

21-6526

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

NOV 29 2021

OFFICE OF THE CLERK

Darneau Pepper — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Darneau Versill Pepper #02002-122
(Your Name)

P.O Box 26030
(Address)

Beaumont, Texas 77720
(City, State, Zip Code)

N/A (Incarcerated)
(Phone Number)

QUESTION(S) PRESENTED

- I. WHETHER Mr. PEPPER was Denied Meaningful Access To The Courts. Thrs. Should have been granted Equitable Tolling
- II. WHETHER THE Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) was UNConstitutional as Applied Here.

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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(AEDPA) Pub. L. 104-132, 110 Stat 1214 (1996)

Other

418 U.S. 539 (1979)

Moore U. McDanal

886 F.2d 721 (4th Cir. 1986)

White v. White

141 F.3d 976 (10th Cir. 1998)

Milner U. Milner

393 U.S. 483 (1969)

Johanson U. Avery

787 F.2d 1 (1st Cir. 1986)

Lookisich v. Cunningham

994 F.2d 1082 (9th Cir. 1993)

Bryant U. MHL

306 U.S. 19 (1939)

Bowen U. Johnson

430 U.S. 817 (1977)

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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 A 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- is unpublished.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 _____ 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- is unpublished.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 _____ 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- is unpublished.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 October 14, 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 _____.
2

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
2

[] 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

- I Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).
- II Fifth Amendment to the U.S. Const.

STATEMENT OF THE CASE

IN 2009, a Colorado State Jury found Mr. Pepper guilty of Two Counts of first-degree Murder, Multiple Counts of attempted Murder, and one Count of possessing a weapon as a former offender. The Colorado Court of Appeals affirmed on direct appeal in 2012, and the Colorado Supreme Court denied Certiorari on March 11, 2013. Subsequent to the Supreme Court's decision, Mr. Pepper obtained evidence of his Actual Innocence as well as evidence supporting claims of ineffective counsel. Mr. Pepper filed a motion for post conviction relief June 17, 2014. In November of 2014 the State Authorities placed Mr. Pepper in the custody of the Federal Authorities. Mr. Pepper properly litigated his case in state court and filed a federal habeas petition on February 4, 2021. The district court denied the petition and the 10th Circuit Court of Appeals denied Mr. Pepper a Certificate of Appealability. Mr. Pepper now seeks this Court review.

REASONS FOR GRANTING THE PETITION

- I. To Determine if Mr. Pepper was denied Meaningful Access To the Courts When He was Placed in Federal Custody.
- II To Determine if The (AEDPA) As Applied here was unconstitutional.

DISCUSSION

- I. Mr. PEPPER WAS Denied Meaningful Access to the Courts WHEN He was Removed From State Custody And Placed IN Federal Custody.

When the State authorities removed Mr. Pepper from State Custody and placed him in federal Custody he was denied any meaningful access to the Courts. The U.S. Constitution guarantees Prisoners the right of meaningful access to the Courts. Bounds v. Smith, 430 U.S. 817, 828 (1977). The right of access imposes an affirmative duty on prison officials to help inmates prepare and file legal papers; either by establishing

an adequate law library or by providing adequate assistance from persons trained in the law. Prison officials are not required to provide both as long as access to either is "meaningful" Bounds, 430 U.S. 828. Courts will allow some restrictions on a prisoner's access to legal resources to accommodate legitimate administrative concerns that include:

- (1) Maintaining security and internal order see e.g. Cookish v. Cunningham, 787 F.2d 1, 5-6 (1st Cir. 1986) (finding right of access not violated because temporary restriction on access to prison library necessary to maintain security and internal order); (2) preventing the introduction of contraband, particularly through mail or legal documents. See e.g. Bryant v. Muth, 994 F.2d 1082, 1087 (4th Cir. 1993) (finding right of access not violated because confiscated legal materials were created through unauthorized use of prison computer); and (3) observing budget constraints. See e.g. White v. White, 886 F.2d 721, 723 (4th Cir. 1989) (finding right not violated when nonindigent people required to pay for postage) In the absence of a legitimate administrative concern, however, a prisoner may not be hindered in seeking access to the judicial system. See e.g. Wolff v. McDonnell, 418 U.S. 539 (1974).

Here, Mr. Pepper was transferred out of State Custody and placed in federal Custody. A transfer that effectively hindered him in seeking access to the judicial system.¹ It is notable, Mr. Pepper diligently sought assistance from the state via U.S. Mail without response. In other words, Mr. Pepper was placed in federal Custody and abandoned by the state and denied meaningful access to the Courts. Accordingly, under such circumstances Mr. Pepper should have been granted equitable Tolling.

II. As an alternative it should be found under the facts of the case the AEDPA was unconstitutional

On April 24, 1996 President Clinton signed into law the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Pub. L. 104-132, 110 Stat 1214 (1996). Title I of the Act made important

¹ Pursuant to Federal Bureau of Prisons policies it does not provide access to state law.

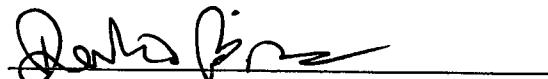
Changes in the Statutes Governing federal habeas Corpus Practice for state prisoners. At relevant part the Act inserted the following into 2254 Proceedings: "A 1-year period of limitation shall apply to a motion under this section." But see Cf. U.S. Const. art I § 9 Cl. 2 The so called Suspension Clause of the United States Constitution which provides: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it." This Clause has prompted this Court to recognize "that 'there is no higher duty than to maintain [the writ] unimpaired. Johnson v. Avery, 393 U.S. 483, 485 (1969) (quoting) Bowen v. Johnston, 306 U.S. 19, 26 (1939)). In Considering the Constitutional implications of some of the restrictions that AEDPA has effected in habeas Corpus review in the state and federal Prisoner Contexts, some of the lower federal Courts have suggested that a Suspension Clause might arise if a prisoner had no Post Conviction opportunity to raise a particular Constitutional Claim See e.g. Miller v. Marr, 141 F.3d 976, 977-78 (10th Cir.) Cert. denied, 525 U.S. 891 (1998). Recognizing that "[w]hether

the one-year [nonopt in] limitation period violates the Suspension Clause depends upon whether the limitation period renders the habeas remedy 'inadequate or ineffective' to test the legality of detention" and "[t]here may be Circumstances where the limitation period at least raises serious Constitutional Questions and possibly renders the habeas remedy inadequate and ineffective....") Turning to the Case at bar, as discussed above Mr. Pepper was effectively abandoned by the state in federal Courts without meaningful access to the Courts. When he attempted habeas review he was procedurally barred on the basis of a Matter of days. Mr. Pepper claimed actual innocence. Such a Circumstance raises serious Constitutional Questions and effectively rendered the habeas remedy inadequate and ineffective. In other words, the state effectively suspended the writ of habeas Corpus by denying Mr. Pepper meaningful access to the Courts. Accordingly, the Court should grant Mr. Pepper's Petition to review the Constitutional questions and Circumstances it presents.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11/17/21