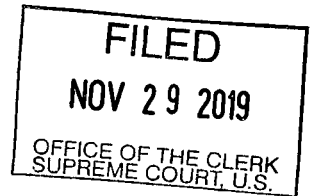


No. 19-6928

ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

LEE DALE LOFTON, JR. - PETITIONER

VS.

WENDY KELLEY [REDACTED] - RESPONDENT(S)

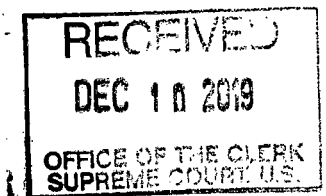
ON PETITION FOR WRIT OF CERTIORARI TO  
U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI  
LEE DALE LOFTON, JR. #140933

DELTA REGIONAL UNIT

880 EAST GAINES ST.

DERMOTT, AR 71638-9515



## QUESTION(S) PRESENTED

1. By the exception of *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), Petitioner's inability to meet the one year time limitation under (AEDPA) in Habeas corpus proceedings is directly ~~related~~ related to the lack of counsel assistance in initial collateral review (Rule 31) proceedings. Wherefore, was this not adequate enough reason for U.S. District Court to have excused procedural default.
2. Did the Arkansas Supreme Court err in not granting Petitioner's ~~timely~~ timely filed motion for extension of time, violating his 14<sup>th</sup> ~~Amendment~~ Amendment to due process, for he made it aware he was ill equipped, seeking 2 copy of his transcript and motion of discovery, thus having to act abstractly, due to ineffective assistance stemming from trial court.
3. Should Petitioner not have been granted relief in U.S. District Court and resentenced in accord with AR. St. 16-93-621(2)(1). of the "Fair Sentencing of Minors Act of 2017", Act 539, S.B. 294, thus making his current sentence an excessive one, inflicting cruel and unusual punishment, violating the 8<sup>th</sup> Constitutional Amendment (Bail - Punishment). And should it not have been regarded as a rule in habeas corpus proceedings by 28 U.S.C. 1652. State laws as rules of decision, and established as a new rule by *Teague v. Lane*, 489 U.S. 288 (1989).
4. Does 28 U.S.C. 1658(2) not make allowance for the challenge of the "Fair Sentencing of Minors Act of 2017" to have been ruled timely in habeas corpus proceedings.

## 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:

## RELATED CASES

- LOFTON V. KELLEY NO. 19-2765, U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT - judgment ~~entered Nov. 22, 2019.~~ entered NOV. 22, 2019.
- LOFTON V. KELLY NO. 5:19-cv-00066-BRW/PSH, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS. judgment entered Aug. 7, 2019.
- LOFTON V. STATE, NO. CR-08-1212, ARKANSAS SUPREME COURT. judgment entered Jan. 15, 2009.
- STATE V. LOFTON NO. 60 CR-07-3957, PULASKI COUNTY CIRCUIT COURT. judgment entered Jan. 10, 2008.

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## TABLE OF AUTHORITIES CITED

### CASES

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| • JENNINGS V. PURKETT, 17 F.3d 979, 782 (8th Cir. 1993)    | (6)          |
| • MARTINEZ V. RYAN, 132 S.Ct. 1309 (2012)                  | (QUESTION 1) |
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| • TELQUE V. LANE, 489 U.S. 288 (1989)                      | (QUESTION 3) |
| • WISE V. ARMONTROUT, 1952 F.2d 221, 223 (8th Cir. 1991)   | (7)          |

### STATUTES AND RULES

|                                                                                                          |                     |
|----------------------------------------------------------------------------------------------------------|---------------------|
| • 6th Constitutional Amendment                                                                           | (6)                 |
| • 8th Constitutional Amendment                                                                           | (QUESTION 3)        |
| • 14th Constitutional Amendment                                                                          | (6)                 |
| • 28 U.S.C. § 2101(c).                                                                                   | (8)                 |
| • 28 U.S.C. § 1652.                                                                                      | (QUESTION 3)        |
| • SCR 11.                                                                                                | (8)                 |
| • HCR 9(2)                                                                                               | (7, 8)              |
| • AR. ST. 16-93-621. (2)(1). OF THE "FAIR SENTENCING OF MINORS ACT OF 2017", ACT 539, S.B. 294.          | (QUESTION 3, PG. 9) |
| • ARCP 37.1                                                                                              | (6)                 |
| • ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA)                                                 | (QUESTION 1)        |
| • 28 U.S.C. § 1658. TIME LIMITATIONS ON THE COMMENCEMENT OF CIVIL ACTIONS ARISING UNDER ACTS OF CONGRESS | (QUESTION 4)        |

### OTHER

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 judgement below.

OPINIONS BELOW

☒ FOR CASES FROM FEDERAL COURTS:

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

☐ reported at N/A ; 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 Lofton v. Kelley 2019 WL 3720729 ; or,

☐ has been designated for publication but is not yet re-  
ported; or,

☐ is unpublished.

## JURISDICTION

☒ For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was 11-22-2019

☒ No petition for timely rehearing was filed ~~in~~ 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 Jan. 15, 2009.

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 ~~and~~ including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(2).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

- 6th Amendment
- 8th Amendment
- 14th Amendment
- 28 U.S.C. § 2241. Power to grant writ
- 28 U.S.C. § 1652. State laws as rules of decision
- FRCP Rule 55. Default judgment, (2).
- Anti-terrorism and Effective Death Penalty Act (AEDPA)
- A.C.A. 5-2-201.
- ACRP 31.1
- *Beck v. Pashett*, 1966 F.2d 1563 (9th Cir. 1992)
- *Capps v. Sullivan*, 13 F.3d 350 (10th Cir. 1993)
- *Engle v. Isacc*, 456 U.S. 107, 135 (1982)
- *Frank v. Mangum*, 237 U.S. 309 (1915)
- *Graham v. Florida*, 560 U.S. 48 (2010)
- *Harris v. Nelson*, 394 U.S. 206, 292, 89 S.Ct. 1082, 22 L.Ed 2d 281 (1969)
- *Harris v. State*, 2018 Ark 179
- *Hughes v. Idaho State Board of Corrections*, 800 F.2d 905, 907-09 (9th Cir. 1986)
- *Jamison v. Lockhart*, 975 F.2d 1377, 1380 (8th Cir. 1992)
- *Jones v. Arkansas*, 929 F.2d 375, 381 (8th Cir. 1991)
- *Linkletter v. Walker*, 381 U.S. 618 (1965)
- *Martinez v. Ryan*, 132 S.Ct. 1309 (2012)
- *Miller v. Alabama*, 132 S.Ct. 2455 (2012)
- *Murray v. Carrier*, 477 U.S. 478 (1986)
- *Richardson v. Miller*, 753 F.Supp. 781, 82 (W.D.Mo. 1990)
- *Roper v. Simmons*, 543 U.S. 551 (2005)
- *Smith v. Lucas*, 9 F.3d 359 (5th Cir. 1993)
- *Stovall v. Denn*, 388 U.S. 293 (1967)

- Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed 674 (1984)
- Teague v. Lane, 489 U.S. 288 (1989)
- Trevino v. Thaler, 133 S.Ct. 1911 (2013)
- Wainwright v. Sykes, 433 U.S. 72, 91 (1977)

All citations appear throughout the proceedings of Appendix B, and, also regard current petition, and all related cases.

## STATEMENT OF CASE

Petitioner was initially a juvenile charged as an adult and convicted to an excessive sentence of 40 years in the Pulaski County Circuit Court, case no. 60CR-07-3957 on Jan. 10, 2008.

