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In the
UNITED STATES SUPREME COURT

Case No. **21-7254**

Supreme Court, U.S.
FILED

DEC 29 2021

OFFICE OF THE CLERK

Stephen C. Hanf
Petitioner

v

Mark S Inch, et. al.,
Respondent

Petition for Writ of Certiorari
to

United States Court of Appeals
Eleventh Circuit

ORIGINAL

Stephen C Hanf

DC # N25458

NWERC

4455 Sam Mitchell Drive

Chipley, FL 32428

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SUPREME COURT, U.S.

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Zuniga v Bean

2021 WL 1565783 Lexis 76285

Case no. 2:20-CV-00619-GMN-BNW

Carter v United States

2021 WL 1978697 Lexis 94475

Case no. C 20-1654-MJP

Dunn v Baca

2020 WL 252577 (No Lexis available)

Case no. 3:19-CV-00702-MMD-WGC

Brown v Davis

2020 (no WL or Lexis available)

Case no. 1:19-CV-01796-DAD

McWhorter v Davis

2020 WL 5942354 (No Lexis available)

Case no. 1:20-CV-00215-NONE

Dawson-Durgan v Warden,

Warren Correctional Institution

2020 WL 4745170 (No Lexis available)

Case no. 1:19-CV-382

James v Garland

2021 (no WL or Lexis available)

Case no. 20-1666 16 F. 4th 320

Holland v Florida

2010 130 S. Ct. 2549 Case no. 09-5327

OPINIONS

First District Court of Appeal, State of Florida
written opinion - Affirmed with dissent December 18, 2015

Notice to Invoke Jurisdiction - Florida Supreme Court
declined

Certiorari, U.S. Supreme Court
Denied April 17, 2017

Motion for Post-conviction Relief, Florida Circuit
Denied May 30, 2019

First District Court of Appeal, State of Florida
Per Curiam Affirmed February 19, 2020

U.S. Northern District of Florida
Dismissed *

U.S. Eleventh Circuit
Denial of COA *

* Opinions relevant to this petition to establish certiorari

List of Parties

- 1) Busch, David J., Petitioners Counsel
- 2) Campbell, Jack, State Attorney, Florida
- 3) Collins, David, Post-conviction Counsel
- 4) L. C., victim
- 5) Duffy, Thomas H., Assistant Attorney General
- 6) Hanf, Stephen C., Petitioner
- 7) Inch, Mark S., Secretary, Florida D.O.C.
- 8) Long, Jr., Robert E., Trial Judge
- 9) Moody, Ashley, Attorney General, Florida
- 10) Moore, Jennifer J., Assistant Attorney General, Florida
- 11) Timothy, Elizabeth M., U.S. Magistrate
- 12) Newman, Luke, Trial Counsel
- 13) Utt, Christine, Assistant State Attorney, Florida
- 14) Wetherell II, T. Kent, U.S. District Judge

CONSTITUTIONAL PROVISIONS

First Amendment - Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Eighth Amendment - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment - Section 1 - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property

CONSTITUTIONAL PROVISIONS

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

JURISDICTION

This Court has jurisdiction due to the U.S. Court of Appeals, Eleventh Circuit's denial of a certificate of appealability.

A question of great public importance and conflict between U.S. Districts and Circuits is being presented for review.

In the interest of justice, this august Court should hear this cause and issue a written opinion as it has far reaching effects across the nation.

QUESTION PRESENTED

whether the COVID-19 pandemic qualifies as an extraordinary circumstance for equitable tolling in the instant case; conflict established -

Carter v United States, 2021, U.S. District,
Lexis 94475 WL 1978697
Case no. C20-1654 MJP

and

Zuniga v Bean, 2021, U.S. District,
Lexis 76285 WL 1565783
Case no. 2:20-cv-00619-GMN-BNW

STATEMENT OF THE CASE

Petitioner was charged by second amended information with three counts of LL molestation involving different victims, one allegedly occurring on or about June 1, 2012, the others "about a year ago." In pretrial ruling, the trial judge granted the defense motion to sever the three counts for trial, but ruled the evidence on the severed counts admissible at trial on any single count.

