

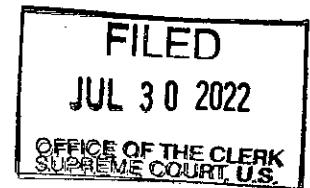
No. 22-5321

22-5321

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

William Divine - Petitioner
vs.
United States of America - Respondent



On Petition for a Writ of
Certiorari to

United States Court of Appeals
for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

William Divine, Pro-Se
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QUESTION PRESENTED

1). When the government impedes a defendant, in the name of COVID-19 safeguards, from making a motion and the Court enforces the (f)(1) clause of 28 U.S.C. §2255 with complete zeal, to the point that one day delay is late, is the same Court to apply the (f)(2) clause, with that zealousness, to comply the equal protection of law clause of the 14th Amendment ?

LIST OF PARTIES

[X] All Parties appear in the caption of the case on Cover Page

RELATED CASES

* None *

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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 judgement/case below due to District Court and Appellate Courts refusal to address the Constitutional issue presented.

O P I N I O N S B E L O W

For cases from Federal Courts

The opinion of the United States Court of Appeals appears at **Appendix A** to the petition.

The opinion of the U.S. District Court appears at **Appendix B** to the petition. Where time bar for procedural dismissal was used to avoid Constitutional issues presented.

Is unpublished

J U R I S D I C T I O N

For cases from **Federal Courts:**

The date on which the United States Court of Appeals decided my case was **MAY 16, 2022**

The jurisdiction of this Court is invoked under **28 U.S.C. §1254(1)**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution's Article I, Section 9, Paragraph 2

"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

A M E N D M E N T I

Religious establishment prohibited. Freedom of speech, of press, right to assemble and to petition.

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

S T A T U T O R Y P R O V I S I O N

Title 28 U.S.C. §2255(f)(2)

- (f) A 1 year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of:
 - (2) The date on which the **impediment** to making a motion created by the government action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such government action.

S T A T E M E N T O F T H E C A S E

On the 5th day of June 2019, I William "shane" Divine had a room located on the second floor of the Econo Lodge in Anderson Missouri. Also there with me was Tara Shere and Matt Mahurin. At or around 11:00 am there was a knock at my door. I opened the door to discover 4 policemen, assigned to the Drug Task Force, which asked if they could come in. I told them they could, if Tara could get dressed first, since she was sleeping. At which point they ask me if could step out, so I complied with their request. They start asking about Brandi, a woman who had been hanging out with us earlier. They told me that she rammed a squad car and took off on foot, while fleeing she dropped 1/2 Oz. of Meth. At which point they returned to Motel and went to front desk and viewed footage. they determine she had came out of my room.

Tara had finished getting dressed so her and Matt came out into the hallway, at which the deputy went inside to look around. He came back out and said it appears that there was meth dust on night stand and what looks to be packaging in trash can in the bathroom.

They handcuffed all of us out in the hallway and said they were going to get warrant for bags, I denied them access to search. Which they returned shortly claiming the judge was eating next door at the Subway, which due to the Subway's location not even in the same town as Courthouse is VERY problematic. The judge eating across the street from that Econo Lodge is both unrealistic and highly convenient. Which means NOT very likely. It also makes it virtually impossible for that judge, at the Subway, to meet Rule 41(b) : rules governing obtaining warrant for search and seizure. They, without ever showing this imaginary warrant, went into my Motel room and searched my closed bags and backpack. Where they found Methamphetamine in amount greater than

500 grams and a personal gun of mine, which I legally owned and had stored in my bags.

At this point we were all taken to the local jail and processed in. I was told that a \$25,000 bond was set for each of us. I made arrangements for bond to be posted for all us. But within a couple hours it took for this to occur, it change to NO BOND. We were took into a room one at the time, myself being last, to be questioned. This is when I requested Counsel. This is when I was informed that the Fed's had my case and I was looking at 15 to 20 years I repeated my request for Counsel. I was held till the morning, then I was transported to Greene County in Springfield Missouri.

On JUNE 11, 2019 a grand jury in the Western District of Missouri returned an indictment charging Mr. Divine with possession with intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. §841(a) and (b)(1)(A). Mr. Divine, under the poor counsel provided by his lawyer, pleaded guilty on DEC 16, 2019. On AUGUST 6, 2020 the District Court sentenced Mr. Divine to 120 Months.

From AUGUST 6, 2020 till JAN 26, 2021 [See Appendix C], when I arrived at Texarkana F.C.I. Divine's time was divided between Greene County and the Federal hold C.C.A. in Cushing Oklahoma, while at this holds I was held under COVID-19 protocol with [NO] access to [ANY] form of law library, plus by Marshal's protocol I was not allowed a single piece of paper to travel with me. So, even if I was allowed to research from making a motion, and I wasn't, I would of not be allowed to carry it with me. The first and longest impediment to making a motion was from 8-6-2020 to 1-26- 2021. On 1-26-2021 I arrived at the B.O.P facility [See Appendix C] and started doing my research.

On JUNE of 2021 the Delta Variant of COVID-19 started sweeping through Texarkana F.C.I. and unfortunately Mr. Divine caught it [See Appendix F] I

was moved to quarantine unit where I fought for my life with the most dangerous illness to hit the planet in over 100 years. While in the quarantine units all we were in possession of, was only a few clothing items.

Around the last week of august we were returned to our assigned housing units. This amounts to almost 3 Months of having [NONE] of the needed items to research and make a motion. At this time I continued my due diligence on research and finished my §2255. I was still under the belief that the Courts would account for the time the government impeded me from making a motion, not use COVID-19 to stifle my Constitutional Right to access the Court.

R E A S O N S T O G R A N T C E R T I O R A R I

I, William Divine, Pro-Se Petitioner, ask this Honorable Court to not be held to a lawyers standard "to less stringent standard than a formal pleadings by lawyers..." **Haines Vs. Kerner**, 404 U.S. 519, 30 L. Ed 2d 652 (1972).

In 1996, Congress passed the Antiterrorist and Effective Death Penalty Act. In it, the Rules governing the 28 U.S.C. §2255 were changed to its current form. In it, it created the strict 1 year limitation. And government is extremely diligent to hold that. Congress in attempt to provide protection from the government, causing hardship on an inmate from making this motion, put a equally strict (f)(2) Clause to suppress the government from causing an impediment to the inmate. This (f)(2) Clause was strong enough that there appears very little case law to cite referencing this clause of 28 U.S.C. §2255.

Government cites 13 case laws in reference to equitable tolling, the §2255(f)(1) Clause... which IS NOT THE CLAIM DIVINE MADE TO THE LOWER COURTS,

A (f)(1) Clause is one of a nature where the delay was caused outside the inmate's control, involving extraordinary circumstances, but [NOT] caused by the government itself.

Divine is [NOT] claiming (f)(1) "equitable tolling"... Mr. Divine [IS] claiming (f)(2) Clause Issue. The government in its attempts to control the spread of COVID-19 performed things [NOT] normal to prison.

To copy a motion for extension or request warrant requires [NO] law library, just requires to copy one from an inmate by trading meals to copy and typed up.

To draft a motion with case law and properly articulated with the exact words of statutes, can only be accomplish through due diligence and access to any form of law library, either with physical law library or virtually in a computer with portal to law library.

The District Court dismissed Mr. Divines §2255 on time limitation without actually answering the claim that the government causing an impediment to Mr. Divine's ability to draft a motion, caused by [NO ACCESS] multiple times, of various lengths of time to [ANY FORM] of law library, exacerbated by not having physical items needed such as printers, paper, etc. All this was caused by the government in an attempt to protect inmates from COVID-19.

The Courts made claims through out 2020 into part of 2021 that COVID-19 caused delays in their part, yet will not acknowledge that the inmates where caused delays by the impediments the governments actions caused.

The Court also holds to every word and day when it comes to 28 U.S.C. §2255(f)(1) but will not acknowledge that the (f)(2) clause exist, so they are piecemealing the statute "In construing statutes, word are to be given their natural, plain ordinary and commonly understood meaning... Word in statutes should not be discarded as "meaningless" and "surplusage" when Congress specifically and expressly included them, particularly where words

are excluded in other section of same act" **United States vs. Wong Kim Bo**, 472 F. 2d 720, 722 (5th Cir. 1972).

The Congress and the Courts could not predict that COVID-19 pandemic would race around the planet and cause global lock-downs. The Court cannot deny this. They also cannot deny that these lock down were 10x worse in effect in control when applied to a prison population.

I come to this Honorable Supreme Court of the United States, claiming the flash-lock-downs and COVID-19 quarantine cause an impediment in which my 1st Amendment Right to access the Courts was blocked by [NO] access to law library and needed accessories. And this caused a loss of accessing the needed information (Case laws, statutes, Fed. R. Civ. P., and Supreme Court law) to create a motion. This clearly shows that §2255(f)(2) is applicable, furthermore, Mr. Diivine's claims even meets the stringent standard the Courts claim in **Simmons vs. United States**, 974 F. 3d 791, 796-97 (6th Cir. 2020). with the fact a causality was also claimed and excluding the element the 6th Circuit add from the bench.

It seems no District has answered this question regarding the (f)(2) Clause. Compounded is that this Honorable Supreme Court appears to not have been properly presented with this question, as to whether a global pandemic can be used to eliminate a inmate's privilege of Habeas Corpus relief, and the 1st Amendment Right of the people to petition the government for a redress of grievances.

This question is ripe to be answered whether a impediment by the government for COVID-19 is also a impediment under 28 U.S.C. §2255(f)(2)...

The claim simple, Mr. Divine was impeded by various COVID-19 lock-downs through my 1 year. And when Mr. Divine could, he did his Due diligence in research case law applicable to [his] case. So the government impediment to make a motion, was a block to making my §2255. This cannot be denied...

By the simple wording of **§2255(f)(2)** Clause the 1 (one) year started when the impediment was removed. Thus Mr. Divine's **§2255** [SHOULD], by law, be Ruled as **TIMELY**.

28 U.S.C. §2255

(f) A 1 year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of-

(2) The date on which the impediment to making a motion created by the government act in violation of the Constitution or laws of the United States is removed if the movant was prevented from making a motion by such government action.

Webster's 9th College Dictionary (1985 Ed.)

IMPEDIMENT: 1. Something that impedes/ 2.A; A bar or hindrance.

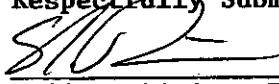
From August 6, 2020 till JAN 26, 2021 when Mr. Divine finally arrived at the B.O.P. Texarkana facility, Mr. Divine was without Law library access, and would of [NOT] been allowed to even keep and bring it if Mr. Divine would of had access. This was a total impediment to making a motion by the government. At the very minimum, the one year window should start 1-26-2021 and run to 1-26-2022. But this would not consider the time people where locked in quarantine with COVID-19 itself.

All Mr. Divine is asking for is the time the government took from him to research, draft and construct his §2255. The time the government impeded me from making a motion was greater than the delay of filing Mr. Divine's 28 U.S.C. §2255, so to follow the wording of the law and the spirit of Article I, Section 9, Paragraph 2 of Constitution, Mr. Divine's §2255 motion to vacate should be considered **TIMELY**.

C O N C L U S I O N

The petition for a Writ of Certiorari should be GRANTED

Respectfully Submitted,



William Divine, Pro-Se

7-30-2022

Date