

ORIGINAL

FILED

07/16/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0204

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 21-0204

EMMANUEL FLORES GOMEZ,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

FILED

JUL 16 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLANT'S OPENING BRIEF

Appearances by:

Emmanuel F. Gomez #3021024
Pro se Petitioner
50 Crossroads Dr.
Shelby, MT 59474

Austin Knudsen
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

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STATEMENT OF THE ISSUE

The issue is whether I am entitled to Equitable Tolling and/or an Extension of Time due to the Coronavirus Pandemic lockdowns and quarantines at Crossroads Correctional Center.

STATEMENT OF THE CASE

On March 31, 2020 my conviction was affirmed by the Supreme Court of Montana and I began working on my Petition for Postconviction Relief. In March of 2020 Crossroads Correctional Center (CCC) started lockdown procedures due to the Coronavirus epidemic. This severely limited my access to the law library at best or it was closed altogether. In March 2021 I filed a request for Equitable Tolling and/or an Extension of Time with the District Court. It was denied.

STATEMENT OF THE FACTS

My conviction was affirmed by the Supreme Court of Montana on March 31, 2020 which makes my Petition for Postconviction Relief due before the end of June. Facility lockdowns and quarantines also began in March 2020. Movement was very restricted to essential workers and medical movements. Library access was almost entirely unavailable. The restrictions continued through to the end of the year when they began to be lifted in phases as the State would allow. In January 2021 the facility began a tablet program which allows me to check out a tablet every other day. These tablets contain the Lexis Nexis legal research software on them. I believe that is when my access to the law library was unrestricted.

STANDARD OF REVIEW

The Montana Rules of Civil Procedure allow for extensions of time. Rule 6(b)(1) states:

"In general. When an act may or must be done within a specified time, the court may, for good cause shown, extend the time: (a) with or without motion or notice if the court acts, or if a request is made before the original time or its extension expires."

The United States Constitution gives me the right of access to the courts. 28 USCS §2244(d)(1)(b) provides a statutory remedy for equitable tolling when an applicant is denied access to the courts in violation of the U.S.

Constitution, extending the limitation period which begins to run from:

"the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action."

In *Lindquist v. Idaho State Board of Corrections* the Court states:

"The existence of of an adequate law library does not provide for meaningful access to the courts if the inmates are not allowed a reasonable amount of time to use the library." 776 F.2d 851, 858 (9th Cir. 1985)

Bounds v. Smith, 430 U.S. 817, 828:

"We hold therefore, that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in law."

SUMMARY OF THE ARGUMENT

I believe I am entitled to equitable tolling and/or an extension of time to allow enough time for filing my Petition for Postconviction and in the future my Federal Habeas if it becomes necessary. It is clear that during the facility lockdowns and quarantines I was not allowed adequate access to the courts in violation of my 14th Amendment right of access to the court.

ARGUMENT

My conviction was affirmed by the Supreme Court of Montana on March 31, 2020 which makes my Petition for Postconviction Relief due before the end of June 2021. I immediately began working on my petition but it was in the early stages of the facility lockdowns and quarantines. Movement was very restricted to mostly medical movements. Library access was made not available due to the quarantines and social distancing requirements set by the State Health Department. These restrictions continued through to the end of the year when they began to be lifted in phases. During that period I was not able to go to the library and use the computer with Lexis Nexis. In the beginning of January 2021 the facility began a tablet program which allows an inmate to check out a tablet every other day. These tablets contain the Lexis Nexis legal research software. I believe that is when my access to the law library became unrestricted. In *Lindquist v. Idaho State Board of Corrections* the court states:

"The existence of an adequate law library does not provide for meaningful access to the courts if the inmates are not allowed a reasonable amount of time to use the library." 776 F.2d 858 (9th Cir. 1985)

The use of the law library during the lockdowns and quarantines if made available for use were limited to one 1-hour session at best due to the time it takes for movement to and from the library, the needs of others, and social distance requirements because the two computers at the library are side by side.

