

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FINNESS EDWARD STOKES — PETITIONER
(Your Name)

vs.

Lozie Davis - Director — RESPONDENT(S)
TDCJ-ID

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals - fifth circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

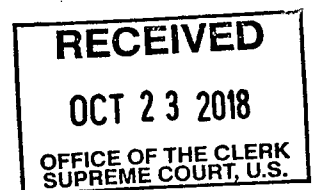
PETITION FOR WRIT OF CERTIORARI

FINNESS EDWARD STOKES
(Your Name) # 1562066 - Clements
9601 Spur 2591

(Address)

AMARILLO, TX 79107
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

- ① Regarding the prisoner's mailbox rule, is Congress intent to be taken literal when stating 'deemed timely when filed (handed over to prison authorities) "on" the last day'?
- ② Did Court abuse its discretion by not apply equitable tolling based on impediment of state?
- ③ When Constitutional violations are clear, does procedural override Constitutional merits?

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:

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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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 July 23, 2019.

☒ No petition for rehearing was timely filed in my case. *extension of time denied / Rehearing late b/c of.*

☐ 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

- * Amendment I - Congress shall make no Law respecting an establishment of Religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people to assemble peacefully, and to petition the Government for a Redress of grievances.
- * Amendment V - No person shall be held to answer for a Capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
- * 28 U.S.C. § 2244(d)(2) - 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

(Constitutional and statutory provisions involved
Con. 2)

shall not count toward any period of limitation
under this subsection.

* 28 U.S.C. § 2244(d)(1) - A one-year period
of limitation shall apply to an application
for a writ of habeas corpus by a person
in custody pursuant to the judgment of
the state court. The limitation shall run from -

* 28 U.S.C. § 2244(d)(1)(B) - The date on
which the impediment to filing an appli-
-cation created by state action in violation
of the Constitution or laws of the United
States is removed, if applicant was
prevented from filing by such state action.

* 28 U.S.C. § 2253(c)(2)

- To obtain a certificate of appealability,
a prisoner must demonstrate a substantial
showing of the denial of a constitutional right.
A petitioner satisfies this standard by
demonstrating that jurists of reason could
disagree with the district court's resolution
of his constitutional claims or that jurists
could conclude the issues presented are
adequate to deserve encouragement to
proceed further.

STATEMENT OF THE CASE

This case revolves around the proper interpretation of Congressional intent with it's language on the prisoner's mailbox Rule (Hurst v. Jack, 108 S.Ct. 2379 (1988)) when it states a prisoner's notice of appeal is deemed filed when handed over to prison authorities for mailing, postage, pre-paid. And states 'deemed' filed 'on' or before the last day. The implications are severe. As the United States district court and then the United States Court of appeals - fifth circuit allege petitioner's 11-07 was filed one-day late. Due on August 16, 2012. On which I claim I filed it on August 16, 2012. The last day for filing. The state and court is attempting to use a prison mail log that cites August 17, 2012 was when it was received. Although it would stand to reason that if someone place an item inside a locked mailbox before midnight it was 'deemed' filed then. Not when the mailroom came the following morning to retrieve the item & log it into the mail log. Thus my first and fifth amendments are being violated. Furthermore, there is a well documented / on record impediment by the state trial court and ineffective counsel which prevented petitioner from filing his 11-07.

REASONS FOR GRANTING THE PETITION

① pertaining to Question/issue presented
ONE:

The United States Eastern District Court erred, and subsequently - The United States Court of Appeals Fifth Circuit erred by upholding and taking the same position of Eastern District Court erroneous Ruling regarding a misapplication of the prisoner's mailbox rule (Houston v. Lack, 108 S.Ct. supra) also see Appendix A-F). Which these rulings prejudice petitioner's cause and harmful by refusing to hear Constitutional merit of numerous violations on illegal convictions, that do place a constraint on petitioner's liberty and freedoms as well as guarantee's enforced through the United States Constitution Amendment one and Amendment five - By stating state 11.07 was filed 'one-day' late to prohibit the equitable tolling provision of 28 U.S.C. § 2244(d) and § 2244(d)(1)(E). The consecutive date immediately after the Petitions due date - While Relying on State exhibit A of Stokes v. Stephens, 4:05 (E.D. Tex) - A prison legal mail log that shows the 11.07 being logged August 17, 2012 - which would be the next day of the last day for filing.

