), tolled the 1-year limitation for filing a federal habeas petition for

Statement of the case

Writ of habeas corpus, for 6 claims, on direct appeal, in the United States District Court, Northern District of California, on 2/17/2006, to hold it in abeyance pending my first post conviction or collateral review in state courts, in failing to decide the issue of whether to hold the petition abeyance, and by erroneously telling me in its findings, and conclusion, on 9/20/2007, that, my petition for writ of habeas corpus, for 6 claims, on direct appeal, was untimely, and it abused its discretion when it made an error of law, a decision contrary to that reached by the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court, in denial of constitutional right. See *Delhommer v. Ramirez*, 340 F.3d 817 (9th Cir. 2003); *Wall v. Kholi*, 79 U.S. 4164, 131 S.Ct. 1278-179 L. Ed. 2d 252 (2011).

C
United States Court of Appeals
For the Ninth Circuit

on 6/27/2008, I filed petition for writ of habeas corpus, for 6 claims, on direct appeal, in the United States Court of Appeals for the Ninth Circuit for review, but, on 10/31/2008, the court denied it, and it abused its discretion when it made an error of law, a decision contrary to that reached by the United States Court of Appeals for the Ninth Circuit, and the United States Supreme

Statement of the Case

Court, in denial of constitutional right. See *Delhomme v. Ramirez*, 340 F.3d 817 (9th Cir. 2003); *Wall v. Kholi*, 79 U.S. 464, 131 S.Ct. 1278, 179 L. Ed. 2d 252 (2011).

D

Sixth Appellate Court

on 4/14/2014, I filed "Motion for collateral review of a judgment—to consider the validity of conviction—under 28 U.S.C.S. § 2244 (d)(2)" in the Sixth Appellate Court.

on 7/8/2014, the Sixth Appellate Court denied my "Motion for collateral review of a judgment—to consider the validity of conviction—under 28 U.S.C.S. § 2244 (d)(2)".

E

California Supreme Court

on 7/25/2014, I filed "Motion for collateral review of a judgment—to consider the validity of conviction—under 28 U.S.C.S. § 2244 (d)(2)" in the California Supreme Court.

on 1/27/2016, the California Supreme Court denied my "Motion for collateral review of a judgment—to consider the validity of conviction—under 28 U.S.C.S. § 2244 (d)(2)".

Statement of the Case

F
United States District Court
Northern District of California

On 2/12/2016, I filed "Motion for Collateral Review of a Judgment - to consider the Validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)", in the United States District Court, Northern District of California.

On 7/6/2016, the United States District Court, Northern District of California, denied my "Motion for Collateral Review of a Judgment - to consider the Validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)".

G
United States Court of Appeals
For the Ninth Circuit

On 7/11/2016, I filed "Motion for Collateral Review of a Judgment - to consider the Validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)" in the United States Court of Appeals For the Ninth Circuit.

On 4/23/2018, the United States Court of Appeals For the Ninth Circuit, denied my "Motion for collateral review of a Judgment - to consider the Validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)".

Statement of the case

United States Court of Appeals For the Ninth Circuit has entered a decision in conflict With the decision of the United States Court of Appeals For the Second Circuit, The Third Circuit, The Fifth Circuit, The Seventh Circuit, The Eighth Circuit, The Tenth Circuit, The Eleventh Circuit, and its own previous decision, and the decision of The United States Supreme Court on the same important federal law, my first "Motion for collateral review of a Judgment—to consider the Validity of conviction—under 28 U.S.C.S. § 2244 (d)(2)", filed at the Santa Clara County Superior Court on 2/10/2002 was pending in the state courts from 2/10/2002 to 1/27/2016, that, under 28 U.S.C.S. § 2244 (d)(2), tolled the 1-year limitation for filing a federal habeas petition, and dismissal of my petition for writ of habeas corpus, for 6 claims, on direct appeal, to hold it in abeyance pending my post conviction or collateral review in state courts on 10/31/2008, as untimely, was erroneous, and my first petition for writ of habeas corpus, for 6 claims, on direct appeal, was not adjudicated on the merits, so my current "Motion for collateral review of a Judgment—to consider the Validity of conviction—under 28 U.S.C.S. § 2244 (d)(2)", was not second or successive. See *Delhomme v. Ramirez*, 340 F.3d 817 (9th Cir. 2003); *Wall v. Kholi*, 79 U.S. 4164, 131 S.Ct. 1278, 179 L. Ed. 2d 252 (2011).

