

No. 22-5268

ORIGINAL

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

ANTHONY PETERS
Petitioner

vs.

TIMOTHY HOOPER, WARDEN
Respondent

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

PETITION FOR WRIT OF CERTIORARI

ANTHONY PETERS, #542955
PRO SE PETITIONER
MAIN PRISON EAST, SPRUCE -3
LOUISIANA STATE PENITENTIARY
ANGOLA, LOUISIANA 70712

QUESTIONS PRESENTED

(1) Whether a federal court lacks authority, on its own initiative, to dismiss a habeas petition as untimely, once the State's highest court has answered the petition answered the petition without consenting its timeliness and the prosecution's initial opposition to the federal habeas intelligently failed to address the limitations as a defense?

LIST OF PARTIES

Anthony Peters and the State of Louisiana are parties to this suit. To date, the State of Louisiana has been represented by the District Attorney's Office for the 19th Judicial District Court, thus has the responsibility for opposing the petition for *writ of certiorari*.

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Petitioner ("Mr. Peters") respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Fifth Circuit's affirmation of the district court's denial of his federal habeas petition under the guidelines set forth in U.S.C. § 2244(d)(1).

OPINIONS BELOW

The opinion of the Court of Appeals, No. 20-30098, affirming the District Court's decision is not published in the Federal Reporter, but is listed as a Westlaw citation under 2022 WL 2070397 and appears in Appendix A to the petition. The Court of Appeals granting COA is not listed in the Federal Reporter, but appears in Appendix A to the petition. The District Court's order is not published in the Federal Supplement, but is listed as a Westlaw citation under 2020 WL 522138 and the Magistrate Judge's Report and Recommendation is not published in the Federal Supplement, but is also listed as a Westlaw citation under 2019 WL 7822517 and both appear in Appendix B. The various state court opinions underlying the federal proceedings appear in Appendix C.

JURISDICTION

The Court of Appeals entered final judgment against Mr. Peters on June 8, 2022. As such, this Court has jurisdiction under 28 U.S.C. § 1254(1) and Rule 13.1 of the Rules of the Supreme Court of the United States. *See Hohn v. United States*, 524 U.S. 236, 253 (1998) (holding denial of COA reviewable).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part:

No person shall be . . .deprived of life, liberty, or property, without due process of law, . . .

Louisiana Code of Criminal Procedure, Article 926(A) states, in pertinent part:

“An application for post-conviction relief shall be by written petition addressed to the district court for the parish in which the petitioner was convicted. A copy of the judgment of conviction and sentence shall be annexed to the petition, or the petition shall allege that a copy has been demanded and refused.”

STATEMENT OF THE ISSUE

According to AEDPA, a “properly filed” state habeas application tolls the statute of limitations for filing a federal habeas petition. Mr. Peters filed a pro se state habeas application that complied with La C. Crim. P. Art. 926, except that it did not contain an attached copy of his judgment of conviction of sentence.

The issue in this writ of certiorari is whether the district court erred by considering *sua sponte* that the application was not “properly filed” even when the state's highest court does not require strict compliance to a “hyper-technical” violation of Art. 926 and elected to review Mr. Peters' application on the merits.

STATEMENT OF CASE

This writ of certiorari arises from the Court of Appeals' affirmation of the District Court's considering, *sua sponte*, that Mr. Peters' federal habeas petition was untimely under 28 U.S.C. § 2244 based on its holding that Mr. Peters was not entitled to statutory

tolling of the limitations period.

A. Statutory and legal background

1. AEDPA's one-year statute of limitations

The Antiterrorism and Effective Death Penalty Act of 1996 provides that “[a] one year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court. 28 U.S.C. §2244(d)(1); accord, e.g., *Osborne v. Hall*, 934 F.3d 428, 431 (5th Cir. 2019) (explaining that AEDPA “impose a one-year limitations period on federal habeas petitions filed by state prisoners”).

That one-year period begins to run, as relevant here, 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.” 28 U.S.C. §2244(d)(1)(A). When “a petitioner does not pursue direct review all the way to the United States Supreme Court, ‘the judgment becomes final at the expiration of the time for seeking such review’— when the time for pursuing direct review in [the U.S. Supreme Court], or in state court, expires.” *Thomas v. Goodwin*, 786 F.3d 395, 397 (5th Cir. 2015) (alteration in original) (quoting *Gonzales v. Thaler*, 565 U.S. 134, 150 (2012)).

