

22-7230

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

CASE NUMBER:

Supreme Court, U.S.
FILED

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JAMES JONATHAN MITCHELL,
Petitioner,

v.

Ricky Dixon - Secty. Fla. Dept. of Corrections,
Respondent.

ON

PETITION FOR WRIT OF CERTIORARI
TO THE
FIRST DISTRICT COURT OF APPEAL - FLORIDA

PETITION FOR WRIT OF CERTIORARI

James Jonathan Mitchell - DC# D0-5455
Okaloosa Correctional Institution
3189 Colonel Greg Maloy Road
Crestview, Florida 32539-6708

Petitioner - In proper person.

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

- I. DOES IT VIOLATE DUE PROCESS TO SUMMARILY DISMISS A PRISONER'S 42 U.S.C.S. 2254 PETITION FOR HABEAS CORPUS WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO ESTABLISH A RECORD-ASCERTAINING WHETHER OR NOT HIS RELATED CLAIM ALLEGING UNCONSTITUTIONAL INTERFERENCE BY THE STATE (COMMITTING HIM TO MENTAL HEALTH ULTRA CONFINEMENT FOR OVER A YEAR WITHOUT ANY DUE PROCESS, HEARING OR COURT ORDER) - QUALIFIED HIM VIA DOCTRINE OF EQUITABLE TOLLING TO RELATEDLY FILE HIS PETITION AS TIMELY?
- II. DOES IT VIOLATE DUE PROCESS TO SUMMARILY DISMISS A PSYCHOTIC PRISONER'S 42 U.S.C.S. 2254 PETITION AS UNTIMELY WITHOUT AFFORDING HIM OPPORTUNITY TO BE HEARD AND PRESENT EVIDENCE IN A HEARING THAT COULD PROVE HIS NON-COURT ORDERED PSYCHIATRIC CONFINEMENT PREVENTED HIM FROM OTHERWISE FILING TIMELY.

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IN THE
SUPREME COURT OF THE U.S.A.

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

The 11th Circuit Court of Appeals denied Petitioner's request for a Certificate of Appealability on 12/27/22. Appendix A.

The U.S. District Court for the Northern District of Florida dismissed Petitioner's § 2254 petition as untimely, disregarding his claim of Fundamental Miscarriage of Justice, and denying his entitlement to Equitable Tolling due to unconstitutional State action that prevented him from otherwise filing timely; denied on See Appendix B.

An Order of Insolvency was issued in the Trial Court on 6/10/20. Appendix C.

A Motion for Leave to Proceed IN FORMA PAUPERIS is enclosed herewith.

INDEX TO APPENDICES

- A. 11th Circuit Court's denial of C.O.A.
- B. U.S. Dist. Ct.'s dismissal of § 2254 petition.
- C. Order of Insolvency.
- D. Petitioner's Response To Motion To Dismiss.
- E. Application for C.O.A.

RELATED CASES

- 1. 2014 CF-2101A (1st Jud. Circ. Ct. - Escambia Ct., FL).
- 2. 1D15-5313 (Direct Appeal - Fla. 1st DCA).
- 3. 1D21-2444 (Appeal of 2nd 3,850 Motion denial).
- 4. 1D20-1804 (Appeal of 1st 3,850 Motion denial).
- 5. 1D21-1341 (State Petition - Writ of HAB. CORPUS).
- 6. SC21-1398 (Pet. for Discret. Review of H.S.).

TABLE OF AUTHORITIES

FEDERAL CASES

- Dodd v. U.S., 365 F.3d 1273 (11th Cir. 2004).
- Irwin v. Dept. Veterans Affairs, 498 U.S. 89.
- Guzman-Laspina v. Barr, 140 S.Ct. 1062, 206 L.Ed.2d 271 (2020)
- Holland v. Florida, 560 U.S. 1 (2010).
- Townsend v. Sain, 372 U.S. 293 (1963).
- Lawrence v. Florida, 421 F.3d 1221 (11th Cir. 2005), aff'd — 549 U.S. 327, 146 L.Ed.2d 924 (2007).
- Wilkerson v. Taylor, 529 U.S. 362 (2000).
- Miller-El v. Cockrell, 537 U.S. 322 (2003).
- Harrington v. Richter, 526 U.S. 86 (2011).
- Anderson v. U.S., U.S. Dist. Ct. (11/8/20) Lexis 3323.
- Martinez v. Ryan, 576 U.S. 1 (2012).
- Coleman v. Thompson, 501 U.S. 722 (1991).
- Schulup v. Delo, 573 U.S. 298 (1995).
- Herrera v. Collins, 506 U.S. 390 (1993).

U.S. CONSTITUTIONAL AMENDMENTS

- 5 - due process.
- 14 - due process.

UNITED STATES CODE

- 28 USC § 2254(e).

JURISPRUDENTIAL DOCTRINE

- Doctrine of Equitable Tolling.

STATEMENT OF THE CASE & FACTS

A. Sole defendant - Petitioner Mitchell(Mx) – was tryed in dock by jury & found guilty 9/11/15 of trafficking 28 gms < 30 kgs of Heroin ¹, conspiracy to possess Heroin, and resisting LEO. He was sentenced to a 25 year minimum mandatory sentence on 10/16/15.

B. Mx did not testify at his trial due to IATC. He had previously never been convicted of any felony.

C. Prior to trial, Mx requested the physical Heroin evidence he suspected was manufactured and/or tampered with be suppressed because it varied in weight, shape, color variation and packaging from the State's photo evidence; and because it was allegedly seized from Mx's home in flagrant violation of § 933.09 Fla.Stat. Knock and Announce rule, violating his U.S.C.A. 4th right to reasonable & safe warranted searches. Suppression was denied.

D. Prior to trial, Mx moved for denial of irrelevant other bad acts evidence of his alleged possession of 4 gms of Heroin in Kaufman county Texas because there was never any conviction of Mx in that arrest, and that charge was ultimately dismissed. His request was denied and an out-of-State , 6 – person gaggle of Texas public safety personnel was presented at commencement of trial, which became a prejudicial half-day feature of the trial, producing no evidence Mx was culpable in any conspiracy to traffic Heroin. It tainted the entire balance of his 3 – day trial.

E. Mx - indigent – took a public defender – assisted direct appeal of above trafficking conviction, which dismally failed challenging the lyon's share of the fundamental errors having produced his wrongful conviction. The

¹ Heroin was developed by the Bayer Pharma Co. in the late 1890s, named for it's ostensible heroic effects, And touted as an alternative to uber-addictive morphine. Heroin proved to be more addictive. It is legally distributed this day in synthetic form as oxycodone.

appeal was affirmed without opinion in the 1st DCA on May 24, 2017.

F. Mx was committed (in Baker Act fashion) to F.D.O.C.'S crisis/transitional care unit from Aug. 2018 to Nov 14, 2019 for psychosis and self-starvation.

G. While committed ut supra, on Mx's behalf Mx's brother timely filed a bare bones "1st 3.850 motion" on 9/20/19 – grieving IATC where counsel failed to: challenge a non-enunciated illegal conviction for conspiracy to possess, request a jury instruction for a mens rea affirmative defense as the TR CT was removing the defense from the instructions; vet jurors for bias in a known inflamed community atmosphere; call available exculpatory witness waiting in the lobby to testify; call Mx to testify (when he had no prior convictions); challenge a jury instruction misstating the law; challenge blatantly false/tampered evidence; impeach State's key witness - detective Bernard - with her inconsistent deposition Statement; disclose a conflict of interest prior to misrepresenting Mx; and prejudice from cumulative error effect. That motion was summarily denied on April 30, 2020.

