

No. **22-5255**

**ORIGINAL**

In The  
Supreme Court of the United States

*Selwin Martin*

SELWIN MARTIN,

Petitioner;

v.

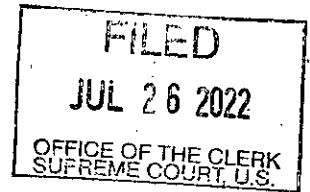
ADMINISTRATOR NEW JERSEY STATE PRISON, ET AL.

Respondent.

On Petition For A Writ Of Certiorari  
To The United States Court of Appeals  
For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Selwin Martin ##666997/509251C  
New Jersey State Prison  
P.O. Box 861  
Trenton, New Jersey 08625



QUESTION PRESENTED

1.) Whether the District Court and the Third Circuit Court of Appeals Err in dismissing the Petitioner's Petition for a Writ of Habeas Corpus as Untimely.

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### OPINIONS BELOW

The United States District Court of New Jersey dismissed petitioner's petition for a writ of habeas corpus as untimely in an Order on March 15, 2017. **(See Appendix - Ex - 1)**

The United States District Court of New Jersey dismissed petitioner's petition for a writ of habeas corpus as untimely in an Opinion on March 15, 2017. **(See Appendix - Ex - 2 to 13)**

The United States Court Of Appeals for the Third Circuit filed an order on December 11, 2019, granting the Petitioner's notice of appeal and the petition for a Certificate of Appealability. **(See Appendix - Ex - 14 to 15).**

The United States Court Of Appeals for the Third Circuit filed an order and opinion on January 21, 2022, affirming the United States District Court of New Jersey dismissal of the Petitioner's petition for a writ of habeas corpus as untimely. **(See Appendix - Ex - 16 to 44).**

The United States Court Of Appeals for the Third Circuit filed an order on May 3, 2022, denying Petitioner's petition for a rehearing En Banc. **(See Appendix - Ex 45 to 46)**

### JURISDICTION

The Third Circuit entered its order affirming the United States District Court of New Jersey dismissal of the Petitioner's petition for a writ of habeas corpus as untimely, which served as the court's judgment, on January 21, 2022. Thereafter, on May 3, 2022, the Third Circuit denied a timely petition for rehearing and rehearing en banc. This Court has jurisdiction under 28 U.S.C. §1254(1) to review the Circuit Court's decision on a writ of certiorari.

## CONSTITUTIONAL PROVISION INVOLVED

### Amendment 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

### STATEMENT OF FACTS

Petitioner Selwin Martin was indicted in Camden County under Indictment No. 98-09-3108. He was charged with and convicted of murder in Count One; felony murder in Count Two; kidnaping in Count Three; criminal restraint in Count Four; possession of weapon for an unlawful purpose in Count Five; unlawful possession of a weapon in Count Six; attempted murder in Count Seven; and conspiracy to commit murder in Count Eight and sentenced to life with a thirty-five year period of parole on October 15, 1999.

On September 21, 2001, the New Jersey Superior Court, Appellate Division affirmed the Petitioner's convictions. On January 10, 2002, the New Jersey Supreme Court denied the Petitioner's petition for discretionary review.

On April 10, 2002, the Petitioner's deadline to seek certiorari from the United States Supreme Court expired (he did not seek a writ of certiorari), thus rendering his conviction final for purposes of the Anti-Terrorism and Effective Death Penalty Act. (Hereafter "AEDPA"). Under AEDPA, the Petitioner had one (1) year from the final date of his conviction to file a petition for a writ of habeas corpus in federal court. 28 U.S.C. §2244(d)(1)(A). This time limit would be tolled while the Petitioner pursued collateral post-conviction relief in the state courts of New Jersey.

On October 21, 2002, the Petitioner filed a petition in New Jersey state court for post-conviction relief, thus tolling his AEDPA limitation. On April 30, 2004, the Camden County Superior Court denied the Petitioner's petition. The Petitioner's

attorney agreed to file an appeal from the denial of the petition for post-conviction relief.

