# SUPREME COURT OF THE UNITED STATES

No. 03–9627

JOHN A. PACE, PETITIONER *v.* DAVID DiGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[April 27, 2005]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The federal Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) establishes a 1-year statute of limitations for filing a federal habeas corpus petition. 28 U. S. C. §2244(d)(1). That limitations period is tolled, however, while "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." §2244(d)(2). This case requires us to decide whether a state post-conviction petition rejected by the state court as untimely nonetheless is "properly filed" within the meaning of §2244(d)(2). We conclude that it is not, and hold that petitioner John Pace's federal petition is time barred.

In February 1986, petitioner pleaded guilty to second-degree murder and possession of an instrument of crime in a Pennsylvania state court. He was sentenced to life in prison without the possibility of parole. Petitioner did not file a motion to withdraw his guilty plea, and he did not

file a direct appeal. In August 1986, he filed a petition under the Pennsylvania Post Conviction Hearing Act (PCHA), 42 Pa. Cons. Stat. §9541 *et seq*. (1988) (amended and renamed by Act No. 1988–47, §§3, 6, 1988 Pa. Laws pp. 337–342). These proceedings concluded in September 1992, when the Pennsylvania Supreme Court denied petitioner's untimely request for discretionary review.

Over four years later, on November 27, 1996, petitioner filed another state postconviction petition, this time under the Pennsylvania Post Conviction Relief Act (PCRA), 42 Pa. Cons. Stat. §9541 *et seq*. (1998). The PCRA had replaced the PCHA in 1988 and was amended in 1995 to include, for the first time, a statute of limitations for state postconviction petitions, with three exceptions.[1] Although petitioner's PCRA petition was filed after the date upon which the new time limits became effective, the petition said nothing about timeliness.

After reviewing petitioner's PCRA petition, appointed counsel submitted a "no-merit" letter. On July 23, 1997, the Court of Common Pleas dismissed the petition, without calling for a response from the Commonwealth. The court noted that petitioner's claims previously had been litigated and were meritless. Petitioner appealed. On May 6, 1998, the Commonwealth filed a brief in response, asserting that petitioner's PCRA petition was untimely

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[1]The amended statute states that "[a]ny" postconviction petition, "including a second or subsequent petition, shall be filed within one year" from the date the petitioner's conviction becomes final. 42 Pa. Cons. Stat. §9545(b)(1) (1998). However, three exceptions are provided: if governmental interference prevented filing; if a new constitutional rule is made retroactive; or if new facts arise that could not have been discovered through due diligence. §§9545(b)(1)(i)–(iii). A statutory note provides that the 1995 amendments "shall apply to petitions filed after [January 16, 1996]; however, a petitioner whose judgment has become final on or before [January 16, 1996] shall be deemed to have filed a timely petition . . . if the petitioner's first petition is filed within one year of [January 16, 1996]." Statutory Note on §9545(b).

under the PCRA's time bar, §9545(b), and citing as support *Commonwealth* v. *Alcorn*, 703 A. 2d 1054 (Pa. Super. 1997). On May 28, 1998, petitioner responded by arguing that the time limit was inapplicable to him. The Superior Court dismissed his petition as untimely on December 3, 1998. The Superior Court reasoned that petitioner's PCRA petition did not come within the statutory note following §9545(b), see *ibid*., and that petitioner had "neither alleged nor proven" that he fell within any statutory exception, see §§9545(b)(1)(i)–(iii). App. 316–317. The Pennsylvania Supreme Court denied review on July 29, 1999. *Id.,* at 372.

On December 24, 1999, petitioner filed a federal habeas petition under 28 U. S. C. §2254 in the District Court for the Eastern District of Pennsylvania. The Magistrate Judge recommended dismissal of the petition under AEDPA's statute of limitations, §2244(d)(1), but the District Court rejected that recommendation, App. 447–466 (June 7, 2001, memorandum and order), 503–533 (Mar. 29, 2002, memorandum and order). The District Court recognized that, without tolling, petitioner's petition was time barred.[2] But it held that petitioner was entitled to both statutory and equitable tolling for the time during which his PCRA petition was pending—November 27, 1996 to July 29, 1999. Beginning with statutory tolling, the District Court held that, even though the state court rejected his PCRA petition as untimely, that did not prevent the petition from being "properly filed" within the meaning of §2244(d)(2). It reasoned that because the PCRA set up judicially reviewable exceptions to the time

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[2]The District Court noted that, under Third Circuit precedent, "petitioners whose convictions became final before the enactment of AEDPA's statute of limitations on April 24, 1996 have until one year from the enactment of the habeas statute of limitations to file their petitions." App. 453, 503. Without tolling, therefore, petitioner's federal habeas petition was filed well after the April 1997 deadline.

limit, the PCRA time limit was not a "condition to filing" but a "condition to obtaining relief" as we described those distinct concepts in *Artuz* v. *Bennett,* 531 U. S. 4, 11 (2000). The District Court alternatively found extraordinary circumstances justifying equitable tolling.