United States Court of Appeals For the Ninth Circuit has entered a decision in conflict With the decision

Statement of the Case

of the United States Court of Appeals For the Second Circuit, the Third Circuit, the Fifth Circuit, the Seventh Circuit, the Eighth Circuit, the Tenth Circuit, the Eleventh Circuit, on the same important federal law:

The United States Court of Appeals For the Second Circuit in *Peterson v. Demskie*, 107 F.3d 92-93 (2d Cir. 1997). The United States Court of Appeals For the Third Circuit in *Sweger v. Chesney*, 294 F.3d 506, 516-17 (3d Cir. 2002). The United States Court of Appeals For the Fifth Circuit in *Spotville v. Cain*, 149 F.3d 374, 378 (5th Cir. 1998). The United States Court of Appeals For the Seventh Circuit in *Carter v. Litscher*, 275 F.3d 663, 665 (7th Cir. 2001). The United States Court of Appeals For the Eighth Circuit in *Nichols v. Bowersox*, 172 F.3d 1068, 1077 (8th Cir. 1999). The United States Court of Appeals For the Tenth Circuit in *Barnett v. Lemaster*, 167 F.3d 1321, 1323 (10th Cir. 1999). The United States Court of Appeals For the Eleventh Circuit in *Guenther v. Holt*, 173 F.3d 1328 (11th Cir. 1999). previously held that under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) - a properly filed application of state post conviction or other collateral review with respect to the pertinent judgment or claim tolls the 1-year limitation

Statement of the case

period for filing a federal habeas corpus.

28 U.S.C.S. § 2244 (d)(2).

United States Court of Appeals For the Ninth Circuit has entered a decision in conflict with its own previous decision on the same important federal law:

(1) The United States Court of Appeals For the Ninth Circuit in *Safford v. Newland*, 250 F.3d 1260 (9th Cir. 2000), previously held that, the tolling provision of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, states that the time during which a properly filed application for state post conviction or other collateral review is pending shall not be counted toward any period of limitation. 28 U.S.C.S. § 2244 (d)(2). The statute of limitations under the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, is tolled for all of the time during which a state prisoner is attempting, through proper use of state court procedures, to exhaust state court remedies with regard to a particular post conviction application. Applying these principle to California's post conviction procedure, the statute of limitation is tolled from the time the first state habeas petition is filed until the California Supreme Court rejects the petitioner's final collateral challenge.

Statement of the Case

(2) The United States Court of Appeals For The Ninth Circuit in *Tillema V. Miles*, 253 F.3d 494 (9th Cir. 2001), previously held that, the Antiterrorism and Effective Death Penalty Act establish a 1-year statute of limitations on the filing of federal habeas corpus petitions. Under 28 U.S.C.S. §2244 (d)(1)(A), state prisoners have 1-year from the date on which their convictions became final in which to initiate federal habeas corpus proceedings that period of limitation is statutory tolled, however, during the time in which a properly filed application for state post conviction or other collateral review with respect to the pertinent judgment or claim is pending. 28 U.S.C.S. §2244 (d)(2)..... The period of limitation in Antiterrorism and Effective Death Penalty Act of 1996 is tolled during the pendency of a state application challenging the pertinent judgment, even if the particular application does not include a claim later asserted in the federal habeas petition.

(3) The United States Court of Appeals For The Ninth Circuit in *Delhomme V. Ramirez*, 340 F.3d 817 (9th Cir. 2003), previously held that, under § 2244 (d)(2), petitioner was entitled to a tolling of the limitation period in § 2244(d)(1)

Statement of the Case

during pendency of a properly filed application for state collateral review. Such review were considered pending until the California Supreme Court's decision on review became final. The fact that petitioner filed additional, overlapping state application did not affect the pending application or act to "untoll" the first round of habeas review. Thus, petitioner's federal habeas petition was timely. The period that an application for post conviction review is pending is not affected or untolled for purpose of 28 U.S.C.S. § 2244 (d)(2) merely because a petitioner files additional or overlapping petitions before it is complete. Rather each time a petitioner files a new habeas petition at the same or a lower level, the subsequent petition has no affect on the already pending application, but trigger an entirely separate round of review. See also *Biggs v. Terhune*, 334 F.3d 910 (9th Cir. 2003). (4) The United States Court of Appeals For the Ninth Circuit in *Campbell v. Henry*, 614 F.3d 1056 (9th Cir. 2010), previously held that, one timely claim in the prisoner's state habeas petition was sufficient to toll the § 2244 (d) statute of limitations with regard to any and all claims in the federal court. Any properly filed application for state collateral review tolls the

