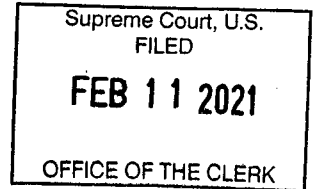


No. **20-7237**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Clyde E. Bradley — PETITIONER
(Your Name)

vs.

Teri Kennedy — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Seventh Circuit Court of Appeals

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

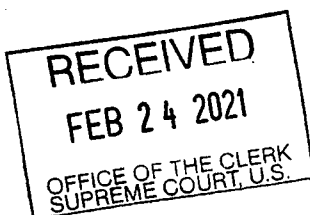
PETITION FOR WRIT OF CERTIORARI

Clyde E. Bradley
(Your Name)

Pontiac U.C., P.O. Box 99#A7045B
(Address)

Pontiac, Illinois 61764
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

I.) WHETHER THE U.S. DISTRICT COURT ERRED IN DISMISSING THE PROSE PETITION FOR HABEAS CORPUS RELIEF WITHOUT PERMITTING THE PETITIONER A FAIR OPPORTUNITY TO FILE A REBUTTAL TO THE RESPONDENT'S ANSWER?

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

Bradley v. Kennedy, No. 19-CV-01248-MMM, U.S. District Court
Central District of Illinois. Judgment entered February 7, 2020.

Bradley v. Kennedy, No. 20-1359, U.S. Court of Appeals for
Seventh Circuit. Judgment entered November 13, 2020.

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dated: November 13, 2020

APPENDIX B ORDER U.S. District Court, Central District,
dated: January 16, 2020

APPENDIX C ORDER U.S. District Court, Central District
of Illinois, dated February 7, 2020

APPENDIX D ORDER U.S. District Court, Central District
of Illinois, dated February 7, 2020.

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STATUTES AND RULES

28 U.S.C. §2254

Rule 5 of the Rules Governing §2254 Proceedings

Federal Rules of Civil Procedure, Rule 60(b)(3) and (d)(1)

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 _____ 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 _____ 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 United States Court of Appeals for 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 November 13, 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: _____, 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 _____.
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, Article I, Amendment VI

Confrontation Clause

Compulsory Clause

Assistance of Effective Counsel

United States Constitution, Article I, Amendment XIV

Due Process

STATEMENT OF THE CASE

This case involves a Federal Habeas Corpus petition that was filed in the U.S. District Court, Central District of Illinois, pursuant to 28 U.S.C. §2254 by a pro se Petitioner. The District Court made an initial merit review of the pro se petition and determined the Respondent should file an Answer. The Respondent did file an Answer.

The issues raised in the pro se petition involved claims that the Petitioner's Constitutional rights were violated in a State Court trial in the following ways:

- 1.) Trial Court engaged in ex parte communications with the jury during deliberations.
- 2.) Trial Court erred in not allowing trial counsel to call a defense witness, or allow cross examination of complainant about stealing money from the Petitioners while incarcerated.
- 3.) Ineffective Assistance of Counsel on Direct Appeal for not arguing trial court's error in denying a full and robust defense by preventing trial counsel from calling two defense witnesses.
- 4.) Ineffective Assistance of Trial Counsel for failing to call several witnesses and present an offer of proof regarding the witnesses' proposed testimony.

After the Respondent filed an Answer to the Habeas Petition the pro se Petitioner struggled to find help with researching and preparing a response to the Answer. Eventually, the Petitioner did gain help from a fellow inmate knowledgeable about the law. A series of Motions were submitted to the District Court seeking to accomplish the following:

- 1.) Extend the time needed to file a late Reply to the Respondent's Answer.
- 2.) Compel the Respondent to produce a copy of all Exhibits used to support the Respondent's Answer to the Petitioner, pursuant to Rule 5 of the Rules Governing §2254 Proceedings.

Statement of the Case, cont...

3.) Reinstate the Habeas Proceedings due to a misrepresentation made by the Respondent about serving the Petitioner a copy of the Exhibit in Support of the Answer.

The District Court denied all the Petitioner's motions and his §2254 Petition, as well as Certificate of Appealability. In the Orders the District Court cited various deficiencies in how the pro se Petitioner prosecuted his claims, despite the Petitioner's limited education, lack of litigation experience, and restrictive access to legal research materials from the prison law library. He subsequently filed a Notice of Appeal with the Seventh Circuit. A cursory denial of Certificate of Appealability was issued several months later by the Appellate Court.

This Petition has now been timely filed.

REASONS FOR GRANTING THE PETITION

The crux of this Petitioner's issue being presented pivots on being denied a fair opportunity to file a Reply to the Respondent Answer. It is true that the Petitioner neglected to file a timely Reply to the Answer, but on at least two occasions he advised the District Court as to the reason(s) for his delay. As a pro se litigant the Petitioner should have been given greater latitude by the District Court in allowing him to file a late Reply to the Respondent's Answer.

