

20-5370  
No.

Supreme Court, U.S.

FILED

APR 14 2020

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

LUIS GUILLEN, PETITIONER

vs.

RUSSELL WASHBURN, WARDEN, RESPONDENT

**PETITION FOR WRIT OF CERTIORARI**

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

*(6<sup>th</sup> Circuit No.: 19-6133)*

*(originating from 2:18-cv-02537)*

Luis Guillen, # 500168, *pro se* Petitioner  
TTCC  
140 Macon Way  
Hartsville, TN 37074

**ORIGINAL**

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SUPREME COURT, U.S.

**LIST OF PARTIES**

All parties appear in the caption of the cover page.

**QUESTIONS PRESENTED**

**REASONS FOR GRANTING THE PETITION**

**I. WHETHER THE PETITIONER'S PETITION IS TIMELY AND/OR THE ONE YEAR STATUTE OF LIMITATIONS IN PETITIONER'S CASE ARE EQUATABLY TOLLED UNDER HOLLAND V. FLORIDA, 560 U.S. 631 (2010)?**

**II. WHETHER THE UNITED STATES DISTRICT COURT AND UNITED STATES COURT OF APPEALS ERRED IN DENYING PETITION WITHOUT ADDRESSING ANY ISSUE(S) AND/OR OPINION AND THIR DENIAL DECISION WAS CONTRARY TO, AND/OR AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED SUPREME COURT PRECEDENT AND WAS NOT BASED ON A REASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED UNDER 28 U.S.C. § 2254(d)?**

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No. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

LUIS GUILLEN, 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The opinion of the United States Court of Appeals appears at Appendix A to the petition and is *unpublished*.

The opinion of the United States District Court appears at Appendix B to the petition and is *unpublished*.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Court of Tennessee denied review on the merits on post-conviction appeal appears at Appendix C to the petition and is *unpublished*.

The opinion of the Criminal Court of Appeals on post-conviction appeal appears at Appendix D to the petition and is *unpublished*.

The Supreme Court of Tennessee denied review on the merits on direct appeal appears at Appendix E to the petition and is *unpublished*.

The opinion of the Criminal Court of Appeals on direct appeal appears at Appendix F to the petition and is *unpublished*.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 and Fourteenth Amendments to the United States Constitution.

### **STATEMENT OF THE CASE**

#### **I. Factual and Procedural Background**

On July 29, 2010, the Shelby County Grand jury indicted the defendant on one count of aggravated rape in violation of Tennessee Code Annotated section 39-13-502 and three counts of aggravated kidnapping in violation of Tennessee Code Annotated section 39-13-304. All four allegations were based on the defendant's treatment of the victim, (defendant's girlfriend), over a four-day period commencing two days after Christmas 2009.

The defendant/petitioner/appellant, Luis Guillen, was found guilty after a trial by jury of one count of aggravated rape, a Class A felony, and one count of aggravated kidnapping, a Class B felony. He was sentenced as a violent offender to twenty-five years for the aggravated rape and to a consecutive ten years for the aggravated kidnapping, for a total effective sentence of thirty-five years.

On appeal, the defendant claimed that the evidence is insufficient to support his convictions and that his sentence is excessive. After reviewing the record and the arguments of the parties, the TCCA affirmed the judgments of the trial court. Appendix-E and F.

The defendant filed a timely petition for Post-Conviction relief. The defendant claimed that his counsel was ineffective under Strickland standard. After hearing the trial court denied relief and TCCA

affirmed the judgments of the trial court. Appendix-C and D.

The Petitioner filed 2254 Petition for Habeas Corpus Relief which was denied in September 2019 without any opinion due to statute of limitations. Appendix-B.

Upon timely appeal, the U.S. Court of appeals denied appeal on 1/23/2020. Appendix-A.

