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## United States v. Segers 271 F.3d 181 (4th Cir. 2001)

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# United States v. Segers

## 271 F.3d 181 (4th Cir. 2001)

### *I. Facts*

A jury convicted James Calvin Segers ("Segers") on October 3, 1996, of conspiracy to possess cocaine with intent to distribute and of attempt to possess cocaine with intent to distribute. The United States Court of Appeals for the Fourth Circuit affirmed Segers' conviction on July 20, 1998. Segers then petitioned the United States Supreme Court for a writ of certiorari, which was denied on November 16, 1998. The Supreme Court also denied Segers' petition for rehearing of the denial of certiorari on January 25, 1999.<sup>1</sup>

On January 20, 2000, Segers filed a pro se motion for a writ of habeas corpus under 28 U.S.C. § 2255.<sup>2</sup> The government moved to dismiss this motion as untimely pursuant to the one-year period of limitation stated in § 2255.<sup>3</sup> The United States District Court for the Middle District of North Carolina agreed with the government and dismissed Segers' motion as untimely, stating that Segers had filed his motion more than one year after his conviction became final.<sup>4</sup>

### *II. Holding*

The United States Court of Appeals for the Fourth Circuit affirmed the district court's dismissal of Segers' § 2255 motion.<sup>5</sup> The Fourth Circuit agreed that the one-year period of limitation established in § 2255 began when the Supreme Court made Segers' conviction final by denying his petition for a writ of certiorari, rather than when it denied his petition for rehearing.<sup>6</sup>

### *III. Analysis*

Segers contended that the "date on which [his] conviction bec[ame] final" was the date on which the United States Supreme Court denied his petition for

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1. United States v. Segers, 271 F.3d 181, 183 (4th Cir. 2001).

2. *Id.*; see also 28 U.S.C. § 2255 (Supp. V 1999) ("A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of - (1) the date on which the judgment of conviction becomes final; . . .").

3. Segers, 271 F.3d at 183.

4. *Id.*

5. *Id.*

6. *Id.* at 182-83.

rehearing of the denial of certiorari.<sup>7</sup> Segers asserted that because this date was less than one year before he filed his § 2255 motion, his motion should not have been dismissed as untimely.<sup>8</sup> The Fourth Circuit, pursuant to *United States v Prescott*,<sup>9</sup> reviewed the district court's denial of Segers' motion de novo.<sup>10</sup>

The Government asserted that, under Supreme Court Rule 16.3, the Supreme Court's order of denial of a petition for a writ of certiorari is not "suspended pending disposition of a petition for rehearing."<sup>11</sup> Therefore, Segers' petition for rehearing had no effect on the finality of his conviction. This made the Supreme Court's denial of his petition for a writ of certiorari the "final disposition of his case."<sup>12</sup> The Fourth Circuit looked at the decisions of the United States Courts of Appeals for the Tenth, Fifth, Seventh and Eleventh Circuits, which had all held that a defendant's conviction becomes final when the Supreme Court denies her petition for a writ of certiorari.<sup>13</sup> Following these authorities, the Fourth Circuit held that the Supreme Court finalized Segers' conviction on November 16, 1998, when the Court denied his petition for a writ of certiorari.<sup>14</sup> Thus, Segers' § 2255 motion, which was filed more than one year later, on January 20, 2000, was untimely.<sup>15</sup>

7. Segers, 271 F.3d at 182; see 28 U.S.C. § 2255 (Supp. V 1999).

8. Segers, 271 F.3d at 182.

9. 221 F.3d 686 (4th Cir. 2000).

10. Segers, 271 F.3d at 183; *United States v. Prescott*, 221 F.3d 686, 687 (4th Cir. 2000) (stating that when the defendant raises a question of law, the circuit court's review is plenary).

11. Segers, 271 F.3d at 184; see also SUP. CT. R. 16.3. The rule states:

[W]henver the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment was sought to be reviewed. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.

