03-6616

No. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 2003

LARRY C. HAYES, #A-01457 — PETITIONER
(Your Name)

vs.

UNITED STATES DISTRICT COURT; NORTHERN DISTRICT
SEVENTH CIRCUIT COURT OF APPEALS — RESPONDENT(S)

ON PETITION FOR EXTRAORDINARY WRIT

COURT OF APPEALS, SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

EXTRAORDINARY WRIT

Mr. Larry C. Hayes
(Your Name)

PO Box 1700
(Address)

GAlesburg, IL 61401
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

I.

WHETHER DISTRICT COURT'S APPLICATION OF § 2244(d) CONSTITUTES AN "IMPERMISSIBLE RETROACTIVE APPLICATION" OF NEW LAW, WHERE PETITIONER'S ARREST AND CONVICTION OCCURRED PRIOR TO ENACIMENT OF AEDPA OF APRIL 24, 1996, IN VIOLATION OF HIS FIFTH AND FOURTEENTH AMENDMENT RIGHTS, AND CONTRARY TO TENETS CITED UNDER LANDGRAF V. USI FILM PRODUCTS, 128 L.Ed. 2d 229 (1994).

(A)

WHETHER THE HOLDING UNDER DUNCAN V. WALKER, 150 L.Ed. 2d 251 (2001), WARRANTS STRICT ENFORCEMENT OF 28 U.S.C. § 2254 EXHAUSTION REQUIREMENT, ADVANCE OF COMITY AND FEDERALISM AS A SUFFICIENT BASIS THAT SUPERCEDES 28 U.S.C. § 2244(d)'S ONE-YEAR LIMITATION PERIOD BEING IMPROPERLY APPLIED, IN VIOLATION OF DUE PROCESS OF LAW.

(B)

WHETHER THE COURT OF APPEALS, FOR THE SEVENTH CIRCUIT, RELIANCE UPON FERNANDEZ V. STERNES 227 F.3d 977 (7th Cir. 2000), AND WHICH CREATES A CONFLICT AMONG CIRCUITS' APPLICATION OF § 2244(d), WARRANTS RULING TO BRING ABOUT CONSISTENCY IN THE INTERPRETATION OF § 2244(d), IN VIOLATION OF THE FOURTEENTH AMENDMENT

JURISDICTION

On September 18, 2001 the District Court, Northern District of Illinois, denied Petitioner request for habeas corpus relief citing "the current petition for habeas corpus relief is untimely. 28 U.S.C. § 2244(d)(2) (2000)." See Exhibit I, hereto attached.

On May 8, 2002, the Court of Appeals, for the Seventh Circuit dismissed appeal for lack of jurisdiction.

Subsequently, on October 25, 2002 this Court denied writ of certirorari.

This United States Supreme Court has jurisidction under Title 28 U.S.C. § 1251(b), and Title 28 U.S.C. § 1651(c), and Section 2101(b).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. The Fourteenth amendment , to the United States Constitution, right to be protected under due process of law, and equal protection of law; and

B. The Fifth amendment, to the United States Constitution, protection against IMPERMISSIBLE RETROACTIVE application of ne w law;

C. Title 28, U.S.C. § 2244(d)

D. Title 28, U.S.C. § 2244(d)(1)

E. Title 28, U.S.C. § 2244(d)(2)

F. Title 28, U.S.C. § 2254

STATEMENT OF THE CASE

On February 9, 1994, Petitioner was convicted by the Circuit Court of Lake County of unlawful possession of 900 grams or more of a substance containing concaine, and unlawful possession with intent to deliver 900 grams or more of a substance containing cocaine, in violation of 720 ILCS 570/402(a)(2)(D) (West 1992) and 720 ILCS 570/401(a)(2)(D)(West 1992). Following a jury trial, Petitioner was convicted on both charges, and was later sentenced to 55 years imprisonment on the latter charge, and imposed a fine of $1.3 million. This conviction and sentence was affirmed by the Illinois Appellate Court on March 20, 1995 in a Rule 23 order, People v. Hayes, No. 93-CF-1354 (unpublished opinion), and the Illinois Supreme Court denied leave to appeal on October 4, 1995. Petitioner sought a timely petition for rehearing in the ILlinois Appellate Court, which was denied on April 19, 1995 (Unpublished Order No. 2-94-0288). Petitioner then filed for leave to appeal to the Illinois Supreme Court. While his direct appeal was pending, Petitioner filed a petition for post conviction relief on May 22, 1995, under the Illinois Post Conviction Hearing Act, 725 ILCS 5/122-1 et seq. The trial court dismissed the petition as frivolous and without merit, and the Illinois Appellate Court affirmed on April 17, 1996. People v. Hayes, 279 Ill.App.3d 575, 665 N.E.2d 419 (2nd Dist. 1996).

