No. 19-7970

IN THE SUPREME COURT OF THE UNITED STATES

SHAWNTE L. SHADE, PETITIONER

vs.

RUSSELL WASHBURN, WARDEN, RESPONDENT

ORIGINAL

PETITION FOR WRIT OF CERTIORARI

FROM THE JUDGMENT OF THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

(6th Circuit No.: 19-6041)

(originating from 3:19-cv-00051)

Shawnte L. Shade, # 327436 *pro se* Petitioner
TTCC
140 Macon Way
Hartsville, TN 37074

LIST OF PARTIES

All parties appear in the caption of the cover page.

QUESTIONS PRESENTED

I. Whether the Petitioner's statute of limitation was equitably tolled under Holland v. Florida, 560 U.S. 631 (2010) in excusing his 92-day delay.

II. Whether the Petitioner's plea was unconstitutional under Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)

III. Whether the Petitioner's counsels were ineffective under Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984),

IV. Whether the Court of Appeals erred in denying Petitioner's appeal.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES

No. _____

_____

IN THE SUPREME COURT OF THE UNITED STATES

SHAWNTE L. SHADE, PETITIONER

vs.

RUSSELL WASHBURN, WARDEN, RESPONDENT

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The opinion of the United States Court of Appeals appears at Appendix A to the petition and is *unpublished.*
The opinion of the United States District Court appears at Appendix B to the petition and is *unpublished.*

For cases from state courts:
The Supreme Court of Tennessee denied review on the merits appears at Appendix C to the petition and is *unpublished.*
The opinion of the Criminal Court of Appeals appears at Appendix D to the petition and is *unpublished.*

JURISDICTION

For cases from federal courts:
The date on which the United States Court of Appeals decided Petitioner's case was on 12/3/2019. No petition for rehearing was timely filed in my case. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution.

STATEMENT OF THE CASE

I. Factual and Procedural Background

On March 31, 2015, the Petitioner pled guilty to one count of especially aggravated robbery. In exchange for the Petitioner's guilty plea, the State dismissed a second count of especially aggravated robbery and recommended that the Petitioner be sentenced as a Range I, standard offender to the minimum fifteen-year sentence with service at one hundred percent pursuant to Tennessee Code Annotated section 40-35-501(i).

On April 30, 2015, the judgment became final.

On 2/22/2016, 297 days after his judgment became final, the Petitioner filed his petition for post-conviction relief by alleging that his guilty plea was not voluntarily and knowingly entered. The Petitioner also argued that his trial counsel was ineffective for failing to properly investigate his case and for failing to share the State's discovery response with him. The Petitioner further argued that trial counsel misinformed him about the amount of time he would actually have to serve before he could be released from prison.

After hearing with an appointment of counsel, the trial court denied Petition on 3/8/2017.

Following a timely appeal, the TCCA (Tennessee Court of Criminal Appeals) affirmed the trial court's denial judgment on 2/27/2018. Tennessee Supreme Court denied an application for permission to appeal on 6/6/2018. Petitioner had until 9/4/2018 (90 day grace period) in which to file a writ of certiorari with the United States Supreme Court which he did not.

Therefore, Petitioner had until 11/11/2018 in which to file his 2254 Petition for a habeas corpus relief.

Then, on 2/11/2019, 92 days after his 365-day statute of limitations has expired, Petitioner filed 2254 petition for habeas corpus relief with the United States District Court at Knoxville, Tennessee.

The US Dist. Court denied petition due to statute of limitations on 8/5/2019. In timely appeal, the US Court of Appeals denied COA on 12/3/2019.

Current petition for writ of certiorari is timely before this honorable United States Supreme Court.

REASONS FOR GRANTING THE PETITION

I. Whether the Petitioner's statute of limitations was equitably tolled under Holland v. Florida, 560 U.S. 631 (2010) in excusing his 92-day delay.

II. Whether the Petitioner's plea was unconstitutional under Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)

III. Whether the Petitioner's counsels were ineffective under Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984),

IV. Whether the Court of Appeals erred in denying Petitioner's appeal.

= = = = = = = = = = = = = =

I. Whether the Petitioner's statute of limitation was equitably tolled under Holland v. Florida, 560 U.S. 631 (2010) in excusing his 92-day delay.

On 3/31/2015, the Petitioner pled guilty to one count of especially aggravated robbery;

(after 30 days has passed), and on 4/30/2015, Petitioner's judgment became final;

(after 297 days after his judgment became final), and on 2/22[1]/2016, the Petitioner filed his petition for post-conviction relief,

On 3/8/2017, the trial court denied Post-Conviction relief;

On 2/27/2018, TN Court of Criminal Appeals denied appeal;

On 6/6/2018, TN S. Ct. denied an application for permission to appeal;

On 9/4/2018, Petitioner's grace period has expired;

On 11/11/2018, Petitioner's 1-year statute of limitations has expired;

(92 days has passed after 1-year statute of limitations expired), and on 2/11/2019, Petitioner filed 2254 petition for habeas corpus relief.

[1] 2/22/2016 was the date when Petitioner handed the petition to prison official to file, and 2/26/2016 was the actual filing date.

Petitioner acknowledges that his 2254 petition was late by 92 days. Therefore, Petitioner offers his due diligence and extraordinary circumstances in an effort to excuse his late filing by relying on equitable tolling under Holland v. Florida, 560 U.S. 631 (2010).

Petitioner has been housed in a for-profit CoreCivic-run new prison, Trousdale Turner Correctional Center ("TTCC" hereafter), which has a serious problem of management with inapplicable tier-management due to lacking-staff and over-crowded population, gang-violence, lockdowns, and drug-overflow. Around the time when Petitioner was served with the denial order from the Tennessee Supreme Court, (which was in the middle of June, 2018), the TTCC was on a major lockdown and frequent follow-up lockdowns due to the inmate-drug-overdose-death incidents, and major gang-fight between the Vice-Lords and the Crips.

As to the equitable tolling of the statute of limitations, our Supreme Court upheld that "the timeliness provision in the habeas corpus status is subject to equitable tolling" in Holland v. Florida, 560 U.S. 631 (2010). Further, the same Court stated that "the habeas status of limitations is non jurisdictional," Id. In general, "to benefit from equitable tolling, plaintiff must demonstrate that they have been diligent in pursuit of his right/claim and demonstrate that some extraordinary circumstances stood in his way" Id and Christenson v. Roper, 135 S. Ct. 891 (2015).

An extraordinary circumstance is one that is "beyond a prisoner's control that makes it impossible to file a petition on time." Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999). And to justify equitable tolling, the extraordinary circumstance must be attributable to external force rather than a petitioner's lack of diligence." Id. Further, a petitioner must establish a "casual connection" between the extraordinary circumstance and his failure to file a timely petition. Bryant v. Arizona

Attorney General, 499 F.3d 1056, 1060 (9th Cir. 2007). "The threshold necessary to trigger equitable tolling under AEDPA is very high, lest the exceptions swallow the rule." Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003)(quoting Miranda v. Castro, 292 F.3d 1063, 1066 (9th Cir. 2002).

As to a matter of lockdown, Petitioner is aware of the fact that "transfers between prison facilities, solitary confinement, lockdowns, restrict access to the law library inability to secure court documents" do not qualify as an extraordinary circumstances for purposes of tolling the limitation period," (Warren v. Kelly, 207 F. Supp. 2d 6, 10 (E.D.N.Y. 2002). These lockdowns, herein mentioned, are "routine incidental lockdowns." See Gaylord v. Johnson, (2016 U.S. Dist. LEXIS 44514, 3/31/2016); Allen v. Johnson, 602 F. Supp. 2d 724, 729 (E.D.Va. 2009); United States v. Van Poyck, 980 F. Supp. 1108, 1110-11 (C.D.Cal. 1997).

Having awareness of that, Petitioner would note and emphasize that there are at least two different kind of lockdowns; one is "routine incidental lockdown in Government-run prisons, (above mentioned)," the other is "lockdowns as a tool of management in private for-profit prisons."

As one of the private for-profit prison, TTCC's lockdown is very unique and different from another facilities under TDOC (Tennessee Department of Correction) and other DOC (Department of Correction) which have the above mentioned "routine incidental lockdowns." The "routine lockdowns" are not only "incidental" but also "accidental" whether it was "administrative purpose" and/or "security purpose." This "routine incidental lockdowns" are meant to be short period of time as possible, and never been used for the reason of to increase an extra profit. Furthermore, even though it was short period of time, usually, TDOC warden teams acknowledge the urgent need of inmates legal-work and deadline cases and allow the Law Library staff(s) to work with their inmate legal clerks and/or legal

helpers who can take care of other inmates deadline cases during the "routine incidental lockdowns" under Lewis v. Casey, 518 U.S. 343 (1996) and Johnson v. Avery, 393 U.S. 483 (1969). Therefore, in Government-run prisons, no inmate misses his/her deadline, and the court does not consider such a routine lockdown as an extraordinary for the tolling of the statute of limitations.

However, in TTCC, the for-profit CoreCivic-run private prison, (1) the warden team utilizes lockdowns as a tool of management for its over-crowded prison population with short-staff for the purpose of creating a profit, (2) the warden team does not acknowledge such an urgent and fundamental inmate legal right, (as mentioned in Lewis v. Casey and Johnson v. Avery), due to their lacking experience because the wardens are from Davidson County Jail without prison experience.

(1) TTCC's Lockdowns as a tool of management for its over-crowded prison population with short-staff;

As mentioned above, the TDOC and other DOC's "routine lockdowns" are accidental and incidental whether for the security purpose and/or administrative purpose. However, the TTCC lockdowns are not incidental nor accidental but "planned-lockdowns" in an effort to increase "profit." Since its opening in late 2015, the TTCC has been focused on only one goal of increasing "profit." The contracted amount that TTCC receives from TDOC is fixed, however, the TTCC reduces its man-power in an effort to increase "profit." The most effective way to increase "profit" is to maintain the facility with short-staff. The TDOC's mission statement, which is to "punishment and rehabilitation," is tampered by the TTCC's mission, which is to "create a profit."

For example, the TTCC has seven (7) Units. (Unit-A, B, C, D, E, F, and W), and there are three doors and three gates between Unit D and the dinning room. Each door and gate require each C/O

(Correctional Officer, total 6 C/Os), plus 1-3 Yard Officer(s), and 1-2 Yard Sgt/Lt/Cpt, totaling 8-11 Officers (as other facilities under TDOC have). In TTCC, however, there has been only one Yard (Walk-) Sgt who has been doing the 11 Officers duty. Inmates have to wait until the Yard (Walk-) Sgt comes to open doors and gates in an effort to go to the Dining room, School, Church, Library, Gym, ... It takes 1-2 hours. During that 1-2 hours, inmates are stuck wherever their last known destination. It would be whether Unit, hall-area, class, dining room, church, library, gym, yard, ... literally wherever. Therefore, there have been unpleasant contentions between inmates and correctional officers during last three years. TTCC Inmates right to access to the court, religious participation, program participation, gym access, ... were highly restricted and violated since its opening due to TTCC's for-profit policy, which is shortage of staff, here. Moreover, the TTCC declares lockdowns whenever Yard (Walk-) Sgt decides for any reason and/or when staffs are not showing up for work which happens every two weeks after their pay-day. The TTCC has a track full of record that it did not make a full consecutive two (2) months without lockdowns for this reason. In that matter, the more inmates "suffers," the more TTCC increases "profit." - This kind of injustice is a totally unheard of under the TDOC and other DOC. There is no precedent in the State of Tennessee and the United States which meets the current TTCC's for-profit lockdowns. Therefore, TTCC's lockdown is extraordinary to satisfy the equitable tolling of statute of limitations under Holland.

(2) Warden's lacking experience and for-profit policy.

The facilities under TDOC and ather DOC have well settled policy in appointing Wardens. The TDOC Wardens have more than decade long experience in actual prison administration as asst. wardens. Normally, decade-long well-experienced asst. wardens become Wardens under TDOC. The asst. wardens have more than another decade-long experience in actual prison administration such as

captains. The captains also have another more than a decade-long experience in actual prison administration such as Lieutenants or Sergeants or Corporals or Correctional Officers (C/O). Therefore, when someone was appointed as a Warden under TDOC, there is no need to explain to them regarding an inmates legal right to access to the court because he/she has been dealing with such a matter as an asst warden, as a captain, as a Sgt, and as a C/O more than three decades under the guideline of the United States decision in Lewis v. Casey and Johnson v. Avery. In other words, the TDOC-appointed wardens know what they should do to meet the goal of TDOC which are "punishment and rehabilitation."

In an effort to fulfill the goal of TDOC and Lewis v. Casey and Johnson v. Avery, all TDOC wardens know the urgent need and right of inmates, such to access to the courts, especially when it involves with a deadline with the court. The TDOC wardens routinely directs the law library supervisors and/or staffs to take care of the inmates who have a deadline with the court even during any routine incidental lockdowns. The TDOC wardens have a routine incidental back-up plan in an effort to secure inmates right to access to the court even during lockdown because the lockdown is routine incidental under Lewis v. Casey, 518 U.S. 343 (1996) and Johnson v. Avery, 393 U.S. 483 (1969) and because it is Wardens who can be sued by inmates if the inmates show prejudice by missing a deadline. The Courts' ruling by holding the routine lockdowns as not an extraordinary circumstance are reasonable because the warden teams have the "routine incidental back-up plan" during such a lockdowns. See Warren v. Kelly, 207 F. Supp. 2d 6, 10 (E.D.N.Y. 2002); Gaylord v. Johnson, (2016 U.S. Dist. LEXIS 44514, 3/31/2016); Allen v. Johnson, 602 F. Supp. 2d 724, 729 (E.D.Va. 2009); and United States v. Van Poyck, 980 F. Supp. 1108, 1110-11 (C.D.Cal. 1997).

However, the TTCC wardens came from the Davidson County Jail because they are employees from for-profit CoreCivic. The first TTCC Warden, Mr. Todd Thomas, was from the Davidson County

Jail and the second TTCC Warden, Mr. Blair Leibach, was from the Davidson County Jail, and the Third Warden, Mr. Russell Washburn, was also from the Davidson County Jail. Unlikely to the TTCC-appointed Wardens, Mr. Todd Thomas, Mr. Leibach and Washburn are not familiar with Lewis v. Casey and Johnson v. Avery regarding the urgent matter of the inmates legal right to access to the court because such a matter is not a priority at County Jail and not fit to their for-profit CoreCivic policy.