H. Petitioner appealed above denial to the 1st DCA (1d 20-1804); affirmed without hearing, or even an answer brief from the State disputing Mx's legal & factual assertions. There was no written opinion either.

I. Mx filed a motion for rehearing, clarification and for certification; summarily denied in toto on April 19, 2021.

J. Mitchell filed a 28 U.S.C. § 2254 PWHC (3:21-cv-533-lc/maf) in the U.S. DIST.CT. -N.D.Fla., Pensacola division on March 25, 2021 – Raising 30 Constitutionally Violative issues (excluding this one) – pending this day.

K. Mx filed a belated "2nd amended (3.850) Motion for Post Conviction relief" May 20, 2021, by right of equitable tolling, grieving IATC for failing to: preserve TR CT'S denial of a psyche evaluation; object to governmental interference; object to a confusing jury instruction of constitutional

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magnitude; challenge State's closing argument wholly unsupported by facts of record, prejudicially affecting outcome of trial; request a mistrial for State's use of contrived physical (Heroin) evidence; Object/Preserve State's violation of Mx's Attorney-Client privilege via electronic eavesdropping & breach of legal mail; present even a bupkes of any exculpatory evidence when so much was available; present any evidence to support his opening Statement; and newly discovered evidence – Mx's live-in girlfriend sold BTH without Mx's knowledge near the date his home was searched – allegedly yielding a quantity of BTH.

L. The TR CT summarily denied the 2nd 3.850 motion 7/16/21; Mx appealed in the 1st DCA (1D21-2444) (pending now).

M. On April 28th 2021, Petitioner filed a State PWHC bringing errors of unaddressed fundamental ~~ERET~~ violations, prosecutor misconduct, and (8) previously unheard issues of IAAC. The petition was filed as equitably tolled due to the State's action (of psyche treatment commitment above) that prevented him from asserting his right timely. Howbeit, it was filed indeed within Florida's outlying 4 year limitation time bar, pursuant to Fla.R.App.P. 9.141(d)(5) and Fla.R.Crim.P. 3.850 (l) & (m). The 1st DCA dismissed it as "Unauthorized," citing Baker v. State, 878 So. 2d 1236 (Fla. 2004) (holding State Prisoner's have little or no right to habeas relief in Florida) {828 So.2d at 1245}.

N. Mitchell motioned for reconsideration, clarification & question certification on 7/19/21 – asserting the summary denial of his IAAC grievances violated due process to an objectively fair & adequate testing for challenged illegality of his conviction at bench & bar² – marshalling him over Baker's (id) threshold for requisite review of his PWHC, secundum Parker v.

² Baker {878 So. 2d at 1241}

State, *supra* @ 380. Mx averred therein the unreasonable spurn to an equitable review of his PWHC essentially neutered his right to be represented by conflict – free counsel guaranteed by the 6th U.S.C.A.; And it would naturally follow there from fractious 5th & 14th U.S.C.A. Eviscerations of the same right to EAOC on direct appeal³. Where the State was so bold to wholesale deny Mx a fair contest of his IAAC that stemmed proximately from a constitutionally violative trial. As well, it was a denial of a meaningful access to the courts in pursuit of justice guaranteed by article 1, s. 9 (Due Process) and s. 21, (access to court) of the Florida constitution. That motion was similarly summarily denied on Sept 7th 2021.

O. Mx sought Florida Supreme Court jurisdiction for redress on 9/29/21 (21 SC-1398), requesting review of the stonewalled injustices theretofore below; raising the incongruity in the DCA'S curt dismissal with the holdings in Henderson v. Sargent, 929 f. 2d 706 (8th circ. 1991); Re Murchison 349 us 133 (1963); Strickland v. Washinton, 466 us 668 (1984)(IAAC); Duncan v. La., 391 us 145 (1968); and Kruse v. State, 222 so.2d 13 (Fla.4 DCA 2017). He asserted this case is exceptional to warrant their review to avoid a fundamental miscarriage of justice archetypal of a dauntingly blatant deprivation of EAOC and a constitutionally courteous review of his claim to being denied that, outrageously. That petition was squelched with quickness on Oct 5th 2021, even prior to the court receiving Mx's brief on jurisdiction. P. Mx timely files this petition for Writ of Certiorari in the United State Supreme court this _____ day of January 2022; because the issue(s) quietused inequitably in the Florida courts here are of issues of paramount importance to the people of this great State, and to people throughout the entire union – fundamental issues, everyday taken for granted because they

