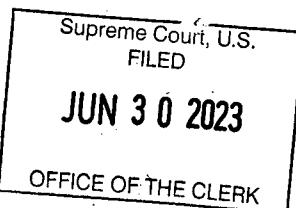


23-5609

No. 21-7590

ORIGINAL

OFFICE OF THE CLERK
IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON, DC



ERIC G. BANKS SR. -PETITIONER

vs.

MARYLAND ATTORNEY GENERAL-RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
PETITION FOR WRIT OF CERTIORARI

ERIC G. BANKS SR.
PETITIONER
MCI-J/P.O. Box 549
Jessup, Maryland 20794

MARYLAND ATTORNEY GENERAL
RESPONDENT
200 ST. PAUL ST.
BALTIMORE, MD. 21202

Questions Presented

- 1.) Did the U.S. District Court violate the Petitioners 5th Amendment Constitutional Right by allowing the lower court to allow the Petitioner to testify against his self and denied freedom and liberty without due process: ineffective counsel, prosecution misconduct and court error.
- 2.) Did the U.S. District Court and the Court of Appeals (Fourth Circuit) violate the Petitioners 6th Amendment Constitutional Right of assistance of counsel by not granting the Petitioner legal representation after the Petitioners post conviction hearing, with the Petitioner's appeal.
- 3.) Did the U.S. District Court violate the Petitioners 8th Amendment Constitutional Rights by holding the Petitioner accountable for time of tolling or delay when the library was close for long periods and when the Petitioner was in need of medical attention, as well as quarantine. Which aided in restricted movement.
- 4.) Did the U.S District Court and the Court of Appeals (Fourth Circuit) violate the Petitioners 14th Amendment Constitutional Rights by not granting the Petitioner an Application of Appealability, when circumstance was beyond the petitioners control.
- 5.) Is it fair and Constitutionally sound to hold the Petitioner accountable for things beyond the Petitioners control?

List of Parties to Proceeding

1. Attorney General of Maryland – Respondent
2. Christopher Smith Warden - Respondent
3. Eric G. Banks Sr. – Petitioner

Corporate Disclosure Statement

1. I am presently incarcerated at MCI-J Institution.
2. The Warden of this institution is Christopher Smith and this institution is holding the Petitioner here as an inmate.

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Eric Glenn Banks Sr. v. State of Maryland unreported opinion, Court of Special Appeals, September Term, 2014, No. 304.

October 26, 2021. Lyons v. Lee, 316 F. 3d 528, 532 (4th Cir. 2003).

Slack v. McDaniel, 529 U.S. 473, 478 (2000); see Buck v. Davis, 137 S. Ct. 759, 773 (2017).

U.S. v. Moore, 24 F. 3d 624, 625 (4th Cir. 1994)

Estelle v. Gamble, U.S. Sup. Ct. 1976.

Jones v. Braxton, 392 F.3d 683, 689 (4th Cir. 2004)

Lyons v. Lee, 316 F. 3d 528, 532 (4th Cir. 2003).

Pennsylvania Dept. of Corrections v. Yeskey, U.S. Sup. Ct. 1998

28 U.S.C. Id § 2263 (b)

I.G.O CASE# C-02-CU-20-001398

28 U.S.C. § 2244(d)(1)

28 U.S.C. § 2244(d)(2)

Hill v. Braxton, 277 F. 3d 701, 704 (4th Cir. 2002)

Harris v. Hutchinson, 209 F. 3d 325, 330 (4th Cir. 2000)).

Table of Authorities (continued)

US Constitution 5th Amendment

US Constitution 6th Amendment

US Constitution 8th Amendment

US Constitution 14th Amendment

Citations of Opinions

Eric Glenn Banks Sr. v. State of Maryland unreported opinion, Court of Special Appeals, September Term, 2014, No. 304. The court seen the plain error, but choose not to act.

Harris, 209 F.3d at 330 [A] resort to equity must be reserved for those rare instances where...it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Statement of the Basis for the Jurisdiction

ECF No. 7. Under the provisions of 28 U.S.C. § 2244

Constitutional Provisions and Statutes

5th Amendment Constitutional Right by allowing the lower court to allow the Petitioner to testify against his self and denied freedom and liberty without due process: ineffective counsel, prosecution misconduct and court error.