The TTCC warden team only allows certain workers to work during any lockdown which profited their financial interest. During lockdown, the TTCC warden team allows *kitchen-workers, *yard-workers, *maintenance, *Disciplinary Board workers, *Grievance Board workers, and *Unit commercial cleaner (so-called, "Roc-men") to work, but not library legal clerks/aides, who can work for other inmates (with deadlines such as the Petitioner). Therefore, unlikely to other prison, the lockdown at TTCC means "no legal work," and TTCC's lockdown is extraordinary.

Given fact, the TTCC's for-profit lockdowns are different from TDOC and other DOC's routine incidental lockdowns as mentioned in Gaylord v. Johnson, (2016 U.S. Dist. LEXIS 44514, 3/31/2016); Allen Johnson, 602 F. Supp. 2d 724, 729 (E.D.Va. 2009); Warren v. Kelly, 207 F. Supp. 2d 6, 10 (E.D.N.Y. 2002); United States v. Van Poyck, 980 F. Supp. 1108, 1110-11 (C.D.Cal. 1997). Therefore, TTCC's lockdown is extraordinary to satisfy the equitable tolling of statute of limitations under Holland.

On top of that, so obviously it was an extraordinary period when Petitioner was notified with the denial order from TN Supreme Court (and during Petitioner's 90-day grace period). - It was the second year of the Trump Era. The whole nation was unstable due to the Robert Meuller Investigation over the Russia Collusion, Michael Cohen's guilty plea, the holidays, and the Democratic victory over

the House of the Representative, which eventually led us to the infamous Government shutdown in 2018-2019.

In such an extra- extraordinary circumstances, the TTCC maintained its lockdown-strategy in controlling over-crowded population (with short staff to increase a profit), and restricted all inmates movements for, but not limited to, *law library, *religious services, *educational programs, *recreation activities, and even *dining-room. For example, the meal was served by, so-called, satellite-serving, by delivering meals to each housing Units without any proper thermal protection and sanitized method. The meal was on the Styrofoam [plastic] trays which were wrapped up with surround-wrap on trash-carrying wheelers. The [recreation] yard/gym, chapel, education building, and library remained closed. Therefore, no inmate was allowed to use the recreation yard or gym; no religious services were held; no educational programs were conducted; and no library..... In such an extraordinary circumstances, inside and outside prison, Petitioner avers that his delay of 92-days should be equitably tolled under the spirit of Holland.

In conclusion, your Petitioner Shawnte L. Shade avers that he has met the burden to benefit from equitable tolling.

First of all; as explained above, your Petitioner avers that the TTCC for-profit lockdowns are very unique and different from any other prisons "routine incidental lockdowns" under TDOC because the lockdown at TTCC means "no legal-work" without any legal support under Lewis v. Casey, 518 U.S. 343 (1996) and Johnson v. Avery, 393 U.S. 483 (1969). - This is the first and most extraordinary circumstance in Petitioner's claim. In any other prisons, there are warden teams and law library staffs who acknowledge the urgent matter of the inmates right to access to the courts such as deadlines with the court under Lewis v. Casey, 518 U.S. 343 (1996) and Johnson v. Avery, 393 U.S. 483 (1969).

As a matter of fact, the TTCC law library aides have submitted several requests to warden regarding this matter by asking warden for permission to work for the deadline cases during lockdown, which the warden did not answer. Had the legal aides have worked, then they surely could have been able to file Petitioner' 2254 Petition in timely manner, (which did not happen in Petitioner's case).

Therefore, being lockdown at TTCC, itself, puts petitioner in an extraordinary circumstance because of this reason. The United States District Court and United States Court of Appeals failed in recognizing differences between the TDOC and other DOC's "routine incidental lockdowns (which is not entitled to tolling of statute of limitations)" and "TTCC's lockdowns as a tool of management for profit," and failed in recognizing such a fundamental injustice at TTCC. Therefore, your Petitioner prays this honorable Supreme Court to recognize such an injustice and miscarriage of justice in this matter as the final and highest justice of the land.

Secondly; Petitioner has tried more than 10 times by sending inmate requests and letters to TTCC Law Library, Chief Security, and Warden, (which were the only method inmates can pursue due diligence under Christenson v. Roper, 135 S. Ct. 891 (2015)), in an effort to get in touch with TTCC law library staff. However, the TTCC warden team and library staff did not recognize the urgent matter of inmates legal right under Lewis v. Casey and Johnson v. Avery, and closed the law library during lockdowns. In given fact, Petitioner was diligent in seek help, but Petitioner's extraordinary circumstance is "beyond his control that makes it impossible to file his 2254 petition on time" as mentioned in Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999).

