Per Curiam

SUPREME COURT OF THE UNITED STATES

MARK A. CHRISTESON *v.* DON ROPER, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 14–6873. Decided January 20, 2015

PER CURIAM.

Petitioner Mark Christeson's first federal habeas petition was dismissed as untimely. Because his appointed attorneys—who had missed the filing deadline—could not be expected to argue that Christeson was entitled to the equitable tolling of the statute of limitations, Christeson requested substitute counsel who would not be laboring under a conflict of interest. The District Court denied the motion, and the Court of Appeals for the Eighth Circuit summarily affirmed. In so doing, these courts contravened our decision in *Martel* v. *Clair*, 565 U. S. ___ (2012). Christeson's petition for certiorari is therefore granted, the judgment of the Eighth Circuit is reversed, and the case is remanded for further proceedings.

I

In 1999, a jury convicted Christeson of three counts of capital murder. It returned verdicts of death on all three counts. The Missouri Supreme Court affirmed Christeson's conviction and sentence in 2001, see *State* v. *Christeson*, 50 S. W. 3d 251 (en banc), and affirmed the denial of his postconviction motion for relief in 2004, see *Christeson* v. *State*, 131 S. W. 3d 796 (en banc).

Under the strict 1-year statute of limitations imposed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U. S. C. §2244(d)(1), Christeson's federal habeas petition was due on April 10, 2005. Nine months before this critical deadline, the District Court appointed attorneys Phil Horwitz and Eric Butts to represent

Christeson in his federal habeas proceedings. See 18 U. S. C. §3599(a)(2) (providing for appointment of counsel for state death row inmates).

Horwitz and Butts, as they have subsequently acknowledged, failed to meet with Christeson until more than six weeks *after* his petition was due. See App. to Pet. for Cert. 93a. There is no evidence that they communicated with their client at all during this time. They finally filed the petition on August 5, 2005—117 days too late. They have since claimed that their failure to meet with their client and timely file his habeas petition resulted from a simple miscalculation of the AEDPA limitations period (and in defending themselves, they may have disclosed privileged client communications). See *id.,* at 90a–92a, 135a. But a legal ethics expert, reviewing counsel's handling of Christeson's habeas petition, stated in a report submitted to the District Court: "[I]f this was not abandonment, I am not sure what would be." *Id.*, at 132a.

The District Court dismissed the petition as untimely, and the Court of Appeals denied Christeson's application for a certificate of appealability. Christeson, who appears to have severe cognitive disabilities that lead him to rely entirely on his attorneys, may not have been aware of this dismissal. See *id.*, at 229a, 231a, 237a.

Nearly seven years later, Horwitz and Butts contacted attorneys Jennifer Merrigan and Joseph Perkovich to discuss how to proceed in Christeson's case. Merrigan and Perkovich immediately noticed a glaring problem. Christeson's only hope for securing review of the merits of his habeas claims was to file a motion under Federal Rule of Civil Procedure 60(b) seeking to reopen final judgment on the ground that AEDPA's statute of limitations should have been equitably tolled. But Horwitz and Butts could not be expected to file such a motion on Christeson's behalf, as any argument for equitable tolling would be premised on their own malfeasance in failing to file timely the

habeas petition. While initially receptive to Merrigan and Perkovich's assistance, Horwitz and Butts soon refused to allow outside counsel access to their files. See App. to Pet. for Cert. 345a.

On May 23, 2014, Merrigan and Perkovich filed a motion for substitution of counsel. The District Court denied the motion, explaining only that it was "not in [Christeson's] best interest to be represented by attorneys located in New York and Pennsylvania," as Merrigan and Perkovich are. *Id.*, at 169a. The District Court did not address Merrigan and Perkovich's offer to forgo all fees and expenses associated with travel to Missouri, nor did it address the possibility of appointing other attorneys for Christeson.

Christeson appealed. The Eighth Circuit dismissed for lack of jurisdiction, apparently reasoning that Merrigan and Perkovich were not authorized to file an appeal on Christeson's behalf.[1] On September 19, 2014, while this appeal was still pending before the Eighth Circuit, the Missouri Supreme Court issued a warrant of execution setting October 29, 2014, as Christeson's execution date.