2. Statutory tolling of the limitations period

AEDPA expressly tolls the one-year statute of limitations for filing a federal habeas petition while a petitioner pursues available state remedies. Under the statute,

“[t]he time during which a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.” 28 U.S.C. § 2244(d)(2).

Put differently, the “one-year period is statutorily tolled during the time that ‘a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending.’” *Leonard v. Deville*, 960 F.3d 164, 168 (5th Cir. 2020) (quoting 28 U.S.C. § 2244(d)(2)).

Hence, the key of this argument is whether a “properly filed” requirement was met.

B. Relevant procedural history

Because the crux of this writ is whether statutory tolling renders Mr. Peters' federal habeas petition was timely, the filing dates of Mr. Peters' direct and collateral review are critical.

1. Mr. Peters' state post-conviction proceedings

Direct appeal. In January of 2013, Mr. Peters was convicted in a Louisiana state court of second degree murder. On Mr. Peters' behalf, the Louisiana Appellate Project appealed to the Louisiana First Circuit Court of Appeal, which affirmed his conviction and sentence on April 17, 2014. Mr. Peters timely sought review from the Louisiana Supreme Court, which denied certiorari on March 6, 2015. Mr. Peters elected to forgo discretionary review from the United States Supreme Court; therefore, his conviction

became “final” for purposes of 28 U.S.C. § 2244(d) on June 4, 2015, ninety days later. *See Palacios v. Stephens*, 723 F.3d 600, 604 (5th Cir. 2013).

State habeas proceedings. Just a few weeks after the Louisiana Supreme Court denied review, on March 30, 2015, Peters timely applied for collateral post-conviction relief in the state trial court. The trial court commissioner concluded that Mr. Peters' state habeas application did not comply with Louisiana Code of Criminal Procedure Article 926 because a copy of his judgment of conviction and sentence was not attached to his application.¹ *See* State Court Record. Vol. I, at Tab 6A.² The state trial court, on the commissioner's recommendation, later dismissed Mr. Peters' state habeas for failure to comply with Article 926. Mr. Peters received notice of dismissal on December 28, 2015.

On January 22, 2016, Mr. Peters timely sought a supervisory writ from the Louisiana First Circuit Court of Appeal to challenge the dismissal of his state habeas application. He also moved to supplement the record in the appellate court so that he could include a copy of the judgment of conviction and sentence. The state intermediate appellate court denied a supervisory writ on July 29, 2016.

On August 31, 2016, Mr. Peters timely sought writ of certiorari from the
1 *See* La. Code Crim. P. art. 926(A) (“An application for post conviction relief shall be by written petition addressed to the district court for the parish in which the petitioner was convicted. A copy of the judgment of conviction and sentence shall be annexed to the petition, or the petition shall allege that a copy has been demanded and refused.”)

2 The state court record is not part of the electronic record on appeal but is available in the Office of the Circuit Clerk.

Louisiana Supreme Court. In the writ Mr. Peters averred that the lower courts erred in denying his habeas application for failure to include a copy of his judgment of conviction and sentence. Mr. Peters also asserted the merits of his claims for state habeas relief. Moreover, Mr. Peters, again attempted to include a copy of the judgment and sentence, moving to amend and remand.

On January 12, 2018, the Louisiana Supreme Court denied on the merits Peters' state habeas application. *See state ex rel. Peters v. State*, No. 2016-KH-1668, ___ So.3d ___, 2018 WL 460867 (La. Jan. 12, 2018). The state's highest court held that "*he fail[ed] to show he received ineffective assistance of counsel under the standard of Strickland v. Washington, 466 U.S. 668 (1984).*" The Louisiana Supreme Court also explained that Mr. Peters had "now fully litigated his application for post conviction relief in state court," that his "claims have now been fully litigated in accord with La. C.Cr. P. art. 930.6," and that this "denial [of relief] is final."

