

IN THE SUPREME COURT OF THE
UNITED STATES

Steve Herbert Speckman
Petitioner

v

No. 21-6410

Bobby Lumpkin, Director
Texas Department of Criminal Justice
Correctional Institutions Division
Respondent

PETITION FOR REHEARING

U.S. Supreme Court Rule 44

Petitioner Speckman comes now to move the Court to rehear his
Certiorari Petition. In support thereof, he would show:

Background

The issues presented in the Certiorari pertain to the application and
calculation of the AEDPA time limit. Speckman presented several questions
dealing with the AEDPA that this Court has never addressed, and that are
issues with a nation wide application. The questions that should be answered
are:

Questions to Answer

One - Does the AEDPA time limit begin to run before the State appellate

process is completed?

Two- Does Faretta apply to the State appellate process?

Three- Does a certiorari in the State court and the Federal Court toll the AEDPA time limit?

Four- Is an evidentiary hearing mandatory when facts are at issue and disputed?

Five- Does the ineffective assistance of counsel on a State habeas corpus writ operate to toll the AEDPA time limit?

Starting the AEDPA Time Clock

The AEDPA time limit is basically a one-year clock; the starting and stopping of which is triggered by certain events. The clock initially starts for Texas prisoners thirty days after the conviction has been affirmed on Direct Appeal. But two events can extend that initial starting of the AEDPA clock. One is the filing of a Petition for Discretionary Review - which Speckman did not file. The other event is the filing of a Motion for Rehearing the Direct Appeal which Speckman did file. The AEDPA time does not begin to run until the State Direct Appeal is complete. Speckman filed a timely Motion for Rehearing his direct appeal (Appendix A pg. 3, 5). The State Appellate Court has never ruled on Speckman's rehearing motion. The motion is still pending. Therefore, Speckman's State Direct Appeal is still pending.

and the AEDPA time could not possibly have started running. The State Appellate Court has taken the position that Speckman can not proceed pro se on appeal. The State Appellate Court's holding violates Faretta v California, 95 S.Ct. 2525, 2533 (1975)

Speckman could not possibly be AEDPA time barred. His State Direct Appeal is not completed because his motion to rehear the State Direct Appeal is still pending in the State Court of Appeals.

Certiorari Tolls the AEDPA Time

Speckman filed a Petition for Writ of Certiorari in the Texas Court of Criminal Appeals No. WR-81,947-01, and in the United States Supreme Court No. 14-8503 before filing his initial 2254 habeas action. Both of these certiorari petitions tolled the AEDPA time limit. Wall v Kholi 131 S.Ct. 1278, 1284-85 (2011) defining collateral review relevant to 2244(d)(2)

Excepting the fact that the AEDPA time limit can not begin because Speckman's State Direct Appeal is not complete the tolling events are as follows: (Appendix B pg. 6,7)

When Speckman filed his 2254 writ on January 31, 2020, 331 days had expired. Speckman's writ was filed with 34 days remaining on the AEDPA clock. He is clearly not time barred.

Mandatory Evidentiary Hearing

The State contested the facts in the lower court. Speckman was unable to establish and prove his claims because the lower courts refused to allow an evidentiary hearing. An evidentiary hearing was mandatory in this case because the facts were at issue regarding AEDPA time limit and others.

Walker v Johnston 312 U.S. 275, 284 61 S.Ct. 574 (1941)

Townsend v Sain 372 U.S. 293, 212-13 83 S.Ct. 745 (1963)

Ineffective Counsel Tolls the AEDPA

Speckman proceeded pro se initially, but an attorney was appointed when the Court of Criminal Appeals remanded the writ to the trial court. Counsel's ineffectiveness deprived Speckman of a live witness evidentiary hearing, and caused Speckman to be unable to litigate all of his issues. Counsel's ineffectiveness excuses any delay on Speckman's part, and tolls the AEDPA time limit.

