

No. 21-7728

IN THE
SUPREME COURT OF THE UNITED STATES

Antonio M. Branco - Petitioner

VS.

Commonwealth of Massachusetts - Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING
Supreme Court Rule 44.2

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No. 21-7728 Branco V. Commonwealth of Massachusetts

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING
Supreme Court Rule 44.2

The Petitioner-Appellant presents his Petition for a Rehearing of the above-entitled cause, and, in support of it, respectfully shows:

GROUND FOR REHEARING

A Rehearing of the decision in the matter is, in the interests of justice because denial of Certiorari has left unaddressed questions and conflicts, across Federal Circuits, that essentially relegates to the abuses of arbitrariness this Courts rulings on Issue(s) of what constitutes a Violation of Due Process, as well as this Courts prior rulings on applicable 28 USC § 2254(b)(1)(B)(ii) exemptions that excuse exhaustion of state remedies.

1. On May 31, 2022 the Court denied the Petition for Writ

of Certiorari. A copy of this Most Honorable Courts ruling is appended hereto.

2. The Petitioner has received no indication of the Court's grounds-reasons for denial, (which essentially affirms the lower courts decision to affirm dismissal of Petitioner's § 2254 Petition Writ for Habeas Corpus on procedural grounds, that Petitioner had failed to exhaust state remedies, or explain any denial of Due Process; the lower courts affirm ruling citing *Layne v. Gunter* 559 F2d 850 (exhaustion) and *United States v. DeLeon* 444 F3d 41 (Due Process).

3. The Courts 5-31-22 ruling came as a surprise and disappointment to the Petitioner. The Petitioner had thoroughly prepared and submitted persuasive Grounds-Reasons for granting Certiorari on questions of crucial importance across all Federal Circuits.

4. This case, like countless others across all Circuits, contains several critical factual and procedural distinctions clearly distinguishing it from the "one size fits all" *Lane* 559 F2d case, that warrant its determination by a different, or at least altered, rule.

5. The Petitioner distinguishes this case from the aforementioned lower courts cited cases, and respectfully suggests that this case should be determined by the First Circuit cases *Olden v. Moore* 445 F2d 806 and *Rivera v. Conception* 469 F2d 17, as well as by *Shelton v. Heard* 696 F2d 1127, and this Most Honorable Court's rulings in *Armstrong v. Manzo* 380 US 545, *Bartone v. United States* 375 US 52, and *Mathews v. Eldridge* 424 US 319. Clearly and conclusively, the Petitioner showed, on the record, compelling evidence of excessive state system direct appeal process Delay, wholly attributable to the state. Second, the Petitioner presented to lower courts ample evidence of his exhaustive diligent efforts to pursue state remedies, as ample reasons for excusing exhaustion of state remedy pursuant to 2254(b)(1)(B)(ii) exemptions. Third, the Petitioner presented clear and compelling precedent, of binding nature, that backed-supported clear evidence of the denial of Due Process by the state system and that systems excessive direct appeal process Delay. The aforementioned are just three crucial factual and procedural distinctions

that clearly distinguish this case from the lower courts cited cases, and that compellingly align it with the Odsen, Rivera, Shelton, Armstrong, Bartone, and Mathews cases.

6. In this Courts Bartone ruling, the Court noted that cases with the aforementioned factual and procedural distinctions, should be treated by a markedly different rule of law, from those properly applicable to cases such as the Layne 559 F2d or United States 444 F3d cases, that the lower court, in its order, stated was controlling in this case. Contrast that lower court order with this Courts ruling in Bartone 375 US at 54 where the Court holds, "Where state procedural snarls or obstacles preclude an effective state remedy against unconstitutional convictions, Federal Courts have no other choice but to grant relief in the collateral proceeding." citing Fay v Noia 372 US 391 (1963). And in the Courts landmark century old Armstrong case, the Court also laid the foundational pillar upon which Due Process would forever be measured by.

7. Given that Habeas Corpus Congress given reason-purpose, is to provide remedy from wrongful incarceration, and prevent people from being unlawfully imprisoned; and given that this Court has

ruled that states (which by their laws provide state direct appeals) must grant those appeals in a Constitutionally comporting manner to prisoners whose convictions - sentences are not final, and are to that point merely provisional; and given that the Court in *Armstrong and Matheus*, has long held that, such requires and includes, that those appeals comport with requirements of Due Process, that mandates all Appeals be processed in a "Meaningful Manner and at a Meaningful Time"; the reasonably prudent person and or jurist can and would unquestionably presume that, a state direct appeal which is not completed by (at the very latest) the midway point of a prisoners sentence, Violates Due Process. In the matter at bar (as with countless other cases effecting prisoners across all Circuits), the state direct appeal was NOT completed by anywhere close to that midway point of the Petitioners sentence. In fact (undisputed) that "appeal" was not even begun, or even as much as docketed, by that watermark-threshold midway point of the Petitioner's sentence. Note that the state courts 8-4-20 docketing, merely beginning an appeal process from a conviction and sentence (6 years),