2. Proceedings below

Proceeding pro se, Mr. Peters filed his federal habeas petition under 28 U.S.C. § 2254 on March 5, 2018—52 days after the Louisiana Supreme Court denied his writ on the merits.³ In that petition Mr. Peters raised several claims for relief, including trial counsel's ineffectiveness for failing to challenge the use of his alleged confession at trial and for failing to challenge improper hearsay testimony. The prosecution opposed the

3 "Under the 'prison mailbox rule,' a pro se prisoner's federal habeas corpus petition is deemed filed when the prisoner delivers it to prison officials according to the proper prison procedures." *Starns v. Andrews*, 524 F.3d 612, 616 n.1 (5th Cir. 2008).

petition by averring that the petition contained claims that had not been fully exhausted in state court and that the other claims did not warrant relief. The prosecution elected not to address the statutory limitations concerning Mr. Peters' habeas petition.

However, the magistrate judge, instead of accessing Mr. Peters' petition on its merits and the prosecution's opposition, he elected to resolved Mr. Peters' petition on a different ground, one that the prosecution had not raised nor did any of the parties brief. The magistrate judge, sua sponte, found Peters' habeas petition untimely based on the one-year statute of limitations that applies to federal habeas claims under 28 U.S.C. § 2244(d). The magistrate chose, on his own accord, chose to recognize Mr. Peters' failure to satisfy the "hyper-technical" requirement set forth in Louisiana Code of Criminal Procedure Article 926, by holding that "[a]pplications for post-conviction that do not comply with [Article] 926 are not considered 'properly filed' and do not toll the statute limitation." The magistrate judge further held that "more than a year elapsed during which the petitioner did not have any properly filed state habeas application pending."

Mr. Peters objected to the report and recommendation, arguing that the magistrate judge "erroneously rel[ied]" on § 2244(d)'s one-year bar. The district court overruled Mr. Peters' objection and agreed to the magistrate's report and recommendation that "[m]ore than a year elapsed during which Petitioner had no properly filed applications for post-conviction or other collateral review petitions pending before the state courts." Without

addressing the merits of the claims, the district court dismissed Peters' federal habeas petition with prejudice.

3. Proceedings on appeal

Mr. Peters noticed his appeal, and sought a certificate of appealability to challenge the district court's procedural ruling that his federal habeas petition was untimely. The court of appeals granted Mr. Peters a COA on the district court's timeliness determination, concluding that "jurists of reason could debate the correctness of the district court's determination that his §2254 application is time-barred. The court appointed Mr. Peters counsel.

After all concerned parties submitted their respective briefs, on June 8, 2022, the court of appeals "AFFIRMED" the judgment of the district court.

REASONS FOR GRANTING THE PETITION

This Court held in the case of *Artuz v. Bennett*, 531 U.S. 4, 121 S.Ct. 361, 148 L.Ed.2d 213 (2000), that "[a]n application is 'filed,' as that term is commonly understood when it is delivered to, and accepted by the appropriate court officer for placement into the official record, and it is 'properly filed' when its delivery and acceptance are in compliance with the applicable laws and rules governing filings."

AEDPA's one-year statute of limitations for filing a federal habeas petition is tolled while a "properly filed" state habeas application is pending. The district court erred by refusing to toll the limitations period because Mr. Peters' state habeas

application failed to contain an attach copy of his judgment of conviction and sentence.

Louisiana legislation set forth requirements concerning a “properly filed” post-conviction application. In Louisiana Code of Criminal Procedure Article 926(A) provides that “[a] copy of the judgment of conviction and sentence shall be annexed to the petition.” However, Louisiana courts have afforded some latitude to litigants, particularly those who are pro se, who have not strictly complied with all requirements of La. C. Cr. P. art. 926. *See State v. Taylor*, No. 19-KH-535, 2019 WL 6358096 (La. App. 5Cir. Nov. 27, 2019). Although the state district court held that Mr. Peters' post conviction application was not “properly filed” due to the lack of a commitment order, the state's highest court held that the district court may not refuse to consider a post conviction application because of a “ministerial” issue with the pleading. *See Lindsey v. State*, 99-2755 (La. 10/01/99), 748 So.2d 456. In the instant case, the state supreme court denied Mr. Peters' state habeas, not on the “hyper-technical” procedural violation, but on the merits of the claims.

Mr. Peters submitted a timely filed federal habeas application and the prosecution elected to oppose the application on the merits of the claims, not statutory limitations. Yet, the magistrate judge, on his own accord, considered, *sua sponte*, that Mr. Peters was not “properly filed” by failing to submit a commitment order with his state habeas petition, thus making his federal habeas petition untimely.

Mr. Peters is aware of federal jurisprudence that supports federal courts authority

to raise a forfeited timeliness defense on their own initiative in exceptional cases. *e.g.*, *Granberry v. Greer*, 481 U.S. 129, 133, 107 S.Ct. 1671, 95 L.Ed.2d 119. Nevertheless, Mr. Peters rest on this Court's holdings in several jurisprudence that lower federal courts can abuse their discretion in considering *sua sponte* the timeliness of the state prisoner's federal habeas petition, especially when the prosecution intelligently forfeited its limitations defense.

Therefore, the question Mr. Peters presents before this Court is whether the lower courts ignored the supremacy clause by abusing their discretion by time-barring a federal petition on the grounds of a state "hyper-technical" procedural violation, even after the state's highest court and the prosecution elected to forfeit the matter?

I. The Court of Appeals has implicitly decided an important question of federal law contrary to the jurisprudence established by this Court [Question 1]

This Court has well settled in *Day v. McDonough*, 547 U.S. 198, 202, 126 S.Ct. 1675, 164 L.Ed.2d 376 (2006), a lower court's discretion to take up timeliness does not hold up when a State is aware of a limitations defense, and intelligently chooses not to rely on it in the court of first instance.

A. The State Supreme Court held that the absent of a "Uniform Commitment Order" is not an "absolute bar to filing such that provides no exceptions

State law governs whether a state habeas application is "properly filed." *See Richards v. Thaler*, 710 F.3d 573, 577 (5th Cir. 2013). As a result, a state habeas

application “is ‘properly filed’ for purposes of § 2244(d)(2) if it was submitted according to the state’s procedural requirements.” *Wilson v. Cain*, 564 F.3d 702, 704 (5th Cir. 2009). Regarding “[p]rocedural filing requirements,” the court of appeals has clarified, “those prerequisites that must be satisfied before a state court will allow a petition to be filed and accorded some level of judicial review.” *Id.* (quoting *Villegas v. Johnson*, 184 F.3d 467, 470 n.2 (5th Cir. 1999)).

Louisiana Code of Criminal Procedure Article 926 provides that “[a] copy of the judgment of conviction and sentence shall be annexed to the petition.” La. Code Crim. Proc. Art. 926(A). However, noncompliance with that provision does not preclude a Louisiana state court from “accord[ing] some level of judicial review” to a petitioner’s state habeas application. *See Wilson*, 564 F.3d at 704 (quoting *Villegas*, 184 F.3d at 470 n.2). On the contrary, Louisiana courts “have afforded some latitude to litigants, particularly those who are *pro se*, who have not strictly complied with all requirements of La.C.Cr.P. art 926.” *State v. Taylor*, No. 19-KH-535, 2019 WL 6358096, at *1 (La. App. 5 Cir. Nov. 27, 2019) (citing, *State ex rel. Lindsey v. State*, 748 So.2d 456 (La. 1999) & *Jacobs v. Cain*, 999 So.2d 1138 (La. 2009)).

Case in point, the Louisiana Supreme Court in *State v. Bailey*, granted a supervisory writ to review the trial court’s refusal to consider a state habeas application. No. 2019-KH-01337, 299 So.3d 49 at *1 (La. July 24, 2020). As the court explained, the trial court “erred in barring consideration of petitioner’s application for post-conviction

relief based on a hyper-technical application of the pleading requirements found in [Article] 926.” *Id.*

Also, in *Taylor*, the Louisiana Fifth Circuit Court of Appeals considered a case in which the petitioner-like Mr. Peters here, failed to “annex a copy of the judgment of conviction as required by Article 926(A).” 2019 WL 6358096, at *1. The appellate court emphasized that the petitioner was a *pro se* incarcerated inmate who attempted to comply with [Article] 926(A) by attaching a copy of the sentencing minute entry.” *Id.* The court remanded the case to the trial court “to either address the merits” of the petitioner’s state habeas application or allow him to supplement it. *Id.* At *2.

In essence, Louisiana law holds that a habeas petition “is *not* to be denied access to the courts for review of his case on the merits by the overzealous application of form and pleading requirements or hyper-technical interpretations of court rules.” *State ex rel. Johnson v. Maggio*, 440 So.2d 1336, 1337 (La. 1983) (emphasis in original). This is especially so for a *pro se* petitioner who tries to comply with the statutory requirements, *See Taylor*, 2019 WL 6358096, at 1.

Here, that rule of Louisiana law controls—because federal courts “defer to [state] courts’ application of state law to determine whether a habeas petition is properly filed.” *Wion v. Quarterman*, 567 F.3d 146, 148 (5th Cir. 2009); *see also Emerson v. Johnson*, 243 F.3d 931, 934-35 (5th Cir. 2001) (holding that petitioner’s motion for reconsideration was properly filed “despite the language of a contrary Texas rule in part because of

Texas case law” that had held otherwise). Likewise, under Louisiana state law, a pro se petitioner’s technical noncompliance with Article 926 does not foreclose judicial review of a state habeas application.

The district court erred in *sua sponte* concluding that because Mr. Peters “fail[ed] to attach a copy of his commitment order to his post-conviction application “his state habeas application was “not considered properly filed and d[id] not toll statute of limitations.” Moreover, the lower state court’s denials of Mr. Peters’ application does not change the result here. Mr. Peters challenged those court’s erroneous dismissals of his state habeas application in timely filed applications for supervisory relief. *See* La. Code Crim. P. art. 930.6(A) cmt.; La. Sup.Ct. R. X, § 5(a).

The Louisiana Supreme Court is “the ultimate arbiter of the meaning of laws of the state.” (*Smith v. Robinson*, 265 So.3d 740, 744 (La. 2018)); therefore, it has the final authority to decide whether Mr. Peters’ application was properly filed under Article 926. *See Id.* Furthermore, the Louisiana Supreme Court is consistent with its refusal to bar relief based on an “overzealous application of form and pleading requirements,” (*State ex rel. Johnson v. Maggio*, 440 So.2d 1336 (La. 1983)), thus reviewed and adjudicated Mr. Peters’ application on the merits. *See infra* at 20-23; *see also Plaut v. Spendthrift Farm, Inc.* 514 U.S. 211, 227 (1995) (“within th[e judicial] hierarchy, the decision of an inferior court is not (unless the time for appeal has expired) the final word of the department as a whole.”)

B. The court of appeals erred when it upheld the district court considering, *sua sponte*, the timeliness of a federal habeas petition, especially when the state's highest court adjudicated the merits of the state habeas and the prosecution failed to address limitations as a defense.

Mr. Peters was denied relief in both the state's district and appellate courts, not for missing a filing deadline, but for not having a "properly filed application" by failing to procedurally attach his commitment order to his state habeas application. However, the Supreme Court of Louisiana held the final say and its adjudication of Mr. Peters' petition on the merits confirmed that it was "properly filed" according to Louisiana law. In denying Mr. Peters' petition the state supreme court held that Mr. Peters "fail[ed] to show he received ineffective assistance of counsel." The court further held that Mr. Peters' had "now fully litigated his application for post-conviction relief in state court," that his claims were "fully litigated in accord with *La. C. Cr. P. art. 930.6*, and that the denial of relief was final."

The Louisiana Supreme Court's decision to consider Mr. Peters' state habeas application on the merits means that it was "properly filed" and thus tolled the habeas statute of limitations. See *Dilworth v. Johnson*, 215 F.3d 497 (5th Cir. 2000); cf. *Broussard v. Thaler*, 414 F. App'x 686 (5th Cir. 2011) (observing that if the state court "considered some of [the petitioner's] claims on the merits, 'we might consider [the] application properly filed because it was accorded some level of judicial review.'" (quoting *Villeagas*, 184 F.3d at 470).

In its opinion the appellate court relied upon the 2004 jurisprudence of *Larry v. Dreike*, 361 F.3d 890, 893 (5th Cir. 2004), which held “[I]f the appellate procedural rule is an absolute bar to filing such that it provides no exceptions and the court need not examine issues related to substance to apply the procedural rule then the application is not properly filed.” However, in 2009, the same court changed its position in *Wilson v. Cain*, 564 F.3d 702 (5th Cir. 2009), where it recognized the state's highest court's adjudication of a state habeas petition despite procedural failures. *Larry* conceivably could be read to suggest that the Louisiana Supreme Court's merits review of Mr. Peters' state habeas application does not render that application “properly filed,” however, it does not control here because principles of federalism require that the habeas statute of limitations be tolled when state courts elect to review the merits of a petitioner's state habeas application. *See e.g., Wall v. Kholi*, 562 U.S. 545 (2011) at 558 (“If a defendant receives relief in state court, the need for federal habeas review may be narrowed or even obviated and this furthers principles of comity, finality, and federalism.” (citation omitted)).