On August 19, 1995, Petitioner filed his second petition for post conviction relief, which was denied by the trial court and was subsequently affirmed by the Illinois Appellate Court on December 31, 1996. People v. Hayes, (Order No. 2-96-0138, dated December 31, 1996). Although deemed untimely the Illinois Appellate Court addressed the merits of Petitioner's arguments and denied it on arguments raised in the second post conviction petition. In the meantime, the Illinois Supreme Court had denied leave to appeal for the first and second post conviction

petitions on October 2, 1996, and April 2, 1997, respectively.

On May 1, 1997, Petitioner filed a third petition for post conviction relief, which was dismissed by the trial court and affirmed by the Illinois Appellate Court on Jult 8, 1998. People v. Hayes, (No. 2-97-0958, dated July 8, 1998, pursuant to Illinois Supreme Court Rule 23). On December 2, 1998, the Illinois Supreme Court denied leave to appeal to this third post conviction petition. Subsequently, the Illinois Appellate Court reviewed the arguments raised by Petitioner and denied it on substantive grounds.

On January 22, 1999, Petitioner filed his fourth and final petition for post conviction relief, which was again dismissed by the trial court, and affirmed by the Illinois Appellate Court on June 19, 2000. Contrary to Respondents position, the fourth post conviction petition was not dismissed as untimely. People v. Hayes, (No. 2-99-0467, dated June 19, 2000)(Petitioner's Exhibit, Appendix III). The Illinois Supreme Court denied leave to appeal on October 4, 2000.

On August 23, 2002, Petitioner filed his petition for writ of certiorari. Hayes v. Neal, No. 02-6215). Subsequently, this Honorable Court denied writ of certiorari.

In addition, while pending before this Honorable Court, subsequent relief was sought through Petitioner's filing of writ of mandamus, on November 13, 2002. Hayes v. United States District Court, (No. 02-7434). On Janaury 13, 2003, petition was denied.

REASON FOR GRANTING WRIT

Petitioner does not seek to relitigate any claims, however, this Honorable United States Suprpeme Court has not reviewed any of the contentions raised.

In addition, the unique questions before this Honorable Court draw great attention to the "impermissible retroactive application" of § 2244(d), of Chapter 153, and 107 of the Antiterrorism and Effective Death Penalty Act to criminal cases where the primary conduct had been adjudicated before April 24, 1996.

Also, the question of Lanfgraf poses significant concern in that Congress did not specifically direct lower courts application of § 2244(d) in all cases of state prisoners seeking federal habeas corpus relief, raising issue to rights protection under due process and judicial review.

Both Duncan v. Walker and Fernandez v. Sternes, equally present significant questions relative to interpretation of § 2244(d) and its application to undermine the Congressional intent of encouraging exhaustion of state court remedies while advancing the interest of comity and federalism, and consistency throughout the circuit as to its tolling provision and calculation thereof.

STANDARD OF REVIEW

Five judicially created guidelines exist for issuance of writs under 28 USCS § 1651; these are, (1) that party seeking writ has no other adequate means, such as direct appeal, to attain desired relief, (2) that petitioner will be prejudiced or damaged in a way not correctable on appeal, (3) that district court's order is clearly erroneous as matter of law, (4) that district court's error is of kind oft-repeated, or manifests disregard of federal rules, and (5) that district court's order raises new and important problems or issues of law of first impression. Bauman v. United States District Court, 557 F.2d 650 (1977).

