

23-7753
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON, DC

William Boyer — PETITIONER
(Your Name)

vs.
Warden, Amy Robey — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Boyer
(Your Name)

LUTHER LUCKETT CORRECTIONAL COMPLEX P.O. Box 6

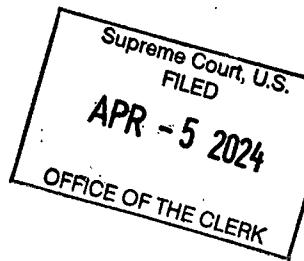
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QUESTION(S) PRESENTED

ARE THE AVERAGE AMERICANS WHO BECOME CRIMINAL DEFENDANTS EDUCATED IN CRIMINAL LAW?

WHY ARE CONVICTED FELONS SUDDENLY REQUIRED TO LEARN THE COMPLEXITIES OF CRIMINAL LAW LESS THAN ONE YEAR FROM THEIR CONVICTION DATE?

DOES THIS NARROW WINDOW OF TIME ALLOW AN UNEDUCATED PERSON ENOUGH TIME TO LEARN ENOUGH OF THE LEGAL HOLDINGS AND PRINCIPLES THAT APPLY TO STATE AND FEDERAL COURTS TO PROPERLY WRITE AND FILE MERITORIOUS CLAIMS?

IS THE LIMITATION SET BY THE ONE YEAR EQUITABLE TOLLING DOCTRINE PARADOXICAL TO THE EQUAL PROTECTION AND DUE PROCESS CLAUSE OF THE 14 AMENDMENT?

IS NOTICE A NECESSARY PART OF PREPARATION?

DOES THE ONE YEAR DEADLINE AUTOMATICALLY REQUIRE PRISON AUTHORITIES TO ASSIST INMATES IN THE PREPARATION AND FILING OF MEANINGFUL LEGAL PAPERS SUCH AS THE FEDERAL HABEAS CORPUS?

DO CONVICTED FELONS HAVE MEANINGFUL ACCESS TO THE COURTS WHEN PRISON AUTHORITIES CHARGED WITH ASSISTING IN THE PREPARATION AND FILING OF MEANINGFUL LEGAL PAPERS DENY CONVICTED FELONS NOTICE OF THE ONE YEAR FILING DEADLINE FOR THE FEDERAL HABEAS CORPUS?

LIST OF PARTIES

AMY ROBEY WARDEN, REPRESENTED BY JOSEPH A BECKETT OFFICE OF THE
ATTORNEY GENERAL OF KENTUCKY

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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 A to the petition and is

reported at RE: Case 23-5655; 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 is unpublished.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 (1) (2) to the petition and is

reported at Civil Action No. 1:22-CV-00061-JHB-HBB; 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 C to the petition and is

reported at Boyer v. Commonwealth, 2019-CA-0331-MR; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Kentucky Supreme Court court appears at Appendix D to the petition and is

reported at 2021-SC-0081-D; 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 January 9, 2024.

[] 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including April 15, 2024 (date) on April 15, 2024 (date) in Application No. n/a A n/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 January 29, 2021. A copy of that decision appears at Appendix C.

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

[] An extension of time to file the petition for a writ of certiorari was granted to and including April 15, 2024 (date) on April 15, 2024 (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law.*

Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein which the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense (competent counsel).

Amend. 14, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law that will abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within jurisdiction the Equal Protection of the Law.

STATEMENT OF THE CASE

On March 5th 2011 after what was described as a lengthy stand-off with police. William Boyer (Petitioner) gave up with-out incident and was arrested for the Murder of Brooke Boyer (Brooke). Petitioner and his ex-wife, (Brooke), were living in separate but adjacent residence with touching property lines with homes, no more than (30) yards apart from one other. Their relationship had been described as strained, on and off again, but by March of 2011. (Brooke) had moved on and was in the early stages of a new relationship. This was a development the Petitioner was not made aware of until days prior to the homicide on March 4, 2011. (Brooke) planned to spend time in that new relationship by traveling to Mississippi and New Orleans. The Petitioner overheard (Brooke) talking on the phone, hearing a male voice, and enraged by the realization and depths of this new the relationship, and that his relationship was suddenly over. The Petitioner became argumentative pleading for her not to leave with their children on this trip. The Petitioner also told (Brooke) he was having reoccurring nightmares similar to those from his childhood when his Mother was involved in a fatal vehicle accident. Petitioner was enraged by this new relationship, disturbed by dreams involving his children being in a fatal accident. However, (Brooke) thought Petitioner was jealous or had ill feelings and this was a ploy to get her to stay. Petitioner was enraged by the fact he had just at this moment completely confirmed the depths of this new relationship. (Brooke) had lied to Petitioner for over a month, going on dates under the guise of taking their daughter to the roller skating ring. Petitioner left (Brooke's) home, returning a few minutes later in a fit of rage, with a rifle in a Laundry basket. He went to the basement where he shot (Brooke) three times in the back which proved fatal. The weapon was one (1) of two (2) sixty-five (65) year old, Japanese *World War II era* carbine bolt action rifles Petitioner inherited from his Grandfather's Estate nearly one (1) year prior. There were no EPO's, DVO's, or history of domestic violence or abuse at any point in their Ten-year relationship. On April 30th 2013, Petitioner entered into a Plea-agreement for a Life sentence with the possibility of parole after (20) years.

