

LAWRENCE v. FLORIDA: APPLICATIONS FOR POST- CONVICTION RELIEF ARE “PENDING” UNDER THE AEDPA ONLY UNTIL FINAL JUDGMENT IN STATE COURT

ELIZABETH RICHARDSON-ROYER*

I. INTRODUCTION

On February 20, 2007, the Supreme Court announced its decision in *Lawrence v. Florida*,¹ seeking to address confusion surrounding the tolling of a one-year statute of limitations applicable to federal habeas corpus petitions. Prior to *Lawrence*, a split had developed among the Circuits regarding whether tolling should be available while a prisoner requests, and the Supreme Court considers whether to grant, review of state post-conviction proceedings. On one hand, the Eleventh Circuit and several other circuits have held that the statute of limitations could only be tolled until the final resolution of an application for state post-conviction relief in state court.² On the other hand, the Sixth Circuit reached the opposite conclusion prior to *Lawrence*, finding that an application for state post-conviction relief would remain pending—and would therefore toll the statute of limitations—during review by the Supreme Court.³

The Supreme Court settled the issue in a 5-4 decision that rejected the Sixth Circuit’s logic and affirmed that of the Eleventh Circuit. The majority opinion took a rather formalistic approach to the statutory

* 2007 J.D./L.L.M. Candidate, Duke University School of Law.

1. *Lawrence v. Florida*, 127 S. Ct. 1079 (2007).

2. *See, e.g.*, *Lawrence v. Florida*, 421 F.3d 1221 (11th Cir. 2005); *Miller v. Dragovich*, 311 F.3d 574 (3d Cir. 2002); *Smaldone v. Senkowski*, 273 F.3d 133 (2d Cir. 2001); *Ott v. Johnson*, 192 F.3d 510 (5th Cir. 1999).

3. *Abela v. Martin*, 348 F.3d 164, 170 (6th Cir. 2003).

interpretation at hand in holding that the tolling of the statute of limitations was available only during pendency of post-conviction proceedings *in state court*. The Court was not persuaded by the numerous policy arguments advanced in support of a broader interpretation for the availability of tolling.

II. BACKGROUND

A. *Statutory Language*

Section 2244(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”)⁴ establishes a one-year statute of limitations for filing an application for federal habeas relief. The one year period runs from “the date on which the judgment became final by the conclusion of direct review.”⁵ However, section 2244(d)(2) provides that the statute of limitations may be tolled for “[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the judgment or claim is pending”⁶ The central question for the *Lawrence* Court in interpreting these provisions was the following: When is an application for state post-conviction relief still “pending” under the AEDPA?

B. *Factual and Procedural Background*

The petitioner, Gary Lawrence, who, along with his wife, killed a man using a baseball bat and a pipe, was convicted of first-degree murder and sentenced to death by a Florida trial court. On appeal, the Florida Supreme Court affirmed Lawrence’s conviction and sentence.⁷ Three hundred and sixty-four days later (one day short of the one-year statute of limitations for filing a federal habeas corpus petition), Lawrence filed his application for state post-conviction relief in Florida trial court. That application was denied and the Florida Supreme Court once again affirmed his conviction.⁸

4. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of 8 U.S.C. and 28 U.S.C.).

5. 28 U.S.C. § 2244(d)(1).

6. 28 U.S.C. § 2244(d)(2).

7. *Lawrence v. Florida*, 421 F.3d 1221, 1223 (11th Cir. 2005).

8. *Lawrence v. State*, 831 So. 2d 121 (Fla. 2002) (per curiam).

Lawrence then filed a petition for certiorari with the Supreme Court and, upon the Court's denial of certiorari, an application for federal habeas relief in district court. The District Court, finding that Lawrence had expended 364 days of his one-year period before filing for state post-conviction relief and had then waited another 113 days after the state post-conviction proceedings were finalized before filing for federal habeas relief, denied his application as time barred.⁹ Relying on clear precedent holding that section 2244(d)'s statute of limitations was not tolled by pendency of a petition for certiorari to the Supreme Court, the Eleventh Circuit affirmed the District Court's dismissal of Lawrence's application for habeas relief.¹⁰ Lawrence's subsequent petition for certiorari was granted,¹¹ and oral argument took place on October 31, 2006.

III. HOLDING & RATIONALE

The majority, in an opinion by Justice Thomas, held that a state court decision did not remain "pending" upon petition for review by the Supreme Court and therefore that section 2244(d)(2) permitted no tolling of the one-year statute of limitations after a state court's final resolution of an application for post-conviction relief.¹² The Court's opinion relied heavily upon the plain language of the statutory provisions in question, as well as upon analogy to other sections within the AEDPA. With regards to matters of policy, the Court attempted to respond to concerns voiced by the dissent, but advanced few persuasive policy rationales in support of its own approach.

As an initial matter, the Court stated that, "[r]ead naturally, the text of the statute must mean that the statute of limitations is tolled only while state courts review the application."¹³ This reading was required, according to the Court, not only because of prior Supreme Court precedent describing a "pending" case as one that has not been finally resolved by state post-conviction procedures, but also because exhaustion requirements of state remedies do not contemplate claims

9. *Lawrence*, 421 F.3d at 1223.

10. *Id.* (relying upon *Coates v. Byrd*, 211 F.3d 1225 (11th Cir. 2000) (per curiam)).

11. *Lawrence v. Florida*, 126 S. Ct. 1625 (2006) (mem.).

12. *Lawrence v. Florida*, 127 S. Ct. 1079, 1083 (2007).

13. *Id.*

that could be simultaneously pending and exhausted.¹⁴ The latter was an argument that had been strongly emphasized by Florida, as well as other states.¹⁵

In addition, the Court placed significant weight on Congress's use of different language to start the statute of limitations running (at the "conclusion of direct review") and to toll it (while the application is "pending"). This "linguistic difference," according to the Court, was "not insignificant."¹⁶ The Court found that section 2263, which addresses an opt-in provision for states that meet certain requirements of providing post-conviction counsel to prisoners, had "more analogous" language to that of section 2244(d).¹⁷ Because section 2263 permits tolling only until "the final State court disposition of [a] petition,"¹⁸ the Court read the language in section 2244(d) as permitting only the same.¹⁹

With an eye toward policy, petitioner Lawrence argued that if the tolling did not include the time during which the Supreme Court considered a petition for certiorari, state prisoners would be required to make two filings simultaneously (if they wished to preserve them at all): a certiorari petition from state post-conviction proceedings and a federal habeas application. The Court rejected this argument, primarily on the basis that Congress had intended section 2263 of the AEDPA to preclude Supreme Court review of state post-conviction proceedings from tolling the statute of limitations. According to the Court, "[b]ecause Congress was not concerned by this potential for awkwardness in § 2263, there is no reason for us to construe the statute to avoid it in § 2244(d)(2)."²⁰

The Court was likewise unpersuaded by any argument that dual filings would create duplicitous matters with both a federal district court and the Supreme Court engaging in similar analysis

14. In addition to the logical incongruities that would result from permitting the designation of "pending" cases as having exhausted remedies, the Court also noted that the statute itself seeks to prevent such a result: "AEDPA's exhaustion provision and tolling provision work together." *Id.*

15. See Brief of the States of Alabama, Arkansas et al. as Amici Curiae in Support of Respondent, *Lawrence v. Florida*, 127 S. Ct. 1079 (2007) (No. 05-8820).

16. *Lawrence*, 127 S. Ct. at 1084.

17. *Id.*

18. 28 U.S.C. § 2263(b)(2).

19. *Lawrence*, 127 S. Ct. at 1084.

20. *Id.*

simultaneously. This line of argument was rejected because, as the Court asserted, the likelihood of it granting certiorari in order to review state post-conviction proceedings (rather than waiting for the federal habeas proceeding) “is quite small.”²¹ Likewise, the Court believed it unlikely that a prisoner would find himself in the odd position of (1) lacking standing to file a petition for federal habeas relief if the state petitions for certiorari after the prisoner prevails in the state post-conviction proceedings and (2) being time-barred from federal habeas relief if the Supreme Court granted certiorari and decided in favor of the state.²² “We cannot,” wrote the Court, “base our interpretations of the statute on an exceedingly rare inequity”²³ In addition, the Court noted that in the rare situations when there did exist some threat of duplicate work, federal district courts would have the option of staying habeas proceedings in order to give the Supreme Court sufficient time to decide whether to reach the merits of a petition for certiorari.²⁴

One concern ostensibly put to rest by the Court’s decision is that a broader interpretation of when tolling occurs might provide an incentive for state prisoners to file petitions for certiorari “so that they receive additional time to file their habeas petitions.”²⁵ This concern, which the Court asserted lay “in contrast to the hypothetical problems identified by Lawrence,”²⁶ represented the sole policy rationale underlying the majority’s opinion.

Finally, because both parties in *Lawrence* agreed that section 2244(d) permitted equitable tolling, the Court assumed the statute to do so without deciding if it in fact did.²⁷ Lawrence’s claim was, however, quite firmly rejected when the Court found that there had been no confusion at the time of the missed deadline and that “attorney miscalculation is simply not sufficient to warrant equitable tolling, particularly in the postconviction context where prisoners have no constitutional right to counsel.”²⁸ The Court provided no

21. *Id.*

22. *Id.* at 1085.

23. *Id.*

24. *Id.* at 1084.

25. *Id.* at 1085.

26. *Id.*

27. *Id.*

28. *Id.*

indication as to how it would decide the question of equitable tolling for section 2244(d) if and when that issue arrives squarely before it.

