

**IN THE
SUPREME COURT OF THE UNITED STATES**

CASE NO: _____ to be assigned

TIMOTHY WOULARD,
Petitioner,

V.

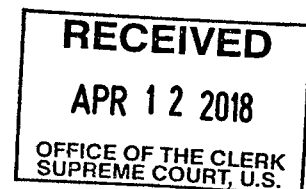
THE STATE OF FLORIDA,
Respondent.

**ON REVIEW FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
NO: 16-10469-CC**

PETITION FOR WRIT OF CERTIORARI

Timothy Woulard, DC# V35760
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Petitioner, *Pro Se*



QUESTIONS PRESENTED

1.) WHETHER PETITIONER IS ENTITLED TO EQUITABLE TOLLING WHERE HE HAS PURSUED HIS RIGHTS DILIGENTLY AND SHOULD BE EXCUSED BASED ON EXCEPTIONAL CIRCUMSTANCES AND BEING A LAYMAN AT LAW

2.) WHETHER PETITIONER WAS AFFORDED ENOUGH TIME BY THE DISTRICT COURT TO RE-FILE HIS HABEAS CORPUS PETITION AFTER THE NOVEMBER 21, 2014 DISMISSAL OF HIS PETITION WITHOUT PREJUDICE FOR FAILURE TO PAY THE FILING FEE OR TO REQUEST *IN FORMA PAUPERIS* STATUS.

3.) WHETHER PETITIONER HAS BEEN DILIGENTLY SEEKING HIS RIGHTS, WHERE HE TIMELY FILED HIS FIRST § 2254 PETITION AND ONLY BECAUSE HE HAD TO REFILE THE § 2254 PETITION DUE TO FAILURE TO PAY THE FILING FEE THE SECOND PETITION BECAME UNTIMELY.

4.) WHETHER THE DISTRICT ERRED IN DISMISSING THE § 2254 PETITION AS UNTIMELY AND SUBSEQUENTLY THE ELEVENTH CIRCUIT COURT ERRED IN AFFIRMING THE DISMISSAL DUE TO THE PETITIONER HAVING A HISTORY OF PSYCHIATRIC AND MENTAL HEALTH TREATMENTS DUE TO MENTAL DISORDERS.

The question presented in this petition arose from the proceedings below.

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The opinion to review the merits appears at APPENDIX A to the petition and is reported at *Woulard v. Secretary, Dept. of Corr. 's*, 707 Fed.Appx. 631 (11th Cir. 2017) (This case was not selected for publishing in the Federal Reporter)

STATEMENT OF JURISDICTION

The date of which the Eleventh Circuit Court of Appeals decided Petitioner's case was on September 5, 2017. A copy of that decision appears at APPENDIX A.

A timely petition for rehearing was denied by the Eleventh Circuit Court of Appeals on January 5, 2018, and a copy of the order denying rehearing appears at APPENDIX B.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) and/or 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition involves violations of the Sixth and Fourteenth Amendment to the United States Constitution

U.S. Const. Amend. 6:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence.

U.S. Const. Amend. 14, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE FACTS

The Petitioner, Timothy Woulard, was charged on March 24, 2010, in the State court with second degree murder with a firearm (Count 1) and possession of a firearm by a convicted felon (Count 2).

On May 11, 2010, Woulard negotiated a plea agreement, perfected between his court appointed counsel and the State of Florida, plead guilty to the lesser included offense of manslaughter for (count 1) and possession of firearm by a convicted felon (Count 2). The trial court adjudicated Woulard guilty and sentenced him to concurrent terms of fifteen years in the Florida Department of Corrections followed by ten years probation on count 1.

On June 10, 2010, Appellant filed a *pro se* motion to withdraw his guilty plea pursuant to Fla. R. Crim. P. 3.171 (i). Woulard subsequently filed a notice of withdrawal of motion to withdraw his plea after sentencing. On July 30, 2010, the trial court did conduct a hearing on the motion to withdraw the withdrawal of plea agreement motion.

On August 14, 2010 Appellant filed correspondence with the trial court asking to withdraw his plea. On August 24, 2010, the court treated the letter as a motion to withdraw plea pursuant to Fla. R. Crim. P. 3.170 (l) and dismissed the motion as untimely.

