

20-7809

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
APR 09 2021
OFFICE OF THE CLERK

Julian J Miller — PETITIONER
(Your Name)

vs.

Dylon Radtke — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Julian J Miller
(Your Name)

6BCI PO Box 19033
(Address)

Green Bay, WI 54307
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

Julian Miller is a Wisconsin state prisoner who is serving a Life sentence for convictions that he alleges were the bi-product of Ineffective Assistance of counsel, Confrontations, Edwards/Miranda, & Napue violations. Miller never received an adjudication of these Constitutional claims in state court because his Direct Appeal was dismissed on January 21, 2016. Miller, however, filed a state habeas corpus alleging the interference & retaliatory acts of prison Business Office staff violated his 1st, 14th Amend., & Access to the court Right and caused the Actual Injury of his Direct Appeal being dismissed. After the state habeas corpus court refused to reinstate his Direct Appeal Rights, Miller's 2254 Petition sought the same equitable remedy from both the District court & 7th Circuit. Miller's Petition also included the above-mentioned conviction related Constitutional claims. The District court used 2244(d)-(1)(A) to dismiss Miller's entire Petition even though the Access claims couldn't accrue until they were raised in the state habeas. The 7th Circuit denied a COA by sidestepping the procedural issue & finding no substantial showing of a Constitutional violation.

In light of Miller's Access of court claims being barred by Heck from a 42 USC 1983 Forum & an Actual Innocence claim being able to serve as a Gateway through 2244(d)(1)(A), this Petition presents the court with the following questions:

- 1.) Does 2244(d)(1)(A) apply to a Habeas Petitioner's Access of Court claim that is barred by Heck & can't accrue pursuant to Christopher v. Harbury until the state habeas corpus remedy is exhausted?

- 2.) If such an access claim is independently raised, can a Habeas Petitioner use it, like a petitioner with an actual innocence claim, and bust thru 2244(d)(1)(A) to obtain Habeas relief?

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II. PARTIES TO THE PROCEEDING

There are no parties to the proceedings other than those listed in the caption. Petitioner is Julian J miller, an inmate. Respondent is Dylon Radtke, Warden of a Wisconsin correctional facility.

III. OPINIONS BELOW

The District Court's Order dismissing Miller's @2254 Petition is reported at "Miller v. Pollard", 2020 WL 291957. Appdx A. The 7th Circuit's December 1, 2020, denial of a Certificate of Appealability is attached while its January 7, 2021, recharacterizing of Miller's Motion for ReHearing as a Motion to Recall the Dec. 30, 2020, Mandate is not reported but details are attached. Appdx B-①

IV. JURISDICTION

The court of appeals' denial of Miller's COA application was entered on December 1, 2021. Appdx B. The Mandate was entered on December 30, 2020, but the Court of Appeals received a petition for rehearing that it recharacterized as a Motion to Recall the Mandate and denied 2012, Appdx C-②. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

V. RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves a state criminal defendant's constitutional rights under the First and Fourteenth Amendments. The **First Amendment** provides in relevant part:

Congress shall make no law * * * abridging * * * the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The **Fourteenth Amendment** provides in relevant part:

No State shall ... 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.

Art. I § 9, cl. 2, of the Constitution reads:

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

The relevant sections of **\$2244(d)(1)**'s 1-year period of limitation for a state prisoner to file a writ of habeas corpus are: The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

Finally, this case also involves the application of **28 U.S.C. § 2253(c)**, which states:

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court;--

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

VI. STATEMENT OF CASE

A. Statute of Limitations

Section 2244(d)(1) creates a one-year limitations period for filing a habeas petition. That year begins to run from the latest of (A) the date the conviction became final, (B) the date a state-created filing impediment was removed, (C) the date this Court created a new constitutional right deemed retroactive on collateral review, or, the focus here, (D) "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." **28 U.S.C. § 2244(d)(1)**.

B. The Trial & Direct Appeal

A Jury in Kenosha, Wi convicted Miller on Sept. 27,2011, and the Trial Court sentenced him on Nov. 11, 2011, to Life w/out parole/extended supervision plus over 100 more years.(Wisconsin's

two-tiered system required Miller to first file his Ineffective Asst. of Trial counsel(IATC) in the trial court, which he did in Nov. 2013, after discharging Appellate counsel. After multiple evidentiary hearings in-between Nov. 13 to May 5,2014, the trial court denied the postconviction motion on June 10,2014. Miller then filed a notice of appeal, which became appeal number 2014-AP-1506. During the litigation of his Direct Appeal, the prison Business Office repeatedly denied miller Legal Loans, which are given to indigent inmates so they can pay for copies & postage, and retaliate against him for filing inmate complaints & grievances to supervisors.

