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**IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2020**

WILLIAM SEVERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was the District Court's decision to dismiss Petitioner's 28 U.S.C. § 2254 petition as untimely correct?

**PARTIES TO THE PROCEEDING
AND RELATED CASES**

The petitioner is:

William Severs

The respondent is:

United States of America

- *Severs v. Attorney General New Jersey, et al.*, No. 15-cv-06421, U.S. District Court for the District of New Jersey. Judgment entered March 19, 2018.
- *Severs v. Attorney General New Jersey et al.*, No. 18-1822, U.S. Court of Appeals for the Third Circuit. Judgment entered November 5, 2019.

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OPINIONS BELOW

The United States Court of Appeals for the Third Circuit affirmed the District Court's Dismissal Petitioner William Severs' Petition. App. 1-7.

STATEMENT OF JURISDICTION

William Severs seeks review of the November 5, 2019, Order of the United States Court of Appeals for the Third Circuit. Jurisdiction of this Court to review the judgment of the Third Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5 of the United States Constitution, which provides:

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 offense 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.

STATEMENT OF THE CASE

Appellant was indicted by a Cumberland County Grand Jury and convicted after a trial by jury of first degree murder, N.J.S.A. 2C:11-3a(1); second degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); third degree unlawful possession of a weapon, N.J.S.A. 2C:39-5c(1); and fourth degree obstruction of justice, N.J.S.A. 2C:29-1. Appellant was sentenced to 60 years New Jersey State Prison with an 85 percent parole disqualifier.

Appellant's Judgment of Conviction was affirmed on direct appeal by the New Jersey Superior Court, Appellate Division, and the New Jersey Supreme Court. Thereafter, Appellant filed a timely Motion for Post-Conviction Relief which was denied by the New Jersey Superior Court, Appellate Division, and the New Jersey Supreme Court. Appellant, a state prisoner, filed a petition pursuant to 28 U.S.C. § 2254 for a writ of habeas corpus.

Appellant's petition was dismissed by the United States District Court for New Jersey on timeliness grounds. Appellant filed an application for appealability and a Notice of Appeal which was granted.

REASONS FOR GRANTING THE WRIT

THE DISTRICT COURT ERRED WHEN IT DIS- MISSED AS UNTIMELY PETITIONER'S 28 U.S.C. § 2254 PETITION.

The Antiterrorism and Effective Death Penalty Act (AEDPA) provides a one-year limitation period for section 2254 claims. There is no dispute that Mr. Severs' petition was untimely. The AEDPA's one-year limitation period may be tolled only in extraordinary cases. *Holland v. Florida*, 560 U.S. 631, 649-50 (2010).

Mr. Severs needed to establish that (1) he pursued his rights diligently, and (2) extraordinary circumstances prevented a timely petition. *Id.* at 649.

1. Reasonable diligence prong of an equitable tolling showing

The diligence required for equitable tolling purposes is reasonable diligence, not maximum, extreme, or exceptional diligence. *Holland*, 130 S.Ct. at 2565. "This obligation does not pertain solely to the filing of the federal habeas petition, rather it is an obligation that exists during the period appellant is exhausting state court remedies as well." *LaCava v. Kyler*, 398 F.3d 271, 277 (3d Cir. 2005) (citing *Jones*, 195 F.3d at 160). A determination of whether a petitioner has exercised reasonable diligence is made under a subjective test: it must be considered in light of the particular circumstances of the case. *See, Schlueter v. Varner*,

384 F.3d 69, 74 (3d Cir. 2004) (“Due diligence does not require the maximum feasible diligence, but it does require diligence *in the circumstances*.”) (emphasis added) (internal quotation marks and citation omitted); see also, *Doe v. Busby*, 661 F.3d 1001, 1013 (9th Cir. 2011) (“To determine if a petitioner has been diligent in pursuing his petition, courts consider the petitioner’s overall level of care and caution *in light of his or her particular circumstances*.” (emphasis added)).

The fact that a petitioner is proceeding pro se does not insulate him from the “reasonable diligence” inquiry and his lack of legal knowledge or legal training does not alone justify equitable tolling. See, *Brown v. Shannon*, 322 F.3d 768, 774 (3d Cir. 2003).

2. The extraordinary circumstances prong of an equitable tolling showing.


In some cases, an attorney’s malfeasance, when combined with reasonable diligence on the part of an appellant in pursuit of his rights, may warrant equitable tolling of the statute of limitations. *Schlueter*, 384 F.3d at 76-77; *Nara v. Frank*, 264 F.3d 310, 320-21 (3d Cir. 2001); *Baldayaque v. United States*, 338 F.3d 145 (2d Cir. 2003). The Supreme Court in *Holland* recognized that egregious attorney neglect amounting to extraordinary circumstances warrants the tolling of the statute of limitations.

Here, the Court of Appeals erred in not finding that Petitioner met his burden to equitably toll the statute of limitations.

CONCLUSION

For these reasons stated in this petition, Mr. Severs respectfully requests that a writ of certiorari be issued to review the decision below.

Respectfully submitted,



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Dated: November 8, 2019