*Id.*

12. Segers, 271 F.3d at 184.

13. *Id.* at 185-86; see also *United States v. Willis*, 202 F.3d 1279, 1280 (10th Cir. 2000) (holding that, for purposes of § 2255, a conviction becomes final once the Supreme Court denies petition for certiorari, regardless of whether the defendant files a petition for rehearing); *United States v. Thomas*, 203 F.3d 350, 355 (5th Cir. 2000) (holding that the defendants' convictions became final on the date upon which the Supreme Court denied their petitions for certiorari); *Horton v. United States*, 244 F.3d 546, 551 (7th Cir. 2001) (holding that defendant's conviction became final after the Supreme Court denied his petition for certiorari, because after this point, no further action was required to dispose of defendant's appeal); *Washington v. United States*, 243 F.3d 1299, 1300-01 (11th Cir. 2001) (holding that the § 2255 one-year limitation period began on the day the Supreme Court denied defendant's petition for certiorari).

14. Segers, 271 F.3d at 186.

15. *Id.* at 182-83.

#### *IV. Application in Virginia*

While § 2255(1) is applicable to collateral review of federal court convictions, 28 U.S.C. § 2254 is applicable to collateral review of state court decisions.<sup>16</sup> Title 28 U.S.C. § 2263(a), which procedurally controls § 2254 petitions for habeas corpus in capital cases, states that “[a]ny application under this chapter for habeas corpus relief under § 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.”<sup>17</sup> In Virginia, the state supreme court automatically reviews all cases in which the defendant is sentenced to death, whether or not the defendant appeals her sentence.<sup>18</sup> Thus, the issue of whether the defendant filed her habeas petition within 180 days after “time for seeking [final state court] review” expired will never arise.<sup>19</sup> However, if the Supreme Court of Virginia affirms the defendant’s conviction and death sentence, she must take care to file her petition for habeas corpus relief within the 180-day period of limitation.<sup>20</sup> Under § 2263(b)(1), this limitation period is tolled:

[F]rom the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review.

. . .<sup>21</sup>

Although this language is not identical to the language in § 2255, it is likely that the Fourth Circuit would find that “the date of final disposition of the petition” is the date on which the Supreme Court denies a defendant’s petition for a writ of certiorari or the date on which the defendant’s time to file this petition expires.<sup>22</sup> It is of no consequence that the defendant has twenty-five days after denial of her petition for a writ of certiorari to petition for rehearing. The 180-day limitation period in capital cases is tolled only between the date on which the defendant files a petition for a writ of certiorari in the Supreme Court and the

16. See 28 U.S.C. § 2255 (Supp. V 1999); see also 28 U.S.C. § 2254 (Supp. V 1999).

17. 28 U.S.C. § 2263(a) (Supp. V 1999).

18. VA. CODE ANN. § 17.1-313 (Michie 1999); see, e.g., *Patterson v. Commonwealth*, 551 S.E.2d 332, 335 (Va. 2001) (stating that statutorily mandated review by Supreme Court of Virginia may not be waived by defendant); *Zirkle v. Commonwealth*, 551 S.E.2d 601 (Va. 2001) (stating that, even where defendant had instructed his counsel not to participate in any appeals on his behalf, the Supreme Court of Virginia was still required by statute to review the imposition of the death sentence).

19. § 2263(a).

20. *Id.*

21. § 2263(b)(1).

22. *Id.*

date on which the Supreme Court denies this original petition for a writ of certiorari.<sup>23</sup>

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23. See § 2263(a). See also § 2244(d)(1), which controls § 2254 petitions for habeas corpus in non-capital cases. Section 2244(d)(1) states that:

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of – (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. . . .

§ 2254(d)(1).

Again, it is likely that the Fourth Circuit would find that “the date on which the judgment became final” is the date on which the Supreme Court denies a defendant’s petition for a writ of certiorari or the date on which the defendant’s time to file this petition expires, thus beginning the 1-year period of limitation. *Id.*