

No. _____

**In The
Supreme Court of the United States
October Term 2017**

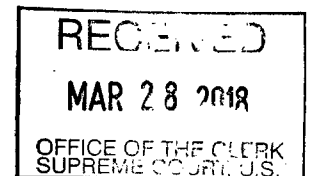
**GUY ANDREW INMAN,
Petitioner,
v.**

**LORIE DAVIS, DIRECTOR
Respondent**

**On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Slack v. McDaniel*, 529 U.S. 473 (2000) this Court set the standard for federal courts to employ when ruling on requests for ‘certificates of appealability’ under 28 U.S.C. 2253(c)

The question presented is:

Did the United States District Court and/or United States Court of Appeals below err by failing to grant Petitioner a ‘certificate of appealability’ for his habeas corpus appeal, under 28 U.S.C. 2253(c) and the “modest showing” required by *Slack v. McDaniel*?

In *Hohn v. United States*, 524 U.S. 236 (1998) this Court held that it has jurisdiction to review lower federal court decisions regarding ‘certificates of appealability’ issued pursuant to 28 U.S.C. 2253(c)/

The question presented is:

Whether, for purposes of appellate review under *Hohn v. United States*, a United States District Court and United States Court of Appeals should state reasons for the denial of a ‘certificate of appealability’, pursuant to 28 U.S.C. 2253(c).

PARTIES TO THE PROCEEDING

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Guy Andrew Inman respectfully submits this petition for a writ of certiorari.

OPINIONS BELOW

On January 8, 2018 the United States Court of Appeals for the Fifth Circuit issued its Order and Judgment denying Petitioner a “Certificate of Appealability” (“COA”), a true and correct copy of which is attached hereto as Appendix A.

On April 4, 2017 the United States District Court for the Eastern District of Texas, Sherman Division, issued its Order of Dismissal and Final Judgment, denying Petitioner habeas corpus relief and denying Petitioner a “Certificate of Appealability,” a true and correct copy of which is attached hereto as Appendix B.

On March 6, 2017 the United States Magistrate Judge of the United States District court issued her Report and Recommendation of United States Magistrate Judge, a true and correct copy of which is attached hereto as Appendix C.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its Order and Judgment on January 8, 2018. In accordance with Rule 13.1 of the Rules of the Supreme Court of the United

States, this Petition has been timely filed. Jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1). The United States District Court below had jurisdiction under 28 U.S.C. 2254.

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

The Sixth Amendment to the United States Constitution provides that: “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 accusation, 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 defense.”

28 U.S.C. Code 2253, provides in pertinent part:

(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant makes a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

On January 13, 2010 Petitioner entered pleas of guilty to four counts of aggravated sexual assault of a child in a state district court in Collin County, Texas. Petitioner was sentenced to thirty (30) years imprisonment in the Texas prison system.

On April 13, 2015 Petitioner filed his first state application for a writ of habeas corpus pursuant to Article 11.07 of the Texas Code of Criminal Procedure challenging the conviction. The Texas Court of Criminal Appeals denied the application without written order on the findings of the state trial court, without a hearing, on January 13, 2016.

Petitioner filed his first federal application for a writ of habeas corpus, pursuant to 28 U.S.C. Section 2254 in the United States District Court for the Southern District of Texas, Houston Division, on April 2, 2016. On April 6, 2016 the petition was transferred to the Sherman Division of the Eastern District of Texas. Petitioner's state and federal habeas petitions challenge the

constitutionality of the conviction because Petitioner was denied the effective assistance of counsel for his defense, in violation of the Sixth Amendment to the United States Constitution.

The United States District Court directed Petitioner to respond to the court's inquiry regarding the issue of time-bar of the federal petition. Petitioner was convicted on January 13, 2010. Under 28 U.S.C. 2244(d)(1)(A) Petitioner had one year to file his federal petition. By the time Petitioner was able to file his state habeas application, on April 13, 2015, the petition was time-barred by more than four years, as the petition was due by February 12, 2011 in the absence of tolling provisions.

Petitioner filed a detailed response in the federal district court below, with several exhibits, explaining why equitable tolling should apply to his case in order to overcome the time bar imposed by 28 U.S.C. 2244(d)(1)(A). The Respondent filed an opposition to Petitioner's response on September 6, 2016. On March 6, 2017 the United States Magistrate Judge issued a report and recommendation, Appendix C, recommending to the United States District Judge that the petition be dismissed as time-barred under 28 U.S.C. 2244(d)(1)(A).

Petitioner filed detailed "objections" to the report and recommendation of the United States Magistrate Judge, which included the filing of pertinent medical records of Petitioner and a request for an evidentiary hearing on the issue of 'equitable tolling'. The medical records were sealed by the court.

The District Judge overruled Petitioner's objections, adopted the report and recommendation of the United States Magistrate Judge, denied and dismissed Petitioner's federal habeas petition, with prejudice, and denied a certificate of appealability for an appeal of the district court's ruling. Appendix B. The District Judge provided no reasons or rationale regarding why the Judge denied a certificate of appealability for an appeal, nor did the Magistrate Judge do so in recommending that a certificate of appealability for an appeal be denied.

Petitioner, who was represented by counsel, filed a twenty-page motion in the United States Court of Appeals for the Fifth Circuit, requesting the court of appeals to issue the certificate of appealability for an appeal of the District Court's ruling. On January 8, 2018 the United States Court of Appeals entered an Order and judgment, denying the certificate of appealability. Appendix A. The court of appeals provided no reasons, based on the facts of Petitioner's case, as to why the court denied the certificate of appealability.

REASONS FOR GRANTING THE PETITION

I. United States District Courts and United States Courts of Appeals should provide reasons when making rulings on matters involving certificates of appealability. This is an issue that has not been, but should be addressed this Honorable Court.

II. The decisions of the United States District Court and United States Court of Appeals contravenes this Court's decisions in *Slack v. McDaniel*, 529 U.S. 473 (2000), and *Holland v. Florida*, 560 U.S. 631 (2010).

EQUITABLE TOLLING

Petitioner's state conviction became final on February 12, 2010. He had one year to file his federal habeas petition under 28 U.S.C. 2244(d)(1)(A), and 2254, absent equitable tolling of the statute. Petitioner did not file his state post-conviction writ application until April 13, 2016. After the Court of Criminal Appeals of Texas denied relief, on January 13, 2016, Petitioner filed his federal habeas petition in the federal district court on April 2, 2016. Petitioner pleaded facts and introduced evidence in the federal district court to demonstrate that the federal district court should apply "equitable tolling" principles to allow the late filing of his federal petition.

In *Holland v. Florida*, 560 U.S. 631, 130 S.Ct. 2549 (2010) this Court held that 28 U.S.C. 2244(d) can be "equitably tolled" when a petitioner demonstrates that he diligently pursued his rights and some extraordinary circumstances stood in his way which prevented him from timely

filing his federal habeas petition under the limitations period provided in 28 U.S.C. 2244(d)(1)(A).

A petitioner need not act with the maximum diligence possible in pursuing his rights. Only reasonable diligence is required. *Avagyan v. Holder*, 646 F.3d 679 (9th Cir. 2011)

Extraordinary circumstances does not require actual impossibility of timely filing a petition. Equitable tolling is appropriate where it would have been technically possible for the prisoner petitioner to file a timely petition, but a prisoner would likely been unable to do so. *Gibbs v. Legrand*, 767 F.3d 879, 888 (9th Cir. 2014). See *Miller v. New Jersey State Dept. of Corr.*, 145 F.3d 616 (3rd Cir. 1998).

A petitioner's physical illness or other health condition can justify the application of "equitable tolling" if the medical condition was serious enough to prevent the time filing of a habeas petition. *Carpenter v. Doama*, 840 F.3d 867, 872 (7th Cir. 2016). Having no access to a prison law library may also constitute exceptional circumstances. *Myers v. Hundley*, 101 F.3d 542 (8th Cir. 1996); *Benjamin v. Kerik*, 102 F.Supp.2d 157 (S.D.N.Y. 2000); *United States v. Mendoza*, No. 04-56733 (9th Cir., June 7, 2006). The action of third parties in misleading a petitioner can warrant the application of equitable tolling principles. *Coleman v. Johnson*, 184 F.3d 398 (5th Cir. 1999).

MAGISTRATE'S REPORT IS INCORRECT

The Magistrate-Judge never even considered the debilitating effects of those conditions in the daily life of a person afflicted by them.

Contrary to the Magistrate's Report, there were no gaps in the extraordinary circumstances of Petitioner's disabling illness that prevented Petitioner from timely filing his state and federal habeas applications. At the time of his trial Petitioner was suffering from Chronic kidney disease and congestive heart failure. The medical 'treatment' he received while a pretrial detainee in the Collin County, Texas Jail was ~~so~~ inadequate that his weight dropped from 250 pounds to 167 pounds. A prison identification card, attached to Petitioner's objections to the Magistrate's Report, shows the emaciated condition of Petitioner when he entered the state's prison system. (Please see picture of Petitioner in Collin County on page 16) (Please see picture of Petitioner before entering Collin County on page 17)

During pretrial, Petitioner was in no condition to work with his defense attorney. His dire medical condition prompted his attending physician in the Collin County, Texas jail to testify to the trial court that Petitioner should be reinstated on bond so that he could get out of the County jail in order to receive needed, proper medical treatment. It was Petitioner's serious medical condition that led him to plead guilty to the state charges. See *Ex Parte Tuley*, 109 S.W. 3d 388 (Tex. Crim. App. 2007) (Recognizing accused persons may plead guilty for reasons other than being guilty).

After entering the Texas prison system was transferred to the Luther Unit. While at that Unit Petitioner was repeatedly transferred to the University of Texas Medical Branch, in Galveston,

Texas, for extended time periods, which has no law library for prisoners under medical treatment. Neither the Magistrate-Judge nor the District Judge are licensed physicians, and could appreciate the seriousness of the daily adverse effects of Petitioner's disabling medical conditions, nor did they cite any medical evidence or treatises when analyzing Petitioner's claims.

Other circumstances contributed to factors over which Petitioner had no control which prevented the timely filing of his habeas application. Petitioner contacted both his court-appointed attorney and retained trial defense attorney, both of whom refused to provide Petitioner with trial records. During early 2010 Petitioner contacted a Tina Church, an individual who led Petitioner to believe she is an attorney, who informed Petitioner she would assist him in challenging his state conviction collaterally. After the passage of significant time Petitioner learned that Ms. Church is not an attorney, and not qualified to research or prepare a post-conviction application for writ of

habeas corpus. (Please see Realease for ALL Legal and Trial Documentation and ALL Evidence) to Tina Church who was Fraudulant) OCTOBER 26, 2010.

On June 7, 2010 Applicant contacted the Actual Innocence Center at the University of Texas in Austin, Texas, requesting assistance in challenging his state conviction. The Center advised Petitioner that his case would be placed on a list for review. Finally, the Center advised Petitioner, on or about December 18, 2013 that his case remained on the waiting list.

In December, 2011 the Reverend Ron Cloutier, who provides religious support to prisoners, referred Petitioner to an attorney named Sam Adamo. On February 29, 2012 Petitioner contacted

Mr. Adamo, who accepted Petitioner's criminal conviction for review. However, after the passage of time, Mr. Adamo wrote to Petitioner during March, 2013, informing Petitioner that he did not do writs of habeas corpus.

On December 15, 2013 Petitioner, while awaiting a further response from the Texas Center for Actual Innocence, contacted attorney Ashley B. Burleson, requesting assistance in investigating and pursuing a state post-conviction writ application. Mr. Burleson agreed to assist Petitioner, after a reasonable period of investigation into the facts and circumstances of the conviction. Mr. Burleson's investigation was needlessly prolonged by the refusal of Petitioner's trial defense counsel to turn over the client file. A state application for writ of habeas corpus was filed on April 13, 2015.

As state above, both the United States Magistrate-Judge and the District Judge unappreciated the seriousness of Petitioner's disabling medical conditions and the daily adverse effects of those conditions. While an individual suffering from such conditions may have enough energy at certain times to sit in bed and write a letter to an actual innocence center, or attorney, asking for help, that does not mean the afflicted person has the energy, focus of mind, to conduct an investigation into his criminal conviction, research applicable law, and be competent enough to prepare an application for writ of habeas corpus. Any reasonable jurist would realize this.

For the District Judge to conclude that Petitioner made ‘some efforts’ to pursue his right but his efforts cannot be viewed as “diligent” is wrong. Appendix B, at p. 3. As the federal Court of Appeals for the Ninth Circuit stated in *Gibbs v. Legrand*, 767 F.3d 879, 888 (9th Cir. 2014), actual impossibility on the part of a petitioner to file timely is not required, nor is maximum diligence required. The requirement is for the petitioner to use “reasonable diligence under the circumstances,” and the question is whether the prisoner would have likely been unable to do so. *Id.* The District Court erred by failing to apply “equitable tolling” principles to the facts of Petitioner’s case, and the Court of Appeals for the Fifth Circuit erred by upholding the decision of the District Court.

CERTIFICATE OF APPEALABILITY

Under 28 U.S.C. 2253(c) an appeal may not be taken of a District Court’s ruling unless a Judge or Circuit Justice issues a Certificate of Appealability. To obtain a COA a prisoner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. 2253(c)(2). The petitioner must demonstrate that reasonable jurists could debate whether that the petition should have been resolved in a different manner, or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The petitioner needs to make only a “modest showing” that reasonable jurists would find the District Court’s assessment of a petitioner’s constitutional claims debatable or wrong. *Id.*, 473 U.S. at 484.

Where a District Court has denied or dismissed a habeas petition on procedural grounds without reaching the petition's underlying writ claims, a COA should issue if the petitioner shows that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason could find it debatable whether the district court was correct in its procedural ruling. *Id.*, 437 U.S. at 473.

The District Court did not address Petitioner's underlying constitutional claim. Appendices A, and B. In his federal petition Petitioner raises a Sixth Amendment ineffective assistance of counsel claim for his defense which adversely impacted his plea of guilty and prevented Petitioner from demonstrating his actual innocence to the charges for which he pleaded guilty. An accused has a Sixth Amendment right to the effective assistance of counsel for his defense, which is also applicable to convictions based on a plea of guilty. *Strickland v. Washington*, 466 U.S. 668 (1984); *Hill v. Lockhart*, 474 U.S. 52 (1985). Thus, jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.

Under *Slack v. McDaniel* jurists of reason would also find it debatable whether the district court was correct in its procedural ruling, in dismissing Petitioner's claim under 28 U.S.C. 2244(d)(1)(A) without applying "equitable tolling" principles to allow the late filing of the petition. As stated above in this certiorari petition the United States Magistrate Judge misread the record, failed to consider medical evidence submitted by Petitioner, and underappreciated the disabling daily

effects of Petitioner's serious medical conditions and other factors which prevented Petitioner from timely filing his federal habeas petition. The District Court erred in finding Petitioner's efforts did not constitute diligence. The United States Court of Appeals erred in its ruling in denying a COA, and provided no reasons for its denial.

FAILURE OF COURTS BELOW TO EXPLAIN THEIR RULINGS

In *Hohn v. United States*, 524 U.S. 236 (1998), this Court held that it has jurisdiction to review lower court decisions regarding rulings on certificates of appealability made under 28 U.S.C. 2253(c). However, such review is made very difficult when a federal court of appeals and district court provides no reasoning for the ruling those courts made. See Appendix A. Without a factual basis articulated for a ruling, for a court of appeals to simply state the rule of law applicable to a statute fails to provide to this Court with the application of law to facts in order to determine if a court of appeals erred, or abused its discretion in making a ruling. The court of appeals ruling in Petitioner's case, Appendix A, reflects similar orders being issued in cases of other prisoners, i.e., unexplained rulings on requests for certificates of probable cause, with the possible exception of some capital cases. This Court should require district courts and federal courts of appeals to provide some factual basis for their rulings.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script that reads "Guy Andrew Inman".

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