Petitioner proceeded to trial on January 30, 2014, on count two which involved L.C. The other two complainants on the other counts testified as collateral crime witnesses, as did the alleged victim of an offense charged under a different case number. Petitioner was found guilty of LL molestation as charged in count two. He was sentenced to life in prison. The other alleged offenses charged against him were nolle prossed by the State.

Petitioner appealed his judgement and sentence to the Florida First District Court of Appeal. (1 D14-1158) Petitioner's judgement and sentence were affirmed with a written opinion, including a dissent, on December 18, 2015. The Court's mandate was issued on February 2, 2016.

Petitioner filed a motion to invoke the jurisdiction of the Florida Supreme Court. (SC 46-175) After reviewing jurisdictional

briefs, the Florida Supreme Court declined jurisdiction.

Petitioner sought certiorari review by this Court. (16-6397.) The State of Florida filed a brief in opposition and this Court declined review on April 17, 2017.

Petitioner filed a motion for postconviction relief on March 30, 2018. His motion was denied, after an evidentiary hearing, on May 30, 2019.

Petitioner appealed the trial court's denial to the Florida First District Court of Appeal. (1D19-2352) The First District issued a per curiam affirmed opinion on February 19, 2020. The court's mandate was issued on March 12, 2020.

Petitioner filed his §2254 petition for writ of habeas corpus on June 19, 2020 in the U.S. Northern District of Florida. The State of Florida filed a motion to dismiss as untimely on October 28, 2020. The Northern District granted the State's motion on April 5, 2021 (Appendix A, B, C, D, E).

Petitioner moved for a Certificate of Appealability from the U.S. Eleventh Circuit on June 11, 2021. (Appendix F) On August 26, 2021 the Eleventh Circuit denied the request, (Appendix G) Petitioner moved to reconsider or abate pending resolution of Judicial

Conflict on September 8, 2021. (Appendix H)
The Eleventh Circuit denied the motion on
October 1, 2021. (Appendix I)

ISSUE ONE

WHETHER COVID-19 QUALIFIES AS AN
EXTRAORDINARY CIRCUMSTANCE FOR
EQUITABLE TOLLING IN THE INSTANT
CASE; CONFLICT ESTABLISHED

Carter v United States, 2021 U.S. Dist.

Lexis 94475, WL 1978697

Case No. C20-1654 MSP

and

Zuniga v Bean, 2021 U.S. Dist.

Lexis 76285, WL 1565783

Case No. 2:20-cv-00619-GMN-BNW

ARGUMENT

Petitioner asserts that the Federal Courts were misplaced in determining that the COVID-19 restrictions did not qualify as an "extraordinary circumstance" warranting "equitable tolling."

In their motion to dismiss, Respondents opined that equitable tolling was not applicable to the instant case because COVID-19 was not an extraordinary circumstance.

The District Court determined that Petitioner had not made a substantial showing that he was sufficiently hindered in preparation of submitting a §2254 Petition for Writ of Habeas Corpus under the time restraints instituted by the AEDPA. They further agreed with the State that COVID-19

* having been put in place by memorandum from the office of the Secretary of the Department of Corrections prior to the press release.

was not an extraordinary circumstance warranting equitable tolling.

The Petitioner whole-heartedly disagrees.

To support their cause, Respondents cite press releases from the Florida Department of Corrections website to establish dates of implementation of various institutional policies and restrictions. These dates are misleading at best and deceptive if accepted at face value. From the perspective of the petitioner, who was living through the situation every day, the press releases merely formalized conditions which were already existing, ^{* see above}

In these press releases, the Florida DOC states that "legal visits would not be impacted by the visitation suspension." Respondent further stated "As a result, this Court should not excuse Petitioner's failure to timely file his Federal Petition for writ of habeas corpus."

