

No. _____

20-5657

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Eric B. Scott — PETITIONER

(Your Name)

FILED

AUG 20 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

William H. Pryor, Jr. — RESPONDENT(S)
et al.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eric Bernard Scott

(Your Name)

Wilcox State Prison P.O. Box 3917

(Address)

ABBEVILLE, GEORGIA 31001

(City, State, Zip Code)

(229) 467-3001

(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE UNITED STATES COURT OF APPEALS ABUSED ITS DISCRETION BY FAILING TO RULE ON APPELLANT'S APPEAL WHICH WAS REMANDED BY THIS COURT.
2. WHETHER THE UNITED STATES COURT OF APPEALS ABUSED ITS DISCRETION BY DENYING THE HABEAS CORPUS PETITION AS FRIVOLOUS.
3. WHETHER THE UNITED STATES COURT OF APPEALS ABUSED ITS DISCRETION BY FAILING TO HOLD A HEARING ON APPELLANT'S HABEAS CORPUS CLAIM.
4. WHETHER THE UNITED STATES COURT OF APPEALS ABUSED ITS DISCRETION BY DENYING APPELLANT LEAVE TO PROCEED IN FORMA PAUPERIS.

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:

1. CIRCUIT JUDGE WILLIAM H. PRYOR, JR.
2. CIRCUIT JUDGE GRANT
3. CIRCUIT JUDGE LUCK
4. UNITED STATES DISTRICT COURT JUDGE
WILLIAM T. MOORE, SR.
5. UNITED STATES MAGISTRATE JUDGE
G. R. SMITH

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	6

INDEX TO APPENDICES

APPENDIX A	DECISION OF THE UNITED STATE COURT OF APPEALS
APPENDIX B	DECISION OF THE U.S. DISTRICT COURT SOUTHERN DISTICT
APPENDIX C	DECISION OF STATE SUPREME COURT DENYING REVIEW.
APPENDIX D	ORDER OF UNITED STATES COURT OF APPEALS DENYING MOTION FOR RECONSIDERATION
APPENDIX E	DECISION OF UNITED STATE COURT OF APPEALS RECEIVED OF PETITION FOR REHEARING WAS
APPENDIX F	RECEIVED UNFILED. PETITION FOR REHEARING WAS RECEIVED RECORDED UNFILED.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- 1.) GARDNER VS. PITCHESS, 731 F.2d 637 (9th Cir. 1984)
- 2.) SACKSON VS. MOTEL 6 MULTIPURPOSE, INC., 130 F.3d 999, 1004 (11th Cir. 1997).
- 3.) EAST VS. CLAYTON COUNTY, 436 FED. APPX. 904 - F.3d - 2011 U.S. APP. LEXIS 15925 (11th Cir. GA. 2011).
- 4.) UNITED STATES V. LIVINGSTON, 490 FED. APPX. 153 (10TH CIR. 2012).

STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the UNITED STATES COURT OF APPEALS appears at Appendix D to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOT AVAILABLE

☐ 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: MAY 27, 2020, 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. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was MAY 10, 1996.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

ON SEPTEMBER 8, 1995, PETITIONER ERIC SCOTT FILED AN APPLICATION FOR A STATE HABEAS CORPUS IN LOWNDES COUNTY SUPERIOR COURT CHALLENGING HIS CRIMINAL CONVICTION FROM CHATHAM COUNTY (GEORGIA).

ON MARCH 13, 1996, THE HABEAS COURT DENIED THE PETITION AND SCOTT APPEALED. ON MAY 10, 1996, THE SUPREME COURT OF GEORGIA DENIED SCOTT A CERTIFICATE OF PROBABLE CAUSE TO APPEAL. HOWEVER, WHILE SCOTT APPEAL WAS PENDING, CONGRESS ENACTED INTO LAW THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA) ON APRIL 24, 1996. DURING THIS TIME, THE SUPREME COURT HELD IN *LIND V. MURPHY*, 117 S.Ct. 2059 (1997) THAT, WHERE A STATUTE HAS BEEN AMENDED WHILE THE APPEAL OF A CASE INVOLVING AN ISSUE AFFECTED BY THE STATUTES IS PENDING, THE GENERAL RULE IS THAT THE APPELLATE COURT IS TO APPLY THE STATUTE AS IT EXISTS AT THE TIME THE COURT RENDER S ITS DECISION ON APPEAL.

