

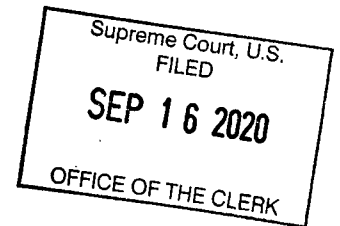
No. 20-7201 Ex. 1

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

JERRY NEIL ALFRED

Petitioner,*



v.

SECRETARY, FL DEPT. OF CORR.

Respondent.

PETITION FOR WRIT OF CERTIORARI

Jerry Neil Alfred-M12748
Apalachee Correctional Institution
35 Apalachee Drive
Swards, FL 32460

* As a pro se prisoner, Petitioner is entitled to a liberal reading of his certiorari petition. See Haines v. Kerner, 404 U.S. 519 (1972).

QUESTION

WHETHER DOCTRINE OF EQUITABLE TOLLING
BY A PETITIONER
COULD BE PROPERLY INVOKED AND ULTIMATE-
LY APPLIED BY DISTRICT COURT TO RENDER
AN OTHERWISE UNTIMELY CLAIM THAT EXIST-
ED AT THE TIME OF PETITIONER'S FILING
OF HIS FIRST 2254 PETITION BUT NOT
RAISED DUE TO HIS TRIAL LAWYER'S
BALD-FACED LIE TIMELY BY MAKING
IT RELATE-BACK TO TIMELY FILED FIRST
PETITION EVEN THOUGH IT WAS BEING
RAISED IN A TECHNICALLY SUCCESSIVE
PETITIONS?

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STATEMENT OF JURISDICTION

This Court has jurisdiction to review the circuit court's disposition of the underlying appeal.

STATEMENT OF THE FACTS

Three years following the resolution of Petitioner's first federal habeas corpus proceeding, he learned that his court-appointed trial lawyer had told him a bald-faced lie regarding an extremely consequential matter prior to the commencement of his trial. The bald-faced lie concerned the contents of an audio recording of a key witness's sworn statement. Because of trial lawyer's bald-faced lie, the key witness was enabled to provide perjured testimony indispensable to the jury's ver-

dict finding Petitioner guilty. Moreover, because Petitioner unwittingly accepted the truth of his court-appointed trial lawyer's bald-faced lie, he failed to include Brady and Giglio claims in his first 2254 petition in 2007.

Upon learning of its falsity, Petitioner ~~then~~ invoked the doctrine of equitable tolling in a technically successive 2254 petition requesting his prosecutorial fraud claim relate back to his timely first petition based on his trial counsel's deliberate deception. The district court accepted the magistrate judge's recommendation that it lacked jurisdiction because the petition was an unauthorized successive one.

Petitioner appealed.

Ultimately, the Court of Appeals for the Eleventh Circuit per curiam affirmed the district court's order.

This certiorari now follows.

SUMMARY OF ARGUMENT IN SUPPORT OF OBJECTIONS

This Court has long ago recognized the supremacy of natural over statutory law. Accordingly, where statutory law dictates a certain outcome, but a compelling case for equitable intervention exists, the normally certain outcome bends to the superceding

power of equity.

In the present case, Petitioner, when

he was constitutionally entitled to effective assistance of counsel, was made the victim of a bald-faced lie by his court-appointed

trial lawyer. This egregious, inexplicable

lies ramifications extended well beyond

securing the State an illicit outcome of Petitioner's trial... It actually impeded his pro se efforts to seek legal redress of his wrongful conviction in his first federal habeas corpus proceeding because at that time he was still under the delusion of the truth of the bald-faced lie, and, consequently, failed to raise completely viable Brady and Giglio claims.

As this Court has previously held that the act of deliberate deception of her client by a lawyer in a postconviction proceeding warrants application of equitable

tolling even though the constitutional rights to effective assistance of counsel does not even attach in this judicial context, it logically follows that an instance of deliberate deception occurring prior to a criminal conviction when the constitutional rights to effective assistance fully attaches dictates the application of equitable tolling even more where it led to default of a viable claim.

QUESTION

WHETHER DOCTRINE OF EQUITABLE TOLLING COULD BE
PROPERLY INVOKED^{BY A PETITIONER} AND ULTIMATELY APPLIED BY DISTRICT COURT TO RENDER AN OTHERWISE UNTIMELY CLAIM THAT EXISTED AT THE TIME OF PETITIONER'S FILING OF HIS FIRST 2254 PETITION BUT NOT RAISED DUE TO HIS TRIAL LAWYER'S BALD-FACED LIE TIMELY BY MAKING IT RELATE-BACK TO TIMELY FILED FIRST PETITION EVEN THOUGH IT WAS BEING RAISED IN A TECHNICALLY SUCCESSIVE PETITION?