Trevino v Thaler 133 S.Ct. 1911, (2013)

Martinez v Ryan 566 U.S. 1, 17, 132 S.Ct. 1309 (2012)

Conclusion

The lower courts have time barred Speckman because they have incorrectly computed and applied the AEDPA. Speckman is clearly not time barred.

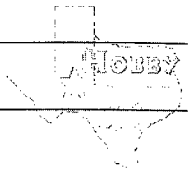


WHEREFORE, Speckman respectfully prays that the Court reconsider their ruling on Certiorari.

Respectfully submitted,

Date: February 11, 2022

Steve Herbert Speckman
Steve Herbert Speckman
pro se



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APPENDIX

A

State Appellate Court
Docket



Style: Criminal - Appellant Steve Herbert Speckman

v.Criminal - State of Texas The State of Texas

Case Priority: Regular

Original Proceeding: No

Case Description: Aggravated Assault

Punishment: 10 yrs, TDCJ-ID BondAmount: In Jail: False

Trial Court Information				
County	Court Name	Case #	Judge	Court Reporter
Tarrant	372nd District Court	0569309D	Honorable David Scott Wisch	Smith, Karen

Transfer Court Information				
Transfer From	Transfer In Date	Transfer Case Number	Transfer To	Transfer Out Date
02 COA	07/16/2013	02-13-00274-CR	07 COA	07/17/2013

Companion/ Consolidated Cases					
Active	Comp Case Number	Date Filed	Style1	Style2	Consolidated Case
False	07-13-00232-CR	07/17/2013 11:57AM	Steve Herbert Speckman	The State of Texas	

Parties and Attorneys						
Party	Party Name	Remarks	Counsel Code	Person Name	Date On	Date Off
Appellant	Speckman, Steve Herbert		Appointed attorney	Leigh W. Davis	07/19/2013	
			Pro Se	Steve Herbert Speckman	06/16/2014	
Criminal - State of Texas	The State of Texas		District attorney	Charles M. Mallin	07/19/2013	02/03/2014
			District attorney	Colby Rideout	02/03/2014	

Interested Entities				
Entity Name	Interested Entity Type	Notice	Date On	Date Off
Davis, Leigh W.	AP ATTY	Yes	07/19/2013 12:07PM	
Davis, Leigh W.	AP ATTY	Yes	07/19/2013 12:07PM	
Judge, Administrative	ADMJUD	No	07/19/2013 12:06PM	
Mallin, Charles M.	DT ATTY	Yes	07/19/2013 12:07PM	02/03/2014
Rideout, Colby	DT ATTY	Yes	02/03/2014 11:26AM	
Smith, Karen	RPT	Yes	07/19/2013 12:06PM	
Speckman, Steve Herbert	PRO SE	Yes	06/16/2014 11:20AM	
Wilder, Thomas A.	DT CLK	No	03/11/2014 2:43PM	
Wisch, David Scott	TC JDG	Yes	07/19/2013 12:05PM	09/03/2013
Wisch, David Scott	TC JDG	Yes	09/03/2013	

Events and Opinions							
Event Date	Stage	Event	Event Description	Disposition	Grouping	Order Type	Submission
09/29/2016	TRANSFER IN	MT REHEAR DISP	PRO SE	DISMJR			

