

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

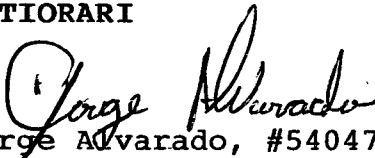
JORGE ALVARADO, PETITIONER

VS.

STEPHEN D'ILIO AND CHRISTOPHER PORRINO, RESPONDENTS.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI


Jorge Alvarado, #540472
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Petitioner, pro se

QUESTIONS PRESENTED

1. Whether the State created an impediment by failing to provide blank habeas corpus forms in Spanish to Petitioner which prevented him from preparing and filing his habeas corpus petition on time, and if so, is Petitioner entitled to equitable tolling?

2. Was Petitioner entitled to appointment of counsel after the District Court granted an evidentiary hearing, to assist him to properly present his claims for purposes of equitable tolling?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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OTHER

United States Constitution, Amendment V	
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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

The Order of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The Order & Opinion of the United States District Court appears

at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided this case was September 11, 2017.

The jurisdiction of this Honorable Court is invoke under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2244(d)(1)(A) provides that "A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review."

28 U.S.C. § 2244(d)(1)(B) provides that "the date on which the impediment to filing a application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action."

STATEMENT OF THE CASE

Petitioner is a non-English speaking inmate who struggled with reading, writing and comprehension of the English language and has no legal skills whatsoever. Petitioner made many requests for Spanish language legal materials and Spanish language translation assistance, but his requests were not honored. As a result, he was unable to prepare and file a timely habeas petition pursuant 28 U.S.C. § 2254. He did, eventually, file a habeas petition that was barred by the statute of limitations under 28 U.S.C. § 2244(d).

The District Court granted an evidentiary hearing in this matter, but did not appoint counsel to assist the Petitioner. And due to his English language deficiencies and lack of legal knowledge, Petitioner was unable to present all available evidence that support his entitlement to equitable tolling.

REASONS FOR GRANTING THE PETITION

I. The Statutory Tolling Of Section 2244(d)(1)(A) Applies To Non-English Speaking Inmates In State Prisons.

Petitioner advances facts and circumstances which are very important components in addressing the language barrier problems for non-English speaking inmates in state prisons, which affects many other similarly situated inmates throughout the Country.

Petitioner's Spanish language legal materials and translation services requests (G-27 forms) were not honored by officials at New Jersey State Prison, significantly creating an impediment that obstructed his abilities to comport with the requirements of Section 2244(d)(1)(A). As a result, when Petitioner was finally able to file a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, the same was dismissed as time barred. Even though Petitioner argued that the statute of limitations should be equitably tolled because his appellate attorney did not timely notify him that the New Jersey Supreme Court had denied certification, and the lack of Spanish language legal materials and translation assistance contributed to his failure to comply with the statute of limitations.

Petitioner, as well as Respondent, submitted additional briefing on the issue of equitable tolling based on the lack of Spanish language legal materials and translation assistance available to Petitioner in prison. To demonstrate, whether equitable tolling is feasible in this matter under the facts and circumstances presented. The District Court issued a Opinion and Order dismissing the habeas petition as time barred. (Opinion and Order, ECF Nos. 16-17.). On the same day the order was

filed, Petitioner filed a motion for an extension of time to file a supplemental brief because he had not received all the documents from the New Jersey Department of Corrections regarding his requests for assistance due to his English deficiency. (Mot for Ext. Time to File, ECF No. 18) The District Court construed Petitioner's motion for extension of time file as a motion for reconsideration under Rule 60(b), and allowed him to file a supplemental brief with any new produced documents from the New Jersey Department of Corrections. (Order, ECF No. 19)

Thus Petitioner submitted copies of the G-27 forms (Requests for Legal Assistance) he filed in 2007, 2008 and 2011. Among those requests, Petitioner wrote on January 25, 2007: "I want to read some legal papers to be ready for my direct appeal, but there is no Spanish legal papers. I have problems understanding the language;" on February 21, 2007: "I am working in my case and I need help. I don't understand the language very good all my legal letters and Court papers are in English;" on February 24, 2007: "I'm working in my case, I need help. I don't understand the English language very good. I have problem reading my legal papers:" on August 29, 2007: "I need more time to work in my case. I want to be ready for my direct appeal. I'm working in my own, and I have a lot of problem reading and understanding the English;" on September 11, 2007: "I need to look for Spanish material. I have problem with my English and all my legal letter from the Court are in English;" on September 18, 2007: "The Trenton State Prison law library is in English only and I can't read or write English. I can

speak a little bit only I need some help;" and on September 21, 2007: "I need more time to work in my case. The law library only have two paralegal in Spanish, but they don't translate legal papers and I need some legal material in Spanish my English is not good." There are many similar additional requests in 2008. Although Petitioner can read and write some English, he has difficulty understanding legal concepts written in English.