Petitioner believes this case presents an issue of National Importance because lower courts do not always take into consideration the gross disparity of resources and experience between pro se litigants and government attorneys. For this reason, this Court should allow the petitioner a fair opportunity to file a brief to demonstrate the inequity of lower courts dismissing a Federal Habeas petition on technical grounds—as a means to clear a lower court's docket. This is all the more relevant after a jurist of reason (in this case) made a threshold determination that the pro se petition had merit. Without direct guidance from this Court, a lower court will continue to deprive pro se inmates of a fair opportunity to have their Constitutional claims adjudicated on the merits, for no other reason than "comity".

As this Court is well aware, pro se litigants are to be held to a less stringent standard of pleading, See, *Resnick v. Hayes*, 213 F.3d 443 (9th Cir. 2000). Similarly, the Federal Habeas Corpus statute is to be interpreted and applied by lower courts in a way that is not overly technical. Pro se litigants are to be afforded fair and meaningful opportunities to correct deficiencies with a complaint or with delays in complying with Court procedures or a filing deadline. See, *Palmer v. City of Decatur*, 814 F.2d 426 (7th Cir. 1987), *Allen v. Calderon*, 408 F.3d 1150 (9th Cir. 2005) and *Sterling v. U.S.*, 985 F.2d 411 (8th Cir. 1993). In this case, the District Court never assessed the pro se Petitioner's delay by the

factors generally considered by a lower court before dismissing a pro se Complaint. See, Emerson v. Thiel College, 296 F.3d 184(3d Cir. 2002). (Factors include: party's personal responsibility, prejudice to adverse party, history of dilatoriness, conduct made in bad faith, effectiveness of other forms of sanctions besides dismissal, and merit of claims or defenses).

In support of his multiple Motions to obtain an Extension of Time and for the Production of Exhibits relied on by the Respondent's Answer the Petitioner attached a Declaration attesting to his minimal education, lack of litigation experience, and the restrictive policies at the prison law library hindering his ability to research and prepare his case. Additionally, the Petitioner had attested to gaining help from another prisoner more knowledgeable in the law. All of which demonstrated the Petitioner's diligence in prosecuting this case in the lower court to the best of his ability.

Equally troubling is how—in this case—the Petitioner had brought to the District Court's attention how the Respondent failed to provide the Petitioner a copy of the Exhibits relied on in the Answer as Rule 5 of the Rules Governing §2254 cases requires. It's notable that the Respondent did provide the Petitioner a copy of the required documents on January 16, 2020. Yet, the Respondent did not affirm that it had provided the initial copies on December 2, 2019 when the Respondent filed an Reply to the Petitioner's Motion seeking a copy of the Exhibits. However, the District Court simply assumed the Respondent did provide the copies as required by Rule 5 two separate times. Even after the Petitioner pointed out the misrepresentation to the District Court the Court simply ignored the obvious disparity of postage prices between the two dates December 2, 2019 and January 16, 2020—same dates the Respondent's attorney claimed to have sent the exhibits. The end result being that the Petitioner was deprived of having all the necessary documents to prepare a proper reply to the Answer and a fair opportunity to have made a reply all together.

It's clear that the District Court held the Petitioner at a much higher standard of compliance than it did the Respondent's attorney. The District Court routinely parsed his words in the Orders issued that insinuated the Petitioner had been dilatory in prolonging the litigation. And again, the Court never evaluated the Petitioner's effort to prosecute his Habeas petition by the factors enumerated by other courts and reasonable jurists. This is a matter further acquiesced by the Court of Appeals when it made a summary denial for granting a Certificate of Appealability to the pro se Petitioner. As this Court is well aware, a COA is to be granted when a reasonable jurist would debate the procedural denial and whether the pro se petitioner has presented issues of Constitutional violations. See, *Slack v. McDaniel*, 529 U.S. 473 (2000).

As a final matter to point out to this Court, it does seem as if there is a genuine conflict between the various Circuit Courts of Appeal as to what extent pro se Habeas petitioner's should be given fair opportunity to comply with procedural rules before a court may dismiss a Habeas petition for non-compliance and without an opportunity to file a Reply to a Respondent's Answer. For this reason alone, this Court should take up this case to resolve the matter so lower courts have clear guidance on how to treat a pro se Petitioner who has missed following procedural rules. This is an issue that is tantamount to allowing District Courts additional reasons to bar inmate litigants from Habeas relief similar to how other procedural bars or limitations have been used to prevent Habeas Corpus relief, despite a pro se litigant having presented underlining claims of Constitutional violations that have passed a District Court's merit review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Clyde Bradley

Date: February 9, 2021

APPENDIX