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

## **REASONS FOR GRANTING THE PETITION**

- I. PETITIONER'S PETITION IS TIMELY AND/OR THE ONE YEAR STATUTE OF LIMITATIONS IN PETITIONER'S CASE ARE EQUATABLY TOLLED UNDER HOLLAND V. FLORIDA, 560 U.S. 631 (2010).**
- II. UNITED STATES DISTRICT COURT AND UNITED STATES COURT OF APPEALS ERRED IN DENYING PETITION WITHOUT ADDRESSING ANY ISSUE(S) AND/OR OPINION AND THIRIR DENIAL DECISION WAS CONTRARY TO, AND/OR AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED SUPREME COURT PRECEDENT AND WAS NOT BASED ON A REASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED UNDER 28 U.S.C. § 2254(d).**

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## **PROCEDURAL HISTORY**

1. Your Petitioner/Appellant is an indigent state inmate and a LEP (Limited English Proficiency) person.
2. In the end of July, 2018, Petitioner/Appellant filed a Petition of 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS by challenging 35-year sentence along with a Motion To Proceed In Forma Pauperis.
3. Around September 2019, United States District Court denied petition without addressing any issue(s) and/or opinion. Appendix-B. Petitioner filed a timely notice of appeal.
4. United States Court of Appeals affirmed the District Court's decision. Appendix-A.
5. Current Petition for writ of certiorari is timely.

## **Statement of Case**

### **Factual and Procedural Background**

On July 29, 2010, the Shelby County Grand jury indicted the defendant on one count of aggravated rape in violation of Tennessee Code Annotated section 39-13-502 and three counts of aggravated kidnapping in violation of Tennessee Code Annotated section 39-13-304. All four allegations were based on the defendant's treatment of the victim, (defendant's girlfriend), over a four-day period commencing two days after Christmas 2009.

The defendant/petitioner/appellant, Luis Guillen, was found guilty after a trial by jury of one count of aggravated rape, a Class A felony, and one count of aggravated kidnapping, a Class B felony. He was sentenced as a violent offender to twenty-five years for the aggravated rape and to a consecutive ten years for the aggravated kidnapping, for a total effective sentence of thirty-five years.

On appeal, the defendant claimed that the evidence is insufficient to support his convictions and that his sentence is excessive. After reviewing the record and the arguments of the parties, the TCCA affirmed the judgments of the trial court. Appendix-E and F.

The defendant filed a timely petition for Post-Conviction relief. The defendant claimed that his counsel was ineffective under Strickland standard. After hearing the trial court denied relief and TCCA affirmed the judgments of the trial court. Appendix-C and D.

On July 31, 2018, Petitioner filed his 2254 petition by handing over the petition to prison

official. In his 2254 petition, Petitioner raised constitutional questions (claims/Issues) which were properly exhausted in the state courts.

### **Issues in this proceeding at United States District Court:**

#### **Issue (1):** Whether the evidence was insufficient to support the convictions.

The Petitioner claims that the evidence is insufficient to support his convictions for aggravated rape and aggravated assault under *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2D 560 (1979).

#### **Issue (2):** Whether the trial court erred by imposing an excessive sentence.

The trial court imposed an aggravated rape 25-year sentence and aggravated kidnapping 10-year sentence, consecutively, resulting 35-year sentence.

As to the rape conviction, considering the fair sentencing guideline and lack of jury's finding of enhancement factor(s), the 25 maximum should have been adjusted to 15 minimum.

As to the consecutive matter, considering the Kidnapping was a necessary element of Rape, in this case, the Aggravated Rape and Aggravated Kidnapping conviction should have been merged to protect Petitioner from double conviction/jeopardy under Blockburger test. *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932).

Petitioner's 35-years sentence is excessive in violation of the 8<sup>th</sup> Amendment to the Constitution of the United States.

#### **Issue 3(IAC-1):** On Jury Instruction.

As argued above in this Petition, (\*Sufficiency of evidence and \*Excessive sentence), because the alleged kidnapping offense was a part of the alleged rape and essentially incidental, the constitutional due process clause and double jeopardy clause demand an appropriate jury instruction, - later called as a White Jury Instruction. *State v. White*, 362 S.W.3d 512 (3/8/2012). Petitioner's counsel was in effective by not challenging this matter under Strickland.

#### **Issue 4(IAC-2):** Ineffective assistance of counsel On Actual Innocence.

Petitioner avers that the incident was not a rape or a kidnapping. It was an aggravated assault. Petitioner claims that he is factually innocent from conviction of rape and kidnapping in this case. Petitioner's counsels were ineffective in challenging this matter. Such ineffectiveness was prejudicial to Petitioner. Without counsels such ineffectiveness, the court outcome, more than likely, would have been different in favor of Petitioner.

Petitioner's trial counsel was ineffective in challenging his innocent claim under Strickland. Trial counsel's failure was prejudicial to Petitioner. Without trial counsel's failure in this matter, the court outcome, more than likely, would have been different in favor of Petitioner.

