

federal habeas counsel represents in his request for guidance from this Court, (1) petitioner's conviction became final effective July 1, 2007 and (2) petitioner was subsequently granted permission by the Texas Court of Criminal Appeals to file his state habeas corpus application retroactively and that state appellate court declared petitioner's state habeas corpus application to have been "timely filed as of October 11, 2007," there is a distinct possibility the AEDPA's one-year statute of limitations might have no application to a federal habeas corpus petition filed by petitioner in this Court on or before January 11, 2013. One of the few things that is clear at this juncture is that the Texas Court of Criminal Appeals denied petitioner's state habeas corpus application on the merits on September 12, 2012. *Ex parte Juan Edward Castillo*, 2012 WL 3999797, WR-70,510-01 (Tex. Crim. App. September 12, 2012). If all the facts are as petitioner's federal habeas counsel has asserted in petitioner's "Request for Guidance," it is distinctly possible there will be no issue involving the AEDPA's statute of limitations raised in this Court. Ultimately, the decision whether to raise the AEDPA's statute of limitations as an affirmative defense in this cause lies with the respondent's counsel of record.

Finally, the Court notes that, on more than one occasion, when confronted with an unusual or atypical procedural context for a petitioner's state habeas corpus proceeding, the Attorney General of Texas has agreed not to assert the affirmative defense of the AEDPA's statute of limitations based upon equitable considerations. Whether the Texas Attorney General will choose to do so in petitioner's case remains to be seen. Thus, petitioner's "Request for Guidance" seeks an advisory opinion which this Court may not issue.


Accordingly, it is hereby **ORDERED** that:

1. Petitioner's "Request for Guidance," filed October 3, 2012, docket entry no. 5, is **DISMISSED WITHOUT PREJUDICE** as unripe.

2. The Clerk shall send a copy of this Order to petitioner's counsel of record and the Post-Conviction Litigation Division of the Office of the Attorney General of the State of Texas, *attention Leslie Kuykendall*.

It is so ORDERED.

SIGNED this 9th day of October, 2012.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE