IN THE
SUPREME COURT OF THE UNITED STATES

No. 00 - 7004

FILED
NOV 14 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

This is a Capital Case
Execution is scheduled for
November 15, 2000

In Re:

JAMES W. CHAMBERS,

Petitioner,

PETITION FOR A WRIT OF HABEAS CORPUS

Respectfully submitted,

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***Counsel of Record**

NOV-13-00 MON 03:46 PM FILC FAX NO. 18163632799 P. 02/21

QUESTIONS PRESENTED

I.

Whether the substantive gatekeeping provisions for successive habeas petitions set forth under 28 U.S.C. §2244(b) are retroactively applicable to a prisoner who filed his initial petition before April 24, 1996 if he can establish that he would be allowed to overcome any successive or abusive writ bars under pre-AEDPA standards.

II.

Whether the strict application of the substantive standards for successive and abusive petitions set forth under §2244(b)(1) and 2244(b)(2)(B) to bar the federal courts from entertaining a successive habeas petition results in an unconstitutional restriction of federal judicial power that violates Article III of the Constitution.

III.

Whether the State of Missouri violated petitioner's right to due process of law by withholding material exculpatory evidence that could have been utilized to discredit the only eyewitness to the crime.

IV.

Whether petitioner received ineffective assistance of counsel due to trial counsel's failure to effectively cross-examine the state's only eyewitness, Fred Ieppert, with material inconsistencies in his own testimony, as well as inconsistencies between Ieppert's account and the testimony of other witnesses.

V.

Whether a capital conviction and sentence of death secured through the testimony of a single eyewitness of questionable credibility violates the due process clause of the Fourteenth Amendment to the Constitution.

JURISDICTIONAL STATEMENT

Petitioner sought leave to file a second or successive petition for a writ of habeas corpus by a person in state custody by filing a motion pursuant to 28 U.S.C. §2244(b)(3)(A), on November 9, 2000 in the Eighth Circuit Court of Appeals. On November 13, 2000, the court of appeals denied petitioner leave to file a successive habeas petition. Because this decision is not reviewable under §2244, petitioner has sought review of his conviction by filing an original writ of habeas corpus pursuant to 28 U.S.C. §2241 and §2254(a). These statutes provide the jurisdictional basis for this Court's original habeas corpus jurisdiction. In addition, this Court has jurisdiction under the All Writs Act codified under 28 U.S.C. §1651(a). Pursuant to Supreme Court Rule 20.4(a), petitioner further states that he did not make application to the district court in the jurisdiction in which he is confined because he is prohibited from doing so under 28 U.S.C. §2244, as amended in 1996.

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STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

James W. Chambers, has been on Missouri's death row for 18 years as a result of a barroom argument which culminated in the shooting of Jerry Oestricker outside the Country Club Lounge in Arnold, Missouri on the evening of Friday, May 29, 1982. After Petitioner was convicted and sentenced to death at his first trial in December of 1982, the Missouri Supreme Court reversed the conviction because the trial court failed to give a self-defense instruction. State v. Chambers, 671 S.W.2d 781 (Mo. en banc 1984). Petitioner's conviction and sentence following retrial in 1985 was affirmed by the Missouri Supreme Court in State v. Chambers, 714 S.W.2d 527 (Mo. en banc 1986), but later reversed by the Eighth Circuit Court of Appeals because Petitioner received ineffective assistance of trial counsel. Chambers v. Armontrout, 907 F.2d 825 (8th Cir. en banc 1990), cert. denied 498 U.S. 950 (1990).

Petitioner's third trial commenced on October 28, 1991. Mr. Chambers was again convicted and sentenced to death. After Petitioner's timely Rule 29.15 motion was denied by the trial court, his third conviction and death sentence were affirmed by the Missouri Supreme Court on consolidated appeal in State v. Chambers, 891 S.W.2d 93 (Mo. en banc 1994).