Furthermore, in addition, Petitioner's Post-Conviction counsel was ineffective in challenging Petitioner's Tennessee conviction to assert the ineffective assistance of post-conviction counsel in this matter. Petitioner shows such Post-Conviction counsel's failure in

raising Trial counsel's constitutional failure as "cause" to excuse the petitioner's procedural default of this claim, if any, under Sutton, Martinez, Trevino, Strickland, and White.

Satisfying Strickland two prong test, your Petitioner respectfully request a hearing with an appointment of counsel.

**Issue 4(IAC-3):** Ineffective assistance of counsel On Interpreter Matter.

Petitioner is a Mexican National. He has been a LEP (Limited English Proficient)- person. He was never allowed a full and meaningful access to a legal counsel or a language interpreter.

In claiming his actual innocent, it was vital, critical and essential for Petitioner to have a full and meaningful access to a legal counsel and/or a language interpreter. Petitioner's trial counsel and Post-Conviction counsel were ineffective in guarantying and securing this matter. By counsels failure in this matter, Petitioner's fundamental constitutional rights were deprived. Due to counsels failure Petitioner's legal proceedings became deaf and impaired to Petitioner. Without counsels failure, Petitioner would have proven his innocence on rape and/or kidnapping charges. Petitioner's counsels were ineffective in challenging this matter. Such ineffectiveness was prejudicial to Petitioner. Without counsels such ineffectiveness, the court outcome, more than likely, would have been different in favor of Petitioner.

Petitioner's trial counsel was ineffective in this matter under Strickland. Trial counsel's failure was prejudicial to Petitioner. Without trial counsel's failure in this matter, the court outcome, more than likely, would have been different in favor of Petitioner.

Furthermore, in addition, Petitioner's Post-Conviction counsel was ineffective in challenging Petitioner's Tennessee conviction to assert the ineffective assistance of post-conviction counsel in this matter. Petitioner shows such Post-Conviction counsel's failure in raising Trial counsel's constitutional failure as "cause" to excuse the petitioner's procedural default of this claim, if any, under Sutton, Martinez, Trevino, Strickland, and White.

Satisfying Strickland two prong test, your Petitioner respectfully request a hearing with an appointment of counsel.

**Issue 4(IAC-4):** Ineffective assistance of counsel On VCCR (Vienna Convention of Consular Relations) Matter.

Article 36 of the Vienna Convention on Consular Relations (VCCR) Treaty states that signatory states shall inform an alien's consulate when he or she is arrested or imprisoned, and the arresting state shall inform the alien of his or her right to consulate contact. Vienna Convention on Consular Relations, art. 36(1)(b), Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261.

Under the VCCR, a foreign national arrested or detained in the United States must be advised of his or her right to request that appropriate consular officials be timely notified of the individual's detention.

**Issue 4(IAC-5):** Ineffective assistance of counsel On Plea Matter.

As Petitioner's trial counsel testified at Post-Conviction hearing, there was a favorable offer of eight (8) years at 85% from the State in exchanging Petitioner's guilty plea. However, because of his LEP situation, inability in meaningful communication with his counsel, misunderstanding of the law, and cultural difference, Petitioner was unable to enter into such

favorable guilty plea.

As to the Plea matter, it appears that trial counsel used his personal secretary as an interpreter in communicating with Petitioner. The personal security's interpreting (English-Spanish language) skill is highly doubtful and never been verified or approved by the trial judge.

Had Petitioner have understood the nature of the charge in the United State and Plea proceeding in the United States, with the meaningful interpretation service, he, more than likely, would have accepted the favorable 8-years at 85% plea which was offered by the State.

Petitioner's trial counsel was ineffective in this matter under Strickland. Trial counsel's failure was prejudicial to Petitioner. Without trial counsel's failure in this matter, the court outcome, more than likely, would have been different in favor of Petitioner by accepting then-offered favorable eight (8) years at 85% guilty plea.

Furthermore, in addition, Petitioner's Post-Conviction counsel was ineffective in challenging Petitioner's Tennessee conviction to assert the ineffective assistance of post-conviction counsel in this matter. Petitioner shows such Post-Conviction counsel's failure in raising Trial counsel's constitutional failure as "cause" to excuse the petitioner's procedural default of this claim, if any, under Sutton, Martinez, Trevino, Strickland, and White.