6th Amendment Constitutional Right of assistance of counsel

8th Amendment Constitutional Rights by holding the Petitioner accountable for time of tolling or delay when the library was close for long periods and when the Petitioner was in need of medical attention, as well as quarantine

14th Amendment Constitutional Rights by not granting the Petitioner an Application of Appealability

STATEMENT OF THE CASE

On April 30, 2014 the Petitioner filed an Application for review of sentence by a three judge panel. Following a hearing the panel declined to modify the Petitioner's sentence.

The Petitioner filed a motion for modification of sentence on June 25, 2014, which was denied on July 8, 2014.

On March 25, 2015 the Petitioner received a letter from the attorney Mr. Juan P. Reyes who was an assistant public defender. He stated he was resending my letter because in their system they had the wrong address.

On October 9, 2015, the Petitioner filed a motion for drug and alcohol treatment pursuant to section 8-505 thru 8-507 of the Maryland Health General Article. On October 13th, 2015 the petition was denied.

On February 11, 2016 Mr. Reyes explained to the Petitioner that the Petitioner could not submit no information to the Court of Special Appeals. But the Petitioner could share with him for inclusion into the Petitioners Post Conviction. Mr. Reyes was the attorney from the Public Defender's office who helped with the Petitioner appeal after the Petitioners trial. He also told the Petitioner that the Petitioner had to file his own Writ of Certiorari. Mr. Reyes or no one else told the Petitioner he had to file a Habeas Corpus after the Petitioner's Writ of Certiorari.

On June 30, 2016 the Petitioner's conviction was confirmed by the Court of Appeals of Maryland in an unreported opinion. That courts mandate was issued on August 1, 2016.

The Petitioner is a layman to the law and does not know all of the state and federal rules to a point he could apply them very effectively to procedures beyond the appeal stage. On **September 29, 2016** the Petitioner Writ of Certiorari to the Court of Special Appeals and the supplement filed there to was denied.

On **February 14, 2017** the acting Chief Attorney, Mrs. Initia Lettau of the Public Defender's Office wrote the Petitioner. She was stating that her office has received the Petitioners Post Conviction and they opened a file, in turn an attorney will contact the Petitioner. On **March 1, 2017** the Petitioner wrote Mrs. Lettau at the Public Defender's Office in the Post-Conviction Division letting her know he sent all his information pertaining to his Post-Conviction.

On **March 20, 2017** the Petitioner received a letter from Mr. Norman Handwerger stating that he was the Petitioner's assigned attorney for the Petitioners post-conviction case. On **July 24, 2017** the Petitioner filed an amendment to his post-conviction case. On **July 25, 2017** the Petitioner wrote a letter stating that the amendment was not to replace the Petitioner's post-conviction petition, but to add to it. After requesting information from the Maryland State Police Forensic Science Division, they wrote the Petitioner explaining that their lab was not the lab that processed his case. The Petitioner was trying to do as much work as he could because the Petitioner's attorney was not responding or submitting any legal documents.

On **August 3, 2017** a directive was sent to the Petitioner stating that all inquiries should be directed to the Petitioners counsel and not directly to the court.

On Aug. 17, 2017 Petitioner attorney, Mr. Norman Handwerger filed a withdrawal of the Petitioners post-conviction against the Petitioners wishes. Three days later the Petitioner filed a motion to have the withdrawal stricken from the record. But, on August 31, 2017 the motion was denied and the motion for the Petitioners motion to withdrawal by the Petitioner's attorney was granted. On September 18, 2017 the Petitioner filed for Post-Conviction relief again on his own. On Oct. 30, 2017 the Petitioner wrote Mrs. Lettua at the Public Defender's Office requesting an attorney and some assistance.