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Petitioner then sought federal habeas relief in the United States District Court for the Western District of Missouri in 1995. District Judge Howard F. Sachs denied the petition on March 12, 1997. Thereafter, the Eighth Circuit Court of Appeals affirmed the district court in all respects. Chambers v. Bowersox, 157 F.3d 560 (8th Cir. 1998). The Supreme Court denied certiorari on June 21, 1999. Chambers v. Bowersox, 119 S. Ct. 2383 (1999).

In July, 1999, petitioner's wife, Darlene Chambers, filed suit against Fred Ieppert and others in Jefferson County, Missouri, Circuit Court requesting that a grand jury be impaneled to consider filing criminal charges against witnesses who testified at petitioner's preliminary hearing and at the three trials. On August 9, 1999, the circuit court appointed Morley Swingle, the elected prosecuting attorney of Cape Girardeau County, to investigate the case. The special prosecutor subsequently issued a report on October 25, 1995, which concluded that there was insufficient evidence to establish that any witness committed perjury at the trial. However, for purposes of this petition, Mr. Swingle interviewed Ken Vaughn who told him that the windows of the bar, and particularly the window that Fred Ieppert purportedly viewed the shooting from, were painted black. (Swingle Report at p. 8).

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Petitioner was scheduled to be executed on November 10, 1999. The Eighth Circuit stayed this execution date pending the outcome of Slack v. McDaniel, 529 U.S. 473 (2000). Chambers v. Bowersox, 197 F. 3rd 308 (8th Cir. 1999). This stay was lifted after Slack was decided.

In the summer of 2000, Mr. Chambers' family hired Jefferson City, Missouri, attorney John William Simon to file a state habeas action in the Missouri Supreme Court on Mr. Chambers' behalf. Mr. Simon, in a visit to the Arnold, Missouri, police department, discovered several police reports and photos which had never been disclosed to petitioner. Based upon this newly discovered evidence, Mr. Simon, on Mr. Chambers' behalf, filed the state habeas petition before the Missouri Supreme Court on August 28, 2000, raising, among other things, claims pertaining to the concealment of evidence and ineffective assistance of counsel. The Missouri Supreme Court summarily denied this habeas petition on October 3, 2000. The court soon thereafter set petitioner's execution for November 15, 2000.

On November 9, 2000, petitioner filed a request for leave to file a successive habeas corpus petition, pursuant to 28 U.S.C. §2244(b)(3) in the Eighth Circuit. Petitioner also submitted to the court an application for a stay of execution and a proposed habeas corpus petition. Apart from the substantive claims for habeas relief

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which he advanced, petitioner also argued that the substantive gateway provisions of 2244(b) are not retroactively applicable to petitioner and, in the event that they are, these provisions violate Article III of the Constitution. The court of appeals denied petitioner leave to file a successive petition and denied his application for stay of execution on November 13, 2000. Because of the jurisdictional limitations imposed by 28 U.S.C. §2244, petitioner now seeks an original writ of habeas corpus from this Court. See Felker v. Turpin, 518 U.S. 651 (1996).

B. STATEMENT OF FACTS

On the evening of May 29, 1982, Jerry Oestricker was drinking at the Country Club Lounge, a tavern in Arnold, Missouri.[1] (Tr. 303-304). Also present in the lounge was Norma Ieppert, an employee, and several members of the Turner family. (Tr. 273-74). Mrs. Ieppert observed Oestricker walk past the chair of Jackie Turner who was seated at a table with his family. (Tr. 275, 340-41). Oestricker bumped Turner's chair and a brief argument ensued, after which Oestricker returned to the pool table. (Tr. 275).

After the initial confrontation between Jackie Turner and Oestricker, Jackie's mother belligerently requested that Jackie's brother Phil and her daughter defend their

[1]Cites to the state court trial transcripts will be designated as follows: the third trial will be "Tr.;" the second "Tr. II;" and the first "Tr. I."

