

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

ANIL NAYEE,
PETITIONER,

v.

THE ADMINISTRATOR OF THE NEW JERSEY
STATE PRISON; THE ATTORNEY GENERAL OF
THE STATE OF NEW JERSEY,

RESPONDENT(S).

APPLICATION TO FILE THE PETITION FOR
CERTIORARI OUT OF TIME

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1. Defense counsel was assigned to represent the petitioner, Anil Nayee, with regard to his appeal in the United States Court of Appeals, Third Circuit.

2. On July 27, 2023, the Third Circuit, denied the Petitioner's appeal. The Petitioner filed for two Applications/Petitions for a Rehearing En Banc. The first Petition for a Rehearing En Banc was denied on September 18, 2023. The second Petition for a Rehearing was denied on October 3, 2023.

3. The Petitioner submits that the October 3, 2023 order that denied the filing of a second Petition for a Rehearing and/or En Banc is an order that tolled the 90 day time period to file the Petition for Certiorari.

4. The Petitioner is currently incarcerated at the New Jersey State Prison. Defense counsel was relieved as counsel by the Third Circuit. However, the Petitioner contacted defense counsel on December 12, 2023, and he requested that defense counsel file for an extension for him to file his own Petition for Certiorari. The motion for an extension of time was filed.

5. The Petition for Certiorari was now due on January 3, 2024. The Petitioner is requesting that his case be accepted out of time. The Petitioner is requesting the Petition for Certiorari that was postmarked on January 3, 2024 be accepted.

6. The Petitioner is requesting that the October 3, 2023 order be the starting date for any tolling to file the Petition for Certiorari.

7. This case presented a substantial and important question of federal law; Whether the defendant was denied due process and the ineffective assistance of counsel when he was forced to appear before the jury in prison garb. Trial counsel was also ineffective because he failed to object to the defendant appearing in prison garb at the trial. The defendant's family repeatedly offered to provide civilian clothes to the defendant at all stages of the case.

8. Additionally, the defendant was also denied due process when the trial court failed to instruct the jury on the lesser-included offense of manslaughter to the murder charge. The defendant also asserts that trial counsel was ineffective for arguing that there was no basis for the lesser included charge of manslaughter. There was more than adequate evidence in the record to support a lesser included charge for voluntary manslaughter. The defendant is also entitled to federal habeas relief on this claim.

9. This case is a clear violation of the seminal case of Estelle v. Williams, 425 U.S. 501 (1976). In Estelle v. Williams, 425 U.S. 501 (1976), the Supreme Court considered "whether an accused who is compelled to wear identifiable prison clothing at

his trial is denied due process or equal protection of the laws." Id. at 502.

10. On the morning of trial, the defendant had asked an officer at the jail to allow him to wear civilian clothes, but his request was denied. Subsequently, at trial, neither the defendant nor his counsel made any objection to the identifiable prison attire worn by the defendant. The Supreme Court recognized that, consistent with the Fourteenth Amendment, a state cannot "compel an accused to stand trial before a jury while dressed in identifiable prison clothes." Id. at 512.

11. The trial of a defendant in prison garb has been recognized as an affront to the dignity of the proceedings and as jeopardizing a defendant's due process right to a fair trial; thus, the State may not compel a defendant to appear for trial before a jury in identifiable prison or jail clothing. The constant reminder of a defendant's condition implicit in prison attire may affect a juror's judgment and thereby endanger the presumption of innocence by creating an unacceptable risk that the jury will impermissibly consider that circumstance in rendering its verdict. Estelle v. Williams, supra, 425 U.S. 501, 505.

12. The appearance of the defendant Nayee's prison uniform should not have been permitted to affect the jurors' decision making, which should have been on the hard evidence alone.

Defendant Nayee had the right to appear in civilian clothing (instead of a prison or jail uniform) to avoid the risk that the jury's judgment will be tainted and the defendant's right to a presumption of innocence will be compromised. Trial counsel simply ignored the wishes of defendant Nayee to wear civilian clothes for the trial.

13. On page 3 of the Third Circuit opinion it alleges that nothing in the record "warrants a conclusion that Nayee was compelled to standing trial in jail garb." This ruling by the Panel was inherently incorrect. In the motion to supplement the record, the defendant clearly explained that his family wanted to provide him with clothing for the trial. Trial counsel simply committed an inexcusable blunder by not permitting defendant Nayee to wear civilian clothes. Trial counsel's deficiencies certainly prejudiced him. A very strong defense could have been presented to argue that defendant was only guilty of a manslaughter charge. If defendant Nayee would have worn civilian clothing, then there is a strong chance that he would have only have been convicted of manslaughter instead of murder.

14. Accordingly, the Petitioner respectfully requests that an order be entered accepting the Petition for Certiorari out of time. Moreover, the Petitioner is requesting that the Clerk accept the filing of the post-marked petition on January 3, 2024, and to consider the Petition for Certiorari as timely

filed.

15. Here, the concepts of equitable tolling is available. Equitable tolling is available 'only when extraordinary circumstances beyond a prisoner's control make it impossible to file on time and the extraordinary circumstances were the cause of the prisons' untimeliness.' See, Bills, v. Clark, 628 F. 3d, 1092, 1097 (9th Cir. 2010).

16. Here, the defendant submits that he has satisfied his burden to grant equitable tolling. Here, the purpose of equitable tolling is to "soften the harsh impact of technical rules that which otherwise prevent a good faith litigant from having her day in court." United States v. Buckles, 647 F. 3d. 883, 891 (9th Cir. 2011). We have followed a tradition in which courts of equity have sough to 'relieve hardships which, form time to time, arise from a hard and faster adherence' to more absolute legal rules, which, if strictly applied, threaten the 'evils of archaic rigidity.' See Hazel-Atlass Glas Co. v. Harford-Empire Co., 322 U.S. 238 , 248 (1944)

17. Anil Nayee was diligent in pursuing his rights to file a Petition for Certiorari. However, he first wanted to exhaust of his rights to file a second Petition for a Rehearing En Banc. This pursuit was denied on October 3, 2024. Anil Nayee also had health problems during the summer. He has mental health issues that contributed to any delays. Anil Nayee was always

reasonable diligent to file his Petition for Certiorari. He is therefore entitled to equitable tolling, and his Petition for Certiorari should be accepted out of time.

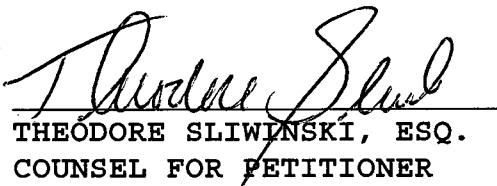
18. In sum, the Supreme Court has recognized that the equitable doctrines of tolling remain available to soften the harsh impact of technical rules that prevent a good faith litigant from having his day in court. If there was case in which the deadlines need to be relaxed to prevent a miscarriage of justice this is it.

CONCLUSION

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be accepted out of time.

Dated this 15th day of March, 2024.

Respectfully submitted,



THEODORE SLIWINSKI, ESQ.
COUNSEL FOR PETITIONER