

APR 10 2021

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No. 20-8304IN THE
SUPREME COURT OF THE UNITED STATES

LEE GOSTON A.D.C. # 105879

- PETITIONER
(Your Name)DEXTER PAYNE, Director,
Arkansas Division of Correctionvs.
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

8TH CIRCUIT COURT OF APPEALS

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

LEE GOSTON # 105879

(Your Name)

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ORIGINAL

QUESTION(S) PRESENTED

- I | Did the U.S. District Court and the Eighth Circuit Court of Appeals error by denying petitioner's 28 U.S.C.A. § 2254 Writ of Habeas Corpus Petition as being "Time Barred" and discarding Appealability? Was the Petitioner entitled to "Equitable Tolling"
- II | Did the Appellate Attorney err by providing ineffective assistance of counsel? Is it true or not that the appointed attorney should have raised the issue of mental incompetency in the appeal?
- III | Did the Trial Judge err by allowing the petitioner to stand trial while being mentally incompetent.

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:

Pulaski County Circuit Court Seventh Division of Arkansas Judge John B. Plegge.

U.S. District Court of the Eastern District of Arkansas Judge and Magistrate D.P.

Marshall Jr. and Beth Deere. U.S. 8th Circuit Court of Appeals Judges Kelly, Erickson, and Grasz. Appellate Attorney Chris Tarver.

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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 D 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[] is unpublished.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 C 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[] is unpublished.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 C 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 Arkansas Supreme court appears at Appendix B to the petition and is

[] reported at Goston v. State Supreme Court of Arkansas, September 30, 1996, 326 Ark. 106, 930 S.W.2d 332
[] 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 04, 2021.

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 Filed: 08/31/2020.
A copy of that decision appears at Appendix C.

[] 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. _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- I. The 14th Amendment section (1) states: "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 rights; by disregarding immunities of my mental incompetence, see citations: MUHAMMAD v. UNITED STATES, 735 F3D 812, 815 (8TH CIR. 20013) (quoting HOLLAND v. FLORIDA, 560 US 631, 649(2010)); See MARTIN v. FAYRAM, 849 F3D 691, 698 (8TH CIR. 2017); APPENDIX C. Also see PATE v. ROBINSON 383 US AT 388-389, 86 S.CT AT 844 (Harlan J. Dissenting) See DUSKY v. UNITED STATES 362 US 402, 402, 80 S.CT. 788, 788, 4 L.ED. 2D 824 (1960) Appendix A. Statutes 28 U.S.C.§ 2254 and 28 U.S.C. § 2244 (d) Appendix B.
- II. The 6th Amendment state a person has a right "to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." The Attorney appointed to me ineffectively assisted on my appeal, see citations: SUGGS, 513 F3D AT 678, MARTIN 384 F3D AT 851-52 See LEE v. DAVIS 328 F3D 896, 900-01 (7TH CIR. 2003) See EVITTS v. LUCEY, 469 US 387, 394, 105 S.CT. 830, 83 L.ED. 2D 821 Appendix A.

STATEMENT OF THE CASE

On November 9, 1995, I Lee Goston Pro Se was found guilty by a jury and sentenced to life plus 30 years for Aggravated Robbery and Theft of Property of the One Bank at 4520 W. Markham, Little Rock, Arkansas. During the "Hearing" before trial I showed clear signs of being mentally disturbed. An Act III was requested by Attorney Herbert Wright and was denied by Circuit Court Judge John Plegge. The only argument made by Appellate Counsel Chris Tarver was about a denial of a speedy trial. On June 22, 2020, I got a Petition filed under 28 U.S.C. § 2254 for a Writ of Habeas Corpus after serving over 24 years on the conviction claiming to be "lost mentally" the entire 24 years. On August 31, 2020. Judge D.P. Marshall. U.S. District Judge adopted Magistrate B. Deere's disposition given on August 3, 2020 dismissing my petition as being "Time Barred," and denied me a certificate of Appealability. On February 8th 2021 the Eighth Circuit Court of Appeals Judge Kelly, Erickson, and Grasz affirmed and denied the appeal because I was not given a Certificate of Appealability. Neither of the Courts ever heard the petition or the "Belated Appeal" attached to it.

