No. 03-6570

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
SEP 0 4 2003
OFFICE OF THE CLERK

In Re Paul Eric Antoine — PETITIONER
(Your Name)

vs.

On Habeas Corpus — RESPONDENT(S)

ON PETITION FOR A WRIT OF Habeas Corpus

Supreme Court, State of California
Court of Appeals State of California Second appellate Dist.

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR Habeas Corpus

Paul Eric Antoine CDC# K-76515
(Your Name)

P.O. Box 608
(Address)

Tehachapi, CA. 98581
(City, State, Zip Code)

N/a
(Phone Number)

## Table of Contents


| Title | Page |
|---|---|
| Questions Presented | 2 |
| List of Parties | 3 |
| Constitutional and Statutory Provisions Involved | 4 |
| Statement of the Case | 5 |
| Reasons for Granting the Petition | 6-10 |
| Relief Requested/Conclusion | 11 |
| Time Line | Exhibit A. |
| District Court Denial of Motion for Reconsideration - Ninth Circuit Court of Appeals Denial | Exhibit B. |
| Proof of Mailing of Habeas Petition to Superior Court/California, Denials | Exhibit C. |
| District Court Denial of Habeas Petition | Exhibit D. |
| Motion to File Successive Petition - Denial of same | Exhibit E. |

## QUESTION(S) PRESENTED

Has the United States District Court, Central District of California, Judge Cooper, Unconstitutionally Denied the Petitioner his right to Habeas Corpus as Guaranteed by the Suspension Clause of the United States Constitution by failing to allow tolling for filing times in the State Courts of the Petition for Writ of Habeas Corpus.

Does this Court's ruling on June 17, 2002, Carey, Warden v. Saffold, No. 01-301, 2002 DJDAR 6683, in which it was decided that, "Deadline to file federal habeas petition is tolled during interval between denial of one state petition and filing of next one", apply to the petitioner's case, even though this ruling was made after this court denied the Writ of Certiorari, No. 00-10306.

Is the petitioner barred from submitting a successive petition to the District Court pursuant to the AEDPA, even though the Recommendation of the Magistrate Judge and Subsequent adoption of the Recommendation by the District Court Judge is contrary to rulings made by this court. Is the only avenue left to the petitioner this Petition for an Extraordinary Writ.

## STATEMENT OF THE CASE

After a jury trial in a California court in 1997, Petitioner was convicted of assault with a deadly weapon, Ca. Penal Code Section 245(a)(1) and it was found that he personally inflicted great bodily injury upon the victim in the commission of the offense, Ca. Penal Code Section 12022.7(a). As Petitioner had a prior strike within the meaning of California's Three Strikes Law, the trial court sentenced Petitioner to state prison for a term of eleven years.

After his direct state appeal was unsuccessful, Petitioner filed a Habeas Corpus Petition in the Superior Court of Los Angeles County, the original mailing was lost and refiled by the Petitioner and ultimately denied. Petitioner then filed a Habeas Corpus Petition in the California Supreme Court, which in turn was denied. After Exhausting these State remedys Petitioner filed a Petition for Writ of Habeas Corpus in the United States District Court, Central District of California, after the Petition was amended for failure to abide by local rules, the Respondent filed a motion to dismiss the petition stating that the petition was barred by the one-year period of limitation set out in the Antiterrorism and Effective Death Penalty Act of 1986, AEDPA, U.S.C. Section 2244(d). Petitioner filed an opposition. The United States Magistrate Judge, Carolyn Turchin issued a Magistrate Judge's Report and Recommendation recommending that the petition be dismissed as being time barred, the petitioner filed an objection to the report that was held up by the prison mailroom, received late and construed as a motion for reconsideration. The District Court Judge, Florence Marie Cooper, issued an order adopting the Magistrate Judges Report and dismissing the petition as being time barred, petitioner sought a Certificate of Appealability in the Court of Appeal which was denied, submitted A Writ of Certiorari to this court that was denied, motioned to this court for reconsideration, which was denied and submitted a Motion to Vacate the District Court Ruling under Rule 60(b) of the Federal Rules of Civil Procedure, which was denied and currently under Appeal with the Ninth Circuit under Case No: 09-72098

A time line of these events appears as Exhibit A.

## REASONS FOR GRANTING THE PETITION

Pursuant to Rule 20.01:

This Writ will be in aid of the Court's Appellate Juristiction in that the District Court Judge, Judge Florence Marie Cooper of the Central District Court of California, has based her denial which in turn triggered the denial from the 9th Circuit Court of Appeals on an assumption that is Contrary to rulings made by this court. Specifically, the District Court Judge Ruled that the petitioner was not allowed equatable tolling of a Habeas Corpus Petition that was submitted and subsequently lost by a California Superior Court, Further explanation provided in arguement). This ruling is totally wrong, the District Court Judge stated that the State of California by way of it's constitution has enabled all courts the ability to hear Habeas Corpus Petitions, and that the petitioner should have submitted his petition to the California Supreme Court instead of the Superior Court. This assumption and ruling is contrary to this courts ruling in Carey, Warden v. Saffold, No. 01-301, 2002 Daily Journal, Daily Appellant Reports Pg. 6683, No: 01-10306, Quoting Justice Breyer J. "The word pending pertains to time between lower court's decisions and filing of a petition in a higher court."

In the instant case the District Court and the Court of Appeals have "Termed" this case, even recently the district court judge when served a copy of this instant petition states the case is termed. The petitioner has had his Rights to Habeas Corpus suspended, this is violative of the Suspension Clause of the United States Constitution.

Pursuant to Rule 20.04(a):

Petition could not have been filed in the District Court or the Court of Appeals, petitioner made motion to file a successive petition, pursuant to the Antiterrorism and Effective Death Penalty Act, this motion was denied by both courts, Documentation of the requests and denials is in Exhibit E.

(Petitioner asks for leave in that he utilized the verbage Exhibit instead of Appendix)

UNITED STATES COURT OF APPEALS

FILED

JUL 28 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| PAUL ERIC ANTOINE,<br><br>Petitioner,<br><br>v.<br><br>ARTHUR CALDERON, Warden,<br><br>Respondent. | No. 03-72098<br><br>ORDER |

Before: LEAVY, HAWKINS and RAWLINSON, Circuit Judges

The application for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition in the district court is denied. Petitioner has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

> (A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

No petition for rehearing or motion for reconsideration shall be filed or entertained in this case. *See* 28 U.S.C. § 2244(b)(3)(E).

S:\MOATT\Panelord\7.21.03\cp3\03-72098.wpd