Therefore, June 14, 2004, would have been the last date the Petitioner could have filed a timely appeal of the Camden County Superior Court decision. Despite several repeated efforts to stay on top of his lawyer to make sure the appeal was filed, no appeal was ever filed. After four attempts over an eighteen month period, the Petitioner was led to believe that an appeal was filed and pending.

During all this time, the Petitioner was moved to a federal prison to serve an unrelated sentence. After returning to the New Jersey prison system, the Petitioner inquired about the status of his appeal that he believed was still pending.

Being that the Petitioner's Post-Conviction attorney never provided him with a copy of the order denying his petition for Post-Conviction relief, he was forced to write a letter to the court in order to receive a copy of the Post-Conviction relief denial. When the Petitioner determined that his appellate counsel had not filed his appeal, the Petitioner took it upon himself to file a pro-se appeal in the New Jersey Superior Court, Appellate Division. The Petitioner also filed a motion in the Appellate Division to recognize his appeal as within time.

The Appellate Division granted the motion, but denied the appeal on the merits on December 18, 2014. The Petitioner then filed a petition for certification in the New Jersey Supreme Court for a discretionary review, but April 30, 2015, the New Jersey Supreme Court denied his application.

On June 12, 2015, the Petitioner filed a petition for a writ a habeas corpus in the United States District Court of New Jersey. This petition raised five grounds: **GROUND ONE:** Because Defendant Was Tried Jointly With His Brother, Who Was Also His Co-Defendant, The Ineffective Trial Performance Of Co-Counsel Irreparably Tainted Defendant's Right To A Fair Trial; **GROUND TWO:** The Defendant Was Denied His Right To Due Process Of The Law, Right To A Fair Trial And To The Effective Assistance Of Counsel Under The State And Federal Constitutions Since Trial Counsel Failed To Motion The Court To Grant An Order Excluding The Identification Of Peter Brown And Shantay Elliott And The Court Failed to Grant Such An Order; **GROUND THREE:** Defendant Was Denied The Effective Assistance Of Trial Counsel, in Contravention Of The Sixth And Fourteenth Amendments To The United States Constitution and Article 1, Paragraph 10 of The New Jersey Constitution, Since Trial Counsel Failed to Move Sever The Trial; **GROUND FOUR:** Defendant Was Denied the Effective Assistance of Trial Counsel, in Contravention Of The Sixth And Fourteenth Amendments To The United States Constitution and Article 1, Paragraph 10 of The New Jersey Constitution, And Right To A Fair Trial And Due Process of The Law Under The Sixth Amendment And/Or The Fourteenth Amendment, Since Trial Counsel Failed To Move A Document Into Evidence Indicating That The Pager Did Not Belong to Him Or His Co-Defendant; **GROUND FIVE:** Defendant Was Denied the Effective Assistance of Trial Counsel, in Contravention Of The Sixth And Fourteenth Amendments To The United States Constitution and Article 1, Paragraph 10 of The

New Jersey Constitution, Since Trial Counsel Failed To Move For A Mistrial Based Upon The Improper Remarks Made During The State's Closing Arguments.

On March 15, 2017, the district court dismissed the petition for a writ of habeas corpus as untimely. Selwin Martin v. Stephen D'Illio, et al., No. 15-7158 (JBS), slip opinion (March 15, 2017). Petitioner filed a timely notice of appeal and a petition for a certificate of appealability (COA).

On December 11, 2019, the Third Circuit Court of Appeals Granted the Petitioner's application for a Certificate of Appealability.

On January 21, 2022, the Third Circuit Court of Appeals affirmed the March 15, 2017, District Court's decision for dismissal of the Petitioner's petition for a writ of habeas corpus as untimely.

On May 3, 2022, the Third Circuit denied a petition for rehearing and rehearing en banc.

## REASONS FOR GRANTING THE WRIT

### Point I

The District Court Erred by Not tolling the Petitioner's Habeas Limitation in Accordance with 28 U.S.C. §2244(d)(1).

