No. 22-6086

IN THE

SUPREME COURT OF THE UNITED STATES

DALE McCOY, - PETITIONER

vs.

UNITED STATES OF AMERICA, - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DALE McCOY # 17098-029

F.C.I. PEKIN, POST OFFICE BOX 5000

PEKIN, ILLINOIS 61555-5000

QUESTIONS PRESENTED

I. Whether the unforeseen and unexpected quarantining of the Petitioner, by the Federal Bureau of Prisons; due to the COVID -19 Pandemic, justifies "Equitable Tolling" of a § 2255 filing deadline to the United States District Court.

II. Whether the [B.O.P.'s] denial of allowing Petitioner to "access the courts" by denying him access to the legal library during the quarantining period, constitutes a violation of Due Process; in accordnace with the Fifth and Fourteenth Amendment(s) to the United States Constitution.

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the Court whose judgment is the subject of this petition is as follows:

Clerk of Courts Office
United States District Court
Northern District of Iowa
Honorable Judge Linda R. Reade
111 Seventh Street S.E.
P.O. Box 12
Cedar Rapids, Iowa 52410-2102

Clerk of Courts Office
Eighth Circuit Court of Appeals
111 South 10 Street
Room 24.329
St. Louis, Missouri 63102

Don Chatham
United States Attorney's Office
Northern District of Iowa
Room 12
111 Seventh Avenue S.E.
Cedar Rapids, Iowa 52401

Ms. Ashley L. Corkery
U.S. Attorney's Office
Northern District of Iowa
Room 12
111 Seventh Avenue S.E.
Cedar Rapids, Iowa 52401

Ms. Patrice A. Murray
Fed. Bldg. & U.S. Courthouse
101 First Street S.E.
Cedar Rapids, Iowa 52401

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page No.

United States Court of Appeals Cases:

UNITED STATES STATUTES

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix __A__ to the petition and is:

[ ] reported at _____:

[ ] has been designated for publication, but is not yet reported; or,

[X] is unpublished.

[X] The opinion(s) of the United States District Court appears at Appendices; __C__ ; __D__ ; __E__ ; __F__ ; & ///, to the petition and is:

[ ] reported at _____:

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of the following provisions relevant to the determination of the present case are set forth in the appendices: 28 U.S.C. § 2255; U.S. Constitution Amendment V; and U.S. Constitution XIV. 21 U.S.C. § 802 (44); 21 U.S.C. 841(b)(1)(A); and 21 U.S.C. § 851(a).

STATEMENT OF CASE

On May 30th, 2017, Petitioner pled guilty to; 'Distribution of a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). On November 3, 2017, the Petitioner was sentenced to 327 months' imprisonment. On November 14th, 2017, the Petitioner filed a timely notice of appeal. See Notice of Appeal (criminal docket no. 36). On January 29th, 2019, the Eighth Circuit Court of Appeals affirmed the Petitioner's sentence. See criminal docket nos: 45-46.

The Petitioner **did not** file a petition for a writ of certiorari with the United States Supreme Court, which was due on or before April 29, 2019, (excluding 01/29/19 as the day triggering the filing deadline,) certiorari due on 04/29/19; 90 days after the decision of the Eighth Circuit Court of Appeals. Thus, Petitioner's conviction and sentence became final on April 30, 2019.

In March of 2020, without any foreknowledge or warning, the Petitioner was placed in a quarantine status, and locked down by the Federal Bureau of Prisons, at F.C.I. Pekin, Pekin, Illinois.

During the quarantining period, (due solely to the COVID-19 Pandemic) Petitioner was foreclosed and forbidden from phone calls; computer e-mails, talking to other inmates at their cell doors; accessing the Educational Department, whereas the 'legal library' is located, etc.

During said quarantining period, F.C.I. Pekin staff were in a quandry as to what to say to inmates; because there was no communication(s) or directives coming from the Warden's office, other than "keep them locked down."

