

24-6838 **ORIGINAL**
CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAR 10 2025
OFFICE OF THE CLERK

CORTEZ BENNETT - Petitioner

v.

JOHNNY FITZ, WARDEN - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

Appeal from the United States Court of Appeals, 6th Circuit

PETITION FOR WRIT OF CERTIORARI

CORTEZ BENNETT, # 330900
(Your Name)

WTSP, P.O. Box 1150
(Address)

Henning, Tennessee 38041-1150
(City, State, Zip Code)

Not Applicable
(Phone Number)

QUESTION(S) PRESENTED

**I. WHETHER THE PETITIONER IS ENTITLED TO EQUITABLE TOLLING OF
ONE YEAR STSTUTE OF LIMITATIONS?**

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 subject of this petition is as follows: N/A.

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(Tenn. Crim. App, 7/12/2022), **Bennett-V**, perm. App. Denied (Tenn. 2022)

APPENDIX-D: State v. Bennett, No M2019-01034-CCA-R3-CD, 2020 WL 2044740, at *1 (Tenn.
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APPENDIX-E: Bennett v. State, M2013-01269-CCA-R3-PC (Tenn. Crim. App. 8/12/2013),
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APPENDIX-F: Bennett v. State, No. M2024-0260-CCA-R3-PC, 2005 WL 2546929 (Tenn. Crim.
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APPENDIX-G: State v. Mays, No. M2001-02151-CCA-R3-CD, 2002 WL 31385939, at *2 (Tenn.
Crim. App. 10/22/2002), **Bennett-I**, perm. App. Denied (Tenn. 2003).

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Holland v. Florida, 130 S.Ct. 2549 (2010)	

STATUTES AND RULES

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.

OPINION BELOW

[] For cases from Federal Courts:

The Memorandum decision of the United States Court of Criminal Appeals, 6th Circuit, is unreported at Bennett v. Fitz, # 24-5679, 2024 WL 5359540, (6th Cir. 12/10/2024), Bennett-VII. A copy is attached herein as Appendix-A. No Motion To Rehear was filed.

The Memorandum decision of the United States District Court, Middle District Tennessee, is unreported at Bennett v. Fitz, # 3:23-cv-01227, 2024 WL 2926196, (M.D.Tenn, 6/10/2024), Bennett-VI. A copy is attached herein as Appendix-B.

[] For cases from State Courts:

The Memorandum decision of the Tennessee Court of Criminal Appeals is unreported at Bennett v. Genovese, No. W2021-01507-CCA-R3-HC, 2022 WL 2733404, at *1 (Tenn. Crim. App, 7/12/2022), Bennett-V, perm. App. Denied (Tenn. 2022). A copy is attached herein as Appendix-C.

JURISDICTION

For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was 12/10/2024.

No Petition for rehearing was timely filed in my case.

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

For cases from State Courts: N/A.

The Memorandum decision of the Tennessee Court of Criminal Appeals is unreported at State v. Bennett, No M2019-01034-CCA-R3-CD, 2020 WL 2044740, at *1 (Tenn. Crim. App. 4/28/2020) **Bennett-IV**, (no perm. App. Filed). A copy is attached herein as **Appendix-D**.

The Memorandum decision of the Tennessee Court of Criminal Appeals is unreported at Bennett v. State, M2013-01269-CCA-R3-PC (Tenn. Crim. App. 8/12/2013), **Bennett-III**. Petitioner sought discretionary review with the Tennessee Supreme Court, which was denied review. A copy is attached herein as **Appendix-E**.

The Memorandum decision of the Tennessee Court of Criminal Appeals is unreported at Bennett v. State, No. M2024-0260-CCA-R3-PC, 2005 WL 2546929 (Tenn. Crim. App. 10/11/2005), **Bennett-II**, no perm. App. Filed. A copy is attached herein as **Appendix-F**.

The Memorandum decision of the Tennessee Court of Criminal Appeals is unreported at State v. Mays, No. M2001-02151-CCA-R3-CD, 2002 WL 31385939, at *2 (Tenn. Crim. App. 10/22/2002), **Bennett-I**, perm. App. Denied (Tenn. 2003). A copy is attached herein as **Appendix-G**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment to the United States Constitution

STATEMENT OF CASE

On 3/1/2001, Petitioner and his co-defendants were convicted by a Davidson County Criminal Court jury of First-Degree Premeditated Murder for the killing of the victim, Ms. Tonya Tyler, one count of First-Degree Felony Murder for the killing of Ms. Tyler, one count of Especially Aggravated Robbery, one count of Attempted First-Degree Murder for the Attempted Killing of Mr. Wesley Tyler, Sr., and one count of Especially Aggravated Robbery of Mr. Tyler. *State v. Mays*, No. M2001-02151-CCA-R3-CD, 2002 WL 31385939, at *2 (Tenn. Crim. App. 10/22/2002), *Bennett-I*, perm. App. Denied (Tenn. 2003); (D.E.#10-1, PageID 109, 122-25). The trial court imposed the mandatory life sentence on the conviction for First-Degree Premeditated Murder and on the conviction of First-Degree Felony Murder on this same day. (Id at PageID 109). Following a sentencing hearing, the trial court imposed a sentence of 25-years for the Especially Aggravated Robbery and a 25-years for Attempted First-Degree Murder. (Id. PageID 122-25). The trial court ordered the two (2) 25-year sentences to run concurrently to each other but consecutive to the two (2) life sentences, resulting in a total effective sentence of life plus 50-years. *Bennett-I*, 2002 WL 31385939, at *2.

