

MAY 10 2023

OFFICE OF THE CLERK

No. -
23-5249

IN THE
SUPREME COURT OF THE UNITED STATES

Bryan D. Green — PETITIONER
(Your Name)

vs.

5th circuit court appeals RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5th circuit court of appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bryan D. Green
(Your Name)

Federal Correctional Institution
P.O. Box 1000
(Address)

Butner, NC 27509
(City, State, Zip Code)

(Phone Number)

ORIGINAL

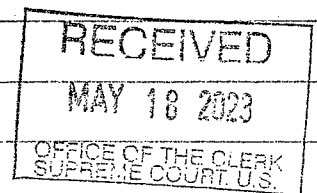
Docket number: 22-50772

United States
Supreme Court

Caption: United States v. Byron D. Green

Petition for writ of Certiorari
On the U.S. Appeals Court for
the Fifth Circuit

Petition for writ of Certiorari



QUESTIONS PRESENTED

Is the law satisfied if a pro se litigant had anything less
or one year with access to courts to file a motion?

Is a trial attorneys failure to file an NOA enough of a due process
violation to allow equitable tolling?

Did the 5th district court give consideration to the "totality
of circumstances" faced by Mr. Green in granting equitable
tolling?

If one risk of facing the death penalty is somewhat coercive
are 2 risks of death unconstitutional?

Does long term isolation have a coercive effect on pre-trial detainees?

What are the effects of long term isolation and how can they affect
a ~~prisoner~~ petitioners ability effectively represent them selves?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [] 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:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
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☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

Jurisdictional Grounds

Date of Judgment to be reviewed: 03/01/2023

01/23/2023

08/09/2022

Date of rehearing: 03/01/2023

Provisions that confer jurisdiction to the Supreme Court to hear this case

- Article III of the U.S. Constitution Section 2 Clause 2 (Jurisdiction of the Supreme Court) "The Supreme Court shall have appellate jurisdiction in all other cases not related to Supreme Courts original jurisdiction. The Supreme Court answers questions of Federal law and has final authority to determine meaning and application of words in Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FACTS OF THE CASE

In 2015 Green was in the special housing unit of midland county jail under administrative segregation for protective custody.

For 2 years in state court Green left his 9x9 cell for 1 hour three times a week. He could not socialize with anyone. He did not have a television. He did not have a radio. He had books and could make paid calls to his family. This is the only difference between "administrative segregation" and "disciplinary segregation". Both housed in the same unit.

The first year of pre-trial state incarceration the death penalty was considered but dropped.

After 2 years of state custody in 2018 the federal court won the case and Green was moved to the special housing unit of Ector county Correctional Center.

The cells here provided roughly 2'x9' of space to move in. Three walls were made of bars with a camera constantly on the cell. Every 20 minutes for count an officer would 'bang' a magnetic counter against a metal plate on a metal door. Every thirty minutes, all day, every day. During one year Mr. Green only had the opportunity to go 'outside' for one hour five times. In ~~one~~ one year. The usually reason for recreation being closed is 'lack of staff'. Green was not fed on several occasions without the ability to file Administrative Remedy.

For one year again the death penalty was considered but dropped.

In 2018 ECCC was closed due to facility conditions and a suicide incident. Mr. Green was moved to Haskell Correctional Facility.

Before being sentenced Mr. Green instructed his attorney Aaron Eckman to file a notice of appeal, which Eckman said he would do.

During these times before accepting a plea Green was shackled and handcuffed for a four hour drive to the court housed and interviewed by the DA, Prosecutor and 3 cops. Placed in a chair pinned between the wall and floor. During this meeting the Prosecutor + Howard - said he would use Mr. Green's military record to 'hurry him' unless he did the right thing.

Mr. Green was sentenced in October 2019. Between then and January 2020 he was housed at Oklahoma City and Pahrump Nevada.

In January 2020 Green was housed in General Population at FCI Three Rivers, Texas.

He requested and received his docket sheet in February when he did not see a notice of appeal. Mr. Green was not sure what he was supposed to see but had not heard from an attorney.

Green and his family attempted to contact Mr. Eckman to try and find out what had happened. From February to April calls went mostly unanswered. When they were a secretary made promises that Eckman would call back or contact Mr. Green but he never did.

