

21-6187

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

JAMES E. LYONS

Petitioner,

FILED

AUG 02 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

v.

SECRETARY DOC / ATTORNEY GENERAL, FLA.

Respondent.

On Certiorari to the U. S. SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Petitioner: JAMES E. LYONS

DC# 765618

Okaloosa Correctional Institution
3189 Colonel Greg Maloy Road
Crestview, Florida 32539-6708

Respondent: Attorney General, State of Florida

Phone # (850) 487-1963

PL-01, The Capitol,
Tallahassee, Florida 32399-1050

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SUPREME COURT, U.S.

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for mailing by James E. Lyons

QUESTION PRESENTED:

WHETHER THE 11TH CIRCUIT COURT OF APPEALS SHOULD HEAR AND RULE UPON PETITIONERS CERTIFICATE OF APPEALABILITY THAT WAS DENIED, AND ALLEGED THAT TRIAL COUNSEL AND POST CONVICTION COUNSEL WERE BOTH INEFFECTIVE AND GROSSLY NEGIGENT.

LIST OF PARTIES: ALL PARTIES APPEAR ON COVER PAGE.

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JURISDICTION

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1257(A)

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PETITION FOR WRIT OF CERTIORARI

THE PETITIONER PRAYS THAT A WRIT OF CERTIORARI BE ISSUED IN HIS CASE CONCERNING AN ERRONEOUS DENIAL OF A COA (CASE 17-14934-A)

STATEMENT OF THE CASE

THE PETITIONER IS CURRENTLY SERVING A LIFE SENTENCE AFTER HE WAS CONVICTED OF MULTIPLE CRIMES IN 1999. HE APPEALED HIS CONVICTION AND A FLORIDA APPELLATE COURT AFFIRMED ON SEPTEMBER 26, 2000, AND IT WAS MANDATED OCTOBER 13, 2000. ON MARCH 26 2002 PETITIONER FILED A COUNSELED RULE 3.850 MOTION WHICH WAS DENIED AND THEN AFFIRMED SEPTEMBER 9, 2003, AND MANDATED SEPTEMBER 27, 2003. IN MARCH 2004 PETITIONER FILED A PRO-SE § 2254 PETITION AND THE STATE ARGUES THAT IT SHOULD BE DISMISSED AS UNTIMELY. THE PETITIONER ARGUES THAT THE MOTION SHOULD BE EXCUSED BECAUSE OF HIS ATTORNEYS INEFFECTIVENESS AND ABANDONMENT. PETITIONERS RETAINED COUNSEL FOR THE 3.850 MOTION ALLOWED HIS FEDERAL HABEAS DEADLINE TO RUN OUT BEFORE FILING PETITIONERS 3.850 MOTION. THUS, IN 2007 THE DISTRICT COURT DISMISSED PETITIONER 2254 AS UNTIMELY. TEN YEARS LATER IN APRIL 2017 PETITIONER FILED A 60(B) MOTION CONCERNING THE DISMISSAL OF HIS 2254 WHICH WAS DENIED AND PETITIONER FILED ANOTHER 60(B)(5) IN AUGUST 2017 WHICH WAS ALSO DENIED. PETITIONER APPEALED AND MOVED FOR A COA WHICH THE DISTRICT COURT REFUSED TO ISSUE SO HE WENT TO THE 11TH CIRCUIT AND WAS AGAIN TURNED DOWN. THE PETITIONER NOW TURNS TO THE U.S. SUPREME COURT FOR A WRIT OF CERTIORARI.

REASONS FOR GRANTING THE WRIT

IN SUPPORT OF THIS PETITION THE PETITIONER PRESENTS THE FOLLOWING LAWS AND FACTS WHICH SHOULD BE CONSTRUED AS LIBERALLY AS POSSIBLE. THE CLAIMS HEREIN ARE BASED ON ISSUES OF FACT AND THERE CAN BE NO SEMBLANCE OF A FULL AND FAIR HEARING UNLESS THE COURT REACHES AND DECIDES THE ISSUES OF FACT TENDERED BY THE DEFENDANT.

SEE HAINES V. KERNER 92 S.Ct. 594 (1972) TOWNSEND V. SAIN 83 S.Ct. 745 (1963)

THE SUPREME COURT HAS HELD THAT CERTAIN CONSTITUTIONAL RIGHTS ARE OF FUNDAMENTAL IMPORTANCE TO OUR SYSTEM OF JURISPRUDENCE. ONE OF THESE IS THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. THE RIGHT TO COUNSEL IS THE FOUNDATION OF OUR LEGAL SYSTEM BECAUSE THE DEFENDANT REQUIRES THE GUIDING HAND OF COUNSEL AT EVERY STEP IN THE PROCEEDINGS AGAINST HIM. WITHOUT IT, THOUGH HE MAY NOT BE GUILTY, HE FACES THE DANGER OF CONVICTION BECAUSE HE DOES NOT KNOW HOW TO ESTABLISH HIS INNOCENCE. SEE GIDEON V. WAINWRIGHT 83 S.Ct. 792 (1963)

IN THE PRESENT CASE, THE PETITIONERS RETAINED 3.850 COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL, BY FAILING TO FILE PETITIONERS 3.850 MOTION IN A TIMELY MANNER, IN ORDER TO PRESERVE HIS FEDERAL - YEAR TIME LIMIT. AS HERE, "COUNSEL IS INEFFECTIVE IF HE IS UNFAMILIAR WITH THE LAWS AND FACTS OF THE CASE."

POST CONVICTION COUNSEL'S PERFORMANCE IN THIS ISSUE PREJUDICED THE PETITIONER TO THE POINT-CONFIDENCE IN THE RELIABILITY OF THE PROCEEDINGS HAS BEEN UNDERMINED. COUNSEL'S POOR PERFORMANCE HERE HAS HAD A SERIOUS AND INJURIOUS EFFECT UPON THE PROCEEDINGS, AND RENDERED THE ENTIRE LEGAL PROCESS FUNDAMENTALLY UNFAIR. THE PETITIONER SHOULD NOT BE PUNISHED FOR THE FAILINGS OF AN OFFICER OF THE COURTS, WHO IS SWORN TO PROTECT HIS CLIENTS RIGHTS. THE PETITIONER IS TIME-BARRED AND UNABLE TO ATTACK HIS CONVICTION IN THE FEDERAL COURTS, THUS HIS RIGHTS TO DUE PROCESS HAVE ALSO BEEN VIOLATED, BECAUSE THE PETITIONER IS DENIED HIS BASIC PROCEDURAL RIGHTS OF A FULL AND FAIR POST CONVICTION PROCEEDING. MARTINEZ V. RYAN 132 SCT. 1309 (2012) MADE THE LAW CLEAR THAT "A PROCEDURAL DEFAULT WILL NOT BAR A FEDERAL HABEAS COURT FROM HEARING A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHERE COUNSEL WAS INEFFECTIVE IN POSTCONVICTION PROCEEDINGS."

THEREFORE, THE FEDERAL COURTS RULINGS ARE ERRONEOUS, BECAUSE, AS HERE, ATTORNEY ERROR RISING TO THE LEVEL OF INEFFECTIVE ASSISTANCE OF COUNSEL CAN CONSTITUTE CAUSE TO SET ASIDE PROCEDURAL DEFAULT. COLEMAN V. THOMPSON 111 SCT. 2546 (1991) FURTHERMORE, THIS COURT HOLDS THAT "CONVENTIONAL NOTIONS OF FINALITY OF LITIGATION HAVE NO PLACE WHERE LIFE OR LIBERTY IS AT STAKE, AND THE INFRINGEMENT OF CONSTITUTIONAL RIGHTS IS ALLEGED." SANDERS V. U.S. 83 SCT. 1068 (1963)

ALSO, ERRORS OF THIS KIND JUSTIFY COLLATERAL RELIEF NO MATTER HOW LONG THEY MAY HAVE BEEN FINAL, AND EVEN THOUGH THEY MAY HAVE NOT BEEN RAISED IN PRIOR PROCEEDINGS." ROSE V. LUNDY 102 SCT. 1198 (1982) THE PETITIONER ASKS THAT THIS LEGAL REASONING BE APPLIED TO HIS CASE ALONG WITH THE ARGUMENTS PREVIOUSLY FILED ON THIS CLAIM. COMBINED, THEY PROVIDE OVERWHELMING SUPPORT THAT THE LOWER COURTS HAVE CONSTANTLY ABUSED THEIR DISCRETION BY FAILING TO GRANT THIS PETITIONER RELIEF ON THIS ISSUE. HE HAS SATISFIED BOTH PRONGS OF STRICKLAND AND SHOWN THAT THE LOWER COURT IS IN ERROR, BECAUSE REASONABLE JURISTS WILL FIND THIS CASE DEBATEABLE.