+ Received Nov. 24, 2001

(Appendix I)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LARRY CHARBERT HAYES	)	
Petitioner,	)	**No. 01 C 00328**
v.	)	
KENNETH BRILEY, Warden	)	**Judge Ronald A. Guzmán**
Respondent.	)	

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MEMORANDUM OPINION AND ORDER

On January 18, 2001 petitioner Larry Charbert Hayes filed his petition seeking a writ of habeas corpus. Petitioner alleges that he was denied effective assistance of counsel. On April 17, 2001, this Court noted the affirmation of the first dismissal of post-conviction relief and instructed respondent to explain whether the other three petitions were properly filed, for if they were not then the instant petition is clearly untimely. Respondent now moves to dismiss on the contention that the latter three petitions were not properly filed, or alternatively that the fourth was not properly filed, and thus could not suspend the tolling of the one-year statute of limitations. For the following reasons, the court finds the petition time barred.

BACKGROUND FACTS

On February 9, 1994, petitioner was convicted by the Circuit Court of Cook County of unlawful possession of 900 grams or more of a substance containing cocaine, and unlawful possession with intent to deliver 900 grams or more of a substance containing cocaine, in violation of 720 ILCS 570/402(a)(2)(D) (West 1992) and 720 ILCS 570/401(a)(2)(D) (West 1992). Following a jury trial, Petitioner was convicted on both charges, and was later sentenced to 55 years imprisonment on the latter charge, and imposed a fine of $1.3 million This conviction and sentence was affirmed by the Illinois Appellate Court on March 20, 1995 in a Rule 23 order, *People v. Hayes,* No. 93-CF-1354 (unpublished opinion), and the Illinois Supreme Court denied leave to appeal on October 4, 1995. Petitioner sought a timely petition for rehearing in the Illinois Appellate Court, which was denied on April 19, 1995 (Unpublished Order No. 2-94-0288) (Respondent's Exhibit A.). Petitioner then filed for leave to appeal to the Illinois Supreme Court. While his direct appeal was pending, petitioner filed a petition for post-conviction relief on May 22, 1995, under the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq. The trial court dismissed the petition as frivolous and without merit, and the Illinois Appellate Court affirmed on April 17, 1996. *People v. Hayes*, 279 Ill. App. 3d 575, 665 N.E.2d 419, (2nd Dist. 1996)(Respondent's Exhibit B).

On August 19, 1995, petitioner filed his second petition for post-conviction relief, which was denied by the trial court and was subsequently affirmed by the Illinois Appellate Court on December 31, 1996. *People v. Hayes,* (Order No. 2-96-0138, dated December 31, 1996)(Respondent's Exhibit C). Although deemed untimely the Illinois Appellate Court addressed the merits of petitioner's arguments and denied it on arguments raised in the second

post-conviction petition. In the meanwhile, the Illinois Supreme Court had denied leave to appeal for the first and second post conviction petitions on October 2, 1996, and April 2, 1997, respectively.

On May 1st , 1997, petitioner filed a third petition for post-conviction relief, which was dismissed by the trial court and affirmed by the Illinois Appellate Court on July 8, 1998. *People v. Hayes,* (No. 2-97-0958, dated July 8, 1998, pursuant to Illinois Supreme Court Rule 23)(Respondent's Exhibit D). On December 2, 1998, the Illinois Supreme Court denied leave to appeal to this third post conviction petition. Although this petition was untimely the Illinois Appellate Court reviewed the arguments raised by petitioner and denied it on substantive grounds.

On January 22, 1999, petitioner filed his fourth and final petition for post-conviction relief, which was again dismissed by the trial court, and affirmed by the Illinois Appellate Court on June 19, 2000. This petition was deemed untimely. *People v. Hayes,* (No. 2-99-0467, dated June 19, 2000)(Respondent's Exhibit E). The Illinois Supreme Court denied leave to appeal on October 4, 2000.

DISCUSSION

In 1996, Congress enacted the Antiterrorism and Effective Death Penalty act ("AEDPA") which established a one-year period of limitation for filing a motion under 28 U.S.C. § 2254. Under the AEDPA, a state prisoner who wants collateral relief from a federal court must file his federal petition within one year from the latest of :

CONCLUSION

This dismissal may not appealed unless this court of the Court of Appeals issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). If petitioner seeks a certificate of appealability from this court, petitioner should explain why "reasonable jurists could debate whether (or, for that matter, agree that), the petition should have been resolved in a different manner or that the issued presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel,* 529 U.S. 473, 483-84 (2000)(quoting *Barefoot v. Estelle,* 463 U.S. 880, 893 (1983)).

IT IS SO ORDERED 9/17/01

ENTERED:

Ronald A. Guzmán

HON. RONALD A. GUZMAN
United States Judge