

21-5466 ORIGINAL

No. _____

Supreme Court, U.S.
FILED

JUL 25 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Roxman C. Castro — PETITIONER
(Your Name)

vs.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Roxman C. Castro #1845477
(Your Name)

12071 F.M. 3522
(Address)

Abilene, Texas 79601
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether extraordinary circumstances exist to warrant equitable tolling when, through no fault of his own, Petitioner received notice of his state habeas denial after the expiration of his AEDPA one-year statute of limitations?

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

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STATUTES AND RULES

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

[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[X] is unpublished.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[X] is unpublished.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 _____ 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[] is unpublished.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 _____ 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[] is unpublished.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 18th May 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 _____. 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

- Fourteenth Amendment to the US Constitution

- Due Process Clause
 - Equal Protection Clause

- 28 U.S.C. § 2244

STATEMENT OF THE CASE

On February 12, 2013, a jury in the 351st Judicial District Court of Harris County, Texas, found Petitioner guilty of Capital Murder and Sentenced him to LIFE.

On August 26, 2014, the Court of Appeals for the First District of Texas affirmed his conviction. His Petition for Writ of Certiorari was denied on October 30, 2017. Castro v. Texas, 138 S.Ct. 384 (2017) (mem.)

On October 23, 2018 Petitioner filed a State application for a writ of Habeas Corpus, which was denied without written order on November 27, 2019. This tolled the limitations period for 400 days, extending the deadline to file a federal habeas petition to December 4, 2019.

Unfortunately, Petitioner was not notified of the State habeas courts decision until December 6, 2019. He immediately filed his federal habeas corpus the same day.

On December 2, 2020 Magistrate Judge Peter Bray recommended that the Court deny Petitioner's federal habeas petition as time barred. On January 6, 2021 the US District Judge adopted the report and recommendation as its memorandum and opinion. A Certificate of Appealability was denied *sua sponte*.

Petitioner filed a Notice of Appeal and an application to proceed IFP on appeal. Both requests were subsequently denied by the Fifth Circuit Court of Appeals on 18th May 2021.

Petitioner now seeks a Writ of Certiorari from this Honorable Court.

REASONS FOR GRANTING THE PETITION

Q. Whether extraordinary circumstances exist to warrant equitable tolling when, through no fault of his own, petitioner received notice of his State habeas denial after the expiration of his AEDPA one-year Statute of limitations?

Petitioner avers that, in the real world, a prisoner can not foresee the actions of the Court until he receives ACTUAL notice of such, and thus cannot be expected to act with due diligence until that time.

In this case, the extraordinary circumstances at issue involved the 9 day delay in serving petitioner notice of the denial of his State habeas corpus, which subsequently placed him 2 days beyond the AEDPA one-year statute of limitations.

Texas prisoners do not have access to e-file or Pacer - nor are most prisoners clairvoyant. Therefore, a Texas prisoner has no realistic way to discern when he may need to act and must wait upon notice through the imperfect USPS system and the archaic (and currently overburdened) delivery system at the prison unit level - neither of which a prisoner has any scintilla of control over. Delays in either of these systems can not be contributed to the prisoner.

When the petitioner in this case filed his State habeas corpus he left a window of 7 days to file his 2254 petition. 7 days is an adequate amount of time to file his petition - and pursuant to the Prison Mailbox Rule, petitioner would have done so had he received notice of the State denial anytime during that period. But petitioner did not receive notice until 9 days later. Although petitioner filed his 2254 immediately, he was time barred before he even knew he needed to act. Under such circumstances, petitioner avers that he is entitled to equitable tolling. Thank you.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

R. Castro

Date: 25th July 2021

APPENDIX - A