The Court of Appeals for the Third Circuit reversed. *Pace* v. *Vaughn*, 71 Fed. Appx. 127 (2003) (not precedential). With regard to *statutory* tolling, it relied on a line of Third Circuit cases to conclude that the PCRA time limit constitutes a "condition to filing" and that, when a state court deems a petition untimely, it is not "properly filed." *Id.*, at 128. With regard to *equitable* tolling, it held that there were not extraordinary circumstances justifying that remedy. *Id.*, at 129. Because Circuits have divided over whether a state postconviction petition that the state court has rejected as untimely nonetheless may be "properly filed," we granted certiorari.[3] 542 U. S. — (2004). We now affirm.

In *Artuz* v. *Bennett, supra*, we held that time limits on postconviction petitions are "condition[s] to filing," such that an untimely petition would not be deemed "properly filed." *Id.*, at 8, 11 ("[A]n application is '*properly* filed' when its delivery and acceptance are in compliance with the applicable laws and rules governing filings" including "time limits upon its delivery"). However, we reserved the question we face here: "whether the existence of certain exceptions to a timely filing requirement can prevent a late application from being considered improperly filed." *Id.*, at 8, n. 2. Having now considered the question, we see no grounds for treating the two differently.

As in *Artuz*, we are guided by the "common usage" and "commo[n] underst[anding]" of the phrase "properly filed." *Id.*, at 8, 9. In common understanding, a petition filed

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[3] Compare, *e.g.*, *Dictado* v. *Ducharme*, 244 F. 3d 724, 726–728 (CA9 2001), with *Merritt* v. *Blaine*, 326 F. 3d 157, 162–168 (CA3 2003).

after a time limit, and which does not fit within any exceptions to that limit, is no more "properly filed" than a petition filed after a time limit that permits no exception. The purpose of AEDPA's statute of limitations confirms this commonsense reading. On petitioner's theory, a state prisoner could toll the statute of limitations at will simply by filing untimely state postconviction petitions. This would turn §2244(d)(2) into a *de facto* extension mechanism, quite contrary to the purpose of AEDPA, and open the door to abusive delay.

*Carey* v. *Saffold,* 536 U. S. 214 (2002), points to the same conclusion. In *Saffold*, we considered whether §2244(d)(2) required tolling during the 4½ months between the California appellate court's denial of Saffold's postconviction petition and his further petition in the California Supreme Court. The California Supreme Court denied the petition "on the merits and for lack of diligence," which raised the question whether that court had dismissed for lack of merit, for untimeliness, or for both. *Id.*, at 225 (internal quotation marks omitted). Although we ultimately remanded, we explained that, "[i]f the California Supreme Court had clearly ruled that Saffold's 4½-month delay was 'unreasonable,'" *i.e.,* untimely, "*that would be the end of the matter*, regardless of whether it also addressed the merits of the claim, or whether its timeliness ruling was 'entangled' with the merits." *Id.*, at 226 (emphasis added); see also *id.*, at 236 (KENNEDY, J., dissenting) ("If the California court held that all of [Saffold's] state habeas petitions were years overdue, then they were not 'properly filed' at all, and there would be no tolling of the federal limitations period"). What we intimated in *Saffold* we now hold: When a postconviction petition is untimely under state law, "that [is] the end of the matter" for purposes of §2244(d)(2).

Petitioner makes three principal arguments against this reading. First, he asserts that "condition[s] to filing" are

merely those conditions necessary to get a clerk to accept the petition, as opposed to conditions that require some *judicial* consideration. Respondent David DiGuglielmo (hereinafter respondent) characterizes petitioner's position, which the dissent also appears to embrace, see *post*, at 7, as a juridical game of "hot potato," in which a petition will be "properly filed" so long as a petitioner is able to hand it to the clerk without the clerk tossing it back. Brief for Respondent 16. Be that as it may, petitioner's theory is inconsistent with *Artuz*, where we explained that jurisdictional matters and fee payments, both of which often necessitate judicial scrutiny, are "condition[s] to filing."[4] See 531 U. S., at 9. We fail to see how timeliness is any less a "filing" requirement than the mechanical rules that are enforceable by clerks, if such rules exist.[5] For exam-

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[4] With regard to jurisdiction, see, *e.g.*, *Commonwealth* v. *Judge*, 377 Pa. 387–389, 797 A. 2d 250, 257 (2002) (Pennsylvania court had jurisdiction over PCRA petition, despite the fact the petitioner was not in Pennsylvania custody). With regard to filing fees, see, *e.g.*, Pa. Rule Crim. Proc. 904(F) (2005) ("When a defendant satisfies the judge that the defendant is unable to pay the costs of the post-conviction collateral proceedings, the judge shall order that the defendant be permitted to proceed *in forma pauperis*").

