

23-6047

No. _____

FILED

AUG 10 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RALPH REED

— PETITIONER

(Your Name)

vs.

WARDEN MAY

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RALPH REED

(Your Name)

J.T.V. CORRECTIONAL CENTER

(Address)

SMYRNA, DE 19979

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

DID THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT ABUSE ITS DISCRETION BY DENYING APPELLANTS RIGHTS TO DUE PROCESS WHEN THE STATE OF DELAWARE GAVE APPELLANT 3 YEAR TO FILE HIS (INITIAL STATE COLLATERAL POST-CONVICTION PROCEEDING). FROM THE TIME OF THE DELAWARE SUPREME COURT DECISION OF HIS DIRECT APPEAL. THE FEDERAL COURT SHOULD HAVE GRANT APPELLANT HABEAS CORPUS RELIEF UNDER THESE EXTRAORDINARY CIRCUMSTANCES PREVENTED APPELLANT TIMELY FILING. 28 U.S.C § 2254.

DID THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND THE LOWER COURTS ABUSE ITS DISCRETION BY DENYING APPELLANTS RIGHTS CONSTITUTIONAL AND DUE PROCESS RIGHTS. MR. REED DID NOT HAVE ANY COUNSEL ON HIS FIRST STATE INITIAL COLLATERAL STATE POST-CONVICTION PROCEEDING MOTION UNDER INEFFECTIVE ASSISTANCE OF COUNSEL MARTINEZ V. RIAN 132 S. CT. 1309 (2012). MR. REED HAVE PROVED THAT HE HAS BEEN PURSUING HIS RIGHTS DILIGENTLY FOR MANY YEAR FROM THE START OF HIS (INITIAL STATE COLLATERAL POST-CONVICTION PROCEEDING), MR. REED SHOWED THAT SOME EXTRAORDINARY CIRCUMSTANCES STOOD IN HIS WAY AND PREVENTED TIMELY FILING.

DID THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT ABUSE ITS DISCRETION BY DENYING APPELLANTS CERTIFICATE OF APPEALABILITY UNDER FED. R. CIV. P. 60(B)(6) AND FED. R. CIV 60 (B)(2) AND FED. R. CIV. P. 59(E)(3).

QUESTION(S) PRESENTED

DID THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT ABUSE ITS DISCRETION BY DENYING APPELLANTS CERTIFICATE OF APPEALABILITY UNDER FED R. CIV. P. 60(B)(2) AND RULE 60(B)(6).

DID THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND THE LOWER COURTS ABUSE ITS DISCRETION BY DENYING APPELLANTS CONSTITUTIONAL RIGHTS TO A FAIR TRIAL BY AN ALL WHITE JURY VIOLATED BATSON V. KENTUCKY 476 U.S. 574, 106 S. CT 1921, 90 L. ED 2d 69 (1986).

DID THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND THE LOWER COURTS ABUSE ITS DISCRETION BY DENYING APPELLANTS CONSTITUTIONAL RIGHT TO A FAIR VOIR DIRE QUESTIONS TO THE JURY PANEL. FOSTER V. CHATMAN AND BATSON V. KENTUCKY

DID THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND THE LOWER COURTS ABUSE ITS DISCRETION BY DENYING APPELLANTS CONSTITUTIONAL RIGHTS OF SIMILARLY SITUATED BLACK AND WHITE JURORS DISCRIMINATION BY THE STATE PROSECUTION VIOLATED EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT. AND 6TH AMENDMENT.

QUESTION(S) PRESENTED

1) BEFORE THIS COURT LIES A SIGNIFICANT AND FUNDAMENTAL QUESTION: WAS IT FAIR FOR PETITIONER HABEAS CORPUS FILING TIME TO RUN ONCE HIS CONVICTION BECAME FINAL ON DIRECT REVIEW WHEN THE STATE OF DELAWARE GAVE HIM 3 YEARS TO FILE FOR "POST-CONVICTION RELIEF PETITION? SUCH QUESTION IS OF CRITICAL IMPORTANCE" BECAUSE THIS CRITICAL CONFLICT PREVENTS THE COURT FROM EVER REACHING THE MERITS OF THE CONSTITUTIONAL VIOLATION ON HIS HABEAS CORPUS PETITION.

