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NO.

22-6204

IN THE
Supreme Court OF THE UNITED STATES

RONNIE FAMOUS - Petitioner

- vs -

LARRY FUCHS - Respondent

On Petition For A Writ of Certiorari To

United States Court of Appeals for the Seventh Circuit Court

Petition For Writ of Certiorari

Ronnie Famous

2925 Columbia Drive / P.O. Box 900

Portage, WI 53901

ORIGINAL

Questions Presented

I.

Did the Court of Appeals violate the rule announced in *Rhines v. Weber* by denying petitioner the benefit of § 2254 (d)(2), despite the fact that petitioner's 2254 habeas petition was a mix petition?

II.

Did the Court of Appeals' majority misread *Holland v. Florida* by applying its own application of the equitable tolling doctrine to instances of "extraordinary circumstance" conflicts with the approach taken by this Court?

List of Parties

All parties appear in the caption of the case on the cover page

Related Cases

Rhines v. Weber, 2000 9D 19, 608 N.W.2d 303

Rhines v. Weber, 346 F.3d 799 (C.A.8 2003)

Baldryague v. United States, 338 F.3d 145, 152-153 (C.A.2 2003)

Spitzyn v. Moore, 345 F.3d 796, 801-802 (C.A.9 2003)

Opinions Below

The opinion of the United States Court of Appeal for the Seventh Circuit, denying Famous's petition for an appeal of the District Court's decision denying Famous's petition for habeas corpus is unreported and is reproduced in the Joint Appendix.

The District Court's denial of habeas relief is also unreported

and is reproduced in the Joint Appendix.

Jurisdiction

The order of the Court of Appeals denying rehearing and rehearing en banc was entered on September 20, 2022. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(c).

Constitutional, Provision, and Statutory Involved

This case involves the AEDPA, 28 U.S.C. § 2244(d)(1), § 2244(a)(2) and § 2244(c)(3).

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Appendix A United States Court of Appeal for the Seventh Circuit

Appendix B Order of Circuit Judge ILANA D. ROYER

Appendix C Petitioner's motion for stay-and-abeyance

Appendix D Judge Charles Clevert Jr. Decision Granting the Stay

Appendix E Judge William C. Griesbach, Decision Granting State's motion

Appendix F Petitioner's motion to vacate the order of Judge Griesbach

Appendix G Petition for Rehearing

Table of Authorities Cited

CASE

- Rhines v. Weber, 544 U.S. 269 (1)
- Rose v. Lundy, 455 U.S. 509 (1)
- Nowaczyk v. Warden, 799 F.3d 69, 79 (1st Cir. 2002) (1)
- Zaruela v. Artuz, 254 F.3d 374, 380 (2nd Cir. 2001) (1)
- Freeman v. Page, 708 F.3d 522, 577 (7th Cir. 2000) (1)
- Holland v. Florida, 540 U.S. 631 (2)
- Pace, 544 U.S., at 418, 125 S.Ct. 1807 (2)
- Bounds v. Smith, 430 U.S. 817 (5)
- Johnson v. Avery, 393 U.S. 483 (5)
- Valverde v. Stinson, 224 F.3d 129 (7)
- Kaltas v. United States, 328 U.S. 750 (7)

State of Case I

Petitioner's case coincide with *Rhines v. Weber*, 544 U.S. 269. In this case Mr. Rhines was allowed to return back to the state court to present his unexhausted claims and then return back to the federal court for review of his perfected petition, 28 U.S.C.A. § 2254.

Before the statute of limitations on the filing of federal habeas corpus petitions, this court decided *Rose v. Lundy*, 455 U.S. 509 (total exhaustion requirement). As a result of the interplay between AEDPA's 1-year statute of limitation and Lundy's dismissal requirement, petitioners who come to federal court with "mixed" petitions run the risk of forever losing their opportunity for any federal review of their unexhausted claims.

If a petitioner files a timely mixed petition in the federal district court and the district court dismisses it under Lundy after the limitations period has expired, this will likely mean the termination of any federal review.