(Reasons for granting petition con. 2)

The nature of the United States Supreme Court granting a writ of Certiorari, when a question of law or conflict with other Circuit Courts previous rulings is subsumed into the merits before us here in this cause.

The language of the Congressional intent within this Courts rulings on *Houston v. Lack*, 108 S.Ct. 2379 (1988). That has long established the prisoner's mailbox rule which states:

"Under Federal Rules of Appellate Procedure 4(a)(1), pro se prisoner's notice of appeal are 'filed' at the moment of delivery to prison authorities for forwarding to the district court." ID.

(cf. *Fallen v. United States*, 378 U.S. 139, 84 S.Ct. 1689, 12 L.Ed. 2d 760

(Stewart, J. Concurring) "unskilled in law, unaided by counsel, and unable to leave the prison. A pro se prisoner's control over the processing of his notice necessarily ceases as soon as he hands it over to the only public officials to whom he has access - the prison authorities - which applies to civil actions including habeas corpus proceedings." ID.

(Reasons for granting petition con. 3)

(See also 1 Rules governing § 2254 Cases
On The United States District Courts @

Rule 3 (d) Inmate filing; And Appendix D

@ pg. 223 - For Complete authorities/Citations).

In light of cited authorities and direction
from this United States Supreme Court
on Prisoner's mailbox Rule and the exact
circumstances of instant case - we are
guided to know that petitioner's 11.07
filed 'on' the last day for filing as timely,
could not be construed otherwise and the
very prison log the state relied on as
evidence has made petitioner's case
for him. See Appendix C - United States
Magistrate Report and Recommendations)
citing petitioner's 11.07 was received
on August 17, 2012. And August 16, 2012
was the last day for filing.

From this point we only need a common
sense analyse to reach the conclusion that
petitioner's state 11.07 was filed "in" the
last day - timely under Houston v. Lack, supra.
Prisoner's mailbox Rule. On the Texas
Dept. of Criminal Justice - Institutional
Division mail is only picked up once each
day Monday - Friday at approximately 0700
hours in the morning. Therefore, and

(Reasons for granting petition con. 4)
legal mail item placed inside the mailbox
anytime before midnight (that date)
"on" the last day for filing would not
because it could not be picked up by
the mailroom personnel until 0700 hours
the next day. much less when they could
get around to actually logging an item
onto the mail log. Thus petitioner could
only have placed the item on the mail
(Relinquish/hand over to prison authorities)
on the day prior to the date on which
it was picked up or logged onto the
mail log to go out. It was deemed filed
"the moment" it was placed onto the mailbox
and then picked up the next date.

(Notation: prisoner's are not free to come
out of their housing assignment prior to
0700 hours when the mail is being picked up).
Certainly a reasonable jurist would find both
courts rulings debatable, at the least a
certificate of appealability should have
been issued.

The issue present effects all pro se litigants
on the question of the prisoner's mailbox
rule. Should the courts rely on the analyses
used here, regarding prison mail logs or the
literal language of cited prisoner's mailbox rule?

(Reasons for granting petition an. 5)

② Pertaining to Issues presented: Two, The United States Eastern District Court erred and The United States Court of Appeals - fifth circuit by upholding an abuse of discretion.

The Question of law before this Court - United States Supreme Court, which effects other pro se litigants abroad, to provide Courts with guidance on the matter of... Can a Court (Trial Court) withhold a petitioner's 11.07 habeas corpus relief on conflict/contempt of Ct's own order, until the petitioner has no other remedie available.

On present cause, The Trial Court issued an order to designate controverted issues where if true would entitle petitioner to relief that gave Trial Counsel a set amount of time to respond to 11.07 grand nine - ineffective assistance of Counsel. On which Trial Counsel did not comply until over a year beyond the date on the order/deadline. The Trial Court held, petitioner's 11.07 was same beyond one year from Ct's initial order awaiting Trial Counsel's untimely Affidavit. Accordingly, petitioner amended his state 11.07 writ of habeas corpus to cite grand ten - ineffective assistance of Counsel.

(Reasons for granting petition (B-6)
prejudice his Appeal/Record by being
in contempt of Court's order and Trial
Court abuse of discretion for allowing it
and withholding 11-07 FOR over one-year
(See Appendix D @ iv-vi).

In Appendix A - The United States Court of
Appeals - Fifth Circuit erroneously states
..." for the first time, that the statute of
limitations should have begun to run on a
later, unspecified date when a state-created
impediment was removed and that he is
entitled to equitable tolling because the
State Courts impeded his ability to pursue
his rights in unspecified ways."

This is factually incorrect and inconsistent
with the Record available to us.

See Appendix D @ vi. Where I state in my
brief in support of COA... "once Trial Counsel
was in contempt of Court order..." Appellant
filed numerous motions seeking relief from
adverse action by the Trial Court. So I filed
a writ of mandamus (Appendix A 2 E of brief)
on June 2, 2014. I then filed my § 2254 on
June 9, 2014. The writ of mandamus was denied
on June 10, 2014, one-day after I had filed
my § 2254 "stay on a beyance", for the very
reason to prevent the Trial Court and the
ineffective counsel as not to put me in a

(Reasons for granting the petition en. 7)

position to become time-barred." ID.

(and compare to Appendix F - original §2254 which bears the writing center caption "stay on a beyance".)

The rehearing of said writ of mandamus was not denied until November 6, 2014. Therefore, this impediment was lifted where equitable tolling under 28 U.S.C. §2244(d)(2) would apply. (The record contains all exhibits to support petitioner's claims.)

The standard of a certificate of appealability based on 28 U.S.C. §2253(c)(2); see also *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

'To obtain a COA, he must make "a substantial showing of the denial of a constitutional right," which in turn requires him to show "that a jurist of reason could find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason could find it debatable whether the district court was correct in its procedural ruling." ID.

This standard implies that the constitutionality merits must at least be considered? This question affects every litigant seeking a COA and requires this Court's direction/guidance.

③ pertaining to issues presented: Three.

The question to the Court is simple Although

(Reason for granting the petition can be)

consistent guidance exists thus yet.

Does procedural law (AEDPA) trump the Constitution of the United States (e.g. Constitutional violations used to ensure a conviction)?

To answer the question calls for some measure of the merit of Constitutional violations or claims, which was not done by the United States Court of Appeals - fifth circuit on present case. (See Appendix A - Courts order denying cert.).

The decision to invoke equitable tolling is left to the district court's discretion. Beyond that is only a review for abuse of discretion;

(See *Barrs v. Sullivan*, 906 F.2d 120, 122 (5th Cir. 1990))

"We must be cautious not to apply the statute of limitations too harshly. Dismissal of a first habeas petition is a particularly serious matter for the dismissal denies the petitioner the protections of the great writ entirely, risking injury to an important interest in human liberty. *Donchar v. Thomas*, 116 S.Ct. 1293 (1996); 517 U.S. at 324, *supra*." *Id.*

Every circuit that has addressed the issue has taken the position the equitable tolling of the statute of limitations is available as appropriate circumstances (see e.g. *Smith v. McGinnis*, 208 F.3d 13, 17-18 (2nd Cir. 2000); *Miller v. New Jersey State Department of Corrections*, 145 F.3d 616, 618-19 (3rd Cir. 1998); *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000).