³ Secundum Evitts v. Lucey, 469 us 387, 83 LED 2d 821 (1985).

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have been providently set in jurisprudential stone in the United States of America: sanctity of castle and the guarded, safe & reasonably warranted searches therein; the due process of a fair trial with the EAOC in a fair venue with a fair, unbiased Judge and prosecutor, untainted by politic. And with Justice thereof fail – safed by an objective Appellate and high court surety.

REASONS FOR GRANTING OF WRIT

GREAT SIGNIFICANCE OF THE OMNIBUS ISSUE

Pursuant to Florida Statute § 79.01 and Parker, *supra*, Mitchell filed in the 1st DCA a request for relief from his unjust trial, conviction and severe 25 year prison penalty which predicated from multiple prejudices of IATA, an unfair trial with a biased jury and judge, and from multiple assaults from governmental interference. His State PWHC was a proper litigation seeking review originally of the (per Parker, *supra*) IAAC and for an objective determination of the legality (or lack thereof) of his conviction and sentence. Therein he asserted: an unstainable defect from lack of competent substantial evidence in his culpability of trafficking 28 gms < 30 kgs Heroin) ; the State's failure to prove every element of the crime (knowledge of presence) and the impermissibly repugnant use of pyramidal stacked inferences in this wholly circumstantial evidence case.

Where the PC CT rendered an objectively unreasonable finding on the merits of Mx's grievances in his 1st 3.850 Motion (by misweighing the evidence of record; A failure applying *stare decisis* praxis as to qualifying reliability of in - court testimonies alleging Mx's culpability, *vis à vis* their inconsistent deposition Statements; and a misapplication of Strickland, *inter alia*), Mx asked the district court to allay the constitutionally inviable conviction, judgment and sentence against him - on grounds of State & federal constitutional violations delineated in his PWHC (Not that he's singularly innocent, but that he is not guilty of trafficking

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ARGUMENT IN SUPPORT OF GRANTING WRIT OF CERTIORARI OF AN OMNIBUS ISSUE

I. PETITIONER'S DILIGENCE WAS VALIDATED BY HIS FILING A MOTION TO STAY & ABSTAIN - IN THE WRONG FORUM, WHILE HE PURSUED EXHAUSTION IN STATE COURTS.

Petitioner (Pet.) timely filed a "placeholder petition" in the trial court, believing it was adequate to stay and obey his 1 year AEDPA limitations period while diligently pursued exhaustion in the state courts. At the same time, he was heavily medicated with psychotropic drugs for hallucinations, hearing voices and other psychotic, bizarre behavior, in addition to awaiting another, emotionally devastating trial for Murder by Drug Distribution - of which he was/is innocent.

In Dodd v. U.S., 365 F.3d 673, 1282 (11th Cir. 2004) - the circuit court (Cir. Ct.) denied Dodd's petition unfairly for a supposed failure to show efforts to timely file his action (as alleged here); yet this Court reversed that dismissal because they found "equitable tolling can be applied to prevent an otherwise diligent petitioner [from suffering injustice] from timely filing his action [by no fault of his own?]. This ~~case~~ meets the "extraordinary circumstances" standard due to Pet's unwilling commitment to FDOC Psychiatric Care Units, which prevented him from legal research, law library assistance, and even telephone use for months - see Appendix, p. 17.