REASON FOR GRANTING THE PETITION

ACCORDING TO FEDERAL LAW PRISON AUTHORITIES HOUSING STATE INMATES ARE REQUIRED TO ASSIST IN THE PREPARATION AND FILING OF MEANINGFUL LEGAL PAPERS.

NOTIFICATION IS A FUNDAMENTAL PART OF PREPARATION AND WHEN A STATE AGENCY FAILS TO PROVIDE PROPER NOTIFICATION THIS CAUSES A FAILURE OF THE FUNDAMENTAL REQUIREMENT OF PREPARATION.

THIS FAILURE BY A STATE AGENCY SHOULD NOT BE THE REASON A PRISONER IS STRIPED OF HIS OPPORTUNITY TO LITIGATE HIS CLAIMS BEFORE THE FEDERAL COURT SYSTEM.

THE REASON FOR GRANTING THIS PETITION IS FOR THE UNITED STATES SUPREME COURT TO HAVE THE OPPORTUNITY TO DEFINE THE ELEMENTS OF PREPARATION AND CONFIRM WHETHER NOTICE IS AN ELEMENT OF PREPARATION. THIS WILL PROVIDE THE OPPORTUNITY TO EXPAND THE ONE (1) YEAR EQUITABLE TOLLING DEADLINE IN THE ANTI-TERRORIST AND EFFECTIVE DEATH PENALTY ACT OF 1996 (AEDPA) AND FEDERAL RULE 22 OF CIVIL PROCEDURES WHICH ARE TOO RESTRICTIVE AND DO NOT ALLOW ENOUGH TIME FOR MEANINGFUL ACCESS TO THE COURTS.

Prisoner William Boyer (Boyer) raises a single argument; (page#8) of the Ky. Court of Appeals Opinion No. 2019-CA-0331-MR states and acknowledges: "*Boyer began to pursue post-conviction relief shortly after his conviction in April 2013. In December 2013, he indicated to the Circuit Clerk that he believed counsel had failed to provide him with adequate assistance and he requested a copy of the record compiled in his case so that he could finish preparing his RCr. 11.42 petition.*" The Ky. Court of Appeals Opinion further states: "*Nearly a two years later Boyer began filing a series of motions*" This confirms two (2) points Boyer wishes to convey; Boyer has met (1) one of Holland v. Florida 560 U.S. 631 (2010) prongs of the equitable tolling doctrine; because Boyer has been pursuing his rights diligently, however, Boyer has not met the second prong which is that some extraordinary circumstance stood in his way. While he falls within the

“*reasonable diligence*” standard nevertheless Boyer fails to meet the second (2) prong which causes a failure to meet the “*equitable tolling*” requirements.

This Petition has been filed because the adjudication of timeliness comes full circle back to Bounds v. Smith, 430 U.S. 817 (1977) which is law written by this Court some forty-six (46) years ago and narrowed by Lewis v. Casey 518 U.S. 343 (1996) which is law written by this court some twenty-eight (28) years ago. The *Holland* Court held “*garden variety*” attorney negligence would not provide sufficient justification for equitable tolling. However, Boyer does not blame his attorney for his failure to meet the filing requirements of the Federal Habeas.

Boyer argues this failure to meet filing requirements of the Federal Habeas Corpus is willful negligence on behalf of the Kentucky Department of Corrections. Boyer arrived at Roederer Correctional Complex (RCC); a Kentucky Department of Corrections facility on May 23, 2013. (Please See Appendix F) During this timeframe Boyer went through two or three days of Institutional orientation at (RCC). The orientation process provided no tutorials, but it did provide some information a prisoner needs to know during the course of a prison sentence and introduced some of the basic internal processes during this orientation.

Unfortunately, during the course of this orientation no Kentucky Department of Corrections Staff member or assigned Legal Aide explained the one (1) year equitable tolling standards and filing deadline for the Federal Habeas Corpus under 42 U.S.C § 2254.

