NO. 20-8175 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

TIMOTHY ALAN MARR,— PETITIONER,

VS

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

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEAL FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

TIMOTHY ALAN MARR: DC# 252162

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(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 the lower courts denied Petitioner' s petition for writ of habeas corpus as untimely, violating Petitioner's Fourteenth Amendment Rights to due Process.

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:

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

Cases

Statutes

Constitution

Rules

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

[X] 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.

[x] is unpublished.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[ ] has been designated for publication but is not yet reported: or, [X] is unpublished.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[] is unpublished.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or, [ ] is unpublished.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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 3, 2021.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition reconsider was denied by the United States Court of Appeals on the following date: March 23, 2021, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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(1j.

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was March 3, 2021, A copy of that decision appears at Appendix A.

[ ] 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. § 1 257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

On May 2. 2006, the prosecution filed a criminal information against the Petitioner (R 6-8). The prosecution filed an amended information on February 27, 2007; this new information alleged that the Petitioner, on May 2, 2006. committed the following crimes: (1) robbery with a deadly weapon against victim Rhea Sheffield; (2) aggravated fleeing and eluding from the police; (3) resisting arrest with violence while carrying a weapon against victim Stanley Deckert; and (4) possession of cocaine (R 27-28).

After the usual pretrial delays, the case proceeded to trial on February 11, 2008 (T T -301). After a two-day trial, the jury found the Petitioner guilty as charged (R 67-70, T 355-357). At a March 31, 2008. sentencing hearing, the trial court sentenced the Petitioner to life in prison as a prison release reoffender on the robbery with a deadly weapon conviction and concurrent State prison sentences on the other convictions (R 149-153),203-208).

The Petitioner filed his notice of appeal on August 20, 2007.

Petitioner filed several postconviction motions stated in detail in the statement of the facts, which allowed a timely filed section 2254 petition for writ of habeas corpus in the United States District court. However, on March 22, 2018, the United States District Court, Middle District of Florida, Tampa Division, dismissed the petition as untimely.

The United States Court of Appeals deniedcertificate of appealability on March 3, 2021, and denied motion for reconsideration on April 19, 2021.

STATEMENT OF THE FACTS

Appellant judgment and sentence became final on May 6, 2009. Appellant had 90-days or through August 4, 2009, to petition the United States Supreme Court for wit of certiorari. See United States Supreme Court Rule 13. Appellant had through August 4. 2010, absent any tolling to file his section § 2254 petition in the Federal District Court.

On March 8, 2010, Appellant filed a Rule 3.800, Fla. R. Crim. P. motion in the trial court, which was finally denied by the State appellate court on February 11, 2011: a period of 226-days elapsed before time tolled. Appellant had 139- days remaining or through June 30, 2011, to file is section § 2254 petition in this case.

The Federal Court has miscalculated my days.

On February 4, 201 l, Appellant filed a Rule 3.850, Fla. R. Crim. P. motion in the trial court, which was stricken with leave to amend because the motion exceeded the limit by twenty pages. Appellant amended motion was also stricken for the same reason because appellant supplemented the amended motion with an additional eighteen pages. Appellant's second amended Rule 3.850 motion was also supplemented, totaling eighty-two pages. As a consequence, the motion was denied with prejudice for failing to comply the rules governing the length of a Rule 3.850motion

On June 5, 2014, the State appellate court issued the mandate on Appellant's denial of Rule 3.850 motion; a period of 52-days elapsed before time tolled. Appellant had 87-days to file his section § 2254 petition in the United States District Court.

While Appellant' s Rule 3.850 motion was pending a ruling in the State appellate court, Appellant filed a second Rule 3.800 motion, which was ultimately Denied by the State appellate court on October 7, 2014. Appellant had a new deadline of January 12, 2015, to file his section § 2254 petition but filed it on January 16, 2015.

REASONS FOR GRANTING THE PETITION

The lower courts' decisions erred in failing to find Petitioner section 2254 petition for writ of habeas corpus timely in the United States District Court. The lower courts' decisions conflict with the relevant decisions of this Honorable Court in *Holland v. Florida*[1]. This case is a timely opportunity to correct a manifest injustice. Additionally, the decision below is erroneous, and the issue that it addresses is important.

I. The lower courts erred in denying the Petitioner' section 2254 petition for writ of habeas corpus as untimely.

Under the **statutory tolling** of the limitations period, the one-year limitations period for habeas corpus is tolled by state postconviction or other collateral proceedings that are properly filed as a matter of governing state procedural law but not by the period needed to prepare a state postconviction petition. See 28 U.S.C. 2244(d)(2) (The 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 shall not be counted toward any period of limitation under this subsection.). See, *e.g., Day v. McDonough*, 547U.S. 198 or, 201 or (2006) (The one-year clock is stopped during the time the petitioners properly filed application for state postconviction relief is pending. (quoting 28 U.S.C. 2244(d) (2)))

For purposes of this tolling mechanism, [a]n application is *properly* filed when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. See *Artuz v. Bennett*, 531 U.S. 4, 8 (2000). Prior to the Courts decision in *Artuz v. Bennett*, the lower courts were divided on the question whether the properly filed language required merely compliance with formal pleading, filing. and timing requirements or whether it also demanded compliance with jurisdictional, substantive, and default-avoiding requirements. The tolling period includes the time during which the denial of a state postconviction petition is on appeal within the state judicial system including the time following a trial

[1] *Holland v. Florida*, 560 U.S. 631, 648 (2010).

The tolling provision applies not only to the first state postconviction petition but also to any *second or successive* state postconviction petition that is properly filed as a matter of state procedural law. See. e.g., *Drew v. Department of Corr.*, 297 F.3d 1278, 1284, 1285 (11th Cir. 2002), cert. denied, 537 U.S. 1237 (2003) (petitioners third state court application would have been properly filed despite its untimeliness if it had alleged facts that would trigger any of the three exceptions set forth in the Florida statute[j; [u]nder *Artuz [v. Bennett*], the fact that a motion is successive does not render it improperly filed)

The federal courts have employed the **equitable tolling** doctrine to create a grace period for prisoners whose convictions became final before the Antiterrorism and Effective Death Penalty Act (AEDPAs) enactment and who would otherwise be denied a full year following AEDPAs enactment to file a habeas corpus petition or section 2255 motion. The equitable tolling doctrine also can be invoked, regardless of whether a prisoner's conviction became final before or after AEDPAs enactment, to avert unjust application of AEDPAs statute of limitations to bar a federal habeas corpus petition or section 2255 motion. As this Honorable Court has explained, the application of the equitable tolling doctrine in appropriate cases allows the federal courts to further AEDPAs basic purposes of eliminat[ing] delays in the federal habeas review process without undermining basic habeas corpus principles and to ensure that the statute of limitations does not impinge upon the vital role that the writ of habeas corpus plays in protecting constitutional rights or close courthouse doors that a strong equitable claim would ordinarily keep open. See *Holland v. Florida*, 560 U.S. 631, 648 (2010). See id. at 645-48 ([L]ike all 11 Courts of Appeals that have considered the question, we hold that 2244(d) is subject of equitable tolling in appropriate cases. We base our conclusion on the following considerations. First, the AEDPA statute of limitations defense is not jurisdictional. It does not set forth an inflexible rule requiring dismissal whenever its clock has run. We have previously made clear that a nonjurisdictionol federal statute of limitations is normally subject to a rebuttal presumption in favor of equitable tolling. In the case of AEDPA, the presumptions strength is reinforced by the fact that equitable principles have traditionally governed the substantive law of habeas corpus, for we will not construe a statute to displace courts traditional equitable authority absent the

courts denial of state postconviction relief and before a timely notice of appeal is filed. See *Evans v. Chavis*, 546 U.S. 189 or, 191 or, 198, 201 (2006) (The time that an application for state postconviction review is pending [for purposes of section 2244(d)(2)s tolling provision] includes the period between (1) a lower courts adverse determination, and (2) the prisoners filing of a notice of appeal, *provided* that the filing of the notice of appeal is timely under state law.; if state statutes and rules do not specify number of days for timely filing and instead afford reasonable time for filing of notice of appeal and if state courts treatment of state postconviction petition does not clear[ly] indicate[e] that request for appellate review was timely or untimely, the [federal] Circuit must itself examine the delay in [the] case and determine what the state courts would have held in respect to timeliness[,] without using a merits determination [by state court] as an absolute bellwether (as to timeliness). See *Carey v. Saffold,* 536 U.S. 214, 217, 21921, 22425 (2002)(for purposes of section 2244(d)(2)s tolling provisions phrase during which on application for state collateral review is pending in the state courts, the statutory word pending cover[s] the time between a lower state courts decision and the filing of a notice of appeal to a higher state court, including in California, notwithstanding states employment of unique state collateral review system that does not involve a notice of appeal, but rather the filing (within a reasonable time) of a further original state habeas petition in a higher court. [A]n application is pending as long as the ordinary state collateral review process is in continuance *i.e.*, until the completion of that process. In other words, until the application has achieved final resolution through the States post-conviction procedures, by definition it remains pending.)