ON AUGUST 5, 2005, PETITIONER FILED HIS § 2254 PETITION IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT. DURING THIS TIME, THE DISTRICT COURT DISMISSED THE PETITION AS TIME BARRED UNDER 28 U.S.C. § 2244(d).
(1)

STATEMENT OF THE CASE

(CONT'D)

RATHER THAN DISMISSING THE PETITION AS TIME BARRED UNDER § 2244(d), THE DISTRICT COURT SHOULD HAVE APPLIED EQUITABLE TOLLING TO THE LIMITATION PERIOD. SEE WIGGINS V. HETZEL, U.S. DISTRICT (LEXIS 55756) (2013), CITING HOLLAND V. FLORIDA, 560 U.S. ___, 130 S.Ct. 2549, 177 L.Ed. 2d 130 (2010). SEE ALSO KIMBER V. JONES, 2013 U.S. DISTRICT LEXIS 49045. SEE ALSO MARTIN V. MCNIEL, 633 F.3d 1257 (11th Cir. 2011). PETITIONER FILED THE APPROPRIATE MOTION BUT TO NO AVAIL. THE DISTRICT COURT REFUSED TO MAKE A RULING. (SEE COPY OF PETITIONER'S MOTION IN OPPOSITION).

ON SEPTEMBER 26, 2006, PETITIONER FILED A CERTIFICATE OF APPEALABILITY IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT. DURING THIS TIME, THE UNITED STATES COURT OF APPEALS DELETED SCOTT'S PETITION AS TIME BARRED BY THE ONE-YEAR STATUTE OF LIMITATIONS UNDER 28 U.S.C. § 2244(d). NEVERTHELESS, THE UNITED STATES COURT OF APPEALS SHOULD HAVE REMANDED THE CASE TO THE DISTRICT COURT FOR AN EVIDENTIARY HEARING ON THE CLAIM OF EQUITABLE TOLLING. SEE SAN MARTIN V. MCNIEL, SUPRA.

STATEMENT OF THE CASE

CONT'D

THEREAFTER, SCOTT FILED A MOTION TO RECALL MANDATE. ON FEBRUARY 3, 2015, THE UNITED STATES COURT OF APPEALS DENIED THE MOTION AND PETITIONER APPEALED. ON APPEAL, THIS SUPREME COURT DECIDED ON APRIL 29, 2015, THAT THE ORDER FROM THE UNITED STATES COURT OF APPEALS FOR CASE NO. 06-13577-B, DOES NOT APPEAR TO BE AN ORDER FROM WHICH THIS COURT CAN TOLL TIME. BECAUSE OF THIS, THE SUPREME COURT REMANDED THE CASE TO THE UNITED STATES COURT OF APPEALS WITH DIRECTIONS TO ENTER AN ORDER FROM WHICH THIS COURT CAN TOLL TIME. TO DATE, THE UNITED STATES COURT OF APPEALS HAVE YET TO ISSUE AN ORDER DESPITE THE FACT THE APPEAL HAS BEEN PENDING FOR (5) YEARS DATING BACK TO APRIL 29, 2015. PETITIONER FILED A MANDAMUS ON NOVEMBER 5, 2019, TO COMPEL THE COURT TO RULE ON HIS APPEAL, BUT TO NO AVAIL. THE UNITED STATES COURT OF APPEALS HAS CONTINUED TO ABUSE ITS AUTHORITY.

REASONS FOR GRANTING THE PETITION

THE REASON THE SUPREME COURT SHOULD GRANT CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

FOR EXAMPLE, THE UNITED STATES COURT OF APPEAL HAS ENTERED A DECISION IN CONFLICT WITH *IN RE SMITH*, 926 F.2d 1027 (11th Cir. 1991).

IN RE SMITH, THE UNITED STATES COURT OF APPEALS HELD THAT A MANDAMUS IS A DRASTIC REMEDY RESERVED FOR EXTRAORDINARY SITUATIONS. IT IS APPROPRIATE ONLY TO REMEDY A CLEAR USURPATION OF POWER OR ABUSE OF DISCRETION, AND WHEN NO OTHER ADEQUATE MEANS OF OBTAINING RELIEF IS AVAILABLE. IN PARTICULAR, A WRIT OF MANDAMUS MAY ISSUE ONLY TO CONFINE AN INFERIOR COURT TO A LAWFUL EXERCISE OF ITS PRESCRIBED JURISDICTION OR TO COMPEL IT TO EXERCISE ITS AUTHORITY WHEN IT IS ITS DUTY TO DO SO.

IN THE INSTANT CASE, THE UNITED STATES COURT OF APPEALS ABUSED ITS DISCRETION BY FAILING TO RULE ON APPELLANT'S APPEAL WHICH HAD BEEN REMANDED BY THIS COURT. THEREAFTER APPELLANT FILED A MANDAMUS TO COMPEL THE COURT TO EXERCISE ITS AUTHORITY BUT THE COURT REFUSED. NOT ONLY THAT, BUT THE DECISION

REASONS FOR GRANTING THE PETITION

CONT'D

OF THE COURT APPEALS THAT DECIDED THIS CASE IS IN CONFLICT WITH THE DECISIONS IN RE SMITH, SUPRA. BECAUSE OF THIS, IT IS OF IMPORTANCE FOR THE SUPREME COURT TO DECIDE THE CASE BECAUSE OF OTHERS WHO ARE SIMILARLY SITUATED; AND THE WAYS THE DECISION OF THE LOWER COURT IN THIS CASE WAS ERRONEOUS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eric BERNARD Scott

Date: AUGUST 15, 2020