On Dec. 18, 2017 the Petitioner wrote the Public Defender's office again explaining how Mr. Handwerger came to see the Petitioner once and filed a withdrawal. After that the Petitioner heard nothing from the assigned attorney. Also the Petitioner thought after the attorney filed the withdrawal that he was no longer the Petitioner's attorney. Mr. Handwerger was kept on the case when the Petitioner filed an amendment Jan. 31, 2018 pro se. On Feb. 9, 2018 the Petitioner filed a motion to have Mr. Handwerger taken of the case and requested a panel attorney to be assigned. The judge was in agreement with the Petitioner and granted the motion. The judge stated that Mr. Handwerger had ten days to find the Petitioner a panel attorney.

On Feb. 13, 2018 the attorney Mr. Jonathan P. Heshmatpour was assigned to the Petitioners case. On Feb. 15, 2018 a notice of appearance and a substitute of counsel was filed by Mr. Heshmatpour. The Petitioner wrote Mr. Heshmatpour on June 19, 2018 due to the fact that several months went by since he was assigned to the Petitioners case with no contact.

A copy of the letter was sent to the clerk on Aug. 21, 2018 to be placed on the record. On Aug. 27, 2018 the Petitioner wrote Mr. Heshmatpour not just because the Petitioner have not heard anything from him. On September 25, 2018 a letter was sent to the Petitioner and Central Records. The letter showed where the attorney Mr. Handwerger requested certain records. The Petitioner filed another amendment Dec. 21, 2018. The state filed an opposition on Jan. 18, 2019 by electronic efile. The Petitioner never received a copy until the day of his **Post-Conviction hearing in court**. The first half of the Petitioner Post-Conviction hearing took place on **Jan. 22, 2019**.

Due to all the attorney not being present and the Petitioner filed a motion to have his attorney (Mr. Heshmatpour), removed from his case. The judge denied the motion and Mrs. Lettua from the Public Defender Office stated they would not assign the Petitioner another attorney. The second half of the Petitioner's Post-Conviction hearing took place on **March 29, 2019**. The Petitioner had to order his own transcript **April 25, 2019**. The Petitioner Post-Conviction was denied on **August 29, 2019**. The Petitioner received a copy on **September 16, 2019**. The Petitioner submitted a letter to the court due to attorney trying to explain why the Petitioner found out about the denial so late. On **October 3, 2019** the Petitioner filed an Application for Leave to Appeal. In **November 2019** the Petitioner Application for Leave to Appeal was denied.

On **November 12, 2019** the Petitioner received an order from the court stating that the Petitioner had 15 days to show cause as to why the Application for Leave to Appeal should not be stricken due to the factor. The Petitioner is not able to just walk to the library if and when it is open.

Then find information he can use to try and put together some type of petition or motion in spite of the fact that is not well verse in the area of law. The Petitioner filed a response to show cause.

Inadequate opportunities for prisoners to access the courts. such as a prison law library that has few books or is unavailable to prisoners in solitary confinement. When determining the adequacy of prison conditions, judges consider both the conditions themselves and how prison officials have subjected inmates to them. For example, by closing the law library or refusing attorney visits. We understand that things occur and for the sake of rules and safety action are taken. But in the event that something occurs and a **constitutional right is having been put on hold** eventually a means of **substitution should be put in place**. Especially sense the outside world is on a different time table making accommodations for inmates with disabilities. *Pennsylvania Dept. of Correctional v. Yeskey, U.S. Supp. Ct. 1998. This include prisoners in quarantine or is restricted due to medical issues.*

On **January 26, 2018** the Petitioner was given a facial exam at John Hopkins setting up for surgery at a later date. On **May 22, 2018** the Petitioner had surgery on his nose. On **June 22, 2018** the Petitioner went back to John Hopkins Hospital. On October 26, 2018 the Petitioner went to Bon Secure for abdominal pain.

On **January 22, 2019** the Circuit Court of Anne Arundel County held a hearing of the Petitioner Post-Conviction. On **March 29, 2019** the Petitioner post –conviction hearing continued.

On June 29, 2019 the Petitioner was seen again for problems with his nose, where he had surgery at.

On August 8, 2019 the Petitioner went to medical 5 times starting at 11: pm. On August 9, 2019 the Petitioner saw an NP at 9: am. The Petitioner stayed at medical until 4:pm at which time they decided to send him to JCI Institution hospital. When the officer and the Petitioner arrived at the gate at JCI they were told that the technician was gone for the day, so the Petitioner was taken back to MCI-J Institution.

