NO. 18-9116 ORIGINAL

February/March Term - 2019
In The
Supreme Court Of The United States
Winter/Spring Term - 2019

Jesus Cotto-Petitioner
-vs-
State of Illinois-Respondent(s)
On Petition For Writ Of Certiorari To
United States Court of Appeals for the Seventh Circuit

Petition For Writ Of Certiorari

Jesus Cotto-Petitioner (B70889)
Menard Correctional Center
P.O. Box 1000
Menard Illinois 62259

Questions Presented

I). "Whether Federal Courts May Excuse A Petitioner's Failure To Comply With The State Court's Procedural Rules, Notwithstanding The State Court's Determination That Its Own Rules Had Been Violated"?

II). "Whether Post-Convictions Petitioners Represented By Counsel Should Be Entitled To "Reasonable Assistance Of Counsel," Regardless Of Weather Counsel Was Appointed (OR) Privately Retained?"

III). "Whether The Natural Life Statute, i.e. 720 ILCS 5/33N was Held by The Illinois Supreme Court To Be Unconstitutional In Its Entirety And Void Ab Initio, For Violating The Single Subject Rule of Article 4, Section 8 (d) Enacted By The Legislature In Public Act 89-203 (eff. July 21, 1995) And Again In Public Act 89-428 (eff. December 13, 1995)

List Of Parties

☑ 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 judgement is the subject of this petition is as follows:

1. Hon. Frank H. Easterbrook, Court of Appeals Circuit Judge for the Seventh Circuit, 219 S. Dearborn St. Chicago, Illinois 60604
2. Hon. Daniel A. Manion, Court of Appeals Circuit Judge, For The Seventh Circuit, 219 S. Dearborn St. Chicago, Illinois 60604
3. Hon. Thomas M. Durkin, District Judge, For The Northern District of Illinois, Eastern Division, 219 S. Dearborn St., Chicago, Illinois 60604
4. Attorney General For Illinois, 500 Second Street, Springfield, Illinois 62701
5. Hon. Kimberly M. Foxx, State's Attorney For Cook County, 309 Daley Center, Chicago, Illinois 60601

Table of Contents

Index To Appendices

Table of Athorities Cited

Cases	Page
Rose v. Lundy, 455 U.S. 509 (1982)	9
AEDPA, section 2254(b)(1)(A)	9
DAY v. McDonough, 547 U.S. 198, 205 (2006)	9, 10, 13
Slack v. McDaniel, 529 U.S. 473, 483 (2000)	10
2R. Hertz J. Liebman, Federal Hebeas Practice	10
And Procedure, Section 24.2, pp. 1123-1136 (5th ed. (2005)	10
Ill. Const., Art 1, sec. 9 ct. 2	10
People v. Cotto, 2015 Il App (1ST) 123489	10, 11, 12
People v. CSASZAR, 2013 Il. App (1ST) 100467	11, 12
U.S.C.A. Const. Amend. Sixth	11
U.S.C.A. Const. Amend. Fourteenth	11
Post-Const. Hearing Act, 725 ILCS/122-1 et seq. (West 2008)	11, 12
People v. Perkins, 229 Ill. 2d 34, 42 (2007)	11
People v. Suarez, 224 Ill. 2d 37, 46 (2007)	11
People v. King, 39 Ill. 2d. 295, 297 (1968)	11
People v. Turner, 187 Ill. 2d 406, 415-416 (1999)	11
People v. Anguiano, 2013 Il. App (1ST) 113458	11
People v. Hayes, 49 Ill. 2d 298, 303 (1971)	11
People v. Kegel, 392 Ill. App 3d 358 (2nd 2009)	12
28 U.S.C., Sec. 2244(d)(1), 2244(d)(2)	12
Gray v. Zatecky, 865 F. 3d 909, 912 (7th Cir. 2017)	12
Holland v. Florida, 360 U.S. 631, 649 (2010)	12
Neverson v. Farquharson, 366 F. 3d 32, 41 (C.A. 1, (2004)	12
Smith v. McGinnis, 208 F. 3d 13, 17 (CA. 2 2000)	12
Harris v. Hutchinson, 209 F.3d 325, 329-330 (C.A. 4 2000)	12
Moore v. United States, 173 F3d. 1131, 1134 (C.A. 8 1999)	12
Sanvik v. Unite States, 177 F. 3d 1269, 1272 (C.A. 11 1999) (per curim)	12

Cases

Statute And Rules

In The
Supreme Court Of The United States
Petition For Writ Of Certiorari

Petitioner Jesus Cotto, respectfully prays that a writ of certiorari issue to review the judgement 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 no. 18-1784; 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 no. 17-C3719; 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 C to the petition and is

- ☑ Reported at 2016 IL 119006; or,
- ☐ has been designated for publication but is not yet reported; or,
- ☐ is unpublished.

