No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 2022

HEERALALL PURAN,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Eleventh Circuit

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Question Presented

Whether Petitioner Puran Is Entitled to a Certificate of Appealability on the Question Whether Equitable Tolling Should Apply to Permit an Untimely Habeas Petition When the Petition Was Untimely Solely Due to an Undisputed Math Mistake.

List of Parties and Corporate Disclosure Statement

Heeralall Puran, Petitioner.

Secretary, Florida Department of Corrections, Respondent.

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Petition for a Writ of Certiorari

The Petitioner, HEERALALL PURAN, respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

Opinion Below

The unreported order of the United States Court of Appeals for the Eleventh Circuit, *Puran v. Secretary, Florida Department of Corrections, et al.* denying Puran a certificate of appealability is included in the Appendix hereto.

Jurisdiction

The United States Court of Appeals for the Eleventh Circuit rendered its judgment on August 23, 2022. The jurisdiction of this Court is timely invoked under 28 U.S.C. § 1254.

Statutes Involved

28 U.S.C. § 2244

(d)(1) A 1-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. The limitation period shall run from the latest of –

> (A) the date on which the judgment became final by the consideration of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional 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
>
> (D) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The 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 section.

28 U.S.C. § 2244(d)(1)-(2).

28 U.S. Code § 2253

(a)In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b)There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)

(1)Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A)the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B)the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3)The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

Statement of the Case

Heeralall Puran ("Puran") filed a counseled habeas petition pursuant to 28 U.S.C. § 2254 in the United States District Court for the Middle District of Florida, Ocala Division, October 18, 2019. The petition was filed three days past the AEDPA habeas filing deadline due to an undisputed math mistake of filing counsel.[1] The petition was ultimately dismissed as untimely by the district court which also denied a certificate of appealability.[2] Puran filed a timely notice of appeal which pursuant to Eleventh Circuit Court of Appeals procedure was construed as a request for certificate of appealability ("COA"), which the Eleventh Circuit denied by a summary order entered August 23, 2022. This petition has followed in a timely manner thereafter.

Statement of the Facts

Counsel for Puran acknowledged in the initial habeas petition that it was three days late and explained in detail the cause of the untimeliness:

> 18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar

[1] Counsel set forth in detail in the initial pleading the error and reason for the error.

[2] The district court also summarily concluded without any elaboration that the petition failed to present a substantial constitutional question on the merits.

your motion.*

This motion is untimely by three days because of a simple math mistake counsel made in calculating the time remaining on the one year deadline. Counsel discovered the math mistake late in the evening of the second day after the correct deadline and immediately notified the client's family, the referring attorney, Susanne Sichta, and opposing counsel, Assistant Attorney General Rebecca McGuigan by the following email explaining all of the circumstances surrounding the mistake:

> I was contacted by Heerelall Puran's sister, Gaitree Puran-Sarjoo, August 19, 2019, about representing Heerelall Puran in his anticipated federal habeas (28 USC 2254 petition). The following day, August 20, 2019, I emailed to the sister a proposed representation letter. A copy of that letter is attached hereto.
>
> In that initial letter I calculated, as is my custom in federal habeas representation agreements, the federal habeas deadline. I calculated the deadline to be October 22, 2019. I sent a revised letter agreement Saturday, August 24, 2019, the only changes being to correct a misspelling of a name and to add the father's name to the letter and to change the date of the letter. A copy of the August 24th letter is also attached hereto. In between those two emailed letters, I sent an email on August 20, 2019 to the sister noting that the calculation of the federal deadline is very technical and that I had asked my junior partner, Ryan McFarland, to double check my calculation. A copy of that email is attached. I was formally retained September 6, 2019 upon payment of my attorney's fee.
>
> I began a draft of the proposed 2254 the very next day, September 7, 2019. The first draft in my computer folder is named "Puran - 2254 DRAFT 9-7-2019." A copy of that draft is attached.

