

# McQuiggin v. Perkins: Innocence Prevails Over Deadlines

by Donald Scarinci

The U.S. Supreme Court recently confirmed that innocence matters in criminal court. While the notion may seem quite obvious, the Court has never found that a prisoner is entitled to habeas relief based on a freestanding actual-innocence claim. Rather, the petition must allege some form of constitutional violation.

In *McQuiggin v. Perkins*, the Court considered whether innocence matters when a writ of habeas corpus was filed after the time allowed under statute. In a 5-4 decision, the majority concluded that compelling evidence of innocence could overcome an otherwise untimely petition. The complicated Supreme Court decision sparked heated debate amongst the justices, even initiating a scathing dissent from Justice Antonin Scalia.

## *The Facts of the Case*

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) requires state prisoner to file a [federal habeas petition within one year](#), starting from “the date on which the judgment became final.” If the petition alleges newly discovered evidence, the filing deadline is extended to one year from “the date on which the factual predicate of the claim...could have been discovered through...due diligence.”

Floyd Perkins was convicted of first-degree murder and sentenced to life without parole. More than 11 years after his conviction became final, Perkins filed a federal habeas petition, alleging ineffective assistance of trial counsel. To overcome AEDPA’s time limitations, he asserted newly discovered evidence of actual innocence, relying on three affidavits, the most recent dated July 16, 2002, each pointing to someone else as the murderer. The District Court found that, even if the affidavits could be characterized as newly discovered evidence, Perkins had failed to show the due diligence required to toll AEDPA’s limitations period.

## *The Supreme Court’s Decision*

By a vote of 5-4, the Supreme Court confirmed that “[a]ctual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar.” As Justice Ruth Bader Ginsburg noted, previous decisions have held that the “fundamental miscarriage of justice exception” may be relied upon to overcome various procedural defaults, including the failure to comply with filing deadlines.

Here, the majority concluded that these exceptions survived AEDPA’s passage. “Sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is AEDPA’s statute of limitation,” the majority explained.

Rather, courts should faced with an innocence claim should “count unjustifiable delay on a habeas petitioner’s part, not as an absolute barrier to relief, but as a factor in determining whether actual innocence has been reliably shown.”

The dissent strongly disagreed with the logic of the majority, characterizing it as “bizarre” and “feeble.” Justice Antonin Scalia stated, “With its eye firmly fixed on something it likes—a shiny new exception to a statute unloved in the best circles—the Court overlooks this basic distinction, which would not trouble a second-year law student armed with a copy of Hart & Wechsler. The Court simply ignores basic legal principles where they pose an obstacle to its policy-driven, free-form improvisation.”

If this opinion is any suggestion of what’s to come in the more controversial decisions on same-sex marriage and affirmative action, it will be an interesting few weeks.