

No. ~~23-7351~~

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 17 2024

OFFICE OF THE CLERK

ROLANDAS MILINAVICIUS,
PRO-SE, PETITIONER,

VS.

COMMISSIONER, GEORGIA DEPARTMENT
OF CORRECTIONS, AND
ATTORNEY GENERAL, STATE OF GEORGIA
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ROLANDAS MILINAVICIUS

GDC# 1297095

HAYS STATE PRISON

P.O. Box 668

TRION, GA. 30753

QUESTION(S) PRESENTED

1. DID A HOLLAND ERROR OCCUR WHEN THE ELEVENTH CIRCUIT COURT OF APPEALS USED AN UNREASONABLE APPLICATION OR RULED CONTRARY TO THE FACTS PRESENTED THAT SHOWN AN EXTRAORDINARY CIRCUMSTANCE OCCURRED HINDERING A TIMELY FILED § 2254 PETITION?

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON
THE COVER PAGE.

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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

FEDERAL CASES:

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS
AT APPENDIX A, TO THE PETITION AND IS UNPUBLISHED.

THE OPINION OF THE UNITED STATES SOUTHERN DISTRICT COURT
IS UNAVAILABLE TO PETITIONER. PETITIONER REQUESTED A COPY FROM
SAID COURT TO NO AVAIL.

JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS FEBURARY 9TH, 2024.

NO PETITION FOR REHEARING WAS TIMELY FILED IN MY CASE.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2244 - Finality Of DETERMINATION (APPENDIX D)

28 U.S.C. § 2254 - STATE CUSTODY; remedies in Federal Courts (APPENDIX E)

STATEMENT OF THE CASE

IN NOVEMBER 2008, PETITIONER WAS CONVICTED OF TWO COUNTS OF MALICE MURDER, AGGRAVATED ASSAULT, FIREARM OFFENSES, AND OTHER CRIMES. MILINAVICIUS V. STATE 721 S.E.2d 843.

DURING THE TRIAL THE COURT FAILED IN LOCATING AN LITHUANIAN SPEAKING INTERPRETER, BUT INSTEAD HIRED A RUSSIAN SPEAKING INTERPRETER. (LET THE RECORD REFLECT THAT IT PROVEN THAT RUSSIAN AND THE LITHUANIAN LANGUAGES GREATLY DIFFER.)

PETITIONER WAS FOUND GUILTY AND SENTENCED TO TWO CONSECUTIVE TERMS OF LIFE IN PRISON, PLUS A CONSECUTIVE TERM OF FIVE YEARS. AFTER APPEALING THE GEORGIA SUPREME COURT AFFIRMED THE CONVICTION AND SENTENCE ON JANUARY 23, 2012. A STATE HABEAS WAS FILED AND DENIED. A CERTIFICATE OF PROBABLE CAUSE WAS FILED AND DENIED ON MAY 16, 2019. AT NO TIME WAS A TEXT OF THE AEDPA'S ONE-YEAR TIME LIMITATION, WAS AVAILABLE, IN THE LITHUANIAN LANGUAGE.

ON APRIL 13, 2020, PETITIONER FINALLY PROCURED TRANSLATION ASSISTANCE FROM A FELLOW INMATE WHO HELPED PETITIONER FILE HIS 28 U.S.C. § 2254 PETITION, BUT IT WAS ENTERED EIGHT MONTHS PAST THE 28 U.S.C. § 2244 (d) TIME LIMIT. THE MAGISTRATE COURT RECOMMENDED THAT THE PETITION BE DISMISSED AS TIME-BARRED.

PETITIONER RESPONDED BY 'NOTING' AGAIN THAT BEING A LITHUANIAN IMMIGRANT IMPAIRED HIM IN SPEAKING OR READING THE ENGLISH LANGUAGE, YET IN SPITE OF THESE ATTEMPTS TO INFORM THE COURT OF THIS EXTRAORDINARY MITIGATING CIRCUMSTANCE, THE COURT MADE NO REBUTAL, OR MENTIONED IT AT ALL, OF THE PREJUDICIAL IMPAIRMENT THAT HAD HINDERED THE TIMELY FILING OF THE 28 U.S.C. § 2254 PETITION, BUT ONLY STRICTLY APPLIED THE 28 U.S.C. § 2244 (d) TIME-LIMIT.

