

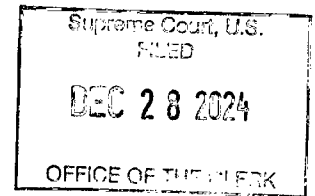
No. 23-6764

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN RAY MORRIS, SR. — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN, DIRECTOR — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KEVIN RAY MORRIS, SR #02132142
(Your Name)

1313 CR 19,
(Address)

Lamesa, TX 79331
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHEN PETITIONER ALLEGED THAT HE WAS ENTITLED TO EQUITABLE TOLLING
BASED ON THE PRISON MAILROOM'S MISHANDLING OF PRISONER MAIL, INCLUD-
A SCANDAL INVOLVING PRISON EMPLOYEES THROWING PRISONER'S MAIL IN
THE TRASH, IF THE STATE FAILS TO DENY PETITIONER'S ALLEGATIONS SUR-
ROUNDING THE ACTIONS OF THE PRISON MAILROOM, DID THE LOWER COURT ERR
IN DENYING PETITIONER'S CLAIM TO EQUITABLE TOLLING?

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:

RELATED CASES

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STATUTES AND RULES

28 U.S.C. 2244(d)(1)

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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 _____; 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☒ is unpublished.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 B to the petition and is

☐ reported at _____; 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☒ is unpublished.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☐ is unpublished.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 October 2, 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: _____, 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. § 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

"[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor shall deny to any person within its jurisdiction the equal protections of the laws."

U.S. Const. Amend. XIV

The Antiterrorism and Effective Death Penalty Act (AEDPA) imposes a one-year limitations period for habeas petitions brought by prisoners challenging state criminal convictions. 28 U.S.C. 2244(d).

Under this provision, the limitations period runs from the...

(B) the date on which the impediment to filing an application created by the State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action.

28 U.S.C. 2244(d)(1).

STATEMENT OF THE CASE

The U.S. District Court ruled that Petitioner's federal petition for writ of habeas corpus was time barred under the AEDPA.

Petitioner argued that, for several reasons, he was entitled to equitable tolling.

Relevant to this appeal to this Court, Petitioner alleged that, ultimately, he was not time barred because any delay was the product of a State created impediment.

Specifically, Petitioner alleged that he originally filed his State writ application on September 23, 2019, but, that through due diligence, he discovered that the prison mailroom had not mailed his application to the Court. Petitioner discovered this fact on August 28, 2020 when he became aware of a prison mailroom scandal which involved mail clerks throwing prisoners' mail in the trash, rather than sending the mail out.

Upon discovering such, Petitioner had to reassemble his court records and reprepare his State application for refiling.

Complicating his efforts were numerous medical issues, including heart surgery and covid-19 infection.

The State⁴ never denied Petitioner's allegations of the mailroom scandal.

Petitioner's assertion is that the State's failure to refute or deny Petitioner's allegations of the mailroom scandal amounted to the State admitting the truth of the accusation, and that Petitioner was therefore entitled to equitable tolling for the eleven-months period between the time he turned in his application for mailing and the time he discovered his application had been mishandled due to the actions of the prison mailroom.

REASONS FOR GRANTING THE PETITION

This petition should be granted because the decision of the U.S. District Court is contrary to this Court's decisions and calls for the exercise of this Court's supervisory authority.

In Holland v. Florida, 560 U.S. 631 (2010), this Court held that 2244(d) was subject to equitable tolling in appropriate cases. *id.*, at 645.

This Court found that Congress "expressly allows tolling for state-created impediments that prevents a prisoner from filing his application, but only if the impediment violates the Constitution of federal law.

The actions of the prison mailroom clerks in inappropriately throwing prisoners' legal mail in the trash rather than forwarding the mail to the U.S. Postal service amounted to a federal crime.

When Petitioner alleged those actions as part and parcel of the reason his federal habeas petition was late, the State had ample opportunity to deny Petitioner's allegations. Petitioner's allegations were made under oath.

The federal habeas court made a credibility determination in favor of the State, even though the State never alleged that Petitioner's claims concerning the prison mailroom's mishandling of prisoner's mail wasn't credible or truth.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kerry Ray Morris, Sr.

Date: 12/28/23