Respondent failed, maybe inadvertantly, maybe not, to advise the District Court that every other institutional law library was also shut down. This occurred the day before the Florida First District Court of Appeal issued its mandate in the instant case (March 12, 2020). Further, ~~Petitioner~~ Respondent and ultimately the U.S. District Court failed to consider the effect of statewide travel and movement restrictions established by order of Governor DeSantis on March 9, which prevented in person consultation between Petitioner and his legal

advisor. Even video conferencing was not possible due to institutional quarantine restrictions. In effect, with an eighteen day deadline, Petitioner was compelled to rely on the U.S. Postal Service to seek or receive legal advice, each round-trip mailing requiring an eight to ten day turnaround time. Electronic communication of any kind was impossible.

Petitioner also submitted a statement from the Law Library Supervisor Hatcher "that the access to the Northwest Florida Reception Center Main Unit Law Library is limited to only court ordered deadlines, due to the COVID-19 pandemic..."

The statement notes that numerous housing units have been on quarantine and "that inmates under quarantine have had limited, or no access to the law library due to the COVID-19 pandemic."

The statement fails to take notice that, since the law clerks that worked in the library were also under quarantine and were prohibited from leaving their housing units, even inmates that were able to reach the library received severely limited services. This had become apparent to Petitioner as early as March 4, 2020, prompting him to seek an extension of time to file any subsequent actions. (Appendix J) Had Petitioner been able to consult with his legal counsel, or even one of the Law Library clerks, he would have been able to learn about prospective equitable tolling and would have filed such a motion. This guidance was denied to the Petitioner because of the effects of the COVID-19 pandemic.

During this time frame from March 9, 2020 to June 2020, Petitioner was under an institutional medical quarantine. There was no movement within the institution and as a result Petitioner had no access to his legal documents which were required to be stored in the Law Library. Magistrate Timothy opined that Petitioner needed to merely copy one claim to another on the form, which, at that time, Petitioner was also unable to access. (Appendix A) While this arguably could be so, Petitioner would first have to have access the Petition guidelines form and to his legal documents stored in the Law Library. Even without the medical quarantine, at NWERC Main Unit a litigator had to actually provide a court order. Deadline by rule, whether it be Federal or State rule, were not being recognized by staff, all because of the COVID-19 restrictions instituted by memorandum from Mark Inch. Had COVID-19 not occurred, Petitioner would have timely filed because he would have not have been barred from accessing his legal materials in the Law Library storage. Had the institution recognized the Rule of Law, i.e. the AEDPA as a court ordered deadline, Petitioner still might have been able to timely file his §2254 petition, although other institutional restrictions would still likely have prevented this. The crux of the matter is that Petitioner could not, through no fault of his own, file his §2254 petition on time due to COVID-19. Therefore, COVID-19 is an extraordinary circumstance which warrants equitable tolling.

There are two recent cases which conflict with the instant case; Zuniga v Bean, 2021, WL 1565783, Lexis 76285, case no. 2:20-cv-00619-GMN-BNW, which in part states the following. "When faced with a short deadline, the usual practice of the Federal Public Defender is to quickly file a timely amended petition, effectively a rough draft based upon a brief initial investigation, to which later amended petitions can relate back. Counsel also usually asks for leave to further amend the petition after a full investigation. The problem now for counsel is even that practice is now difficult to impossible, The problem is the COVID-19 pandemic." (Section III Discussion)

If trained legal counsel faces such an impossibly extraordinary circumstance, one must concede the impossibly extraordinary task facing a pro-se litigant with no legal training who doesn't even know what equitable tolling is and has no way to quickly learn. To the Petitioner's limited knowledge there would be only one opportunity to research and produce perhaps the most important legal document they would ever submit. It is grossly unfair to flippantly suggest that they should submit a "bare bones" version with no opportunity to consult trained legal counsel, not even an inmate law clerk.