The District Court argues that a Petition for Postconviction Relief is simple and straightforward. I disagree. A pro se petitioner has the burden of proving entitlement to relief and the citing of proper authorities. This is not a simple task for a person with a basic education who speaks English as a second language. This is further complicated by the fact that the librarian has no training at all in legal research or the requirements for filing legal papers and does not know what forms are required for filing legal papers. Additionally Montana State Prison and the Department of Corrections have a written policy that inmates may not assist each other with legal work. A violation of this rule will result in disciplinary action. This policy combined with the lockdowns and quarantines due to the Coronavirus pandemic did not satisfy my 14th Amendment right of adequate access to the courts.

"We hold, therefore, that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in law." *Bounds v. Smith*, 430 U.S. 817, 828

In accordance with MCA §46-21-102(1)(b) my 1-year limitation period began to run on June 30, 2020, 90 days from the March 31, 2020 Supreme Court Decision. During this period this facility had already started restricting movements, lockdowns, and quarantines due to continuing positive Covid-19 test results. Researching and preparing my petition was made impossible.

28 USCS §2244(d)(1) sets a similar 1-year limitation period. Additionally §2244(d)(1)(b) provides a statutory remedy for equitable tolling when an applicant is denied access to the courts in violation of the United States Constitution by extending the limitation period which begins to run from:

"the date on which the impediment to filing an application created by the State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action."

In *Davis v. State*, 2008 MT 226, 344 Mont. 300, 187 P.3d 654, the Montana Supreme Court concluded that, "the statutory time bar set forth in §46-21-102 MCA does not circumscribe a district court's subject matter jurisdiction", and remanded the case back to the District Court to "determine whether the failure to toll on equitable grounds would work 'a clear miscarriage of justice, one so obvious' that the imposition of the time bar would compromise the integrity of the judicial process". *Davis* at ¶ 23-25 (internal citations omitted).

To impose the 1-year time limitation without regard to the impediments created by the State (in denying adequate access to legal research materials in violation of the Constitution and laws of the United States), and the extraordinary circumstances both State and facility lockdowns in response to the Coronavirus epidemic would result in said "miscarriage of justice". Because of this the Court should grant equitable tolling in which the 1-year limitation period began to run on January 2, 2021, (the date when this facility began the tablet program with access to legal research materials). M.R.Civ.P. Rule 6(b)(1) states:

"In General. When an act may or must be done within a specified time, the court may, for good cause shown, extend the time: (a) with or without motion or notice if the court acts, or if a request is made before the original time or its extension expires."

I believe I have shown good cause to grant equitable tolling and/or an extension of time considering the extraordinary circumstance created by the Coronavirus epidemic and as a result the State lockdown procedures.

CONCLUSION

Due to the inadequate access to law library and the facility lockdowns and quarantines creating an impediment for preparing and filing my petition should grant equitable tolling so the 1-year limitation period began to run on January 2, 2021, the date on which this facility began the tablet program.

Alternately I am requesting an extension of time of 180 days pursuant to M.R.Civ.P Rule 6(b)(1) which states:

"In General. When an act may or must be done within a specified time, the court may, for good cause shown, extend the time: (a) with or without motion or notice if the court acts, or if a request is made before the original time or its extension expires."

I believe I have shown good cause to grant equitable tolling and/or an extension of time in light of the impediment created by the Coronavirus lockdown procedures. I am concurrently seeking an extension of time in the Federal District Court and absent any extensions my petition will be filed with only days remaining before both State and Federal time limitations expire. It is likely that once I receive a final decision from the State Supreme Court in the mail the remaining time will have gone by leaving me unable to seek an extension in the Federal District Court therefore time barring me by no fault of my own.


CERTIFICATE OF SERVICE

A copy of the forgoing has been sent to:

Austin Knudsen
Montana Attorney General
P.O. Box 201401
Helena, MT 59620-1401

Clerk of District Court
Missoula County District Court
200 West Broadway St.
Missoula, MT 59802-4292

Dated this 13th day of July, 2021.


Emmanuel F. Gomez