Satisfying Strickland two prong test, your Petitioner respectfully request a hearing with an appointment of counsel.

**Issue 4(IAC-6):** Ineffective assistance of counsel Batson violation.

The Petitioner and victim were Mexican. Their relationship was based on Mexican culture. All surrounding was Mexican. In such situation, there should have been a certain percent of jury for a constitutional fair peer jury trial under Barton holding. *Batson v. Kentucky*, 476 U.S. 79, 90 L Ed 69, 106 S Ct. 1712 (1986). Petitioner believe that there was not a single juror who would be a peer to him at his trial in language, in culture, and in constitutional understanding in violation of the constitutional fair peer jury trial and Batson.

Petitioner's trial counsel was ineffective in this matter under Strickland. Trial counsel's failure was prejudicial to Petitioner. Without trial counsel's failure in this matter, the court outcome, more than likely, would have been different in favor of Petitioner by enjoying a constitutional peer jury trial.

Furthermore, in addition, Petitioner's Post-Conviction counsel was ineffective in challenging Petitioner's Tennessee conviction to assert the ineffective assistance of post-conviction counsel in this matter. Petitioner shows such Post-Conviction counsel's failure in raising Trial counsel's constitutional failure as "cause" to excuse the petitioner's procedural default of this claim, if any, under Sutton, Martinez, Trevino, Strickland, and White.

Satisfying Strickland two prong test, your Petitioner respectfully request a hearing with an appointment of counsel.

**Issue 4(IAC-7):** Ineffective assistance of counsel On Right To Testify/Not Testify.

Petitioner should have not taken stand at his trial due to his appearance, demeanor and facial tattoo. Had Petitioner have understanding about the Right To Testify and Not To Testify as a Constitutional Right, he more than likely would have not taken stand at his trial for his best interest.

Petitioner's trial counsel failed in guaranteeing Petitioner Constitutional Right Not To

Testify for his best interest.

Petitioner's trial counsel was ineffective in this matter under Strickland. Trial counsel's failure was prejudicial to Petitioner. Without trial counsel's failure in this matter, the court outcome, more than likely, would have been different in favor of Petitioner by practicing his constitutional Not To Testify at trial for his best interest.

Furthermore, in addition, Petitioner's Post-Conviction counsel was ineffective in challenging Petitioner's Tennessee conviction to assert the ineffective assistance of post-conviction counsel in this matter. Petitioner shows such Post-Conviction counsel's failure in raising Trial counsel's constitutional failure as "cause" to excuse the petitioner's procedural default of this claim, if any, under Sutton, Martinez, Trevino, Strickland, and White.

Satisfying Strickland two prong test, your Petitioner respectfully request a hearing with an appointment of counsel.

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#### **Factual and Procedural Background - continued**

By lacking of language interpreter service and by not knowing the procedural requirement(s) and statute of limitations, Petitioner showed "Cause" and "Prejudice" for his late filing 2254 petition. See original 2254 petition, Pages 34-39.

On 9/28/2018, State filed it's Answer by challenging the one-year statute of limitation.

In March, 2019, by permission, Petitioner filed his Reply to Respondent's Answer, which was Motion To Dismiss as untimely. Soon after his reply, on 7/24/2019, Petitioner filed a Motion To Leave To File a Supplemental Response To Respondent's Motion To Dismiss. In September<sup>①</sup>, 2019, United States District Court denied petition without addressing any issue(s) and/or opinion. Petitioner filed a timely notice of appeal. The United States Court of Appeals denied Petitioner's appeal on 1/23/2020. Current Petition for a writ of certiorari is timely.

<sup>①</sup> The ruling was on 8/30/2019.

## **Statute of Limitations**

As Respondent stated in its Answer/Motion To Dismiss, Petitioner's judgments became final 90-days later on March 10, 2014, during which time he could have filed – but did not file – a petition for writ of certiorari in the United States Supreme Court. Petitioner submitted his pro se petition for Post-Conviction Relief to prison authorities for mailing on 2/20/2014, which was before the 90-day (grace-) period elapsed.

On 5/19/2017, Petitioner's Post-Conviction was denied by TN Supreme Court, and Petitioner's one-year statute of limitations began to run the next day, 5/20/2017, and continued to run for 365 days until it expired on 5/21/2018, (because 5/19/2018 was a Saturday). Petitioner filed his 2254 petition on 7/31/2018. Therefore, the Respondent averred that Petitioner's petition was late by seventy-two (72) days.

