

Standard for Proving That a Prisoner Is Mentally Incapable of Filing a Timely Habeas Corpus Petition

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The Ninth Circuit Defined the Legal Standard for Extending the Time Limits for Filing a Habeas Corpus Petition Due to Mental Impairment

In *Bills v. Clark*, 628 F.3d 1092 (9th Cir. 2010), the United States Court of Appeals for the Ninth Circuit ruled on the legal standard a petitioner must show to extend time limits for filing a *habeas corpus* petition when he is mentally impaired. The Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA, codified at 28 U.S.C. § 2244 (2006)) limits the filing of a federal *habeas corpus* petition to one year after the judgment has become final in state court.

Facts of the Case

Jimmy Lee Bills was convicted and sentenced to 25 years to life in prison for possession of a sharp instrument by a state prisoner while incarcerated on a separate charge in California. He appealed his case through the state courts. The state judgment against him became final on January 28, 2004. He filed a state *habeas corpus* petition on November 15, 2004, that extended his time to file a federal *habeas corpus* petition. His state *habeas corpus* petition was denied on October 12, 2005. This extended his federal *habeas corpus* time limit until December 25, 2005. He filed a *pro se* federal *habeas corpus* petition on October 10, 2006, nearly 10 months after the deadline had passed.

Mr. Bills' counsel requested that the federal district court extend the AEDPA time limits due to Mr. Bills' "inability to read and write, his neurological deficits, borderline to mildly retarded level of intelli-

gence, concurrent psychosis and lack of assistance available to him" (*Bills*, p 1094). The magistrate judge ordered an evidentiary hearing in which Mr. Bills and Dr. John S. Miller, a clinical psychologist, testified. Mr. Bills testified that while he had prepared several court filings in previous years and had represented himself *pro se* in his previous trial for possession of a sharp instrument (including examining witnesses and making opening and closing statements), he had relied on a fellow prisoner for this particular *pro se* filing. Dr. Miller testified that Mr. Bills "could not understand his legal rights sufficiently to make rational choices with respect to acting on them" based on a diagnosis of "bipolar with a variety of behavior and cognitive disorders" (*Bills*, p 1095). Two previous competency evaluations from 2000 were also introduced into evidence. These evaluations opined that Mr. Bills was competent to stand trial while commenting on his below average or borderline intellectual functioning and his report of auditory hallucinations. The magistrate judge, relying on *Dusky v. United States*, 362 U.S. 402 (1960), recommended that the district court deny extending the time limits because Mr. Bills' "repeated legal filings and his *pro se* representation in the state trial showed he was competent during the AEDPA limitations period" (*Bills*, p 1095). The district court adopted the magistrate judge's findings and recommendations in full.

Mr. Bills appealed to the Ninth Circuit and was granted a certificate of appealability (COA) on whether the district court had applied the correct legal standard in denying extension of the time limits. He also appealed under the Americans with Disabilities Act (ADA), claiming that AEDPA limitations should be extended for any petitioner with an ADA-covered disability. However, the Ninth Circuit denied a COA on the district court's ruling on the applicability of ADA, because Mr. Bills did not "assert the denial of a constitutional right" (*Bills*, p 1096).

Ruling

In a unanimous opinion, the Ninth Circuit reversed the dismissal of Mr. Bills' *habeas corpus* petition and remanded the case to apply the standard described below. Circuit Judge Tymkovich, writing for the court, concluded that to be eligible to extend the time due to a mental impairment, the petitioner had to meet a two-part test:

- (1) First, a petitioner must show his mental impairment was an “extra ordinary circumstance” beyond his control, by demonstrating that the impairment was so severe that either
 - (a) petitioner was unable rationally or factually to personally understand the need to timely file or
 - (b) petitioner’s mental state rendered him unable personally to prepare a habeas petition and effectuate its filing.
- (2) Second, the petitioner must show diligence in pursuing the claims to the extent he could understand them, but that the mental impairment made it impossible to meet the filing deadline under the totality of the circumstances, including reasonably available access to assistance [*Bills*, pp 1099–100].

Reasoning

Judge Tymkovich relied in part on the Supreme Court’s ruling in *Holland v. Florida*, 130 S. Ct. 2549 (2010), in which the Court recognized that AEDPA time limits could be extended when the petitioner can show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way” (*Bills*, p 1096).

Because no appellate court had yet specifically defined the standard for competency in extending the time limits of a *habeas corpus* petition, Judge Tymkovich then discriminated between the competency standards set by the Supreme Court in *Dusky*; *Godinez v. Moran*, 509 U.S. 389 (1993); and *Indiana v. Edwards*, 554 U.S. 164 (2008). *Dusky* set the standard for competence to stand trial, *Godinez* for pleading guilty, and *Edwards* for representing oneself.

Judge Tymkovich reasoned that:

[The new standard] requires the court to evaluate the petitioner’s ability to do by himself the two functions involved in complying with the AEDPA filing deadlines—i.e., understand the need to file within the limitations period, and submit a minimally adequate habeas petition—and to evaluate the petitioner’s diligence in seeking assistance with what he could not do alone [*Bills*, p 1100].

To evaluate this in practice, the judge wrote that the district court must:

- (1) find the petitioner has made a non-frivolous showing that he had a severe mental impairment during the filing period that would entitle him to an evidentiary hearing;
- (2) determine, after considering the record, whether the petitioner satisfied his burden that he was in fact mentally impaired;
- (3) determine whether petitioner’s mental impairment made it impossible to timely file on his own; and
- (4) consider whether the circumstances demonstrate the

petitioner was otherwise diligent in attempting to comply with the filing requirements [*Bills*, pp 1100–1].

Discussion

Since the AEDPA limited the time allowed for state prisoners to file federal *habeas corpus* petitions to one year, the question of how mental impairment may be a factor in allowing for an extension (equitable tolling) had not been answered by the courts. In this decision, the Ninth Circuit clarified the competence necessary for complying with the time limits set by the AEDPA for filing a federal *habeas corpus* petition.

The standard requires a severe impairment that incorporates the key concepts of a rational and factual understanding from *Dusky* or an inability to prepare the petition. In addition, the petitioner “always remains accountable for diligence in pursuing” his rights due to the totality-of-the-circumstances test.

In addition to intellectual disabilities, disorders that could lead to incompetence for a timely *habeas corpus* filing include psychosis, mania, severe depression, dementia, delirium, and traumatic brain injury. Note that the time that is tolled is subtracted from the one-year limit; therefore, if a defendant is temporarily incompetent for a specific portion of the filing time, that interval would presumably be added to the one-year limit to file for *habeas corpus*.

The key for a mental health professional in evaluating a defendant under this standard appears to be evaluating the presence of such a disorder and its associated symptoms in a defendant that would impair a rational or factual understanding of the need to file in time or prevent the defendant from personally preparing and filing the petition.

As of this writing, the trial court has not ruled on Mr. Bills’ case under the new standard.

Diminished Capacity

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Diminished Capacity Is Only a Defense if the Charge Is a Specific-Intent Crime