that given 4-9-16 sentence commencement, had a Good Time Earned adjusted midway point of December 2018. In the matter at bar a Constitutionally comporting state direct appeal, given the six year sentence begun on 4-9-16, required completion of that appeal by December 2018 not docketing in August 2020. The state system failed, Violating Petitioners Constitutional Rights. Put numerically, by the time the state system merely proceeded to begin an appeal process that the Due Process Clause to the U.S. Constitution requires have been completed by December 2018, the Petitioner in August 2020 had already served 92 (ninety-two) percent and approximately 70 (seventy) percent of his minimum-maximum sentences respectively. That undisputed (indisputable) fact can hardly be said to comport to (be) Due Process.

Excessive state direct appeal Delay Violates Due Process precisely because, any appeal (from conviction-sentence) that is processed in the latter part of a prisoners sentence (in case at bar, merely starting the appeal process only after the Petitioner had already served 92 and 70 percent of his minimum-maximum sentences respectively) is essentially a meaningless

Headnote ① That "definitively" interprets the "Meaningful Time" component of this Court's Armstrong Ruling.

appeal, by that point a "hollow platitude"; if the purpose of the Appeal is really to serve its intended purpose of providing remedy from wrongful imprisonment that includes release from that imprisonment.

8. This case puts before this Most Honorable Court substantial Issues and controlling Precedent as reasons for the Court's intervention on the unsettled Question concerning the Constitutionally protected Right to Due Process. A Re-hearing tightly and squarely focused on the distinctions between this case and the United States 444 3d case, wrongfully relied upon by lower court, and whether these distinctions merit a different Rule of Law, ① IS a matter of fundamental fairness to Petitioners across all Federal Circuits, a matter of sound and just Public Policy, and would not unduly burden the Court. As the Court states and holds in Armstrong at 552, "The fundamental requirement of Due Process is the opportunity to be heard at a Meaningful Time, and in a Meaningful Manner." The Court further holding "Due Process is an opportunity which

must be granted at a Meaningful Time." Justice for all, "Liberty for all Just Persons," and Public Policy, rightfully all yearn for the Courts Honorable interpretation of "Meaningful Times" "meaning".

9. This Most Honorable Court's Burton ruling clearly prescribes that, the state systems excessive appeals process Delay (in this case) constitutes "snarls in that system," that exempt any requirement to exhaust state remedies, fitting the conditions for exemption found in 28 USC § 2254(b)(1)(B)(ii). However that Burton ruling is habitually being ignored and discarded by the lower courts, including some Federal Circuits, in defiance of the Court's established and Binding Precedent on the matter.

10. Equally crucial, is for the Court to finally Rule on what constitutes a "Meaningful Time," within the Court's interpretation - defining Due Process in both the Armstrong and Mathews Court Rulings. Those Rulings have long established that Due Process is the opportunity to be heard in a Meaningful Manner and at a "Meaningful Time".

Currently, conflict and inconsistency exists, amongst the Federal Circuits, particularly with regards to the Meaningful Time Factor. That relegates to arbitrariness and abuse the Courts rulings in *Armstrong* and *Mathews*.

11. This Most Honorable Court has not yet settled the question of: what constitutes the Meaningful Time portion - factor of the Courts Ruling defining Due Process, the Constitutionally protected Right under both the V and XIV Amendments to the Constitution of the United States of America. The "time" is now, that this crucial question should finally at long last be settled as Law by this Most Honorable Court.

12. The Court has interpreted and defined the Due Process clauses of the V and XIV Amendments as consisting of two factors, (a) opportunity to be heard in a meaningful manner, and (b) opportunity to be heard at a "meaningful time." Conflict among the Federal Circuits, as to the interpretation of those two Due Process factors (particularly the Meaningful Time factor), has discriminately subjected

countless numbers of persons imprisoned, to Violation of their Constitutionally protected Rights to Due Process. In the case at bar, the Petitioner has suffered unjustifiable state system caused excessive Delay, in process of his state direct appeal from unlawful conviction - sentence. That Inordinate and Excessive Delay amounts to nearly the entire term of the Petitioners unlawful imprisonment from unlawful conviction. That can hardly be considered as in any manner comporting with the Constitutionally Protected Right to Due Process.

13. In a Petition for Writ of Habeas Corpus, pursuant to 28 USC § 2254, that concerns itself with relief from oppressive imprisonment (that is the result of unlawful prosecution - as is the fact and case in the matter at bar), the "Time" element "Meaningful Time" is the all critical Due Process factor that must be considered for interpretation and definitive settling by the Court. And that factor remains undefined by the Court, and by the Court's Rulings defining Due Process in the

Armstrong and Mathews Courts Rulings, those prescient Rulings thus relegated to the abuses of arbitrariness, which can hardly be perceived or known to resemble, in any form, Justice, or lawful process.

