No. _____

In The
Supreme Court of the United States

JAMES HARRIS,

Petitioner,

v.

SHERIE KORNEMAN, Warden,
Western Missouri Correctional Center

Respondent.

On Petition For A Writ Of Certiorari To the Supreme Court of Missouri

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Mr. Harris filed a petition for habeas corpus relief from his state court convictions and sentences. The district court found that the petition was time-barred and denied a certificate of appealability (COA). Without explanation, the Eighth Circuit also denied a COA. The case thus presents the following question:

> Did Mr. Harris present reasons for why the one-year limitations period should be equitably tolled in his case to which reasonable jurists could differ concerning the correctness of the district court's conclusion, thus requiring a COA?

LIST OF PARTIES

All parties appear in the case caption on the cover page of this petition.

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In The

Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Petitioner James Harris respectfully prays that a Writ of Certiorari issue to review the judgment of the Eighth Circuit Court of Appeals entered in this case on January 7, 2020.

OPINIONS BELOW

The order of the Eighth Circuit denying a Certificate of Appealability (COA) is attached as Appendix A. No opinion accompanied the decision or was reported. The memorandum and order of the district court is attached as Appendix B.

JURISDICTION

The judgment of the Eighth Circuit Court of Appeals was entered on January 7, 2020, denying a COA as to Mr. Harris's petition for writ of habeas corpus which the district court dismissed as being time-barred. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. This petition, postmarked June 5, 2020, is timely filed pursuant to SUP. CT. R. 13.1. On March 19, 2020, this Court extended the deadline for filing petitions for certiorari from 90 to 150 days.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment of the United States Constitution 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 offence 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.

The Sixth Amendment of the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment to the United States Constitution provides:

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.

Also, this case involves the application of 28 U.S.C. § 2253(c), which states:

> (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court . . . .
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

Mr. Harris filed his petition under 28 U.S.C. § 2254 on January 19, 2017, in the United States District Court for the Western District of Missouri challenging his state court convictions and sentences. The State filed its response to the petition arguing that Harris's petition was time-barred under 28 U.S.C. § 2244(d). Harris filed a traverse. On December 4, 2019, the Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri, denied Harris's habeas petition as time-barred. Also, the district court denied him a certificate of appealability as to his claims finding that no reasonable jurists could debate whether his petition should have been resolved differently based upon the law of equitable tolling in the Eighth Circuit and the facts of the case. (Appendix B).

Mr. Harris filed an application for a certificate of appealability with the Eighth Circuit Court of Appeals in which he argued that met both prongs of the *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983) standard. Specifically, he argued that a quick review of his petition demonstrated that he had raised debatable claims regarding trial court error and the effectiveness of counsel and that it is was debatable among reasonable jurists that the district court was correct in its procedural ruling. Mr. Harris further argued that extraordinary circumstances prevented him from filing a timely federal habeas petition and that the one-year limitation period should be tolled. *See Holland v. Florida*, 130 S. Ct. 2549, 2560, 177 L.Ed. 2d 130 (2010). The Eighth Circuit denied the COA without comment. (Appendix A).

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD GRANT THE WRIT TO DIRECT THE APPELLATE COURT TO ISSUE A COA AS TO THE DISTRICT COURT'S PROCEDURAL RULING.

A habeas corpus petitioner is entitled to a certificate of appealability (COA) if he makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). This means that the issue before the court should be one about which reasonable jurists could disagree:

> In requiring a 'question of some substance', or a 'substantial showing of the denial of [a] federal right', obviously the petitioner need not show that he should prevail on the merits. He has already failed in

> that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further.' [Citations omitted].
>
> *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983).

Applying this standard under the AEDPA, the Supreme Court in *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) stated:

> We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.

Therefore, doubts as to whether to issue a certificate of appealability should be resolved in favor of the appellant. *Fuller v. Johnson*, 114 F.3d 491, 495 (5th Cir. 1997); see *Buxton v. Collins*, 925 F.2d 816, 819 (5th Cir. 1991); *Buie v. McAdory*, 322 F.3d 980 (7th Cir. 2003).

