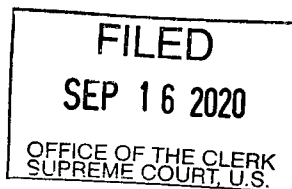


No. 20-5725

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

RHEASHAD LAMAR LOTT — PETITIONER
(Your Name)

vs.

E. OSEGUERA, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

RHEASHAD LAMAR LOTT
(Your Name)

MARK W. STILES UNIT, 3060 FM 354
(Address)

BEAUMONT, TEXAS [77705]
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. WAS PETITIONER'S 42 U.S.C. § 1983 COMPLAINT ENTITLED TO BENEFIT OF
EQUITABLE TOLLING?
2. DID PETITIONER DILIGENTLY PURSUE HIS DR OR WAS HE PREVENTED
IN SOME EXTRAORDINARY WAY FROM ASSERTING HIS RIGHTS BEFORE THE
STATUTE OF LIMITATIONS EXPIRED?
3. WAS THE FIFTH CIRCUIT COURT OF APPEALS' DENIAL OF PETITIONER'S APPEAL
A DECISION IN CONFLICT WITH OTHER COURTS OF APPEALS OF THE UNITED
STATES OR UNITED STATES SUPREME COURTS' DECISIONS?

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. E. DSEGUEIRA - Defendant
2. JOHN BRIMMER - Defendant

RELATED CASES

- STATE OF TEXAS v. RHEASHAD LAMAR LOTT, No. FD9-00780, DALLAS COUNTY, TEXAS. Judgment entered on September 8, 2009
- RHEASHAD LAMAR LOTT v. E. DSEGUEIRA, et al., No. 3:19-cv-0126-G-BH, U.S. District Court For the Northern District of Texas. Judgment entered on February 22, 2019.
- RHEASHAD LAMAR LOTT v. E. DSEGUEIRA, et al., No. 19-10314, U.S. Court of Appeals For the Fifth Circuit. Judgment entered on April 8, 2020. Rehearing denied on May 22, 2020.

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- APPENDIX E - Petitioner's Petition for Panel Rehearing
- APPENDIX F - Petitioner's Initial Complaint With the State Bar of Texas - Based on Trial Counsel Refusing to Convey Contents of Discovery File.
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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
• CABALLERO V. WYANDOTTE COUNTY SHERIFF'S DEPARTMENT, et al. 2019 US App LEXIS 30647 (10th Cir. 2019)	5
• ELLUL V. CONGREGATION OF CHRISTIAN BROS., 774 F.3d 791 (2nd Cir. 2014)	5
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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 _____ 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 cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was APRIL 8, 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: MAY 27, 2020, and a copy of the order denying rehearing appears at Appendix D.

☐ 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 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

- UNITED STATES CONSTITUTION AMENDMENT IV: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."
- UNITED STATES CONSTITUTION AMENDMENT V: "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 offense 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."
- UNITED STATES CONSTITUTION AMENDMENT XIV: "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."

STATEMENT OF THE CASE

On May 27, 2008, E. Oseguera entered a false arrest warrant, without probable cause, for Petitioner into the Police Database. Petitioner was falsely arrested/imprisoned on this warrant on May 28, 2008. After photo lineups were generated, E. Oseguera submitted a probable cause affidavit for the arrest of Petitioner on May 29, 2008 - which was signed by a Magistrate Judge.

On May 28, 2008, John Brinner made a Press Release statement that Petitioner was arrested off of a valid probable cause arrest warrant (entered on May 27, 2008), and would be arraigned on May 28, 2008. Petitioner was arraigned two days later, on May 30, 2008.

From May 30, 2008 through October 10, 2009, Petitioner attempted to obtain the Discovery File from Defense Counsel, but to no avail. (At this time, Petitioner is unaware that he was arrested off of a false arrest warrant without probable cause entered into the Police Database on May 27, 2008.)

From November 6, 2009 through November 7, 2017, Petitioner diligently attempted to obtain the Discovery File from Defense Counsel.

When Petitioner received Defense Counsel's latest submission of the Discovery File on November 7, 2017, only then did he become aware that the warrant entered into the Police Database was false and without probable cause. On January 4, 2019, Petitioner filed a 42 USC §1983 complaint against E. Oseguera and John Brinner.

The United States District Court for the Northern District of Texas dismissed the Complaint on the basis of being time-barred.

Petitioner appealed this dismissal to the United States Court of Appeals for the Fifth Circuit on the basis that he is entitled to equitable tolling.