Prior to that unreasonable state action(s), Pet. was diligent in filing a stay abeyance motion for federal habeas review (Ground 9 - Application For Certificate of Appealability (ACOA), p.6 - see Appendix E), even while he was teetering on the edge of schizophrenia which eventually overtook him. They said in Travis v. Dept. of Veterans Affairs, 448 US 89, 95-96, 112 L.Ed.2d 433 - that equitable tolling is allowed for belated filings where Pet pursued judicial remedies (as here), made a defective inadvertent filing (as here), or where he was tricked... They said in Cidroso-Lasprilla v. Barr, 140 S.Ct. 1062, 206 L.Ed.2d 271 (2020) that - "To determine whether [a] litigant exercised diligence, judges must conduct what this Court has characterized as an equitable, fact intensive investigation. Considering the unique facts of each case to decide whether litigant's efforts were reasonable in light of his circumstances." That could NOT have happened here because the district court (District) dismissed Pet's petition before receiving his response to the State's motion to dismiss addressing the issue - that also showed a failure of the Dist. Ct. to conduct a fair determination of issues, *de novo*. The Holland v. Florida Court (556 US 631 (2012)) said - as "2244(d) was subject to equitable tolling in appropriate cases like this one, and

"the 11th Circuit's standard [qualifying equitable tolling] was too rigid" as here.

II. THE CIRCUIT COURT FAILED ACKNOWLEDGING -
THE DISTRICT COURT'S SUMMARY DISMISSAL
SUFFERED INEQUITABLY FROM LACK OF
A REQUIRED EVIDENTIARY HEARING

Both the Dist. Ct. and the Circ. Ct. dis-regarded Pet's Actual Innocence claim which was well supported by Newly Discovered Evidence the State court improperly summarily denied aspects of essential requirements of the law of due process.

The U.S. Dist. Ct. and Circ. Ct. unfairly denied Pet an evidentiary hearing in accordance with 28 USC § 2254(e) and holdings of Townsend v. Sain, 372 U.S. 293 (1963) (holding an evidentiary hearing is required when any of six (6) criteria are present, even after Pet asserted that, in fact, all six (6) criteria were/are existential in this case).

III. THE LOWER U.S. COURTS RULED UNFAIRLY -
PETITIONER IS NOT LEGALLY & EQUITABLY
ENTITLED TO EQUITABLE TOLLING BY
MISCONSTRUING AND MISWEIGHING
THE EVIDENCE OF RECORD.

Please see Pet's A.C.A. - Appendix E
Ground 5, p.5.

IV. THE LOWER U.S. COURTS ALTOGETHER DISREGARDED PETITIONER'S CLAIM OF FUNDAMENTAL MISCARRIAGE OF JUSTICE, WHERE HE ASSERTED IN HIS § 2254 PETITION (APPENDIX G) HE IS INNOCENT.

Please see A.C.O.A. - pp. 5-6, Ground Six and Seven, Appendix E.

V. THE CIRCUIT COURT PREJUDICED PETITIONER BY RULING WITHOUT A HEARING - ("Petitioner failed to demonstrate a causal connection between his alleged mental issues... and the untimeliness of his § 2254 petition.")

Please see Grounds Three & Four of Pet's A.C.O.A. - pp. 4-5 (Appendix E).

Conclusion

The Dist. Ct's summary dismissal of Pet's § 2254 petition suffered unfairly from lack of any evidentiary hearing or just consideration for Pet's factual innocence claim, which was denied summarily by the state courts - improperly of essential requirements of the law and the U.S. Constitution.