The opinions of the Appellate Court, First Judicial court appears at Appendix D to the petition and is

- ☑ Reported at 2015 IL App. (1st) 123489; 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 January 16, 2019.

- ☐ 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) on Application no._____ A_____.

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

For cases from state courts:

The date on which the highest state court decided my case was May 19, 2016. A copy of that decision appears at Appendix C.

- ☐ 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) on Application no.___ A____.

The jurisdiction of this court is invoked under 28 U.S.C.. section 1257 (A).

Constitutional And Statutory Provisions Involved

United States Amendment Sixth- the right to effective assistance of counsel at every critical stage.

United States Amendment Fourteenth- No person shall be deprived of life, liberty, or property without due process of law.

Illinois Constitution 1970, Article 1, sec. 2: No person shall be deprived of life, liberty, or property without due process of law nor be denied the equal protection of the law.

28 U.S.C.A. section 2244 (d): One-year statute of limitations on petitions for federal habeas relief is subject to equitable tolling in appropriate cases.

Ill Const. Art. 1, sec. 9, cl.2

Public Act 89-203 (eff. July 21, 1995)

Public Act 89-428 (eff. Dec. 13, 1995)

Public Act 95-1052, sec.93 (eff July 6, 2009)

Statement of the Case

Jesus Cotto was convicted of armed robbery and sentenced to natural life in prison pursuant to the habitual criminal statute, 720ILCS5/33B-1 ct sec. (West2008). (T.C.86). The same attorney represented Cotto at trial and during his direct appeal. (C.16). On June 3, 2009, the appellate court affirmed Cotto's conviction in a rule 23 order (C.176).

On September 28,2011, with the assistance of (a second) retained counsel, Cotto's paid counsel filed a petition for post-conviction relief alleging that his trial attorney was ineffective. (C.9-16). The circuit court advanced Cotto's petition to the second stage of post-conviction proceedings. (R.C.2). The state filed a motion to dismiss, in part because the petition was untimely. On November 2, 2012, the circuit court dismissed the petition. (C.180-98;R142). In a divided opinion, the appellate court affirmed the dismissal. People v. Cotto 2015IL App.(1st)123489. Two justices voted to affirm the dismissal stating that Cotto was not entitled to "reasonable assistance from his privately retained post-conviction counsel." Cotto, 2015ILApp(1st)123489, sec. 10. The dissenting justice would have "held that Cotto was entitled to reasonable assistance from his privately retained counsel," and would have remanded his case for counsel's failure to provide reasonable assistance." Cotto, 2015IL App(1st)123489. Sec. 17-20.

At Trial

Guadalupe Cardenas and Kelvyn Negron, who were both 14 years old at the time of trial, testified that they were walking home from school on March 7, 2008, when a man, whom they identified as Cotto, emerged from an alley. (T.R.9-12, 41-44). Cardenas and Negron testified that Cotto wrapped his arm around Negron's neck and said, "Give me you shit." (T.R.13-14 44-45). Cardenas tried to pull Negron away from Cotto, (T.R.14.15). Cardenas testified, (Cotto) pulled up his left arm and he had the black hoodie on and he had the sleeve over and I could see that he had a gun with him because I saw the black part, basically

the thing where the bullets come out from." (T.R.15). Cardenas testified that she had seen a gun at school before. (T.R.16). She conceded that she could only see about one centimeter of the gun protruding from Cotto's sleeve. (T.R.39). Cardenas and Negron testified that Cotto broke off the gold chains Negron was wearing around his neck and ran back to a green car parked in the alley. (T.R.17-18, 47). Cardenas read the license plate number of the green car and she and Negron ran to her house. (T.R.18,20,48). Cardenas called the police, who arrived about 20 minutes later (T.R.19,48). She described the robber to them and gave them the license plate number of the green car (T.R.19-20).

Officer Matthew Scott, one of the officers who spoke to Cardenas and Negron, testified that, using the license plate number, he put together a photo array that Cardenas and Negron viewed separately (T.R.64,68). They both identified someone in that array (T.R.22-23,49-50,65).

On March 11, 2008, Scott was driving in an unmarked car when he saw a green car with the same license plate number Cardenas had given him (T.R.68-69). Scott tried to pull the car over but it would not stop. (T.R.70). Ultimately, traffic forced the car to stop (T.R.70). Cotto got out of the driver's seat and began to walk away quickly (T.R.70). Scott pursued him and arrested him (T.R.71). Scott brought Cotto back to the police station where Detective John Hillmann organized a lineup (T.R.72,76). Cardenas and Negron both identified Cotto in the lineup as the man who robbed Negron (T.R.24-26,52-54,79-80). Hillmann testified that he told Cotto that he had been identified in a robbery case (T.R.83-84). According to Hillmann, Cotto told him that he saw a chain dangling from the boy's neck, ripped the chain off of the boy's neck, got back into his car and drove away (T.R.84).

Cotto testified that he took Negron's chains from him but that he did not have a gun (T.R.87). Rather, Cotto testified that he had "plastic rubber tubing inside (his) left-hand sleeve" (T.R.87). He said that the tube had come from inside his car (T.R.96). Cotto had placed it in the pocket of his hooded sweatshirt but

it started to fall out so he stuffed it in his sleeve (T.R.93). Cotto admitted waving the tube at Cardenas but said that he was not using it as a weapon (T.R.87,92-93). He also said he did not wave the tube at Cardenas to frighten her (T.R.94). Cotto testified that he had four prior convictions for robbery and aggravated battery in a public place (T.R.88). The court found Cotto guilty of armed robbery (T.R.103). On September 29, 2008, the trial court sentenced Cotto to natural life in prison based upon his prior convictions for armed robbery and aggravated vehicular hijacking with a weapon (C.148-49,154-55).

Direct Appeal

On direct appeal, Cotto's attorney averred that the state failed to prove beyond a reasonable doubt that he was armed during the robbery (C.176). On June 3, 2009, the court affirmed Cotto's conviction in a rule 23 order (C.170-178). Represented by Michael Levinsohn.

Post-Conviction Proceeding

On September 28, 2011, Cotto's paid attorney (Konstantinos K. Markakos) filed a post-conviction petition (C.9,179). The petition claimed that Cotto was denied his right to effective assistance of counsel at trial for, inter alia, failing to investigate his case, failing to put on various expert witnesses, assuring him he was eligible for a shorter sentence than life imprisonment, telling him to lie about having a rubber tube, and failing to give him notice of the appellate court's decision in a timely manner (C.10-16). The petition also argued that Cotto was denied due process of law because the trial court failed to admonish him before trial that he could substitute judges (C.11).

In support of Cotto's claims, post-conviction counsel attached the transcripts of two pretrial court dates, Cotto's trial, and Cotto's sentencing hearing (C.19-155). He also included affidavits from Cotto, Cotto's brother and Cotto's mother (C.159-61,163-66,168-74). Cotto's affidavit asserted that his attorney did not "send my

mother, my brother or myself the appellate (court's) decision until after 35 days had pass(ed)***(C.174). The affidavits from Cotto's brother and mother also averred that Cotto's attorney "Michael Levinsohn" did not send them the appellate court's order until more than 35 days had passed (C.161,166). (See Appendix E)

The petition included a copy of the court's Rule 23 order affirming Cotto's conviction on direct appeal and an envelope postmarked September 4, 2009, addressed to Cotto's mother from his trial attorney Michael Levinsohn (C.176-79). On March 30, 2012, the state filed a motion to dismiss Cotto's post-conviction petition (C.180). The state averred that, inter alia, the petition was untimely and that Cotto did not allege that the untimeliness was not due to his culpable negligence (C.184-85). On August 17, 2012, Cotto's post-conviction counsel filed a response to the state's motion to dismiss (C.200). Counsel maintained that Cotto's petition showed that "he was not"culpably negligent" for the late filing because he had attached the envelope showing that his trial attorney (Michael Levinsohn) had mailed the court's decision to Cotto's mother, several months after his conviction was affirmed (C.200-01). He made no other argument regarding timeliness (Konstantinos K. Markakos). The court granted the state's motion to dismiss on November 2, 2012 (R.142).