2) THE UNCONSTITUTIONAL CONFLICT IN THE STATE OF DELAWARE AND THE FEDERAL STATUTE OF LIMITATIONS WAS A CLEAR DIRECT-UNFAIR AND ILLEGITIMATE VIOLATION TOWARD THE PETITIONER REED FILING TIMES. HERE PETITIONER BY STATE OF DELAWARE LAW HAD 3 YEARS TO SUBMIT HIS STATE POST-CONVICTION RELIEF PETITION TO THE STATE OF DELAWARE SUPERIOR COURT. THE CONFLICT WAS THE STATE OF DELAWARE AND THE FEDERAL LIMITATION STATUTE OF ONE YEAR.

3) THE ISSUE IS DEBATABLE ARGUMENT JURIST OF REASON WHICH WARRANTS FURTHER REVIEW BY THIS COURT. THE DISTRICT COURT FAILED TO GIVE PETITIONER EQUAL TOLLING TO FILE INITIAL HABEAS CORPUS.

4) RAIPH REED INVOKED MARTINEZ V. RYAN 132 S. CT 1309 (2012) PROCEDURE DEFAULT EXCEPTION FOR MY INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS. MR. REED DIDN'T HAVE COUNSEL FOR HIS FIRST MOTION FOR POST-CONVICTION RELIEF (ENTIAL COLLATERAL PROCEEDINGS). THIS COURT SAID THAT ALL DEFENDANTS HAVE A RIGHT TO A LAWYER IN THERE FIRST POST-CONVICTION MOTION INITIAL COLLATERAL PROCEEDING. THE EXCEPTION CONTAINED IN MARTINEZ V. RYAN 132 S. CT 1309 MR REED PREVIOUSLY INTEGRATED CLAIMS SHOULD BE HEARD AND GRANTED RELIEF BY THIS COURT AND THE LOWER COURTS.

5) WAS IT FAIR FOR THE STATE OF DELAWARE USE RACIAL BASIS IN THE JURY SELECTION AT MR REED TRIAL.

6) WAS IT FAIR FOR THE JURY FAILED TO DISCLOSE HIS CONNECTION TO THE VICTIMS BROTHER DURING VOIR DIRE AND THAT CONNECTION WAS NOT DISCOVERED UNTIL AFTER THE JUROR WAS SEATED AND SWORN IN FOR MR. REED TRIAL.

QUESTION(S) PRESENTED

- 7) WAS IT FAIR FOR THE PROSECUTOR USE A BASIS UNCONSTITUTIONAL DISPARATE VOER DIRE QUESTIONS TO THE JURY PANEL.

- 8) WAS IT FAIR FOR THE STATE PROSECUTOR TO USE RACIAL BASIS IN DISPARATE TREATMENT OF SEMIARY SITUATED BLACK AND WHITE JURORS FOR DISCREMINATION VIOLATE THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION.

- 9) WAS IT FAIR FOR THE TRIAL COURT ABUSED ITS DISCRETION BY NOT CONLUDEING THAT MR. REED TRIAL COUNSEL DEPRIVE HIM OF HIS 6TH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL FOR FOR FAILING TO PROPERLY INVESTIGATE AND SUPBOENA TWO CRUCIAL DEFENSE WITNESSES.

LIST OF PARTIES

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

KATHLEEN JENNINGS ATT. GEN OF DELAWARE
DELAWARE DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET 8TH FL
WILMINGTON, DELAWARE 19801

RELATED CASES

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STATUTES AND RULES

28 U.S.C. § 2254

FED. R. CIV. P. 59(e)3

FED. R. CIV. P. 60(b)(6)

FED. R. CIV. P. 60(b)(2)

OTHER

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 A to the petition and is

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 8, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: MAY 8, 2023, and a copy of the order denying rehearing appears at Appendix EXA-8

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C § 2254
2. FED. R. CIV. P. 59(e)(3)
3. FED. R. CIV. P. 60(b)(6)
4. 6TH AMENDMENT
5. 14TH AMENDMENT