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IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM

NO. 00-7004

DEATH PENALTY CASE

EXECUTION DATE NOVEMBER 15, 2000

FILED
NOV 14 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN RE:

JAMES WILSON CHAMBERS,

PETITIONER,

PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS

TO THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

AND

AL LUEBBERS, SUPERINTENDENT,

POTOSI CORRECTIONAL CENTER

JAMES WILSON CHAMBERS
POTOSI CORRECTIONAL CENTER
RT2 BOX 2222 CP#22
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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT ACTED WITHOUT JURISDICTION, OR IN EXCESS OF ITS JURISDICTION, AND/OR WITHOUT DUE PROCESS OF LAW WHEN THE COURT DENIED PERMISSION FOR LEAVE TO FILE SUCCESSIVE WRITS OF HABEAS CORPUS WITHOUT FIRST MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW, BY ARBITRARILY DENYING PERMISSION TO FILE A SECOND SUCCESSIVE PETITION ON A PRIMA FACIE SHOWING OF KNOWING USE OF MATERIAL PERJURY, SUPPRESSION OF EVIDENCE OF MATERIAL INFORMATION, ALL NOT REASONABLY AVAILABLE TO THE PETITIONER IN PRIOR PETITIONS?

II. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT EXCEEDED ITS JURISDICTION WHEN IT ALLOWED THE STATE TO FILE FALSE, FABRICATED DOCUMENTS TO REFUTE THE PETITION FOR LEAVE TO FILE SECOND OR SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS?

III. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUITS RULE 22B(3)(b)(c), ALLOWING THE STATE TO LITIGATE ON THE MERITS IN THE APPELLATE COURTS, IS INCONSISTENT WITH 28 USC §2244 at (3)(C)(2000), WHEREIN CONGRESS DIRECTED THAT AN APPLICATION BE GRANTED ON A "PRIMA FACIE SHOWING" WITHOUT REGARDS TO THE MERITS, WHERE PETITIONER WAS PREJUDICED BY THE STATE KNOWINGLY FILING FALSE FABRICATED PICTURES, AND EVIDENCE WITH NO PROPER AUTHENTICATION, OR FOUNDATION, AND PRESENTING MATTERS BEYOND THE BURDEN OF "PRIMA FACIE SHOWING" IN THAT COURT, THEREBY COMMANDING UNITED STATES SUPREME COURT TO EXERCISE ITS SUPERVISORY AUTHORITY, WHEREIN JAMES WILSON CHAMBERS IS ABOUT TO BE EXECUTED?

IV. WHETHER THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT EXCEEDED ITS AUTHORITY BY USING THE AMENDATORY HABEAS CORPUS PROVISIONS AGAINST PETITIONER TO DETERMINE WHETHER A SUCCESSIVE WRIT SHOULD BE ALLOWED, WHEN IN FACT THE PETITIONER HAD FILED HIS FIRST APPLICATION UNDER THE OLD LAW, BECAUSE UNDER THE OLD SUCCESSIVE WRIT PROCEDURES, THE PETITIONER CAN SHOW THAT HE WOULD HAVE BEEN ENTITLED TO FILE A SUCCESSIVE PETITION, AND AT LEAST ONE US COURT OF APPEALS HAS RULED, THAT UNDER THOSE CIRCUMSTANCES, PETITIONER WOULD BE ENTITLED TO THE PROCEDURES UNDER THE OLD SUCCESSIVE WRIT STANDARDS?

V. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT ACTED IN EXCESS OF ITS JURISDICTION BY NOT REMANDING THE PETITIONER'S PETITIONS ON THE GROUNDS THAT THE ADEPA 1996 PROCEDURE IS INAPPLICABLE TO DEATH PENALTY CASES WHEREIN THE STATE HAS NOT "OFT" IN TO QUALIFY FOR THE NEW AEDPA ACT OF 1996?

PARTIES

PETITIONER IS:

JAMES WILSON CHAMBERS

RESPONDENT IS:

Chief Judge Roger Wollman
United States Court of Appeals
for the Eighth Circuit
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application for second or successive habeas petition or section 2255 motion. The response must include:

(1) a brief response to the grounds for relief stated by petitioner or movant;

(2) information petitioner or movant has not under Rule 22(B)(a)(2) and (3) of these local rules; and

(3) copies of orders and memorandum opinions in all former habeas proceedings and section 2255 motions filed by petitioner or movant."