[5] Perhaps not unintentionally, petitioner fails to provide us any guidance on exactly which Pennsylvania Rules are subject to a clerk's striking for noncompliance. We doubt there are many such rules, both because few truly mechanical rules exist and because the role of the clerk in refusing petitions in most courts is quite limited. See, *e.g.*, Fed. Rule Civ. Proc. 5(e) ("The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices"); 28 U. S. C. §2254 Rule 3(b), available at WESTLAW, United States Code Annotated database (Apr. 20, 2005) ("The clerk must file the petition and enter it on the docket"); see also Advisory Committee Note on Habeas Corpus Rule 3(b), 28 U. S. C. p. ___ ("Rule 3(b) requires the clerk to file a petition, even though it may otherwise fail to comply with Rule 2. This rule . . . is not limited to those instances where the petition is defective only in form; the clerk would also be required, for example, to file the petition even though it lacked the requisite filing

ple, Pennsylvania Rule of Criminal Procedure 901 (2005), which is entitled "Initiation of Post-Conviction Collateral Proceedings," lists two mandatory conditions: (A) the petition "shall" be filed within the time limit, and (B) the proceedings "shall be initiated by filing" a verified petition and "3 copies with the clerk of the court in which the defendant was convicted and sentenced." The natural reading is that (A) is every bit as much of a "condition to filing" as (B).

Petitioner also argues that, because §2244(d)(2) refers to a "properly filed *application*," then any condition that must be applied on a claim-by-claim basis, such as Pennsylvania's time limit, cannot be a "condition to filing." (Emphasis added.) Section 2244, however, refutes this position. Section 2244(b)(3)(C), for example, states that the court of appeals "may authorize the filing of a second or successive *application* only if it determines that the *application* makes a prima facie showing that the *application* satisfies the requirements of this subsection." (Emphases added.) Yet the "requirements" of the subsection are not applicable to the application as a whole; instead, they require inquiry into specific "claim[s]." See §2244(b)(2)(A) ("claim" relies on a new rule made retroactive); §2244(b)(2)(B) ("claim" with new factual predicate).[6] In fact, petitioner's argument is inconsistent with

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fee or an *in forma pauperis* form"). Indeed, not even filing in the right court would be a "condition to filing" under petitioner's limited theory. See 42 Pa. Cons. Stat. §5103(a) (2004) (instructing that, when a petition is filed in the wrong court, it is not to be stricken but transferred to the proper court). Under this theory, "filing" conditions may be an empty set.

[6] Similarly, §2244(d)(1) provides that a "1-year period of limitation shall apply to an *application* for a writ of habeas corpus." (Emphasis added.) The subsection then provides one means of calculating the limitation with regard to the "application" as a whole, §2244(d)(1)(A) (date of final judgment), but three others that require claim-by-claim consideration, §2244(d)(1)(B) (governmental interference); §2244(d)(1)(C) (new right made retroactive); §2244(d)(1)(D) (new factual predicate).

§2244(d)(2) itself, which refers not just to a "properly filed application," but to a "properly filed application . . . *with respect to the pertinent judgment or claim*." (Emphasis added.)

Finally, petitioner challenges the fairness of our interpretation. He claims that a "petitioner trying in good faith to exhaust state remedies may litigate in state court for years only to find out at the end that he was never 'properly filed,'" and thus that his federal habeas petition is time barred. Brief for Petitioner 30. A prisoner seeking state postconviction relief might avoid this predicament, however, by filing a "protective" petition in federal court and asking the federal court to stay and abey the federal habeas proceedings until state remedies are exhausted. See *Rhines* v. *Weber*, *ante*, at 8. A petitioner's reasonable confusion about whether a state filing would be timely will ordinarily constitute "good cause" for him to file in federal court. *Ibid.* ("[I]f the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory tactics," then the district court likely "should stay, rather than dismiss, the mixed petition").

The dissent suggests that our conclusion in *Artuz*, that state procedural bars "prescrib[ing] a rule of decision for a court" confronted with certain claims previously adjudicated or not properly presented are not "filing" conditions, requires the conclusion that the time limit at issue here also is not a "filing" condition. *Post*, at 7; see *Artuz* v. *Bennett*, 531 U. S., at 10–11 (discussing N. Y. Crim. Proc. Law §§440.10(2)(a) and (c) (McKinney 1994)). The dissent ignores the fact that *Artuz* itself distinguished between time limits and procedural bars. 531 U. S., at 8–10. For purposes of determining what are "filing" conditions, there is an obvious distinction between time limits, which go to the very initiation of a petition and a court's ability to

consider that petition, and the type of "rule of decision" procedural bars at issue in *Artuz*, which go to the ability to obtain relief.[7] Far from requiring "verbal gymnastics," it must be the case that a petition that cannot even be initiated or considered due to the failure to include a timely claim is not "properly filed." *Id.,* at 10.