C.State Habeas Corpus(17AP 1506)

, Miller gave his state habeas corpus petition to prison staff during the weekend of July 6-8,2017, at a time when the Respondent argued and the District Court agreed that @2244(d)(1) (A) had already expired(Feb.21,2017). Wisconsin's Habeas is patterned after its Federal counterpart, with the exception of a statute of limitations, and reinstates the Direct Appeal Rights of defendants who successfully allege in their Knight(habeas) Petitions that Ineffective Asst. of appellate counsel deprived them of a Right to Appeal. This is the remedy Miller sought for his allegations that he was deprived of his Direct Appeal because of the invidious discrimination, unjustified & retaliatory acts by prison staff. The Respondent did not assert a laches defense during the litigation of Miller's state habeas corpus. The petition was denied in an order dated October 15, 2018. (*Appdx E*). The Wisconsin Supreme Court denied his petition for review of that order on April 9, 2019.

D. District Court Dismisses @2254 Petition

Miller filed his \$2254 Petition on Jan. 19,2019,(DKT 1)and it alleged that he is in custody as a result of several Constitutional violations that occurred:

(A) Before (5th,14th Amend./Miranda-Edwards violations) and at Trial (Ineffective Asst. of

Counsel, Police/Prosecutorial Misconduct before & at Trial, Confrontation violation, Juror-related issues, failure to give Lesser-Included). (DKT 1 at grounds 4-11) AND

(B) During Direct Appeal, such as invidious discrimination, unjustified & retaliatory acts by prison staff that violated his 1st,14th amend., & Access of the Court Rights and caused the dismissal of his Appeal on Jan.21,2016 & the Feb.3,2016, refusal to accepts his Brief. Id at Grounds 1-3.

Miller's Petition was filed while his state habeas corpus ,supra, was pending and his Motion to File a Protected Petition indicates why he believed he only had 2 days left on a \$2244(d)(1) (A) window.

The District court agreed that \$2244(d)(1)(A)'s 1 year limitation period began on February ,2017, because Direct Review expired 30 days after the Wisconsin Court of Appeals dismissed january 21, 2016 Miller's appeal for failure to file his brief. Therefore, the District court concluded that Miller's state habeas filed on June 2017, didn't qualify for equitable tolling pursuant to @2244(d)(2) and his @2254 filed in ,but stayed in abeyance until the state habeas was completed, was late.Appdx. Nowhere in the District Court's Order does it discuss Miller's 1st,14th, & Access of Court claims.Id.

E. Litigation in 7th Circuit

The Court of appeals denied Miller's Certificate of appealability on December 1,2020, and entered a mandate on December 30,2020.Appdx B-D. Before the Dec.22,2020, deadline for filing a Petition for Rehearing, however, Miller had wrote the Prison Librarians on about Dec.20th and asked them to come to his housing Dorm, pick up his flash drive, and print the Rehearing Petition. Because of COVID-19, movement is restricted and the Librarians must come

to the Dorm to get the drive, which inmates type their legal documents on. Seeing the delay by the Library in picking up the drive & knowing the business office was delayed in processing Legal

Loan mail , Miller filed a Motion for Application of the mailbox rule to the date he set out to get copies off his flash drive i.e. Dec.20. Appdx D

The 7th Circuit recharacterized Miller's Petition for Rehearing as a Motion to Recall the Mandate, which it denied on Jan. 7,2021. Appdx. D

REASONS FOR GRANTING CERTIORARI REVIEW

To begin with, the District Court never took cognizance of Miller 1st,14th Amend, & Access of court claims and Dismissed the entire #2254 Petition as untimely. (Appdx A) On the other hand, the 7th Circuit denied a COA despite Miller presenting sufficient evidence for his Access of court claims to deserve encouragement to proceed further. (Appdx B) The Court should grant review because the 7th circuit's denial of a COA is in conflict with the Court's 1st,14th Amend, & Access of court decisions and contrary to the requirement that it limit its inquiry to whether Jurists could find them debatable or adequate to proceed further

-Miller-El v. Cockrell, 537 US 322327,336-37(2003)

Therefore, the Court, as it did in Tharpe v. Sellers 138 SCT 545 and Buck v. Davis, 137 SCT 759(2017), should grant Review to determine whether Jurists could find it debatable whether Miller' Direct Appeal was dismissed on Jan. 21,2016, as a result of 1st, -14th Amend, & Access of court violations by prison Business staff

the 1st Amend. prohibits government officials from subjecting an individual to retaliatory acts for engaging in protected speech. Nieves v. Bartlett, 139 SCT 1715(2019) One, after he was denied a Legal Loan by Business Offcie Staff Ms. Debruin on

-Aug. 19, 2015, (Appdx F), Miller engaged in protected speech by filing grievances & a complaint to her supervisor. (Appdx 6(-2)) Two, Miller suffered an adverse action when Ms. DeBruin approved a \$50 Loan, when Miller needed \$100 for expenses, & only gave him until November to use it. (Appdx H) Whereas, the normal practice for Loans approved in Sept onwards is to allow it to be used until Dec. 31, (Appdx H) Third, there is a causal connection between Miller's protected speech & Ms. DeBruin's action because the latter occurred in close proximity to the former i.e. within weeks! Had Miller been given until Dec 31, 2015 to use the Loan, he wouldn't have had to file an Extension Motion of the Dec. 30th deadline for filing his Brief, BUT would have had enough \$ on the available Loan to meet the deadline. Instead, the extension Motion had to be filed due to prison staff losing Loan application papers & then the state Court of Appeals dismissed his Direct appeal on Jan, 2016. None of these post Dec. 30 events would've occurred had Ms. DeBruin not retaliated.