This non-communication between Administration (FCI Pekin's Warden) and staff below that level, (i.e. Lieutenant's; Unit Managers; Case Managers; Counselors; Psychologists; as well as the Chaplain) telling inmates, "It should be any day now;" "They aren't telling us (staff) anything;" "We are trying to get answers;" "It can't be much longer," etc. This went on here at F.C.I. Pekin for three months. Petitioner told staff that, "he had to file a § 2255 motion," and staff just did not care to address petitioner's concerns nor complaints. **Because** of the quarantining, most upper level staff, (from Correctional Officers above) were not doing their normal duties, as because of the Pandemic, thoses particular staff were operating as addtional Correctional Officers. (i.e. assisting in showering duties, food delivery and prep, sometimes collecting laundry, etc.)

While Petitioner is not at all familiar with the Federal case laws, he was being assisted at the time (prior to the unexpected lockdown) by another inmate. Petitioner was learning on how to research, as well as learning how to argue the fact that his prior State of Iowa conviction under 124.401(1)(c) did not mesh with the Federal definition of Methamphetamine, thereby making the State of Iowa definition broader than that it's federal counterpart. Petitioner was trying to make a substantial claim of Ineffective Assistance of Counsel, on the basis that Counsel **should have** recognized (amongst other cases) **Taylor v. United States,** 495 U.S. 575, 600-02, 110 S. Ct. 2143, 2159-60, and utilizing the categorical approach in regards to arguing Petitioner's sentencing enhancement, for a prior drug offense.

After Petitioner had not heard from the District Court in regards to his 'Motion for Reconsideration' [Pursuant to Rule 59(e)] he wrote the District Court said Motion for Status Inquiry. On or about January 15th, of 2022, Petitioner received in the mail, an Order from the District Court dated december 29th, 2021; in which Judge Linda R. Reade stated, "First, the Court **never received** a "Motion for Reconsideration," this was amongst two other reasons, that the Court again denied the Petitioner any relief. See Appendix D . (Doc. 6).

The Petitioner's Unit manager, Mr. Gary Brown, personally called the United States District Court clerk, and explained that the Petitioner had **1)** had been under a quarantine; **2)** had not been able to access the legal library within the Educational Department; **3)** had not been able to submit **any type** of staff memorandum stating such, because local Institutional policy did not allow such memorandums without staff actually seeing the need (post-court order). Mr. Brown stated to the Clerk of Court, that he would type 'something up' and the Clerk of Court replied that "Have Mr. McCoy re-submit it."

Petitioner did so, along with a 'Motion to Clarify' as the Court's Order was confusing. (i.e. the Order from 12/30/21) (Doc. 6)(App. D-1) On May 3rd, 2022, the Court issued it's Order on the clarification matter. See Appendix E-1. (Doc. 9).

On May 6th, 2022, the District Court issued it's Order denying Petitioner 'Motion to Appeal In Forma Pauperis, stating the Court found there are no appealable issues in this case. Appendix F . (Doc. 18).

Staff at the time of the quarantining period, would not adhere to the Petitioner's request for a "memorandum," stating that the Petitioner was being quarantined. According to staff, they **have to have** a directive or Order from the Court, showing the "need" for such a Memorandum, before they will issue such.

Continuing to believe, that F.C.I. Pekin would let Petitioner out of [his] cell, at any time, Petitioner continued to wait, to try to not only get released from his housing unit's quarantine, but to access the legal library in order to verify what was in [his] § 2255 motion of which, **all he had** at the time of his 'quarantine,' were the legal notes that he had accumulated from another inmate assisting him with researching, and legal theory.

Petitioner, realizing that being released from quarantine, in time to effectively deal with the research, verification, and properly putting together his § 2255 motion, handwrote what he believed was somewhat a proper § 2255 motion, and had to wait on his Case Manager to copy said motion, so that he might retain a copy of what he sent. On May 1st, 2020, Petitioner mailed said § 2255 motion to the United States District Court clerk in Cedar Rapids, Iowa.

On April 15th, 2021, the Honorable Linda R. Reade from the Northern District of Iowa, issued forth it's Order denying Petitioner's § 2255 motion, based upon it's 'untimely filing' and therefore not reviewing the merits of Petitioner's Ineffective Assistance of Counsel claim. See Appendix C .