Moreover, the appellate court held that “concerns over comity and exhaustion of state courts when they “determine that something is not procedurally barred.” *Melancon v. Kaylo*, 259 F.3d 401 (5th Cir. 2001). So “[f]ederal courts should not undermine a state's decision to hear merits of a petition by refusing to toll the period of limitations under §2244(d)(1) while that petition is pending.” *Id.* Therefore, under the appellate court's

own precedent, because the Louisiana Supreme Court reviewed Mr. Peters' state habeas application on the merits, it was "properly filed" for purposes of §2244. *See Wilson*, 564 F.3d at 704.

C. Mr. Peters' state habeas application was pending from March 30, 2015 (when it was filed in the state trial court) until January 12, 2018 (when it was finally denied on the merits by the Louisiana Supreme Court), his federal habeas petition was timely filed

Mr. Peters asserts that his state habeas application was timely filed at each state court stage since its initial filing on March 30, 2015 (when it was filed into the trial court) until its final stage on January 12, 2018 (when the Louisiana Supreme Court denied the merits of the application), therefore, his federal habeas should be recognized as timely filed.

"An 'application is pending as long as the ordinary state collateral review process is in continuance'-- i.e., 'until the completion of that process.'" *Leonard v. Deville*, 960 F.3d 164 (5th Cir. 2020) (quoting *Carey v. Saffold*, 536 U.S. 214-219-20 (2002)). Put differently, "until the application has achieved final resolution through the State's post-conviction procedures, by definition it remains pending." *Id.* (quoting *Saffold*, 536 U.S. at 219-20). Moreover, a state habeas application remains pending "during the intervals between the state court's disposition of a state habeas petition and the petitioner's timely filing of a petition for review at the next level." *Melancon*, 259 F.3d at 406; *accord Leonard*, 960 F.3d at 167 n.1.

Mr. Peters timely filed his state habeas application on March 30, 2015. After receiving notice that his application was dismissed, Mr. Peters timely sought a supervisory writ from that dismissal to the state intermediate appellate court. After the appellate court denied the supervisory writ, Mr. Peters timely sought review from the Louisiana Supreme Court.⁴ Mr. Peters' application did not "achieve [] final resolution" until January 12, 2018, when the Louisiana Supreme Court denied review on the merits.

Mr. Peters avers that there are no "time gaps" in his collateral review process." *See id.*, at 172, AEDPA's 1-year statute limitations was tolled from the time Peters' conviction became final on June 4, 2015,⁵ until the Louisiana Supreme Court denied habeas relief on the merits on January 12, 2018. Mr. Peters filed his federal habeas petition on March 5, 2018, which only allowed 52 days to run on the statute of limitations.

CONCLUSION

Throughout Mr. Peters' state habeas process, the prosecution was fully aware of the *technical violation* concerning Mr. Peters' filing procedure and elected not to address the matter. The prosecution was also aware that the state supreme court adjudicated Mr. Peters' habeas petition on the merits. The prosecution had a second opportunity to

4 It should be noted that because of a natural disaster, Louisiana suspended all legal deadlines from August 12 to September 9, 2016. Under the Supreme Court of Louisiana's order, all filings due between August 12, 2016, and September 9, 2016, were "considered timely if received in this court" by September 12, 2016.

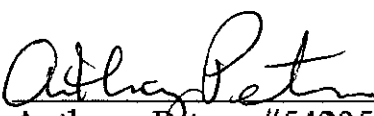
5 Mr. Peters elected to forgo discretionary review with the U.S. Supreme Court, thus his conviction became final 90 days after the Louisiana Supreme Court denied a writ of certiorari on direct appeal. *See supra* at 7.

address the matter when Mr. Peters filed his initial §2254 federal petition, yet they knowingly elected to forfeit the matter and opposed the petition on the merits of the claims.

Mr. Peters is cognizant of instances where the lower courts can consider a forfeited habeas defense when extraordinary circumstances so warrant. However, the lower courts are aware of precedents set by this Court that held the lower courts *can not* exercise their discretion to take up a timeliness defense when the prosecution chose not to address the matter.

Therefore, Mr. Peters humbly request for this Honorable Court to reverse the appellate court's decision and remand for further proceedings.

Respectfully Submitted,


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