Second, the 14th Amend. protects against invidious discrimination at all stages of the appellate process. Griffin v. Illinois, 351 -US 12, 18. How Ms. DeBruin treated another similarly situated inmate, Leichman, sheds light on how she was discriminating vs Miller. Leichmann was on Direct Appeal & applied for a Loan in the same month (Aug) as Miller. DeBruin gave him a. a \$31 loan while Business Office supervisor Ms. Bosten allowed him to go over the \$100 limit so he could pay for postage. (Appdx I(-2)) Whereas, Miller was completely denied a Loan in Aug (Aug because he spent \$33.57 on canteen, which was half of what Leichmann spent. (Appdx 51) Supervisor Bosten also discriminated against Miller because she refused to grant him either a limited Loan or overdraft, which

-were his only 2options since he only had \$1.39 in his account, to mail out his Brief in-between Jan.19-20,2016.(Appdx ~~E~~) Instead, she waited until Jan.21,2016, for Miller to get paid & then denied his request for postage.Id. Whereas, Basten allowed inmate Leichamnn to go over the \$100 Loan limit so he could pay for postage.(Appdx ~~J-2~~) Had Basten fulfilled her obligation to not interfere with Miller's mail & provide indigent inmates with postage, Bounds v. Smith, 430 US 817,821,24, the state appellate court would've considered his Brief filed on Jan. 19-or 20th,2016, via Mailbox rule. see Wisconsin statute 809.80(3)-(c) & Judicial Notice.

Consequently, Ms.Debruin's & Ms.Basten's violations of miller's 1st,14th Amend., & Access of court Rights caused the Jan.21,2016 dismissal of his Direct appeal.

however, these Access claims could NOT accrue until Miller raised them in his July 2017 state habeas corpus.(Appdx ~~E~~), cf.

Christopher v. Harbury, 536 US 403,9A complaint must identify a remedy that may be awarded as recompense but not otherwise available in some suit that may yet be brought) Wisconsin Habeas is patterned after its Federal counterpart, but doesn't have a stat of limitation & reinstatement of Direct appeal Rights is a equitable remedy. State ex rel Wren v. Richardson,936 NW 2d 587.

Hence, Miller's Access claims didn't accrue until they were denied by the state habeas court(Appdx ~~E~~) and Congress legislates against the bcdrop of the Court's decisions & that statute of limitations, @2244(d)(1)(A)-(D) don't accrue until there is a complete cause of action. Northstar v. thomas, 515 US

Dodd v. US, 545 US 353,360.

In light of the Great Writ's doors traditionally being open to Access of court claims filed before AEDPA, Dodd v. Cook, &

-Cochrane v Kansas, the Court should grant Review to determine whether Congress intended for §2244(d)(1)(A) to be used to bar Access claims with Actual Injuries like Miller's AND whether an Access claim can serve as an equitable exception to the §2244(d)(1)(A) stat of ltd & allow a habeas Court to reinstate Direct Appeal Rights like in Roe v. Flores-Ortega? If the the judicially crafted Actual Innocence standard can serve as as a gateway through §2244(d)(1)(A), how much more should an Access of Court claim, which did not have to survive AEDPA, but was given life by the Constitution! McQuiggins v. Perkins. To allow Habeas Petitioners with Actual Innocence claims, to pass through §2244(d)(1)(A), but prevent Petitioners with an Access of Court claim from doing so, would created a strange inequity.

Alternatively, the Court should grant Review on the question of whether Congress intended for §2244(d)(1)(B) to be the trigger for Miller's Access claim? The limited application of this statute of ltd by Sister Circuits has focused on the conduct of state prison officials who interfere with an inamtes' ability to file the §2254 Petition. Shannon v. Newlnad, 410 F3d 1083(9th); Johnson v. Fla DOC, 513 F3d 1328(11th Circ.); Lloyd v. Van Natta -296 F3d 630(7th); Egerton v. Cockrell, 334 F3d 433(5th)

However, the Court should answer whetehr these Sister Circuits have taken too narrow of a view of Congress' intentions because * The alleged interference & retaliation of prison staff were 1st, 14th Amend, & Access of Court violations that * Created an impediment to Miller filing a §2254 & screened under §2244(d)(1)(A) because the dismissal of his Direct appeal meant he failed to exhaust §2254(b)(1)(A) & procedurally defaulted which * Could only be Removed by Miller raising the Access claims as an Independent Const violation in state court so he'd have a compete cause of action AND could use it to overcome defaults Martinez v. Ryan. The Court should clarify Congress' intentions.

I Certify that, Purs. to #1746, this Petition was mailed 4/7/21

Julie M
4/7/21