

Steven L. Price  
Judge



Oregon Judicial Department  
TWENTIETH JUDICIAL DISTRICT  
Washington County Circuit Courts  
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TTY # (503) 846-4863

November 29, 2011

Brian P. Conry PC  
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Portland, Oregon 97204

RE: [REDACTED] v. State of Oregon  
Washington County Case No. [REDACTED]

Dear Counsel:

What follows is my decision on the defendant's motion to dismiss for failure to file within the time period set forth in ORS 137.510. I deny the motion insofar as the *Padilla* claim is concerned. I grant the motion regarding the other claims.

Absent the "escape clause" provision of ORS 137.510 (3), petitioner had until March 18, 2010 to file for post conviction relief on this March 18, 2008 conviction. He filed on December 20, 2010. The escape clause allows the late filing of a petition where there are "grounds for relief asserted which could not reasonably have been raised" within the period of limitations,

*Padilla* constitutes an abrupt about face in federal post conviction relief law. *Padilla* establishes federal rights which, though similar to state rights, have a different source from, and are independent of, state rights. That is why *Gonzalez v. State of Oregon*, 340 Or 452 (2006) has no bearing on this case. That case addressed Oregon Constitutional rights to be advised of immigration consequences of a criminal conviction. *Padilla* addresses federal constitutional rights to be advised of immigration consequences of criminal convictions. Petitioner presses a *Padilla* claim, not a *Gonzalez* claim.

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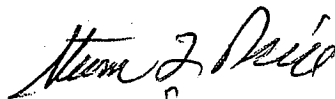
*Padilla* could not reasonably have been anticipated before it was decided, on March 31, 2010. Petitioner could not reasonably have asserted a *Padilla* claim before then. Therefore, the escape clause applies to the *Padilla* claim. Interestingly, the escape clause does not say how long the period of limitations should be extended. This would be more problematic had petitioner waited several years after *Padilla* to file a petition. However, petitioner waited only nine months. ORS 137.510 does not give us a number of months or years in which a person must file under the escape clause. Lacking specific guidance, I resort to what seems reasonable. Nine months seems reasonable.

Based on the above, I deny the motion to dismiss the *Padilla* claim.

I grant the motion to dismiss the other claims. All the grounds for those claims existed and petitioner could have learned of them within the period of limitations. It is heartbreaking to hear of the violence petitioner suffered in Somalia. However, assuming for the sake of argument that he was unable to act on such information, that inability does not qualify for the escape clause provision of ORS 137.510(3). *Benitez-Chacon v. State of Oregon*, 178 Or App 352, 356-357 (2001) (citing *Bartz v. State of Oregon*, 314 Or 353 (1992)). This does not mean that petitioner cannot show that he had viable defenses to the criminal charges as part of showing prejudice resulting from inadequate representation on the *Padilla* issue. However, these other claims may not be pursued as independent claims.

Thank you for your consideration. I ask that Mr. Lewman prepare the order and judgment.

Very truly yours,



Steven L. Price  
Circuit Court Judge

SLP/gc

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