Thirdly and finally; herein mentioned TTCC for-profit lockdown, which is an extraordinary

circumstance, which is the cause of his failure to file a timely 2254 petition, is attributable to external force rather than a Petitioner's lack of diligence. There is a "casual connection" between the extraordinary circumstance and his failure to file a timely petition as mentioned in Bryant v. Arizona Att. Gen., 499 F.3d 1056, 1060 (9th Cit. 2007).

By satisfying Holland v. Florida, 560 U.S. 631 (2010); Christenson v. Roper, 135 S. Ct. 891 (2015); Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999); Bryant v. Arizona Attorney General, 499 F.3d 1056, 1060 (9th Cir. 2007); Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003); and Miranda v. Castro, 292 F.3d 1063, 1066 (9th Cir. 2002), Petitioner avers that his statute of limitations was equitably tolled in excusing his 92-day delay.

II. Whether the Petitioner's plea was unconstitutional under Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)

On March 31, 2015, The Petitioner pled guilty to one count of especially aggravated robbery. In exchange for the Petitioner's guilty plea, the State dismissed a second count of especially aggravated robbery and recommended that the Petitioner be sentenced as a Range I, standard offender to the minimum fifteen-year sentence with service at the one hundred percent pursuant to Tennessee Code Annotated section 40-35-501(i).

At the plea submission hearing, the prosecutor recommended a sentence of fifteen years "to serve... at one hundred percent." the trial court then explained that the Petitioner would be sentenced to "fifteen years at one hundred percent, **with the possibly of earning fifteen percent off.**" The trial court further explained that **the Petitioner would have to serve at least eighty-five percent of his sentence before he would be eligible for release.**

The trial court then reviewed the rights the Petitioner was waving by pleading guilty. During this review, the Petitioner stated that trial counsel had reviewed the plea agreement form with him and that he was satisfied with trial counsel's representation. The trial court also stated as follows:

> It's my understanding that you have agreed to receive the minimum of [fifteen] years for [the] offense; however, that is at a [one hundred] percent serve rate, **meaning, that you must serve at least [eighty-five] percent before you could meet with the parole board and receive good time credit off the back-end of the sentence.**

The trail court asked the Petitioner if he understood his sentence, and **the Petitioner responded that he did.**

As a factual basis for the Petitioner's guilty plea, the State provided that the Petitioner had gone to the apartment of a coworker, stabbed her in the neck, and took $1,800 "that was left over from [the

victim's] income tax return.' The trial court asked the Petitioner how he pled, and the Petitioner responded "guilty." Sensing some hesitation from the Petitioner, the trial court asked the Petitioner if he was "certain this [was] what [he] want[ed] to do," and the Petitioner responded that it was "the best thing" he could do.

The trial court questioned the Petitioner further, and the Petitioner stated that he had one to the victim's apartment "to buy dope." The Petitioner admitted that he stabbed the victim in the neck and that he "took the drugs (inaudible) hand from her property." The Petitioner then stated that he was "taking [the] plea because it [was] [fifteen] years" and because it was the "best of both bad situations." After this, the trial court accepted the Petitioner's guilty plea and the State's sentencing recommendation.

On February 26, 2016, the Petitioner filed a pro se petition for post-conviction relief alleging that his guilty plea was not knowing and voluntary because trial counsel was ineffective and had misinformed him about the amount of time he would actually have to serve before he could be release from prison. An attorney was appointed to represent the Petitioner in this matter, but no amended petition for post-conviction relief was filed.

The Petitioner testified at the post-conviction hearing that he told trial counsel that he "never committed a robbery." The Petitioner admitted that he stabbed the victim in the neck. However, the Petitioner claimed that he did not take any money from the victim. According to the Petitioner, he stabbed the victim because she had not provided him "the amount [of cocaine] that [they] agreed on," and he left her apartment with only "the dope that was put in [his] hand."

The Petitioner claimed that trial counsel never showed or reviewed with him the discovery materials provided by the state. The Petitioner testified that he reviewed with him the discovery materials after his guilty plea and learned that there was no evidence regarding "the amount of the

money" and "[h]ow the money was obtained" by the victim. The Petitioner asserted that he wanted trial counsel to attempt to prove that the victim did not have $1,800. The Petitioner explained that he thought "if somebody tells you that [they] have a receipt for this, well, [they should] show the receipt."

The Petitioner admitted that the detective who questioned him told him that he was accused of stabbing the victim and taking money from her. The Petitioner testified that he confessed to the detective that he stabbed the victim, although he told the detective that he thought he stabbed the victim in the chest rather than her neck. The Petitioner further admitted that trial counsel told him that he was accused of taking "some money" from the victim.

