Capital Defense Journal

Volume 9 | Issue 1 Article 6

Fall 9-1-1996

LONCHAR V. THOMAS 116 S. Ct. 1293 (1996) United States Supreme Court

LONCHAR V. THOMAS

116 S. Ct. 1293 (1996)
United States Supreme Court

FACTS

On October 13, 1986, Larry Lonchar and an accomplice shot and stabbed four members of a bookmaking operation to which Lonchar owed money. At his trial for capital murder, Lonchar refused to cooperate with his attorney or attend the trial, stating that "he did not have a case" and that he wished to die.[1] The Supreme Court of Georgia upheld his conviction on mandatory appeal,[2] and Lonchar's execution was scheduled for the week of March 23, 1990. Two days before the execution Lonchar's sister filed a "next friend" *habeas* petition which was subsequently dismissed in both state and federal court. Lonchar's execution was set again for February 24, 1993. Lonchar then filed his own state *habeas* petition, which was dismissed when he changed his mind. When his execution date was re-set for June 23, 1995, Lonchar's brother filed another "next friend" petition in state court, which was quickly dismissed. The day of the scheduled execution Lonchar filed another state *habeas* petition, alleging 22 different claims. At the same time, he told the court that he only wanted to delay his execution in the hope that the Georgia legislature might change the method of execution from electrocution to lethal injection so that Lonchar might be able to donate his organs. When the state court dismissed the petition as an abuse of the writ, Lonchar immediately filed his first **federal** *habeas* petition.[3]

In federal district court, the State argued that Lonchar's petition should be dismissed as an abuse of the writ because he had waited six years to seek relief, had twice waited until the day of his execution to file his petition, and had admitted that he sought relief not to vindicate his rights, but only to delay his execution. Although the district court essentially agreed with these contentions, it ruled that Habeas Corpus Rule 9,[4] and the cases interpreting it, were the sole authority for dismissing a federal petition based on abuse of the writ. Because the Rule provides for dismissal only of "second or successive" petitions, not of a first petition, the district court declined to dismiss Lonchar's petition and granted a stay of execution to permit time to consider the petition.[5]

The Court of Appeals for the Eleventh Circuit vacated the stay the next day on the grounds that "equitable principles" independent of Rule 9 granted courts the authority to dismiss "abusive" *habeas* petitions.[6] In so holding, the appellate court relied heavily on the United States Supreme Court's *per curiam* opinion in *Gomez v. United States Dist. Court for Northern Dist. Of Cal.*[7]

HOLDING

The United States Supreme Court reversed the court of appeals and held: 1) If a court cannot dismiss a petition on the merits, it cannot achieve the same result by vacating a stay and allowing the case to be mooted by the petitioner's execution, and 2) a court may not dismiss a first federal *habeas* petition on "equitable" grounds not encompassed by Habeas Corpus Rule 9, and thereby ignore the Rules, statutes, and established *habeas* precedent.[8]

ANALYSIS/ APPLICATION IN VIRGINIA

I. Stay Must Be Granted to Avoid Mootness

A district court may dismiss even a first *habeas* petition immediately if "it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief in the district court."[9] However, if the petitioner's claims are substantial enough to avoid dismissal under this standard, as they were in *Lonchar*, the district court's discretion is severely constrained when dealing with an initial federal *habeas* petition. When considering a request for a stay of execution to consider a **first federal** *habeas* petition, "if the district court cannot dismiss the petition on the merits before the scheduled execution, it is obligated to address the merits and must issue a stay to prevent the case from becoming moot."[10] Accordingly, a court must grant a stay whenever a first *habeas* petition cannot be dismissed on the merits, even if it is filed at the "eleventh hour."[11] This ruling upholds and slightly extends the Court's earlier ruling in *Barefoot v. Estelle*,[12] which held that where the petitioner has obtained a certificate of probable cause on his initial *habeas* petition and a stay of execution is necessary to prevent the petition from becoming moot by the death of the petitioner, a stay must be granted. Here, "if the

---

[1] *Lonchar v. State*, 369 S.E.2d 749, 752 (Ga. 1988).

[2] *Id.*

[3] *Lonchar v. Thomas*, 116 S. Ct. 1293, 1295-96 (1996).