During this time Mr. Green requested court transcripts for research purposes. He was given the address to an "Ann Record" (Pecord) who never answered phone calls or letters from him or his family. Nor was any assistance forthcoming from the court.

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In summer of ~~2019~~ 2020 restrictions started to be put in place at FCI Three Rivers to mitigate the spread of COVID. Inmates were confined to their units and law library was closed. As COVID conditions worsened restrictions increased until inmates were confined in their cells.

Shortly thereafter Mr. Green was housed again in the HU at Three Rivers until winter. This was due to threats to life due to the same reasons why he was housed as protective custody for four years, pre-trial.

In January 2021 Green was housed at FCI Butner where he began to file despite remains COVID restrictions on law library. Conditions of the facilities construction made access to the library more available. Green also requested his transcripts again, but never received them.

Argument

The lower courts have erred in denying petitioners habeas Corpus motion to vacate set aside or correct their sentence and accompanying equitable tolling motion.

According to Federal Habeas Corpus Practice and Procedure the one year limitations period for filing is triggered when a judgement becomes final.

If the defense seeks direct review the judgement becomes final at the conclusion of certiorari review or - if the defense did not seek direct review - the judgement becomes final at the end of the review period.

Mr. Green was under the presumption that his attorney filed a notice of appeal like he was instructed. Green was sentenced in October of 2018; it wasn't until February that he learned his attorney failed to file an NOA. Four months out of his limitations period.

Equitable Tolling

Equitable tolling should be applied if:

1) the petitioner pursued their rights diligently.

2) Petitioner was prevented from filing by circumstances outside their control.

Mr. Green was sentenced in October 2018. It wasn't until February of 19 that he discovered he did NOT have appellate counsel and his attorney did NOT file a notice of appeal as instructed (a latent due process violation).

Mr. Green and his family tried for many months to show or his attorney to figure out what had happened and what to do. There were many promises to get in touch but they never did.

Mr. Green also requested from the court a copy of his transcripts. The court directed him to a allegedly retired woman

named "Ann Recon" who never answered the phone. Did not answer emails or letters and as far as the defense knows never actually existed. Mr. Green never got his transcripts, without which much information about his case pertinent to any appeal may not have been discovered.

When the COVID pandemic began in March Prisons began to lock down many Prisons, such as FCI Three Rivers where Green was housed, locked inmates down in their cells with limited access to computers and no access to the law library. Experiences during the early days may vary but the BOP's guidelines for Quarantine lockdown can be found on their website. The lower court made a baseless generalization that "every inmate in America" had access to law library.

Without the protection of the Constitution a motion filed by a pro se litigant would be useless. Mr. Green's ~~that~~ a sentencing attorney failed in his duties the difficulties in obtaining paperwork from the court and lack of access to law library greatly hampered the Petitioner's ability to effectively litigate their case.

As it says in [Holland v. Florida 560 U.S. 631] the AEDPA's statute of limitations... is not jurisdictional. It does not set forth a inflexible rule requiring dismissal whenever its clock has run —

The lower court ignored "his strongest argument" of Mr. Green's attorney failing to file an NOA. Disregarded his lack of access to courts saying "every inmate in America" had access and disregarded how the court did not provide court documents as requested. Furthermore they denied his motion — already something frowned upon by Congress — with prejudice. A rather extreme denial. The petitioner has to wonder if the courts ever ~~at~~ actually received his motion. May it get lost in the mail somewhere?

[Holland]... we recognize the AEDPA seems to eliminate delay in the Federal Habeas Corpus Process... but AEDPA seems to do so without undermining basic Habeas Corpus principles and while

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seeking to harmonize the new statute with prior law under which a petition's timeliness was always determined under equitable principles. When Congress codified new rules governing this previously judicially managed area of law it did so without losing sight of the fact that the writ of Habeas Corpus plays a vital role in protecting constitutional rights. It did not seem to end every possible delay at all costs... the importance of the great writ, the only writ explicitly protected by the constitution (Article I § 9 Cl 2) along with congressional efforts to harmonize the new statute with prior law, counsel hesitancy before interpreting AEDPA's statutory silence as indicating a congressional intent to close court house doors that a strong equitable claim would ordinarily keep open.