STATEMENT OF THE CASE

NOVEMBER 15, 2000 EXECUTION DATE

The Missouri State Supreme Court set an execution date for November 15, 2000, at the Potosi Correctional Center to enforce the appellate decision issued in **State v. Chambers, #74525, 891 SW2d 93 (Mo. Banc 1994).**

Petitioner was at all times a state prisoner that previously had filed a petition for writ of habeas corpus, under the old law, and which was denied, and affirmed on appeal, and certiorari was denied. That opinion was issued in **Chambers v. Bowersox, 157 F3d 560** (CA8 1998), cert. den., 119 SCt. 2383 (1999).

Subsequent to the denial of habeas corpus remedies, the United States Court of Appeals for the 8th Circuit recalled its mandate and stayed the case pending disposition of a case in the United States Supreme Court. **Chambers v. Bowersox,** 197 F3d 308 (CA8 1999), cert. den., 119 SCt.

(1999).

Petitioner then petitioned the United States Court of Appeals for the 8th Circuit for permission to file a second or successive petition for writ of habeas corpus under 28 USC §2244(b).

The United States Court of Appeals for the 8th Circuit denied the first application July 20, 2000 (Appendix B), and denied the second petition September 6, 2000 (Appendix A)(Neither order is reported).

In the intrim the petitioner filed a 42 USC §1983 action in the ED of Missouri, which was dismissed. The dismissal was appealed to the 8th Circuit, Cause 99-3739 (CA8). On July 7, 2000, the United States Court of Appeals for the 8th Circuit issued an order to show cause to the state to respond why a stay of execution should not be granted because of the perjury committed by the states main witness. The state responded by Stacy Anderson, Assistant State Attorney General, and her argument was no stay could be granted because no execution date had been set. So, the petition was denied

Stacy Anderson also filed responses to the petition for successive writ, during which time Stacy Anderson filed a response to the July 7, 2000 order in the law suit appeal to file a response.

At the same time of the second successive petitions, the petitioner had a law suit appeal pending. The court ordered in that case the state to show cause why a stay should not be granted concerning the perjury (Appendix

C). The court then went on to deny the petition first of all, because no date was set (Appendix D), and then when a date was set, has since denied stays (Appendix E, F).

In that suit, one man claim is that the suppression of evidence hinders any possible clemency petition. The claim is premised on **Young v. Hayes, 218 F3d 850 (CA8 2000).**

STATEMENT OF FACTS

James Chambers was convicted three times in the bar-room shooting of Jerry Oestricker.

Historically, every state and federal court has universally agreed that petitioner has a viable defense of self defense. First, the Missouri Supreme Court reversed the conviction because no self-defense instruction was given. **State v. Chambers, 671 SW2d 781 (Mo.Banc 1984).** Secondly, the United States Court of Appeals for the 8th Circuit reversed because counsel was found to be ineffective for not presenting viable witnesses to the self-defense. **Chambers v. Armontrout, 885 F3d 1318 (CA8); Chambers v. Armontrout,** 907 F2d 8825 (CA8), cert. den., 111 SCt. 369. Thus, it was clearly established by the facts issued by both the state and federal court that James Chambers, being much smaller than the victim, had the legal right to assert self-defense and the legal right to present his witnesses showing that defense.

Subsequent to all the three trials and all the last appeals, in 2000, more than 18 years after the charges was

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 00-3031

James W. Chambers, *

Petitioner, *

v. *

Al Luebbers, *

Respondent. *

On application for Permission to file a Successive Habeas Petition

Before RICHARD S. ARNOLD, BEAM, MORRIS SHEPPARD ARNOLD, Circuit Judges.

JUDGMENT

Petitioner's petition for authorization to file a successive habeas application in the district court is denied. Mandate shall issue forthwith.

(5544-010199)

September 6, 2000

A

A true copy.

ATTEST: Michael E. Gans

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

FILED
NOV 14 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE:)
JAMES CHAMBERS,)
)
Petitioner.)

