

04-721 EVANS V. CHAVIS

DECISION BELOW: 382 F3d 921

LOWER COURT CASE NUMBER: 01-17072

QUESTION PRESENTED:

In *Carey v. Saffold*, 536 U.S. 214, 225 (2002), this Court held that, where a California prisoner "unreasonably" delays in filing a state habeas corpus petition after denial in a lower court, that application is not "'pending' during this period" and therefore does not toll the one-year statute of limitations for filing federal habeas corpus petitions. The Court further held that the California Supreme Court's denial of a habeas petition on the merits does not itself "indicate that the petition was timely." *Id.* at 226. The question presented is:

Did the Ninth Circuit contravene this Court's decision in *Carey v. Saffold* when it held that a prisoner who delayed more than three years before filing a habeas petition with the California Supreme Court did not "unreasonably" delay in filing the petition -- and therefore was entitled to tolling during that entire period -- because the California Supreme Court summarily denied the petition without comment or citation, which the Ninth Circuit construes as a denial "on the merits"?

CERT. GRANTED 5/2/2005