Because *Martinez v. Ryan* may under certain circumstances permit the inclusion of issues which were not exhausted in state court, I knew that I needed to review the entire state record, direct appeal and 3.850 proceeding, to assess whether any additional issues should be added and for that purpose too would want to meet face to face with the client to discuss any matters my review had brought to my attention. I worked on the case from time to time and after finishing the review my secretary arranged an attorney client visit for me with Mr. Puran at the Lake Butler Medical and Reception Center yesterday, October 16, 2019. I met with Mr. Puran for about one and a half hours and told him I would file his 2254 by the October 22, 2019 deadline if not a day or two early.

Today, October 17, 2019 I went back to work on the final draft of the 2254 petition and again asked my junior partner to again confirm my calculation of the deadline, on the off chance that I had gotten it one day off, at least that was what I was thinking. Tonight about 9 p.m. my partner called me and told me that the date in the letter was off by ten days, that the 2254 deadline was October 12, not October 22. Because the 12th was a Saturday, the deadline would roll over to the first business day, and because Monday, October 14, was a federal holiday, the deadline rolled over to Tuesday, October 15, 2019.

We spent about an hour on the phone together redetermining every factor in the calculation and there is no way around it, I have missed the deadline by two days as of this evening, three days tomorrow.

I can and will file the 2254 tomorrow but it will be untimely by three days.

At the time I wrote the proposed representation letter I was undergoing medical tests to determine what had caused a

small intestine bowel obstruction which had put me in the hospital at the Mayo Clinic for three days, July 11, 12 and 13, 2019. The fear on the part of the doctors and me was that it was a bowel cancer. Bowel cancer in the small intestine is not observable by MRI or CT scan in about 50% of cases. I had had an MRI at the Borland Groover Clinic and it did not show any reason for the obstruction. The Mayo Clinic scheduled me for a CT scan August 27, 2019, but before I could have it I became very ill and was seen by my Mayo Clinic doctor, Dr. Yenior, August 19, 2019, the same day I was first contacted by the Heerelall family. I had a very enlarged inguinal lymph node which Dr. Yenior scheduled for an ultrasound guided biopsy the very next day, August 20, 2019. I had lost ten pounds as well since the bowel obstruction the month before. The morning of the ultrasound guided biopsy I first prepared the Puran representation letter - making the ten day mistake in the math of the deadline - then went to see my Priest, Father Britt, to talk to him about what I thought might be my coming mortality. I then went from there to the Mayo Clinic for the biopsy. My wife of 26 years had died July 14, 2018 and I had been suffering greatly from profound grief from her suffering and death, and in fact the bowel obstruction came the night of the anniversary of her original cancer diagnosis. Mayo Clinic set me up with an appointment with a Palliative Care PA Monday, August 26, 2019, anticipating that palliative care would be desired, and this was two days after I sent out the revised representation letter.

I describe all of this medical history just so you have an understanding of my mental state at the time I made this mistake in determining the deadline for this habeas.

The biopsy came back clear of malignancy but the Mayo doctors were still worried that it was a bowel cancer, so they scheduled me for a double balloon enteroscopy which

> enables the doctors to go up into the small intestine and take biopsies. This was done October 1, 2019, and the results, miraculously, came out all clear. The doctors still do not know what caused this very unusual small bowel obstruction, but it does not appear now to be cancer and I am getting better every day. I have not gained back the weight I lost, but I have quit losing weight.
>
> I will be able to file the 2254 for Mr. Puran tomorrow, Friday, October 18, 2019. It will be three days late.
>
> The Eleventh Circuit permits the State to waive the untimeliness of a habeas petition. I am respectfully requesting under the circumstances above that the State agree to do so in this case.
>
> I am also going to immediately notify the family of the client, the client, and the referring attorneys about what has happened by copying them on this email and mailing a copy to the client.
>
> I have been admitted to practice law in Florida since 1978. I have never been sanctioned by any court for any reason. I pride myself on working diligently and professionally for my clients. I feel devastated by this mistake. I thought I was being diligent in this case.
>
> If you wish to speak with me, my cell phone is 904-662-4419.

The State's initial response has been that it intends to defend against his petition on all grounds, including timeliness. However, counsel for Mr. Puran intends to raise this matter with the Attorney General in Tallahassee and request a personal meeting to discuss the circumstances of this case and whether the Attorney General will agree to waive the time bar under the unique circumstances presented here.

