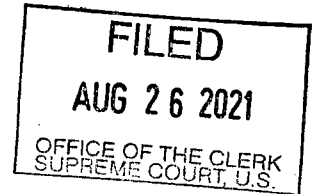


No. **21-5536**



IN THE
SUPREME COURT OF THE UNITED STATES

EDDIE DEWAYNE LEE — PETITIONER
(Your Name)

vs.

SCOTT CROW — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURTS OF APPEALS FOR THE TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EDDIE DEWAYNE LEE

(Your Name)

8607 SE FLOWER MOUND ROAD

(Address)

LAWTON, OKLAHOMA 73501

(City, State, Zip Code)

(580)-351-7228

(Phone Number)

QUESTION(S) PRESENTED

Should a criminal defendant that can demonstrate that he has been diligently pursuing a writ of habeas corpus pursuant to 28 sec. 2254 be afforded Equitable Tolling of the One Year Filing Deadline when he can demonstrate that the prison thwarted his ability to timely file his case by denying him access to the Prison Law Library or Legal Assistances.

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:

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STATEMENT OF THE CASE

CHALLENGING ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY OF 1996

That this motion is prepared **Pro-Se** without the aid or assistance of a trained counsel of law and ask that this court will give any **syntax** structural errors and liberally construe to **Appellant's Eddie Dewayne Lee, Pro-Se Motion** in accordance to **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991), that is now being brought before this **Honorable Court** in the **Interest of Justice**. **The Tenth Circuit** has described that it is the court's responsibility in this regard, "[I]f the court can reasonably read the pleadings to state a valid claim on which the appellant could prevail, it should do so despite the appellant's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." **Id. {emphasis added bold, underlined and quotation marks}**. That the rule in **Hall**; as applied to prisoners is binding on the courts of this state. **Oklahoma Constitution article 1, § 1; See also Haines v. Kerner**, 404 U.S. 519, 520-521, 92 S. Ct. 594, 596, 30 L.Ed. 2D 652 (1972).

That the petitioner states the following in the interest of justice and to correct an injustice done under the **Anti-Terrorism and Effective Death Penalty Act of 1996**, codified at 28 U.S.C. § 2244 (d) (AEDPA). As the courts was informed this is a statement of facts to explain why I couldn't make the one year time line to file his **Habeas Corpus** in **The United States Western District Court In The State Of Oklahoma**. In this "**Statement of Facts**" It will have several exhibits to show why it was **Impossible** to file my case in a timely fashion. In opinion it's states there's no excuse, which is **Inaccurate and Misinterpretation** of the law. Under **York v. Galetka**, 314 F. 3d 522, 527 (10 Cir. 2003). [A] appellant is entitled to **Equitable Tolling** only 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. "**Holland v. Florida**, 560 U.S. 631, 649, 130 S. Ct. 2549, 177 L. Ed. 2D 130 (2010) (quoting **Pace v. DiGuglielmo**, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L. Ed. 2D 669 (2005) (Internal quotation marks omitted). In the **Western District** responses the court refused to hear or acknowledge how **Oklahoma Department**

Of Corrections has interfered or hindered me from filing my cases in a timely fashion. [A]n inmate bears a strong burden to show specific facts to support his claim of extraordinary circumstances and due diligence. “*Yang v. Archuleta*, 525 F.3d 925, 928 (2007) (citations omitted). *Gibson v. Klinger*, 232 F.3d 799, 808 (10 Cir. 2000). A appellant seeking Equitable Tolling must show “(1) that circumstance stood in his way and prevented timely filing. “*Holland v. Florida*, 560 U.S. 631, 649, 130 S. Ct. 2549, 177 L. Ed. 2D 130 (2010) (quotations omitted). A appellant must show specific facts to support a claim of extraordinary circumstance, and due diligence, *Yang v. Archuleta*, 525 F.3d 925, 928 (10th Cir. 2008). Extraordinary circumstances that may warrant equitable tolling include a appellant’s actual innocence, such as where an adversary’s misconduct prevents timely filing or where the petitioner actively pursues remedies but files a defective pleading within the limitation period. *Gibson*, 232 F.3d at 808. Likewise an attorney’s misconduct or error, if egregious, may create a qualifying extraordinary circumstance. *Holland*, 560 U.S. At 651. *David v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998). A petitioner is entitled to Equitable Tolling “only if he shows (1) that he has pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing. “*Holland*, 560 U.S. At 649 (internal quotation marks and citation omitted); see also *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000); *Miller*, 141, F.3d At 978. A appellant’s burden in making this demonstration is a heavy one; a court will apply Equitable Tolling only if a appellant is able to show specific facts to support his claim of extraordinary circumstances and due diligence. *Yang v. Archuleta*, 525 F.3d 925, 928 (10th Cir. 2008) (internal quotation marks and citation omitted). In *Bounds v. Smith*, (1977-430 U.S. 817, 52 L. Ed. 2D 172, 97 S. Ct. 1491, the United States Supreme held that the fundamental federal constitutional right of access to the courts required prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing the inmates with adequate Law Libraries or Adequate Assistance from persons trained in the law. In 1990, 22 inmates of various prisons operated by the Arizona Department Of Corrections filed a class action in the United States District Court for the District of Arizona against Arizona prison authorities. The inmates alleged that the authorities were depriving them of their constitutional right of access to the courts. Following a Bench trial, the District Court ruled that (1) the prison system failed to comply with constitutional standards with respect to access to the courts in a number of areas relating to the adequacy and availability of Law Libraries and Legal Assistance programs; and (2) groups of inmates-prisoners in Lockdown and illiterate or Non-English speaking inmates were particularly affected by the inadequacies of the system. The District Court also appointed a special master to investigate and report about appropriate relief (843 F Supp 1553). Hereafter, the District Court adopted, without substantial change, the special master’s proposed permanent injunction, which