This court recognize the gravity of this problem and the difficulty it has posed for petitioners and federal district courts alike. To solve the problem, district courts have adopted a version of the "stay-and-obeyance" procedure. This procedure is being held in other district court; see, *Nowaczyk v. Warden*, 299 F.3d 69, 79 (1st Cir. 2002); (Continuance properly granted when dismissal could jeopardize petitioner's ability to obtain federal review); same; *Zarvels v. Artuz*, 254 F.3d 374, 380 (2d Cir. 2001); same; *Freeman v. Page*, 208 F.3d 572, 577 (7th Cir. 2000).

In the leading case, petitioner was found guilty by jury of four counts of first-degree sexual assault of a child and one count of exposing a child to harmful material. I was convicted and sentenced to 168 years of confinement. I disagree with the outcome of the trial proceeding and decided to challenge my convictions on direct appeal.

From 2001 til 2010 I have been pursuing my rights diligently, as it states by this Court in *Holland v. Florida*, 560 U.S. 631; It was made clear that a "petitioner" is "entitled to equitable tolling" only if he shows "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way" and prevented timely filing. *Pace*, 544 U.S., at 418, 125 S.Ct. 1827. In this case, the "pursuing his rights diligently" at issue involve an extensive period of time between the lower courts and I, back and forth litigation of my post-conviction proceedings. In *Rhines* it clearly states, "The statute of limitation is tolled during the pendency of a properly filed application for state post-conviction or other collateral review, § 2244(c)(2), *Rhines*, 544 U.S. 269. In August 17, 2010 I filed my first petition for habeas Corpus in federal court. (28 U.S.C.A § 2254) The petition was originally assign to District Court Judge Charles Clements Jr.

Like *Rhines* my petition was a "mixed" petition with exhausted and unexhausted claims. After the screening of the petition under Rule 4 of the Rules Governing Section 2254 cases

District Court Judge Cleverts Jr. saw my claims raise constitutional questions that could support habeas relief.

But I had filed a motion to stay - and - abeyance the petition to be allowed to go back down to the state court to exhaust my unexhausted claims (Appx C). The district court would abuse its discretion if it granted a stay when the unexhausted claims are plainly meritless.

That wasn't the case here, even in the order by circuit-judge Ilana D. Rovner states; "Petitioner made a substantial showing of the denial of his right to effective assistance of counsel under the sixth Amendment. see 28 U.S.C. § 2253 (c) (2) (Appx B).

District Court Judge Cleverts Jr. granted the motion for stay-and-abeyance and stayed the petition on January 31, 2011, to permit petitioner to exhaust his state remedies.

The federal case was reassigned to District Judge William C. Griesbach December 19, 2018, who lifted the stay February 15, 2019. The District Judge screen the amended petition under Rule 4 of the Rules Governing Sec. 2254 cases, when it had already been through preliminary review, and ordered the state to answer the petition.

The state filed a motion to dismiss petition as untimely filed and on October 10, 2019 the district court granted the states motion to dismiss. (Appx E). It concluded that Petitioner's petition was time barred by AEDPA's one year statute of limitations for filing a habeas petition in 28 U.S.C. § 2244 (d) (1).

This decision is in conflict with this court's decision in Rhines. This Court made it clear in the Rhines case "Once the petitioner exhaust his state remedies, the district court will lift the stay and allow the petitioner to proceed in federal court. Rhines, 544 U.S. 269

I was not engaging in abusive litigation tactics or causing intentional delay. I was allowed to go back to the state court to give them the opportunity to correct the constitutional violation and they fail to do so. The United States Court of Appeals for the Seventh Circuit stated in their September 28, 2020 order that "Famous's December 2019 motion to vacate the District Court's judgment will be taken with the case (Appx B). The Court also stated in that same order that the parties "must" address whether Famous's Petition was otherwise timely. (Appx B). The Seventh Circuit fail to adhere to this order. And gave a ruling that's in conflict with Rhines. See motion to vacate the district court's order of Judge Griesbach. (APPX F). Where the seventh circuit failed to address said motion on appeal. (APPX B).

Famous also ask that this court address the motion to vacate the district court's order of Judge Griesbach. (APP. F).

State of Case II

The one-year statute of limitation on petition for federal habeas relief by petitioner Ronnie Famous is subject to equitable tolling.