The Petitioner claimed that he would not have pled guilty had he known he was accused of taking $1,800 from the victim as opposed to "just a number." The Petitioner testified that trial counsel told him that "nobody really cares how much money" that was stolen. The Petitioner further testified that he "would almost agree" if he had been accused of taking the cocaine and "the money that [he] spent" on the cocaine, but that he would not admit to taking$1,800 because that "could have been proven or not proven."

Despite this, the Petitioner testified that he "deserved what [he] got." The Petitioner explained that he agreed to accept the State's plea offer of fifteen years to be serve at on hundred percent and that he did so without knowing how much money he was accused of taking because trial counsel advised him that his time would be "stretched... out more" if he went to trial and that he ' was looking at almost a life sentence."

With respect to his sentence, the Petitioner admitted that his plea agreement form stated that his sentence would be fifteen years to be served at one hundred percent. The Petitioner claimed that he did not read the plea agreement form and that trial counsel "just ran through it right fast." The Petitioner admitted that this was not the first time he had pled guilty to a felony.

The Petitioner testified that when he pled guilty, he believed that he would only have to serve twelve years and nine months because he had "been in prison" and he knew "when somebody says a hundred percent, that there's not a hundred percent." The Petitioner claimed that he told trial counsel that he could not serve a fifteen-year sentence "day-for-day." the Petitioner further claimed that once he got to prison, he discovered that he was not eligible for any sentencing credits.

Both the prosecutor and the Petitioner's attorney agreed when the post-conviction court stated that the Petitioner was wrong and that, as was explained at the plea submission hearing, the Petitioner was eligible to receive sentencing credits for up to fifteen percent of his sentence. The Petitioner admitted that he may have " read [the law] wrong, " but he asserted that he was told by a prison "legal aid" that he could not get any sentencing credits.

The Petitioner testified that he "understood that [he] was signing [the plea agreement form] in lieu of going to trial and getting a [R]ange [II sentence] starting at [twenty-five] and ending up with [forty] years, or multiple charge[s] with [twenty-five] years stacked together" and that he thought "it was better for [him] to sing [it] and go ahead and do [his] time," but that his "time sheet" said "a hundred percent" and did not have a "deduction" or "say standard, mitigated, [R]ange [I], none of that"

Trial counsel testified that he met with the Petitioner several times and that he spoke with the detective and the prosecutor about the case. Trial counsel could not recall if he poke to the victim. But he did speak to the victim's attorney. Trial counsel recalled that the Petitioner had confessed to stabbing the victim and had "admitted to taking something away from the house." The Petitioner told trial counsel that the stabbing "was a drug deal that went wrong."

Trial counsel testified that he talked about the State's discovery response with the Petitioner. However, trial counsel could not recall if he showed the Petitioner the photographs or documents from the discovery materials. Trial counsel testified that he told the Petitioner that the victim had accused

the Petitioner of taking money from her and that he explained to the Petitioner that the amount of the money was not legally relevant for purposes of an especially aggravated robbery charge.

Trial counsel testified that he was able to negotiate with the prosecutor and secure an offer where the Petitioner would be sentenced as a Range I, standard offender to fifteen years to be serve at one hundred percent. Trial counsel admitted that he initially told the Petitioner the wrong percentage of time that could be taken off his sentence, but that he corrected himself and informed the Petitioner that " was good time he would get [fifteen] percent off his sentence." Trial counsel testified that he felt confident that the Petitioner would earn sentencing credits because he had "always been good... in custody."

Trial counsel testified that he advised the Petitioner to accept the plea offer. Trial counsel explained that the Petitioner had enough prior felony convictions to be classified as a Range II, multiple offender and would have faced a minimum sentence of twenty-five years if convicted at trial. Trial counsel further explained that her believed the Petitioner was more likely to be sentenced near the maximum of forty years because the Petitioner had prior convictions for " attempted murder" and aggravated robbery. Additionally, the prosecutor had advised trial counsel that she was considering seeking a superseding indictment for attempted fist degree murder and especially aggravated kidnapping.

Trial counsel recalled that he advised the Petitioner that the Petitioner's claim that the thought he had stabbed the victim in her chest and only took the cocaine he had bought from the victim would not be a convincing defense at trial. Trial counsel testified that he reviewed the plea agreement form with the Petitioner, that the Petitioner signed the form, and that it was the Petitioner's choice to plead guilty. Trial counsel believed that the Petitioner was " well aware of what kind of jeopardy he was in," that he "knew what he was getting into [,] and he entered his plea."

On March 8, 2017, the post-conviction court entered a written order denying post-conviction relief. The post-conviction court accredited the testimony of trial counsel over the Petitioners. The post-conviction court concluded that the Petitioner was properly advised "that he was pleading guilty to an offense with a service rate of one hundred percent [] with the possibility of receiving credit of up to fifteen percent [] of the sentence." the post-conviction court further concluded that the Petitioner "made a knowing and intelligent choice to waive his right to trial and to enter a plea of guilty." The post-conviction court stated that "[g]iven the enormity of the potential punishment [the Petitioner] faced, coupled with the strength of the [S]tate's case, no competent attorney providing effective assistance of counsel would [have] advise[d] [the Petitioner] to reject the offer he ultimately accepted."