Under 28 U.S.C. §2244(d), a prisoner in state-custody seeking federal habeas relief has one year to timely file his habeas writ petition. The one year runs from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." *Id.* at 2244(d)(1)(A). Additionally, the one year limitation tolls while "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending. *Id.* at 2244(d)(2).

Being that the Petitioner's application for State post-conviction relief was "properly filed" and remained "pending" throughout the entire time, the tolling provision 2244(d)(2) applies. Therefore, his petition for habeas relief filed on June 12, 2015 was actually timely.

The record is clear that being denied a State petition for collateral relief in 2004. A number of years passed before the Petitioner filed his appeal in 2012. Nonetheless, the New Jersey Appellate Court accepted his 2012 filing "as within time." It is important to note here that the New Jersey Appellate Court neither granted a motion to file his appeal "nunc pro tunc," and nor did it grant a motion to consider his appeal on the merits notwithstanding its lateness. Nor is there record evidence that the Defendants waived the issue of timeliness in order to address

the Petitioner's claims on the merits. Rather, the Petitioner asked the court to accept his appeal "as within time," which the court granted the motion. Therefore, for purposes of Petitioner's state collateral litigation, his appeal was timely filed, which satisfied the obligation under AEDPA that it be "timely filed."

This Court has explained that "an application is 'properly filed' when its delivery and acceptance are in compliance with the applicable laws and rules governing filings" including "the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee." Artuz v. Bennett, 531 U.S. 4, 8 (2000). At issue here is whether the Petitioner's state-court appeal was timely filed. The State did not raise before the District Court any defects in the Petitioner's filing aside from its timeliness. Thus, if the Petitioner's filing was timely, it was also "properly filed."

"[A] petition filed after a time limit, which does not fit within any exceptions to that limit, is no more 'properly filed' than a petition filed after a time limit permits no exception." Pace v. DiGuglielmo, 544 U.S. 408, 413 (2005). The Petitioner's notice of appeal was indisputably filed after the deadline to do so under New Jersey law. However, unless the Petitioner's petition comes within an exception to New Jersey rules, it could not have been timely. However, in deciding whether the Petitioner's application fit into an exception, the District Court ignored the ruling of the New Jersey Appellate court, which

made it clear that the Petitioner's late filed appeal did fit into an exception. Instead, the District Court conducted a de novo review of this issue.

In keeping with the principles of comity and federalism inherent in AEDPA, this Court have repeatedly made clear that a state court's petition or appeal is properly filed if the courts of that state say it is properly filed. Inquiry into the question of whether a late filing was late or if a late filing fit into an exceptions" is only appropriate where the state court does not address the issue. "In the absence of . . . clear indication that a particular request for appellate review was timely or untimely, the Circuit must itself examine the delay in each case and determine what the state courts would have held in respect to timeliness." Evans v. Chavis, 546 U.S. 189, 198 (2006). "If the California Supreme Court had clearly ruled that Safford's 4½ month delay was unreasonable," that would be the end of the matter, regardless of whether it also addressed the merits of the claim, or whether its timeliness ruling was 'entangled with the merits. Carey v. Saffold, 536 U.S. 214, 226 (2002). "[I]f a state court fails to rule clearly on the timeliness of an application a federal court 'must . . . determine what the state court would have held in respect to timeliness.'" Jenkins v. Superintendent of Laurel Highlands, 705 F.3d 80, 85-86 (3d. Cir. 2013) (quoting Evans 546 U.S. 189).

Although it is not enough that the state court made a determination on the merits (there are many reasons why a state court might have adjudicated an appeal or collateral claim on the

merits despite an untimely filing, see Carey, 536 U.S. at 225-26) if the state court clearly determined that a filing was timely the federal court must not second-guess that determination. Furthermore, this Court has "repeatedly identified a state court's practice of accepting a pleading as an important indication that the pleading is properly filed." Jenkins 705 F.3d 87. Therefore, if a state court has a regular practice of accepting seemingly late-filed petitions as timely via a nunc-pro-tunc or similar procedure, this is an important indication that the state court considered the filing to be timely and that a federal court asked later to address a habeas petition should apply statutory tolling to such a claim.

