

## 04-1324 DAY V. MCDONOUGH

DECISION BELOW:391 F3d 1192

LOWER COURT CASE NUMBER: 04-10778

### QUESTIONS PRESENTED:

28 U.S.C. § 2244(d) establishes a one-year limitations period for federal habeas corpus petitions filed by state prisoners. When Patrick Day filed his federal habeas petition, the magistrate judge examined it as required by Habeas Rule 4 and ordered the State to respond. In its answer, the State did not raise a limitations defense. Instead, it expressly conceded that Day's petition was timely.

Nevertheless, almost a year after the petition was filed and seven months after the parties finished briefing the merits of Day's claims, the magistrate judge recommended sua sponte that the petition be dismissed as untimely. The district court adopted that recommendation and the Eleventh Circuit affirmed.

Acknowledging a conflict with decisions of the Sixth and Ninth Circuits, the Eleventh Circuit held that the State's failure to plead limitations was not a waiver and that Rule 4 -- contrary to its plain text -- authorizes a court to dismiss a habeas petition sua sponte after an answer has been filed.

This case presents the following important questions on which the courts of appeals are divided:

1. Does the State waive a limitations defense to a habeas corpus petition when it fails to plead or otherwise raise that defense and expressly concedes that the petition was timely?
2. Does Habeas Rule 4 permit a district court to dismiss a habeas petition sua sponte after the State has filed an answer based on a ground not raised in the answer?

CERT. GRANTED 9/27/2005

FORMERLY DAY v. CROSBY