Justice Ginsburg, writing in dissent and joined by Justices Stevens, Souter and Breyer, argued that the majority's reading was "neither compelled by the text of § 2244(d)(2) nor practically sound."²⁹ As a textual matter, and in contrast to the majority's section 2263 analogy, the dissent found that the unambiguous language in section 2263(b)(2) was evidence that if Congress had wanted to permit tolling during State court post-conviction proceedings only, it would have clearly indicated such an intent.³⁰ Another difference in the approach taken by the dissent turned upon the meaning of the phrase "application for State post-conviction or other collateral review."³¹ The majority had placed the emphasis on the word "State" and precluded tolling during review by the Supreme Court. The dissent, on the other hand, emphasized the word "application." According to it, an application for state post-conviction relief "is not transformed into a federal application simply because the state-court applicant petitions for [Supreme Court] review."³²

Although the dissent's opinion did respond to the majority's statutory interpretation with an alternative interpretation of its own, the strength of the opinion lay in its attention to practical application. Ginsburg's opinion made use of several policy considerations, the importance and the relevance of which were denied by the majority's opinion. For example, Ginsburg remained concerned, both for administrative and jurisdictional reasons, about simultaneous filings of pleadings seeking similar relief.³³ In addition, unlike the majority, she was not concerned with inconsistency between tolling and exhaustion because the two mechanisms "serve discrete functions and need not be synchronized."³⁴ Finally, her opinion cited administrative hassles facing judges who must determine whether to grant a stay in a federal habeas proceeding while the Supreme Court decides whether to grant certiorari, as well as confusion for *pro se* litigants unaware of the need for duplicate petitions. Ginsburg argued that these policy

29. *Id.* at 1090 (Ginsburg, J., dissenting).

30. *Id.* at 1088.

31. 28 U.S.C. § 2244(d)(2).

32. *Lawrence*, 127 S. Ct. at 1086 (Ginsburg, J., dissenting).

33. *Id.* at 1089–90.

34. *Id.* at 1088.

problems would cease to exist if the tolling was permitted, and she noted that “no similar problems, practical or jurisdictional,” would result had the Court adopted the dissent’s approach.³⁵

IV. POLICY CONSIDERATIONS AND CONCLUSION

The Court’s decision in *Lawrence* will, almost without question, adversely affect state prisoners seeking post-conviction relief. Though state interests in reaching final judgment—particularly in death penalty cases—will be furthered by limited availability of tolling, prisoners will struggle with the need to file dual petitions. Particularly in cases in which the timing of the two filings may become an issue, prisoners will be required to make difficult choices regarding which filing to prioritize. *Pro se* litigants have long struggled with the complexities of post-conviction self-representation even with filing deadlines arriving one at a time. The Court’s decision in *Lawrence* unnecessarily—particularly if it is based upon a reading of AEDPA that is not required—makes the struggle more difficult.

Because both a petition for Supreme Court review of a state post-conviction application and a petition for habeas corpus in federal court are rights that prisoners possess, there is real injustice in creating a prohibitively difficult process. By preventing the creation of an incentive for prisoners to file petitions for certiorari, the decision in *Lawrence* may accomplish just the opposite when it creates a disincentive for prisoners to fully pursue all avenues of post-conviction relief. This is a particularly dangerous and unfortunate result when the prisoners are those with the greatest need for relief (and those for whom a functioning post-conviction process is of utmost importance): individuals who have been sentenced to death.

In addition to affecting prisoners and their representatives, the decision in *Lawrence* may also strain judicial resources and force judges to rule on countless motions to stay filed by prisoners awaiting the Supreme Court’s decision on a petition for certiorari. Permitting two courts to simultaneously hear similar or nearly identical claims may also interfere with principles of comity and with the finality of judgments.

35. *Id.* at 1090.

A final effect of the Court's holding in *Lawrence* may be to render equitable tolling less available to prisoners who have inadvertently run afoul of time limitations.³⁶ Before *Lawrence*, it was at least arguable that equitable tolling could apply when a prisoner's reliance upon a State's guarantee of assistance was a full or a partial cause for a missed deadline.³⁷ With *Lawrence's* holding that equitable tolling was unavailable to Lawrence, it now seems that being "affirmative[ly] misled"³⁸ in a way that might give rise to equitable tolling requires something more than a state's promise to monitor counsel's quality of representation.

36. The Court's holding on the issue of equitable tolling may be of limited significance in the event that a later decision renders equitable tolling simply unavailable for AEDPA's statute of limitations for federal habeas petitions.

37. See *Piler v. Ford*, 542 U.S. 225, 234 (2004) (remanding to the Ninth Circuit to consider whether a concern that a petitioner was "affirmatively misled" by a magistrate judge was grounds for equitable tolling); *id.* at 235 (O'Connor, J., concurring) (noting that equitable tolling "might well be appropriate" if the petitioner was "affirmatively misled" by a court "or the State"); Brief Amicus Curiae of the American Civil Liberties Union and the ACLU of Florida in Support of Petitioner, *Lawrence v. Florida*, 127 S. Ct. 1079 (2007) (No. 05-8820).

38. *Piler*, 542 U.S. at 234.