No. 00-7004

RESPONDENT'S SUGGESTIONS IN OPPOSITION TO PETITIONER'S ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR STAY OF EXECUTION

COMES now respondent, by and through counsel, and states as follows as his suggestions in opposition to Chambers's original petition for writ of habeas corpus and request for stay of execution:

A. Introduction

After unsuccessfully petitioning the Eighth Circuit three times in the last six months for leave to file a successive federal habeas corpus petition, petitioner has filed the instant petition for writ of habeas corpus in this Court. Chambers presents two constitutional challenges to 28 U.S.C. § 2244(b) and raises three substantive grounds for relief: (1) that the prosecution withheld exculpatory evidence that would have materially undermined the credibility of state's witness Fred Ieppert; (2) trial counsel was ineffective for failing to impeach Ieppert with inconsistences between his instant trial testimony and his preliminary hearing testimony and his testimony from the two prior trials in this case; and (3) that it violates due process to base his conviction on the testimony of one witness.

The standard for granting an original writ of habeas corpus is set out in United States Supreme Court Rule 20.4(a).

> To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.

Petitioner has failed to show that exceptional circumstances exist that warrant the exercise of the Court's discretionary power to grant the writ.

First, petitioner's claims are successive and abusive. Although the Court left open the question of whether it was bound by the recent amendments to 28 U.S.C. §2244 which governs the review of successive and abusive claims, the Court indicated that the statutory standards "inform" its consideration of original habeas corpus petitions. Felker v. Turpin, 116 S.Ct. 2333, 2339 (1996). Regardless of whether the Court applies 28 U.S.C. §2244 or the abuse of the writ doctrines of McClesky v. Zant, 499 U.S. 467, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991), and Sawyer v. Whitley, 505 U.S. 333, 112 S.Ct. 2514, 120 L.Ed.2d 269 (1992), petitioner is not entitled to review of his claims. Additionally, petitioner's claims are barred by the one-year statute limitations in 28 U.S.C. § 224(d), are procedurally defaulted and/or are Teague-barred. Finally the claims are without merit. Thus, this Court should not grant a writ of habeas corpus or issue a stay of execution.

B. Procedural History and Facts

On May 29, 1982, James Chambers killed Jerry Oestricker.[1] Since then, three juries have convicted Chambers of capital murder, § 565.001, RSMo 1978, and sentenced him to death. State v. Chambers, 671 S.W.2d 781 (Mo. banc 1984); State v. Chambers, 714 S.W.2d 527 (Mo. banc 1986); State v. Chambers, 891 S.W.2d 93 (Mo. banc 1994).[2]

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[1] Although Chambers has asserted that he killed Oestricker in self-defense, he has never claimed that he is factually innocent of the murder. Cf. Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995).

[2] Chambers's first conviction was reversed by the Missouri Supreme Court because he did not receive a self-defense instruction. State v. Chambers, 671 S.W.2d at 784. This Court, *en banc*, reversed Chambers's second conviction finding that trial counsel was ineffective for failing to call James Jones as a witness at trial. Chambers v. Armontrout, 907 F.2d 825, 828-33 (8th Cir.) (*en banc*), cert. denied, 498 U.S. 950 (1990). Chambers's third trial was a windfall. At the collateral (continued...)

The facts of Chambers's crime, as found by the Missouri Supreme Court, were as follows:

> On May 29, 1982, Jerry Oestricker was in a bar. Heading for the restroom, he bumped into a member of the Turner family; an argument ensued. After the bar owner was summoned from home, he asked Oestricker and the Turners to leave. The Turners did, but Oestricker did not.
>
> About an hour later, Chambers arrived at the bar with one of the Turners and two other people. Those two stayed in the car, parked facing the road. Chambers carried a .38 caliber revolver.
>
> Chambers and Oestricker argued. The bar owner told them to leave. Chambers started to leave, then turned and said to Oestricker: "Come on out, you motherfucker. We'll settle this outside." Oestricker followed Chambers outside.
>
> Within seconds after both exited, people in the bar heard a gunshot. Chambers then repeatedly hit Oestricker (who had been shot in the heart) in the face with a gun. Chambers dragged Oestricker out of the doorway and shouted into the bar: "The rest of you motherfuckers want some of this?" Chambers then rode off, in the waiting car. Oestricker died of a gunshot wound.