During the direct appeal, Petitioner raised the issues: (1) trial court's error in denying his motion to suppress the photographic line-up, (2) the sufficiency of evidence to support his convictions for First-Degree Murder, Attempted First-Degree Murder, and two counts of Especially Aggravated Robbery, and (3) the excessive sentence. *Id.* at *3 - *6, without success. *Id.* at *9. The Tennessee Supreme Court denied Petitioner's Application for permission to appeal on 2/24/2003. (D.E.# 10-19). Petitioner did not file a petition for a writ of certiorari in the United States Supreme Court.

Petitioner filed a pro se petition for Post-Conviction Relief in the Davidson County Criminal Court in timely manner. The trial court appointed a lawyer for Petitioner and the court appointed post-conviction counsel filed an amended petition. (D.E.#11-1, PageID 1360-76, 1379-85, 1388-89). Following an evidentiary hearing, the post-conviction court denied relief. (Id. at PageID 1393-1400). In timely appeal, Petitioner raised issues under the Ineffective Assistance of Counsel. *Bennett v. State*, No. M2024-0260-CCA-R3-PC, 2005 WL 2546929 (Tenn. Crim. App. 10/11/2005), **Bennett-II**, no perm. App. Filed. On appeal, Petitioner raised 15 claims of ineffective assistance of counsel. Id. at *8 - *9. The Tennessee Court of Criminal Appeals affirmed the judgment of the Post-Conviction Court. Id. at *16. Then, Petitioner's Post-Conviction counsel, Mr. Charles Walker, did not file the discretionary review with the Tennessee Supreme Court, notified that Petitioner's appeal was over, there was nothing he can do, and abandoned Petitioner and Petitioner's case without proper notification on Federal appeal or any other secondary appeal(s) in the State court.

In 2013, approximately 8 years later, Petitioner filed a motion to reopen his Post-Conviction proceeding in the Davidson County Criminal Court, which was summarily dismissed by the Post-Conviction Court. (D.E. # 11-7, 11-8). Petitioner untimely appealed the summary dismissal to the Tennessee Court of Criminal Appeals. (D.E. # 11-9). *Bennett v. State*, M2013-01269-CCA-R3-PC (Tenn. Crim. App. 8/12/2013), **Bennett-III**. Petitioner sought discretionary review with the Tennessee Supreme Court, which was denied review. (D.E. # 11-12).

In March 2019, Petitioner filed a motion to correct an illegal sentence in Davidson County Criminal Court pursuant to Tennessee Rules of Criminal Procedure Rule 36.1. (D.E. # 11-13, PageID 1665-84). The motion was summarily dismissed, and Petitioner appealed to the Tennessee Court of Criminal Appeals. *State v. Bennett*, No M2019-01034-CCA-R3-CD, 2020 WL 2044740, at *1 (Tenn. Crim. App. 4/28/2020) **Bennett-IV**, (no perm. App. Filed). The Tennessee Court of

Criminal Appeals affirmed the denial of the trial court. Petitioner did not see discretionary review with the Tennessee Supreme Court.

In November 2021, Petitioner filed a petition for Writ of State habeas Corpus in Lake County Circuit Court, alleging that his indictment for first-degree attempted murder was void and that his dual conviction for especially aggravated robbery of Mr. and Mrs. Tyler violated double jeopardy principles. Bennett v. Genovese, No. W2021-01507-CCA-R3-HC, 2022 WL 2733404, at *1 (Tenn. Crim. App, 7/12/2022) *Bennett-V*, perm. App. Denied (Tenn. 2022). The petition was summarily denied because the court ruled out that Petitioner failed to state a cognizable claim, the judgment was not void, and none of his sentences had expired. Id. Petitioner appealed the summary denial to the Tennessee Court of Criminal Appeals. Id. The Tennessee Court of Criminal Appeals affirmed the trial court's summary denial, discerning no error. Id. Petitioner sought discretionary review in the Tennessee Supreme Court, which was denied. (D.E. # 11-28).

