Opinions written by Judge Sonia Sotomayor, found with a Lexis search for "AEDPA," excluding immigration cases and other cases not involving collateral review of criminal judgments.

by Kent Scheidegger, Criminal Justice Legal Foundation
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***Rodriguez* v. *Artuz*, USDC-SDNY, 990 F. Supp. 275, January 13, 1998**

Second Circuit precedent required pre-AEDPA petitioners to file within a "reasonable time" of enactment of AEDPA, not a full year like other circuits. Judge Sotomayor finds a petition filed one year and two days after enactment of AEDPA to be untimely. "To hold otherwise would be to place those whose convictions became final before the effective date of the AEDPA in a *better* position than those whose convictions became final after the effective date . . . ."

See also rejects a Suspension Clause attack on the § 2244 statute of limitations, a claim previously accepted by Judge Sweet of the same district. This is a thorough and thoughtful opinion. Her conclusion is that Congress can restrict habeas in this way, "at least where no claim of actual or legal innocence has been raised...."

***Rashid* v. *Khulmann*, USDC-SDNY, 991 F. Supp. 254, January 13, 1998**

Petition filed 6 days short of AEDPA + 1 year is untimely under USCA2 "reasonable time" rule.

***Albert* v. *Strack*, USDC-SDNY, 1998 U. S. Dist. LEXIS 129, January 13, 1998**

Similar to *Rashid*.

***Santana* v. *Artuz*, USDC-SDNY, 1998 U. S. Dist. LEXIS 126, January 13, 1998**

Similar to *Rashid*.

***Shariff* v. *Artuz*, USDC-SDNY, 1998 U. S. Dist. LEXIS 371, January 16, 1998**

Another petition filed just short of one year, but this time petitioner has reasons to be late – documents destroyed in a flood and lawyers who are slow despite his prodding. Ineffective assistance would not excuse actual noncompliance with the statute of limitations, but the USCA2 "reasonable time" rule is different.

***Alexander* v. *Keane*, USDC-SDNY, 991 F. Supp. 329, January 16, 1998**

In another petition almost one year after AEDPA, Judge Sotomayor ponders whether there is an "actual innocence" exception to the statute of limitations. Applies the *Schlup* standard and finds petitioner does not meet it.

***Cuadrado* v. *Stinson*, USDC-SDNY, 992 F. Supp. 685, February 13, 1998**

Petition dismissed for nonexhaustion. Petition presented federal constitutional claims after his direct appeal was only on state grounds.

***Cowart* v. *Goord*, USDC-SDNY, 1998 U. S. Dist. LEXIS 1698, February 18, 1998**

Dismissal under statute of limitations. Rejects argument that petition should relate back to the day pro se prisoner requested forms. He had no reason to wait until the eleventh hour to make the request.

***Alexander* v. *Keane*, USDC-SDNY, 991 F. Supp. 329, March 5, 1998**

Denies motion to reconsider Jan. 16 order. Grants certificate of appealability on question of whether § 2244(d) violates Suspension Clause due to conflict with opinion of another judge of the same district.

***United States* v. *Felzenberg*, USDC-SDNY, 1998 U.S. Dist. LEXIS 4214, April 2, 1998**

Allows a borderline untimely § 2255 petition to go forward, noting that in contrast to the state-prisoner cases, the claims had not previously been heard by any court. Rejects numerous ineffective assistance claims on the merits.

***Halo* v. *New York State Div. of Parole*, USDC-SDNY, 1998 U.S. Dist. LEXIS 9711, July 1, 1998**

Dismisses untimely petition and grants certificate of appealability, as in *Alexander*.

***United States* v. *Triestman*, USCA2, 178 F. 3d 624, June 2, 1999**

Triestman had a gun-use conviction along with his drug conviction. After *Bailey* v. *United States*, 516 U. S. 137 (1995), a prior panel decision allowed him to use § 2241 to get around the § 2255 limit and get relief on the gun charge. Now he claims double jeopardy precludes resentencing on the other, undisturbed charges. Judge Sotomayor rejects the argument, along with a statutory sentencing authority argument.

***Jiminian* v. *Nash*, USCA2, 245 F. 3d 144, April 2, 2001**

"This opinion considers whether § 2255 may be deemed to offer an 'inadequate or ineffective' remedy within the meaning of 28 U. S.C. § 2255, ¶ 5, thereby allowing a federal prisoner to file a habeas corpus petition pursuant to 28 U. S.C. § 2241(c)(3), where a prisoner who had a prior § 2255 motion dismissed on the merits and cannot meet the AEDPA's gate-keeping requirements seeks to raise a claim that was available in a prior § 2255 motion. We conclude that § 2255 cannot be deemed inadequate or ineffective under such circumstances. We further hold that when a federal prisoner who has already had a § 2255 motion dismissed on the merits attempts to use § 2241 to raise claims that could have been raised in a prior § 2255 motion, district courts should construe the petition as a second or successive § 2255 motion and transfer it to this Court for certification. Finally, we hold that authorization to file a second or successive § 2255 motion is not available under the circumstances presented in Jiminian's application." Limits *Triestman* to claims previously unavailable.