State v. Chambers, 891 S.W.2d 93, 99 (Mo. banc 1994).

After direct and collateral post-conviction review by the Missouri Supreme Court following his third trial, Chambers filed a 28 U.S.C. § 2254 petition for writ of habeas corpus in the United States District Court for the Eastern District of Missouri on April 21, 1995. Chambers v. Bowersox, No. 4:95CV00710 CDP (E.D. Mo.). The case was transferred to the Western District. Chambers v. Bowersox, 95-0369-CV-W-6 (W.D.Mo.). The district court appointed counsel, and, on March 1, 1996, seven weeks before the President signed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) into law, counsel filed a "First Amended Petition for Writ of Habeas Corpus."

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[2](...continued)
post-conviction relief hearing following his third trial, Chambers testified that he was in full agreement with counsel's decision not to call Jones at the second trial, that he never wanted Jones to testify because Jones had changed his story and was vulnerable to impeachment, and that the decision to challenge counsel's failure to call Jones was simply a "tactic to use in the appellate system." Chambers v. State, CV192-1117CC, Transcript at 189-92 (Cole County, March 31, 1993).

Chambers v. Bowersox, 95-0369-CV-W-6 (W.D.Mo.) (Docket Sheet, Doc. 23). That amended petition contained 28 claims for relief, some of which contained additional sub-claims.

Chambers alleged, in relevant part, that trial counsel was ineffective for failing to impeach Fred Ieppert with inconsistencies between his testimony at the third trial and his testimony at the previous two trials, his testimony at the preliminary hearing, and his statements to police. Specifically, Chambers claimed that trial counsel should have cross-examined Ieppert on six purported inconsistencies: a) whether Chambers checked the gun before shooting the victim to see if it was loaded; b) the position of the victim when he was shot; c) the distance between the victim and Chambers when Chambers fired the gun; d) whether the victim ran or walked out of the bar after being challenged by Chambers; e) whether the victim had anything in his hand when he followed Chambers out of the bar; and f) whether Ieppert lost sight of the victim and Chambers when they exited the bar.

Chambers raised this claim in his Missouri Supreme Court Rule 29.15 motion. The motion court rejected the claim finding that:

> [d]efense counsel provided adequate and competent cross-examination of all state's witnesses including Fred and Norma Ieppert. The court notes that Fred Ieppert was a particularly difficult witness because of his age and hearing problems and care had to be taken so as not to alienate the jury by an overly aggressive cross-examination. Defense counsel did well with what was a difficult situation.

Chambers appealed this ruling, and the Missouri Supreme Court affirmed.

> Chambers next argues that trial counsel failed to effectively impeach Fred Ieppert with prior inconsistent statements from the two previous trials. The motion court denied this claim, finding cross-examination "adequate and competent". . . .
>
> Even under these conditions, the record shows that defense counsel did much to impeach Ieppert. Counsel established that Ieppert drank four beers on the night of the murder, impeached him several times with prior inconsistent testimony, highlighted mistaken direct examination testimony, and challenged Ieppert's

> memory. The motion court had the benefit of evaluating the effect of cross-examination on the jury. There is no evidence that trial counsel could have exposed additional prior inconsistent statements without alienating the jury.

State v. Chambers, 891 S.W.2d 93, 110 (Mo. banc 1994).

On March 12, 1997, the district court, applying pre-AEDPA law, denied Chambers's amended habeas corpus petition. Chambers v. Bowersox, No. 95-0369-CV-W-6 (W.D. Mo. March 12, 1997) (unpublished). The district court found Chambers's claim with respect to Ieppert to be without merit because there was "no material impeachment that could likely have overcome the thrust of the Ieppert testimony."

On June 23, 1997, Chambers filed an Application for Certificate of Appealability in the district court invoking 28 U.S.C. § 2253(c) and Fed.R.App.Pro. 22. Chambers v. Bowersox, No. 95-0369-CV-W-6 (W.D. Mo.) (Doc. 64). Chambers asked for permission to raise 13 of his 28 claims on appeal.