However, Rule 13 of the United States Supreme Court Rule defines the Time for Petitioning as follows:

### **Rule 13. Review on Certiorari: Time for Petitioning**

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

The word of Rule 13 is clear that Petitioner had an opportunity to file a writ of certiorari with

the United States Supreme Court within 90 days (grace period) after the entry of the 5-19-2017 judgment by a state court of last resort. The grace period expired on 8/18/2017.

Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) does not limit whether the grace period should be applied only on direct appeal or on Post-Conviction appeal, too.

Under the Rule 13 of the United States Supreme Court Rule and AEDPA, your Petitioner's one-year statute of limitations began to run on August 18, 2017, and expired on August 17, 2018. Thus Petitioner's 07-31-2018 filing was timely under Abela decision<sup>1</sup> and Gass decision<sup>2</sup>.

**Abela v. William Martin, 348 F.3d 164; 2003 U.S. App. LEXIS 21359; (6th Cir.), No. 00-2430, (10/22/2003).**

In Abela, the 6<sup>th</sup> Circuit established the tolling of the statute of limitations during the state post-conviction proceeding.

**Gass v. Chandler, 2006 U.S. Dist. LEXIS 101736 (6/8/2006).**

In Gass, the United States District Court established that the 90 day grace period applied after the collateral review, the post-conviction proceeding.

In Gass, the United States District Court held that the period of limitations under 2244(d)(1) is tolled for that amount of time in which "a properly filed application for a State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending ..." 28 U.S.C. 2244(d)(2).

In Gass, as a conclusion of his direct appeal, the Supreme Court of Kentucky rendered its unpublished opinion on February 21, 2002 (DN 1, Direct Appeal Opinion of the Supreme Court of

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<sup>1</sup> Abela v. William Martin, 348 F.3d 164; 2003 U.S. App. LEXIS 21359; (6th Cir.), No. 00-2430, (10/22/2003).

<sup>2</sup> Gass v. Chandler, 2006 U.S. Dist. LEXIS 101736 (6/8/2006).

Kentucky at 1). Gass' first 90 day grace period expired on 5/22/2002. Then, the 365 day one year statute of limitation started to run on 5/23/2002 and lasted to 5/23/2003. Therefore, Gass filed his collateral challenge, the post-conviction petition, on April 15, 2003. Gass used up 327 days and had only 38 days. On September 29, 2003, the Simpson Circuit Court issued a memorandum{2006 U.S. Dist. LEXIS 5} and order denying Gass' Rule 11.42 motion for post-conviction relief (DN 10, Appendix Volume XIV at 659-666). On April 13, 2005, the Supreme Court of Kentucky denied Gass' motion for discretionary review on post-conviction appeal. See Gass v. Chandler, 2006 U.S. Dist. LEXIS 101736 (6/8/2006). Gass had only 38 days left upon 4-13-2005 denial. However, the Gass court applied the 2<sup>nd</sup> -90 day grace period pursuant to the Rule 13 of the United States Supreme Court Rule and calculated the final deadline to file 2254 petition as 8/19/2005 under Abela and concluded that Gass' filing date of 8/18/2005 was timely. The following is a part of Gass;

On April 15, 2003, Gass properly filed his Rule 11.42 motion for State post-conviction relief. Thus, he tolled the period of limitations on April 15, 2003. 28 U.S.C. 2244(d)(2); Cowherd v. Million, 380 F.3d 909, 912-914 (6th Cir. 2004). If the Court uses May 23, 2002 as the date the statute of limitations first began to run, then 327 days of the one year period of limitation have passed and only 38 days remain.

On April 13, 2005, the Supreme Court of Kentucky denied Gass' motion for discretionary review. The Sixth Circuit has held that the statute of limitations set forth in 2244(d)(1) remains tolled until conclusion of the 90 day period for filing a petition for writ of certiorari regardless of whether the petitioner actually petitions the{2006 U.S. Dist. LEXIS 16} Supreme Court to review the case. Abela, 348 F.3d at 172-173. In essence, Abela establishes a 90 day grace period.

If the 90 day grace period is applied then the period of limitation clock begins on July 13, 2005. If only 38 days remain of the one-year period of limitation then the petition must be filed on or before August 19, 2005 to be timely.