Counsel for Puran had a practice of often setting forth in his representation letter his calculation of the AEDPA deadline for federal habeas cases. In this case the representation agreement contained a detailed description of how the deadline was determined. It stated as follows:

> There is an absolute deadline which cannot be extended to file this federal 2254 habeas petition. That deadline is determined by a formula, which makes the petition due within one year of the case being final on direct appeal in state court. However, once a case is final, the one year time limit is tolled so long as a properly filed state post conviction motion (such as a Rule 3.850 motion) is pending in state court or on appeal in state court. Further, a case is not final on direct appeal for purposes of this federal time limit, when the decision or mandate is entered by the state appeal court, but instead, it is final 90 days after the date the state court of appeals entered its decision (this 90 days is to account for the right a criminal defendant has to petition the US Supreme Court for review and petitioner/appellants get the benefit of tacking on this 90 days of tolling even when no petition is filed at the Supreme Court - I am assuming no US Supreme Court petition was filed in this case). So, to determine the deadline we start with the date of the direct appeal decision. According to the Fifth DCA docket that date was July 29, 2014. So we add 90 days to that date to get the date the state judgment was final for federal purposes. The final date was October 27, 2014. At that point the one year time limit clock started running and would run until the 3.850 motion was filed. The original 3.850 motion was filed May 7, 2015 and an amended motion was filed October 23, 2015. If the initial 3.850 motion was properly filed (and there is no order showing on the docket questioning its filing), then the one year time limit was tolled starting on May 7, 2015. At that point 192 days had elapsed between the finality date and the tolling date. That left 173 days to file the federal habeas excluding the time the time limit is tolled. The matter remained tolled until the 3.850 motion was denied, then appealed, and finally until the appeal decision entered. For this purpose, the federal Eleventh Circuit Court of Appeals in *Nyland v. Moore*, 216 F.3d

1264 (11th Cir. 2000) has held that the time remains tolled until the mandate issues on the decision. The mandate did not issue, according to the Fifth DCA docket in the 3.850 appeal until April 22, 2019. So the federal time clock started running again the very next day, April 23, 2019 and is running until we file the habeas petition, which must be filed within the one year, 365 day limit. 173 days from April 22, 2019 is October 22, 2019. So, our absolute deadline to file his federal habeas is October 22, 2019. That gives us approximately two months from today.[3]

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[3] The error came when the date 173 days after April 22, 2019 was calculated. Counsel is 70 years old at this time, 67 years old at the time, and was in the practice of doing math calculations by hand on paper and not using online date calculators. The hand computation was as follows:

Month	Correct	Counsel's Math
Starting April 22	8 days remaining in month	8
May	31	39
June	30	69
July	31	100
August	31	131
September	30	161
Subtotal of days remaining out of 173	161	151
October (deadline)	12	22

The error came from not "carrying the one" when totaling the digits in the right side of the column of numbers, which resulted in a subtotal of 151 instead of 161.

The State filed a response seeking dismissal based on the untimeliness of the petition.

Puran argued in reply that no reported case had ever denied equitable tolling or excusable neglect with respect to AEDPA untimeliness when the untimeliness was found to be due not to legal error on the part of the petitioner's counsel but due solely to a math mistake.

The district court nevertheless denied relief, dismissed the petition and denied a COA as did the Eleventh Circuit and this petition has followed.[4]

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[4] It is Petitioner Puran's position that the district court did not sufficiently address the merits the merits of the Sixth Amendment Constitutional claims of ineffective assistance of counsel which were presented in Puran's petition. The district court's order dismissing the habeas petition only properly addressed the procedural merits of the petition. The only reference to the substantive Constitutional claims came in two sentences at the very end of the order dismissing the petition, under the caption of "Certificate of Appealability," which stated:

> Petitioner has not demonstrated that reasonable jurists would find the district court's assessment of the constitutional claims and procedural rulings debatable or wrong. Further, Petitioner has failed to make a substantial showing of the denial of a constitutional right. Thus, the Court will deny Petitioner a certificate of appealability.