The tolling period does not include certiorari review by the United States Supreme Court of the state courts denial of postconviction relief. See *Lawrence v. Florida*, 549 U.S. 327 or, 329 or (2007) (Congress established a 1-year statute of limitations for seeking federal habeas corpus relief from a state-court judgment, 28 U.S.C. 2244(d), and further provided that the limitations period is tolled while an application for State post-conviction or other collateral review is pending, 2244(d)(2). We must decide whether a state application is still pending when the state courts have entered a final judgment on the matter but a petition for certiorari has been filed in this Court. We hold that it is not.).

clearest command. The presumptions strength is yet further reinforced by the fact that Congress enacted AEDPA after this Court decided *Irwin [v.* Department of Veterans Affairs, 498 U.S. 89 (1990)] and therefore was likely aware that courts. when interpreting AEDPAs timing provisions, would apply the presumption. We recognize that AEDPA seeks to eliminate delays in the federal habeas review process. But AEDPA seeks to do so without undermining basic habeas corpus principles and while seeking to harmonize the new statute with prior law, under which a petitions timeliness was always determined under equitable principles. When Congress codified new rules governing this previously judicially managed area of law. it did so without losing sight of the fact that the writ of habeas corpus plays a vital role in protecting constitutional rights. It did not seek to end every possible delay at all costs. The importance of the Great Writ, the only writ explicitly protected by the Constitution, Art. I, 9, cl. 2, along with congressional efforts to harmonize the new statute with prior law, counsel's hesitancy before interpreting AEDPAs statutory silence as indicating a congressional intent to close courthouse doors that a strong equitable claim would ordinarily keep open.).

Petitioner submits that a habeas corpus petitioner is entitled to equitable tolling if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing. See *Menominee Indian Tribe v. United States*, 136 S. Ct. 750, 755, 756 n.2 (2016) (quoting above standard of *Holland* for equitable tolling, explaining that court of appeals employed standard to deny Tribes request for equitable tolling, and observing that we have never held that [Ho/lands] equitable-tolling test necessarily applies outside the habeas context, and we have no occasion to decide whether an even stricter test might apply to a nonhabeas case): *Lawrence v. Florida*, 549 U.S. 327 or, 335 & n.3, 336 (2007) (To be entitled to equitable tolling, Lawrence must show (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing: equitable tolling may be available in cases in which prisoner prevailed in state court and Supreme Court then grants certiorari and overturns state court judgment and in which prisoner then is time-barred from filing federal habeas corpus petition, given arguably extraordinary

circumstances and the prisoners diligence)

In applying these general criteria, a federal court can appropriately draw upon decisions made in other similar cases for guidance, but with awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case. See *Holland v. Florida*, 560 U.S. at 649. In reviewing the 11th Circuits application of the equitable tolling doctrine to the facts of the case, this Court in *Holland* rejected the 11th Circuits overly rigid per se approach of categorically foreclosing equitable tolling to excuse late filing caused by the prisoners lawyer except where the prisoner presents proof of [counsels] bad faith, dishonesty, divided loyalty. mental impairment or so forth. Id. at 649, 653. See *also, e.g., Socha v. Boughton*, 763 F.3d 674 at 685, 686-687 ((7th Cir. 2015) (rejecting states attempt to pick off each of the circumstances *Socha* identifies, explaining why in isolation it is not enough to justify equitable tolling. Incarceration alone, for example, does not qualify as an extraordinary circumstance: It does not matter that one could look at each of the circumstances encountered by *Socha* in isolation and decide that none by itself required equitable tolling. The mistake made by the district court and the state was to conceive of the equitable tolling inquiry as the search for a single trump card, rather than an evaluation of the entire hand that the petitioner was dealt. In *Holland*, the Supreme Court disapproved the use of such a single-minded approach. It wrote instead that a persons case is to be considered using a flexible standard that encompasses all of the circumstances that he faced and the cumulative effect of those circumstances.; equitable tolling is granted because hurdles which *Socha* faced including difficulties in obtaining case file from former counsel, limited access to prison law library. and inadequacy of library resources were nearly insurmountable when everything [is taken] into account).

On the above stated facts and law, Petitioner submits that he should be entitled to equitable tolling in this case because Petitioner judgment and sentence became final on May 6, 2009. Petitioner had 90-days or through August 4, 2009, to petition the United States Supreme Court for writ of certiorari. See United States Supreme Court Rule 13. Appellant had through August 4, 2010, absent any tolling to file his section § 2254 petition in the Federal District Court.

On March 18, 2010, Petitioner filed a Rule 3.800, Fla. R. Crim. P. motion inthe trial court, which was finally denied by the State appellate court on February 11, 2011: a period of 226-days elapsed before time tolled. Appellant had 139-days remaining or through June 30, 2011, to file is section § 2254 petition in this case.