undated detailed changes with respect to the prison system's **Law Libraries and Legal Assistance** programs (see 43 F.3d 1261, Appendix A).

The United States Court Of Appeals For The Ninth Circuit refused to grant the prison authorities

application for a stay of the injunction, but the **Supreme Court** granted such a stay pending the filing and disposition of a petition for a writ of certiorari (511 U.S. 1066, 128 L. Ed 2d 360, 114 S. Ct. 1638). On the merits of the authorities' appeals, the court of appeals affirmed the terms of the injunction with minor exceptions (43 F. 3d 1261). On certiorari, the **Supreme Court** reversed and remanded. In an opinion by **Scalia, J., joined by Rehnquist, Ch. J., and O'Connor, Kennedy, and Thomas, JJ.,** and joined as to holding 3 below by **Souter, Ginsburg, and Breyer, JJ.,** it was held that (1) an inmate who, in a federal court suit, alleged a violation of **Bounds v. Smith** had found actual injury pursuant to the federal constitutional doctrine of standing; (2) the **District Court's** Injunctive order was improper, where (a) after the trial, the **District Court** had found actual injury on the part of only one plaintiff, who was illiterate, and (b) the inadequacy that caused the actual injury to the named plaintiff was not widespread enough to justify system wide relief and (3) the **District Court's** injunctive order also was improper on the ground that the **District Court** had failed to accord adequate deference to the judgment of the prison authorities. **Thomas, J.** concurring expressed the view that (1) there was no basis in constitutional text, precedent, history, or tradition for the conclusion in **Bound v. Smith** that the constitutional right of access to the courts imposed affirmative obligations on the states to finance and support prisoner litigation; and (2) for the last half century, the federal judiciary has been exercising equitable powers and issuing structural decrees entirely out of line with its constitutional mandate, **Souter, J., joined by Ginsberg and Breyer, JJ.,** concurring in part, dissenting in part, and concurring in the judgment, expressed the view that demise of the claims by prisoners in lock-down and Non-English speaking inmates in the case at hand should have been expressed as a failure of proof on the merits; (2) systemic relief was inappropriate solely because of the failure to prove that **Arizona** had denied court access to illiterate prisoners in every prison or many prisons; and (3) in a case not involving substantial, systemic deprivation of access to the courts, the requirements of **Article III of the Federal Constitution** normally could be satisfied if a prisoner demonstrated that (a) the prisoner had a claim that the prisoner would raise if the access scheme provided by the state were to indicate that the claim was actionable, and (b) such scheme was so inadequate that the prisoner could not research, consult about, file, or litigate the claim. **Stevens, J.,** dissenting, (1) agreed that the relief ordered by the **District Court** was broader than necessary and that the case should be remanded, but (2) expressed the view that (a) because most or all of the prison authorities concerns regarding the **District Court's** order could have been addressed with a simple remand, there was no need to resolve the other constitutional issues that the **Supreme Court** reached out to

address, and (b) it was wrong to suggest that the **District Court** had denied **Arizona** a fair opportunity to be heard in the case at hand. **Equitable Tolling** may be appropriate where “**Truly Extraordinary Circumstances**” prevented the plaintiff from filing his or her claim despite diligent efforts. “**Braxton v. Zavarsa**, 614 F.3d 1156, 1161 (10th Cir. 2010) (quoting **Dean Wi**
eynolds Inc, v. Hartman; 911 P 2d 1094; 1099 (Colo. 1996). From the exhibits I’m presenting it plainly states it shows that this facility was placed on **Lock-Down** which denied me access to the **Law Library**. My understanding of **Bounds v. Smith**, **Lawton Correctional Facility** was to have an individual with some-type of knowledge dealing with **Court’s Procedures or Rules Of Laws**. Yes this facility has a **General Counsel** which has no contact with inmates so we are left with a **Correctional Officer** who’s the **Main Supervisor** of the **Law Library** who has no idea or knowledge dealing with court motions or case law that we request. Having to deal with an individual who has no **Knowledge or Degree** with **Court’s Procedures or Case Laws**, thus this facility being on **Lock-Down** are factors that prohibited my access to the **Law Library** to work on my case, so that I could make my filing in a timely fashion.

