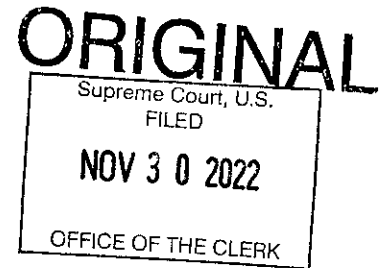


No. 22-6298

IN THE
SUPREME COURT OF THE UNITED STATES



ANTOINNE LEE WASHINGTON,

PETITIONER

vs.

UNITED STATES OF AMERICA

RESPONDENT,

OFFICE OF THE FEDERAL PUBLIC DEFENDER,

RESPONDENT,

JOSEPH D. HERROLD,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS, FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ANTOINNE LEE WASHINGTON

PRO-SE PETITIONER/PLAINTIFF

REG. NO. 18267-030

P.O. BOX 1000

TALLADEGA, AL 35610

QUESTIONS PRESENTED FOR REVIEW

1. May a legal malpractice cause of action be dismissed for a failure to state a claim, in pursuant to the "Heck Doctrine" (Heck v. Humphrey, 512 U.S. 477,489 (1994), without applying equitable tolling to the statute of limitations, or in the alternative, staying the claims until habeas proceedings are resolved.

LIST OF PARTIES

° Washington v. United States, No. 4:20-cv-00225, U.S. District Court for the Southern District of Iowa. Judgment entered June 30, 2022.

° Washington v. United States, No. 22-2603, U.S. Court of Appeals for the Eighth Circuit. Judgment entered September 9, 2022.

RELATED CASES

United States District Court for the Southern District of Iowa
No. 4:20-cv-00225 (2022 US DIST LEXIS 140139 (8th cir. 2022))
Date of entry of judgment: June 30, 2022

United States Court of Appeals for the Eighth Circuit
No. 22-2603
Date of entry of judgement: September 9, 2022

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CITATIONS OF OPINIONS AND ORDERS

The decision of the United States District Court for the Southern District of Iowa, on the petitioner's legal malpractice action, is reported in 2022 US DIST LEXIS 140139 (8th cir. 2022).

The dismissal of the legal malpractice action of petitioner was appealed to the United States Court of Appeals for the Eighth Circuit, which affirmed the judgment, without any briefing schedule, or opinion, but is set forth in Appendix B.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on September 9, 2022. Rehearing was denied on November 2, 2022.

Jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1657

28 U.S.C. §2401(b)

28 U.S.C. §2671-2680

STATEMENT OF THE CASE

I. Course of Proceedings

On July 20, 2020, Antoinne Lee Washington (Hereinafter referred to as Mr. Washington), filed this legal malpractice action, in the United States District Court for the Southern District of Iowa.

On June 30, 2022, Mr. Washington's complaint was dismissed for a failure to state a claim.

On September 9, 2022, the United States Court of Appeals for the Eighth Circuit affirmed the judgment.

On November 2, 2022, the United States Court of Appeals for the Eighth Circuit, denied rehearing.

II. Relevant Facts

In August of 2018, Mr. Washington was represented by Joseph D. Herrold (Mr. Herrold), a federal public defender, in a three day trial, in the United States District Court for the Southern District of Iowa. On July 20, 2020, Mr. Washington timely filed this legal malpractice action (Appendix F), alleging negligence, fraud, and a breach of fiduciary duty, in pursuant to 28 U.S.C. §2871-2680, which violated Mr. Washington's rights under the fifth and sixth Amendment of the United States Constitution. Between July 20, 2020, and April of 2022, Mr. Washington filed a variety of motions, in which the defendant(s) failed to respond

to Mr. Washington then filed two separate motions for default judgment (Appendix J; Appendix K), and in response the district court dismissed Mr. Washington's complaint, on June 30, 2022, for a failure to state a claim, in pursuant to the "Heck Doctrine". Mr. Washington then timely appealed, in the United States Court of Appeals for the Eighth Circuit, which affirmed the judgment, September 9, 2022, then denied rehearing on November 2, 2022.