On appeal, Cotto argued that his post-conviction counsel had failed to provide reasonable assistance by failing to adequately contest the state's assertion that the untimely filing of his petition was due to Cotto's culpable negligence. People v. Cotto 2015IL App (1st)123489 sec.9, Relying on People v. Csaszar, 2013IL App (1st)100467 sec. 15, two justices affirmed the dismissal of Cotto's post-conviction petition on the grounds that Cotto "was not entitled to reasonable assistance from (any) attorney," whether paid or appointed, and because counsel did not provide reasonable assistance in this case." Id., at sec. 17-20. (See AppendixE6) Justice Dissenting...

Citations to the Record will be as follows: (T.C.)- common law record from trial; (T.R.)-report of proceedings from trial; (E.)-common law record from the instant post-conviction proceedings; (R.)-report of proceedings from the instant post-conviction proceedings. Any factual assertions not cited are taken from the court's Rule 23 order on direct appeal (C.176). People v. Cotto, no. 1-08-3031 (June 3, 2009). And any (or) all documents not attached will be (Re.)-reference to the brief(s) in the case. Cotto, 2015IL App(1st)123489, respectively.

Reasons For Granting The Petition

I). "Whether Federal Courts May Excuse A Petitioner's Failure To Comply With The State Court's Procedural Rules, Notwithstanding The State Court's Determination That Its Own Rules Had Been Violated"?

Facts in Support of Petitioner's Claim:

1) The fact that congress expressly referred to "tolling" during state collateral review proceedings is easily explained without rebutting the presumption in favor of "equitable tolling"..., because a petitioner cannot bring a federal habeas claim without first exhausting state remedies---" a process that frequently takes longer than one year." Rose v. Lundy, 455 U.S. 509,102 3. CL. 1198, 7IL.Ed.2d379 (1982); Section 2254 (b)(1)(A).

In the present case, the state realized that a federal claim cannot be filed until All of Petitioner Cotto's state remedies has to be exhausted..., And understood that it was the retained attorney, Michael Levinsohn, who impeded Cotto's from exhausting his state review to the Illinois Supreme Court, statutory requirement of 35 days to file his (PLA), because counsel Levinsohn failed to forward the appellate court's decision until after the time elapsed for filing. And that this impediment by counsel Levinsohn was highly prejudicial to Petitioner Cotto's constitutional rights under the Sixth and Fourteenth amendments, because the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) statutory limitations clock began to run its course- after the appellate court's decision- Since the counsel failed to inform Cotto's of the Appellate court's decision was ruled on June 3, 2009(C.176,178) Counsel Levinshon deprived Cotto's of his substantial constitutional rights under (both) Constitutions,(see Exh. E).

For AEDPA recognized for seeking to eliminate delays in the federal habeas review process (Day V. McDonough 547U.S.198, 205, 213,126s.ct.1617, 164 l. ed. 2d876 (2006);Id.,at,205-206); Miller-El v. Cockrell, 537 U.S. 322,3332, 123S. Il. 1029, 154L. Ed. 25 931(2003). And if (AEDPA) also seeks to do so without undermining

basic habeas corpus principles. And seeking to harmonize the new statues with prior law, under which a petition's timeliness was always determined under equitable principles. See Slack v. McDaniel, 529 U.S. 475, 483, 120 S. ct. 1595, 146 L.Ed.2d542(2000)("AEDPA's present provisions...incorporate earlier habeas corpus principles"); see also Day, 547 U.S., at 202.n1,126s.ct.1625;Id.,at214,126s.ct.1675 (Scalia J.dissenting); 2R. Hertz & J. Liebman, Federal Habeas Corpus Practice and Procedure, sec.24.2,pp.1123-1136(5th Ed.2005).

2) And Congress ~~edited~~ codified new rules governing this previously judicially managed area of law, and it did so without losing sight of the fact that the 'writ of habeas corpus plays a vital role in protecting constitutional rights." Slack, 529 d.S, al 495, 120 Sich 1595. For congress did not seek to end every possible delay at all costs. CF. dS. al 483-488, 120 Sich 1595. Thus the importance of the Great Writ, the only writ explicitly protected by Constitution. Article 1, sec. 9, ch 2, along with congressional efforts to have harmonize the new statute with prior laws, interpreting AEDPA's statutory silence as indicating a congressional intent to close courthouse doors that a strong "equitable claim" would ordinarily keep open. (See Appendix B).

II). "Whether Post-Convictions Petitioners Represented By Counsel Should Be Entitled To "Reasonable Assistance Of Counsel," Regardless Of Weather Counsel Was Appointed (OR) Privately Retained?"