The Court recently revisited the COA standard in *Buck v. Davis*, 137 S. Ct. 759, 773-774 (2017). There, the court rejected the reasoning of the Fifth Circuit in denying a COA, holding that the court had improperly reviewed the merits of the claim:

> The court below phrased its determination in proper terms—that jurists of reason would not debate that Buck should be denied relief, 623 Fed. Appx., at 674—but it reached that conclusion only after essentially deciding the case on the merits. . . . We reiterate what we

> have said before: A "court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims," and ask "only if the District Court's decision was debatable." *Miller–El*, 537 U.S., at 327, 348, 123 S.Ct. 1029.

The process of determining whether a COA is appropriate to review a district court's procedural decision, such as a finding of procedural default or a denial of evidentiary hearing, is governed by *Slack v. McDaniel*, 529 U.S. 473, 483-484 (2000). This Court held that where a claim was dismissed by the district court on procedural grounds, the petitioner must meet the *Barefoot* standard as to the procedural question, and must show at a minimum, that jurists of reason would find it debatable whether the petition states a valid claim of a constitutional right. Where the merits of the constitutional claims have not been fully developed—for example, because the district court dismissed the petition on procedural grounds—the Court need only take a "quick look" at the constitutional claims. *Mateo v. United States*, 310 F.3d 39, 41 (1st Cir. 2002).

Of course, in Mr. Harris' case, this Court cannot determine the reasoning employed by the Eighth Circuit when it denied a COA. The standard of 28 U.S.C. § 2253, however, as interpreted in *Buck* and this Court's other cases requires a COA in Mr. Harris's case. Because Mr. Harris has demonstrated that his grounds for relief were debatable and that the correctness of the district court's procedural

denial of his petition was debatable.

The Eighth Circuit should at least review on appeal the district court's dismissal of Mr. Harris's habeas petition as being time-barred. Beginning with his trial and up to the filing of the late notice of appeal in his postconviction case, ineffective attorneys have represented Mr. Harris. His trial attorney labored under a conflict and incorrectly informed the judge that he had to sentence Mr. Harris to consecutive sentences. His postconviction attorney abandoned him after the dismissal of his postconviction motion.

Although Mr. Harris did not timely file his federal habeas petition within the one-year period set forth in 28 U.S.C. §2244(d), his federal habeas petition may be considered timely if he is entitled to equitable tolling of that one-year period. This Court has held that "§ 2244(d) is subject to equitable tolling in appropriate cases." *Holland*, 130 S. Ct. at 2560). To be entitled to such tolling, a petitioner must show "'(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." Id. at 2562 (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). Recently, this Court clarified that equitable tolling is available only if the prisoner satisfies both elements of the two-part test. *See Menominee Indian Tribe of Wisconsin v. U.S.*, 136 S.Ct. 750, 755-56 (2016).

It is debatable among reasonable jurists that Mr. Harris has been pursuing his rights diligently and extraordinary circumstances stood in his way which prevented a timely filing. Postconviction counsel never advised Mr. Harris that his amended postconviction motion had been denied or that his time to file a notice of appeal would begin to run thirty days after the entry of the judgment. Mr. Harris learned of the dismissal of his amended motion from a third party only after a substantial amount of the time had passed. Once Mr. Harris learned his postconviction motion had been denied, his family eventually obtained counsel who filed a motion seeking leave to file a late notice of appeal. The state court of appeals granted this motion but almost a full year had elapsed since the motion court denied the amended motion. Once the mandate from his postconviction appeal issued, Mr. Harris eventually retained counsel to file his federal habeas petition.

Similarly, it is debatable among reasonable jurists whether extraordinary circumstances prevented Mr. Harris from filing a timely federal habeas case. This was not the situation in which counsel merely miscalculated a deadline but totally abandoned Mr. Harris. Counsels's inaction made it impossible for Mr. Harris to file in a timely manner a petition for writ of habeas corpus. *See Holland*, 560 U.S. at 653 (noting that "in this case, the failures seriously prejudiced a client who

thereby lost what was likely his single opportunity for federal habeas review of the lawfulness of his imprisonment and of his death sentence"). The Eighth Circuit should have granted Mr. Harris a COA given that Mr. Harris's equitable tolling argument is fact-intensive and is deserving of further review. *See Barefoot*, 463 at 893.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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