Statement of the case

28 U.S.C.S. § 2244 (d) statute of limitation as to any claim relating to the pertinent judgment. Whether or not such claims are contained in the state application 28 U.S.C.S. § 2244 (d) affords state prisoner 1-year from the end of direct appeal in state court to apply in federal court for a writ of habeas corpus, but tolls the statute of limitations during the pendency of any properly filed state court application for collateral review, 28 U.S.C.S. § 2244 (d)(1) The time during which a properly filed application for state post conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection 28 U.S.C.S. § 2244 (d)(2) 28 U.S.C.S. § 2244 (d)(2) specifies that the period of limitation is tolled while a properly filed application for state post conviction or collateral review with respect to the pertinent judgment or claim is pending. To give meaning to Congress's use of the word judgment, any application for relief from a conviction or sentence that is properly filed in state court will toll the statute, whether or not it includes any claim present in the federal petition.

Statement of the case

United States Court of Appeals For the Ninth Circuit has entered a decision in conflict with the decision of the United States Supreme Court on the same important federal law:

(1) The United States Supreme Court in *Wall V. Kholi*, 79 U.S. 4164, 131 S. Ct. 1278, 179 L. Ed. 2d 250 (2011), previously held that, the period of limitation is tolled, while the inmate seeks judicial examination of his conviction, because his motion is "collateral review" under § 2244 (d)(2).... The term "collateral review" means judicial review of judgment in a proceeding that is not part of direct appeal.... Under the Antiterrorism and Effective Death Penalty Act of 1996, a properly filed application for state post conviction or other collateral review with respect to the pertinent judgment or claim tolls the 1-year limitation period for filing a federal habeas petition. 28 U.S.C. § 2244 (d)(2). The Antiterrorism and Effective Death Penalty Act of 1996 generally requires a federal habeas petition to be filed within 1-year of the date on which the judgment became final by the conclusion of direct review. 28 U.S.C. § 2244 (d)(1)(A). But the 1-year limitation period is tolled during the pendency of a properly filed application for state post conviction or collateral review with respect

Statement of the Case

to The Pertinent Judgment or claim. 28 U.S.C.S. § 2244 (d)(2) The Antiterrorism and Effective Death Penalty Act of 1996 establishes a 1-year period of limitation for a state prisoner to file a federal application for a writ of habeas corpus. 28 U.S.C.S. § 2244 (d)(1). This period runs from the latest of four specified dates, including the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. 28 U.S.C.S. § 2244 (d)(1)(A). See also Jimenez v. Quarterman, 555 U.S. 113, —, 129 S.Ct. 681, 685, 172 L. Ed. 2d 475, 482 (2009); Duncan v. Walker, 533 U.S. 167, 175-178, 121 S.Ct. 2120, 150 L. Ed. 2d 251 (2001); Williams v. Taylor, 529 U.S. 420, 431, 120 S.Ct. 1479, 146 L. Ed. 2d 435 (2000).

REASONS FOR GRANTING THE PETITION

United States Court of Appeals For the Ninth Circuit has entered a decision in conflict with the decision of the United States Court of Appeals For the Second Circuit, the third Circuit, the Fifth Circuit, the Seventh Circuit, the Eighth Circuit, the Tenth Circuit, the Eleventh Circuit, and its own previous decision, and the decision of the United States Supreme Court on the same important federal law: Filing "Motion for collateral review of a Judgment - to consider the Validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)", at the state court, tolled a 1-year statute of limitation for filing a federal habeas corpus petition.

On 2/10/2002, I filed "Motion for collateral review of a Judgment - to consider the Validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)", in Santa Clara County Superior Court, and while it was pending in the state courts, on 2/17/2006 I filed a federal habeas corpus petition, for 6 claims, on direct appeal, in the United States District Court, Northern District of California, and asked the court to hold my federal petition in abeyance, while I exhausted my first state post conviction or collateral review, but - on 2/12/2016, when I filed exhausted "Motion for collateral review of a Judgment - to consider the Validity of conviction - under 28 U.S.C.S. § 2244 (d)(2)", in the United States District Court, Northern District of California, the court dismissed it on the

Reasons For Granting The Petition

ground that it was a second or successive petition.

on 7/11/2016, I filed my exhausted "Motion for collateral review of a Judgment - to consider the validity of conviction - under 28 U.S.C. § 2244(d)(2)" in the United States Court of Appeals for the Ninth

Circuit, but, on 4/23/2018, the court dismissed it on the ground that it was a second or successive petition.

This court must reverse the decision because my exhausted federal habeas corpus petition was not a second or successive petition since my initial petition was dismissed without an adjudication on the merits.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Peter Wilson

Date: 5/2/2018