ARGUMENT ON THE MERITS

A writ of certiorari should be issued to the Eleventh Circuit Court of Appeals in this case.

It should issue because conclusive evidence was presented to the lower courts that Petitioners'

court-appointed trial lawyer told him—as well as the trial judge—a bald-faced lie prior to the jury's verdict finding him guilty. Setting aside the immediate impact that the bald-faced lie had on the outcome of the trial, its delayed impact on Petitioner's later habeas corpus proceeding in the federal courts was causing his unwitting failure to raise to raise viable Brady and/or Giglio claims.

These events—i.e., a lawyer's bald-faced lie and a client's failure to take advantage of an opportunity for legal redress based on a mistaken belief of the truth of the lie—are something that this Court has already fashioned a legal remedy for: equitable tolling.

See Holland v. Florida, 560 U.S. 631 (2010). Although thus far that legal remedy has only been applied in the context of the expiration of the one-year deadline to file a timely 2254 petition based on the deliberate deception of postconviction lawyer, there is an even more compelling reason to apply it when a trial lawyer's deliberate deception leads to the subsequent default of otherwise viable postconviction claims. See Coleman v. Thompson, 501 U.S. 722 (1991).

In Coleman, this Court held that there is no constitutional right to counsel in collateral-review proceedings. See id. Despite this reality, an act of deliberate deception on the part of non-constitutionally-required counsel that results in the ex-

piration of the one-year filing deadline under AEDPA dictates the application of equitable tolling to make an otherwise untimely petition, timely. See Holland, supra. Under this state of affairs, it would come off as rather perverse not to afford legal recourse to equitable tolling to make an otherwise untimely claim, timely, where the deliberate deception of a constitutionally-required counsel led to the default of the substantial claim in both state and federal initial collateral-review proceedings. See Martinez v. Ryan, 566 U.S. 1 (2012) (observing "effective trial counsel preserves claims to be considered on appeal, and in federal habeas proceedings."). To do so would create the ugly optics of affording more judicial protection to a duly convicted felon than to someone merely accused of a crime awaiting her day in court.

Furthermore, to deny claim-specific equitable tolling in instances where the deliberate deception of a constitutionally-required counsel led to the unwitting default of a substantial claim would result in the nightmare scenario that gave birth to the modest qualification of the Coleman holding subsequently in Martinez. See Martinez, *supra*. Specifically, as a direct result of the deliberate deception of a constitutionally-required lawyer, judicial review of the belatedly-discovered substantial claim would be impossible since, strictly speaking, a claim that is predicated on evidence that existed at the time of the filing of the first 2254 petition does not meet the definition of "newly discovered evidence" even though its true substance is not known due to the constitutionally-required lawyer's inexplicable lie.

Thus, it is crystal clear that there are at least two classes of claims defaulted during the first federal habeas corpus proceedings. The first class of defaulted claims comprises those which the deliberate deception of a constitutionally-required lawyer did not play a part in the failure to raise, which, needless to say, is the vast majority. The second class comprises those which the deliberate deception of a constitutionally-required lawyer actually caused the failure to raise. For the latter class, an unsuspecting victim of a constitutionally-required lawyer's gross violation of her basic duty of honesty to her client should not be saddled with the unenviable and, more importantly, impossible task of squeezing a square peg (i.e., a claim defaulted courtesy of deliberate deception) into a round hole (i.e., 28 U.S.C. § 2244(b)(3)(A)) when such an extraordinary circumstance has a ready made

legal remedy: equitable tolling. The fact that, but for the deliberate deception of Petitioner's constitutionally-required lawyer, he would have raised a substantial Brady and/or Giglio claim in his first 2254 petition constitutes ample justification for application of claim-specific equitable tolling in this case.

CONCLUSION

The judgment of the Eleventh Circuit Court of Appeals should be reversed and Petitioner's case should be remanded with instructions to apply equitable tolling if he proves constitutionally-required lawyer's deliberate deception.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that I have placed a true and correct copy of the foregoing document in the hands of a prison official to forward to Attorney General Office PL 01 The Capitol Tallahassee, FL 32399 via U.S. Mail on September 15, 2020.