On January 26, 2011, Mr. Woulard filed a Fla. R. Crim. P. 3.850 motion for postconviction relief in the State court and asserted two grounds of ineffective assistance of counsel. The State court granted an evidentiary hearing on one ground. On March 29, 2013 the trial court subsequently entered an order denying the Fla. R. Crim. P. 3.850 motion.

On April 8, 2014 the Fifth District Court of Appeal of Florida issued a *per curiam* opinion affirming the mandate issued March 2, 2014.

Mr. Woulard filed an initial *pro se* § 2254 petition in the federal court on October 7, 2014, but the District Court dismissed it without prejudice because he had not paid the filing fee. Mr. Woulard filed a second § 2254 petition along with the \$ 5.00 filing fee in December 2014.

In January of 2016, the District Court dismissed Mr. Woulard's second § 2254 petition as untimely. On January 28, 2016, pursuant to the mailbox rule Woulard filed a petition for certificate of appealability.

In October of 2016, the Eleventh Circuit Court of Appeal granted Woulard's petition for certificate of appealability on one issue and to proceed *in forma pauperis*. The Circuit Court did grant Appellant until January 27, 2017 to file his initial brief.

On September 5, 2017 the Eleventh Circuit Court of Appeals affirmed the district court's dismissal of Mr. Woulard's habeas corpus petition as untimely. See *Woulard v. Secretary, DOC.*, 707 Fed.Appx. 631 (11th Cir. 2017).

REASONS FOR GRANTING A WRIT OF CERTIORARI

1.) WHETHER PETITIONER IS ENTITLED TO EQUITABLE TOLLING WHERE HE HAS PURSUED HIS RIGHTS DILIGENTLY AND SHOULD BE EXCUSED BASED ON EXCEPTIONAL CIRCUMSTANCES AND BEING A LAYMAN AT LAW

The Petitioner asserts that the District Court's findings were contrary to or involved an unreasonable application of federal law as provided by the United States Supreme Court.

The Petitioner should be entitled to equitable tolling, where he has been pursuing his rights diligently. The Petitioner's procedural mandate rests solely on the alleged six (6) day delay in filing of the second § 2254 habeas corpus petition with \$ 5.00 filing fee. Exceptions should be made in light that Petitioner received a procedural mandate only because, he didn't pay the \$ 5.00 filing fee with his first habeas corpus petition which he had timely filed initially. Exceptions should be made in light that the Petitioner is only a layman at law with mental health issues, and he is not a lawyer trained in the art and science of law. Exceptions should be made only, because Petitioner is untrained in law and has to solely rely on prison law library clerks, who are also not trained attorneys at legal services, they simply are a little more experienced than other average prisoners, in assisting to research and drafting legal documents.

In the case at bar the Petitioner was left alone without an attorney to prepare his postconviction motions. Petitioner has no training in the court of law; moreover he has a limited education and a long history psychiatric treatments and mental health problems and is not fit to argue law without the slow diligent hand and proper guidance of an experienced attorney in the court of law. Petitioner is entitled to all exceptional circumstances that is been afforded him by the United States Constitution. Petitioner's rights should not be overlooked simply because of some procedural mandates, where he has up to this point been seeking diligently any and all relief within the available remedies.

The Petitioner did not raise this prior to this proceeding, because simply he is not trained in law and did not know that he needed to provide supporting reason why he had late-filed the second § 2254 petition.

This court should take into consideration that the Petitioner is inexperienced in postconviction litigation due the lack of professional counsel in light of *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), as this very own Court in *Martinez* stated that: "... a procedural default will not bar a ... court from hearing a substantial claim if, in the state's initial review collateral proceeding there was no counsel or counsel in that proceeding was ineffective". See also *Trevino v. Thaler*, 569 U.S. ___, 133 S. Ct. ___, 185 L.Ed.2d 1044 (2013). This language is clear and does not warrant further interpretation. In the case at bar, the Petitioner was

without counsel during his initial review collateral proceeding, as well as the appeal therefrom, and subsequent proceedings in the federal courts, and as such he was disadvantaged when filing his initial motion for postconviction relief or the subsequent appeal and § 2254 proceeding.

