IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-13016-I

IN RE: JACKSON STALLINGS,

Petitioner.

Application for Leave to File a Second or Successive Habeas Corpus Petition, 28 U.S.C. § 2244(b)

Before HULL, WILSON and MARTIN, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), Jackson Stallings has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C).

In his application, Stallings indicates that he wishes to raise one claim in a second or successive § 2254 petition. Stallings argues that his life sentence, which was for non-homicidal crimes he committed as a juvenile, violated his Eighth Amendment right to be free from cruel and unusual punishment. Stalling alleges that: (1) he was 17 years old when he committed the crimes that resulted in his life sentence; and (2) under Florida law, he is ineligible for parole. Stallings asserts that his claim relies upon a new rule of constitutional law, namely *Graham v. Florida*, 560 U.S. __,130 S. Ct. 2011 (2010). In *Graham*, the Supreme Court held that the Eighth Amendment "prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." *Graham*, 560 U.S. at __, 130 S. Ct. at 2034. In doing so, the *Graham* Court stated that the "case implicates a particular type

of sentence as it applies to an entire class of offenders who have committed a range of crimes." *Id.* at __, 130 S. Ct. at 2022-23.

In *Tyler v. Cain*, 533 U.S. 656, 121 S. Ct. 2478 (2001), the Supreme Court stated that a new rule of constitutional law satisfies § 2244(b)(2)(A) only when the Supreme Court itself "has held that the new rule is retroactively applicable to cases on collateral review." *Tyler*, 533 U.S. at 662, 121 S. Ct. at 2482. The Supreme Court has not expressly stated, in *Graham* or later, that *Graham* is retroactively applicable to cases on collateral review.

However, the Supreme Court acknowledged in *Tyler* that it can make a rule retroactive not only with a single express statement, but "with the right combination of holdings." *Tyler*, 533 U.S. at 666, 121 S. Ct. at 2484. In *In re Holladay*, 331 F.3d 1169, 1172-73 (11th Cir. 2003), this Court employed this "retroactivity by logical necessity" mechanism to conclude the Eighth Amendment prohibition on executing mentally retarded persons announced in *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242 (2002), was made retroactive to collateral review cases by the Supreme Court.

Thus, there is an argument that the *Graham* rule may be retroactive to cases on collateral review even though the Supreme Court has not expressly so stated. Accordingly, we conclude that Stallings has met his burden of making a prima facie showing that his application satisfies § 2244(b)(2)(A). *See* 28 U.S.C. §

2244(b)(3)(C). Whether the argument is ultimately correct is an issue we leave to the district court. *See id.* § 2244(b)(4) ("A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section."). If the district court concludes that Stallings has satisfied the § 2244 requirements for filing a second or successive petition, it shall proceed to consider the merits of the petition, along with any defenses the respondent may raise.

Stallings's application for leave to file a second or successive habeas corpus petition is GRANTED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of Court

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July 21, 2011

Jackson Stallings
New River CI - Inmate Legal Mail
7819 NW 228TH ST
RAIFORD, FL 32026-3100

Appeal Number: 11-13016-I
Case Style: In re: Jackson Stallings
District Court Docket No:

The enclosed order has been entered. No further action will be taken in this matter.

The district court clerk is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Gloria M. Powell, I
Phone #: (404) 335-6184

Enclosure(s)

DIS-4 Multi-purpose dismissal letter