

20-5210
No.

IN THE
SUPREME COURT OF THE UNITED STATES

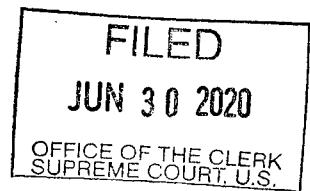
PROVIDED TO
FL WOMEN'S
RECEPTION CENTER
ON 1/30/21 FOR MAILING

AD 6/30/20

ASHLEY DUNN – PETITIONER

vs.

JULIE JONES, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS -
RESPONDENTS

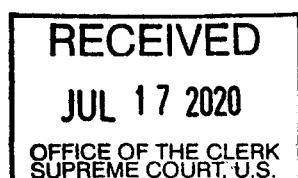


U. S. ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Ashley Dunn DC# U25001

FLORIDA WOMEN'S RECEPTION CENTER
3700 N.W. 111th Place
OCALA, FLORIDA 34482



QUESTION(S) PRESENTED

- I. DID PETITIONER MAKE A SUBSTANTIAL SHOWINIG THAT HER 28 U.S.C. 2254 PETITION WAS TIMELY?
- II. DID PETITIONER MAKE A SUBSTANTIAL SHOWING THAT HER 28 U.S.C 2254 PETITION WAS ENTITLED TO EQUITABLE TOLLING?

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

Arthur v. Allen 452 F. 3d 1234

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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

[X] For cases from **federal courts:**

The opinions of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at 6:18-cv-00759-RBD-GJK; 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[] is unpublished.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 _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For case 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[] is unpublished.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 case from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 1, 2020.

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 C.

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 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. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION AMENDMENT FOURTEEN- SECTION 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CONSTITUTION AMENDMENT FIVE: All Defendants' have a constitutional right to access the courts. To be denied that right is a due process violation where being incarcerated does not negate such rights and any attempt to prevent a filing is denying a pro se access to the courts.

STATEMENT OF THE CASE

The Petitioner was sentenced to life without the possibility of parole for first-degree murder with a firearm. The Florida Fifth District Court of Appeal affirmed her sentences and convictions on August 19, 2014 and issued its mandate on September 12, 2014.

On September 10, 2015 Petitioner filed a pro se Fla R. Crim. P. 3.850 motion. On September 7, 2016, Petitioner filed an amended Rule 3.850 motion. The state court ultimately denied the motion on the merits on June 23, 2017. The Fifth DCA affirmed and issued its mandate on April 30, 2018.

On May 11, 2018, Petitioner filed a pro se 2254 petition. The state responded that Petitioner's 2254 petition was untimely because the one-year limitation period had expired on November 16, 2015, and her September 2015 motion had not tolled her time. The district court denied Petitioner's 2254 petition as untimely, agreeing with the state.

REASONS FOR GRANTING THE PETITION

I. DID PETITIONER MAKE A SUBSTANTIAL SHOWING THAT HER 28 U.S.C. 2254 PETITION WAS TIMELY?

The Eleventh Circuit Court of Appeals decision in the Petitioner's case is in direct conflict with it's own decisions in *Spottsville v. Terry*, 476 F. 3d 1241; *Knight v. Schofield*, 292 F. 3d 709; and *Pliler v. Ford*, 542 U.S. 225. In the aforementioned cases in the circuit held "It was unreasonable for a pro se litigant to second-guess or disregard an instruction in a written order of a court."

It is clear from the record that like in *Spottsville*, the Petitioner followed the instructions given to her by the State Court to the letter. However, it appears that in the instant case the Eleventh Circuit does not wish to abide by their previous rulings.

Additionally, in the instant case the Petitioner was denied her constitutional right of access to the courts. The prison authorities are required to provide adequate law libraries and legally trained assistance to prepare and file meaningful legal papers, *Arthur v. Allen*, 452 F. 3d 1234. At the time it was necessary for the Petitioner to start filing post appeal collateral attacks on her sentence the prison law library was unable to provide an experienced law clerk assist her. As such they were unable to provide the petitioner with the capability needed to attack her

sentence.

When the Petitioner discovered this she attempted to get assistance of any kind. Following that she filed the pro se Rule 3.850 motion that the Eleventh Circuit claims did not qualify to toll her time. Contrary to the Eleventh Circuit's assertion the filing of the "inadequate" motion is proof that the Petitioner was actively seeking assistance from the law library. Although the Rule 3.850 motion may have been facially insufficient the Petitioner did in fact alert the courts to her grounds and that there was a violation of her constitutional rights. The Petitioner followed the guidance provided by the prison law library whose primary focus is to protect the Petitioner's constitutional right to access the courts and the ability to prepare a petition or complaint. This inadequacy has led to the Petitioner's inability to pursue a desired actionable challenge to her sentence and therefore demonstrates that the state failed in the law.

Based on the aforementioned, the Petitioner has made a substantial showing that her Petition should be considered timely.

II. DID PETITIONER MAKE A SUBSTANTIAL SHOWING THAT HER 28 U.S.C. 2254 PETITION WAS ENTITLED TO EQUITABLE TOLLING?

The Petitioner in this case was well within her time frame to file her 2254 motion. The court docket shows that the Petitioner's 3.850 motion was filed on September 10, 2015 which was within the one year time frame. The Respondent would have the court believe that because Petitioner used an Abeyance to set aside a time frame that does not entitle her to equitable tolling, however, it does. The Respondent says a sufficient motion must be filed within the allotted time frames. One was filed only with an abeyance attached. The courts have held that equitable tolling is appropriate when the court has led the Petitioner to believe that he had done everything required of him. *Hallgren v. United States DOE*, 331 F. 3d 588 the court allowed the Petitioner to file the abeyance, granted it and had her believe it was binding.

Although the lower court has no legal authority over the Federal Courts have held that for equitable tolling, "Extraordinary circumstances" are established if the Petitioner is affirmatively misled, either by the court or the state, equitable tolling might be appropriate. The U.S. Supreme Court has also acknowledged that procedural instruction run the risk of being misleading. The case here involved a lay person who reasonably believed she was correct in her efforts and endeavors. She

cannot interpret the law as an experienced attorney would. And, certain leeway must be afforded by lay persons. There is not a blatant one year late filing. The Petitioner filed what she believed was appropriate. And what lay person would second-guess or disregard an instruction in a written order of a court, *Rutland v. Williams*.

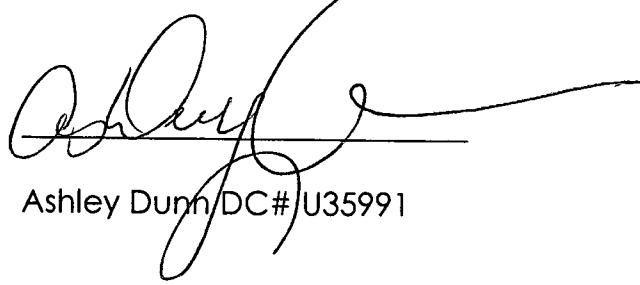
This is "The court of last resort." The Petitioner is a principle to a murder and because she believed her life was in danger held her silence. How can the law not protect the Petitioner's interest of equitable tolling when she did not do anything but try to have her case filed in time so she could seek Federal review if she was not given relief in the state courts?

Petitioner's Post/Abeyance was filed in proper time and this warrants equitable tolling and for her case to be addressed on its merits. The Petitioner prays she is granted relief in this regard.

CONCLUSION

Petitioner has made a substantial showing where her pro se motion should be received as timely.

Respectfully submitted,



Ashley Dunn, DC# U35991

Date: June 30, 2020