The settlement of that point is critically important to protecting the Constitutional Rights of all prisoners, and, the Petitioner argues, the whole of Public, as Violation of any Constitutional Right has the effect of Violating the Aggregate of Rights. As the Federal Court in *Rheavark V Shaw* 628 F 2d 297 states at 303 "Criminal Appellants often languish in prison or jail, vegetating while they await the outcome of their appeals.. if an appeal is not frivolous, a person convicted of a crime may be receiving punishment the effects of which can never be completely reversed, or living under the opprobrium of guilt when he or she has never been properly proven guilty and may indeed be innocent under the law.... The cancerous malady of decay which haunts our judicial system by postponing the rectification of wrong and

Headnote ② [But those Principles are not being adhered to, and as if the Wild Wild West are being violated by the lower courts.]
the vindication of those unjustly convicted must be

excised from the judicial process at every stage. //

14. The Principles held to by this Most Honorable Court

in Armstrong, Bartone, and Mathews, are consistent

with the language of Congress in 28 USC § 2254 (b)

(1)(B)(ii), are of such importance that existing unjust conflict, in the interpretation of those

Principles, should be resolved by the Court. It is

important that this Most Honorable Court reiterate

the Principles the Court holds to in Armstrong,

Bartone, and Mathews by at long last settling the

existing conflict in interpreting those Principles

(in the various lower courts and Circuits) by defining,

resolving, and giving meaning to the Meaningful Time

Factor of Due Process.

15. At current, "There is no Supreme Court decision holding

that excessive Delay in a state direct appeal is in

Violation of the Due Process Clause of the United

States Constitution." quoting Reed V. Quarferman

Headnote ③ But the lack of a decision by this Most Honorable Court in no way indicates excessive Delay does not Violate Due Process. It just means the Court has yet to settle the Issue..

504 F3d 465 (11th Circ). However the Reed Court continues

"...a majority of Circuit courts have held that the principle(s) that excessive Delay (appellate) may Violate the Due Process Clause is a logical application of Supreme Court precedent."

For instance, the Third Circuit in *Burkett v. Cunningham* 826 F2d 1208, in the matter of excessive appellate Delay and correct interpretation of this Courts Ruling in *Armstrong*, holds that the "Due Process Clause guarantees a reasonably speedy appeal if the state has chosen to give defendants the right to appeal." The Petitioner adds to that the fact that Excessive appellate Delay, in order that any Ruling on its implications on Due Process not contradict the language of this Most Honorable Court in *Armstrong* and *Mathews*, cannot but be found to be indisputably in Violation of Due Process. Any other Ruling would be a contradiction of Law and simply illogical. The current lack of any clarity on this important Issue, and in fact the absense of any Ruling whatsoever, particularly with the clarity of specificity on question of "what constitutes the

Meaningful Time Factor" of this Courts definition of "Due Process", constitutes a loophole that is arbitrarily abused to the great prejudice of countless imprisoned and in the aggregate the Public as a whole; AND it is clear evidence of a gaping hole in the Law, that unless filled by this Most Honorable Courts head on settling of the question, renders at least this part of the Law and our legal judicial system (if not the entire system in aggregate) to lawlessness.

16. As this Most Honorable Court has held in Universal Camera Corp V. NLRB 340 US 474 "a clash of opinions in Courts of appeal requires Settlement of question by Supreme Court of the United States."

There is no doubt that the question of paramount importance as relates to this Courts definition of Due Process in Armstrong and Matthews, that is "What is a Meaningful Time" can be easily settled and answered with the clarity that is reserved for the Honor of this Court. There is also no doubt that the

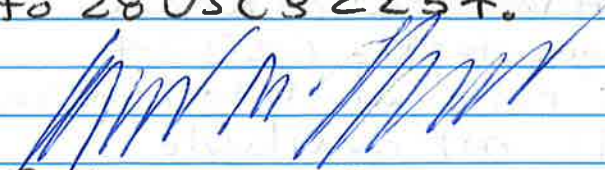
question, which is of paramount importance, remains unanswered, unsettled. That presents to the Court this clear Question matter, of both gravity and general importance, that poses a matter of significance to countless Petitioners across all Federal Circuits, for which unresolved conflict remains a question that this Most Honorable Court should finally resolve; for the sake of uniform on point Rule, and for the sake of Justice and Liberty for all Righteous.

CONCLUSION

For the reasons just stated, Antonio M. Branco, the Petitioner, humbly and respectfully urges that this Petition for a Rehearing be Granted, and that, on further consideration, the Petition for Certiorari be Granted or the judgement of the lower court reversed and remanded to the District Court for judgement on the full Merits of the Writ for Habeas Corpus pursuant to 28 USC § 2254.

Respectfully submitted,

by Pro Se Petitioner,
this 23rd day of June 2022


Antonio M. Branco