THE MAGISTRATE COURT IN A PARALLEL RECOMMENDATION DID NOT EVEN NOTE THE FACT OF PETITIONERS LANGUAGE BARRIER TO DENY A MOTION TO APPOINT COUNSEL.

IN APPENDIX B, PAGES 9-10, PETITIONERS FACTS ARE CLEARLY AN EXTRAORDINARY CIRCUMSTANCE WHEREAS HENDERED HIM IN TIMELY FILING HIS § 2254 PETITION.

ON FEBRUARY 9, 2022, PETITIONERS § 2254 PETITION WAS DISMISSED IN A TWO-PAGE ORDER THAT NEITHER PENNED ANY FACTUAL FINDINGS, NOR LEGAL ANALYSIS, ON THE EQUITABLE TOLLING TOPIC, BUT ONLY THAT PETITIONER FAILED TO OBJECT.

THE COURT RECEIVED TWO MOTIONS DATED FEBRUARY 8, 2022, REQUESTING AN EXTENSION OF TIME TO FILE OBJECTIONS TO THE RECOMMENDATION OF THE MAGISTRATE COURT IN WHICH THE DISTRICT COURT ISSUED ANOTHER ORDER GRANTING THE EXTENTION YET THE DISTRICT COURT THEN ISSUED ANOTHER ORDER DISMISSING THE § 2254 PETITION. THE DISTRICT COURT APPARENTLY CONCLUDED THAT THE PROFFERED FACTS WERE TRUE, BUT DECIEDED THAT THEY DID NOT MATTER, WHEREAS THE COURT HELD THAT AS A MATTER OF LAW AN INMATES LACK OF ENGLISH FLUENCY CATERGARICALLY 'CANNOT' MERIT EQUITABLE TOLLING AND THAT THAT DIFFICULTY IS NOT AN "EXTRAORDINARY CIRCUMSTANCE", THUS CITING; UNITED STATES V. MONTANO, 398 F.3d 1276, 1280 n.5 (11TH Cir. 2005), WITHOUT HOLDING ANY TYPE OF HEARING.

THE DISTRICT COURT DENIED PETITIONERS CERTIFICATE OF APPEALABILITY, BUT THE COURT OF APPEALS IN THE ELEVENTH CIRCUIT GRANTED A COA ON ONE QUESTION:

"WHETHER THE DISTRICT COURT ERRED BY GRANTING THE MOTION DISMISS PETITIONERS 28 U.S.C. § 2254 HABEAS PETITION AS TIME-BARRIED BECAUSE A PETITIONERS INABILITY TO SPEAK ENGLISH FLUENTLY CANNOT SERVE AS A BASIS FOR EQUITABLE TOLLING OF THE ADEPA'S ONE-YEAR FILING DEADLINE?"

THE COURT AFFIRMED THE DISTRICT COURT'S DISMISSAL ON FEBRUARY 9, 2024. (APPENDIX A, PAGE 6). PETITIONER HAD AIDE OF COUNSEL SUPPLIED BY THE FEDERAL DEFENDER PROGRAM, INC. IN FILING HIS BRIEF OF APPELLANT TO THE ELEVENTH CIRCUIT COURT OF APPEALS (APPENDIX B). THE STATES APPELLEES IN (APPENDIX C).

REASONS FOR GRANTING THE PETITION

PETITIONER WILL SHOW THAT THE DECISION OF THE LOWER COURT IS NOT ONLY ERRONEOUS FOR FAILING TO HOLD AN HEARING TO UNDERSTAND THE FACTUAL FACTS OF PETITIONER'S HENDERANCE, BUT ALSO FOR NOT HOLDING AN EVIDENTIARY HEARING AND OF THE NATIONAL IMPORTANCE TO HAVE THIS HONORABLE COURT TO INTERVENE TO DECIDE THE QUESTION PRESENTED BECAUSE OF THE CONFLICTS IN DECISIONS IN OTHER DISTRICT AND APPELLATE COURTS AND OF THE IMPORTANCE OF THIS CASE IN WHICH WILL AIDE OTHER NON-ENGLISH SPEAKING PEOPLE IN SIMILARLY SITUATED CONDITIONS TO HAVE THE FEDERAL OR STATE COURTS SUPPLY THE § 2244 STATUTE PRINTED OR ORALLY INFORMED IN A PERSON'S NATIVE LANGUAGE UPON A CONVICTION, TO MAKE CLEAR THE ONE-YEAR LIMITATION OF THE § 2244 STATUTE LAW.

THIS CASE INVOLVES A FACTUAL SET OF FACTS RELATED TO PETITIONER'S LANGUAGE BARRIER THAT HAD HENDERED HIS ABILITY TO FILE HIS 28 U.S.C. § 2254 HABEAS PETITION ON TIME. THE COURT OF APPEALS OF THE ELEVENTH CIRCUIT AS WELL AS THE DISTRICT COURT IGNORED FACTUAL FACTS ON THE QUESTION OF EQUITABLE TOLLING OF THE § 2244 STATUTE.

PETITIONER, A NATIVE OF LITHUANIA, COULD NOT COMMUNICATE IN THE ENGLISH LANGUAGE, AND DESPITE DILIGENCE, LACKED ACCESS TO LITHUANIAN LEGAL AIDES AND MATERIALS TO UNDERSTAND THAT THE § 2244 (d) RULE EVEN EXISTED, THUS, UNKNOWINGLY PASSING THE ONE-YEAR DEADLINE. THE LOWER COURTS DISMISSED HIS § 2254 PETITION AS TIME-BARRED AND ALSO CONCLUDED THAT PETITIONER'S INABILITY TO UNDERSTAND OR COMMUNICATE IN THE ENGLISH LANGUAGE CATEGORICALLY DID NOT MERIT EQUITABLE TOLLING.

PETITIONER IS AN INMATE AT HAYS STATE PRISON IN TRION, GEORGIA. THE FATE OF THIS WRIT OF CERTIORARI REST UPON HIS BACKGROUND AS A LITHUANIAN UNABLE TO UNDERSTAND THE ENGLISH

LANGUAGE TO HAVE BEEN ABLE TO KNOW THAT THE § 2244(d) ONE-YEAR EVEN EXISTED BEFORE THAT TIME LIMIT EXPIRED. THE NUMBER OF LITHUANIA PEOPLE IN THE UNITED STATES IS ONLY AROUND 33,000. THE DISTANCE BETWEEN THE ENGLISH AND LITHUANIAN LANGUAGES ARE VAST. THUS THE LITHUANIAN LANGUAGE IS CONSIDERED AS RARE. THIS WIDE GAP IN LANGUAGE HAS COST PETITIONER DEARLY IN ALL STAGES IN HIS LEGAL ATTEMPTS TO PROPERLY CHALLENGE HIS CONVICTION IN ALL HIS POST-CONVICTION REMEDIES.

IN HOLLAND V. FLORIDA, 560 U.S. 631, 632(b), 130 S.Ct. 2549, 2553 (2010), HELD THAT THE ELEVENTH CIRCUITS PER SE STANDARD IS TOO RIGID. A "PETITIONER" IS "ENTITLED TO EQUITABLE TOLLING" IF HE SHOWS, (1) THAT HE HAS BEEN PURSUING HIS RIGHTS DILIGENTLY, AND (2) THAT SOME "EXTRAORDINARY CIRCUMSTANCE" STOOD IN HIS WAY. SUCH "EXTRAORDINARY CIRCUMSTANCE" ARE NOT LIMITED TO THOSE THAT SATISFY THE ELEVENTH CIRCUITS TEST. COURTS MUST OFTEN "EXERCISE THEIR EQUITY POWERS... ON A CASE-BY-CASE BASIS", DEMONSTRATING "FLEXIBILITY" AND AVOIDING "MECHANICAL RULES". IN ORDER TO "RELIEVE HARDSHIPS... ARISING FROM A HARD AND FAST ADHERENCE" TO MORE ABSOLUTE LEGAL RULES. (INTERNAL CITATIONS OMITTED).

A TEST FOR DETERMINING EQUITABLE TOLLING OF THE ONE-YEAR LIMITATION PERIOD IS ALSO FOUND IN ANDREWS V. ORR 851 F.2d 146 (6TH CIR. 1988). IN WHICH WAS SET OUT IN A FIVE PART TEST:

- (1) THE PETITIONERS LACK OF NOTICE OF THE FILING REQUIREMENT;
- (2) THE PETITIONERS LACK OF KNOWLEDGE OF THE FILING REQUIREMENT;
- (3) DILIGENCE IN PURSUING ONE'S RIGHTS;
- (4) ABSENCE OF PREJUDICE TO THE RESPONDENT, AND;
- (5) THE PETITIONERS REASONABLENESS IN REMAINING IGNORANT OF THE LEGAL REQUIREMENT FOR FILING HIS CLAIM.

THE PETITIONER'S FACTS HAD ESTABLISHED THIS FIVE-PART TEST FOR EQUITABLE TOLLING.

IN MENDOZA V. CAREY, 449 F.3d 1065, 2006 U.S. App. LEXIS 13954 (9th Cir. 2006) CITING: WHALEM/HUNT V. EARLY 233 F.3d, 1146, 1148 (9th Cir. 2000) HELD THAT, "THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FOUND THAT THE STATES FAILURE TO PROVIDE ACCESS TO THE TEXT OF THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 CONSTITUTED POSSIBLE GROUNDS FOR EQUITABLE TOLLING WHERE, ACCORDING TO THE HABEAS PETITIONER'S ALLEGATIONS, THE 'ABSENCE' OF A COPY OF THE AEDPA'S IN HIS NATIVE LANGUAGE PREVENTED HIM FROM LEARNING ABOUT THE AEDPA'S ONE-YEAR DEADLINE, AND THEREFORE, PREVENTED A TIMELY FILED § 2254 PETITION. BY ANALOGY, WHERE A PETITIONER ALLEGES THE LACK OF ACCESS TO HIS NATIVE- LANGUAGE LEGAL MATERIALS PREVENTED HIM FROM LEARNING ABOUT THE AEDPA'S DEADLINE, AND THEREBY PREVENTED HIS TIMELY- FILED PETITION, THE NINTH CIRCUIT CONCLUDED IN MENDOZA, SUPRA, THE COMBINATION OF (1) A PRISON LAW LIBRARY'S LACK OF SPANISH- LANGUAGE LEGAL MATERIALS, AND (2) THE PETITIONER'S ABILITY TO OBTAIN TRANSLATION ASSISTANCE BEFORE THE ONE-YEAR DEADLINE COULD CONSTITUTE EXTRAORDINARY CIRCUMSTANCES FOR EQUITABLE TOLLING PURPOSES.

WHEREFORE, PETITIONERS FACTS ESTABLISHED THAT HE HAD A LACK OF LITHUANIAN- ENGLISH LEGAL MATERIALS PREVENTED HIM FROM TIMELY LEARNING ABOUT THE AEDPA'S DEADLINE AND THEREBY PREVENTED HIS TIMELY FILING HIS § 2254 HABEAS PETITION. THESE FACTS APPEAR WITHIN HIS APPELLANT BRIEF (APPENDIX A, PAGES 9-10) THAT WERE PRESENTED TO THE ELEVENTH CIRCUIT COURT OF APPEALS.

THE FACTS PRESENTED ESTABLISHED THAT:

- (1) HIS CONVICTION OCCURRED IN NOVEMBER 2008, AND HE APPEALED WITH THE AIDE OF COUNSEL WHICH WAS AFFIRMED ON JANUARY 23, 2012;
- (2) A YEAR LATER, (AGAIN WITH COUNSEL) FILED A STATE HABEAS PETITION WHICH WAS DENIED AND APPEALED AND DENIED ON MAY 16, 2019;

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,
/s/ Rolandas Milinavičius

ON THIS 9th DAY OF April, 2024.