

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FILED
NOV 28 2022
CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

JEREMIAH LYLE VAN TASSEL)	
)	Case No. 1:21-cv-172
Petitioner,)	
v.)	SUSAN PARADISE BAXTER
)	United States District Judge
MICHAEL CLARK, ATTORNEY)	
GENERAL JOSH SHAPIRO, and)	RICHARD A. LANZILLO
DISTRICT ATTORNEY OF ERIE)	Chief United States Magistrate Judge
COUNTY,)	
)	
Respondents.)	

PETITIONER'S RESPONSE TO SHOW CAUSE ORDER

Comes the Petitioner in the above-entitled action, Jeremiah Van Tassel, and would show this Court the following:

1. Petitioner faced extraordinary circumstances that stood in the way of timely filing.
2. Petitioner exercised reasonable diligence.
3. Petitioner was a victim of fraud upon the court, which his 2254 petition reflects, which in turn demands equitable estoppel until the fraud is dealt with.

ARGUMENT

4. The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") provides 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."

28 U.S.C. § 2244(d)(1). The United States Supreme Court has held that AEDPA's statute of limitations is nonjurisdictional and "subject to equitable tolling in appropriate cases." *Holland v. Florida*, 560 U.S. 631, 645 (2010). Further, "a nonjurisdictional federal statute of limitations is normally subject to a 'rebuttable presumption' in favor 'of equitable tolling,'" see *id.* (emphasis in original) (quoting *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95-96 (1990)), and, in the case of AEDPA, "the presumption's strength is reinforced by the fact that equitable principles have traditionally governed the substantive law of habeas corpus," see *id.* at 646 (internal quotation marks omitted) (quoting *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). This Court has acknowledged that equitable tolling is proper where "principles of equity would make [the] rigid application [of a limitation period] unfair." *Miller v. N.J. State Dep't of Corr.*, 145 F.3d 616, 618 (3d Cir. 1998) (alterations in original) (internal quotation marks omitted) (quoting *Shendock v. Dir., Off. of Workers' Comp. Programs*, 893 F.2d 1458, 1462 (3d Cir. 1990)).

5. Generally, a petitioner is entitled to equitable tolling if he can show that: (1) he has been pursuing his rights diligently, and (2) some extraordinary circumstance stood in his way and prevented timely filing. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). The diligence required for equitable tolling purposes is "reasonable diligence," not maximum, extreme, or exceptional diligence. *Holland*,

560 U.S. at 653; Ross, 712 F.3d at 799. A petitioner's exercise of reasonable diligence is a subjective determination based on the facts and circumstances of each individual case. *Ross*, 712 F.3d at 799. The extraordinary circumstances prong is similarly assessed subjectively. *Id.* at 802-03. However, it is also clearly established that "the exercise of a court's equity powers . . . must be made on a case-by-case basis," see *Holland*, 560 U.S. at 649-50 (alteration in original) (internal quotation marks omitted) (quoting *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964)), and that "[t]he flexibility inherent in equitable procedure enables courts to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct . . . particular injustices," see *id.* at 650 (second and third alteration in original) (internal quotation marks omitted) (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944)).

FRAUD UPON THE COURT

6. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court." In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function — thus where the impartial functions

of the court have been directly corrupted.”

7. “Fraud upon the court” has been defined by the 7th Circuit Court of Appeals to “embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 *Moore’s Federal Practice*, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated “a decision produced by fraud upon the court is not in essence a decision at all, **and never becomes final.**”

8. United States Courts of Appeals expressly require that fraud upon the court must involve an officer of the court. See *Geo. P. Reintjes Co. v. Riley Stoker Corp.*, 71 F.3d 44, 48 (1st Cir.1995); *Demjanjuk*, 10 F.3d at 348. The Ninth Circuit noted that “one species of fraud upon the court occurs when an ‘officer of the court’ perpetrates fraud affecting the ability of the court or jury to impartially judge a case.” *Pumphrey v. Thompson Tool Co.*, 62 F.3d 1128, 1130 (9th Cir.1995); see also *Weese v. Schukman*, 98 F.3d 542, 553 (10th Cir.1996) (noting that “fraud on the court should embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court”) (citation omitted); *Kerwit Med. Prods., Inc. v. N. & H. Instruments, Inc.*, 616 F.2d 833, 837 (11th Cir.1980) (same).

9. That fraud upon the court is also attested to by Petitioner's Private Criminal Complaint, attached hereto as Exhibit A.

WHEREFORE, Petitioner moves this Court to grant him the relief he requests.

Respectfully Submitted,

Jeremiah L. Van Tassel
NL 0329
SCI Albion
10745 Route 18
Albion, PA. 16475

Certificate of Service

This certifies that I have on this ____ day of November, 2022, placed a true and exact copy of my

PETITIONER'S RESPONSE TO SHOW CAUSE ORDER

in the U.S. Mails, first-class postage prepaid, addressed to:

Erie County (PA) District Attorney's Office
140 West St, Suite 506
Erie, PA. 16501

Jeremiah L. Van Tassel