If the Supreme Court entertains this Writ of Certiorari; This Supreme Court of the United States will have a difficult time overruling its own precedence just as the Supreme Court Justices seated when overruling the “*separate but equal doctrine*” from Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 overruled by Flemming v. South Carolina Electric and Gas Company, 239 F.2d 277 (4th Cir. 1956) Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 and Boling v. Sharpe 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed 884.

This Supreme Court of the United States most likely will not entertain this Writ of Certiorari or in the latter it may hold the precedence and uphold the procedural denial of Boyer’s Federal Habeas Corpus by the lower courts as being procedurally barred because of the twenty-eight (28) year precedence SET by the (AEDPA OF 1996) and the controlling case law doctrine.

If Boyer is denied on the merits or if the United States Supreme Court refuses to entertain his case. Boyer will completely have exhausted his Court Options which will confirm the prejudice resulting from the “*willful negligence*” of a state agency to assist in the preparation and filing of meaningful legal papers.

Thus, Boyer will meet the standard articulated and set in *Lewis v. Casey* which requires a showing of prejudice resulting from the “*willful negligence*” of a State Agency to meet the simplest requirement of *Bounds v. Smith* supra. Which will support a “system wide injury” that has caused “actual injury” or “*actual prejudice*” resulting in the inability for Boyer to meet a filing deadline or to present a claim.” *Lewis v. Casey* supra at 349.

Boyer meets the prongs of *Lewis v. Casey* supra and now cites the fundamental language of *Bounds v. Smith* supra which was not overruled but simply annexed with a prejudice prong enacted by *Lewis v. Casey* supra.

Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed. 2d 72 (1977) states: The fundamental constitutional right of access to the courts held to require prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.

This promise created by Bounds has been broken for well over a decade; when Boyer was originally convicted and transferred to the Department of Corrections; Boyer was diligently seeking his rights. Boyer was never informed of the one (1) year time limitation of the “*equitable tolling doctrine*” for the Federal Habeas Corpus. In fact, by the time Boyer was *incorrectly* informed of the equitable tolling doctrine and began learning the procedural rules, he was already in violation of the doctrine.

The real question of substance is: How can a first time offender living in what most naturalized and natural born American citizens call “*the Greatest Country on Earth*” suffer prejudice through an involuntary guilty plea only to be thrown away as if this first time offender is a useless citizen beyond any form of Rehabilitation. When every final judgment contains language which affirms the reason for incarceration rehabilitation. With the exception of offenders given the labels of “*Mass Murderers*” and “*Serial Killers*” extra care should occur so as not to allow these labels the weight which might camouflage the facts; causing prejudice.

All first time convicted felons should have the right to present their claim within a meaningful timeframe; anything less amounts to being denied meaningful “*Access to the Courts*”.

When a first time offender is convicted his right to present his claims should not be procedurally blocked by the government until a truly meaningful time has passed.

This logic stems from the fact that once a first-time offender is convicted, there comes a necessary period of time for acclimation or adjustment to this new reality both mentally and environmentally. One (1) year is not enough time to physically be placed in a permanent housing location and have time to process the avalanche of information cascading towards any first-time convicted offender of any serious offense. A meaningful amount of time to be physically be placed, acclimate and process enough legal information would constitute a two (2) year window of time. This would allow the first-time offender a meaningful amount of time to physically be housed and comprehend their rights with the proper “*Access to the Courts*.”

Since Lewis v. Casey 518 U.S. 343, 116 S.Ct. 2174, 135 L.Ed. 2d 606 (1996) originated as a Writ of Certiorari from the United States Court of Appeals for the Ninth Circuit. Boyer requests this Writ of Certiorari to be construed in a similar manner as Lewis v. Casey *supra*.

Boyer contends his federally protected *Fifth, Sixth and Fourteenth Amendment rights* which are supposed to be safe guarded by the United States Constitution have been invaded and supports this claim by citing Bell v. Hood, 327 U.S. 678 (1946) which articulates these principles in HN4- “*Federal courts have jurisdiction to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what U.S. Const. amend. XIV forbids a state to do. Moreover, where federally protected rights have been invaded, courts will be alert to adjust their remedies so as to grant the necessary relief. And where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.*” In Horner ex rel. Horner v. Kentucky High Sch. Ath. Ass'n, 206 F.3d 685 (6th Cir 2000) which states: The starting point for our analysis [**41] should be the seminal decision of Bell v. Hood, 327 U.S. 678, 90 L.Ed. 939, 66 S.Ct. 773 (1946) in which the Supreme Court stated the oft-repeated principle that where

federally protected rights have been invaded, *it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.*

And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.