Doesn't Mr. Green have a strong claim due to the post-conviction litigation opportunities taken from him by his attorney's failure to file an appeal (itself a blatant due process violation) :
Does he not have a strong claim due to the harsh and unusual nature of his pre-trial detention (twice facing the death penalty and enduring nearly 5 years of one-man isolation can have extreme consequences to ~~thin~~ the mind and body (cage))

One of the laws Congress seeks to harmonize the AEDPA with is the original Habeas Corpus Practice called "the equitable doctrine of estoppel" Rule 9(a) of the Federal Habeas Corpus rules.

Rule 9(a) states that dismissal was inappropriate if petitioner however they litigated conscientiously, did not have grounds for relief available to them, could have discovered through the exercise of reasonable diligence previously obscure facts or rights, or the petitioner was prevented from filing by circumstances outside their control.

Mr. Green could not have discovered grounds for relief without court records - like his transcripts - lack of access to law library, or ^{an} appellate attorney. A Petitioner can not know what grounds for relief

they have without resources. Just like a defense cannot be prepared without discovery of evidence.

Nor can Petitioners discover previously obscure facts without research time and effort. Upon incarceration filers start with a legal knowledge of roughly zero. The AEDPA ~~gives~~ gives the a year of time to build a case and file. Litigants provide the effort (due diligence). Prisons provide the resources (law library)

Lack of access means they did not have the resources to discover grounds for relief or certain ^{facts}. No matter how long they have or how hard they try. Difficulties in obtaining pertinent paperwork was also a limitation on the resources necessary for building a case. For 4 months Mr. Green believed he retained counsel - as he should have - leaving him 8 months time to build and file his case. 8 months is not an accord with the AEDPA one year so does not satisfy law.

In [Goch v. Boughton 763 F.3d 689] "the mistake made by the district court... was to conceive of the equitable tolling inquiry as a search for a single trump card rather than ~~the~~ an evaluation of the entire how the prisoner was dealt. In Holland the Supreme Court disapproved the use of such a single minded approach. It wrote instead that a person's case is to be considered using a flexible standard that encompasses all of the circumstances he faced and the cumulative effect of those circumstances. Equitable tolling is granted because the hurdles Goch faced includes difficulty in obtaining file from former counsel, limited access to prison law library, in adequacy of library resources, were nearly insurmountable when everything is taken into account."

Mr. Green did not retain counsel for appeal as he should if his trial attorney followed instructions and filed an NOA. He did not receive court documents as requested from the court. He had no access to law library and was suffering from the mental deterioration common in long stays in segregation. For this - ~~at~~ circumstances more onerous

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than thoughts faced by Mr. Gochu. - equitable tolling should have been granted to Mr. Green.

Federal Habeas Corpus Practice And Procedure Part IV Vol 2
§24.4

- Applicant who committed procedural default may be excused and obtain federal review if they can show cause and prejudice
- Or demonstrates by showing that failure to consider claim results in a fundamental miscarriage of justice
- Courts have explained the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration.

Mr. Green's plea of guilty came at the hands of circumstances not were inherently coercive while certain elements of coercion are acceptable to a point, there is a limit; Mr. Green's case went passed that limit. It could not be possible that his ^{wif} was not overborne by 4 1/2 years pre-trial isolation in what amounted to disciplinary segregation if not in name. Having faced 2 death penalties for the same charges and a number of interviews that were in fact intended to force him to plea.

[U.S. v. Dauton 604 F.2d 631, 934 (5th 1979)] a guilty plea must be free from coercion

[U.S. ex rel Siebold v. Beincbe 362 F.2d 592, 593 (2nd 1966)] a conviction will not be sustained if it rests upon a plea of guilty which is the result of coercion.

[Euziere v. U.S. 249 F.2d 293, 295 (10th 1957)] fundamental standards of procedure in criminal cases require that a plea of guilty to the charge or charges contained in an indictment or information be entered freely, voluntarily and without any semblance of coercion.

[U.S. ex rel Ellington v. Gilligan 296 F. Supp 244 (2nd 1966)]
the fact that a promise that induced a guilty plea was subsequently kept does not establish that the plea was voluntary. whether it was must be decided in the light of events at the time of its entry. The issue does not lend itself to precise mathematical determination. Its resolution is one of fact which involves the evaluation of psychological factors ~~and~~ and elements that may be reasonably calculated to influence the human mind.