(Reason for granting petition con. 9)

of the AEDPA period is a statute of limitations, Courts can in extraordinary circumstances allow late claims to proceed equitably tolling doctrine. The doctrine of equitable tolling preserves a plaintiff's claims when strict application of statute of limitations would be inequitable. *Lambert v. United States*, 44 F.3d 296, 298 (5th Cir. 1995) (citing *Burnett v. New York, Cent. R.R. Co.*, 380 U.S. 424, 428, 85 S.Ct. 1050, 13 L.Ed.2d 941 (1965)).

The only Circuit Courts to have considered the question have held that the AEDPA limitations period is not a jurisdictional bar. See *Miller v. New Jersey State Dept of Corrections*, 175 F.3d 616, 618 (3rd Cir. 1998); *Miller v. Marr*, 141 F.3d 976, 978 (10th Cir.), Cert. denied, No. 98-5195, 1998 WL 407280 (Oct. 5, 1998); *Calderson v. United States Dist. Court*, 128 F.3d 1283, 1289 (9th Cir. 1997), Cert. denied - U.S. - 118 S.Ct. 899, 139 L.Ed.2d 884 (1998); cf.

Henderson, 1 F. Supp.2d at 654 (holding that limitation is not a jurisdictional bar.) *Parker v. Bowersox*, 975 F.Supp.1251, 1252 (C.D. Mo. 1997) (Adopting the *Calderson* rationale and holding that the AEDPA period is not a jurisdictional bar. We now join our sister circuits in concluding that AEDPA one-year statute of limitations does not operate as a jurisdictional bar and can in appropriate exceptional circumstances be equitably tolled.)

(Reasons for granting petition con. 10)

Section § 2241(d)(1) does not prohibit the Courts from entertaining actions after the statutory limit has passed; Instead it merely sets forth the relevant statute of limitations. Therefore, the statutory language of § 2244(d)(1) indicates that Congress did not intend, the statutory limitations period to divest federal jurisdiction. The explicit grant of jurisdiction to the district Courts relating to the habeas writ is contained in 28 U.S.C. § 2241. Congress chose to insert the AEDPA limitation amendment into § 2244, which Congress concerns the finality of determinations and contains provisions relating to non-jurisdictional limitations, such as restraints on duplicative and frivolous litigation. This plain reading of the statute as a whole implies that Congress did not intend by its choice of language and placement to limit federal habeas claims. See *Conway v. Control Data Corp.*, 955 F.2d 358, 361-62 (5th Cir. 1992) (finding that limitations period is not a jurisdictional requirement). Citing *Zipes v. Trans World Airlines Inc.*, 455 U.S. 385, at 393, 102 S.Ct. 1127 L.Ed. 2d 234 (1982). See also *Calderon*, at 128 F.3d at 1289 (AEDPA's one-year timing provision is a statute subject to equitable tolling, not a jurisdictional bar.) *Id.* 28 U.S.C. § 2244(d)(2) provides a period for which the petitioner's section § 2254 writ of habeas corpus is tolled pending

(Reasons for granting petition con. 11)

The resolution of the state level post-conviction proceedings.

Specifically 28 U.S.C. § 2244(d)(2) states:

(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 count toward any period of limitation under this subsection, and additionally to this 28 U.S.C. § 2244(d)

(1) states:

A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of the state court.

The limitation period shall run from the latest of -

(B) the date on which the impediment to filing an application created by state action in violation of the Constitution or laws of the United States is removed, if applicant was prevented from filing by such state action." ID.

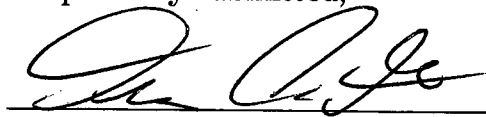
(see Appendix D @ p. 5-9 and entirely on et Constitutional violations & citations).

The lower Courts have long used AEDPA to circumvent the United States of America's Constitution & its protections. Aforementioned questions before this Court for obstruc-

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



F. Ness EDWARDS Stokes

Date: October 1st, 2018