Over Forty (40) years ago the Department of Justice and Attorney General of the Commonwealth settled a 42 U.S.C. § 1983 by entering into a “*Consent Decree*” (*Please See*) Kendrick v. Bland 541 Supp. 21 (W.D. Ky. 1981). The Department of Justice and the Attorney General of the Commonwealth replaced the Attorney’s assigned to each prison in Kentucky; and created the inmate Legal Aide position in order to save the State money as recognized by the Kentucky Supreme Court in May v. Coleman, 945 S.W. 2d 426. (1997); and still meet the Constitutional requirements of Bounds v. Smith, 430 U.S. 817 (1977). The Department of Justice and Attorney General authorized the Secretary of the Justice and Public Safety Cabinet to oversee the (KYDOC), to promulgate policy KCPP 14.4 to provide structure to the Legal Services program; and create an inmate (OJT) legal aide program.

Unfortunately, this policy is woefully inadequate; and among other things, has resulted in the denial of “*adequate continuous training*” for Legal aides, which is a denial of the “*Access to the Courts*” it is supposed to protect. The KYDOC KCPP 14.4 was promulgated to provide structure to the Legal Services program. However, this policy does not provide or adopt the proper language from the “*Consent Decree*” from which it was created. Which has resulted in the Department of Corrections (OJT) Legal Services program as a whole to be “*virtually non-existent.*” Due to this absence of “*adequate continuous training*” Boyer did not receive the most

fundamental aspect of preparation which is being given notice of the one (1) year time stipulation found in 42 U.S.C. 2254 which is the law.

Boyer contends the most fundamental requirement of Bounds v. Smith *supra* is the preparation requirement; which amounts to proper notification of the one (1) year equitable tolling requirement of 42 U.S.C.S. § 2254 and the (AEDPA).

Boyer cites another well recognized 6th Circuit Case Terry v. Potter, 111 F.3d 454 (1997) which states: *"It is not for us to extricate that court from the untoward results of a decision construing Kentucky statutory law, nor to question the wisdom of its own logic in doing so. That is Kentucky's business; ours is application of the Fifth Amendment as made applicable to state criminal prosecutions under the Fourteenth".*

Therefore, since the Federal Courts employ the principle of being concerned only of the Constitutional rights and privileges which are directly attached to the Constitution.

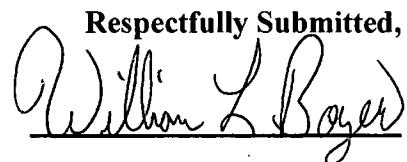
Boyer contends his due process rights under the 14th Amendment have been invaded by the Kentucky Department of Corrections “*willful negligence*” to assist him in the preparation and filing of meaningful legal papers.

Boyer contends this is an argument which deserves conversation regarding the definition of “*preparation*”; which is defined in Merriam Webster as “*a preparatory act or measure*” and the root word “*Prepare*” is defined in Merriam Webster as “*to make ready beforehand for some purpose, use, or activity*”. Citing the Black’s Law Dictionary, we find “*preparatory work*” in place of “*preparation*” which is defined under “*Travaux préparatoires*” which is defined as “*Material used in preparing the ultimate form of an agreement or statute, and esp. of an international treaty; the draft or legislative history of a treaty*” The Court’s definition of

“preparation” concerning the Federal Habeas Corpus and other meaningful legal papers is of Great interests. Even more so is the request for the extension of the tolling doctrine to a two (2) year window as to not request the Senate to repeal its action but merely make its action a truly meaningful amount of time of Constitutional significance.

CONCLUSION

The Petition for a Writ of Certiorari should be granted. For the reasons stated above, Boyer requests this Supreme Court of United States to Grant Certiorari and entertain his argument and issue a new order, allowing Boyer a one-year grace to prepare a New Federal Habeas Corpus and climb the lower Federal court in order to Receive rulings on the merits of the case, due to the fact the Petitioner was never assisted in the preparation and filing of meaningful legal papers as promised by the ruling in *Bounds v. Smith supra* and now meets the *Lewis v. Casey supra* standard. To rule on the facts which caused Boyer’s acceptance of a guilty plea without waiving the Constitutional “right to present a defense” on the record during the Boykin plea colloquy. According to Boykin, Boyer could not have silent waiver of a Constitutional right. The record was silent regarding his waiver of the direct consequence of the Constitutional right to present a defense during trial. For these reasons, the Petition for Certiorari should be granted and the case should be remanded for reversal due to a silent record concerning the waiver of a Constitutional right during a guilty plea. Which was the trial related Constitutional right to present a defense.

Respectfully Submitted,


Date: June 7, 2024