If this petition for certiorari is granted on the procedural issue, then pursuant to *Slack v. McDaniel*, 529 U.S. 473 (2000), the case should be remanded for a determination *on the merits* of the substantive Constitutional claims.

Reasons for Granting the Writ

Whether Petitioner Puran Is Entitled to a Certificate of Appealability on the Question Whether Equitable Tolling Should Apply to Permit an Untimely Habeas Petition When the Petition Was Untimely Solely Due to an Undisputed Math Mistake.

Counsel for Puran conceded in his initial filing that the petition was not timely, It was filed three days late. The late filing was due to nothing other than an error in arithmetic. Counsel candidly and in detail explained the circumstances surrounding the late filing. Counsel first informally requested the State to waive the time bar.

The State declined to waive the time bar and instead filed its reply asking the Court to dismiss the petition as untimely.

In its response, the State relied primarily upon *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007).

> Lawrence argues that his counsel's mistake in miscalculating the limitations period entitles him to equitable tolling. If credited, this argument would essentially equitably toll limitations periods for every person whose attorney missed a deadline. Attorney miscalculation is simply not sufficient to warrant equitable tolling, particularly in the postconviction context where prisoners have no constitutional right to counsel. e.g., *Coleman v. Thompson*, 501 U.S. 722, 756-757, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991).

Lawrence v. Florida, 549 U.S. 327, 336-37, 127 S. Ct. 1079, 1085 (2007).

But that holding has no application to the facts of Puran's case. The "miscalculation" at issue in *Lawrence* was not an arithmetic miscalculation, not a

math mistake, but a disagreement over the governing law and how the law was to be applied to determine the proper filing date. Likewise the remaining cases cited by the State, all decided in reliance upon *Lawrence*, all involved *legal* errors, not clerical miscalculations: *Cadet v. Florida Dep't of Corr.*, 853 F.3d 1216, 1237 (11th Cir. 2017) ("Because Cadet has shown, at most, that his failure to meet the filing deadline was the product of his attorney's good faith but negligent or grossly negligent misunderstanding of the law, the district court properly dismissed the habeas petition as untimely."); *Steed v. Head*, 219 F.3d 1298, 1299 (11th Cir. 2000) (holding that an attorney's "miscalculation or misinterpretation" of the AEDPA limitations period does not warrant equitable tolling).

No case has ever held that a clerical math error bars equitable tolling. The concept that arithmetical errors are in a category unto themselves is not novel, but recognized in the federal criminal and civil rules. Even otherwise final federal criminal judgments are subject to correction for arithmetical errors within fourteen days of sentencing.

> Rule 35. Correcting or Reducing a Sentence
>
> (a) Correcting Clear Error. Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

Rule 35(a), Fed.R.Crim.Proc..

More fundamentally, Fed.R.Cr.P. 36 provides that a court at any time may correct a clerical error arising from an oversight or omission:

> Rule 36. Clerical Error
>
> After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.

Fed. R. Civ. Proc. 60(a) is to the same effect:

> (a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

It is not uncommon for federal criminal plea agreements to provide an exception in their appeal waiver provisions for arithmetic sentencing errors. See, e.g., *United States v. Perkins*:

> "Perkins waives his rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal from his conviction and sentence. He further waives his right to contest his conviction and sentence in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255. Perkins, however, reserves the right: (a) to bring a direct

> appeal of (i) a sentence exceeding the statutory maximum punishment, (ii) an upward departure from the advisory guideline range deemed applicable by the district court, or (iii) an arithmetic error at sentencing, and (b) any claims of ineffective assistance of counsel."

United States v. Perkins, 481 F. App'x 114, 115 n.1 (5th Cir. 2012).[5]

In federal criminal appeals arithmetic errors are remanded for correction as clear error.

> The undisputed arithmetic error requires remand to the district court to amend the restitution award.

United States v. Cyr, 29 F. App'x 1, 3-4 (D.C. Cir. 2001).