The Fifth Circuit denied this appeal on the basis that Petitioner did not establish that he actively pursued his judicial remedies or otherwise acted diligently.

Petitioner filed a Petition For Panel Rehearing, providing documentations from July 26, 2010 through November 7, 2017, that supported that he acted diligently. The Fifth Circuit denied the Petition For Panel Rehearing.

The Fifth Circuit has entered a decision in conflict with decisions of another United States Court of Appeals on the same important matter.

REASONS FOR GRANTING THE PETITION

The United States Court of Appeals for the Fifth Circuit's Decision to dismiss Petitioner's Complaint as time-barred, on the basis that Petitioner failed to establish that he actively pursued his judicial remedies or otherwise acted diligently, is a decision that 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.

In Petitioner's Petition for Panel Rehearing, he supported that he actively pursued his judicial remedies and acted diligently by submitting to the Court fifteen (15) pages of documents. From "July 26, 2010; " December 27, 2011; " January 23, 2012; " February 22, 2012; " April 24, 2012; " May 2, 2012; " April 10, 2013; " August 17, 2017; " August 28, 2017; " September 13, 2017; and " November 7, 2017 - attempting to obtain a copy of the Discovery File from Trial Counsel: SEE: APPENDIX E.

During this time, Petitioner also pursued his judicial remedies by filing a State Writ of Habeas Corpus - alleging Ineffective Assistance of Counsel, Federal Writ of Habeas Corpus - alleging Ineffective assistance of Counsel, Certificate of Appealability, and Writ of Certiorari.

The U.S. Supreme Court held in *Pace v. DiGiuglielmo*, 125 S.Ct. 1807 (2005)...

"Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently; and (2) that some extraordinary circumstance stood in his way."

SEE ALSO: *Laballero v. Wyandotte County Sheriff's Department, et al.*, 2019 U.S. App. LEXIS 30647 (10th Cir. 2019)...

"Period can be equitably tolled if a plaintiff 'has been pursuing his rights diligently and some 'extraordinary circumstance stood in the way and prevented timely filing.'"

By Petitioner receiving a copy of the Probable Cause Arrest Warrant, signed on May 29, 2008, and a copy of Detective E. Osqueria's Case Notes in which he admits that he submitted an arrest warrant into the Police Database on May 27, 2008 - all received on November 7, 2017; Petitioner reasonably did not know of existence of Cause of Action, SEE: *U.S. v. Spectrum Brands, Inc.*, 924 F.3d 337 (7th Cir. 2014); *Ellul v. Congregation of Christian Bros.*, 774 F.3d 791, 799, 801 (2nd Cir. 2014)...

REASONS FOR GRANTING THE PETITION
(Continued)

"The discovery rule and the continuing violation doctrine are both equitable doctrines, but they serve different purposes and operate in different ways. The discovery rule is designed to protect a plaintiff who, through no fault of his own, does not learn that a defendant has caused him harm until the limitations period has already run; the discovery rule thus delays the accrual of his cause of action until such time as he reasonably could have discovered the defendant's wrongdoing."

SEE ALSO: *Timberlake v. A.H. Robins Co. Inc.*, 727 F.2d 1363, 1364 (5th Cir. 1984) ...

"Texas courts have recognized an exception to this general rule, the 'discovery rule,' which applies where a claimant is unable to know of an injury or the cause of an injury at the time it occurred."

SEE ALSO: *Glasscock v. Armstrong Cork Co.*, 946 F.2d 1085, 1092 (5th Cir. 1991) ...

"When the discovery rule applies, the statute of limitations is tolled until the plaintiff discovers, or through the exercise of reasonable care and diligence should have discovered the nature of his injury and its cause in fact."

By Defense Counsel refusing to furnish Petitioner the Discovery File until November 7, 2017, after denying Petitioner's requests (numerous) since May 30, 2008, Petitioner reasonably did not know of the existence of his cause of action until November 7, 2017, thus entitling him to the benefit of equitable tolling.

By Petitioner furnishing copies of documentations supporting that he actively and diligently pursued Defense Counsel to furnish the Discovery File, but the Fifth Circuit dismissed appeal as time-barred; based on the relevant citations herein, the U.S. Court of Appeals for the Fifth Circuit has entered a decision in conflict with another court of appeals' decision on the same matter, and 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.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BERNARD LAMAR LOTT

Date: AUGUST 11, 2020