STATEMENT OF THE CASE

ON SEPTEMBER 2002, PETITIONER FILED IN THE DISTRICT COURT OF DELAWARE AN MEMORANDUM OF LAW SUPPORTING MOTION TO AMEND JUDGMENT UNDER EXTRAORDINARY CIRCUMSTANCES AND PLAIN ERROR PURSUANT TO 28 U.S.C. § 2254 AND CIVIL RULE 52(B) PETITIONER RAISED MULTIPLE GROUNDS OF CONSTITUTIONAL VIOLATIONS UNDER INEFFECTIVE ASSISTANCE OF COUNSEL, CITING MAYTEZ V. RYAN 132 S. CT. 1309 (2012) MAJL V. SUPERINTENDENT S.C.T 2019 U.S. APP. LEXIS 22458 AND CIVIL RULE 60(B)(6). -- SEE ATTACHMENT OF EXHIBIT(A) (B) (C)

THE DISTRICT COURT OF DELAWARE DID NOT UNDERTAKE AND DECIDED THE GROUNDS IN THE MEMORANDUM WAS NOT REE FOR CONSIDERATION, DESPITE THE COURTS AFFIRMATION. AND CONCLUDED THAT PETITIONER LACK STANDINGS, BECAUSE HE HAD NOT BEEN GRANTED A CERTIFICATE OF APPEALABLE FROM THE THIRD CIRCUIT AND THE MEMORANDUM WAS TIME BARRED BY ITS 2009 AND 2012 LITIGATES. DISMISSING IN ITS ENTIRETY FOR LACK OF JURISDICTION, 1D EXHIBIT (A) ... SUBSEQUENTLY THE THIRD CIRCUIT DETERMINED THAT PETITIONER MUST EXHAUST FOR NOT APPEALING THE DISTRICT COURTS 2014 DECISION. SEE EXHIBIT (A) (A) AND ATTACHMENTS.

SEPTEMBER 2002 PETITIONER FILED IN THE DISTRICT COURT OF DELAWARE AN MEMORANDUM OF LAW SUPPORTING MOTION TO AMEND JUDGMENT UNDER EXTRAORDINARY CIRCUMSTANCES AND PLAIN ERROR PURSUANT TO 28 U.S.C. § 2254 AND CIVIL RULE 60(B)(6). PETITIONER RAISED SEVERAL GROUNDS OF CONSTITUTIONAL VIOLATIONS UNDER INEFFECTIVE ASSISTANCE OF COUNSEL, CITING MAYTEZ V. RYAN 132 S. CT. 1309 (2012) TREJINO V. THAYER 133 S. CT. 1911. 2013 WL 23008205, WALLEN V. JUSTS 233 F.3D AT 1148, HOLLAND 130 S. CT. 47 2565-26, DOE V. BUSBY (61 F3D 1001, 2011 U.S. APP LEXIS 21419,

STATEMENT OF THE CASE

PHILERS V. ALAMEDA 569 F.3D 1120, 1124 (9th Cir 2009) HOUNSD V. SEMENOVSKI 986 F.2D 24,29, 30 (2d Cir. 1993) WILLIAMS V. TAYLOR 529 U.S. 362, 401, 120 S.Ct. 1445, 146 L.Ed. 389 (2000) WEEKLY V. MOSE 244 F.3D 874 (2001) SITZMAN V. BOONE 464 F.3D 1013 (2006) CENTEL RUIE 60(B)(6) TSAPKOWITES V. TRANSRACIFIC CARRIERS 6088, 392 F.Supp. 922 S.D. N.Y. (1990) SINCE V. DUNITZ 1, 529 U.S. 473, 483 120 S.Ct. 1595, 146 L.Ed. 2054 (2001) GRANTMAN RUIE 60(B)(6) RELZER. ROSS 417 U.S. 600 94 S.Ct. 2437, 41, L.Ed. 20 341 (1974) at 393-394 GREENE AND DOUGLAS DUE PROCESS.

