

DOCKET NUMBER: CV20-5000732-S-STATE OF CONNECTICUT SUPERIOR COURT  
SUPERIOR COURT  
G.A. 19

MARASH GOJCAJ

2024 MAY -6 P 2: 03 JUDICIAL DISTRICT OF

V. : TOLLAND AT SOMERS

COMMISSIONER OF CORRECTION : MAY 6, 2024

### MEMORANDUM OF DECISION ON ORDER TO SHOW CAUSE

Marash Gojcaj, the petitioner, filed this, his first petition for a writ of habeas corpus on August 17, 2020. Thereafter, in February 2024, the respondent sought an order to show cause why the petition should be permitted to proceed pursuant to General Statutes § 52-470. Gojcaj filed an objection. Evidence and argument on whether the petition should be dismissed for failure to show good cause were presented on May 2, 2024. After review of the matter the court finds that Gojcaj has demonstrated good cause.

#### I. Relevant Facts

Gojcaj was convicted by a jury of murder and sentenced to fifty years in prison. Gojcaj appealed his conviction and the conviction was affirmed on June 24, 2014. State v. Gojcaj, 151 Conn. App. 183, 92 A.3d 1056 (2014). Our Supreme Court denied certification on October 15, 2014. State v. Gojcaj, 314 Conn. 924, 100 A.3d 854 (2014). The time period within which to petition the United States Supreme Court expired on or about January 13, 2015 and that is when the conviction became final. Since the instant petition was filed on August 17, 2020, it is untimely. Gojcaj argues that he hired Attorney Norm Pattis to file a petition for a writ of habeas corpus for him and Attorney Pattis did not do so for over four years. This, he argues, constitutes good cause. At the hearing, Attorneys Pattis, Kevin Smith and Gojcaj himself testified. Gojcaj submitted exhibits.

Attorney Kevin Smith testified that from 2016 to May 2020 he was a partner in the firm of Pattis and Smith, LLC. He knew that Gojcaj was a client of the firm but it was not a case he worked on, except at the very end of the attorney-client relationship, he was asked to get involved and review the transcripts. However, the attorney responsible for representing Gojcaj was Attorney Norm Pattis. Attorney Smith did not recall speaking to Gojcaj or doing any work on his case.

Attorney Pattis testified that he was hired by Gojcaj to file a petition for a writ of habeas corpus. He did not recall whether, at the time he represented Gojcaj, he was aware of the filing deadline contained in General Statutes § 52-470. He met with Gojcaj two to three times during the course of his representation at correctional institutions. Gojcaj provided Attorney Pattis with case materials. In 2019, Attorney Pattis became aware that Gojcaj was frustrated with Attorney Pattis's delay in prosecuting the case. At that time, Gojcaj had a petition for new trial pending, but Attorney Pattis did not know of any reason why the petition for a writ of habeas corpus was not filed contemporaneously. He also told Gojcaj that he would file a petition early in 2020, but he did not do so. He did not advise Gojcaj of any time limitations contained in § 52-470 at any time during any of their communications, however, he subsequently testified that he did not recall if that conversation ever occurred. Attorney Pattis' office had a "bingo sheet," that was used to keep track of filing deadlines for clients, but Gojcaj's deadline for filing the habeas petition was not on it. Attorney Pattis testified that Gojcaj was eager to get the petition filed; Gojcaj had given him an enormous amount of material to review and Attorney Pattis did not review that material in a timely fashion.

Gojcaj testified that he hired Attorney Pattis to file the petition for a writ of habeas corpus. On June 21, 2016, he provided notes to Attorney Pattis, along with his copies of transcripts and documents. During the course of the representation, Attorney Pattis met him three times in total and he met Attorney Smith once, when he accompanied Attorney Pattis. During these meetings, they discussed the progress of filing the petition. At no time did Attorney Pattis tell him about the

five-year time period within which to file the petition, nor did Attorney Smith. He learned of the time limitation from Attorney Amore approximately eighteen months prior to this hearing.

He was frustrated with Attorney Pattis because, despite being engaged for almost four years, Attorney Pattis had done no work on the petition. Sometime in February 2020, he asked Attorney Pattis for a refund of the retainer. He asked for his materials to be returned to him, but ultimately did not receive everything from Attorney Pattis. He then filed this petition in August 2020.

## II. Legal Discussion

A habeas court may be barred from hearing the merits of a petition if the petition was not filed in a timely manner. Alleging just that, the respondent sought an order to show cause pursuant to General Statutes § 52-470, which provides, in relevant part:

(c) Except as provided in subsection (d) of this section, there shall be a rebuttable presumption that the filing of a petition challenging a judgment of conviction has been delayed without good cause if such petition is filed after the later of the following: (1) Five years after the date on which the judgment of conviction is deemed to be a final judgment due to the conclusion of appellate review or the expiration of the time for seeking such review; (2) October 1, 2017; or (3) two years after the date on which the constitutional or statutory right asserted in the petition was initially recognized and made retroactive pursuant to a decision of the Supreme Court or Appellate Court of this state or the Supreme Court of the United States or by the enactment of any public or special act. The time periods set forth in this subsection shall not be tolled during the pendency of any other petition challenging the same conviction.