In November 20, 2023, Petitioner filed a pro se petition for current Writ of Habeas Corpus under 28 U.S.C. § 2254 by raising seven (7) issues. (D.E. # 1). Petitioner's verification is dated 11/14/2023 (Id. PageID 12). In an order filed on 12/2/2023, the United States District Court directed the Respondent to file a response to the petition. (D.E. # 6). The Respondent filed State Record and Motion To Dismiss arguing that the Petition should be denied as time-barred under 28 U.S.C. § 2244(d)(1)(A). (D.E. # 12). On 4/4/2024, Petitioner filed his Reply and explained that he is entitled the equitable tolling of the one-year statute of limitations. On 6/10/2024, the United States District Court dismissed Petition as untimely. Petitioner's filed a timely appeal with the United States Court of Appeal. On 12/10/2024, the United States Court of Appeals denied Appeal. Current Petition is timely in this honorable United States Supreme Court.

REASONS FOR GRANTING THE PETITION

ARGUMENT

I. WHETHER THE PETITIONER IS ENTITLED TO EQUITABLE TOLLING OF ONE YEAR STATUTE OF LIMITATIONS?

(a) Relevant facts supporting Argument:

After the Tennessee Court of Criminal Appeals' denial of Petitioner's Post-Conviction appeal, *Bennett-II*, on 10/11/2005, Petitioner's court appointed Post-Conviction counsel, Mr. Charles Walker, did not file then-available application for permission to appeal with the Tennessee Supreme Court, which should have been filed within 60 days from 10/11/2005, which deadline expired on 12/10/2005. After receiving the 10-11-2005 denial decision from the Tennessee Court of Criminal Appeals, the Post-Conviction Counsel, Mr. Walker, stated that all was over for Petitioner Bennett. There was no advice from Mr. Walker regarding any possible appeal in the State court and/or Federal court.

Furthermore, at that time, from October 2005 to January 2006, Petitioner had been suffering from mental and physical breakdown and tick attack which have been attacking him 2-3 times a year mostly Winter and Spring time due to his birth-defect and childhood head injury. Which condition normally led him to be quarantined either at hospital or segregation with heavy medications. Therefore, the Petitioner was unable to do anything while the statute of limitation was being expired except to ask his court appoint Post-Conviction counsel to do something (for his best interest), repeatedly.

Petitioner's Post-Conviction Counsel, Mr. Charles Walker, by knowing the Petitioner's such a medical condition, abandoned Petitioner and his appeal; firstly, by not filing the Rule-11 Application, which was a discretionary review by the Tennessee Supreme Court, secondly by not

advising Petitioner regarding his available appeals in the State court and/or the Federal courts, such as Habeas Corpus, Writ of Certiorari, Error Coram Nobis, Rule 36.1 Motion, ... Therefore, the mentally and physically ill Petitioner was left in the abandoned-zone by his Post-Conviction counsel.

In Petitioner's case, the whole situation surrounding the one-year statute of limitation was an extraordinary (circumstance) under the standard of Holland v. Florida, 130 S.Ct. 2549 (2010), where the United States Supreme Court held that the court appointed counsel's failure to file the petition in timely manner in spite of Holland's multiple request, .. "rose to the level of extraordinary circumstance," of kind sufficient to permit equitable tolling of statute of limitations. The Petitioner Holland was not suffering mental or physical illness, but Petitioner Bennett was. The Petitioner Holland made multiple request to his court appointed counsel regarding timely petition, and Petitioner Bennett repeatedly requested to his court appointed counsel to file timely appeal. Like the Holland, current case meets the Extraordinary Circumstance and diligent requirement for Due Process Tolling of the one (1) year Statute of Limitations. Therefore, as held in Holland v. Florida, Id., this Honorable United States Supreme Court should hold the same, accordingly.

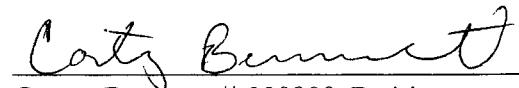
~ The lower courts' denial decisions are contrary to, and unreasonable application of, well settled Federal law, Holland v. Florida, Id.

In addition, because of the Petitioner's mental and physical deficiency and his grave sentence of Life-Plus-50 years, this Honorable United States Supreme Court's intervention into the Petitioner's case may be justified in the best interest of justice.

CONCLUSION

By showing the constitutional and good reason, your Petitioner prays that this Honorable United States Supreme Court grant current petition for a writ of certiorari.

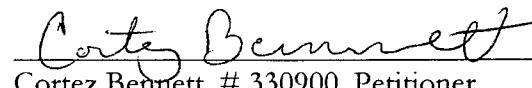
Respectfully submitted,



Cortez Bennett, # 330900, Petitioner

AFFIRMATION

The Petitioner affirms under penalty of perjury that foregoing statement was true and correct according to his knowledge on this the 10th day of March 2025, at Henning, TN.



Cortez Bennett, # 330900, Petitioner

MAILBOX DROP RULE

The Petitioner affirms under penalty of perjury that foregoing Petition for writ of certiorari is (1) dropped into the designated Institutional Mailbox, or (2) handed to the appropriate Institutional Staff to mail out with proper stamps/money withdrawal request attached on this the 10th day of March 2025, at Henning, TN.



Cortez Bennett, # 330900, Petitioner