On July 7, 1997, the district court granted a certificate of appealability on 6 of the 13 claims, including the claim related to Ieppert. Chambers v. Bowersox, No. 95-0369-CV-W-6 (W.D. Mo.) (Doc. 67). The Eighth Circuit Court of Appeals affirmed the denial of habeas corpus relief in Chambers v. Bowersox, 157 F.3d 560 (8th Cir. 1998), cert. denied, 119 S.Ct. 2057 (1999). Specifically, with respect to the Ieppert claim, the court found as follows:

> Chambers also complains that his counsel ineffectively impeached Fred Ieppert, a witness for the State who provided some of the most damaging testimony against Chambers. Ieppert testified, inter alia, that Chambers, after challenging Oestricker to join him in settling their dispute outside, stopped and "checked" his gun to make sure it was loaded, suggesting premeditation. Ieppert had not previously testified to this, despite having given a statement to the police after the murder, and having testified during both previous trials and a preliminary hearing. There were other variations between Ieppert's testimony at the third trial and his earlier testimony, including how much time passed between Chambers's departure from the bar and the firing of the gun. As the Missouri Supreme Court noted, Ieppert was a

> difficult witness because of his age and hearing problems, and care had to be taken not to alienate the jury with an overly aggressive cross-examination. The District Court held there was no prejudice, and we agree. Any possibility that a few more questions asked of Ieppert would have produced a different result is remote.

Chambers . Bowersox, 157 F.3d at 568.

On February 22, 1999, before Chambers filed his certiorari petition from the Eighth Circuit's decision, this Court granted certiorari in Slack v. McDaniel, 119 S.Ct. 1025 (1999). Subsequently, Chambers filed his certiorari petition. This Court denied Chambers's certiorari petition on June 21, 1999. Chambers v. Bowersox, 119 S.Ct. 2383, 527 U.S. 1029 (1999).

In the meantime, on May 25, 1999, Chambers's wife, Darlene Chambers filed a criminal complaint in the Jefferson County, Missouri, Circuit Court, CR199-0938-F(3)A12, alleging that Fred Ieppert perjured himself during Chambers's trials. The Jefferson County Prosecuting Attorney reviewed the complaint and found insufficient evidence to initiate a criminal prosecution against Mr. Ieppert. The Presiding Judge of the Jefferson County Circuit Court dismissed the complaint on June 23, 1999.

On July 22, 1999, Darlene Chambers filed another criminal complaint in the Jefferson County Circuit Court, CR199-1247, again alleging that Ieppert perjured himself and raising additional claims of prosecutorial misconduct. On August 4, 1999, Jefferson County Circuit Court Judge Edward Williams ruled that a special prosecutor would be appointed to investigate the complaint. On August 9, 1999, Judge Williams appointed Morely Swingle, the Cape Girardeau County Prosecuting Attorney, as special prosecutor to investigate the allegations of perjury.

On August 30, 1999, the Missouri Supreme Court scheduled Chambers's execution for September 29, 1999. On September 4, 1999, Mr. Swingle requested the Missouri Supreme Court to stay Chambers's execution until completion of his investigation. On its own motion, the Missouri

Supreme Court re-scheduled Chambers's execution for November 10, 1999.

On October 18, 1999, after oral argument in Slack, this Court ordered that that case be recalendared and that the parties file supplemental briefs addressing two additional questions: "(1) Do the provisions of the AEDPA, specifically, including 28 U.S.C. § 2253(c) and 28 U.S.C. § 2244(b), control the proceedings on appeal? (2) If AEDPA does control the proceedings on appeal, may a certificate of appealability issue under 28 U.S.C. § 2253(c)?" Slack v. McDaniel, 120 S.Ct. 390 (1999).

Over a year ago, on October 25, 1999, Mr. Swingle issued his report concluding that the allegations of perjury against Fred Ieppert were wholly unfounded.