Appendix

A

Style: Criminal - Appellant Steve Herbert Speckman

v.Criminal - State of Texas The State of Texas

Events and Opinions							
Event Date	Stage	Event	Event Description	Disposition	Grouping	Order Type	Submission
09/29/2016	TRANSFER IN	LTR ISSD	ANT				
09/22/2016	TRANSFER IN	MT REHEAR FLD	PRO SE				
08/08/2014	TRANSFER IN	MANDATE ISSD					
07/16/2014	TRANSFER IN	LTR ISSD	PRO SE				
07/14/2014	TRANSFER IN	LTR FLD	PRO SE				
06/27/2014	TRANSFER IN	LTR ISSD	BT PAR				
06/24/2014	TRANSFER IN	LTR FLD	PRO SE				
06/16/2014	TRANSFER IN	LTR ISSD	PRO SE				
06/09/2014	TRANSFER IN	MT REHEAR FLD	PRO SE				
06/05/2014 8:25PM	TRANSFER IN	LTR RECD	ATTY				
05/23/2014	TRANSFER IN	MEM OPINION ISSD		AFFIRM			
		<u>Opinion Type</u>	<u>Author</u>				
		Original Memorandum	Justice Mackey K. Hancock				
05/22/2014	TRANSFER IN	SUBMITTED					Brief
05/22/2014	TRANSFER IN	LTR FLD	PRO SE				
05/21/2014	TRANSFER IN	MT WDR ATTY DISP	APP	denied			
05/09/2014 5:33AM	TRANSFER IN	MT WDR ATTY FLD	APP				
05/01/2014	TRANSFER IN	SUBMISSION/ BRIEFS					Brief
03/27/2014	TRANSFER IN	LTR ISSD	PRO SE				
03/14/2014	TRANSFER IN	EXCEPTIONS FLD	PRO SE				
02/03/2014 10:26AM	TRANSFER IN	BRIEF FLD NO	STA				
02/03/2014	TRANSFER IN	AT ISSUE					
01/06/2014	TRANSFER IN	MT EXT BRIEF DISP	STA	granted			
01/03/2014 2:10PM	TRANSFER IN	MT EXT BRIEF FLD	STA				
12/04/2013	TRANSFER IN	BRIEF FLD NO					
11/07/2013	TRANSFER IN	MT EXT BRIEF DISP	APP	granted			
11/01/2013	TRANSFER IN	MT EXT BRIEF FLD	APP				
10/03/2013	TRANSFER IN	MT EXT BRIEF DISP	APP	granted			
10/03/2013	TRANSFER IN	MT EXT BRIEF FLD	APP				
08/28/2013 4:50PM	TRANSFER IN	RPT RECORD FLD	RPT				

Appendix

A

Style: Criminal - Appellant Steve Herbert Speckman

v.Criminal - State of Texas The State of Texas

Events and Opinions

Event Date	Stage	Event	Event Description	Disposition	Grouping	Order Type	Submission
08/01/2013 4:48PM	TRANSFER IN	CLK RECORD FLD	DT CLK				
08/01/2013 10:58AM	TRANSFER IN	EXT RPT RECORD FLD	RPT				
08/01/2013	TRANSFER IN	EXT RPT RECORD DISP	RPT	granted			
07/17/2013	TRANSFER IN	TRANSFER IN					
07/16/2013	FILING	TRANSFER OUT		GRANT			
06/24/2013	FILING	DS FLD	APP				
06/06/2013	FILING	NOA FLD/COA	APP				
05/29/2013	FILING	SENTENCE IMPOSED	TC JDG				

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Appendix

Document Summary

Stage	Location	File Date	Event	File Description	Index	Volume	Page
TRANSFER IN	Event	12/04/2013	BRIEF FLD NO	Brief			
TRANSFER IN	Event	11/07/2013	MT EXT BRIEF DISP APP granted	Letter			
TRANSFER IN	Event	11/01/2013	MT EXT BRIEF FLD APP	Motion			
TRANSFER IN	Event	10/03/2013	MT EXT BRIEF FLD APP	Motion			
TRANSFER IN	Event	09/29/2016	LTR ISSD ANT	Notice			
TRANSFER IN	Event	09/22/2016	MT REHEAR FLD PRO SE	Motion			
TRANSFER IN	Event	08/28/2013 4:50PM	RPT RECORD FLD RPT	Exhibits			
TRANSFER IN	Event	08/28/2013 4:50PM	RPT RECORD FLD RPT	Master Index			
TRANSFER IN	Event	08/28/2013 4:50PM	RPT RECORD FLD RPT	Hearing			
TRANSFER IN	Event	08/08/2014	MANDATE ISSD	Notice			
TRANSFER IN	Event	08/08/2014	MANDATE ISSD	Mandate			
TRANSFER IN	Event	08/01/2013 10:58AM	EXT RPT RECORD FLD RPT	Motion			
TRANSFER IN	Event	08/01/2013 4:48PM	CLK RECORD FLD DT CLK	Clerk Record			
FILING	Event	07/16/2013	TRANSFER OUT GRANT	DS			
FILING	Event	07/16/2013	TRANSFER OUT GRANT	NOA COA			
FILING	Event	07/16/2013	TRANSFER OUT GRANT	2nd COA Docket Sheet			