[4] Habeas Corpus Rule 9(b) reads, in relevant part, "A second or successive petition may be dismissed if... the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ." Note also that part (a) of the Rule allows courts to dismiss even a first petition which was so delayed that it caused prejudice to the state. In this case, the government did not attempt to invoke this part of the Rule by establishing prejudice.

[5] *Lonchar*, 116 S. Ct. at 1296.

[6] *Lonchar v. Thomas*, 58 F.3d 590, 593 (11th Cir. 1996).

[7] 503 U.S. 653 (1992) (Timing of a filing relevant to decision whether to grant equitable relief).

[8] *Lonchar*, 116 S. Ct. at 1296, 1302-03.

[9] Habeas Corpus Rule 4.

[10] *Lonchar*, 116 S. Ct. at 1297.

[11] Note that the Court has also recently decided a case which seems to reciprocate to the state the rights granted the defendant in *Lonchar*. The Supreme Court held in *Calderon v. Moore*, 116 S.Ct. 2066 (1996) that the state's appeal of a *habeas* petition cannot be dismissed as moot simply because the state has complied with the federal district court's order granting a new trial. Charles Edward Moore, Jr. had successfully petitioned the district court for *habeas* relief based on a violation of his right to self-representation under *Faretta v. California*, 422 U.S. 806 (1975). The district court ordered either his release or the grant of a new trial within sixty days. After their motion for a stay was denied at every level, the State appealed. The Court of Appeals for the Ninth Circuit dismissed the appeal as moot because by that time the State had granted Moore a new trial, though it had not yet begun. The Supreme Court, *per curiam*, reversed, stating that as long as even a partial remedy remains available to the State, the appeal is not moot. "Because a decision in the State's favor would release it from the burden of the new trial itself, the Court of Appeals is not prevented from granting any 'effectual relief whatever' in the State's favor, and the case is clearly not moot." *Id.* at 2067 (citations omitted).

[12] 463 U.S. 880 (1983).

district court lacks authority to directly dispose of the petition on the merits, it would abuse its discretion by attempting to achieve the same result indirectly by denying a stay."[13]

Although it might appear axiomatic that the state may not dispose of a claim by disposing of the claimant, four justices disagreed with this part of the *Lonchar* holding. Led by Chief Justice Rehnquist, the concurrence argued that although the likelihood of the petition's success on the merits is one factor to be considered in granting a stay,[14] there are other factors outside the Habeas Rules themselves which allow a court to decline to grant a stay. The concurrence stated that "[u]nless the eleventh-hour nature of the petition is taken into account, the late filing may induce the federal court to disregard federal-state comity and 'frustrate . . . the States' sovereign power to punish offenders.'"[15] The concurrence argued that the Court's opinion in *Gomez v. United States Dist. Court for Northern Dist. of Cal.*[16] had established that "last-minute or manipulative uses of the stay power constitute equitable grounds which can justify the denial of an application for stay of a state court order of execution."[17] Presumably this holding would apply even if the petitioner had substantive claims that would be rendered moot by his death. The concurrence's position suggests that the subjective motivation of the petitioner in filing the petition may be relevant in evaluating motions to dismiss under Habeas Rule 9. Ironically, although the concurring justices felt that equitable principles outside of the Rules could be applied to deny a stay, they agreed with the majority's conclusion that such equitable principles could not be used to dismiss a petition, even though "[b]y bringing about Lonchar's execution, vacating the stay would prevent courts from considering the petition's merits, just as would its dismissal."[18]

II. Courts Must Follow Rules, Statutes, and Precedents

The district court had found that no statute or rule specifically authorized the dismissal of a federal *habeas* filing which was neither facially invalid, successive, or prejudicial to the State.[19] Nonetheless, the Eleventh Circuit Court of Appeals, drawing its inspiration from language in *Gomez*, found that because the "writ of *habeas corpus* is governed by equitable principles, . . . the petitioner's conduct may thus disentitle him to relief. Even when the petitioner follows procedural rules, the writ comes at a cost to finality and state sovereignty. A petitioner's willful delay and manipulation of the judicial system exacerbate this cost."[20] The Eleventh Circuit Court of Appeals found that Lonchar's actions in waiting until the last possible moment to file his petition constituted "abusive conduct" and vacated the district court's stay of execution.[21]

