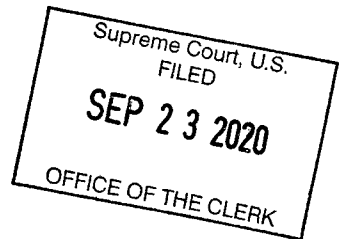


No. **20-6252**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



David Boyle — PETITIONER
(Your Name)

vs.

Timothy Shoop — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Boyle

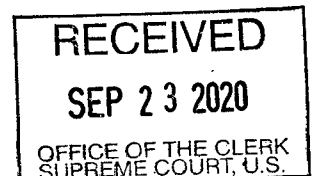
(Your Name)

15802 St. Rt. 104

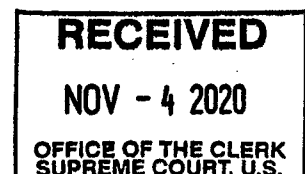
(Address)

Chillicothe Ohio, 45601

(City, State, Zip Code)



(Phone Number)



QUESTION(S) PRESENTED

How can Ohioans reset the statute of limitations pursuant to 28 USC 2244 (d)(1)(A) when Ohio Rules of Appellate Procedure prohibit the only remedy raised by this court in *Jimenez v Quarterman* 555 US 113?

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TABLE OF AUTHORITIES CITED

CASES

Jimenez v Quarterman 555 US 113
Gonzalez v Thaler 565 US 134 (1/13/09)
State v Withers 14ap-726
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STATUTES AND RULES

28 USC 2244 (d)(1)(A)

Appellate Rule 4(A) 3
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OTHER

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

State v Boyle 2013-cr-42 - Greene County Court of Common pleas - 8-2013
State v Boyle 2014-Ohio-1271 - Second District Court of Appeals - 3-2014

State v Boyle 2013-cr-42 - Greene County Court of Common Pleas - 1-2018
State v Boyle 2018-Ohio-3284 - Second District Court of Appeals - 8-2018
State v Boyle 154 Ohio St. 3d 1423 - Ohio Supreme Court - 11-2018

Boyle v Shoop - 2020 US Dist. Lexis 5915 - US District Court - 1-2020
Boyle v Shoop - 2020 US App Lexis 20384 - Sixth Circuit Court of Appeals - 6-2020

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 N/A to the petition and is

☒ reported at 2020 US App Lexis 20384; 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 N/A to the petition and is

☒ reported at 2020 US Dist. Lexis 5915; 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 N/A to the petition and is

☒ reported at 154 ohio st. 3d 1423; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the second district court of appeals court appears at Appendix N/A to the petition and is

☒ reported at 2018-ohio-3284 & 2014-ohio-1271; 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 June 2020.

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☒ 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 _____.

☐ 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 November 7, 2018.
A copy of that decision appears at Appendix N/A.

☐ 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

"Again" Not able to search anything due to Covid-19 to be able to cite any cases. I hope and pray that this Court will understand problems we are having

STATEMENT OF THE CASE

In April of 2013, Petitioner was indicted for 16 counts of rape pursuant to ORC 2907.02. Each count had no victim, no type of sexual conduct, and were allegedly committed within the exact same timeframe, see case number 2013-cr-0042. Counts 1 and 16 were separate and distinct counts; counts 2 to 15 read verbatim to one another.

On August 8, 2013 petitioner plead guilty to counts 2 to 7, counts 2,3,4, and 5 were given a 10 year sentence per counts and run consecutively to each other with the remaining counts run concurrent for an aggregate sentence of 40 years.

Petitioner appealed his conviction with court-appointed counsel. Counsel filed an Anders brief pursuant to *Anders v California* 366 US 738, see *State v Boyle* 2014-ohio-1271. The appellate court allowed petitioner to raise any issue that might have merit, petitioner did so, he raised the issue of defective indictment due to lack of victim, conduct, and timeframe, the appellate court affirmed conviction on March 28, 2014. No appeal followed.

On January of 2018, petitioner filed a collateral attack on case number 2013-cr-0042 in the form of a "Motion to dismiss indictment" in the Greene county trial court asserting multiplicity and duplicity. the trial court one lined its denial and petitioner appealed the trial courts decision.

The appellate court reopened petitioners direct appeal and all parties briefed, the court of appeals denied the appeal on August 17, 2018, see *State v Boyle* 2018-ohio-3284.

Petitioner appealed to the Ohio Supreme Court, asserting the same issues, and was denied jurisdiction on November 7, 2018 see *State v Boyle* 154 Ohio St. 3d 1423.

Petitioner filed his habeas corpus in the United States District Court of Ohio on October 1, 2019, alleging multiplicity in his indictment. Magistrate Michael R. Merz and Judge Rose were assigned the case.

Magistrate Merz filed a report and recommendation requesting dismissal due to the one-year statute of limitations pursuant to 28 USC 2244 (d)(1)(A).