Where it was said in Lawrence v. Florida,
421 F.3d 1221, 1226 (11th Cir. 2005), aff'd in,
344 US 327, 116 Fed. 2d 924 (2007) - "Mental
Incapacity may provide basis for equitable
tolling...," the 11th Circuit's finding here
fails the doctrine of stare decisis by applying
too rigid a bar to ensure an equitably tolled
filing claiming factual Innocence does NOT
go uncorrected by the U.S. Courts - see Folland
v. Florida *supra* at overviews; Considering:
(A) The lower U.S. Courts (and all State Courts)
Failed affording Pet. even one (1) evidentiary
hearing to establish a record with New Evidence
of innocence; (B) the lower U.S. Courts calculated
the AEDPA 1 year limitation incorrectly, as
Pet. explained in "Petitioner's Response to Motion
to Dismiss (Appendix D) - The Speculative
Misinterpretations," pp. 21-22; and (C) the
Cir. Ct.'s adverse finding regarding equitable
tolling was an unreasonable deterrence to
the opinion of every state judge on the content
of federal law [or the Constitution], as in
Wilkerson v. Taylor, 529 US 342, 389 (2000) -
because "federal can disagree with a state
Court's credibility determinations... and
conclude the [lower] decision was unreasonable
or the factual premise was incorrect (as here),"
(quoting Milner v. Cockrell, 537 US 322, 340
(2003)).

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"The reviewing court... must ask... whether fair-minded jurists could disagree that those arguments for equitable tolling here are inconsistent with a prior holding of the U.S. Supreme Court," Harrington v. Richter, 526 U.S. 86, 102 (2001).

Pet. asserts the lower U.S. Courts' findings here are, and to the detriment of well-established jurisprudence that "A litigant is entitled to equitable tolling on establishing (1) diligence, and (2) extraordinary circumstances stood in his way and prevented timely filing. The Second prong is met where circumstances causing the delay are extraordinary and beyond litigant's control" - Tewin, Signal of HN5.

Pet. asserts (ed) he has met both prongs here.

Pet. asserted further his right in overcoming any perceived procedural bar and quoted -

Anderson v. U.S., U.S. Dist. Ct. - S.D. Fla. - 18-24327-cv- Seitz - 09-00806-cr-Sbury (1/18/20) Lexis 3323;

Martinez v. Ryan, 576 U.S. 1 (2012);

Coleman v. Thompson, 501 U.S. 722 (1991);

Schlup v. Delo, 573 U.S. 298 (1995); and

Herrera v. Collins, 506 U.S. 390, 404 (1993).

This case is of great public importance because it affects all litigants who must file an action belatedly due to psychosis and how a state can use it to their advantage to deny a citizen his right under the Constitution to access the federal courts for justice.

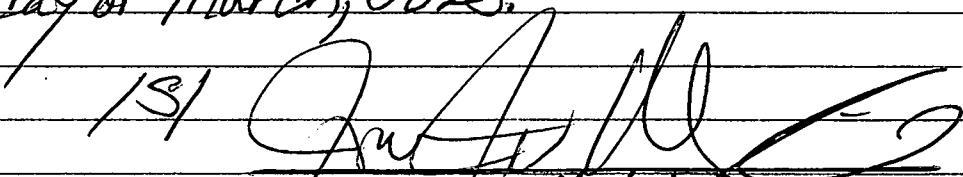
OATH

UNDER PENALTY OF PERJURY, I CERTIFY the foregoing facts are true and correct, that I have reason to and do believe this petition for writ of certiorari is meritorious to warrant the requested writ and is of great public importance, that it is timely served, and that I have read and understand it completely.

CERTIFICATE OF SERVICE & MAILING DECLARATION

I CERTIFY I have furnished a true copy of the foregoing petition to the Fla. Attorney General's Office by placing it into the hands of Okaloosa C.I. official, for mailing via regular U.S. Mail on this 27th day of March, 2023. I CERTIFY UNDER PENALTY OF PERJURY I am indigent & unable to pay the Court's filing fees, and I am enclosing an Informa Pauperis application. I herewith mail the Petition for Writ of Certiorari to the U.S. Supreme Court - postage prepaid - on this 27th day of March, 2023.

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Petitioner
In proper person

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