A Justice of this very own Honorable Court, the Honorable Earl Warren, decades ago cautioned that: “*It is the spirit and not the form of law that keeps justice alive.*”

Under 28 U.S.C. § 2243 the courts’ are instructed to dispose of federal habeas corpus proceedings “as law and justice require”. See also *Carter v. Rafferty*, 621 F.Supp. 533, at 559 (D.C.N.J. 1985). Although, in the case at bar, the habeas corpus petition below may have been disposed of as the “law” requires, but the second prong of § 2243 to wit: “justice” has not been satisfied here, because it is difficult to imagine how justice is being done, when the Petitioner filed his initial § 2254 petition timely and only because of the issue with unpaid filing fee ended up filing his second § 2254 petition untimely. If the District Court simply would have extended the time for Petitioner to provide the filing fee or an *in forma pauperis* application, and would have stayed the initial 2254 petition for the time being, the issue would not be before this court, instead the actual merits of Petitioner’s claims would have been reviewed by now, and the District Court still would have acted within the parameters of § 2243 as the law and justice requires.

In *Davis v. Johnson*, 158 F.3d 806, at 810 (5th Cir. 1998), the Fifth Circuit Court of Appeal stated that a “Court can allow untimely habeas petition based on extraordinary circumstances”.

The Sixth Circuit Court of Appeals in *Dunlap v. United States*, 250 F.3d 1001(6th Cir. 2001), explained that: “The legislative history in this case makes clear congress’ intent that the limitation period operate as a statute of limitation rather than a jurisdictional requirement.” *Id.*; at 1006.

The *Dunlap* court further stated at 1008 that: “Applying the general equitable tolling test of *Andrews v Orr*, 851 F.2d 146 (6th Cir. 1988). In applying this we look to the following five factors: (1) Petitioner’s lack of notice of the filing requirement, (2) the Petitioner’s lack of constructive knowledge of the filing requirement, (3) Diligence in pursuing ones rights, (4) Absence of prejudice to the respondent, and (5) Petitioner’s reasonableness in remaining ignorant of the legal requirement for filing the claim. The decision whether to equitably toll a period of limitations must be decided on case-by-case basis.” *Id.* at 1008.

In the case at bar, the Petitioner meets those 5 prongs and as such the mere delay of six (6) days in filing his petition should have been excused.

2.) WHETHER PETITIONER WAS AFFORDED ENOUGH TIME BY THE DISTRICT COURT TO RE-FILE HIS HABEAS CORPUS PETITION AFTER THE NOVEMBER 21, 2014 DISMISSAL OF HIS PETITION WITHOUT PREJUDICE FOR FAILURE TO PAY THE FILING FEE OR TO REQUEST *IN FORMA PAUPERIS* STATUS.

The Petitioner asserts that the District Court's findings were contrary to or involved an unreasonable application of federal law as provided by the United States Supreme Court.

Petitioner asserts that's his habeas corpus petition was received by prison mailroom October 7, 2014 and due to the failure to pay the \$ 5.00 filing fee after being held in the court, the District Court denied Petitioner's habeas corpus petition on November 21, 2014 without prejudice, because of the failure to pay the required filing fee. Had Petitioner known to pay the \$ 5.00 filing fee immediately with the filing of the initial petition he would have done so and there would not have been any denial, due to the fact that Petitioner is not a lawyer nor is he trained in the science of law. Petitioner asserts that after the petition was denied without prejudice, it was improperly processed by prison officials, as it apparently was held in the prison mailroom for almost two (2) full weeks before the Petitioner received it. Thus, as a result the Petitioner was only afforded an extreme short to formulate a motion or to make arrangements to pay the filing fee. Paying the filing fee by itself can be time consuming because the Petitioner either has to direct the Department

of Corrections to withdraw funds from his Inmate trust account and to write a check (a process that can take three (3) weeks or longer), or in the alternative the Petitioner has to try to contact family members and/or friends on the outside to arrange the filing fee payment for him.

Based thereon, the Petitioner was diligent in pursuing his rights, and he certainly acted with reasonableness regarding the legal requirement for filing his claim. See *Dunlap, supra*.