Petitioner frequently requested help and diligently pursued his direct appeals. Particularly relevant here, on June 7, 2008, Petitioner wrote a request for legal assistance: "I'm waiting for my direct appeal decision, and I am working in my next step Federal or Superior Court. I need some help with this. I don't understand the law. I'm working by myself." This statement suggests Petitioner was contemplating whether he needed to file his habeas case or his PCR petition, but he did not understand what to do. Similarly, on August 14, 2008, Petitioner wrote, I'm waiting for my direct appeal decision. I'm working by myself. I don't speak, read or write English well. I need more time in the law library." On December 5, 2008, Petitioner asked for help translating his legal papers for his lawyer. (ECF No. 21 at 19.) At this point, Petitioner had about ten months remaining to file a timely habeas petition.

The District Court agreed that Petitioner had presented sufficient evidence to suggest that if Spanish language material had been available to him, he might have better understood the workings of the one-year habeas statute of limitations, and

he may have timely filed his petition. The District Court granted Petitioner's motion for reconsideration, vacated the dismissal of the habeas petition, and scheduled an evidentiary hearing.

But despite Petitioner's difficulties with the English language and his extremely low legal IQ, an attorney was not appointed to assist him. Consequently, Petitioner was not able to present to the District Court the fact that he was prohibited from making any legal calls to find out the status of his appeal, because the NJDOC has a telephone policy that only lets inmates that possess a letter from "the courts that is no more than 90 days old indicating that you are currently in litigation or you are permitted to call the court." N.J.A.C. 10A:6-2.8. Yet Petitioner was still denied equitable tolling despite the fact that this Honorable Court has made it clear that the statute of limitations created by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) is subject to equitable tolling in appropriate cases. Holland v. Florida, 560 U.S. 631, 635 (2010).

In short, Petitioner was not afforded a reasonable opportunity to file a timely habeas petition nor to demonstrate his entitlement to equitable tolling.

II. The Statutory Tolling Of Section 2244(d)(1)(B) Applies Where State Created Impediment Violates The Constitution or Federal Laws

Section 2244(d)(1)(B) expressly allows tolling for state created impediments that prevent a prisoner from filing his application, but only if the impediment violates the Constitution or federal laws. The Constitution guarantees prisoners the right of meaningful access to the courts. This right of access imposes an affirmative duty on prison officials to help inmates prepare and file legal papers by either establishing an adequate law library or providing adequate assistance from persons trained in the law. See Bounds v. Smith, 430 U.S. 817, 828 (1977)

Petitioner asserts access to the courts was denied by prison officials when Petitioner was not able to present to the District Court the fact that he was prohibited from making any legal calls to find out the status of his appeal, due to the NJDOC telephone policy that states "An inmate requesting to make a legal call pursuant N.J.A.C. 10A:6-2.8. must submit a G-27 request slip to the Supervisor of Education or designee. In addition to the G27, you are required to submit a letter from the courts that is no more than 90 days old indicating that you are currently in litigation or you are permitted to call the court." (The State of New Jersey Department of Corrections Inmate Handbook 2016 Edition.)

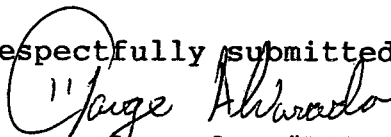
Notwithstanding, the language barriers and low Legal IQ Petitioner continues to contend with, but the State has created an impediment by this written policy that prevents prisoners meaningful legal access to the courts if the inmate cannot

produce " a letter from the courts that is no more than 90 days old indicating that you are currently in litigation or you are permitted to call the court." Moreover, Petitioner's Spanish language legal materials and translation services requests (G-27 forms) were not honored by officials at New Jersey State Prison, again, creating an impediment that obstructed his abilities to comport with the requirements of Section 2244(d)(1)(A). As a result, when Petitioner was finally able to file a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, the same was dismissed as time barred.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


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Date: February 23, 2018