On February 4, 2011, Petitioner filed a Rule 3.850. Fla. R. Crim. P. motion in the trial court, which was stricken with leave to amend because the motion exceeded the limit by twenty pages. Petitioner amended motion was also stricken for the same reason because Petitioner supplemented the amended motion with an additional eighteen pages. Petitioner's second amended Rule 3.850 motion was also supplemented, totaling eighty-two pages. As a consequence, the motion was denied with prejudice for failing to comply the rules governing the length of a Rule 3.850 motion. However, Petitioner submits to this Honorable Court that at least a State appellate court, namely the Fourth District Court of Appeal has reversed the dismissal with prejudice of a R e 3.850 motion for noncompliance of page limitation on the basis that

> [w]hile we understand the court's frustration, we conclude that it should have reviewed the pages within the fifty-page limit as a motion that was "comprehensive, single, and sworn," and stricken the pages that followed. See, e.g. *Mancino v. State*, 10 So. 3D 1203, (Fla. 4th DCA. 2009) (noting that rejection of motion based on form is not the same as a *Spera* rejection). The court's failure to review the sufficiency of the motion amounted to an abuse of discretion. See Fla. R. Crim. P. 3.850(f) (2) (providing a court with discretion to deny with prejudice where an amended motion is still insufficient). We therefore reverse and remand for further proceedings. Reversed and Remanded. Damoorgian, C.J., Warner and Klingensmith, JJ.,concur.

McGill v. State, 157 So. 3d 433 (Fla. 4th DCA 2015)

On the above stated facts and law, Petitioner's Rule 3.850 motion should be considered properly filed and tolled the limitation period for Petitioner to file a section 2254 petition in the United States District Court.

On June 5, 2014, the State appellate court issued the mandate on Petitioner's denial of Rule 3.850 motion: a period of 52-days elapsed before time tolled. Petitioner had 87-days to file his section § 2254 petition in the United States District Court.

While Petitioner's Rule 3.850 motion was pending a ruling in theState appellate court, Petitioner filed a second Rule 3.800 motion, which was ultimately denied by the State appellate court on October 17, 2014. Petitioner had a new deadline of January 12. 2015, to file his section § 2254 petition but filed it on January 16.2015.

Petitioner submits to this Honorable court that he is entitled to equitable tolling because of a mental disability. Petitioner submitted to the District Court that his diagnosis of bipolar disorder showed that he was incapable of pursuing his state court remedies or filing his federal habeas petition within the limitations period. There is information in the record before this Honorable Court to suggest that Petitioner was incompetent during all or even a significant portion of the time he allowed to elapse before the limitations period expired. Petitioner asserts that since 2010, he was experiencing a depressive state of mind that did not allow him to concentrate on any matters of his personal life. All Petitioner saw was sadness, hopelessness everywhere. Petitioner's memory was very poor, thoughts were very slow. These symptoms prevented Petitioner from filing State or Federal collateral challenges to this judgment and sentence in the litigation of this cause.

In sum, even though, Petitioner filed his habeas petition four days after the statute of limitations expired, he was diligent in pursuing his rights, and he has demonstrated an exceptional circumstance (a mental illness) justifying equitable tolling of the statute of limitations. The District Court's determination that although Petitioner suffers from a bipolar disorder, he is not entitled to equitable tolling is incorrect. The record does not support the District Court's conclusion that Petitioner was able to appreciate the need to file a timely section 2254 petition. See *Lows v. Lomorque,* 35a F. 3d 9) 9, 924 (9th Cir. 2003) .

This Honorable Court should find that reasonable jurists would find debatable the District Court's dismissal of Mr. Marr's § 2254 petition as time- barred. This Honorable Court should reverse the denial of certificate of appealability (COA) by the United States Court of Appeals for the Eleventh Circuit at this time.

II. <u>The Question Presented is Important</u>.

Petitioner is presenting an important Federal question of constitutional dimension in which the lower courts did not reasonably applied this Court's law in Holland, supra. Petitioner affirmatively asserts that this case would have had a different outcome if the lower court had granted COA on the question of timeliness in this cause. There is no doubt that the lower Court erred in finding Petitioner's section 2254 petition untimely; even though Petitioner can show extraordinary circumstances that entitles him to equitable tolling to be timely in federal court.

With this case. this Honorable Court should set a new precedent requiring that cases like the Petitioner's be treated with the respect and humanity that people with mental illnesses deserve in litigating their cases in State and federal Courts.

Finally, review of the decision below is important because Federal courts have established that "[a] petitioner's mental impairment might justify equitable tolling if it interferes with the ability to understand the need for assistance, the ability to secure it, *or the ability to cooperate with or monitor assistance the* petitioner does secure." *Robertson v. Davey*, 694 Fed. Appx. 599 (9 Cir. 2017).

In sum, lower courts across this nation would benefit greatly from this Court's input on an issue like Petitioner's. Moreover, a decision in this case, without a doubt would bring more justice to the mental impaired person in need of compassion on a human disability. Therefore, this Court should grant the petition.

CONCLUSION

The Petitioner respectfully prays that this Honorable Court grants his petition for a writ of certiorari because Petitioner was timely with his section 2254 petition which was dismissed by the District Court.

Respectfully submitted,

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Date: May 12, 2021