Therefore, the petition should have been accepted as timely filed and/or the six (6) days delay in filing should have been excused and equitable tolling applied.

3.) WHETHER PETITIONER HAS BEEN DILIGENTLY SEEKING HIS RIGHTS, WHERE HE TIMELY FILED HIS FIRST § 2254 PETITION AND ONLY BECAUSE HE HAD TO REFILE THE § 2254 PETITION DUE TO FAILURE TO PAY THE FILING FEE THE SECOND PETITION BECAME UNTIMELY.

The Petitioner asserts that the District Court's findings were contrary to or involved an unreasonable application of federal law as provided by the United States Supreme Court.

The Petitioner has been pursuing his rights extremely diligently were the only denial of his § 2254 petition is, because of the \$ 5.00 filing fee, which Petitioner submitted along with the second § 2254 petition shortly after the dismissal of the first petition.

The proof that Petitioner has been diligently pursuing his rights and seeking his rights and relief is apparent from the face of the record and the history of the court proceedings. Petitioner is deserving of at least one 'exception' due to the fact that initially his first petition was in fact timely and only dismissed because of the failure to file the filing fee. Subsequently, the Petitioner filed a second petition along with the \$ 5.00 filing fee, but due to the alleged six (6) day delay the § 2254 petition was denied resulting in the procedural mandate. On the face of the record Petitioner has shown that he has been diligently seeking his rights non-stop and this should be an exception in itself. *Davis v. Johnson* and *Dunlap, supra*.

4.) WHETHER THE DISTRICT ERRED IN DISMISSING THE § 2254 PETITION AS UNTIMELY AND SUBSEQUENTLY THE ELEVENTH CIRCUIT COURT ERRED IN AFFIRMING THE DISMISSAL DUE TO THE PETITIONER HAVING A HISTORY OF PSYCHIATRIC AND MENTAL HEALTH TREATMENTS DUE TO MENTAL DISORDERS.

The Petitioner asserts that the District Court's findings were contrary to or involved an unreasonable application of federal law as provided by the United States Supreme Court.

The Petitioner has a history of psychiatric treatment and has a history of taking psychotropic medications as child and teenager, in the county jail and in the Department of Corrections. The Petitioner has a history of mental health counseling and has been evaluated by trained professional doctors/psychiatrists. Due to mental health problems Petitioner is not able to assist an attorney fully as he would like to, the same applies when the Petitioner is seeking assistance from prison law clerks he has problems to adequately convey to them his claims and needs. Due to his mental health issue he has difficulties to understand and comprehend fully applicable law and it takes the Petitioner extreme longer at times to understand what he needs to do in filing his documents.

The Eleventh Circuit Court of Appeals affirmed the District Court's ruling reasoning *inter alia* that the Petitioner abandoned his equitable tolling argument regarding his initial § 2254 petition. However, in any event if the Petitioner did so,

it was simply because due his mental limitations he may involuntarily abandoned this issue. Regardless, this court should take into consideration that: “*Pro se* litigants’ submissions “are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentences construction or litigant’s unfamiliarity with rule requirements.” *Holland v. Taylor* 604 F.Supp.2d 692 (D.Del. 2009); See also *Boag v. MacDougall*, 454 U.S. 364, 102 S. Ct. 700, 70 L.Ed. 551 (1982); and *Tannenbaum v. United v. States*, 148 F.3d 1262, 1263 (11th Cir. 1998). Thus, even if the Petitioner in fact abandoned this issue then the Eleventh Circuit Court of Appeals should have addressed the issue in the interest of justice to determine whether the Petitioner’s delay of mere six (6) days can be excused under the exception of extraordinary circumstances.

CONCLUSION

WHEREFORE, based the foregoing facts, argument, and cited authorities, the Petitioner prays that this court will grant certiorari and thereupon reverse the order below and remand for further proceedings to review the Petitioner's § 2254 Petition for Writ of Habeas Corpus on the merits of the actual claims.

Respectfully submitted,

Date: 4-4-18

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PROVIDED TO TOMOKA CI ON 4-4-18
FOR MAILING BY TW 98