ARGUMENT FOR ALLOWANCE OF WRIT

I.THE COURT OF APPEALS ERRED IN AFFIRMING THE DISMISSAL OF THE LEGAL MALPRACTICE CAUSE OF ACTION, BY DETERMINING NOT TO GIVE THIS COURTS DECISION'S RETROSPECTIVE EFFECT.

Mr. Washington asserts that the Eighth Circuit Court of Appeals decision was erroneous, in respect to the statute of limitations, because it failed to consider, what process an inmate must be afforded under the due process clause, when the "Heck Doctrine" (Heck v Humphrey, 512 U.S. 477, 487, 114 S. Ct. 2364, 129 L. Ed 2d 383 (1994)) bars a civil action from proceeding. This court has held, that it may be appropriate to stay the legal malpractice cause of action, until habeas proceedings are resolved. see; Quackenbush v. Allstate Ins. Co., 517 U.S. 706,731, 116 S. Ct. 1712, 135 L. Ed 2d 1 (1996); see also; Offet v. Solem, 823 F.2d 1256, 1258 (8th cir. 1987).

This court has also held that equitable tolling would apply to the statute of limitations, if the "Heck" bar takes effect. see; Wallace v. Kato, 549 U.S. 384, 393, 127 S. Ct. 1091, 166 L. Ed 2d 973 (2007); see also; Heck v. Humphrey, 512 U.S. 477,489, 114 S. Ct. 2364, 129 L. Ed 2d 383 (1994). The Eighth Circuit Court of Appeals affirmed the judgment of the district court, without any briefing schedule, or opinion.

II. THE DISTRICT ERRED IN DISMISSING THE LEGAL MALPRACTICE CAUSE OF ACTION, WITHOUT APPLYING EQUITABLE TOLLING TO THE STATUTE OF LIMITATIONS, OR IN THE ALTERNATIVE, STAYING THE CLAIMS UNTIL HABEAS PROCEEDING ARE RESOLVED.

In this present case, the United States District Court, For The Southern District of Iowa, erroneously misapplied the "Heck Doctrine" to Mr. Washington's legal malpractice claims, against the United State of America; the Office of The Federal Public Defender; and Joseph D. Herrold. The district court dismissed Mr. Washington's complaint, for a failure to state a claim in which relief could be granted, stating that Mr. Washington's complaint would necessarily imply the invalidity of his conviction; quoting... Heck v. Humphrey, 512 U.S. 477,487 (1994).

Applying the "Heck Doctrine", would require Mr. Washington's conviction to be reversed, or vacated, in order to prevail on legal malpractice claims. If this is true, then according to Heck v. Humphrey, 512 U.S. 477,489 (1994), a federal doctrine of equitable tolling would apply to the legal malpractice cause of action, during habeas challenges to the conviction. But the Eighth Circuit has held, in Trackwell v. Domina, 179 Fed Appx. 980, 982 (8th cir. 2006), that the statute of limitations for legal malpractice cannot be tolled during incarceration. In pursuant to 28 U.S.C. §2401(b), the statute of limitations for claims arising under the FTCA is two years. According the Eighth Circuit's ruling in Washburn v. Soper, 319 f.3d 338, 343 (8th cir. 2002), it held that the statute of limitations for legal malpractice begins to run, when a party knew, or reasonably should have known an injury occurred.

In Mr. Washington's case, on August 13, 2018, the district court held a hearing for withdrawal of counsel, in which Mr. Washington's trial counsel, Joseph D. Herrold, admitted to legal malpractice. ([ECF 68]-case no. 4:17-cr-00198). This hearing, along with Mr. Herrold's conduct prior to trial, and during trial, created Mr. Washington's cause of action, in his legal malpractice claims, in which according to the Eighth Circuit, this would in fact begin the statute of limitations. Mr. Herrold also submitted an affidavit to the district court, and admitted to negligence, and a breach of fiduciary duty (Appx. Section L).

It was erroneous for the district court to dismiss Mr. Washington's under "Heck". The statute of limitations, absent tolling, would run out before Mr. Washington could obtain the reversal of his conviction. Under these circumstances, if Mr. Washington is not allowed to refile his suit, "Heck" would produce immunity from tort liability, a result surely not intended. This court has held, that if the Heck bar takes effect, equitable tolling would apply. see; Wallace v. Kato, 549 U.S. 384, 393 (2007).

Furthermore Mr. Washington expresses a belief that the proper remedy, in this matter would be to stay the legal malpractice action, until habeas proceedings are resolved. Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 731, 116 S. Ct. 1712, 135 L. Ed 2d 1 (1996). see also; Offet v. Solem, 823 f.2d 1256, 1258 (8th cir 1987). The Eighth Circuit's decision in, Trackwell v. Domina, 179 Fed Appx. 980, 982 (8th cir 2006), which held that the statute of limitations, for legal malpractice, cannot be tolled during incarceration, is not in uniform with this courts

decision(s) in, *Heck v. Humphrey*, 512 U.S. 477, 489, 114 S. Ct. 2364, 129 L. Ed 2d 383 (1994); and in, *Wallace v. Kato*, 549 U.S. 384, 394, 127 S. Ct. 1091, 166 L. Ed 2d 973 (2007). A dismissal of Mr. Washington's legal malpractice action as "Heck" barred, would deny Mr. Washington process, under the due process clause of the United States Constitution.

"The court shall expedite, for good cause that a constitutional right of the United States, or a federal statute would be maintained in a factual context, that indicates a request for expedited consideration has merit. Liberty's priority over compensation is why 28 U.S.C. §1657 specifies that a request for collateral relief go to the head of the queue. see; *Post v. Gilmore*, 111 f.3d 556,557 (7th cir 1997).

"The Heck doctrine is not a jurisdictional bar, and because it is not jurisdictional, the Heck defense is subject to waiver. A district court may bypass the impediment of the Heck doctrine, and address the merits of the case. see; *Polzin v. Gage*, 636 f.3d 834, 838 (7th cir. 2011).

III. THE QUESTIONS RAISED IN THIS WRIT ARE IMPORTANT AND UNRESOLVED

The Eighth Circuit has decided important questions of federal law that have not been, but should be settled by this court and are a firm basis for granting certiorari in this case.

1. The Eighth Circuit has made a highly questionable ruling on the retrospective application "Heck Doctrine" (*Heck v. Humphrey*, 512 U.S. 477,487 (1994)), which has produced immunity for legal

malpractice actions, following a conviction in a criminal trial. The question of the retrospective application has yet to be answered by the Supreme Court.


2. This petition presents to this court a more fundamental question for review - May a legal malpractice cause of action be dismissed for a failure to state a claim in which relief could be granted, in pursuant to the "Heck Doctrine", without applying equitable tolling to the statute of limitations, or in the alternative, staying the claims, until the habeas proceedings are resolved. This court has always held that equitable tolling would apply to the statute of limitations, if the Heck bar takes effect (Wallace v. Kato, 549 U.S. 384, 393 (2007)), or in the alternative, it may be appropriate stay the claims until habeas proceedings are resolved (Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 731 (1996)). The decision of the Eighth Circuit is sufficiently unusual, that it is important that this court reiterate this principle, by making "Heck v. Humphrey", and "Wallace v. Kato" retroactive in this case.

CONCLUSION

The judgment of the United States District Court, For The Southern District of Iowa, is a unique departure from decisions of this court, which held that equitable tolling, or a stay would be appropriate if the Heck bar takes effect.

This petition for writ of certiorari should therefore be granted.

Respectfully submitted on this 30 of November, 2022.

X  _____

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