***Galarza* v. *Keane*, USCA2, 252 F. 3d 630, June 21, 2001**

Batson claim in a pre-AEDPA case. Trial judge denied *Batson* motion. Judge Sotomayor rejects, over dissent, procedural default claim based on defense's failure to renew objection. Trial court only ruled on legitimacy of 3 of the 5 or 6 challenges to Hispanic jurors. Remands

to district court to resolve issue or grant conditional writ to allow state court to resolve issue.

***Hizbullahankhamon* v. *Walker*, USCA2, 255 F. 3d 65, June 14, 2001**

No tolling of statute of limitations between denial of coram nobis by NY App. Div. and denial of leave to appeal by NYCA, because appeal is unavailable under NY law. No equitable tolling for time the prisoner spent in solitary because he did not exercise diligence after he got out.

***Galarza* v. *Keane*, USCA2, 2001 U. S. App. LEXIS 15583, July 12, 2001**

Denies rehearing of decision of June 8 because, among other reasons, state's rehearing petition was based on an argument raised for the first time in that petition.

***Loliscio* v. *Goord*, USCA2, 263 F. 3d 178, August 30, 2001**

This opinion applies the deference standard of 28 U.S.C. § 2254(d), as construed in *Williams* v. *Taylor*, 529 U. S. 362 (2000). Notes that CA2 precedent on not considering jurors' statements whether they were influenced by extraneous information may be abrogated by AEDPA. Holds state court reasonably applied precedents. Rejects an ineffective assistance claim with deference to trial counsel. Finds trial counsel was ineffective for bringing up otherwise inadmissible jailhouse informant statement, and state court determination to the contrary was unreasonable, but finds no prejudice.

***United States* v. *Outen*, USCA2, 286 F. 3d 622, April 12, 2002**

Discusses jurisdictional issues regarding an appeal from both a federal criminal judgment and a § 2255 motion. On the merits, rejects a strange attempt to use *Apprendi* to strike down the main federal drug law, 21 U.S.C. § 841, altogether. Finds that the basic sentence for unspecified amounts of marijuana is five years under § 841(b)(1)(D), and the free joints provision of § 841(b)(4) is a mitigating exception. *Apprendi* does not require that the mitigating exception be found inapplicable by a jury.

***Tueros* v. *Greiner*, USCA2, 343 F. 3d 587, September 12, 2003**

State court reasonably applied Supreme Court precedent on attorney conflicts.

***Gutierrez* v. *McGinnis*, USCA2, 389 F. 3d 300, November 15, 2004**

Addresses the question of post-AEDPA harmless error analysis when the state court on direct review has applied the *Chapman* standard. Decides on deferential review of the *Chapman* analysis rather than *de novo* application of the *Brecht* standard. The Supreme Court subsequently decided to the contrary, but the circuits were split at the time and either resolution was reasonable.

***Doe* v. *Menefee*, USCA2, 391 F. 3d 147, November 19, 2004**

Split decision denying habeas relief on statute of limitation grounds. Judge Pooler dissents and would grant. Finds no credible claim of actual innocence. Rejects other claims for tolling.

***Galdamez* v. *Keane*, USCA2, 394 F. 3d 68, January 4, 2005**

Decided that petitioner fairly presented his claims to New York's highest court without

specifically identifying issues but just attaching brief from lower court. No mention of then-recent Supreme Court decision in *Baldwin* v. *Reese*, 541 U. S. 27 (2004). May be correct given New York's quirky procedure. Tersely denies claim on the merits.

***Benn* v. *Greiner*, USCA2, 402 F. 3d 100, March 9, 2005**

Rape case in which the trial judge curtailed cross-examination of the victim regarding her prior accusations. District Judge Weinstein granted habeas relief. "We note first that although the district court recited AEDPA's deferential standard for review of state courts' constitutional rulings . . . we are dubious that its finding of legal error can be justified under that standard. We need not reach the question, however. Even supposing that the district court was correct to find that the Appellate Division's conclusion was contrary to and an unreasonable application of clearly established federal law, the district court's further finding that the error was not harmless was itself clearly in error."

***Serrano* v. *Fischer*, USCA2, 412 F. 3d 292, June 20, 2005**

Case involving a trial court's ban on a particularly obnoxious attorney conferring with his client during two brief breaks in testimony. Supreme Court precedents involved are *Perry v. Leeke*, 488 U. S. 272 (1989) and *Geders* v. *United States*, 425 U. S. 80 (1976). "Rather than create a bright-line rule, the Supreme Court established an intensely context-specific inquiry, the precise contours of which have yet to emerge. In such circumstances, where the governing rule remains so roughly defined, we are less likely to conclude that a given interpretation or application of Supreme Court law is 'contrary to' or an objectively 'unreasonable application of' Supreme Court precedent for purposes of § 2254(d)(1)." The state court decision in this case was neither, on the specific facts of the case.

***Green* v. *Travis*, USCA2, 414 F. 3d 288, July 7, 2005**

State court's holding that *Batson* challenge was not preserved was interwoven with the merits and therefore not independent of federal law. Objection that prosecution was challenging a mix of black and Hispanic venire members stated prima facie case under *Batson* as expanded by *Powers* v. *Ohio*, 499 U. S. 400 (1991). State court holding that defense counsel was objecting to exclusion of "minorities," not a cognizable group, was an unreasonable determination of the facts under § 2254(d)(2). District court's acceptance of prosecutor's race-neutral reasons as stated in the federal habeas hearing was not clearly erroneous. Denial of habeas relief affirmed.