REASONS FOR GRANTING THE PETITION

I. Did the U.S. District Court and the 8th Circuit Court of Appeals err by denying Petitioner's 28 U.S.C. § 2254 Writ of Habeas Corpus petition as being "Time Barred" and discarding Appealability. Was the Petitioner entitled to "Equitable Tolling"

On November 9, 1995 I Lee Goston the Petitioner for Writ of Certiorari was found guilty of aggravated robbery and theft of Property in jury trial in the 7th Division Court of Pulaski County, Arkansas, with Judge John B. Plegge Presiding. Petitioner was sentenced to Life plus 30 years. An appeal was filed by appellate Counsel Chris Tarver, and judgment of conviction was affirmed on Sept. 30, 1996. Approximately 24 years later on June 22, 2020 a petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a person in State Custody was filed by Petitioner, and pertinent to question (12) on page (6) of the petition a Belated Appeal was attached. On August 31, 2020 Judge D.P. Marshall Jr. of the U.S. District Court Eastern District of Arkansas adopted Magistrate B. Deere's recommendation to deny Petitioner's Writ of Habeas Corpus Petition as being "Time Barred." The Court claimed that the mental impairment ("Lost Mentally" by way of hearing voices from an evil spirit) did not constitute the Petitioner to get equitable tolling which would have barred the one year statute of limitations contained in 28 U.S.C. § 2244.

(d). Magistrate Deere's recommended disposition states that the Petitioner is "far from being mentally incompetent." Furthermore the Court argues that the Petitioner earned his G.E.D. while incarcerated, petitioned for Clemency on his own behalf, and he's filed several law suits (all dismissed). The Court say "the record doesn't support Petitioner's claim that he's been continuously incompetent for the last 24 years." Therefore the Court did not hear the Writ of Habeas Corpus Petition or the "Belated Appeal" attached and denied a "Certificate of Appealability." The 8th Circuit Court of Appeals affirmed on February 8, 2021 and honored their request to deny Appealability.

Petitioner claimed to be eligible to file the Writ of Habeas Corpus petition pertinent to question 18 of the petition "timeliness of petition." An explanation as to why the one year statute of limitations contained in 28 U.S.C. § 2244 (d) needed to be provided to not bar the petition. Petitioner explained, "I recently became competent enough to file motions and petitions to the Court myself after being lost mentally and serving 24 years in prison." Petitioner provided (3) exhibits as evidence of his mental impairment. Petitioner Exhibit (1) shows that he has an evil spirit on him and he has heard voices that distract him all day and night documented as far back as Nov. 20, 2017. Petitioner's exhibit (2) shows a law suit abstract (which was dismissed) that stated he has grieved about this mental impairment since 2016, and that the mental impairment is so severe that it

precluded him from focusing, displaying good conduct, etc... for over (10) years. Petitioner's Exhibit (3) shows that this disability precluded him from seeking the assistance of other's to do anything for him. Petitioner does not claim to be illiterate he claims to have a mental impairment of hearing voices that has distracted him for the last 25 years. For this reasons Petitioner claims to be eligible for equitable tolling, meaning that he is exempt from the one year statute of limitations contained in 28 U.S.C. § 2244(d). Law states that "a physical or mental impairment may support equitable tolling (but) whether it will do so depends on its degree and duration." MARTIN v. FAYRAM, 849 F.3D 691, 698 (8TH CIR. 2017) to be entitled to equitable tolling on the grounds of a mental impairment appellant must "allege that his disability was so severe that it precluded him from filing court documents or seeking the assistance of others to do so." It should have been obvious to the Court that by the mental issues present in trial court and in Petitioner's trial 25 years ago that the duration of this alleged mental impairment is valid. Therefore Appealability shouldn't have been an issue in the U.S. District Court~~and~~ the 8th Circuit Court of Appeals. Petitioner further claims that he unintentionally pursued his rights diligently by persevering through the failed filings of law suits, etc... thus educating himself about legal matters beforehand so that he could submit careful work to the Court while being disabled. Law states, "The limitation period may be equitably tolled if a Petitioner is able to show that he

pursued his rights diligently and that some extraordinary circumstances stood in his way to prevent a timely filing. MUHAMMAD v. UNTIED STATES, 735 F3D 812, 815 (8TH CIR. 2013) (Quoting HOLLAND v. FLORIDA, 560 U.S. 631, 649 (2010)). Petitioner's Exhibit (2) (a notarized affidavit) states that he has been distracted by way of "hearing voices since 1995 (over 25 years) The Fourteenth Amendment supports equitable tolling as a protected right as it indicates that a person with a mental impairment is entitled to "equal protection of the laws."

