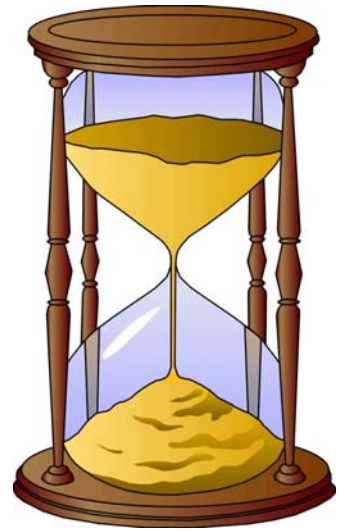

COURT APPEALS INFORMATION & STATUS

"[S]ociety wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.'"
—*Brady v. Maryland*, 373 U.S. 83 (1963)—

Efren has previously appealed his conviction to the Michigan Court of Appeals, Michigan Supreme Court, the U.S. District Court in the Western District of Michigan (Southern Division), the U.S. Sixth Circuit Court of Appeals, and the U.S. Supreme Court.¹

February 24, 1995 Efren filed a petition for writ of habeas corpus² in the U.S. District Court in the Western District of Michigan (Southern Division), a federal district court. On October 19, 1998—three years and eight months later—he received a decision from the court denying his petition. The court contended Efren had filed a "*mixed petition of exhausted and unexhausted claims*," meaning they felt Efren did not exhaust his appellate remedies at the state court level, and was presenting new and previously unargued issues in the federal court.³ Issues not raised in state proceedings generally cannot be raised in a federal habeas petition under the doctrine of exhaustion.



¹In Michigan, generally the order in which a prisoner must appeal his conviction in the courts is as follows: 1) the Michigan Court of Appeals, 2) the Michigan Supreme Court, 3) the U.S. District Court, 4) the U.S. Sixth Circuit Court of Appeals, and 5) the U.S. Supreme Court, respectively. Some individuals only petition one appellate court before being granted relief, and others must appeal to more than one court. It is not uncommon for a prisoner to appeal to all the courts listed and still not be granted relief from a wrongful conviction.

²**Writ of habeas corpus:** The writ of habeas corpus, known as the "great writ," has varied use in criminal and civil contexts. It is a procedure for obtaining a judicial determination of the legality of an individual's custody. Technically, it is used in the criminal law context to bring the petitioner before the court to inquire into the legality of his confinement. The writ of federal habeas corpus is used to test the constitutionality of a state criminal conviction. It pierces through the formalities of a state conviction to determine whether the conviction is consonant with due process of law. *Barron's Law Dictionary*, Third Edition, p. 214, by Steven H. Gifis, Associate Professor of Law at Rutgers, the State University of New Jersey, School of Law Newark.

³The appellate procedures Efren's attorney followed are supported by Professors James S. Liebman and Randy Hertz, *Federal Habeas Corpus Practice and Procedure*, §23.3b, p. 669 and n. 19 (Michie, 1994).

In his opinion, U.S. District Court Judge, Robert Holmes Bell, stated in part:

"Petitioner's mixed petition will be dismissed. Petitioner may file a new petition raising only claims that have been properly exhausted and abandoning the unexhausted claims, or return to state court to present the unexhausted claims."

Judge Bell never issued a decision on the merits of Efren's appellate issues. He simply denied the petition without prejudice.

The appellate issues Efren presented to the U.S. District Court were previously presented to the Michigan courts. Efren proved this by directing the U.S. District Court to the exact location of the pages in the appellate briefs he filed in the Michigan courts where the issues can be found. Still, the judge refused to acknowledge the issues were presented to the Michigan courts.

After having his federal habeas petition denied by the U.S. District Court, Efren appealed to the U.S. Sixth Circuit Court of Appeals, a federal court of appeals. April 14, 1999, U.S. Sixth Circuit Court of Appeals Chief Justice, Boyce F. Martin, Jr., granted Efren's application of probable cause for the court to hear his appeal of the U.S. District Court's decision. August 18, 2000 the U.S. Sixth Circuit Court of Appeals affirmed the U.S. District Court's decision. The U.S. Sixth Circuit Court of Appeals reiterated the U.S. District Court's sentiments that Efren did not exhaust all his appellate issues in the state courts before presenting them to the federal court.

November 16, 2000 Efren petitioned the U.S. Supreme Court for a writ of certiorari⁴ to reverse the opinion of the U.S. Sixth Court of Appeals solely regarding the issue of exhaustion. January 16, 2001 the U.S. Supreme Court denied Efren's petition for writ of certiorari. March 31, 2001 Efren filed a Motion for Relief From Judgment in the Berrien County Trial Court to exhaust appellate issues the federal courts contended he previously did not present to the Michigan courts for review. His motion was denied September 11, 2001 by Judge Angela Pasula.

On September 10, 2002 Efren appealed the decision by the Berrien County Trial Court to the Michigan Court of Appeals. The court denied Efren's appeal on December 27, 2002. Thereafter, he appealed the court's decision to the Michigan Supreme Court on February 19, 2003 by filing a delayed application for leave to appeal. Efren's application for leave to appeal was denied by the Michigan Supreme Court on May 30, 2003. A motion for reconsideration was filed with the court on June 19, 2003. October 30, 2003 the Michigan Supreme Court denied Efren's motion for reconsideration.

December 1, 2003 Efren filed a petition for writ of habeas corpus in the U.S. District Court in the Eastern

⁴**Certiorari:** *Lat:* To be informed of a means of gaining appellate review; a common law writ, issued from a superior court to one of inferior jurisdiction, commanding the latter to certify and return to the former the record in the particular case. The writ is issued in order that the court issuing the writ may inspect the proceedings and determine whether there have been any irregularities. In the United States Supreme Court the writ is discretionary with the court and will be issued to any court in the land to review a federal question if at least 4 of the 9 justices vote to hear the case. *Barron's Law Dictionary*, Third Edition, p. 66, by Steven H. Gifis, Associate Professor of Law at Rutgers, the State University of New Jersey, School of Law Newark.

District of Michigan (Southern Division). The judge assigned to review his petition was the Hon. Gerald Rosen. On June 30, 2006 Judge Rosen denied Efren's petition for writ of habeas corpus. Rosen's decision neglected to address some of Efren's appellate issues, he mischaracterized issues presented, and flatly made false and erroneous statements he attributed to the trial court record. It was clear that Rosen did not review the facts of the case, he did not review the appellate briefs, and that he was intent on denying the habeas petition.

Efren's appellate attorney is now appealing the decision to the U.S. Sixth Circuit Court of Appeals. He awaits a response to his appeal from the court.

In 1996—during the lengthy period Efren awaited a response from the U.S. District Court—Congress passed the "Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA)." Now all appeals to the federal courts, including Efren's, are governed by the AEDPA. The way the language reads in the AEDPA, a person has only *one* opportunity to file a petition for writ of habeas corpus in the federal court. Therefore, Efren's chances of ever getting the justice he so rightly deserves are quickly being exhausted.

(Efren's appellate attorney from 1990 to 2001 was Timothy M. Holloway. His appellate attorney since 2002 has been Stuart G. Friedman.)

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