The Petitioner sat on a bench waiting for someone to give the ok to call 911 or take him to the hospital. The decision was made at 12:30 pm on Aug. 9, 2019. The Petitioner arrived at Bon Secure hospital at 1:20 am on Aug. 10, 2019. The Petitioner was immediately prepped for surgery.

On August 14, 2019 at 3:55 the Petitioner was discharged from Bon Secure hospital and taken to JCI Institution hospital. On Aug. 19, 2019 the Petitioner was taken back to MCI-J Institution. The Petitioner was wheeled chaired to medical before being taken back to his unit with staples in his stomach. On August 29, 2019 the Circuit Court denied the Petitioner's Post-Conviction.

On September 9, 2019 the Petitioner was taken to medical for surgery for a follow up; still had staples in. Was on bed rest. On Oct. 3, 2019 the Petitioner filed an Application for Leave to Appeal. In Aug. of 2019 the Petitioner Application for Leave to Appeal was denied do to being time barred. On November 16, 2019 the Petitioner was moved but was still under doctor care due to the fact that he still had staples in his stomach.

On Nov. 20, 2019 the Petitioner was taken to Bon Secure hospital for a Colonoscopy. The Petitioner forward copies of medical issues and lack of library to the Petitioner

courts. On December 2, 2019 a directive was ordered to set a hearing for January 9,

Courts recognize that prisoners face practical difficulties in exercising their right of legal access and may relay several hurdles in some circumstances to allow stated that the Petitioner was outside of the 30 days to file an Application for Leave to prisoners to file and prosecute claims. Is it fair and Constitutionally sound to hold the Appeal.

Petitioner accountable for things beyond his control? Does the time stop for a Petitioner

On January the 20th, 2020 the Petitioner filed an Appeal to the Circuit Court of terms of filing documents to the court, that is hospitalized, quarantined and are bound Special Appeals. The Court of Appeals confirmed the judge's decision. At this time the by institution rules?

Petitioner was fighting case 21-7590 he was also dealing with the task of case C-02-

None the Petitioners Appeal is ever was denied on the grounds they stated, the CV-20-001001. The library was closed and the Petitioner is not a skilled lawyer. In spite it was denied due to alleged lack of time. A jury in the Circuit Court for Anne Arundel County, Judge Philip T. Caroom presiding, convicted the Petitioner, Eric G. Banks Sr. of second degree murder and acquitted him of first degree murder, conspiracy with them keeping a librarian and having the library open. All things that was beyond to commit first degree murder, use of a凶器 in the commission of a crime of violence, the Petitioners control. The Petitioner sent copies of the medical documentation to the courts.

Judge Caroom sentenced the Petitioner to thirty years in the Division of

On Aug. 27, 2020 the Petitioner filed a Writ of Habeas Corpus in the United Corrections. The Court of Special Appeals affirmed the judgement in an opinion filed States District Court of Maryland. The Petitioner had to resubmit the Writ of Habeas on June 30, 2016, and issued its mandate in 2016 *Eric Glenn Banks Sr. v. State of Maryland unreported opinion, Court of Special Appeals, September Term, 2014, No. 19-1. Pursuant to Maryland Rule C-303, the Petitioner filed a Writ of Certiorari to* that if he pays for one he cannot pay for the other. He only had the money due to the *the Court of Special Appeals to review that the court's decision correct or in violation of Petitioners Rights.*

Petitioner did so. On Nov. 5, 2020 the Petitioner filed an Application for an Application

The Petitioner filed a Notice of appeal *October 26, 2021. Lyons v. Lee, 316 F. 3d 528, 532 (4th Cir. 2003)*. The library being close and the Petitioner being incapacitated due to surgery and institution rules is beyond his control should have gave the Petitioner extra room to proceed. The Petitioner has enclosed medical documents.