Facts in support of Petitioner's claim:

3) On appeal from the dismissal of his post-conviction petition, Cotto asserted that post-conviction counsel Mr. Konstantinos K. Markakos provided unreasonable assistance by failing to adequately contest the state's assertion that he was culpably negligent in filling his petition late. In rejecting those claims, the appellate court found that Cotto "was not entitled to reasonable assistance," merely because his petition was prepared and filed by a privately retained counsel. People v.

Cotto, 2015IL App(1st)123489, sec. 24, citing People v. Csaszar, 2013 IL App (1st)100467, sec. 18,25. For this standard applicable by the appellate court, depriving Cotto of his Sixth and Fourteenth Amdts., because on one hand the court is saying that "Cotto can not enjoy the post-conviction statutory right to reasonable assistance of counsel," and on the other hand, "Cotto's due process of law and his human rights will not be honored or protected."

Thus, this is definitely a form of discrimination against Cotto, because he selected to hire "Konstantinos K. Markakos" a privately retained counsel to file and prepare his post-conviction petition. For the Post-Conviction Hearing Act (the "Act") entitles petitioners to the "reasonable assistance of post-conviction counsel. People v. Perkins 299 ILL.2d 34,42(2007). The statute envisions that counsel would consult with the prisoner either by mail or in person, ascertain has alleged grievances, examine the record of proceedings at the trial, and amend the *** petition, if necessary." People v. Suarez, 224 ILL2d37,46 (2007)..., and the rule and duty of any attorney in a post-conviction proceedings is to "ensure that if the petitioner has any constitutional claims of merit they will be properly recognized, developed and articulated in the post-conviction proceedings." People v. King, 39 ILL.2d 293,299(1968). Therefore, the Act guaranteed Cotto " a reasonable level of assistance," independently of any Supreme Court rule. People v. Turner, 187ILL.2d 406,415-416(1999); see also. People v. Anguiano, 2013IL App.(1st)113458, sec.22. This guarantee pre-dates the implementation of Rule 651(c), and demands that "private counsel" perform the duties later enshrined in the rule, even if there is no concomitant duty to file a certificate. People v. Hayes, 49 ILL.2d 298,303 (1971). (See Appendix C & D)

4) In this case, Cotto on appeal, argued that counsel Konstantinos K. Markakos failed to provide him with reasonable assistance by filing a late petition without adequately explaining why it was filed so late?..., and there was currently 22 Illinois Supreme Court cases with "a split of authority in the appellate court over whether retained counsel (must) be held to the same standard of reasonable representations

as appointed counsel. People v. Cotto, 2015IL App(1st)123489 sec.10; Anguiano, 2013IL App(1st)113458, at sec. 19-40; contra People v. Csaszar, 2013IL App(1st)100467 sec. 13, and People v. Kegel, 392ILL App.3d538(2nd Dist.2009).

Here, in the present case, Mr. Markakos was retained by my family in 2009 Spet. 4, and the appellate court affirmed Cotto's conviction and sentence on June 3, 2009--, given Mr. Markakos enough time to file Cotto's post-conviction petition within the range of the statutory requirement under the Act (725ILCS5/122-1 et.seq.(West 2009); but, Mr. Markakos chose to file said petition on Sept. 29, 2011...,2yrs. And 3mos. later for filing, whereas, Cotto's "one year limitation expired" under 284.S.C.,section 2244(d)(1). due to Mr. Markakos untimeliness understanding of the law, because Mr. Markakos should have known, "that by filing" a late post-conviction petition," that (after) expiration of limitations period did not reset the one-year limitations period under section 2244(d)(2), in which was no fault cause by Cotto. (See Appendix [redacted](Appendix E(b))

5) Cotto contends that his untimely petition should have been saved by equitable tolling. Gray v. Zatecky, 865F.3d 909,912 (7th Cir. 2017). A habeas petitioner is entitled to equitable tolling only if shows; 1) that he has been pursuing his rights with reasonable diligence; and 2) that some extraordinary, nearly insurmountable circumstance outside his control stood in his way and prevented timely filing. Citing Holland v. Florida, 560 U.S.631,649 (2010). Equitable tolling is a highly lack-dependent area in which courts are expected to employ flexible standards on a case-by-case basis, like all 11 Courts of Appeals that have considered the question: "whether AEDPA's statutory limitations period may be tolled for equitable reasons;" where they hold that section 2244(d) is subject to equitable tolling in appropriate cases. See Neverson v. Farquharson, 366F.3d 32,41(C.A.1 2004); Smith v. McGinnis, 208F.3d 13,17 (C.A. 2000); Harris v.Hutchinson, 209F.3d 325,329-330 (C.A. 4 2000); Moore v. United States, 173F.3d 1131,1134 (C.A.8 1999); Sandvik v. United States, 177F.3d 1269, 1272 (C.A. 11 1999) (per curiam). (Appendix [redacted])

