

No. 21-6655

ORIGINAL

Supreme Court, U.S.
FILED

OCT 19 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

HENRY TREVILLION — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

HENRY TREVILLION
(Your Name)

EMC ROCHESTER/PBM 4000/
(Address)

Rochester, MN, 55903-4000
(City, State, Zip Code)

N/A
(Phone Number)

RECEIVED

OCT 19 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

IS PETITIONER HENRY TREVILLION ENTITLED TO AN EVIDENTIARY HEARING REGARDING HIS CLAIM THAT THE STATUTE OF LIMITATIONS SHOULD BE EQUITABLY TOLLED BECAUSE OF THE NATION WIDE LOCK DOWN DUE TO THE COVID 19 PANDEMIC?

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

United States v. Henry Trevillion, 2021 U.S. Dist. LEXIS 68132
8:18-CR-8, Decided April 8, 2021, Filed April 8, 2021

United States v. Trevillion, 770 Fed. Appx. 302;2019, U.S.
Appx. LEXIS 13926, No.18-2936, Submitted April 25, 2019,
Filed May 9, 2019

United States v. Trevillion, 2021 U.S. Dist. LEXIS 40308

TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

OTHER

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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 _____ 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☐ is unpublished.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☐ is unpublished.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 _____.

☐ 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

THE FIFTH AMENDMENT PROTECTS THE RIGHT OF A DEFENDANT AGAINST COMPULSORY SELF INCRIMINATION, PROTECTION AGAINST DEPRIVATION OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW

THE SIXTH AMENDMENT PROTECTS THE RIGHTS OF A DEFENDANT AND PROTECTS THE RIGHT TO A SPEEDY TRIAL, A RIGHT TO A PUBLIC CRIMINAL TRIAL, A RIGHT TO A JURY TRIAL IN CRIMINAL CASES A RIGHT TO BE INFORMED OF THE NATURE AND GROUNDS OF A CRIMINAL ACCUSATION, A RIGHT TO CONFRONT AND CROSS-EXAMINE PROSECUTION WITNESSES, A RIGHT TO THE ASSISTANCE OF COUNSEL IN CRIMINAL CASES

STATEMENT OF THE CASE

On or about January 5, 2018, petitioner was charged with several counts of offenses against the United States. Subsequently petitioner was sentenced to 120 months under 21 U.S.C. §841(a)(1) and 60 months under 924(c). Petitioner filed a direct appeal and the Court of Appeals affirmed the case on May 9, 2019. The conviction was final on August 8, 2019. Petitioner filed his Habeas Corpus petition on December 9, 2020. Petitioner was through his due diligence trying to file his petition before he was time-tolled to submit his petition. Due to the Covid-19 pandemic, petitioner was not able to submit his petition in time. Petitioner brought up several issues for the district court to consider. After denying petitioners §2255 petition, petitioner appealed to the Eighth Circuit Court of Appeals. The Court of Appeals affirmed the denial without considering the fact that petitioner had a plausible excuse for not being able to file his petition in time. On the initial appeal, appellant's counsel stated that there was an issue on the firearm offense, yet the court of appeals allowed counsel to withdraw from the case. The element and factual basis for petitioners plea regarding the firearm offense was never explained by his counsel prior to pleading guilty.

REASONS FOR GRANTING THE PETITION

Congress passed 28 U.S.C. §2255 "to afford federal prisoners a remedy identical in the scope to federal habeas corpus." The new section 2255 created a parallel, yet separate, equivalent habeas corpus procedure for federal prisoners and retained §2254 for state prisoners. This practice was validated when the Supreme Court promulgated and Congress adopted a separate set of rules that addressed federal prisoners' motion for collateral relief. Though section 2255 is denominated a motion, it functions much like an added step in the federal appeal process. Here petitioner was trying to understand how to file his §2255 petition. Due to being locked down due to the Covid pandemic, petitioner was not able to have access to the assigned law library to research and also print out the §2255 habeas corpus petition. "]although neither §2244 nor the 7th circuit has defined what constitutes an 'impediment' for purposes of §2244(d)(1)(B), the plain language of the statute makes clear that whatever constitutes an impediment must prevent a prisoner from filing his petition." Lloyd v. VanNatta, 296 F.3d 630, 663 (7th Cir.2002)[.] Petitioner has shown that he did not have access to the law library or was able to receive a §2255 form to fill out. In this case, appellant counsel failed to give petitioner notice or instruct on what to do next in his appeal process. Counsel was allowed to withdraw after knowing that there was an issue with the

firearm offense. Since the denial of petitioners appeal, he has done everything pro se, without the help of an attorney. Given that petitioner has made sufficient allegations regarding his diligence to entitled him to an evidentiary hearing, he must next demonstrate that "extrodinary circumstances beyond [their] control make it impossible to file a petition on time." Beeler, 128 F.3d at 1288. Without being able to research in the law library, how was petitioner going to know about the statute of limitations on filing his petition? The facility was on lockdown due to the Corona Virus and there was no movement to be able to go to the law library to research the AEDPA? Petitioner brought up his Ineffective Assistance of Counsel in his direct appeal and in his habeas petition to bring up the question of the 924(c) offense. The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate on behalf of his client, as opposed to that of amicus curiae. The no merit letter and the procedure it triggers do not reach that dignity. Counsel should, and can with honor and without conflict, be of more assistance to his client and to the court. His role as advocate requires that he support his clients appeal to the best of his ability. Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request

must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court - not counsel - then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal. In this case, the appellant counsel argued the point of the firearm offense but failed to actually argue the issue. The right to appellant counsel is now firmly established. Evitts v. Lucey, 469 U.S. 392, 105 S.Ct. 830, 83 L.Ed 2d 821 (1985). Strickland ... established the standard for ineffective assistance of counsel, and though it is phrased in terms [directed] of trial counsel, it can be used as a basis for establishing a standard for effective assistance of appellant counsel. [Omitted]

Had appellant counsel failed to raise a significant and obvious issue, the failure could be viewed as deficient performance. If an issue which was not raised may have resulted in a reversal of the conviction, or an order for a new trial, the failure was prejudicial. [...] When a claim of [IAC] is based on failure to raise viable issues, the district court must exa-

mine the trial record to determine whether appellant counsel failed to present significant and obvious issues on appeal. Significant issues which could have been raised, should then be compared to those which were raised. Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome. A reviewing court must review the record and see that the right to effective assistance of appellant counsel was not violated, and require only that appellant counsel's choice of issues was or did not fall below "an objective standard of reasonableness," Strickland, 104 S.Ct. 2052. The weeding out of weak claims to be raised on appeal "is the hallmark of effective advocacy," [omitted], because "every weak issue in an appellate brief or argument detracts from the attention a judge can devote to the stronger issues, and reduces appellate counsel's credibility before the court." Miller, 882 F.2d at 1434. [A]n appellate advocate may deliver deficient performance and prejudice a defendant by omitting a "dead-bang winner," even though counsel may have presented strong but unsuccessful claims on appeal. Page v. United States, 884 F.2d 300, 302 (7th Cir. 1989).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Henry Twellion

Date: 9-21-2021