Without the Petitioner being skilled in the area of law, it takes him time to find out what governs the documents that is needed to please the court. So any time lost or any type of delay intensify the whole process. *Slack v. McDaniel, 529 U.S. 473, 478 (2000); see Buck v. Davis, 137 S. Ct. 759, 773 (2017)*. The Petitioner was the judge presiding over the case; if his situation was something beyond his control to still submitted the petition, and the Petitioner did.

The rule of the mailbox rule need to be revisited by legislation. *U.S. v. Moore, 24F. 3d 624, 625 (4th Cir. 1994) (prison mailbox rule applies though inmate is represented by counsel)*. The rule applies if an inmate hands his mail to an officer. That use to be the old way mail was sent out. The only way that this apply now is if an inmate is on segregation, administrative segregation. For an inmate mail to go out it have to be in the institutional mail box on the compound by 6: am or it will not go out until the following day. When and if the mail is picked up from the institutional mail box on the compound it has to processed up front. There should be a grace period before or after the stamp is placed on the envelope by the institution. The mail box rule need to be revisited by the state.

There are other delays that need to be addressed. Does prisoner have rights to medical treatment? The Constitution say so. To deliberately or intentionally withhold necessary medical treatment constitutes cruel and unusual punishment under the *Eight Amendment. Estelle v. Gamble, U.S. Sup. Ct. 1976.*

So in light of that fact, it would also be cruel and unusual punishment to hold the Petitioner accountable for anything that is beyond his control in the effect to please the court. Just like medical issues and institutional rules is beyond the Petitioners control, so is the closing of the institutional library. In 2019 the Petitioner filed an institution *ARP* form for a lack of access to the library. Then the Petitioner filed an appeal to the **I.G.O.**, then the Petitioner filed a law suit, case No# **C-02-CU-20-001398**. The Petitioner is asking the court to grant him a Certificate of Appealability?

REASONS FOR GRANTING THE WRIT

1. Courts recognize that prisoners face practical difficulties in exercising their rights of legal access and may relax procedural hurdles in some circumstances to allow prisoners to file and prosecute claims.
2. Is it fair and constitutionally sound to hold the Petitioner accountable for things beyond his control?
3. Does the time for the term of filing for a Petitioner stop if the there is no library, the Petitioner is hospitalized, on quarantine due to covid and are bound by the rules of the institution.
4. The rule of the mail box rule need to be revised by legislation. *U.S. v. Moore, 24F. 3d 624, 625 (4th Cir. 1994) (prison mailbox rule applies though inmate is represented by counsel)*. The rule applies if an inmate hands his mail to an officer. That use to be the old way mail was sent out. For an inmate to mail out mail now it has to be put in the institutional mailbox on the compound by 6 a.m. or it will go out the following day. If something is going on in the institution. Once its picked up its processed up front.
5. None of the Petitioner's Appeal issues was denied on the grounds of their existence but was denied due to alleged lack of time.
6. The Petitioner filed 17 claims trial court error, ineffective assistance of counsel, and prosecutorial misconduct.
7. The Petitioner's unreported opinion in his case stated that that they see the error but choose not to act on it at that time.

CONCLUSION

The Court should grant the Petitioner for a writ of certiorari.

Respectfully submitted.

Eric G. Banks Sr.

Eric G. Banks Sr. #424687

Petitioner

MCI-J/P.O. Box 549

Jessup, MD. 20794

APPENDIX

APPENDIX A

Case# 21-7590
UNITED STATES COURTS OF APPEALS
FOR THE FOURTH CIRCUIT

Eric G. Banks Sr. #424687
Plaintiff

v.

Attorney General of Maryland
Warden: Christopher Smith

On Appeal from the United States District Court
For the state of Maryland

Brief of Appellant
Eric G. Banks Sr. #424687
MCI-J/P.O. Box 549
Jessup, MD. 20794

APPENDIX B
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SUMMARY ORDER

To file a writ of certiorari with the supreme court in order to appeal.

For the signature of the Clerk of the Court,
SUPREME COURT OF THE UNITED STATES
WASHINGTON, DC

Name of the Clerk:

The petitioner for a writ of certiorari should be granted.

Respectfully submitted,
ERIC G. BANKS SR. #424687

Eric G. Banks Jr.

Date: 9/6/23