Analysis by Court of Criminal Appeals

The Petitioner contended that his guilty plea was not voluntarily and knowingly entered. The Petitioner argued that trial counsel was ineffective for failing to properly investigate his case and for failing to share the State's discovery response with him. The Petitioner further argued that trial counsel misinformed him about the amount of time he would actually have to serve before he could be released form prison. The State responded that the post-conviction court did not err in denying the petition.

The Tennessee Court of Criminal Appeals (TCCA hereafter) found that the post-conviction court accredited trial counsel's testimony over the Petitioner's. Trial counsel testified that he met with the Petitioner several times and spoke with the detective, the petitioner, and the victim's attorney. Trial counsel further testified that he discussed the State's discovery response with the Petitioner. At the post-conviction hearing, the Petitioner took issue with the fact that trial counsel did not inform him of

the exact amount of money he was accused of taking from the victim and that trial counsel did not attempt to investigate whether the victim actually got an income tax refund for that amount. The Court of Criminal Appeals reasoned a doubt that the Petitioner would not have accepted the State's plea offer for those reasons given the possibility of receiving a forty-year sentence at trial and facing other charges in a superseding indictment.

Despite having conceded this issue in the post-conviction court, the Petitioner's attorney argues that trial counsel misinformed the Petitioner about the amount of time he would actually have to serve before he could be released from prison. The Petitioner cites to Gordon Wayne Davis v. State, No. E2015-00772-CCA-R3-PC, 2016 WL 4737010 (Tenn. Crim. App. Sept 9, 2016), to support his argument. However, the Court of Criminal Appeals found that Davis is inapplicable here. The Petitioner in Davis had been misinformed by his trial counsel and the trial court that he could receive sentencing credits when he statutorily could not. Id. At *9. Here, the Petitioner was properly informed by trial counsel and the trial court that he could receive sentencing credits to reduce his sentence by fifteen percent pursuant to Tennessee Code Annotated section 40-35-501(i). Accordingly, the Court of Criminal Appeals concluded that the post-conviction court did not err in denying the petition.

In given fact, your Petitioner avers that his plea was not knowing and not voluntary because of the ineffective assistance of his trial counsel.

Petitioner's trial counsel failed to conduct a proper investigation of the case and failed to share the State's discovery response with him. Such failure made Petitioner's plea unintelligent and unknowing. Had his trial counsel performed a proper investigation, there was more than a reasonable probability for Petitioner not to enter the plea.

During the plea hearing, the Petitioner told the Judge that he will not admit any robbery charge. There his robbery plea was unwilling and unknowing. However, for some reason, the transcript does not reflect Petitioner's statement in this matter.

In addition, Petitioner was informed by his trial counsel that he would receive fifteen percent sentencing credit. The following is well recorded at Post-Conviction Hearing;

> "The trial court then reviewed the rights the Petitioner was waving by pleading guilty. During this review, the Petitioner stated that trial counsel had reviewed the plea agreement form with him and that he was satisfied with trial counsel's representation. The trial court also stated as follows:
>
> > It's my understanding that you have agreed to receive the minimum of [fifteen] years for [the] offense; however, that is at a [one hundred] percent serve rate, meaning, that you must serve at least [eighty-five] percent before you could meet with the parole board and receive good time credit off the back-end of the sentence.
>
> The trail court asked the Petitioner if he understood his sentence, and the Petitioner responded that he did.

As he answered under the oath at Post-Conviction Hearing, it was Petitioner'sunderstanding that "meaning, that he must serve at least [eighty-five] percent before he could meet with the parole board and receive good time credit off the back-end of the sentence." Which means that he is going to receive some sentencing credit. The words are from his trial counsel, from District Attorney, and from the Honorable Judge. According to those words, Petitioner responded that he understood his sentence. Considering the fact mentioned above, it is reasonable for any defendant to conclude that he/she will be receiving a 15% sentencing credit. As the evidence is clear, Petitioner was under the impression that he is going to receive a fifteen percent sentencing credit, and could complete his sentence after 12.7 years prison time.

If above words are incorrect, then the Tennessee Sentencing Law should be challenged due to an ambiguity and for a clarification. If above words are correct, then Petitioner entitled a 15 % sentencing credit. Either way, Petitioner's counsel was ineffective in this matter. His trial counsel explained that Petitioner would receive a 15 % sentencing credit, and therefore, Petitioner's plea was unknowing, unwilling and unintelligent under Boykin.

The record cannot be more clear that the Law is confusing by alluring Petitioner for *15 % sentencing Credit*, the trial Judge and District Attorney interpreted the Law as *without sentencing credit*, and Petitioner and his trial counsel interpreted the Law as *with sentencing credit*.