Arithmetical errors have been held to even satisfy the stringent plain error standard of Rule 52 of the Federal Rules of Criminal Procedure:

> The Government concedes that there was an arithmetic error, but contends that Martinez waived his right to object by failing to bring the error to the attention of the District Court. Alternatively, the Government relies on the rule articulated in *United States v. Bermingham*, 855 F.2d 925 (2d Cir. 1988), and contends that the sentence can be sustained because the sentence actually imposed -- 37 months -- was within the Guidelines ranges for both of the relevant adjusted offense levels (21 and 20).
>
> Rule 35(c) of the Federal Rules of Criminal Procedure, which permits the District Court to correct any sentence imposed as a result of an arithmetical or technical error, has no application here because Martinez failed to file a motion pursuant to the Rule within seven days of

[5] The cases citing appeal waiver exceptions for sentencing math mistakes are legion.

> sentencing. See Fed. R. Crim. P. 35(c). However, this Court may notice "plain errors or defects affecting substantial rights" even if not brought to the attention of the District Court. See Fed. R. Crim. P. 52. We think that the District Court's arithmetical error amounts to "plain error" even under the rigorous standards recently announced by the Supreme Court in *Johnson v. United States*, 520 U.S. 461, 117 S. Ct. 1544, 137 L. Ed. 2d 718 (1997). As the Government concedes, the District Court made a mistake, and that mistake is clear and obvious at the time of appellate consideration. See 117 S. Ct. at 1549. The error undoubtedly "affected substantial rights" within the meaning of Rule 52, because it resulted in Martinez's receiving a longer sentence than the District Court intended to give him. ***Finally, we think that this sort of error "seriously affects the fairness, integrity or public reputation of judicial proceedings***," 117 S. Ct. at 1550 (quoting *United States v. Olano*, 507 U.S. 725, 736, 123 L. Ed. 2d 508, 113 S. Ct. 1770 (1993) (citations and alteration omitted)), ***since one would be hard-pressed to think of a more senseless injustice than the deprivation of a citizen's liberty for several months as a result of a clerical error. Indeed, the Government's reluctance to concede error on this point presses the limits of reasonable advocacy***.

United States v. Martinez-Rios, 143 F.3d 662, 675-76 (2d Cir. 1998) (emphasis supplied).

As the Second Circuit held, to not permit review due to a simple arithmetic error would “seriously affect[] the fairness, integrity or public reputation of judicial proceedings.”

Clearly, in federal jurisprudence, simple arithmetic, clerical errors are in a class by themselves and can be reviewed and corrected at any time and to fail to do so is itself plain error, which would affect the public reputation of the judicial proceedings.

The error which resulted in the slight late filing in this case was not a case of misinterpretation of the law, or professional error, or even negligence, it was simply a mistake in arithmetic. Arithmetic mistakes are not the "miscalculation" referred to in *Lawrence* and the *Lawrence*'s holding simply has no application to the undisputed facts of Puran's case. To allow *la moindre bévue* to deprive a defendant serving a life sentence from any federal habeas review simply is not right and warrants equitable tolling.

When the shoe was on the other foot, the Florida Attorney General argued that it should not be barred from asserting a time bar merely because it had made an obvious math mistake, and mistakenly advised the federal Court that a § 2254 petition was timely. Instead, argued the State, the federal Court should be allowed to exercise discretion on a case by case basis to decide whether to reach the merits of an otherwise time barred case or not - and the United States Supreme Court agreed.

> The State, on the other hand, points out that the statute of limitations is akin to other affirmative defenses to habeas petitions, notably, exhaustion of state remedies, procedural default, and nonretroactivity. Indeed, the statute of limitations is explicitly aligned with those other defenses under the current version of Habeas Rule 5(b), which provides that the State's answer to a habeas petition "must state whether any claim in the petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations." The considerations of comity, finality, and the expeditious handling of habeas proceedings that motivated AEDPA, the State maintains, counsel against an excessively rigid or formal approach to the affirmative

defenses now listed in Habeas Rule 5. Citing *Granberry*, 481 U.S., at 131-134, 107 S. Ct. 1671, 95 L. Ed. 2d 119, as the instructive case, the State urges express recognition of an "intermediate approach." Brief for Respondent 14 (internal quotation marks omitted); see also id., at 25. In lieu of an inflexible rule requiring dismissal whenever AEDPA's one-year clock has run, or, at the opposite extreme, a rule treating the State's failure initially to plead the one-year bar as an absolute waiver, the State reads the statutes, Rules, and decisions in point to permit the "exercise [of] discretion in each case to decide whether the administration of justice is better served by dismissing the case on statute of limitations grounds or by reaching the merits of the petition." Id., at 14. Employing that "intermediate approach" in this particular case, ***the State argues, the petition should not be deemed timely simply because a government attorney calculated the days in between petitions incorrectly***.