On or about April 28th, 2021, Petitioner filed a Motion for Reconsideration regarding the denial.

On May 31st, 2022, Petitioner filed a Notice of Appeal, and the Eighth Circuit Court of Appeals assigned Petitioner Case No. 22-2137. On June 13, 2022, still due to the restrictive modified movements of FCI Pekin due to the COVID-19 issues, Petitioner was granted an additional 45 days to file a brief.

On July 7th, 2022, the Eighth Circuit denied McCoys application for a Certificate of Appealability, and did not issue any other opinion that Petitioner knows of. See Appendix F .

On September 15th, 2022, McCoy's petition for a Rehearing to the Eighth Circuit panel of judges for the Eighth Circuit was denied.

On November 2, 2022, the Petitioner filed for a Writ of certiorari to this Court.

SUMMARY OF ARGUMENT

In March of 2020, Dale McCoy was unexpectantly and without prior knowledge or warning, quarantined by the Federal Bureau of Prisons; (due to the COVID-19 Pandemic). This action by the B.O.P. forbade McCoy from being able to access the Educational Department, where the only legal library computers are in the Institution. Hence, McCoy could not properly finish retrieving Iowa State statute, research any up-dated case law, verify his legal notes, and otherwise properly compose his § 2255 motion.

By a combination of the aforegoing, coupled with **no communication** from the Administration, and waiting on staff to 'copy' McCoy's § 2255 motion, caused him to be two days late in mailing said motion to the United States District Court for the Northern District of Iowa.

The U.S. District Court denied McCoy's motion without addressing the merits of his claim, based upon the Court stating that McCoy's motion was late, and therefore did not have to proceed with addressing the merits. This was also affirmed by the Eighth Circuit Court of Appeals.

McCoy argues Equitable Tolling should be allowed in this case, because there were extenuating and special circumstances; due to the "once in a lifetime" National Emergency regarding the COVID-19 pandemic. McCoy also argues that had [he] not been 'quarantined' by this governmental action, that he would not only have had his § 2255 properly verified, researched, and composed, but also copied and mailed on time as well.

McCoy argues that he meets 'subsection (2)' of the provisions listed under the § 2255 definition; regarding meeting the requirements of a 'late filing exception.' McCoy also believes that he meets the legal standard(s) for both Equitable Tolling as well as having his constitutional rights violated for Due Process in lieu of Accessing the Courts, as well.

ARGUMENT

1. DALE McCOY'S LATE FILING OF [HIS] § 2255 MOTION FALLS WITHIN THE SCOPE OF EQUITABLE TOLLING.

The framework for Section 2255 provides:

> "A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -
>
> "(1) the date on which the judgment of conviction becomes final;
>
> "(2) the date on which the impediment to making a motion created by governmental 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 governmental action;

"(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

"(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence."

In most cases, the operative date from which the limitation period is measured will be the one identified in (1): "the date on which the judgment of conviction becomes final." However, later filings are permitted where subparagraphs (2) - (4) apply. This case involves paragraph (2), wherein it states; "the date on which the **impediment** to making a motion created by governmental 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 governmental action.**"

As McCoy has within [his] Appendix, not one but two memorandums from [his] Unit Manager, Mr. Gary Brown attesting to the fact that McCoy was indeed placed on quarantine status from March of 2020 through May of 2020. See Appendices G and H. In realtion to the provisions in subparagraph (2), the quarantine due to COVID-19 **was** the impediment. This impediment was not removed until May of 2020. The movant (McCoy) was in fact **prevented** from filing a completely researched and verifiable motion; and the quarantine that was imposed, was directed by a **governmental action.**

A. McCOY'S QUARANTINE WAS ENFORCED BY A GOVERNMENT ACTION.

McCoy's unexpected quarantine was implemented by the Federal Bureau of Prisons, with the 'blessing' of the Department of Justice.

... he did have to provide said State materials, if it affected in any way the inmate's federal case. Mr. Lamirand took this as an offense to his 'authority' and significantly delayed inmate requests for State materials pertaining to their cases. Mr. Lamirand proceeded to tell McCoy, as well as other inmates requesting said State Statutes, that, "he had to get approval from the Regional Attorney;" (per inmate's individual case); "He had to have the attorney verify the need;" and that "this all took time, so be patient."

While awaiting this supposedly 'forthcoming' information, McCoy could not **verify** the legal theory, that another individual whom was assisting McCoy at the time, had put together. This legal theory was that McCoy's prior drug conviction should not have been used for the purposes of Enhancement under 21 U.S.C. §§ 802(44), 841(b)(1)(A) and 851(a); because it was assumed that Iowa's definition of Methamphetamine, was broader than the federal definition of Methamphetamine that triggers statutory enhancements, as well as it was 'assumed' that Iowa Code Scetion 124.401(1)(c) could be violated by Manufacturing, Delivery, or Possessing non - § 802(44) Substances, such as Counterfeit, Simulated or Imitation Controlled Substances. ... For the Courts edification, F.C.I. Pekin Educational Department **used** to have several surrounding State Statute law Books, such as Illinois, Iowa, Indiana, Missouri, Wisconsin, Michigan, Nebraska, etc., however, when the BOP placed the 'electronic law library' within the educational department, all of the hard back State Code books were thrown away. The B.O.P.'s law computers **only** contain Federal case law, and not State.

Both agencies therefore qualify as [a] governmental action; which prevented McCoy from proceeding in a timely action. By rights, McCoy's 'filing clock' should have stopped in March of 2020, when the quarantine began; and started again in May of 2020, when the quarantine was ended.

B. McCOY WAS PROCEEDING WITH DUE DILIGENCE LEADING UP TO HIS FILING DEADLINE.

As McCoy explained to the Eighth Circuit Court of Appeals, in **United States v. Martin**, 408 F.3d 1089, 1092-93 (8th Cir. 2005); for equitable tolling to apply, a prisoner must show that: **1)** extraordinary circumstances prevented him from timely filing; and **2)** he was diligent in pursuing the § 2255 motion. As far back as July of 2019, McCoy was trying to retrieve the Iowa State Statute(s) regarding 124.401(1)(c)(6) from the newly appointed Supervisor of Education, Mr. Lamirand. Mr. Lamirand, had never been in a Supervisory position before, and had transferred to FCI Pekin, from another Federal Bureau of Prisons location.

Mr. Lamirand, was unaccustomed to how things worked, as far as inmate requests for legal materials, state statutes, amongst other items and issues. being new to the position, and overwhelmed, Mr. Lamirand placed upon the 'inmate electronic bulletin board' the fact that inmates requesting State statutes, etc., would not be so indulged, and only Federal laws, Codes, etc., would be provided.

Numerous inmates had to file administrative remedies, in order for Mr. Lamirand to admit that he was in the wrong. This, only after the attorney for the regional sector of FCI Pekin, told Mr. Lamirand that

Meanwhile McCoy **was** able to research, investigate, and put together [his] case notes regarding **Taylor v. United States,** 495 U.S. 575, 600-02, (1990). as well as keeping notes on several other cases backing up his claim(s). All that McCoy had to piecemeal together [his] § 2255 motion, was what legal notes he had accumulated, prior to his unexpected quarantining due to COVID-19. The fact that McCoy did in fact have these notes prior to his quarantining, and attempted to put them together in some sort of 'rational' fashion, does indeed show that McCoy was proceeding with due diligence.

C. PRIOR COURT ALLOWANCES REGARDING EQUITABLE TOLLING.

In **Menominee Indian Tribe v. United States,** 136 S.Ct. 750, 756, 193 L.Ed. 2d 652 (2016) the Court stated, "Extraordinary circumstances" **are present** when an "external obstacle" beyond the party's control "stood in [its] way" and caused the delay. In other words, the circumstances that caused a party's delay must be "both extraordinary **and** beyond its control." ... There can be **no argument** that the once in a life time pandemic of COVID-19 is / was **not** considered "extraordinary." As well as it **cannot** be argued, that McCoy's quarantining, **was within** his control.

In **Holland v. Florida,** 560 U.S. 631, 649, 130 S.Ct. 2549, the Court stated that the principles of equitable tolling are consistent with the "AEDPA's basic purposes of eliminating delays ... without undermining basic habeas corpus principles and by harmonizing the statute with prior law, under which a petitioner's timeliness was always determined under equitable principles." Id. at 648. In light of this, the Court held that the AEDPA's statutes of limitations **"do not set forth** 'an inflexible rule requiring dismissal whenever' it's clock has run'".

The Court further explained that, while courts of equity are of course governed by "rules and precedents," equity **also requires "flexibility"** and avoidance of "mechanical rules." Id. at 649-50. See also, Id. at 650, ("the courts must excercise judgment in light of prior precedent, **but with awareness of the fact that specific circumstances,** often hard to predict in advance, could warrant special treatment in an appropriate case"). Although **Holland** dealt with attorney misconduct, which is not an issue before this court, the decision's broader point is that the "exercise of a Court's equity powers ... must be made on a case-by-case basis."

When examining the paricular circumstances of McCoy's reasoning and circumstances for mailing his § 2255 motion two days late, this Court should find that he satisfies the requirement necessary for equitable tolling. As in **Holland**, the AEDPA's time limitations **do not foreclose** this relief to all those who are unable to meet the statute's deadline.

2. DENYING McCOY ACCESS TO THE COURTS, COINCIDES WITH DENYING McCOY DUE PROCESS; THUS, VIOLATING HIS CONSTITUTIONAL RIGHTS.

Due to the government agencies (the B.O.P. as well as the D.O.J.) ordering that McCoy be quarantined, resulted in McCoy being denied access to the Courts by way of forbidding him access to the legal materials that he needed to complete [his] § 2255 motion. As a result, McCoy had to rely on what handwritten notes that he, as well as legal assistance from another inmate, had pieced together. because staff would not even allow inmates to talk to each other, (i.e. go to another inmate's cell door, or pass notes) when allowed out for a 10 minuted shower; gretaly hampered McCoy's efforts to effectively put his § 2255

... motion together. In **Lewis v. Casey,** 518 U.S. 343, 351, 116 S.Ct. 2174, 135 L.Ed 2d 6060 (1996), quoting **Bounds v. Smith,** 430 U.S. 817, 825, 97 S.Ct. 1491, 52 L.Ed 2d 72, (1977), the Supreme Court confirmed that inmates **have a constitutional right** of access to the courts that obligates prison officials to provide some means, such as a prison law library or a legal assistance program, "for ensuring 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.'" ... The "right of meaningful access to the courts ensures that prison officials **may not erect** unreasonable barriers to prevent prisoners from pursuing or defending all types of legal matters." **Schrier v. Halford,** 60 F.3d 1309, 1313, (8th Cir. 1995).

While "prisoner's have a constitutional right of access to the courts," **Bounds,** 430 U.S. 821, the right is only violated if the prisoner has suffered an "actual injury" by way of an official action **that hindered** his or her pursuit of a "non-frivolous" or "arguable" underlying legal claim." **Lewis,** 518 U.S. at 353 & 353 n. 3. ... McCoy suffered actual injury by not being able to complete [his] research, verify the Iowa State Statute, and intelligently articulate his claim of I.A.C., based upon legal information he was diligently trying to receive from Educational Supervsior Lamirand, and could not.

A. McCOY'S APPLICATION OE ACTUAL AND LEGAL INJURY.

According to Barrons Law Dictionary, 7th Ed., a legal injury is defined as, "any damage resulting from a violation of a legal right, and which the law will recognize as deserving as redress." By forbidding McCoy access to the legal library for that period of time, in which

... he needed in order to finalize his § 2255 motion, constitutes a legal injury by definition. It is a factual assertion that the merits of McCoy's § 2255 are both "non-frivolous" as well as "arguable." The Eighth Circuit Court of Appeals, has found that an inmate could show actual injury, when he was denied relief under a State habeas petition, because he was **prevented** from obtaining meaningful access to the library, to prepare a reply brief. See, **McCauley v. Dormire,** 245 F. App'x. 565, 566 (8th Cir. 2007). As support, the Eighth Circuit cited the Seventh Circuit Court of Appeals decision, in **Marshall v. Knight,** 445 F.3d 965, 968-69, (7th Cir. 2006), which found actual injury when an inmate was denied access to the prison library, and as a result, he lost good time credits because he was unable to research and prepare for a court hearing. ... Thus, utilizing the Eighth Circuit's own rulings and (sets) of 'special circumstances,' McCoy argues that his situation qualifies as another set of special and extenuating circumstances.

B. McCOY NEEDS TO KNOW WHAT THE FEDERAL LAW AND IOWA CODE STATES.

The Court in **Bounds**, specifically stated, that prisoners, no less than lawyers, **must "know what the law is,** in order to determine whether a colorable claim exists, and if so, what facts are necessary to state a cause of action." Id. at 825.

Whereas here, without the updated case law, regarding ineffective assistance of Counsel claims; researching updated predicate enhancement issues; verifying Iowa State statutes / Codes, that McCoy needed in order to properly finish his § 2255, he needed the law computers

... in order to do so. As a note to this Court, the Federal Bureau of Prisons (in Washington D.C.) **does not** provide the most recent case law on inmates "electronic Law computers" like within the 'free world'. B.O.P. legal computers are updated 'usually' every month, around the 20th to the 25th, with the **previous** months case laws. ... So, inmates are always behind at least 30 days if not more, in realizing what is new and recent. The Federal Bureau of Prisons has also discontinued its required legal news update, regarding new and recent case law, thereby making an inmate have to search for such.

By supposedly making sure that the right of accessing the Courts, **requires** prison officials to make some avenue available to determine **"what the law is,"** just did not happen here at FCI Pekin. This in part because McCoy did not have said Court Order showing any imminent deadline.

In **Hartfield v. Nichols,** 511 F.3d 826 (8th Cir. 2008), it explained that being actually prevented from filing a complaint or having a complaint dismissed for "lack of legal adequacy" constitutes an actual injury. In **Bear v. Kautzky,** 305 F.3d 802, 806 (8th Cir. 2002), it held that, "There is no one method of satisfying the constitutional requirement, and a prison system may experiment with prison libraries, jailhouse lawyers, private lawyers on contract with the prison, or some combination of these and other devices." ... **Rather,** a system does not run afoul of the constitution as long as there is no actual harm to an inmates rights.

C. DUE PROCESS AS IT RELATES TO McCOY'S DENIAL OF ACCESS TO THE COURT.

The Due Process Clause relates primarily to the fact that McCoy's right of access to the courts was violated. McCoy must demonstrate that he was not provided an opportunity to litigate a particular claim, and that this claim was non-frivolous and arguably meritorius.

The § 2255 provisions state; "A 1 year period of limitation shall apply to a motion under this section. ..." Meaning, that McCoy had a total of **12 months** in which to prepare [his] motion, **barring** impediments. McCoy was quarantined from March until May. Section § 2255 does **not** state anything about an individual having 10 months, or 11 months to prepare [his] § 2255 motion, it states, 1 year. Again, barring any governmental impediments.

The Constitution guarantees prisoners a right to access the courts. See, **Murray v. Giarratano,** 492 U.S. 1, 11 n.6, 109 S.Ct. 2765, 106 L.Ed 2d 1 (1989) (:The prisoner's right of access has been described as a consequence of the right to due process of law and as an aspect of equal protection." See also, **Christopher v. Harbury,** 536 U.S. 403, 145 n.12, 122 S.Ct. 2179, 153 L.Ed. 2d 413 (2002)(noting, outside of the context of prisons, the right to access the courts is guaranteed by an amalgam of the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses).

For prisoners, meaningful access to the courts "requires prison authorities to assist inmates in the preparation and filing of meaning-

... ful legal papers by providing prisoners adequate law libraries or adequate assistance from persons trained in the law." **Bounds v. Smith,** 430 U.S. 817, 828, 97 S. Ct. 1491, 52 L.Ed. 2d 72 (1977), overruled on other grounds by **Lewis v. Casey,** 518 U.S. 343, 354, 116 S.Ct. 2174, 135 L.Ed. 2d 606 (1996). In **Bounds,** the phrase "adequate assistance from persons trained in the law" refers to "the adequacy of the prisoner's access to his or her court-appointed counsel or other trained assistant," not "to the effectiveness of the representation." **Schrier v. Halford,** 60 F.3d 1309, 1313-14 (8th Cir. 1995).

Prisoners do not possess a constitutional right to legal counsel to pursue the prisoners' grievances, consequently, prisoners do not possess a constitutional right to effective assistance of counsel in pursuing advice from legal counsel regarding prison grievances. Id. at 1313. **Meaningful** access to the courts is the **capability** to bring "actions seeking trials, release from confinement, or vindication of fundamental civil rights." **Bounds,** 430 U.S. at 827. For McCoy to prove a violation of the right to meaningful access to the courts, McCoy must establish that he was deprived the opportunity to litigate a claim challenging the prisoner's sentence or conditions of confinement in a court of law, which resulted in actual injury, that is, the hindrance of a non-frivolous and arguably meritoroius underlying legal claim. See, Harbury, 536 U.S. at 413, 415; also, Casey, 518 U.S. at 351, 353, 355. Because actual injury requirement concerns the prisoner's standing to bring a claim.

Because of the fact that the District Court **did not** address McCoy's merits of [his] argument, that a prior drug offense should not have been considered, as per the enhancement that he received, as it was overbroad, and that the ineffectiveness of [his] then counsel should have challenged this enhancement, relying on **Taylor**, as well as other cases; shows that McCoy's merits were non-frivolous. However, the subject matter at hand is the "equitable tolling" issue primarily. McCoy has to get past that hurdle in order to proceed to the argument of the State of Iowa's definition being more overbroad, than that of the federal statute.

Again, McCoy was left with trying to finish [his] argument with mere supposition, baling wire and string; while waiting on Educational Supervisor Lamirand to actually provide the actual State of Iowa Codes and statutes that McCoy had previously been waiting on for months. Utilizing what information he had gathered up to the point of his quarantine, he felt that he had no choice in the matter.

CONCLUSION

Explaining that equitable tolling of a statute of limitations "requires a litigant to establish '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way'")(quoting **Pace v. DiGuglielmo**, 544 U.S. 408, 418, 125 S.Ct. 1807, 161 L.Ed.2d 669 (2005)); **Jenkins v. Mabus**, 646 F.3d 1023, 1028-29, (8th Cir. 2011)(noting that the "doctrine of equitable tolling ... should be invoked **only in exceptional circumstances truly beyond the** plaintiff's control").

McCoy believes that he has proven beyond any reasonable doubt, that he has fulfilled and met these two requirements. The quarantine that was imposed upon McCoy, was indeed, beyond his control. This is an undisputable fact. Unit Manager Gary Brown's Memorandum clearly states those facts. See Appendix H.

Furthermore, the 'once in a lifetime' pandemic, was also beyond the Petitioner's control.

Finally, Petitioner has shown, that he has unequivocally been pursuing his rights diligently, in the work that he had done, leading up to the quarantined period. Had he not compiled said legal notes, diligently tried to pursue the knowledge that he had placed in his § 2255, then it could be argued that McCoy, had "sat on his hands" for the period of time leading up to March of 2021. However, he had not. McCoy was vested in the time that he was able to get away from UNICOR to go to the legal library, and to research what he could, request what he could, and gather what legal information he could. Fortunantly, he was able to compose a half hearted argument, but still viable, in regards to the merits of his case.

Wherefore, Petitioner prays that the Supreme Court will grant a writ of certiorari in regards to [his] submission, as well as to allow him to proceed in forma pauperis.

Respectfully Submitted,

Dale McCoy # 17098-029