[Golliga v. Wilkerson 998 F.3d 137 (2021)] "Given the devastating consequences of prolonged solitary confinement identified in case law and scientific literature... there is no question that this practice 'disrupts profoundly the senses or personality' as set down in [Conventions Against Torture (1988 F.3d 154) regulation 8 CFR §1208.18(c)(4)(ii)]

[Schup v. Delo 288 U.S. 320-2 (1999)] "the mis carriage of justice exception is rooted in an even more basic principle... our law must not become so caught up in procedural niceties that it fails to sort out simple instances of right from wrong and give some redress for the latter.

Mr. Green was housed in "Administrative Segregation" for protective custody which is identical to "disciplinary segregation". One persons cells with bathroom, shower and every other joy. Segregation is used for punishment because it is uncomfortable. In order to change behavior punishment must be calculated to influence the mind to deter further disruption. But Mr. Green broke no rules while in (concrete) nor was he convicted of any crime.

Everytime Mr. Green asserted that he wanted to go to trial ^{to} his lawyer, his lawyer filed a motion to continue. Greens isolation was endless. He faced the death Penalty twice ^{and} or a life sentence at some distant hopeless trial date. until then Mr. Green lived every hour of those 4 1/2 years in a box the size of a middle class

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suburban bathroom or smaller, occasionally he'd be let out to the court house to be interviewed by the Prosecutor, DA, 3 cops and his attorney. Shockley Hands + feet, Picked up like a child and placed into a chair wedged between the wall + table. His attorney never said a word as the Prosecutor took Mr. Green's military record and circled things like "Infantry" and "Deployment in Afghanistan". Telling him the Prosecution would use his record to "hurt him", unless he "did the right thing".

These are the fundamental miscarriages of justice. These are the wrongs which demand redress. Unless this is what our court systems condone. Not the preponderance of evidence of someone's crimes but on honorable military record. Force and torture a confession out to find the truth or unjust justice of a kind that the guilty may benefit from even while they are punished for their crimes. But to achieve conviction.

For years Mr. Green fought for a trial, only to have the date pushed further away. And at anytime he could make all these traumas stop if he accepted a plea, which he finally did.

Pre-trial confinement

[*Galline v. Wilkinson* 988 F.3d 137 (2021)] "Prolonged solitary confinement is one of the true horrors of the modern day penal system. Years on end of nearly total isolation exact a terrible price." [*Davis v. Ayala* 574 U.S. 297, 135 S.Ct. 2187, 2210, 192 L.Ed.2d 323 (2013)] Studies have shown that prolonged solitary confinement can result in paranoia, hallucinations, suicidal ideation, feelings of impending doom, decline in mental function, insomnia, nightmares and many other symptoms related to severe depression and anxiety [see *Porter v. Clark* 923 F.3d 348, 355-57 (4th Cir. 2019)] Other symptoms include, PTSD, self-mutilation, obsessional thinking, dangerous weight loss, and exacerbation of pre-existing

health issues [Williams v. Georgia Pa Dept. Corr. 848 F.3d 549 566 (3rd Cir. 2017)]
there is not a single study of solitary confinement where in non-voluntary isolation that lasted longer than 10 days failed to result in negative psychological effects.

During this time Mr. Green faced the death penalty twice, once in state court and 2 years later again in Federal court. Both times the penalty was dropped since it happened in separate venues. Perhaps it is protected by 'due process' from a double jeopardy violation. But Mr. Green had his 'life + limb' threatened twice for the same charge. A plain language understanding of that amendment.

The coercive nature of facing death has been discussed by the courts. Does such a risk violate a person's right to trial? It can certainly dissuade a person from pursuing said right. But it's been decided, though coercive, it is not unconstitutional. What about two risks of death? If one is enough to spark debate and admittance of its capacity to "overhear" someone's will, certainly two crosses the bounds into unconstitutionality.

Mr. Green's experiences were over and above the normal incidents of prison life not just in length but in quality as well. During one year of the 4 he served at Ector County Correctional Center (since closed) Mr. Green only had the opportunity to go "outside" for 1 hour 5 times that year. He was not fed on a number of occasions and not given opportunity to file grievance. His cell only provided a 2ft by 8ft lens space to move around in. Imagine trying to exercise in the space provided the size of a coffee table.