The Supreme Court reversed, finding that "the fact that the writ has been called an 'equitable' remedy does not authorize a court to ignore [the] body of statutes, rules, and precedents" which have evolved into traditional *habeas* law.[22] The majority stressed that "the arguments against *ad hoc* departure from settled rules would seem particularly strong when dismissal of a **first** *habeas* petition is at issue. Dismissal of a **first** federal *habeas* petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty."[23] The Court pointed out that the Rules give lower courts substantial discretion in dealing with *habeas* petitions, including dismissal of facially invalid claims, expedited review, and dismissal on various procedural grounds. Most importantly, "a specific federal Habeas Corpus Rule, Rule 9(a), directly addresses the primary factor—delay—that led the Court of Appeals to dismiss the petition for 'equitable reasons.'"[24] Because the conditions of the Rule were not met (no finding of prejudice to the state), the appellate court had no authority to invent a new "equitable" rule to allow it to dismiss the petition. The choices embodied in the Rules must be respected, regardless of whether the particular court agrees with their application under a specific set of circumstances. It would be institutionally inappropriate to "amend[ ] the Rule, in effect, through an *ad hoc* judicial exception, rather than through congressional legislation or through the formal rulemaking process."[25]

The majority also took exception to the interpretation of *Gomez* given by both the court of appeals and the concurrence. The Court pointed out that the petitioner in *Gomez* was not a first-time *habeas* filer—he had filed four previous petitions. Technically, *Gomez* was not even a *habeas* case—the petitioner brought the action under 42 U.S.C. § 1983. Rather, the language relied upon by the court of appeals to the effect that a "court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief"[26] was in fact simply the Court stating that the abuse of the writ doctrine would also apply to the § 1983 action, because it was the petitioner's attempt to circumvent the *habeas* rules barring successive petitions. As the Court pointed out, "*Gomez* did not, and did not purport to, work a significant change in the law applicable to the dismissal of first *habeas* petitions."[27]

Similarly, the fact that Lonchar's motive for filing his federal *habeas* petition was simply to delay his execution makes no difference. Courts should "not look behind an action that states a valid legal claim on its face in order to try to determine the comparative weight a litigant places on various subjective reasons for bringing the claim."[28]

Nor does it matter, in the case of a first federal *habeas* claim, that the action is brought at the last minute. Although successive claims might be barred, "the interest in permitting federal *habeas* review of a first petition is quite strong. And, given the importance of a first federal *habeas* petition, it is particularly important that any rule that would deprive inmates of all access to the writ should be both clear and fair."[29] It was in the interest of this fairness and clarity that the Court found that *ad hoc* equitable considerations outside the framework of the Rules should not be used to dismiss a first federal *habeas* claim.[30]

---

[13] *Lonchar*, 116 S. Ct. at 1297 (1996).

[14] *Id.* at 1304.

[15] *Id.* at 1305 (Rehnquist, C.J., concurring) (quoting *Engle v. Isaac*, 456 U.S. 107, 128 (1982)).

[16] 503 U.S. 653 (1992).

[17] *Lonchar*, 116 S. Ct. at 1305.

[18] *Id.* at 1296.

[19] *Id.*

[20] *Lonchar v. Thomas*, 58 F.3d at 592 (11th Cir. 1996) (citations omitted).

[21] *Id.* at 593.

[22] *Lonchar*, 116 S. Ct. at 1298 (1996) (citations omitted).

[23] *Id.* at 1299 (emphasis in original).

[24] *Id.* at 1300.

[25] *Id.* at 1301.

[26] *Gomez v. United States Dist. Court for Northern Dist. Of Cal.*, 503 U.S. at 654 (1992).

[27] *Lonchar*, 116 S. Ct. at 1301.

[28] *Id.* at 1303.

[29] *Id.* at 1302.

[30] *Id.* at 1303.

III. Impact in Virginia

Because of the imposition of the new federal *habeas* rules under the Antiterrorism and Effective Death Penalty Act,[31] it is not clear what impact, if any, this decision will have on *habeas* cases litigated under the new regime. The Act puts such strict time limits on the filing of *habeas corpus* petitions that future petitioners will almost certainly be unable to replicate the actions of Lonchar.[32] The holding of the case may prove useful, however, to counsel who, in other contexts, are facing the dismissal of their case on supposedly "equitable" grounds.