In his report, Merz concluded that the only way to restart the 2244 (d)(1)(A) limitations was a remand back to the trial court and resentencing, and then start the appellate procedure anew, pursuant to *Gonzalez v Thaler* 565 US 134 (1/10/12).

Within the *Gonzalez* decision, this court refers to a previous holding, *Jimenez v Quqrterman* 555 US 113 (1/13/09). In this case, there were similarities between the case at bar and *Jimenez*. Both petitioners appellate counsel filed an Anders brief. *Jimenez* was not afforded his right to raise any meritorious issue due to prison transfers, Petitioner was allowed. Both Petitioners filed collateral attacks on their original convictions, *Jimenez* filed a Texas state habeas corpus, and Petitioner filed a "motion to dismiss indictment." *Jimenez* was seven years after conviction

Petitioner was four years after initial appeal.

Jimenez was granted an out-of-time/delayed appeal which re-opened direct review, Petitioner was granted an appeal of right, which re-opened direct review.

Jimenez did not appeal to the highest state court, Petitioner reached the Ohio Supreme Court and was denied. Petitioner pointed all of this out to Magistrate Merz.

Judge Rose sent the report back to Merz for further briefing in supplemental report and recommendation. Here Merz was stuck on the "out-of-time" appeal approach and requested dismissal again.

Petitioner objected and asked the question, what did it matter if Petitioner reopened direct review by an out-of-time/delayed appeal or an appeal as of right when both methods in Ohio allow the appellate court the power to modify the original judgment entry and restores pendency to the direct review.

Judge Rose sent the objections back to Merz requiring further briefing. Petitioner bolstered the question in the second supplemental report and recommendation. Judge Rose denied Petitioner on January 14, 2020 by denying and accepting "DDc #'s", and refused to reach the merits of the claim. See 2020 US Dist. Lexis 5915.

Petitioner appealed to the Sixth Circuit court of appeals asking the same question that Merz avoided because This Honorable court stated in Jimenez:

"HN8 When a state court has in fact re-opened direct review the conviction is rendered non-final for purposes of 2244 (d)(1)(A) during the pendency of the reopened appeal."

The Sixth Circuit Court held onto the "Narrow" ruling in Jimenez claiming the appeal had to be re-opened by delayed appeal. See Boyle v Shoop 2020 US App. Lexis 20384.

Petitioner appeal to this Honorable Court requesting a remedy that Ohioans can use to restart the statute of limitations.

In Ohio, Appellate Rule 4(A) governs a 30 day timeframe in order to be guaranteed an "appeal of right". Appellate Rule 5(A) governs the format for a "delayed appeal"

"Appellate Rule 4(A) appeal as of right - when taken

(A) time for appeal

(1) subject to provisions of App. R. 4(A)(3), a party who wished to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within thirty days of that entry."

"Appellate Rule 5 - appeals by leave of court in criminal cases

(A) Motion by defendant for delayed appeal

(1) After the expiration of the thirty day period provided by App.R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of court to which the appeal is taken in the following class of cases:

(a) criminal proceedings,

Petitioner was within the 30 day timeframe and was guaranteed an appeal of right, pursuant to Merz, this did not "restore the pendency of direct review" pursuant to Jimenez.

Pursuant to a non-related case, Elkins v Warden 2:20-cv-2934, Elkins went and directly filed for a "delayed appeal" in the court of appeals and was denied due to:

"A delayed appeal is only available where a defendant has not pursued a timely appeal as of right."
State v Withers 14AP-726 (10/21/14)

"Because Appellant 'had previously appealed the trial courts ** judgment entry of his conviction and sentence *** the procedure in App.5(A) is not available to appellant."
State v Montgomery 18AP-585 (2/14/19)

In Elkins, the "delayed appeal", even improper, pursuant to Judge Graham did not restore the pendency of direct review."
So What does?

The only potential remedy that complies with Ohio Rules of Appellate Procedure as well as Jimenez, supra. is to file a collateral attack in the trial court, and when denied, wait until the 31st day and file a delayed appeal.

When an appeal is delayed in Ohio, the court inherits "judicial discretion.", therefore a petitioner would have to establish why he was untimely. The only reason Petitioner could use is:

"The united state supreme court does not allow its statute of limitations to be re-set unless an appellant complies completely with Jimenez v Quatterman 555 US 113; therefore, appellant is commanded to be late, in order to be on time."

If this Court agrees that this is the only remedy, than it shall be, but what does it matter if the appeal is "of right" or "delayed" when both render the same outcome by "restoring the pendency to the direct review?"

REASONS FOR GRANTING THE PETITION

By granting this petition, it will create a justiciable way for Ohioans to receive appellate review from all federal level courts, without granting this petition, there will be absolutely no way for an ohioan to reach the federal level if he has not exhausted his state remedy.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David Boyle

Date: 9-2-20