The petition for writ of habeas corpus was filed in the Clerk's office on Monday, August 22, 2005 (DN 1). However, the petition is dated August 18, 2005. Assuming Gass delivered his petition to prison authorities on Thursday August 18 or Friday August 19, 2005, then the petition is timely filed under the prison mail box rule. Houston v. Lack, 487 U.S. 266, 108 S.

Ct. 2379, 101 L. Ed. 2d 245 (1988).

If the 90 day grace period is not applied then the period of limitation clock begins on April 13, 2005. If the remaining 38 days of the one-year period of limitation are applied to this date then the statute of limitations would have expired on Monday May 23, 2005. Under this scenario, Gass' petition would be time barred. However, the undersigned concludes since Abela is still controlling law in this Circuit the grace period should be applied and Gass' petition is timely filed.

Under Gass calculation, it is clear that Petitioner Luis Guillen's direct appeal was denied by the TN Supreme Court on 12/10/2013. During his 1<sup>st</sup> -90 day grace period pursuant to the Rule 13 of the United States Supreme Court Rule, Petitioner filed his post-conviction Petition. Therefore, Petitioner Luis Guillen did not use any of 365 day statute of limitations. Upon the final denial of the post-conviction proceeding by the TN Supreme Court on 5/19/2017, Petitioner Guillen's 2<sup>nd</sup> -90 day grace period, (pursuant to the Rule 13 of the United States Supreme Court), started to run 5/20/2017 and expired on 8/20/2017. Therefore, Petitioner's 7-31-2018 filing is timely as Gass.

#### **The lower court's error:**

The United State Court of Appeals application and calculation of the statute of limitations under Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Lawrence v. Florida, 549 U.S. 327, 333 (2007) is not satisfactory in denying Petitioner Guillen's circumstance. Miller-El, Slack, and Lawrence are remote from Petitioner's circumstance. Only Gass v. Chandler, 2006 U.S. Dist. LEXIS 101736 (6/6/2006) is met with the Petitioner Guillen's circumstance in this matter. The United States District Court for the Western Dist. of Tennessee and United States Court of Appeal for the Sixth Circuit's denial decision was (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of

the United States" or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." See 28 U.S.C. § 2254(d). Further, in Petitioner Guillen's case, not only the Federal courts, but also the state courts, did not adjudicate a claim "on the merits" in this matter. Therefore, the "AEDPA deference does not apply, and [this honorable United States Supreme Court] may review the claim de novo." Bies v. Sheldon, 775 F.3d 386, 395 (6th Cir. 2014).

**Holland's extraordinary circumstance - CAUSE:**

In the alternative, your Petitioner shows the CAUSE for equitable tolling because herein-mentioned two months was a cumulate effect of several facts, such as his inability and ignorance (Hall v. Warden, 662 F.3d 745, 751 (6<sup>th</sup> Cir. 2011)), an ineffective assistance of counsel, lack of prison legal assistant (Leon v. Parris, No. 3:15-cv-00094, 2015 WL 7283164, at \*4 (M.D. Tenn. Nov. 16, 2015)), and his LEP status (Cobas v. Burgess, 306 F.3d 441, 444 (6<sup>th</sup> Cir. 2002)). Petitioner avers that the totality and cumulative effect of his circumstance satisfies the Holland test in excusing statute of limitations. HOLLAND v. FLORIDA, 177 LED2D 130, 2010 US LEXIS 4946, 6/24/2010. Petitioner's circumstance was extraordinary because he is L.E.P. Person AND pro se AND abandoned by his counsel AND abandoned by his prison legal library AND an indigent State inmate. There cannot be more extraordinary circumstance than Petitioner's cumulative circumstance. Petitioner avers that such an extra ordinary circumstances would satisfies the Holland test in excusing the statute of limitations.

Prayer:

Therefore, Petitioner Guillen prays this honorable Supreme Court to grant current Petition for a writ of certiorari and remand the case to the lower court for an evidentiary hearing for the remaining claims with an appointment of counsel.

Respectfully submitted,



Luis Guillen, # 500168, *pro se* Petitioner  
TTCC

140 Macon Way  
Hartsville, TN 37074

4/10/2020. (Original Submission)

6/18/2020. (Re-submission by order)

8/5/2020. (Re-Submission by order)