THE PETITIONER HAS BEEN DILIGENTLY FIGHTING HIS ERRONEOUS CONVICTION UNTIL HIS RETAINED POST-CONVICTION ATTORNEY 'ABANDONED' HIM, BY FAILING TO PRESERVE HIS FEDERAL TIME LIMIT. THIS REDUCED HIM TO 'PRO-SE STATUS', BUT IT WAS TOO LATE TO FILE ANYTHING, AND HE WAS NOT EVEN AWARE OF THE SITUATION. CLEARLY THIS CREATES AN 'EXTRORDINARY CIRCUMSTANCE' THAT HAS BEEN DECIDED IN THE PETITIONERS FAVOR BY BUCK V. DAVIS 137 SCT. 197 (2017) MAPLES V. THOMAS 132 SCT. 912 (2012) CAPET V. FLORIDA 853 F3D 1216 (11th CIR. 2017) AND HOLLAND V. FLORIDA 130 SCT. 2549 (2010) - (ALL RULING "EXTRORDINARY CIRCUMSTANCES BEYOND ATTORNEY NEGLIGENCE QUALIFIES TO WARRANT EQUITABLE TOLLING IN HABEAS CORPUS.") RESPECTFULLY, THE SAME SHOULD APPLY IN THIS PETITIONERS CASE.

CLEARLY, BUT FOR THE ARBITRARY, DEFICIENT ACTIONS OF PETITIONERS ATTORNEYS THERE IS A GREAT PROBABILITY THAT THE OUTCOME OF PETITIONERS PROCEEDINGS WOULD HAVE BEEN DIFFERENT. STRICKLAND V. WASHINGTON 104 S.Ct. 2052 (1984) THE SUB-STANDARD PERFORMANCES OF PETITIONERS LAWYERS AT TRIAL, AND ESPECIALLY IN POST-CONVICTION, HAVE ROBBED HIM OF HIS CONSTITUTIONAL RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL, A FAIR TRIAL, AND DUE PROCESS. THE PETITIONER HAS NOT BEEN ALLOWED TO ATTACK HIS ERRONEOUS CONVICTION FULLY AND FAIRLY IN THE COURT SYSTEM, AND POST-CONVICTION PROCEEDINGS. OVER 80 YEARS AGO IN GODDARD V. STATE 196 So. 596 (FLA. 1940) THE FLORIDA SUPREME COURT HELD THAT "NO CONVICTION IS WARRANTED EXCEPT UPON EVIDENCE FULLY AND FAIRLY PRESENTED." THEREFORE THE PETITIONER CONTENDS THAT HIS CONVICTION IS UNWARRANTED, BECAUSE THE EVIDENCE WAS NOT PRESENTED FULLY AND FAIRLY AS GODDARD REQUIRES.

CONCLUSION

WHEREFORE, THE PETITIONER PRAYS THAT THIS HONORABLE COURT WILL GRANT HIM A WRIT OF CERTIORARI IN THIS CAUSE, OR ANY AND ALL RELIEF THAT THIS COURT DEEMS JUST AND PROPER. THIS COURT HAS CONTINUOUSLY HELD THAT "IT IS FAR BETTER THAT TEN GUILTY MEN GO FREE, THAN FOR ONE INNOCENT MAN TO BE WRONGFULLY CONVICTED." WHEN THIS HONORABLE COURT ALLOWS THE EVIDENCE TO BE PRESENTED, FULLY AND FAIRLY, IT WILL SHOW THAT THE PETITIONER, JAMES E. LYONS, IS THAT ONE INNOCENT MAN.