

19-7846

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

FEB 18 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Cemaludin Veseli, II — PETITIONER
(Your Name)

vs.

Carla Agnew-Hacker, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cemaludin Veseli, II
(Your Name)

PO Box 5000
(Address)

Floren, AZ 85132
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

When the State Courts have failed to sign a formal order for five years - and have still not issued that order as required by State procedural rules - and - there is no interlocutory appeal for interim orders - was it a violation of Slack v. McDaniel 529 U.S. 473 (2000) Not to issue a Certificate of Appealability?

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

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STATUTES AND RULES

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 judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals 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☒ is unpublished.

The opinion of the United States district court appears at Appendix C 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 Nov 8 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: December 20, 2019, and a copy of the order denying rehearing appears at Appendix D.

☐ 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).

STATEMENT OF THE CASE

On September 9, 2013, a jury sitting in the Superior Court of Arizona in and for Coconino County convicted Petitioner of second-degree murder, a class one felony. (Bates 600). The trial court sentenced Petitioner to sixteen years in prison. The Arizona Court of Appeals affirmed Petitioner's convictions and sentences on January 29th, 2015.

The trial court appointed counsel, who could not find a colorable claim. (Bates 483-84, 489-93). On July 24, 2017, Petitioner filed a pro se "Opening Brief" that the trial court construed as a PCR Petition (Id. 499-53). On November 30, 2017, the trial court denied Petitioner's PCR claims. (Id. 608-13). Petitioner did not petition the Arizona Court of Appeals for further review.

Here, Respondents state that Petitioner's first PCR Notice "failed AEDPA's 1-year limitation period until the conclusion of the PCR Petition proceeding." Respondents correctly recount that Petitioner failed to file a pro-se PCR Petition by September 28, 2015 deadline. (Doc. 8 at 6). Yet the record does not reflect that the trial court issued an order dismissing the PCR proceeding. Respondents have not cited any state rule or case law providing that a PCR proceeding is automatically concluded if a defendant fails to file a PCR Petition by the applicable deadline.

REASONS FOR GRANTING THE PETITION

THE DECISION CONFLICTS WITH
STACK V. McDaniel 529 U.S. 473,
484-851 (2000)

The State Court received Petitioner's timely notice for post-conviction relief on February 1, 2015 and as of this writing, have not ruled on that notice.

The District Court found the claims procedurally defaulted. In Stack v. McDaniel, 529 U.S. 473, 484-851 (2000) this Court stated when "jurists of reason would find it debatable whether the District Court was correct in its procedural ruling. A COA should issue.

Here, the State Court did make a decision on the brief petitioner filed - erroneously labelling it a second PCR. - As no decision has been issued as of this writing on Petitioner's PCR, Petitioner could not seek Appellate Review.

Hence, it was error to find the PCR time barred (Precluded).

CONCLUSION

Petitioner has shown "Justit of Reason would find it debatable whether the District Court was correct in its procedural ruling."

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Amelia D. Vent.

Date: *2/20/2020*