In the present case, soon thereafter Counsel Michael J. Levinsohn, failed to provide Cotto's family and him with the appellate court's decision of June 3, 2009, until well after 35 days-Cotto's family hired and retained another private attorney Mr. Konstantinos K. Markakos, 2 weeks later on Sept. 18-20, 2009 (see postmarked Appendix Eb; and while Cotto was under the impression that Mr. Markakos was preparing his post-conviction petition under the time limitation statute---, Cotto's brother filed a complaint under Attorney Registration and Disciplinary Commission (ARDC) on March of 2010 on behalf of Jesus Cotto against Mr. Michael J. Levinsohn, in which the ARDC concluded its inquiry regarding Mr. Levinsohn on April 3, 20188. (Appendix E & Eb

6) Cotto presented affidavits, by Carlos Cotto and Olga Vega, a letter postmarked for Sept. 4, 2009, the late received appellate court's opinion--, which clearly showed that (both) of these privately paid counsel's impeded Cotto's ability to properly address these counsels "extraordinarily circumstance" due to Cotto's lack of knowledge in the science of law-for this was the sole purpose of having hired these attorney's, "to protect my constitutional rights, and to assure that all procedures were followed in a timely manner...,and that the AEDPA "statute of limitations defense-is not jurisdictional," (see Day v. McDoough 547 U.S. 198,205,126 S.ct.1675,164 L.Ed.2d 376(2006), it does not set forth "an inflexible rule recognizing dismissal whenever" its clock has run." Id.at208,126S.CT.1675..., see also Id. At 213,126 S.CT.1675 (Scalia, J.dissenting). As such, petitioner, Jesus Cotto, should have been granted "equitable tolling" by the District Judge in case no. 1-17-CD-03719, where the attorney's were dishonestly with their representations for failing to file timely petition(s) or hand over the appellate court's opinion; which prevented Cotto to protect himself, his constitutional rights, as well as his human rights-where equitable tolling was appropriate under section 2244(d) of the AEDPA statute of limitations, at pp. 2560-2565. And because it is subject to a "rebuttable presumption" in favor "of equitable tolling."

Irwin v. Department of Veterans Affairs 498 U.S.89,95-96, 111 S.CT. 433,112 L.Ed.2d

435(1990), and the presumption's strength is reinforced here by the fact that "equitable principles" have traditionally "governed" substantive habeas law. Munaf v. Green, 553 U.S. 674, 689,128 3. ct. 2207, 171 L.Ed.2d1 (2008). Moreover. the court's cases recognize that equity courts can and do draw upon decisions made in other similar cases for guidance, exercising judgement in light of precedent. demonstrating "flexibility" and avoiding "mechanical rules," Holmberg v. Armbrecht, 327 U.S.392,396,66 S.cb 582,90 L.Ed.743 (1946), in order to "relieve hardships-arising from a hard and fast adherence" to more absolute legal rules, Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 248, 643. Ct. 992, 88 L.Ed.1250 (1944), but with awareness of the fact that specific circumstances. often hard to predict, could warrant special treatment in an appropriate case. Coleman v. Thompson, 501 U.S. 722, 753, 111 3. Ch 2546, 115 L.Ed.2d640 (1991).

7) The rule is difficult to reconcile with more general equitable principles in that it fails to recognize that at least sometimes, "an attorney's unprofessional conduct can be so egregious as to create, "an extraordinary circumstance" warranting equitable tolling," as several other federal courts have specifically held." Although, equitable tolling is not warranted for "a garden variety claim of excusable neglect, (Irwin 498 U.S.at 96, 111 S.CT.453), this case presents far more serious instances of attorney's misconduct than that. Pp.2562-2564. The record facts suggest that this case may well present "extraordinary" circumstances..., for the District Court, incorrectly rested its ruling not on a lack of such circumstances, but on a lack of knowledge and diligence..."no lower court has yet considered whether the facts of this case indeed constitute extraordinary circumstances sufficient to warrant equitable tolling." (Appendix C, D and E, and E(b)).