It is a trial counsel's duty to inform/educate his client with the meaning and exact term of the plea. Whether the Tennessee Sentencing Law is correct or not, or needed some clarification in this matter, Petitioner's plea was not knowing and notvoluntarily entered because of the ambiguity of law and ineffective assistance of his trial counsel under Boykin. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)).

Petitioner/Appellant respectfully prays that there is a genuine need for this Honorable United States Supreme Court to intervene in this case to secure uniformity of decision under Boykin, to secure settlement of important questions of law, to secure settlement of questions of public interest, and for the exercise of the Supreme Court's supervisory authority.

Petitioner prays that this Honorable Supreme Court to grant this application for appeal.

III. Whether the Petitioner's counsels were ineffective under Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984),

The trial counsel has a constitutional duty of reasonable investigation and meaningful advice on plea for Petitioner's best interest. Strickland v. Washington, 466 U.S 668, 687 (1984).

In Petitioner's case, before the plea agreement, his counsel was constitutionally ineffective by failing to proper and reasonable investigation on alleged cash which is material in this case as an element of a robbery. The victim simply did not have such an amount of cash and it would have been proven by a simple review/investigation of the victim's bank record and Tax Return. Without alleged cash involvement, the case could not be as an Aggravated Robbery (B-Class felony) but Aggravated Assault (C or D-Class felony). Petitioner's counsel should have been through the victims bank account and her financial record including Tax Return in an effort to prove that the victim did not have such an amount of cash. Had Petitioner's counsel have tried that, he more than likely would have proven that the victim's cash allegation was false and the Robbery charge would have been dismissed before the trial.

Further, Petitioner's counsel was ineffective is plea matter as mentioned above Issue # 2 as to a matter of 15 % sentencing reduction.

Trial counsel such errors and ineffectiveness in plea matter (Issue # 2) and investigation (Issue # 3) prejudiced to Petitioner because he had to face a robbery charge without money (Issue # 3) and entered a plea with was unwilling, unintelligent, and unknowing (Issue # 2).

Without counsel's ineffective assistance in this matter (plea and investigation), the court

outcome, more than likely, would have been different in Petitioner's favor.

For example; had trial counsel have investigated regarding alleged $1.800 (Tax Return money) as untrue, Petitioner's offense, more than likely, would have dropped from Aggravated Robbery to Simple Assault or Aggravated Assault which are lesser than Aggravated Robbery. Then, Petitioner would have sentenced lesser than 6 year imprisonment.

Had trial counsel have informed Petitioner "without parole eligibility," Petitioner, more than likely, would count-offer "with 15 % parole eligibility," or would reject the plea deal and insisted to go through trial in an effort to prove that there was no-money, therefore, no-robbery.

Trial counsel was constitutionally ineffective, and such an ineffective prejudiced to Petitioner. Without counsel's ineffectiveness in this matter, the court outcome, more than likely, would have been different in Petitioner's favor.

Satisfying Strickland standard, your Petitioner pray s for a relief or hearing with an appointment of counsel in this matter.

Petitioner/Appellant respectfully prays that there is a genuine need for this Honorable United States Supreme Court to intervene in this case to secure uniformity of decision under Strickland, to secure settlement of important questions of law, to secure settlement of questions of public interest, and for the exercise of the Supreme Court's supervisory authority.

Petitioner prays that this Honorable Supreme Court to grant this application for appeal.

IV. Whether the Court of Appeals erred in denying Petitioner's appeal.

The United States Court of Appeals erred in denying Petitioner's claim due to statute of limitations. As mentioned above # I, Petitioner entitled an equitable tolling due to the existing external force which is an extraordinary circumstance under Holland.

Petitioner/Appellant respectfully prays that there is a genuine need for this Honorable United States Supreme Court to intervene in this case to secure uniformity of decision under Holland, to secure settlement of important questions of law, to secure settlement of questions of public interest, and for the exercise of the Supreme Court's supervisory authority.

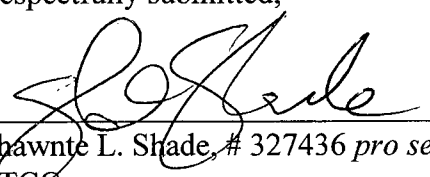
The lower court's denial was contrary to, and/or an unreasonable application of, clearly established supreme court precedent (Holland, Boykin, and Strickland) and was not based on a reasonable determination of the facts in light of the evidence presented at petitioner's guilty plea hearing and post-conviction proceedings.

Petitioner entitled a hearing with an appointment of counsel in this matter.

CONCLUSION

The petition for writ of certiorari should be granted to correct a fundamental miscarriage of justice.

Respectfully submitted,



Shawnte L. Shade, # 327436 *pro se* Petitioner
TTCC
140 Macon Way
Hartsville, TN 37074
2/23/2020