For these reasons, we hold that time limits, no matter their form, are "filing" conditions. Because the state court rejected petitioner's PCRA petition as untimely, it was not "properly filed," and he is not entitled to statutory tolling under §2244(d)(2).

We now turn to petitioner's argument that he is entitled to *equitable* tolling for the time during which his untimely PCRA petition was pending in the state courts.[8] Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. See, *e.g.*, *Irwin* v. *Department of Veterans Affairs,* 498 U. S. 89, 96 (1990). Petitioner argues that he has satisfied the extraordinary

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[7] Compare, *e.g.*, Pa. Rule Crim. Proc. 901(A) (2005) (titled "Initiation of Post-Conviction Collateral Proceedings" and listing compliance with the time limit as one mandatory condition); 42 Pa. Cons. Stat. §9545(b) (2002) (titled "Jurisdiction and proceedings" and listing the time limit); *Commonwealth* v. *Fahy*, 558 Pa. 313, 328, 737 A. 2d 214, 222 (1999) (describing the time limit as "jurisdictional"); 2 Ala. Rule Crim. Proc. 32.2(c) (2004–2005) (stating that a court "shall not entertain" a time-barred petition), with 42 Pa. Cons. Stat. §9543(a) (2002) (titled "Eligibility for relief" and listing procedural bars, like those at issue in *Artuz*); 2 Ala. Rule Crim. Proc. 32.2(a) (2004–2005) (stating that a "petitioner will not be given relief" if certain procedural bars, like those at issue in *Artuz*, are present).

[8] We have never squarely addressed the question whether equitable tolling is applicable to AEDPA's statute of limitations. Cf. *Pliler* v. *Ford,* 542 U. S. 225 (2004). Because respondent assumes that equitable tolling applies and because petitioner is not entitled to equitable tolling under any standard, we assume without deciding its application for purposes of this case.

circumstance test. He reasons that Third Circuit law at the time he sought relief required him to exhaust his state remedies and thus seek PCRA relief, even if it was unlikely the state court would reach the merits of his claims, and that state law made it appear as though he might gain relief, despite the petition's untimeliness. Thus, he claims, "state law and Third Circuit exhaustion law created a trap" on which he detrimentally relied as his federal time limit slipped away. Brief for Petitioner 34. Even if we were to accept petitioner's theory, he would not be entitled to relief because he has not established the requisite diligence.

Petitioner's PCRA petition set forth three claims: that his sentence was "illegal"; that his plea was invalid because he did not understand his life sentence was without the possibility of parole; and that he received ineffective assistance of counsel at "all levels of representation." App. 202, 220. The first two of these claims were available to petitioner as early as 1986. Indeed, petitioner asserted a version of his invalid plea claim in his August 21, 1986, PCHA petition. See *id.,* at 144. The third claim—ineffective assistance of counsel—related only to events occurring in or before 1991. See *id.,* at 191.

Yet petitioner waited years, without any valid justification, to assert these claims in his November 27, 1996, PCRA petition.[9] Had petitioner advanced his claims within a reasonable time of their availability, he would not now be facing any time problem, state or federal.[10] And

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[9] Petitioner's PCRA petition did cite allegedly "new" evidence to support his claims that he received ineffective assistance of counsel and that his plea was invalid because he did not understand his life sentence was without the possibility of parole. However, this new evidence was not new at all: It consisted of affidavits from petitioner's parents and brother regarding a meeting they attended with petitioner's counsel and petitioner in 1985 or 1986. App. 195–199.

[10] As noted previously, the PCRA time limit only came into effect in

not only did petitioner sit on his rights for years *before* he filed his PCRA petition, but he also sat on them for five more months *after* his PCRA proceedings became final before deciding to seek relief in federal court. See *id.,* at 372, 373. Under long-established principles, petitioner's lack of diligence precludes equity's operation. See *Irwin* v. *Department of Veterans Affairs, supra*, at 96; *McQuiddy* v. *Ware,* 20 Wall. 14, 19 (1874) ("Equity always refuses to interfere where there has been gross laches in the prosecution of rights").

Because petitioner filed his federal habeas petition beyond the deadline, and because he was not entitled to statutory or equitable tolling for any of that period, his federal petition is barred by the statute of limitations. The judgment of the Court of Appeals is affirmed.

*It is so ordered.*

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January 1996, see n. 1, *supra*, and petitioner's federal habeas petition was due in April 1997, see n. 2, *supra.*