III). "Whether The Natural Life Statute. i.e. 720 ILCS 5/33N was Held by The Illinois Supreme Court To Be Unconstitutional In Its Entirety And Void Ab Initio, For Violating The Single Subject Rule of Article 4, Section 8 (d) Enacted By The Legislature In Public Act 89-203 (eff. July 21, 1995) And Again In Public Act 89-428 (eff. December 13, 1995)

Facts in support of Petitioner's claim:

8) On September 5, 2008, Petitioner Jesus Cotto was convicted of 1 count for armed robbery, and on September 29, 2008, was sentenced under the Habitual Criminal Statute, (720 ILCS5/33B et seg. (West 2008)..., making the sentence of natural life unconstitutional and void ab initio, according to the Illinois Supreme Court, because it was enacted by the Illinois General Assembly in Public Act 89-203 (eff. July 21, 1995) and again in Public Act 89-428 (eff. December 13, 1995), that violated the single-subject rule of Article 4, sec. 8(d), of the Illinois Constitution 1970.

Public Act 89-203

9) At issue, is the challenged constitutionality of Public Act 89-203 where the Illinois Supreme Court invalidated the Act in its entirety for violating the "single-subject clause of article 4, sec. 8(d)," of the Illinois constitution 1970, and applied the "void Ab Initio Principles" upon its decision..., because the legislative Body enactment entitled Public Act 89-203 as: An act in relation to crime." However, the invalidation came to exist upon Public Act 89-203, when the Illinois Supreme found One Section "that was unrelated to crime, which was amended by the Criminal Code of Procedure, 1963, sections 15-1508 and 15-1701 of the "Ill. Mortg. Foreclosure Law codified in the Code of Civil Procedure," and on November 18, 1999, the Illinois Supreme Court determined that these amendments were " distinctly non criminal in nature," and held it violated the single-subject clause of Article 4, sec.8(d), of the Illinois Constitution 1970, and applied the "void Ab Initio standard of law-rendering as though it was never passed..., making Cotto's natural life sentence unconstitutional in its entirety, that warrants vacating the sentence, and grant the 20 to 25 years that was proffer by the prosecution (See letter of Konstantinos K. Markakos, dated August 27, 2012) (Appendix F)

Public Act 89-428

10) Public Act 89-428 was introduced as Senate Bill on March 2, 1995. At that time, the bill was entitled "An Act in relation to prisoners reimbursement to the Department of Corrections for the expenses incurred by the incarceration, amending named Acts. "The bill was eight pages long and addressed only this specific topic. The Senate passed the bill on April 25, 1995, "with no amendments." Senate Bill 721 reached the House of Representatives, amendments four through sixteen were placed on the bill-these amendments addressed "an array of different subjects, including, inter alia, expulsion of school students for bringing weapons to school, increasing the penalties for the possession of cannabis, and providing for privatization of some services of the State Appellate Defender's Office, One amendment retitled the bill as "An Act in relation to crime." With these Amendments, Senate Bill 721 passed the House of Representatives and was sent back to the Senate.

11) The bill encompassed a multitude of subject matters, contained in six articles. Article 1, entitled "The Child Sex Offender Community Notification Law." Article 1 also amended the Sex Offender Registration Act. Article 2 amended the Criminal Code of 1961. The article also amended numerous other acts, including the Alcoholism and other Drug Abuse, and Dependency Act, the Children and Family Services Act, the Military Code of Illinois, the Metropolitan Transit Authority Act, the School Code, the Health Care Worker Background Check Act, and the Illinois Vehicle Code, to include references to the offense of predatory criminal sexual assault of a child. Article 2 also contained provisions amended the Juvenile Court Act.

12) Article 3 created the Environmental Impact Fee Law, beginning on January 1, 1996, fees collected were to be deposited on the Underground Storage Tank Fund created by the Environmental Protection Act. Article 3 also amended the Civil Administrative Code of Illinois, the Motor Fuel Tax Law, and the Environmental Protection Act.

13) Article 4 amended the Cannabis Control Act to enhance the felony classifications for the possession and delivery of certain amounts of cannabis.

Article 5 amended the United Code of Corrections to decrease the frequency of parole hearings for prison inmates.