In the Petitioner's case, there is no "absence of . . . clear indication" of the state court's determination as to the timeliness of the Petitioner's appeal. Evans 546 U.S. 198. The state court not only accepted the Petitioner's appeal and delivered an opinion on the merits, it expressly and plainly granted the Petitioner's motion to file his appeal "as within time." State v. Martin, No. A-3994-11T3, 2014 WL 7178019, at \*2 (New Jersey Super Court Appellate Division December 18, 2014). This ruling stands as a "clear indication" that the Petitioner's appeal was properly filed. Therefore, the district court should have treated that ruling as a dispositive resolution of that issue under New Jersey procedure. To do otherwise would effectively require a finding that a state appellate court, stating on the record that an appeal was filed "within time" was not a clear indication that [the] request for appellate review

was timely." Evans 546 U.S. 198. Such a finding would stand at odds with the record and the principles of comity, finality, and federalism that undergrid AEDPA.

Reasonable jurists could therefore disagree with the district court's decision that petitioner's petition was untimely. Carey v. Saffold, 536 U.S. 214, 226 (2002).

## Point II

The District Court Erred by Not Equitably Tolling the Petitioner's Habeas Limitation in Accordance with 28 U.S.C. §2244(d)(1).

The Petitioner was entitled to equitably tolling for the purpose of AEDPA is to "further the principle of comity, finality, and federalism." Williams v. Taylor, 529 U.S. 420, 436 (2000). In the habeas context, comity, and federalism forbid federal courts from "reviewing a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." Coleman v. Thompson, 501 U.S. 722, 729 (1991). This rule is not limited merely to substantive questions; it "applies whether the state law ground is substantive or procedural."

In the Petitioner's case, the federal law question which the district court resolved was whether the Petitioner procedurally defaulted on his petition for state collateral relief by delaying his filing. This was not, however, a question of first impression in this case. The New Jersey court reviewing the Petitioner's appeal granted his petition to file it as within time, effectively ruling that he was entitled to equitable tolling. By conducting a subsequent and separate equitable tolling analysis, the district court violated the core "principles of comity finality, and federalism" which Congress enshrined in the AEDPA.

Reasonable jurists could therefore disagree with the district court's decision that Petitioner's was not entitled to

equitably tolling for the purpose of AEDPA. Williams v. Taylor,  
529 U.S. 420 (2000).

### Point III

The District Court Erred by Conducting a De Novo Review of the New Jersey Appellate Court's Ruling.

The comity doctrine . . . . "teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter." Coleman, 501 U.S. at 731 (quoting Darr v. Burford, 339 U.S. 200, 204 (1950)). In the Petitioner's case at bar, the New Jersey Appellate court passed upon the Petitioner's motion to file his appeal as within time, and granted that motion. Although the record is bereft of an explanation as to why the Appellate Division granted the Petitioner's motion to file his appeal as within time, the only analysis which the court could have conducted is that laid out by the New Jersey Supreme Court in Molina.

Therefore, because a New Jersey court has already reviewed and ruled on the issue of timeliness, so it was not appropriate or permissible under AEDPA for a federal court with habeas jurisdiction to conduct de novo review. Given that the New Jersey court granted the Petitioner's motion and given that AEDPA deference and federalism required the district court not to overrule a reasonable holding by the state courts, it was error for the district court to reopen this question, and equitable tolling should have been applied to the Petitioner's case.

### CONCLUSION

For all of the foregoing reasons, this Honorable Court should reverse the Third Circuit Court of Appeals decision and the New Jersey district court decisions and remand this case back with instructions that the Petitioner's application for habeas corpus relief be adjudicated on the merits.

Respectfully submitted,

DATE: July 19, 2022

Selwin Martin  
Selwin Martin