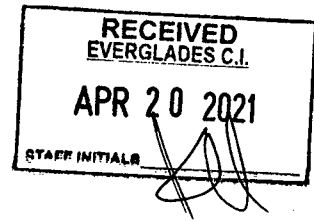
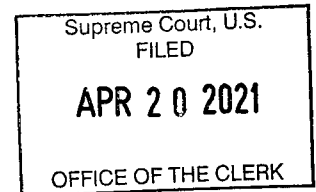


No. **20-7911**



ORIGINAL

SUPREME COURT OF THE UNITED STATES



ANTHONY ATEs, - PETITIONER,

VS.

MARK INCH, AND ASHLEY MOODY, - RESPONDENT(S).

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ANTHONY ATEs DC No.: 082828

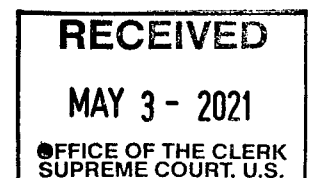
Everglades Correctional Institution

1599 SW 187th Avenue

Miami, Florida, 33194 - 2801

305-228-2000

(Phone Number) Warden



QUESTION(S) PRESENTED

Whether the courts below decided an important federal question in a way that conflicts with the relevant decisions of this Honorable Court when they denied Petitioner's petition for writ of habeas corpus as untimely in violation of Petitioner's right to due process under the United States Constitution.

LIST OF PARTIES

- [X] 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:

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**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☒ is unpublished.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☒ is unpublished.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 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 Eleventh Judicial Circuit in and for Miami-Dade
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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 21, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition rehearing was denied by the United States Court of Appeals on the following date: February 11, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 timely petition 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

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT 14

Section 1. [Citizens of the United States.]

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

Petitioner is currently serving a sentence of thirty years. His convictions and sentences were imposed in the Circuit Court of the Eleventh Judicial Circuit in and for Miami Dade County in case numbers **94-CF-11073** and **95-CF-34118**.

Petitioner, Anthony Ates, filed his pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 while in custody of the Florida Department of Corrections. This Cause was assessed for consideration and relief in the United States District Court for the Southern District of Florida.

On May 15, 2018, the United States District Court for the Southern District of Florida denied Petitioner's petition for writ of habeas corpus and request for an evidentiary hearing. The United States District Court denied certificate of appealability. Petitioner filed a timely notice of appeal. Subsequently, Petitioner sought certificate of appealability from the United States Court of Appeals for the Eleventh Circuit.

On February 21, 2020, the United States Court of Appeals for the Eleventh Circuit denied Petitioner's motion for certificate of appealability. Petitioner filed for rehearing, which was denied on February 11, 2021.

STATEMENT OF THE FACTS

Petitioner Ates is serving a thirty-year sentence in Florida for aggravated battery, armed robbery, and violation of community control. After filing several postconviction motions in state court, Ates filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of Florida.

A magistrate judge reviewed Ates's petition for timeliness. Because the one-year period in which a petitioner must file his petition is tolled while he has a pending state postconviction motion, the magistrate judge took judicial notice of the online state trial and appellate court dockets from Ates's State proceedings to determine the relevant dates for the limitations period. It concluded that Ates's petition was untimely and recommended dismissing the petition on that ground.

Petitioner objected to the magistrate judge's report. He acknowledged that he filed his petition after the limitations period but argued that he was entitled to statutory and equitable tolling. Petitioner objected to the number of motions or petitions considered by the District Court in finding Petitioner untimely in Federal Court. The District court adopted the magistrate judge's report and dismissed the petition as untimely after concluding that Ates filed his petition well beyond the one-year limitations period and that he was not entitled to equitable tolling. Ates appealed and argued in his motion seeking certificate of appealability in the United States Court of Appeals for the Eleventh Circuit that

the District Court erred in dismissing his petition after taking judicial notice of his online state-court records instead of considering the official state-court records.

REASONS FOR GRANTING THE PETITION

The lower courts' decisions erred in denying Petitioner's motion for certificate of appealability when the United States District Court took judicial notice of the online state trial and appellate court dockets from Ates' State proceedings to determine the relevant dates for the limitations period. The United States District Court was incorrect in the sua sponte dismissal of Petitioner's petition for writ of habeas corpus as untimely. Additionally, the decision below is erroneous, and the issue that it addresses is important.

I. The United States Court of Appeals erred in denying the Petitioner's motion for certificate of appealability on the ground that the United States District Court incorrectly took judicial notice of the online state trial and appellate court dockets from Ates' State proceedings to determine the relevant dates for the limitations period.

In order to obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. 2253(c)(2). Where the district court has denied a 2254 petition on procedural grounds, the Petitioner must show that jurists of reason would find it debatable whether (1) the district court was correct in its procedural ruling, and (2) the petition states a valid claim of the denial of a constitutional right, or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595 (2000).

Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 2254 petitions are governed by a one-year statute of limitations that begins to run on the latest of four triggering events, including "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. 2244(d)(1)(A). The Supreme Court has explained that "[f]inality attaches when [it] affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires." *Clay v. United States*, 537 U.S. 522, 527, 123 S. Ct. 1072, 1076 (2003).

The limitation period is statutorily tolled for "[t]he time during which a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." 28 U.S.C. 2244(d)(2). "A state-court petition . . . that is filed following the expiration of the limitations period cannot toll that period because there is no period remaining to be tolled." *Webster v. Moore*, 199 F.3d 1256, 1259 (11th Cir. 2000) (per curiam).

Petitioner submits that reasonable jurists could debate the District Court's determination that Mr. Ates' 2254 petition was untimely. Although the clerk entered into the record several documents from Mr. Ates' underlying criminal proceedings, the Magistrate Judge and the District Court largely relied on copies of the state courts' electronic dockets and unofficial records to determine that Mr. Ates' 2254 petition was untimely. While Federal Rule of Evidence 201 permits a court to take judicial notice of a fact that is not subject

to reasonable dispute, the taking of judicial notice is a "highly limited process." *Lodge v. Kondaur Capital Corp.*, 750 F.3d 1263, 1273 (11th Cir. 2014) (quotation omitted). This is because "the taking of judicial notice bypasses the safeguards which are involved with the usual process of proving facts by competent evidence in district court." *Id.* (quotation omitted). Although Federal Courts have previously held that District Courts may sua sponte dismiss 2254 petitions as time-barred, see *In re Jackson*, 826 F.3d 1343, 1348 (11th Cir. 2016) (per curiam), Federal Courts have not addressed the depth of the record they must develop before doing so, particularly before the state has appeared in the case.

Thus, reasonable jurists could debate whether the District Court properly dismissed the petition based on information from copies of electronic dockets and unofficial records from state court. See Fed. R. Evid. 201(b)(2) (judicial notice is appropriate when a fact "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"). Petitioner affirms that a certificate of appealability should be warranted on this issue.

Additionally, reasonable jurists could debate whether the District Court was correct in its procedural ruling that Mr. Ates' 2254 petition was time-barred. On this line, this Court should determine whether reasonable jurists would debate whether Mr. Ates' 2254 petition stated a valid claim of the denial of a constitutional right. See *Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014) (en banc) ("[A] certificate of appealability, whether issued by this Court or a district court, must specify what issue jurists of reason would find debatable.

Even when a prisoner seeks to appeal a procedural error, the certificate must specify the underlying constitutional issue.").

As with its time-bar determination, the District Court relied on select documents, which it placed in the record, to determine that all of Mr. Ates' claims lacked merit. Petitioner asserts that it should be difficult for this Honorable Court to determine whether any of Mr. Ates' claims are meritorious without examining the entire state court record. The case law does not affirmatively answer whether the record considered by the District Court here sufficed for a sua sponte dismissal. Consequently, the District Court's review of, and reliance upon, only select documents that it placed in the record was arguably insufficient to determine whether Mr. Ates' claims failed on the merits.

Mr. Ates' 2254 petition included a claim that counsel's failure to object to sentencing error in Petitioner's case deprived him of counsel guaranteed by the Sixth Amendment of the United States Constitution. Thus, Petitioner's § 2254 petition states at least one facially valid claim for the denial of a constitutional right. *Spencer*, 773 F.3d at 1138. Reasonable jurists could debate both the District Court's resolution of the procedural issue in this case and whether it had a sufficient record to deny Mr. Ates' petition on the merits. *Slack*, 529 U.S. at 484, 120 S. Ct. at 1604.

For these reasons, Mr. Ates' motion for a certificate of appealability should have been granted on the following issue:

Whether the District Court erred in determining sua sponte that Mr. Ates' 28 U.S.C. 2254 petition was time-barred without reviewing the complete, official state court record.

On the above states facts, arguments and law, it is submitted to this Honorable Court that the lower courts erred in determining sua sponte that Mr. Ates' 28 U.S.C. 2254 petition was time-barred without reviewing the complete, official state court record.

II. The Question Presented is Important.

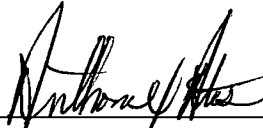
Petitioner is presenting an important Federal question of constitutional dimension in which the lower courts did not reasonably apply the standard set up in *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000) to the instant case.

In this case, this Honorable Court should set a new precedent requiring that cases like the Petitioner's be granted certificate of appealability because reasonable jurists could debate both the District Court's resolution of the procedural issue in this case and whether it had a sufficient record to deny Mr. Ates' petition on the merits.

CONCLUSION

The Petitioner respectfully prays that this Honorable Court grants his petition for a writ of certiorari.

Respectfully submitted,



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