

05-8820 LAWRENCE V. FLORIDA

DECISION BELOW:421 F3d 1221

LOWER COURT CASE NUMBER: 04-15435

QUESTIONS PRESENTED:

I. There is a split in the circuits about whether the one-year period of limitations is tolled for "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment of claim is pending...." Antiterrorism and Effective Death Penalty Act (AEDPA) 28 U.S.C Section 2244(d)(2). Where a defendant facing death has pending a United States Supreme Court certiorari petition to review the validity of the state's denial of his claims for state post-conviction relief, does the defendant have an application pending which tolls the 2244(d)(2) statute of limitations?

II. Alternatively, does the confusion around the statute of limitations -- as evidenced by the split in the circuits -- constitute an "extraordinary circumstance," entitling the diligent defendant to equitable tolling during the time when his claim is being considered by the United States Supreme Court on certiorari?

III. And in the second alternative, do the special circumstance where counsel advising the defendant as to the statute of limitations was registry counsel -- a species of state actor -- under the monitoring supervision of Florida Courts, with a statutory duty to file appropriate motions in a timely manner, [Florida Statutes Section 27.711(12)] constitute an "extraordinary circumstance" beyond the defendant's control such that the doctrine of equitable tolling should operate to save his petition?

CERT. GRANTED 3/27/2006