

No. 24-6949

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JAN 06 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

KENDRICK CHRISTMAS,

PETITIONER

VS.

TIM HOOPER, WARDEN, LOUISIANA STATE PENITENTIARY,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI

Kendrick Christmas

KENDRICK CHRISTMAS #585115
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RECEIVED
JAN 22 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1.

WHETHER KENDRICK CHRISTMAS'S FEDERAL WRIT OF HABEAS CORPUS IS ENTITLED TO EQUITABLE TOLLING DURING THE TIME HE FILED FOR SUPERVISORY WRITS IN THE LOUISIANA SUPREME COURT UNTIL HE RECEIVED RECEIPT OF JUDGMENT?

LIST OF PARTIES

There are no parties to the proceeding other than those listed in the caption.

Petitioner is Kendrick Christmas, pro se litigant; Richard Ward, District Attorney for the Parish of Iberville.

The Respondent is Tim Hooper, Warden.

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OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is reported as *Christmas v. Hooper*, 118 F.4th 724 (5th Cir. 10/10/2024) (Appendix A).

The District Court for the Middle District of Louisiana did not publish its opinion (Appendix B).

The decision of the Supreme Court of Louisiana is reported as *State ex rel. Christmas v. State*, 2016-0326 (La. 8/04/2017), 222 So.3d 1267 (Appendix C).

JURISDICTION

The Fifth Circuit, Court of Appeals filed its decision on October 10, 2024, and denied Mr. Christmas's Certificate of Appealability. This Honorable Court has jurisdiction under 28 U.S.C. §1254(1) to review the circuit court's decision on a writ of certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §2254

(State Custody, Remedies in Federal Court)

STATEMENT OF THE CASE

On August 25, 2009, Mr. Christmas was charged with one count of second degree murder and two counts of attempted second degree murder. On April 14, 2011, a jury unanimously found Mr. Christmas guilty on all counts. On June 13, 2011, the trial court denied Mr. Christmas' post-verdict judgment of acquittal and new trial then sentenced him to life imprisonment without the benefit of probation, parole, or suspension of sentence for the second degree murder. The trial court also sentenced Mr. Christmas to fifty (50) years on each count of attempted second degree murder at hard labor, without the benefit of probation, parole, or suspension of sentence. The trial court ordered these sentences to run concurrent with each other.

On December 12, 2011, Mr. Christmas appealed his conviction with the First Circuit Court of Appeal raising the following grounds : (1) the trial court failed to grant his *Batson* challenge; and (2) the evidence was insufficient. On June 8, 2012, the First Circuit Court of Appeal affirmed Mr. Christmas' direct appeal. *State v. Christmas*, 2011-2047 (La. App. 1st Cir. 6/8/12), 2012 WL 2061506 (unpublished).

On July 6, 2012, Mr. Christmas filed a writ of certiorari with the Louisiana Supreme Court. The Louisiana Supreme Court denied the writ of certiorari on January 25, 2013. *State v. Christmas*, 2012-1551 (La. 1/25/13), 2013 WL 406002 (unpublished). Mr. Christmas did not file a writ of certiorari to the United States Supreme Court.

On December 10, 2013, Mr. Christmas mailed his application for post-conviction relief to the trial court utilizing the prison mail system. Exhibit 1. The trial court denied three (3) of Mr. Christmas' claims intermittently --- (1) collusion between the district attorney and public defender in not challenging the selection of grand jurors for violations of the National Voter's Registration Act of 1993; (2) forensic expert, Charles Watson, used "junk science" in examining bullets; and (3) Dr. Alfredo Saurez was not qualified as a forensic pathologist by the trial court. On May 21, 2015, the trial court denied Mr. Christmas' application for post-conviction relief in its entirety. Exhibit 2.

Mr. Christmas filed a notice of intent that was filed by the clerk's office on June 23, 2015. On June 19, 2015, Mr. Christmas mailed his supervisory writ of review to the Court of Appeal, First Circuit utilizing the prison mail system. Exhibit 3. The First Circuit Court of Appeal extended the time for filing on or before November 9, 2015. *State v. Christmas*, 2015-0988 (La. App. 1st Cir. 9/8/15),

(unpublished). On October 28, 2015, Mr. Christmas refiled the supervisory writ in the First Circuit Court of Appeal utilizing the prison mail system. Exhibit 4. On January 14, 2016, the First Circuit denied relief. *State v. Christmas*, 2015-1733 (La. App. 1 Cir. 1/14/16) (unpublished). On February 12, 2016, Mr. Christmas mailed his supervisory writ of review to the Louisiana Supreme Court utilizing the prison mail system. Exhibit 5. The Louisiana Supreme Court denied supervisory writs on August 4, 2017. *State ex rel. Kendrick Christmas v. State of Louisiana*, 2016-0326 (La. 8/4/17), 222 So.3d 1267. Mr. Christmas, however, did not receive notice of the Louisiana Supreme Court's judgment until about June 13, 2018. Exhibit 6.