To my understanding of **Oklahoma Department of Correctional Policy OP-030115** section A; page 9-10, **Institution Law Libraries** will be open a minimum of **Thirty (30)** hours per week, **Six (6)** hours per day **Monday through Friday**, no holidays or weekends at all medium facilities. In one of my exhibits will be a copy of **Oklahoma** policy which deals with access to the **Law Library** plus I’m sending copies of all the **Lock-Down** that prohibited me from being able to file my case in a timely fashion. This is an ongoing problem with **Oklahoma Department Of Corrections**. The facilities mainly objected is to keep **Defenders** from filing their cases in a timely fashion and having access to the **Law Library**. That should qualify me for **equitable Tolling**, which in fact should allow the court to rule on my favor for a **Certificate Of Appealability** to process. As the courts can see Appellant is **Challenging Anti-Terrorism and Effective Death Penalty Act of 1996**, in appellant’s appeal I will show by my exhibits that I was denied access to my legal work by the warden of the facilities I was at. The Appellant, here, respectfully prays upon this Honorable Court to reverse and remand with instruction[s], **Section 2254(d)** provides three ways to overcome **AEDPA** deference. Two appear in **§ 2254(d)(1)**, which provides that a state prisoner can qualify for habeas relief by showing a state court decision was (1) “contrary to” or (2) “involved an unreasonable application of” federal law that was clearly established by the **Supreme Court. 28 U.S.C. § 2254 (d)(1)**; **Williams v. Taylor**, 529 U.S. 362, 405 (2000); see **Bell v. Cone**, 535 U.S. 685, 694 (2002) (explaining the “contrary to” and “unreasonable application” clauses each carry “independent meaning”). The third way **§ 2254(d)(2)**, requires a state prisoner to show that a state court decision was based on an unreasonable
(4)

actual determination.

The Supreme Court ruling[s] that have been passed down over the last decade concerning juveniles have dramatically effected how juveniles are handled in the judicial system. The most recent ruling to be decided on
Montgomery v. Louisiana 136 S.Ct. 718; 193 L.E.d.2d 599 (2016); was the decision to make the prior two
ruling[s] retroactive. This being the point of contention, the Western District Court seeks to dismiss the
appellant on cursory review due to being outside the AEDPA (1) year time frame from the new intervening
statutory change in law (January 25th 2016), Placing the one year deadline at January 25th 2017. Appellant
led his post-conviction on February 13th 2018 placing him only 13 month[s] out of time. The Oklahoma
Department of Corrections is constantly going on statewide lock-downs, see exhibit B, and Appellant
has done as best he can with the limited resources at his disposal. During the end of the one year time frame
appellant was in transition between facilities and still managed to file a Post-Conviction. In between Septemb
r 2017 and April 5th of 2018 Appellant was at three different facilities. Upon arrival at L.C.R.F. (Lawton
Correctional Rehabilitation Facility)(April 5th 2018), Appellant had to file for Mandamus relief to receive a
response from the Oklahoma County District Court. See 28 U.S.C. § 2254(d)(2). Thus, "[e]ach of AEDPA's three
prongs – contrary to clearly established federal law, unreasonable application of clearly established federal law,
and unreasonable determination of the facts – presents an independent inquiry." Budder v. Addison, 851 F.3d
1047, 1051 (10th Cir. 2017) cert denied, Byrd v. Budder, 138 S. Ct. 475 (2017). Federal habeas corpus is a
guard against extreme malfunctions in the state criminal justice systems..." Harrington v. Richter, 562 U.S. 86
13 (2011).

In the case at bar Judge Lewis stated in his dissent that: "[t]his case is effectively indistinguishable from
Martinez v. State, 2019 OK CR 7, in which a majority of the Court adopted 'what I regard as an unreasonable
application of clearly established federal law,' as set forth in Miller v. Alabama, 567 U.S. 460, 132 S. Ct.
1155, 183 L.E.d.2d 407 (2012), in dealing with consecutive life-without-parole equivalent sentences." Petitione
argues that because Judge Lewis and Kuhlen dissent that his claim[s] are debatable among jurist and The
"contrary to" clause

REASONS FOR GRANTING THE PETITION

The reason for granting this Petition is for my Habeas Corpus to be heard in the United States Western District Of The State Of Oklahoma, or to be granted a Certificate Of Appealability. As the courts should know I followed every procedure which the courts ordered. Therefore in the interest of justice Petitioner, Eddie Dewayne Lee, seek a Certificate Of Appealability so the lower court could hear my Federal Habeas Corpus Relief, and to hear it on it's merits.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eddie Lu

Date: August 25th, 2021