Article 6 amended section 14-3 of the Criminal Code of 1961, which governs exemptions from the offense of eavesdropping. The amendment added subsection (j) to section 14-3. Article 6 also amended the Code of Criminal Procedure of 1963 to provide that a criminal defendant who is receiving psychotropic drugs is entitled to a fitness hearing only where the court finds there is a bona fide doubt of the defendant's fitness. This article also added a new provision to the law governing the admission of the hearsay statements of child victims.

14) Public Act 89-428 provided that its provisions would take effect upon becoming law, except that article 1 would take effect June 1, 1996, and article 3 would take effect January 1, 1996, Public Act 89-428 was passed by both the House and the Senate and was signed into law on December 13, 1995. However, turning to the substantive issue of the constitutionality of Public Act 89-428.

Single Subject Rule

Public Act 89-428, violated the single-subject rule of the Illinois Constitution, Article 4, sec.8(d), of the Illinois Constitution of 1970 provides, in pertinent part, as follows:

> "Bills, except bills for appropriation and for the codification, revision or rearrangement of laws," shall be confined to one subject." Const. 1970, art. 4, sec. 8(d).

The single-subject clause is a substantive requirement for the passage of bills and is therefore subject to judicial review. People v. Dunigan, 165ILL.2d235,254,209ILL. Dec.5 3, 650 N.E.2d1026 (1995). The court discussed the historical purpose of the single-subject rule in Fuehrmeyer v. City of Chicago, 57ILL.2d193,201,311 N.E.2d116 (1974), stating:

"The history and purpose of the constitutional provision are too well understood to require any education at our hands. The practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, (is) both corruptive of the legislator and dangerous to the state." Fuehrmeyer, 57ILL.2d at 202,34 N.E.2d116, quoting People ex rel. Drake v. Mahaney 13 Mich. 486-494-95 (1865).

15) A matter is moot when the issues involved in the trial court no longer exist because interviewing events have rendered it impossible for the reviewing court to grant the complaining party effectual relief. In Re A Minor, 127 ILL.2d 247,255,130, ILL, Dec.225,537 N.E.2d 292 (1989).

This rule is not applicable in this case. The constitutional challenge pursued here is that Public Act 89-428 and Public Act 89-203 was enacted in violation of the single-subject rule of the Illinois Constitution. The single-subject rule prohibits the enactment of bills that encompass more than one subject..., and a challenge that an Act violates the single-subject clause, is by definition, "directed at the Act in its entirety"..., there is no one provision or feature of the Act that is challenged as unconstitutional..., in fact, a single-subject challenge does not address the substantive constitutionality of the Act's provisions at all; Rather, a single-subject challenge goes to the very structure of the Act, and the process by which it was enacted."

Public Act 89-428 and Public Act 89-203 in its structure is invalid, The Acts may not be permitted to stand, accordingly to the Illinois Supreme Court, because "subsequent legislation, however, will not remedy the constitutional defect in P.A. 89-428 and P.A. 89-203 since they were passed in violation of the single-subject rule. Moreover, P.A. 89-428 has not been replaced in its entirety--, some provisions of P.A. 89-428 have not been revisited in separate legislation, because a single-subject violation would render invalid each and every provision of P.A. 89-428,

the fact that some provisions of P.A. 89-428 have not been readdressed also defeats "any mootness argument"..., further, with regard to those provisions of P.A> 89-428 that have been reenacted in some form, in most instances, the effective dates of the new legislation postdate the effective date of the corresponding provision in P.A. 89-428--, made a window of time exists when the allegedly invalid provisions of P.A. 89-428 were in effect and had not been suspended by subsequent legislation. For these reasons, Cotto's natural life sentence must be vacated, and request that this court grant him a new sentence. (Appendix F)

Habitual Criminal Statute

720ILCS 5/33B, et seq. (West 2008)

16) When Cotto was convicted and sentenced in 2008, the habitual criminal statute was already held to be unconstitutional in its entirety and void ab initio by the Illinois Supreme Court, making Cotto's challenge withstanding..., because the Legislature "reappealed" Article 33B by Public Act 95-1052, sec. 93 (eff. July 1, 2009), 10 months after Cotto's conviction and sentence of September 2008, which made the natural life imposed against Cotto unconstitutional and void by P.A. 89-203 and P.A. 89-428.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

S/ Jesus Cotto

Date: March 29, 2019 A.D.2019