Prior to receiving the Louisiana Supreme Court's judgment, Mr. Christmas diligently pursued his rights by making several requests to the Louisiana Supreme Court for the status of his pending supervisory writ. His first status check to the Louisiana Supreme Court was made on March 14, 2017, the Louisiana Supreme Court informed Mr. Christmas that "[t]he court will notify you when it has reached decision in this matter." Exhibit 8. On June 7, 2018, Mr. Christmas sent another letter to the Louisiana Supreme Court requesting the status of his pending supervisory writ. Exhibit 9.

On June 18, 2018, Mr. Christmas wrote the Legal Programs Director for the Louisiana State Penitentiary requesting a letter of verification that he did not receive notice of judgment not any legal mail between August 4, 2017 and June 13, 2018. Exhibit 10. By notice dated June 19, 2018, the Legal Programs Director for the Louisiana State Penitentiary advised Mr. Christmas that “the Louisiana Supreme Court ... advised that they did not send anything back to [Mr. Christmas].” Exhibit 11. On June 20, 2018, the Legal Programs Director for the Louisiana State Penitentiary stated that:

We the legal programs department has not receive any legal mail from the Louisiana Court in any form to be delivered to Kendrick Christmas, through our legal mail reception [and / or] delivery process.

Exhibit 12.

John Tarlton Olivier, Clerk of Court for the Louisiana Supreme Court issued a letter to the Legal Programs Department for the Louisiana State Penitentiary stating there had been a “delay in sending of court actions and acknowledgement letters ... [d]ue to a change in staff ... since August 25, 2017.” Exhibit 13. As stated above, Mr. Christmas received notice of judgment from the Louisiana Supreme Court on about June 13, 2018. Exhibit 6. Mr. Christmas, meanwhile, prepared his Federal Writ of Habeas Corpus that he forwarded to the United States District Court for the Middle District of Louisiana on about July 13, 2018, via

prison authorities at the Louisiana State Penitentiary. Exhibit 14. The Magistrate Judge's Report and Recommendation thereby denying and dismissing Mr. Christmas' Writ of Habeas Corpus be denied as untimely in which he filed an objection. The district court adopted the Magistrate Judge's Report and Recommendation thereby denying and dismissing Mr. Christmas's Writ of Habeas Corpus as untimely although issuing a certificate of appealability regarding the timeliness of his Writ of Habeas Corpus. *Christmas #585115 v. Vannoy, et al.*, No. 18-00691-BAJ-EWD (USDC, MDLA 3/31/22).

On May 2, 2022, Mr. Christmas wrote this Honorable Court's clerk of court requesting a status check of his appeal and expressing his desire to appeal. Exhibit 15. Deputy Clerk Connie Brown informed Mr. Christmas "there is no open appeal in this Court and that the District Court order of March 31, 2022, did not transfer your case to this Court." Exhibit 16. On May 11, 2022, Mr. Christmas wrote another letter to the clerk of court's office expressing his desire to appeal this matter. Exhibit 17. He again informed the clerk of court's office of his desire to appeal by letter dated June 4, 2022. Exhibit 18. On June 10, 2022, Mr. Christmas filed a notice of appeal and a motion for relief of judgment. Exhibit 19. On February 13, 2023, the district court denied Mr. Christmas' motion for relief of judgment. *Christmas v. Vannoy, et al.*, No. 18-00691, 2023 WL 2486572 (USDC,

M.D. Louisiana 2/13/23). Exhibit 20. On February 28, 2023, Mr. Christmas filed a Notice of Appeal. Exhibit 21. On May 31, 2023, the United States Court of Appeals for the Fifth Circuit issued a Certificate of Appealability. Exhibit 22. The United States Court of Appeals for the Fifth Circuit agreed that Mr. Christmas's letter as a notice of appeal was sufficient and timely; however, the court affirmed the district court's denial of habeas corpus relief as being untimely. *Christmas v. Hooper*, 118 F.4th 724 (5th Cir. 10/10/24). Exhibit 23.