In the case at bar Judge D.P. Marshall Jr. points out that Petitioner is not illiterate, but fails to address his mental impairment of "hearing voices" for over 25 years. This is an error. The degree and duration of this alleged mental impairment is severe, this qualifies Petitioner for equitable tolling. Thus the Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus and the Belated Appeal should not have been time-barred and the Certificate of Appealability should not have been an issue to the Courts. For these reasons the Writ of Certiorari should be exercised concerning the following "Questions.":

II. Did Attorney err by providing ineffective assistance of counsel. Is it true or not that the appointed attorney should have raised the issue of mental incompetency in the appeal.

On May 16, 1995 a hearing was held on the competency of the Petitioner. Attorney Herbert T Wright argued that the Petitioner was not ready for trial that scheduled morning, because of mental incompetency. Trial was not canceled and was scheduled to run by Judge Plegge. Petitioner was called by the Judge to the Hearing, and had to be dragged before the Court in front of jurors. Trial was canceled and set off for almost seven months. Seven months later, on 11/9/1995 (without a mental evaluation) Petitioner was tried and convicted of Life plus 30 years. The only argument in his appeal was the denial of a speedy trial by the appellate counsel Chris Tarver whom represented him in trial.

In the hearing there were significant issues raised about mental incompetency, and the arguments and issues were clearly stronger than a speedy trial issue which was only argued about in the Petitioner's appeal. The Stronger argument should not have been overlooked by Attorney Chris Tarver. Petitioner believes that mental incompetency was a significant and obvious issue that should not have been omitted in the appeal. "When a Petitioner contends that his appellate counsel was ineffective because counsel overlooked a meritorious argument, we first examine the record to see whether the appellate attorney in fact omitted "significant and obvious" issues. SUGGS, 513 F3D AT 678, MARTIN, 384 F.3D AT 851-52. If so, we then compare the neglected issues to those actually raised; if the

ignored issues are "clearly stronger" than those raised appellate counsel was deficient. LEE v. DAVIS, 328 F.3D 896, 900-01 (7TH CIR. 2003)

A Criminal defendant is entitled constitutionally effective assistance of counsel on direct appeal. EVITTS v. LUCEY, 469 U.S. 387, 394, 105 S.Ct 830, 83 L.Ed 2d 821 (1985). Sixth Amendment right to effective assistance of counsel extends first to appeal as outright.

In the case at bar the Petitioner showed signs of mental incompetency during the hearing held on May 16, 1995 and important issues were made about his ability to stand trial as a result of being mentally incompetent. To overlook these significant issues and omit them in the appeal when they were stronger issues than the speedy trial issue was an error and counsel is liable as said of ineffective assistance of counsel. Thus the Writ of Certiorari should be granted and any other relief such as a reversal, dismissal etc... that his Court deems just and proper.

III. Did the Trial Judge Err by allowing the Petitioner to stand trial while being mentally incompetent.

On May 16, 1995 a hearing was held before the Petitioner's scheduled trial, and the mental competency of the Petitioner was talked about by Attorney Herbert T. Wright and Judge Plegge. During the end of the hearing after a scene had been made by the Petitioner, Judge Plegge stated "he is currently laying his head on the counsel table and he has absolutely acted like he has no interest in this matter today

and refused to talk to his attorney." The petitioner should have been given a professional competency test after this incident by an appropriate psychologist, psychiatrist, or mental health doctor, etc. No test was given. "In a competency hearing the emphasis is on (the defendant's) capacity to consult with counsel and to comprehend the proceedings, and this is by no means the same test as those which determine criminal responsibility at the time of a crime." PATE V.

ROBINSON 383 U.S. AT 388-389, 86 S.CT. AT 844 (Harlan, J. Dissenting).

Also during the end of the hearing Judge Plegge made another statement concerning the Petitioners Mental Competency. Judge Plegge stated "he has had to be dragged into and out of the Courtroom and he has displayed no emotion whatsoever concerning the matters before the Court today." This statement made by the Judge suggested that he Petitioner had no rational understanding of the proceedings of his trial, but almost seven months later the Petitioner was taken to trial without a mental evaluation and convicted of Life plus 30 years. The test of incompetency is whether a Defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." DUSKY V.

UNITED STATES 362 U.S. 402, 402, 80 S.CT 788, 788, 4 L.ED. 2D 824 (1960).

Due Process clause of the 14th Amendment prohibits criminal prosecution of a Defendant who is not competent to stand trial.

In the case at bar, including but not limited to the Petitioner's current mental condition the argument of mental incompetency is valid. The Petitioner is suggested to be incompetent by the statements made by Judge Plegge, and to have had his trial without an appropriate mental evaluation was an error and his conviction should be reversed, dismissed, and reliefs form this Writ of Certiorari should be granted.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully Submitted,

Tom Barton Pro Se

Date: 3-29-2021