

Justices Debate Whether Lawyer Negligence Can Extend Habeas Deadline

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The U.S. Supreme Court on Monday struggled with just how bad a lawyer must be to warrant stopping the clock on the time for filing a prisoner's federal habeas petition.

In *Holland v. Florida*, the justices confronted two issues: whether the one-year deadline for filing habeas petitions under the [Antiterrorism and Effective Death Penalty Act](#) can be tolled for equitable reasons, and whether a lawyer's gross negligence is one of those reasons for halting the clock.

The issues stem from the death penalty conviction of Albert Holland in 1991. After his conviction became final in 2001, Holland had 365 days to file a federal habeas petition. The state of Florida appointed Bradley Collins to represent him in state post-conviction proceedings and Collins filed a state post-conviction motion 351 days into the one-year federal state of limitations. That motion stopped the clock on the one-year deadline, but the clock would resume moving once his post-conviction motion was denied -- leaving him only 14 days in which to file the federal petition. Collins ultimately missed that deadline.

On Monday, Todd Scher of the Law Office of Todd G. Scher in Miami Beach, Fla., told the justices that the 11th U.S. Circuit Court of Appeals was wrong when it held that attorney negligence, even gross negligence, does not entitle a habeas petitioner to a tolling of the limitations period absent additional allegations of "bad faith, dishonesty, divided loyalty, mental impairment or so forth."

What happened in Holland's case, Scher said, "goes beyond garden-variety negligence." He recounted how Holland repeatedly told Collins that he wanted to preserve his right to file a federal petition if his state petition was denied. Collins did not keep in close communication with Holland. The death row inmate made several pro se motions in attempts to remove Collins from his case. Holland, with an eye on the federal filing deadline, also contacted the clerk of the Florida Supreme Court several times to check on the status of his post-conviction appeal when Collins was nonresponsive. His pro se motions were dismissed because, the state argued successfully, he was represented by counsel. More than a month after the Florida Supreme Court issued its decision, Holland learned of the decision after getting access to the prison's library.

When pressed by Justice Samuel Alito Jr. on what the test should be for tolling the limitations period in situations involving attorney negligence, Scher replied, "Extraordinary circumstances

coupled with the petitioner's diligence. It's a case-by-case determination. Here we had lack of notice to the petitioner that the state court decision had issued and a failure to communicate."

Justice Anthony Kennedy noted that Holland was more knowledgeable than many prisoners about the habeas procedure. "Suppose you had a client who was totally bewildered by it. Why shouldn't he be more protected than your client? I'm not sure where to draw the line."

Scher emphasized that Holland was "stuck with this lawyer. The state refused to allow him to even file motions to dismiss the lawyer because he was represented by a lawyer. We have complete abandonment."

Florida Solicitor General Scott Makar countered that Congress did not intend to permit equitable tolling for any reason.

"Even if it is a terrible disaster, an earthquake, fire or flood?" asked Justice Stephen Breyer.

Federal rules, Makar said, may permit exceptions when there are problems with access to the courts, but he argued that Congress imposed the one-year limit in order to avoid the use of habeas petitions to delay finality of convictions and sentences.

Eleven circuits agree that equitable tolling is available under the federal statute. The Supreme Court has never explicitly ruled on the issue.

"If the Court accepts equitable tolling, it has to be exceptionally narrow," said Makar, adding that attorney incompetence cannot be a basis for stopping the clock. Holland's claims were "garden-variety negligence." Missed deadlines, he said, were "ordinary, run of the mill events."