We agree. . . .

In sum, we hold that district courts are permitted, but not obliged, to consider, sua sponte, the timeliness of a state prisoner's habeas petition. We so hold, noting that it would make scant sense to distinguish in this regard AEDPA's time bar from other threshold constraints on federal habeas petitioners. See supra, at 206 -207; Habeas Rule 5(b) (placing "a statute of limitations" defense on a par with "failure to exhaust state remedies, a procedural bar, [and] non-retroactivity"); *Long*, 393 F.3d, at 404 ("AEDPA's statute of limitations advances the same concerns as those advanced by the doctrines of exhaustion and procedural default, and must be treated the same."). ***We stress that a district court is not required to double check the State's math***. If, as this Court has held, "[d]istrict judges have no obligation to act as counsel or paralegal to pro se litigants," *Pliler v. Ford*, 542 U.S. 225, 231, 124 S. Ct. 2441, 159 L. Ed. 2d 338 (2004), then, by the same token, they surely have no obligation to assist attorneys representing the State. ***Nevertheless, if a judge does detect a clear computation error, no Rule, statute, or constitutional provision commands the judge to suppress that knowledge***. Cf. Fed. Rule Civ. Proc. 60(a) (clerical errors in the record "arising from oversight or omission may be corrected by the court at any

time of its own initiative or on the motion of any party").

Day v. McDonough, 547 U.S. 198, 208-09, 126 S. Ct. 1675, 1683 (2006) (emphasis supplied).

The Federal courts are familiar with the concept of "excusable neglect" which permits a litigant who, for example, files a notice of appeal late due to a math mistake, to be granted permission for a belated appeal on the basis of excusable neglect. Math mistakes of this sort are accepted as excusable neglect.

This is codified at 28 U.S.C. § 2107(c) and Fed. R. App. P. 4(a)(5), as to civil appeals, and (b)(4), as to criminal appeals. In a criminal appeal the court can excuse a late filing up to thirty days, with or without a motion from the defendant and with or without notice to either party.

These rules - Rule 35, Rule 36, Rule 60, and Rule 4 and the cases thereunder should be permitted to inform the Court's exercise of its equitable discretion to permit the late filing in Puran's case on the basis of excusable neglect or equitable tolling consisting of nothing other than a simple and undisputed math mistake.

In conclusion, Puran's case falls outside the scope of the holding of *Lawrence* and its progeny. Puran's slightly late filing was not due to counsel's "miscalculation" as that term was used in *Lawrence* or any subsequent case. Instead the filing date was wrongly determined by an undisputed arithmetic mistake which had it gone unnoticed

would not have prevented this Court from addressing the merits of the petition. Out of a duty of candor to the Court Puran's own counsel brought the math mistake to the attention of the Court and advised the Court and opposing counsel of all of the surrounding details, none of which the State has disputed. This error is exactly the type of error which the federal courts are familiar with their authority and duty to correct. On these unique circumstances, this habeas petition should have been accepted as timely.

Certainly the argument is sufficiently strong that it meets the test for issuance of a certificate of appealability, that is, it deserves encouragement to proceed further. The district court's and Eleventh Circuit's resolution of this claim is "debatable amongst jurists of reason." Hence, Puran meets the standard for obtaining a COA – this issue is "adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039 (2003).

Conclusion

Petitioner Heeralall Puran respectfully requests this honorable Court grant this petition and vacate the judgment of the Eleventh Circuit Court of Appeals and issue Puran a Certificate of Appealability on the issue argued above.

Respectfully submitted,

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