After further proceedings not relevant here, Merrigan and Perkovich again filed a motion for substitution of counsel on Christeson's behalf. The District Court again denied the motion. Explaining that substitution of "federally-appointed counsel is warranted only when it would serve the interests of justice," it offered four reasons for its decision. Order in No. 04–CV–08004 (WD Mo., Oct. 22, 2014), p. 1, App. to Pet. for Cert. 375a (quoting *Lambrix* v. *Secretary, Florida Dept. of Corrections*, 756 F. 3d 1246, 1259 (CA11 2014); internal quotation marks omitted). First, it deemed the motion to be untimely because it "was not filed until 2014, and shortly before [Christeson's]

[1] Christeson has since submitted a signed retainer agreement with Merrigan and Perkovich that removes any doubt on that score.

execution date." App. to Pet. for Cert. 375a. Second, it observed that Horwitz and Butts had not "abandoned" Christeson, as they had recently appeared on his behalf in a class-action lawsuit challenging Missouri's lethal injection protocol. *Id.*, at 376a. Third, it noted that although Horwitz and Butts had represented Christeson before the Eighth Circuit, that court had not appointed substitute counsel. *Ibid.* Fourth and finally, the District Court expressed its belief that granting the motion would set "an untenable precedent" by allowing outside attorneys to seek "'abusive'" delays in capital cases. *Ibid.*

Christeson again appealed. This time, the Eighth Circuit summarily affirmed the District Court's order. We stayed Christeson's execution, see *post*, p. ____, and now reverse.

II

Title 18 U. S. C. §3599 "entitles indigent defendants to the appointment of counsel in capital cases, including habeas corpus proceedings." *Martel* v. *Clair*, 565 U. S., at ___ (slip op., at 1). "By providing indigent capital defendants with a mandatory right to qualified legal counsel in these proceedings, Congress has recognized that federal habeas corpus has a particularly important role to play in promoting fundamental fairness in the imposition of the death penalty." *McFarland* v. *Scott*, 512 U. S. 849, 859 (1994). Congress has not, however, conferred capital habeas petitioners with the right to counsel of their choice. Instead, the statute leaves it to the court to select a properly qualified attorney. See §§3599(a)–(d). But the statute contemplates that a court may "replace" appointed counsel with "similarly qualified counsel . . . upon motion" of the petitioner. §3599(e).

We addressed the standard that a court should apply in considering such a motion in *Clair*. We rejected the argument that substitution of an appointed lawyer is war-

ranted in only three situations: "when the lawyer lacks the qualifications necessary for appointment . . . ; when he has a disabling conflict of interest; or when he has completely abandoned the client." 565 U. S., at ___ (slip op., at 7) (internal quotation marks omitted). Instead, we adopted a broader standard, holding that a motion for substitution should be granted when it is in the "'interests of justice.'" *Id.*, at ___ (slip op., at 13). We further explained that the factors a court of appeals should consider in determining whether a district court abused its discretion in denying such a motion "include: the timeliness of the motion; the adequacy of the district court's inquiry into the defendant's complaint; and the asserted cause for that complaint, including the extent of the conflict or breakdown in communication between lawyer and client (and the client's responsibility, if any, for that conflict)." *Ibid.*

The District Court here properly recognized that its consideration of Christeson's motion for substitution was governed by *Clair*'s "interests of justice" standard. But its denial of his motion did not adequately account for all of the factors we set forth in *Clair*.

The court's principal error was its failure to acknowledge Horwitz and Butts' conflict of interest. Tolling based on counsel's failure to satisfy AEDPA's statute of limitations is available only for "serious instances of attorney misconduct." *Holland* v. *Florida*, 560 U. S. 631, 651–652 (2010). Advancing such a claim would have required Horwitz and Butts to denigrate their own performance. Counsel cannot reasonably be expected to make such an argument, which threatens their professional reputation and livelihood. See Restatement (Third) of Law Governing Lawyers §125 (1998). Thus, as we observed in a similar context in *Maples* v. *Thomas*, 565 U. S. ___, ___, n. 8 (2012) (slip op., at 17, n. 8), a "significant conflict of interest" arises when an attorney's "interest in avoiding damage to [his] own reputation" is at odds with

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