-He then filed a Rule 37.1 Petition to challenge the ineffective assistance of counsel he received, thus violating his Sixth Amendment right to effective legal representation by the Strickland v. Washington, 466 U.S. 668 (1984) standard. It was denied as untimely. He then appealed in which the circuit judge granted certificate wherefore his record was lodged within the state supreme court, case no. CR-08-1212. Petitioner timely filed a motion for extension of time, and motion for ~~transcript~~ transcript to obtain further evidence to support his ineffective assistance claims, for he was ill equipped to conduct thorough discovery.

It was held in Jennings v. Burkett, 17 F.3d 979, 1782 (8th Cir. 1993) ("to demonstrate prejudice a petitioner must show that errors of which he complains 'worked to his actual and substantial disadvantage, infecting his entire [hearing] with error of constitutional dimensions'. United States v. Frady, 456 U.S. 152, 170 (1982) (emphasis in original)"). State supreme courts err in not granting motion for extension of time is of the forementioned and, thus, violates petitioner's 14 Amendment right to §1. citizenship - due process of law - equal protection.

Several years later as of recently petitioner, filed a writ of habeas corpus in the <sup>U.S.</sup> District Court for the Eastern District of Arkansas. It ultimately denied as untimely. Decided Aug. 2019.

It was held in *Wise v. Armontrout* 1952 F.2d 221, 223 (8th Cir. 1991) ("We... decline the states invitation to presume prejudice as a matter of law due to wise's seventeen year delay in filing this petition... Despite ~~the~~ language found in the advisory notes to Rule 9(2) suggesting that prejudice should be presumed after five years, the states position has been rejected by virtually every circuit to consider it because congress expressly refused to include such a provision in the final rule 9(2)."). The U.S. Supreme Court also decided in *Engle v. Isacc* 1456 U.S. 107, 135 (1982) ("In appropriate cases [the principles of comity and finality] must yield to the imperative of correcting<sup>2</sup> fundamentally unjust incarceration.").

It was held also in *Smith v. Duckworth* 910 F.2d 1492, 1494 (7th Cir. 1990) "It is well settled that the mere lapse of time is not a sufficient ground upon which to base a dismissal under Rule 9(2).".

In regards of the above citations and after thorough review of the record by the U.S. District Court and U.S. Court of Appeals for the Eighth Circuit, petitioners claims should have rendered constitutional violations permitting the excusal of procedural default.

petitioner filed a notice of appeal, in forma pauperis, following the U.S. District Courts order to dismiss his ~~the~~ writ of habeas corpus. The U.S. Court of Appeals entered judgement on November ~~the~~ 22, 2019 denying cert-

ificate of appealability, and denying motion to proceed on appeal in forma pauperis moot. wherefore, the [REDACTED] U.S. Court of Appeals decisions in this case conflict with previous [REDACTED] cited circuit court opinions regarding timeliness and prejudice in filing Habeas corpus petition(s).

For all violations [REDACTED] petitioner sets forth on petition for writ of certiorari by the jurisdiction of 28 U.S.C. 1254, and 28 U.S.C. 2101(c), petitioner earnestly asks that relief be granted.

## REASONS FOR GRANTING THE PETITION

All facts set forth demonstrate the violation of petitioner's constitutional rights resulting in his unlawful confinement and deprivation of his freedom contrary to laws held in *Harris v. Nelson*, 394 U.S. 296, 292, 89 S.Ct. 1082. It is also imperative that petition be granted for unprecedented, AR. St. 16-93-621. (2)(1). I would ensure relief for all those entitled, ~~and~~ should the Supreme Court of the United States rule in its favor. Also, 28 U.S.C. 2403(b) may apply and shall be served on the Attorney General of the State of Arkansas. Wherefore, petitioner earnestly asks that petition be granted.

## CONCLUSION

Petitioner, Lee Dale Lofton, Jr., declares that the foregoing is true and correct, and prays the court grants the relief he seeks, justly, and any other relief the court deems just.

The petition for writ of certiorari should be granted.

Respectfully Submitted,

A. Lofton, Jr.

Date: November 29<sup>TH</sup>, 2019