No ______________

IN The
Supreme Court Of The United States

Reginald Carr - Petitioner

V.

8th Circuit - Respondent(s)

On Petition For Writ Of Certiorari

8th Circuit

Reginald S. Carr #150535
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Question(s) Presented

1. Whether the 8th Circuit violated Mr Carrs Rights or erred when they upheld the United States District Court Eastern District of Missouri decision denying Carrs motion for DNA testing stating his motion was untimely?
2. Did Carr show the 8th Circuit sufficient evidence that he was extraordinary Circumstances such as his Diag of Mental Retardation, low IQ and his Seven plus years in a psychiatric hospital, while being subjected to Four years of shock treatment. "Age 10-17"
3. Did the lower court violate Carrs Rights by allowing the Government to respond to his motion, but not a "Public Defender" The Judge did not Summarily deny Carr's motion? **See:** People v. Higgins ruling.
4. Should the DNA evidence had been considered new evidence under 18 U.S.C.S. 3600

List Of Parties

[✓] All Parties appear in the caption of the case on 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

[✓] For cases from federal courts:

The opinion for the United States court of appeals appears at Appendix D to the petition and is.

[ ] reported at ______________:

Jurisdiction

[✓] For cases from federal courts:

The date on which the United States Court of Appeals decided my was ______________

[✓] 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

U.S. Const. Amend VI:

In all criminal Prosecutions, the accused shall enjoy his right to due Process which the court shall have been previously ascertained by law.

See also: Haines v. Kerner 104 US. 519 at 520-521. (1971)

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Statement of Case

In 5/12/17 Mr. Carr filed a Petition for relief based on the following issues:

1. DNA Testing of newly discovered evidence
2. Destruction of evidence

The District Court erred in denying Carr's motion without a hearing because the court departed from the mandatory Procedure where Carr Preserved the issues by requesting counsel in his motion, in the event that triggered the Court's duty to comply, was its decision not to summarily deny the motion. Instead the court sent a copy of the motion to the Government "(but not to the public defenders office.)" The Courts decision not to send the motion to the Public defenders office deprived Carr of the opportunity to have the Public defender office respond or add any claims with arguable merit. which might have Prejudiced defendant, and Carr's current motion was not successive. See: People v. Higgins COA 57

The Court made it necessary for the District Court to engage the Government to futher investigate Carr's allegations "This would seem to indicate that the District Court had waived its untimely Bar"

If a court does not summarily deny a motion the court is required to the specific actions. The court shall cause a complete copy of the to be served on the Prosecuting attorney and if the Petitioner has requested counsel, then the court

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then shall cause a complete copy of the motion to be served on the public defender. The public defenders office then has 49 days to inform the court whether it intends to represent the defendant. identify whether any conflict exists, add any claims the public defender finds to have arguable merit. the court must then order the Prosecution to respond and the defendant reply, once the parties have filed their Pleadings the court finds that it is appropriate to enter a ruling containing written findings of fact and conclusion of the law.

The District court also stated that in order for Carr to overcome the untimelness he would have to fall/prove that he was entitled to relief under at least one of these categories.

I) The applicant was or is incompetent and such incompetence substanially contributed to the delay

II) The evidence to be tested is newly discovered DNA evidence

III) That the applicants motion is not based soley on the applicant's own assertion of innocence

IV) Upon good cause shown

V) For the purpose of this paragraph.

Carr filed with the 8th circuit explaining to them why his motion should have been reviewed and that his low IQ and Mental Retardation would be considered extraordinary circumstances in his not filing his motion in a timely fashion

The court first informed the Government and ordered for a response concerning those allegations. [Holding In Similar Cases]

The trial court erred by holding the defendant was not intellectually disabled where it applied an incorrect legal standard by treating defendant IQ score of 70 and 75 alone as dispositive of the case and by failing to balance and analyze his adaptive functioning deficits with his I.Q score. even though trial courts have

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found that the defendant had proven the existence of two adaptive functioning deficits were so severe that he should be ruled intellectually disabled. See Carr v. State

~~His adaptive functioning deficits with his IQ score~~

, Virtually no limits are placed on relevant mitigating evidence a capital defendant may , introduce concerning his own circumstance. See: Capital Punishment Cruel & Unusual Punishment

In Carr's index case he has not been allowed to show the relevance of his mental capacity. Impaired Intellectual functioning is inherently mitigating if it is an ongoing fact that individuals suffering from some form of Mental Retardation exist. the American Association on intellectual and developmental disability (formely the AAMR) defines intellectual disability as a condition Originating before age eighteen "Characterized" by significant limitations in both intellectual functioning and in adaptive behavior as expressed in conceptional, social, and Practical adaptive skill. following significant deficits in one of the three adaptive skills domain includes language, reading and writing and money, time and a number of concepts. The social skills domain includes inter Personal Skills, social responsibility, self-esteem, gullibility naiveté (ie wariness) follows rules / obeys laws, avoid being victimized and social Problem solving, the Practical skills domain includes activities of daily Personal care, occupational skills, use of money, safety health care. travel/transportation, schedules/routine and use of the telephone.

The current medical literature standards concerning intellectual disability requires the same three basic elements; significantly sub average intellectual functioning significant deficits in adaptive behavior, and manifestation before age eighteen. An assessment deficits in intellectual disability must be retrospective to the time

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of the crime and before the Petition turned eighteen.