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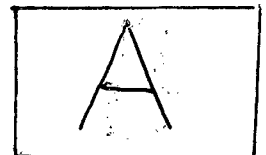
Document Summary

Stage	Location	File Date	Event	File Description	Index	Volume	Page
TRANSFER IN	Event	07/14/2014	LTR FLD PRO SE	Letter			
TRANSFER IN	Event	06/27/2014	LTR ISSD BT PAR	Letter			
TRANSFER IN	Event	06/24/2014	LTR FLD PRO SE	Pro se letter			
TRANSFER IN	Event	06/16/2014	LTR ISSD PRO SE	Notice			
TRANSFER IN	Event	06/09/2014	MT REHEAR FLD PRO SE	Motion			
TRANSFER IN	Event	06/05/2014 8:25PM	LTR RECD ATTY	Letter			
TRANSFER IN	Event	05/23/2014	MEM OPINION ISSD AFFIRM	Notice			
TRANSFER IN	Event	05/23/2014	MEM OPINION ISSD AFFIRM	Judgment			
TRANSFER IN	Opinion	05/23/2014	MEM OPINION ISSD AFFIRM	Opinion		198	2064
TRANSFER IN	Event	05/22/2014	LTR FLD PRO SE	Pro se letter			
TRANSFER IN	Event	05/21/2014	MT WDR ATTY DISP APP denied	Notice			
TRANSFER IN	Event	05/09/2014 5:33AM	MT WDR ATTY FLD APP	Motion			
TRANSFER IN	Event	05/01/2014	SUBMISSION/BRI EFS	21 Day Letter			
TRANSFER IN	Event	03/27/2014	LTR ISSD PRO SE	Notice			
TRANSFER IN	Event	03/14/2014	EXCEPTIONS FLD PRO SE	Exception			
TRANSFER IN	Event	02/03/2014 10:26AM	BRIEF FLD NO STA	Brief			
TRANSFER IN	Event	02/03/2014 10:26AM	BRIEF FLD NO STA	br filed letter			
TRANSFER IN	Event	01/03/2014 2:10PM	MT EXT-BRIEF FLD STA	Motion			

Calendars

Stage	Set Date	Calendar Name	Reason Set
TRANSFER IN	08/08/2014	STOR	CASE STORE

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B

AEDPA Elapsed Time



B

Appendix

AEDPA Elapsed Time

5/23/2014 Opinion issued by State Court of Appeals

Untolled

<u>AEDPA Clock</u>	<u>Event</u>	<u>Date</u>	<u>Days</u>	<u>Time Elapsed</u>
Start	Opinion + 30 days	6/23/2014	June 8 July 31	
Stop	State Certiorari filed	8/14/2014	Aug. 13 52	52
Start	State Certiorari denied	9/20/2014	Sept. 10 Oct. 31	59
Stop	Federal Certiorari filed	11/19/2014	Nov. 18 59	
Start	Federal Certiorari denied	4/20/2015	April 10 May 9	19
Stop	Federal Rehearing Filed	5/10/2015	19	
imbricated	Federal Rehearing denied	7/20/2015	- imbricated	
Stop	State DNA motion filed	7/8/2015		
Start	State DNA motion denied	10/7/2015	Oct. 24 Nov. 30	61
Stop	State 11.07 habeas filed	12/8/2015	Dec. 7 61	
Start	State 11.07 habeas denied	9/11/2019	Sept. 18 Oct. 31	140
Stop	2254 petition filed	1/31/2020	Nov. 30 Dec. 31 Jan. 30 140	

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Appendix

331
days used