Summary and analysis by:
Daryl L. Rice

---

31 Pub. L. 104-132, 110 Stat. 1214 (1996).

32 For an in-depth discussion of the ramifications of the new law, *see* Raymond, *The Incredible Shrinking Writ: Habeas Corpus Under the Anti-Terrorism and Effective Death Penalty Act of 1996*, Capital Defense Journal, this issue.

FELKER v. TURPIN

116 S. Ct. 2333 (1996)
United States Supreme Court

FACTS

On November 23, 1981, Ellis Wayne Felker met Joy Ludlam, a cocktail waitress. He induced her to visit him the next day by offering her a job at a business he claimed to own. Ms. Ludlam was found dead in a creek some two weeks later. The medical examiner reported she had been beaten, raped, sodomized, and then strangled. Hair and other incriminating fiber evidence linked the victim to Felker. In addition, a witness placed the victim's car at Felker's home the day she disappeared.[1]

Felker, who was on parole for rape at the time of the murder, was convicted of capital murder, rape, aggravated sodomy, and false imprisonment and was sentenced to death on the capital murder charge. His conviction and death sentence were affirmed on direct appeal by the Supreme Court of Georgia,[2] and the United States Supreme Court denied his petition for *certiorari*.[3] The state trial court denied collateral relief, the Supreme Court of Georgia refused to issue a certificate of probable cause to appeal the denial, and the United States Supreme Court again denied *certiorari*.[4]

Felker then filed his first federal *habeas* petition, alleging five substantive claims,[5] but the district court denied the petition and the Eleventh Circuit Court of Appeals affirmed the denial.[6] Felker then filed a second state petition a few days before his scheduled execution, which was denied. On May 2, 1996, the week of his scheduled execution, Felker filed for a stay of execution and a motion for leave to file a second federal *habeas* petition. He sought to raise two new claims: the first that the *voir dire* and jury instructions had been constitutionally invalid, and the second that new forensic evidence "so discredited the State's testimony at trial that petitioner had a colorable claim of factual innocence."[7]

Between Felker's first and second federal *habeas* petitions the Antiterrorism and Effective Death Penalty Act of 1996 (ATEDA)[8] had been signed into law. The court of appeals thereafter held that Felker's second petition did not meet the requirements of the Act, nor would it have met pre-Act requirements. The court of appeals therefore denied both motions.[9] Felker then filed what he styled a "Petition for Writ of Habeas Corpus, for Appellate or Certiorari Review of the Decision of the United States Circuit Court for the Eleventh Circuit, and for Stay of Execution."[10] The Supreme Court granted the stay and *certiorari*, limiting briefing to three issues: (1) the extent to which the provisions of ATEDA apply to an original petition for *habeas corpus* filed in the Supreme Court, (2) whether application of ATEDA suspended the writ of *habeas corpus* in this case, and (3) whether Title I of ATEDA, especially § 106(b)(3)(E), constitutes an unconstitutional restriction on the jurisdiction of the Supreme Court.[11]

HOLDING

The United States Supreme Court held, first, that although Title I does impose new restrictions on the Supreme Court's authority to grant relief, it did not repeal their authority to entertain **original** *habeas* petitions.[12] Second, the Court held that Section 106(b)'s "gatekeeping"

---

1 *Felker v. State*, 314 S.E.2d 621, 627-628 (Ga. 1984).

2 *Id.* at 649.

3 *Felker v. Georgia*, 469 U.S. 873 (1984).

4 *Felker v. Zant*, 502 U.S. 1064 (1992).

5 Felker's claims were: (1) that the state's evidence was insufficient to convict him; (2) that the state withheld exculpatory evidence; (3) that there was ineffective assistance of counsel at sentencing; (4) that the state improperly used hypnosis to refresh a witness' memory; and (5) that the state violated the double jeopardy clause by using Felker's 1976 conviction as evidence at trial. *Felker v. Turpin*, 116 S. Ct. 2333, 2336 (1996).

6 *Felker v. Thomas*, 52 F.3d 907 (1995).

7 *Felker v. Turpin*, 116 S. Ct. at 2337.

8 Pub. L. 104-132, 110 Stat. 1214 (codified at 28 U.S.C. §§ 2244, 2253-54, 2261-66).

9 *Felker v. Turpin*, 83 F.3d 1303 (11th Cir. 1996).

10 *Felker v. Turpin*, 116 S. Ct. at 2337.

11 *Id.*

12 *Id.*