(e) In a case in which the rebuttable presumption of delay under subsection (c) or (d) of this section applies, the court, upon the request of the respondent, shall issue an order to show cause why the petition should be permitted to proceed. The petitioner or, if applicable, the petitioner's counsel, shall have a meaningful opportunity to investigate the basis for the delay and respond to the order. If, after such opportunity, the court finds that the petitioner has not demonstrated good cause for the delay, the court shall dismiss the petition. For the purposes of this subsection, good cause includes, but is not limited to, the discovery of new evidence which materially affects the merits of the case and which could not have been discovered by the exercise of due diligence in time to meet the requirements of subsection (c) or (d) of this section.

The respondent alleges that Gojcaj was required to file his petition prior to January 2020, and because the instant petition was not filed until August 2020, there is a rebuttable presumption that the filing of the instant petition has been delayed without good cause. The court agrees that the petition is untimely. General Statutes § 52-470 (e) provides that if such a rebuttable presumption

exists, the petitioner shall have a meaningful opportunity to investigate the basis for the delay and respond to the order. While “meaningful opportunity” is not defined in the statute, our Supreme Court has noted that the term usually refers to an opportunity that comports with due process. Kelsey v. Commissioner of Correction, 329 Conn. 711, 722, 189 A.3d 578 (2018) (Kelsey I). If, after such opportunity, the court finds that the petitioner has not demonstrated good cause for the delay, the court shall dismiss the petition. Our appellate courts have recently defined good cause as encompassing “something outside of [a petitioner’s] control, or the control of habeas counsel, [that] caused or contributed to the delay in the filing of [the] second petition.” Kelsey v. Commissioner of Correction, 343 Conn. 424, 442, 274 A.3d 85 (2022) (Kelsey II).

Our Supreme Court approved of our Appellate Court’s enumeration of the following factors in determining whether a petitioner has proven good cause: “(1) whether external forces outside the control of the petitioner had any bearing on the delay; (2) whether and to what extent the petitioner or his counsel bears any personal responsibility for any excuse proffered for the untimely filing; (3) whether the reasons proffered by the petitioner in support of a finding of good cause are credible and are supported by evidence in the record; and (4) how long after the expiration of the filing deadline did the petitioner file the petition.” Kelsey v. Commissioner of Correction, 202 Conn. App. 21, 34-35, 244 A.3d 171 (2020), *aff’d*, Kelsey II, *supra*, 343 Conn. 424. The court also recognized that “the legislature certainly contemplated a petitioner’s lack of knowledge of a change in the law as potentially sufficient to establish good cause for an untimely filing;” Kelsey II, *supra*, 343 Conn. 444; however, “the legislature did not intend for a petitioner’s lack of knowledge of the law, standing alone, to establish that a petitioner has met his evidentiary burden of establishing good cause.”<sup>1</sup> *Id.* Thus, a petitioner’s professed lack of knowledge is to be viewed in conjunction with the factors

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<sup>1</sup> The court also stated that the frivolousness of a petition is an additional factor that a habeas court can consider in determining good cause. Kelsey II, *supra*, 343 Conn. 444 n.9.

enumerated above. Recently, in Rose v. Commissioner of Correction, 348 Conn. 333, 347, 304 A.3d 431 (2023), our Supreme Court held that “ineffective assistance of counsel is an external, objective factor that may constitute good cause to excuse the delayed filing of a habeas petition under § 52-470 (c) and (e).”


Gojcaj argues that good cause exists because he hired, in 2016, Attorneys Pattis and Smith to file the petition for a writ of habeas corpus on his behalf and they did nothing until March 2020 at which point he fired them and they refunded his money. At that time, the five-year limitation within which to timely file a petition had already passed. This, he argues, constitutes good cause. The court agrees. Attorney Pattis took a substantial retainer from Gojcaj - \$25,000 – and yet did not file a petition for almost four years – indeed, he was fired four years later when no petition had been filed. He then ceased representing Gojcaj without advising Gojcaj that any subsequently filed petition would be untimely.<sup>2</sup> This is a factor external to the defense because this rises to the level of ineffective assistance of counsel. Reasonably competent counsel would not have waited four years to file a petition for a writ of habeas corpus and would have made themselves aware of the time limitation, filed a petition within that time period and, in their alternative, advised their client of that limitation when they were fired for failing to do the job they were hired for. Gojcaj cannot be expected to independently file the petition while he has hired counsel to represent him and relies on counsel for that purpose. Gojcaj was diligently pursuing his desire to file the petition and the court finds his and Attorney Pattis’ testimony credible in that regard.

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<sup>2</sup> The respondent argues that it is unclear that whether Attorney Pattis advised Gojcaj of the time limitation. While that may be a relevant fact to consider when determining whether good cause exists from trial, appellate or prior habeas counsel’s failure to advise their client about the limitation within which to file a first or subsequent petition *in the future*, it is irrelevant in this case because Attorney Pattis was retained *for the purpose of filing this habeas petition*. It does not matter whether he advised Gojcaj of the time limitation because it was not Gojcaj’s responsibility to timely file the petition; it was Attorney Pattis’.

Attorney Patis' abject failure to timely file the petition constitutes good cause to excuse the

delay.

  
Bhatt, J.

Copies sent to:

Marash Gojcaj - by mail

Attorney Arnold Amore

Attorney Uriel Junior Loyd

OCSA - Civil Litigation

OCPD - LSU

Judge Blatt

} by JORVO

by: Kathryn Stackpole, First Asst. Clerk

5/6/2004