THE DISTRICT COURT OF DELAWARE AND THE FEDERAL APPEALS COURT FAIL TO GRANT MR. REED MOTIONS UNDER EXTRAORDINARY CIRCUMSTANCES AND UNDER DILIGENT CIRCUMSTANCES AND DUE PROCESS WHEN THE STATE OF DELAWARE MOSLEAD PETITIONER OF HIS RIGHTS UNDER THE CONSTITUTIONAL STRONG AMENDMENT.

MR. REED ASSERTS EVERYTHING HE DONE OVER THE YEARS WAS REASONABLY DILIGENT UNDER THE CIRCUMSTANCES OF THIS CASE AT BAR. HOLLAND, 130 S.Ct. at 2565-26.

MR. REED FILED MANY MORE MOTIONS TO CHALLENGE HIS CONVICTION. MR. REED FILED MANY RUIE 60(B)(6) MOTIONS TO CHALLENGE HIS CONVICTION FOR A NEW TRIAL.

MR. REED HAD NO COUNSEL ON HIS FIRST POST-CONVICTION MOTION FOR EFFECTIVE ASSISTANCE OF COUNSEL. PURSUANT TO MONTANIZ V. RANA 138 S.Ct. 1309 (2018).

STATEMENT OF THE CASE

MR. REED HAVE PROVED THAT HE HAS BEEN PURSUING HIS RIGHTS DILIGENTLY FOR MANY YEARS FROM THE START OF HIS (INITIAL COLLATERAL PROCEEDINGS). PETITIONER SHOWED THAT SOME EXTRAORDINARY CIRCUMSTANCES STOOD IN HIS WAY AND PREVENTED TIMELY FILING.

REASONS FOR GRANTING THE PETITION

THE THIRD CIRCUIT COURT AND THE DISTRICT COURT FAILURE TO CORRECT THE STATE OF DELAWARE MISLEADING STATUTE OF IMITATION IN IMITATION COLLATERAL STATE POST-CONNECTION PROCEEDINGS.

MR. REED DID NOT HAVE ANY COUNSEL ON HIS FIRST STATE INITIAL COLLATERAL STATE POST-CONNECTION PROCEEDINGS MOTION UNDER INEFFECTIVE ASSISTANCE OF COUNSEL MARTINEZ V. Ryan 132 S.Ct 1309 (2012). MR. REED HAVE PROVED THAT HE HAS BEEN PURSUING HIS RIGHTS DILIGENTLY FOR MANY YEARS FROM THE START OF HIS INITIAL STATE COLLATERAL POST-CONNECTION PROCEEDINGS). MR. REED SHOWED THAT SOME EXTRAORDINARY CIRCUMSTANCES STOOD IN HIS WAY, BY THE STATE OF DELAWARE STATUTE OF IMITATION THAT PREVENTED MR. REED TIMELY FILING 28 U.S.C. § 2254.

THE THIRD CIRCUIT DECISION UNDER CIVIL RULE 6(B)(6) IS IN PROPOSE OF ITS JUDGMENT IN SIMILAR CASES UNDER ITS JURISDICTION AND OTHERS. BECAUSE CIVIL RULE 6(B)(6) IS NOW-JURISDICTIONAL IN APPLICATION. SEE, JACKSON V. ASTABUE 304 F.3D AT 1353 (11th CIR 2001) SPEIGHT V. XEROX COR. 2018 U.S. DIST. LEADS 63918 (THE TIME LEAST IS, OF COURSE NOW-JURISDICTIONAL) AND IT IS THEREFORE "SUBJECT TO EQUITABLE TOLLING PERMITTING A COURT TO DISREGARD THE LATE FILING" (See FEINMAN V. BROWARD Cnty Sch. Bd, 2016 US DIST LEADS 52866 (Same), BROWN V. JOHN DEERE PROD 2010 U.S. DIST LEADS 11514 (Same), SANDUICK V. UNITED STATES 197 F.3D AT 129 (11th CIR 1999) (EQUITABLE TOLLING IS APPROPRIATE WHEN A MOVANT UNUSUALLY FILES BECAUSE OF EXTRAORDINARY CIRCUMSTANCES THAT ARE BOTH BEYOND HIS OR HER CONTROL AND UNUSUALLY EVEN WITH DILIGENCE.