The Court may say that Mr. Green's placement in administrative segregation was for the safety and security of himself and the institution and thus protected conduct. I direct the court again to Gallin

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"Conditions of confinement that stem from judicially imposed sanctions following a lawful conviction are not ipso facto exempted from the definition of torture (according to the international convention against torture). Barbaric prison conditions might constitute torture if they cause severe pain or suffering and if circumstances indicate that the intent of the authorities in causing the severity of pain and suffering (over and above the discomforts incident to confinement in that time and place) is to illicitly discriminate, punish, coerce confession, intimidate or the like, just as live burial would be torture even if somewhere it were the lawful sanction for the offense.

"Any number of torridous conditions may be consistent with legitimate purposes... live burial would adequately address any security concerns and promote deterrence objectives — but that surely does not mean that live burial is exempt from the definition of torture.

"One court has gone so far to state that if particular conditions of segregation being challenged are such that they inflict a serious mental illness, greatly exacerbate mental illness, or deprive inmates of their sanity, the defendants have deprived inmates of a basic necessity of human existence — indeed they have crossed over into the realm of psychological torture [Madrid v. Gomez 889 F. Supp. 146 1264 (N.D. Cal 1995)] See also [Ruiz v. Texas 137 S.Ct 1246 247 197 L.Ed 2d 487 (2017)]"

[Interim report ¶ 73 U.N. Doc A/66/268 (Aug. 5, 2011)] "The practice of solitary confinement creates a situation of psychological ~~pressure~~ pressure (during pre-trial confinement) which can influence detainees to make confessions or statements against others and undermine the integrity of the investigation.

When solitary is used intentionally during pre-trial detention as a technique for the purpose of obtaining information or a

Confession is amounts to torture as defined in Article 1 or to cruel, degrading, inhuman treatment or punishment under Article 16 of the Convention Against Torture"

[U.S. ex rel Elkinson v. Gilligan 256 F. Supp 244 (2nd 1966)]
"When the Judge made a Promise the higher Court considered the fact that the Promise may not have been designed or intended to induce or influence the defendant to Plead Guilty is not material - the Question is did it have that impact?"

The intent of that oppressive interview by the Prosecutor was to overhear the defendants will, to take the best part of his life and his best mitigating defense and turn it against them, while his "defense" attorney got quietly by, Inert + Powerless.

It had been years since the investigation was over. There had been no new evidence the only thing to be had was a confession, Green and pinned to a chair surrounded by cops + interviewed. This is text book coercion. And they knew what they were doing.

Just like the DA knew of Mr. Green's state time in isolation and recommended continued segregation at ECCC, so he was told by his attorney and the facility warden.

What was the DA's intent? Considering facilities construction the only other alternative was to house Green in general population where he would be in danger what is more important like in Elkins is what were the consequences and the impact of Mr. Green's circumstances? "a de facto situation of psychological pressure which can influence detainees to make confessions" [Interim report ¶ 23 U.N. Doc A/66/208 (Aug 5 2011)]

[Miller v. Fenton 474 U.S. 104, 88 L.Ed 2d 405 (1985)] "The admissibility of a confession turns as much on whether the techniques used for extracting the statements, as applied to this suspect, are compatible with a system that presumes innocent

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He argues that a conviction will not be secured by inquisitorial means as on whether the defendants will was in fact overborne."

The courts have made a mistake that the constitution applies to a case number and not person. That when a case changes names so does the case number but it is not the same person who suffers from the repetition, suffers from things like anxiety about the outcome of the case, or overly person pre-trial incarceration. Both things are the reasons why a speedy trial protection exists.

The constitution does not exist for the courts. It exists to protect the people. To protect the individual American like Mr. Green who right to be free from facing loss of life or liberty twice for the same charge was not upheld. His right to effective counsel was not upheld. His right to appeal was not upheld. His right to a speedy trial was not upheld. And his right to liberty was not upheld.

To protect the freedom of confession, the mind of the accused and the integrity of an investigation. To balance the power of the state in the justice system. Proleses must be in place to reduce the time spent in pre-trial isolation. Proleses already in place for disciplinary segregation, where inmates do not stay in for longer than a year and that is in cases of murder in prison. And no post-disciplinary inmate will stay longer than 90 days without the regional warden's approval.

The petitioner moves the supreme court to consider his habeas corpus motion and reduce his sentence fifteen years.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date:
