

U.S. Supreme Court

Justices hear case on limits of habeas corpus filings

November 02, 2006

By: Tony Mauro

U.S. Supreme Court Justice Stephen Breyer said during legal arguments in a Florida death row case that experience has taught him something about the legal profession.

"Judges and lawyers are not always geniuses," Breyer said Tuesday. "And they will get mixed up all the time."

What worried Breyer, though, is that when things get mixed up, "people will lose rights that they have."

At issue in the case is the interplay between federal and state deadlines and tolling rules as they relate to the one-year statute of limitations for filing habeas corpus petitions imposed by the Antiterrorism and Effective Death Penalty Act (AEDPA.)

The case, Lawrence v. Florida, was brought by Gary Lawrence, convicted in 1995 for the murder of his estranged wife's boyfriend. Following denial of state post-conviction relief, a lawyer for Lawrence appealed to the U.S. Supreme Court with a petition for certiorari, but review was denied in 2003.

When the lawyer then filed a habeas petition in the Northern District of Florida, it was dismissed as time-barred because of the one-year statute of limitations. But on appeal, Lawrence contends that his pending Supreme Court petition should have tolled, or suspended, the statute of limitations, giving him more time to seek federal habeas.

For the Supreme Court, the case was the latest in a long series of disputes over the meaning of the 1996 AEDPA law. But in filings before the court, others fit the Lawrence case into the running controversy over capital defendant representation in Florida.

The American Civil Liberties Union and the ACLU of Florida filed an amicus brief cataloging the "profoundly troubling number" of other Florida cases in which defendants have been shut out of federal habeas review because of similar tolling errors by their lawyers.

Six out of eight completed cases in which Florida inmates have been denied federal habeas involved lawyers who, like Lawrence's, were private attorneys appointed under Florida's registry program. Eight more cases, all involving private registry lawyers, are pending.

"Notwithstanding Florida's assurance of quality representation, including the filing of appropriate pleadings in a timely manner," the ACLU brief asserts, "the legal representation provided by the state and purportedly monitored by its courts has led directly to an intolerably long list of capitally-sentenced defendants who may never have an opportunity to pursue federal habeas review."

Last year, Florida Supreme Court Justice Raoul G. Cantero III criticized the general quality of representation by lawyers on the private registry compared with the work of lawyers with the state-run Capital Collateral Regional Counsel offices. Gov. Jeb Bush has tried to eliminate the CCRC offices and replace them with private lawyers.

The issue raised by the ACLU never arose during oral argument Tuesday. The justices seemed divided over the case, with Breyer expressing concern about Lawrence losing his rights, while others worried that adopting Lawrence's position would give lawyers and defendants in other cases a way to evade the one-year limit and stretch out the appeals process.

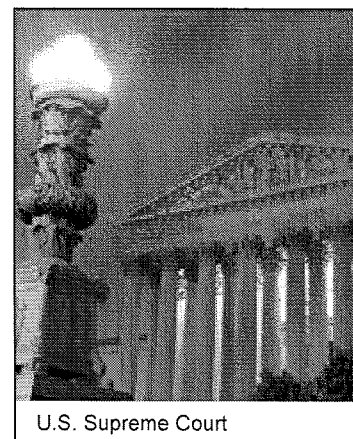
Chief Justice John Roberts Jr. calculated that, from start to finish, it takes six months or longer for the Supreme Court to dispose of a certiorari petition — a period when, if Lawrence prevails, the one-year statute would be tolled. "In a law that imposed a one-year statute of limitations," Roberts said, "an additional six-month period would strike me as odd."

Roberts also said: "This law was passed to prevent people from delaying. But anybody who wanted to delay would then have to file a cert petition, I assume."

But Fort Lauderdale lawyer Mary Bonner, appointed by the court to represent Lawrence, responded that other delays in the system have extended appeals "10 years, 12 years, 14 years." She also noted that how long a certiorari petition is pending is under control of the Supreme Court. "This is not a frolic of unnumbered years."

Justice John Paul Stevens also seemed to rebut Roberts' concern by pointing out that the one-year AEDPA statute is tolled while the lengthy process of state post-conviction relief is pending as well. "The question is whether there may be another six months added on to that five- or six-year period," Stevens said.

Foley & Lardner partner Christopher Kise argued for the state of Florida before the high court. He characterized Lawrence's case as "no more than a disagreement with AEDPA's recognized policies and procedures, and an improper attempt to convert ignorance of settled law into an extraordinary circumstance."



U.S. Supreme Court

EXPERT WITNESS

CONSTRUCTION & ARCHITECTURE

JEFFREY IGOE, AIA

25 Years Experience • Trial Testimony and Depositions

Licenses Held:

ARCHITECT

GENERAL CONTRACTOR

ROOFING CONTRACTOR

BUILDING INSPECTOR

BUILDING OFFICIAL

JEFFREY IGOE, AIA

954-561-2820

jiarch@bellsouth.net

Kise also said, "Ignorance of settled law whether by an incarcerated pro se petitioner, by private counsel or by appointed counsel is not an extraordinary circumstance and does not excuse prompt filing."

A decision in the case could come anytime before the end of the court term in late June.

Tony Mauro is U.S. Supreme Court correspondent for ALM Media Inc., parent of the Daily Business Review.

Back To:

- [Today's top stories.](#)
- [More business stories.](#)
- [More legal stories.](#)

ALM Media, Inc. takes copyright infringement seriously. YOU MAY NOT DISTRIBUTE THIS STORY, ELECTRONIC OR OTHERWISE, WITHOUT OUR PERMISSION. You may print or purchase this story from our archives for your personal use only. In order to obtain reprint permission rights, please contact Sue Viera at 305-347-6621 or 800-777-7300 ext. 6621. If you need a subscription, please call 1--877-347-6682.