

The following information is provided simply to show two things:

- 1) why Mr. Skinner's Texas State habeas claims were dismissed, and
- 2) how determined Mr. Skinner and his attorneys were to file a Texas State habeas appeal.

NOTE: This information comes directly from a portion of the U.S. District Court ruling in Mr. Skinner's Federal habeas corpus appeal. Because of the problem Mr. Skinner had the Texas State courts, the U.S. District Court allowed Mr. Skinner deference to raise his habeas corpus claims in the Federal courts.

United States District Court
N.D. Texas, Amarillo Division.

Henry W. SKINNER, Petitioner,
v.
Nathaniel QUARTERMAN, Director, Texas Department of Criminal Justice,
Correctional Institutions Division, Respondent.

Henry W. SKINNER, Petitioner,
v.
Douglas DRETKE, Director, Texas Department of Criminal Justice,
Correctional Institutions Division, Respondent.

No. 2:99-CV-0045.
Feb. 22, 2007.

ORDER OVERRULING OBJECTIONS, ADOPTING REPORT AND
RECOMMENDATION and DENYING PETITION FOR A WRIT OF HABEAS
CORPUS, ROBINSON, J.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AVERITTE

PROCEDURAL HISTORY

Petitioner was convicted by a jury of capital murder, and his punishment was assessed at death by lethal injection. *State v. Skinner*, Cause No. 0005216 (District Criminal Court No. 3 of Tarrant County, Tex. March 22, 1995)¹. The case was appealed to the Texas Court of Criminal Appeals, and the Court of Criminal Appeals affirmed the conviction and death sentence in a published opinion. *Skinner v. State*, 956 S.W.2d 532 (Tex.Crim.App. Sept.10, 1997). Petitioner filed an initial state application for writ of habeas corpus on March 26, 1998. The Texas Court of Criminal Appeals dismissed this initial application based upon the trial court's determination that it was untimely filed. Petitioner then filed his initial federal habeas petition in this Court on February 5, 1999. On August 1, 2000, this federal proceeding was administratively closed and all proceedings were stayed so petitioner could return to state court to once again present his habeas claims. Petitioner became eligible to return to state court because Texas law had changed to allow previously untimely state applications to be considered on their merits. See TEX.CODE CRIM. PROC. ANN. art. 11.071 s 4A(f) (Vernon's Supp.1999).

Petitioner's second state habeas application was filed on February 27, 2001. On October 10, 2001, the Court of Criminal Appeals dismissed the application, invoking the rule of habeas corpus abstention, on the basis that there was a pending federal petition. *Ex parte Skinner*, No. 20,203-04 (Tex. Crim. App. Oct. 10, 2001). The state court dismissed the state petition on this ground even though the federal court had stayed the case solely to allow petitioner's claims to be presented to the state courts.

Petitioner then returned to federal court and filed another habeas corpus petition on July 19, 2002. Respondent filed a motion to dismiss the petition, arguing petitioner's claims remained unexhausted and that this Court should dismiss the petition, rather than hold it in abeyance, in order for petitioner to return yet again to state court to exhaust his claims. On September 12, 2002, the undersigned issued a Report and Recommendation, recommending Respondent's motion to dismiss be denied. Specifically, this Court held petitioner should not be required

¹ The venue was changed from Gray County to Tarrant County.

to return to state court and again attempt to exhaust his state remedies since this Court had previously stayed all federal proceedings for the express purpose of allowing petitioner to re-file in state court and exhaust his state court remedies, only to have the state courts refuse to address the merits of the case. In recommending denial of the motion to dismiss, the undersigned also found that, should the federal petition be dismissed rather than stayed, the one year AEDPA statute of limitations would have run, and limitations would have to be equitably tolled for the federal courts to consider any future federal petition. Thus, while Respondent had stated that it would not oppose equitable tolling and would not raise the statute of limitations as a defense in the future, petitioner could not be guaranteed any subsequent federal court hearing the matter would accept such a waiver or would not otherwise find the petition to be time barred.² The district court overruled objections filed by Respondent and adopted the Magistrate Judge's recommendation by Order, dated September 27, 2002.

Petitioner then filed an amended petition for writ of habeas corpus on December 2, 2002. Respondent filed an answer on July 25, 2003, and furnished the state court records. Petitioner filed a reply on December 5, 2003. On May 18, 2004, this Court granted, in part, petitioner's December 5, 2003 motion for discovery. Pursuant to that Order, a deposition was taken on July 21, 2004. On November 16-18, 2005, an evidentiary hearing was held, covering an agreed-to list of disputed issues submitted by the parties on October 3, 2005. These disputed issues included facts relevant to petitioner's first through fifth and eighth claims for relief. Both parties filed post-hearing briefs on March 6, 2006, and reply briefs on March 14, 2006.

² The undersigned acknowledges that it is very probable respondent's statement that it would not oppose equitable tolling as to any future federal petition would result in petitioner being able to pursue federal habeas corpus relief. As probable as that scenario is, however, it still is not a guarantee that this Court, the Court of Appeals, or the Supreme Court, might eventually decide otherwise or determine that, as a matter of law, equitable tolling was not available. Since the initial federal habeas case was administratively closed and held in abeyance solely to allow petitioner to exhaust his state habeas corpus remedies and the state court refused to entertain such application, there is no logical reason petitioner should be put at risk of forfeiting his right to seek federal habeas corpus relief, however slight that risk might be.