The second and perhaps even more telling conflict: Carter v United States, 2021, WL 1978697, Lexis 94475, case no. 20-1654 MJP, in a section labeled ANALYSIS, subsection B, Timeliness of Petition,

"Although Carter's petition is untimely, the Court may accept it under the doctrine of equitable tolling... the Court finds that equitable tolling excuses Carter's tardy petition. The Court finds that extraordinary circumstances - the COVID-19 pandemic - stood in Carter's way from filing this petition a month earlier. Acting pro-se, Carter avers that he has been without access to a law library due to the pandemic-related lockdown, and he asserts that this impeded his ability to file this in a timely manner.... The government believes there is insufficient evidence to this effect. The Court disagrees. While Carter has not provided great detail about how the COVID-19 pandemic impacted his filing efforts, the Court accepts his averment that the pandemic^{has} frustrated his access to the law library and that this prevented his filing a month earlier."

Conflict is also established by several Federal District Court cases from 2020: Dunn v Baca, 2020, WL 2525772, case no. 3:19-cv-00702-MMD-WGC, stating that "The Court finds that under the extraordinary circumstances of the COVID-19 pandemic, equitable tolling for a fixed time... is warranted." (Section I Summary); "The extraordinary circumstance of the COVID-19 pandemic is ongoing, and at the moment is preventing Dunn from filing a timely amended petition." (Section III Discussion); It is therefore ordered that Petitioner's motion for equitable tolling due to COVID-19 (ECF no. 11) is granted." (Section IV Conclusion). Zuniga v Bean and Dunn v Baca are from the Nevada District.

In the California District E.D.; Brown v Davis, 2020, 482 F. Supp. 3d 1049, case no. 1:19-cv-01796-DAD.

Holdings 3) petition deadline would be tolled due to impact of COVID-19 pandemic. Discussion 4)... a literal impossibility to file, however, is not required. Grant v Swarthout, 862 F.3d 1104 1107 (9th Cir. 2017) stating that equitable tolling is appropriate even where "...it would have technically been possible for a prisoner to file a petition" so long as the prisoner "would have ~~been~~ likely been unable to do so." Discussion 14)... the COVID-19 pandemic makes it unlikely and very well impossible that a comprehensive federal habeas petition in this case can be completed and filed prior to the requested, as tolled, deadline of June 1, 2021.

McWhorter v Davis, 2020, WL 59432354, case no. 1:20-cv-00215-NONE, ORDER GRANTING EQUITABLE TOLLING..., the court finds the pending motion amenable to decision without a hearing. For the reasons explained below, the court will grant equitable tolling of the applicable statute of limitations to and including March 31, 2021... In the Discussion section the Court also cites Grant v Swarthout (see previous at Discussion 4)). Also appearing in the discussion, "The court has granted specific prospective equitable tolling on grounds that the COVID-19 pandemic, in its present form, has presented an extraordinary circumstance that impeded timely filing of a complete federal petition."

In the Ohio District S.D. Western Division:
Dawson-Durgan v Warden, Warren Correctional

2020

Institution, W2 4745170, case no. 1:19-CV-382, in the ORDER AND REPORT AND RECOMMENDATION Section *1. "In response to the Report and Recommendation, petitioner has provided an Ohio Supreme Court Entry regarding the tolling of the statute of limitations and time limitations under the Ohio Revised Code due to the COVID-19 pandemic. In addition to tolling applicable limitation periods and time limits, the Entry indicates that "the Court will... grant reasonable requests to extend the time for filing any type of document, provided that the request is necessitated by the COVID-19 emergency. A party may also file a motion for leave to file out of time, and the Clerk shall accept the motion if the delay in filing is due to the effects of or measures necessitated by the COVID-19 emergency." And in Section *3, "Accordingly, in sum, after weighing the Rhines factors, for good cause shown, and out of concern that the ~~denial~~ dismissal of the petition at this juncture might unreasonably impair future federal review of any of petitioners grounds for habeas corpus relief, it is RECOMMENDED that the petitioners motion for stay and abeyance (Doc. 14) be GRANTED and that the instant proceedings be STAYED,...