This Petition for Writ of Certiorari now follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD FIND THAT KENDRICK CHRISTMAS'S FEDERAL WRIT OF HABEAS CORPUS IS ENTITLED TO EQUITABLE TOLLING DURING THE TIME HE FILED FOR SUPERVISORY WRITS IN THE LOUISIANA SUPREME COURT UNTIL HE RECEIVED RECEIPT OF JUDGMENT?

Mr. Christmas presents the narrow question of whether his inquiries were sufficient to establish that he diligently pursued relief to receive equitable tolling of the one-year limitation period.

Standard of Review

“The Antiterrorism and Effective Death Penalty Act's one-year limitations period on state prisoners seeking federal habeas review is subject to equitable tolling.” *Jimenez v. Hunter*, 741 Fed.Appx. 189, 191-192 (5th Cir. 7/5/18) (quoting *Holland v. Florida*, 560 U.S. 631, 645, 130 S.Ct. 2549, 177 L.Ed.2d 130 (2010)). In *Hardy v. Quarterman*, 577 F.3d 596, 598 (5th Cir. 2009) (per curiam) that court held that Hardy had diligently pursued federal habeas relief, and that he had “suffered a significant state-created delay when the TCCA failed in its legal duty to inform him that his petition had been denied.” *Id.* at 599. The court noted that Hardy had acted diligently by timely inquiring to the state convicting court; therefore, he “is entitled to equitable tolling of the statute of limitation.” *Id.*

In the instant matter, on December 12, 2011, Mr. Christmas appealed his conviction with the First Circuit Court of Appeal which was affirmed on June 8, 2012, by the Louisiana First Circuit Court of Appeal. *State v. Christmas*, 2011-2047 (La. App. 1st Cir. 6/8/12), 2012 WL 2061506 (unpublished). Mr. Christmas timely sought a Writ of Certiorari with the Louisiana Supreme Court that was filed on July 6, 2012. The Louisiana Supreme Court denied Mr. Christmas's Writ of Certiorari on January 25, 2013. *State v. Christmas*, 2012-1551 (La. 1/25/13), 2013 WL 406002 (unpublished). Mr. Christmas did not file a writ of certiorari to the United States Supreme Court.

On December 10, 2013, Mr. Christmas mailed his Application for Post-Conviction Relief to the trial court utilizing the prison mail system. Exhibit 1. The trial court denied three (3) of Mr. Christmas' claims intermittently --- (1) collusion between the district attorney and public defender in not challenging the selection of grand jurors for violations of the National Voter's Registration Act of 1993; (2) forensic expert, Charles Watson, used "junk science" in examining bullets; and (3) Dr. Alfredo Saurez was not qualified as a forensic pathologist by the trial court. On May 21, 2015, the trial court denied Mr. Christmas' application for post-conviction relief in its entirety. Exhibit 2.

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Prior to receiving the Louisiana Supreme Court's judgment, Mr. Christmas diligently pursued his rights by making several requests to the Louisiana Supreme Court for a status of his pending Supervisory Writ. His first status check to the Louisiana Supreme Court was made on March 14, 2017, the Louisiana Supreme

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On June 18, 2018, Mr. Christmas wrote the Legal Programs Director for the Louisiana State Penitentiary requesting a letter of verification that he did not receive notice of judgment nor any legal mail between August 4, 2017 and June 13, 2018. Exhibit 10. By notice dated June 19, 2018, the Legal Programs Director for the Louisiana State Penitentiary advised Mr. Christmas that “the Louisiana Supreme Court ... advised that they did not send anything back to [Mr. Christmas].” Exhibit 11. On June 20, 2018, the Legal Programs Director for the Louisiana State Penitentiary stated that:

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stated above, Mr. Christmas received notice of judgment from the Louisiana Supreme Court on about June 13, 2018. Exhibit 6. Mr. Christmas, meanwhile, prepared his Federal Writ of Habeas Corpus that he forwarded to the United States District Court for the Middle District of Louisiana on about July 13, 2018, via prison authorities at the Louisiana State Penitentiary. Exhibit 14.

Clearly, Mr. Christmas exercised the necessary diligence in pursuing his federal habeas rights. Mr. Christmas should not be penalized for the significant state-created delay by the Louisiana Supreme Court's Clerk of Court's Office failure in there legal duty to inform him that his Supervisory Writ had been denied.

CONCLUSION

This Petition for a Writ of Certiorari should be granted based on the law and premises submitted therein.

Dated this 6th day of January, 2025.

Respectfully Submitted,



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