The Petitioner Petitioned under 18 USCS-3600 for relief on the assertion that in light of his Mental capacity the Eight Circuit was wrong to refuse to consider the disability of Carr's question on the grounds that his untimely filing was attributed to his low IQ See: Exhibit-A, B, C, D

In Atkins v. Virgina, 536 U.S. at 316, 153 L.ed 335, 122 S.Ct 2242. it has been explained that impaired intellectual functioning is inherently mitigating. In the United States Court for the fifth Circuit the appropriate threshold test as in Penry was whether there was constitutionally relevant mitigating evidence that is evidence of a "uniquely Severe" Permanent handicap.

Unlike Tennard. Carr's low IQ did constitute a uniquely severe condition that has been throughly documented back to the early 1970's, well before he was eighteen years of age, which is one of the Primary measures for Retardation.

In Tennard the Supreme Court granted certiorari, vacated; the Court of Appeals Judgment and remanded for further Consideration in light of Atkins v. Virgina (2002) 536 U.S. 304 122 S.Ct 2242, 153 L.2d 335.

As in Tennard (2) the low I.Q evidence was relevant mitigating evidence. turning to the analysis that the 8th Circuit should have conducted, reasonable test and concluded the Carr's low IQ evidence along with his Past and Present mental adaptive behavior that was diagnosed at Fulton State Hospital in Fulton MO, was relevant mitigating evidence which would have given rise

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to Mental Incompetence and since the relationship between special issues and Carrs low IQ evidence has the same essential features as that between other's Mental Retardation evidence it should have been reviewed as such.

Carr's intellectual functioning has mitigating demensions beyond the impact it has on his ability to act.

In Carrs case not just the evidence of his low IQ is relevant but also his Diag. from the age of 10 that through the use of shock treatment indicated a uniquely severe condition leading to the analysis of mental Retardation

Carr has made a substanial showing of denial of his constitutional Right 28 USCS
In Bill v. Clark 628 F 3d 1092 the Prisoner argued that he was entitled to equitable tolling due to his low IQ and writing deficiencies during the limitations Period. The District found his Mental defieiencies were not so severe as to constitute an extraordinary circumstance that prevented him from filing his petition on time. The court of Appeals held equitable tolling was Permissable if the petitioner shaved mental impairment so severe that he was unable personally either to understand the need to timely file or prepare a habeas Petition and that impairment made it impossible under the totality of the circumstances to meet the filing deadline despite the prisoners diligence with respect to the necessary diligence, the record did not address whether the Prisoner was diligent in seeking assistance with his claim nor did it address whether there was any assistance available to the prisoner on reasonable terms, thus denying equitable tolling the district Court did not properly frame the inquiry into the effects of the Prisoners mental impairment on his ability to pursue his claims diligently during

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the §2244(d)(1) limitations Period. including whether he had reasonable access to assistance.

In this index case Carr has shown through evaluation that he does in fact meet the requirements that is needed for an individual to be allowed to have the opportunity to have the opportunity to have his case reviewed regardless of the timelines. Following the guidelines of an individual who has a very low IQ of 71 with 7 years of hospitalization in a Psychiatric Hospital and (4) Years of Shock treatment at a time when this type of treatment was virtually unexplored does in fact qualify Carr as an individual who intellectual abilities are at such a limit that according to his evaluation he does not even have the capacity to articulate in the minutest of levels when it comes to following a complete array of litigation.

The United States Court of Appeals for the Ninth Circuit recognizes a general rule that equitable tolling is available where the prisoner can show extraordinary circumstances were the cause of an untimely filing

In what determines what constitutes extraordinary circumstances which could cause an individual to file a motion in an untimely fashion the Supreme Court has stated that an individual with low IQ and suffering from mental Retardation is in fact an extraordinary circumstance that should be allowed to file his or her motion in light of the uncontrolable mental issues
Carr never finished grade school the last grade attended was the sixth grade this is the grade that the majority of mental Health Physicians agree upon as being the the highest Grade level the vast majority of Mentally Handicapped individuals are likely to reach.

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To evaluate whether Carr is entitled to equitable tolling the district court must (1) find the Petitioner has made a non-frivolous showing that he had severe mental impairment during the filing period that would entitle him to an evidentary hearing (2) determine after considering the record. Whether the Petitioners mental impairment made it impossible to timely file on his own (3) determine after considering the record whether the Petitioner satisfied his burden that he was in fact mentally impaired.

According to Post-Conviction Proceedings New DNA Test that made previously DNA testing capable of indentification amount to Newly discovered DNA evidence "Under the innocence Protection Act of 2004 18 USCS-3600

In Carrs case nearly 25 years has passed from his initial trial, the advances in DNA technology has grown expotentially, this qualifying as newly discovered evidence therefore Carr is entilted to review and DNA testing based on the above facts.

DNA capable of identification amounts to Newly discovered evidence; Dewatson 2015 CA 9 Mont 792 F3d 1174

Reason For Granting Writ of Certiorari

Ignoring the Petitioner Constitutional Rights just because he is mentally handicapped and therefore does not have the mental fortitude to grasp the complexity of filing the proper Petition or filing it in a timely manner would signify a gross and egregious injustice. The court should clarify the actual meaning of what can or cannot be clarified as new evidence since it would seem

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other courts have used their own determination in what it rendered anew. Hence therefore based on the strength and factual findings this Petition should not have been denied by the 8th circuit and therefore this egregious finding on the 8th Circuits Part should be reversed.

Conclusion

Respectfully Submitted,

Reginald D. Carr

Date: 3-28-2018.