The Ohio courts are proactively dealing with COVID-19 pandemic emergency contingencies. The Florida courts refuse to do so, denying that any such emergency or extraordinary circumstances even exist.

Finally, in a case from the United State Court of Appeals, First Circuit: James v Garland, 2021, 16 F. 4th 320. From the Opinion Section, "After an Immigration Judge (IJ) ordered petitioner Andrea Joy James removed from the United States, the Board of Immigration Appeals (BIA) dismissed James's appeal as untimely. In so doing, the BIA failed to address James's request to apply equitable tolling in assessing whether her appeal was timely. For that reason, we vacate the BIA's dismissal of James's appeal and remand for the BIA to assess in the first instance whether the thirty-day time limit for appealing the IJ's order should have been equitably tolled so as to render James's appeal timely. Our reasoning follows." From the Opinion Section *322, "By the time of James's removal hearing, the World Health Organization and the United States had declared COVID-19 a public health emergency." [hearing date was February 19, 2020]... "On March 10, 2020, just ten days before James's appeal deadline, the Governor of Massachusetts declared a state of emergency due to COVID-19.... Within days, the World Health Organization declared COVID-19 a pandemic, and the United States declared COVID-19 a national emergency...." From the Opinion Section, sub-section - V, "For the forgoing reasons, we vacate the BIA's order of dismissal and remand to the BIA for it to determine in the first instance whether James's case presents circumstances warranting equitable tolling...."

while this final citation might not present

a source of conflict with the instant case, it does demonstrate that in at least one U.S. Circuit Court even a non U.S. citizen can prevail in the face of the extraordinary circumstances surrounding the COVID-19 pandemic emergency.

In Carter v United States the Washington District Court found that even though Carter had not provided great detail about how COVID-19 had impacted his filing efforts the Court accepted his argument. Contrarily, not for the first time, the Florida U.S. District Court and the U.S. Court of Appeals, Eleventh Circuit are holding their litigators to a much more stringent standard than what equitable tolling calls for. As noted in a June, 2010 decision by this esteemed U.S. Supreme Court: Holland v Florida, 130 S.Ct. 2549, No. 09-5327, in a section titled Held: in Subsection b) 'The Eleventh Circuit's per se standard is too rigid. A "petitioner" is "entitled to equitable tolling" 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. Pace v DiGuglielmo, 544 U.S. 408, 418, 125 S.Ct. 1807, 161 L. Ed. 2d 669. Such "extraordinary circumstances" are not limited to those that satisfy the Eleventh Circuit's test.'

No jurist, reasoning honestly, could conclude that the confusion, lockdowns, and quarantines which affected the entire fabric of civil society, especially during the early stages of the pandemic,

did not also affect legal filings all over the nation. Further, no person could expect someone to copy from documents which they do not have in their possession and which are locked in a storage room to which no access is granted during a medical quarantine. Such an expectation is patently unreasonable.

The lower courts' failure to apply equitable tolling to the instant case violates Petitioner's First Amendment Right to access the courts, as well as his Fifth and Fourteenth Amendment rights to due process. It would be cruel and unusual punishment to penalize Petitioner for matters outside of his control.

As it stands, Petitioner filed his § 2254 Petition for Writ of Habeas Corpus as soon as he possibly could, even though it was technically eighty days late.

A grave injustice has occurred and it is incumbent upon this Court to review and to issue a written opinion to correct the manifest injustice and resolve the conflict. Here, the Petitioner was wholly prevented from filing his § 2254 petition timely due to factors over which he had no control. To penalize him for this goes against the ends of fundamental fairness and jeopardizes the very foundation of justice.

CONCLUSION

WHEREFORE, Petitioner respectfully requests this Honorable Court to hear and rule that he is entitled to equitable tolling due to COVID-19 restrictions which prevented him accessing his active legal materials which he was required to keep stored in the Law Library and which were essential to preparing and filing a § 2254 Petition for Writ of Habeas Corpus.

Respectfully submitted,

Stephen Hanf

Stephen Hanf, pro se