REASONS FOR GRANTING THE PETITION

THIS COURT, THE UNITED STATES SUPREME COURT HAS HELD THE IMMITATION PROVISION OF 28 U.S.C. § 2254 IS A STATUTE OF IMITATION EITHER THAN A JURISDICTIONAL BAR. SEE, FRANKE V. DEPT OF VETERANS AFFAIRS, 1498 U.S. AT 95 (1996). NOTWITHSTANDING, ABOUT THE LOWER COURT'S RELEVANT REST ON THE PETITIONER'S TIMELINESS OF HIS INITIAL FILING. MOREOVER, FOR WHICH CAUSE PETITIONER BRINGS HIS CONCERNS. IN MARTINEZ V. RYAN, THIS COURT WROTE. "STATE PRISONERS MAY NOT BE PROCEDURALLY BARRED WHEN PETITIONER BRINGS CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL." EMPHASIS OF ORIGINAL 2D 566 U.S. AT 14 (2002) SEE ALSO COX V. HORN, 757 F.3D AT 119 (3D CIR 2014) (same).

PETITIONER FURTHER ARGUES THAT THE DISTRICT COURT'S DETERMINATION OF HIS MEMORANDUM AS "TIME BARRED" UNDER CIRCUIT RULE 59(E) IS MISPLACED. RULE 59(E) "A DEVICE TO RELITIGATE THE ORIGINAL ISSUES DECIDED BY THE DISTRICT COURT AND IT IS USED TO ALLEGED LEGAL ERRORS. UNITED STATES V. FIORELLI 337 F.3D AT 288 (3D CIR 2003). IT IS CLEAR PETITIONER WAS SERIOUSLY RELIEF UNDER CIRCUIT RULE 59(E) (3) WHERE THERE WAS THE NEED TO CORRECT CLEAR ERRORS OF LAW AND FACT. "THEREFORE TO PREVENT A MANIFEST INJUSTICE" THEREFROM MAYIS SEAFOOD CASE V. DOMESTICUS, 176 F.3D AT 671 (3D CIR 1999). THE THIRD CIRCUIT HAS SAID AS PRECEDENT "THE DISTRICT COURT IS REDUCED TO USING A RULE 59(E) MOTION AS A JUNG OUTSIDE THE REACH OF JURISDICTIONAL IMITATIONS THAT A.F.D.P.A. IMPOSES UPON MULTIPLE COLLATERAL ATTACKS. BLYSTONE V. HORN, 664 F.3D AT 414 (3D CIR 2011). IN OTHER WORDS. RULE 59(E) MOTIONS TO AMEND OR ALTER JUDGMENT ARE MATERIALLY DIFFERENT FROM RULE 60(B) MOTIONS, SUCH THAT A RULE 59(E) MOTION DOES NOT CONSTITUTE A SECOND OR SUCCESSIVE HABEAS CLAIM APPLI APPLICATION EVEN IF IT ADVANCES A HABEAS CLAIM". 10664 F.3D AT 413.

PROCEDURAL DEFAULT AS IMPLIED BY THE LOWER COURTS DECISIONS ARE NOT JURISDICTIONAL BARS TO REVIEW PETITIONERS HABEAS CORPUS PETITION ON THE MERITS. IREST V. CAIN 522 U.S. AT 89 (1997). JUDICIAL ECONOMY IN THIS CASE, FAVORS ADDRESSING THE MERITS. PETITIONERS RIGHTS ARE PROTECTED BY THE UNITED STATES CONSTITUTION, AND WHERE AS HERE, THE THIRD CIRCUIT HAS FAILED TO PROTECT THOSE SAME RIGHTS. THE UNITED STATES SUPREME COURT, MUST PROVIDE RELIEF TO THE PETITIONER. WHERE IT IS CLEAR THAT THE THIRD CIRCUITS DECISIONS ARE NOT ONLY IN OPPOSITE OF ITS CIRCUIT PRECEDENT, BUT IN OPPOSITE TO THOSE NATIONALLY AND THE UNITED STATES SUPREME COURT.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ralph Reed

Date: _____