The record facts reveal, inter alia, that Famous's court appointed attorney, Mark Rosen, had failed to send Famous his trial transcript upon his (Mr. Rosen) conclusion of representation of Mr. Famous. Despite Famous's many letter emphasizing the importance of him obtaining his transcripts. This was the year of 2001, Mr. Famous finally had gotten his case files in June of 2005. Upon Mr. Famous retaining his case files he immediately seek the help/assistance from someone who is knowledgeable in law. The constitutional right to Counsel in Criminal cases does not apply to requires states to assist inmates in preparing and filling habeas petitions by providing some form of legal assistance, such as adequate law libraries or the assistance of persons train in law, Bounds v. Smith, 430 U.S. 817, 821-28 (1977), If a state has not made alternative form of legal assistance available, it must allow inmates to assist each other in filing habeas petitions; Johnson v. Avery 393 U.S. 483, 490 n.11 (1969). Famous took the path of seeking assistance from a jail-house lawyer, but unfortunately that inmate went to Segregation with Famous's legal files. Famous filed many request and complaints to the prison for his legal work. Almost two years later, Famous finally gotten possession of his legal

work. Right away Famous pursue his rights diligently; State prisoner is entitled to equitable tolling of one-year Statute of limitations on petitions for federal habeas relief only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing of petition. 28 U.S.C. A. § 2244(d). The United States Court Appeals for the Seventh Circuit (Appx A) in their decision admitted that "the court did not address whether Mr. Famous had made adequate efforts to retrieve the file once it was seized by prison authorities" (pg. 14 p. 2) But in the same decision it states "Mr. Famous submitted letters and complaints to the prison, which responded to him. The record indicates these letters and responses were exchanged on these dates, and gives the dates" (pg. 4 footnote 6). So the courts were fully aware of the extraordinary circumstances that stood in the way of Mr. Famous and prevented him from timely filing the petition/or filing anything of that matter, but still the courts fail to address the issues.

This court held in *Holland v. Florida* 560 U.S. 631, 1. Section 2244(d), the AEDPA statute of limitations, is subject to equitable tolling in appropriate cases, pp. 2560-2565, and this is the appropriate case. In the leading case, like the decision in *Holland*, the District Court incorrectly rested its ruling not on a lack of such circumstances, but on a lack of diligence.

Famous diligently pursued his rights by writing Mr. Rosen numerous letters seeking his trial transcripts and by writing numerous complaints to the prison officials when his legal work was confiscated by them. Exception to AEDPA's 1-year limitation because allegations that Correctional officer confiscated petitioner's legal papers shortly before filing deadline sufficiently justified equitable tolling; *Valverde v. Stinson*, 224 F.3d 129.

Also Famous suffer from a history of mental illness that prevented him from filing anything on his own. The record facts reveal, on-site health services noted that Famous has a long history of psychotic symptoms and delusional beliefs. The Court of Appeals base their denial on one clinical note stating that Famous's thought processes were well-organized, and this is an opinion coming from someone who briefly spoken to Mr. Famous one time back in 2009. But the on-site notes are more up-to-date (2013). [Reminder] when Famous finally gotten his legal files from Mr. Rosen, he seek the help/assistance of an jailhouse lawyer. Again like in *Holland* the Court of Appeals incorrectly rested its ruling not on a lack of such circumstances, but in a lack of diligence, *Holland*, 560 U.S. 631. The Court of Appeals decision was premised on a mis-understanding of Mr. Famous's prognosis, and it did solely rely on a erroneous interpretation of Famous's mental illness. Therefore "we can not say" with fair assurance that, that erroneous interpretation was not substantially swayed by the error. Quoting *Kotteakos v. United States*, 328 U.S. 750, 765 (1946). This decision is in conflict with *Holland*.

Reasoning For Granting The Petition

supreme court Rule 10 (b)

A state court or a united state court of Appeals has decided an important question of Federal law that has not been, but should be settled by this court or has decided an important Federal question in a way that conflicts with relevant decision of this court.

conclusion

The decision of the united states court of Appeals for the seventh circuit is in conflict with relevant decisions of this court and ask for a reversal of that decision in the interest of Justice.

The petition for a writ of certiorari should be granted.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

sign Ronnie Farnous

Date November 9, 2022