Based on this Court's October 18, 1999, order in Slack, Chambers filed a motion to recall the Eighth Circuit's mandate in his federal habeas case. Chambers argued that this Court's grant of certiorari in Slack, to consider whether 28 U.S.C. § 2253(c) controlled the proceedings in that appeal, called into question the Eight Circuit's decision in Tiedeman v. Benson, 122 F.3d 518 (8th Cir. 1997). The Eighth Circuit held in Tiedeman that the certificate of appealability provisions of 28 U.S.C. § 2253(c) could be applied to habeas petitions filed before the effective date of the statute. Tiedeman v. Benson, 122 F.3d at 520-22. Chambers argued that if this Court overruled Tiedeman in Slack, a portion of the Eighth Circuit's opinion in the instant case would be overruled and that he would be entitled to "rebriefing and reargument in his first habeas appeal." Based upon this potential for rebriefing and reargument, Chambers asked that his execution be stayed pending a decision in Slack.

A divided panel of the Eighth Circuit granted Chambers's requested stay of execution on November 4, 1999. Chambers v. Bowersox, 197 F.3d 308 (8th Cir. 1999). This Court denied

respondent's motion to vacate the stay. Bowersox v. Chambers, 120 S.Ct. 465 (1999).

On April 26, 2000, this Court decided Slack and held that the certificate of appealability provisions were applicable to appeals such as Chambers's filed before the effective date of the statute. Slack v. McDaniel, 120 S.Ct. 1595 (2000). As a result, on May 5, 2000, the Eighth Circuit vacated its previously imposed stay of execution.

On May 18, 2000, Chambers filed a "Petition for Emergency Stay of Execution Directed to Honorable Judge Richard Arnold from Darlene Chambers and James Chambers" and "Supplemental Suggestions in Support of a Stay of Execution Requesting Production and Inspection" in a 42 U.S.C. § 1983 suit filed by Chambers and other Missouri inmates that was pending in the Eighth Circuit. Tyler v. Carnahan, No. 99-3739 (8th Circuit). The § 1983 suit had been filed in the United States District Court for the Eastern District of Missouri on August 23, 1999. Tyler vs. Carnahan, No. 99-CV-1325 (E.D.Mo.). The complaint was dismissed as frivolous by the district court on September 30, 1999.[3] According to the district court's judgment, the § 1983 litigation did not involve Chambers's execution or any claim that Ieppert impeached himself. Chambers appealed to the Eighth Circuit. Tyler v. Carnahan, No. 99-3739 (8th Cir).

Chambers alleged in his motion for stay of execution that the State knowingly elicited perjured testimony from State's witness Fred Ieppert. Specifically, Chambers asserted that Ieppert perjured himself at Chambers's preliminary hearing when he testified that he was able to see Chambers and the victim through a window after they left the bar and that the State elicited this testimony from Ieppert at the preliminary hearing knowing it to be false. As a corollary claim,

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[3] See In re Tyler, 120 S.Ct. 455 (1999) ("As petitioner[, Melvin Leroy Tyler,] has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in non-criminal matters from petitioner unless the docketing fee . . . is paid. . . .").

Chambers argued that the State suppressed evidence and information that would have established Ieppert's perjury and permitted his impeachment at the third trial.

On July 7, 2000, the Eighth Circuit issued an order directing respondents to "file a response to the pending motions for stay of execution . . . . In particular, we would like the state to address the claim that Fred Ieppert testified falsely at the preliminary hearing." After receiving respondent's response, the court denied the request for stay of execution in the § 1983 suit on August 3, 2000. Tyler v. Carnahan, No. 99-3739 (8th Cir. August 3, 2000).[4]

On May 19, 2000, Chambers filed an application to file a second or successive federal habeas corpus petition in the Eighth Circuit. James Chambers v. Al Luebbers, 00-2252WMKC (8th Cir.). In that petition, Chambers alleged that Fred Ieppert perjured himself during the preliminary hearing--the same claim that was presented to the court in the May 18, 2000, motions for stay of execution filed in the § 1983 suit. Respondent filed suggestions in opposition to Chambers's application to file another habeas petition on or about June 7, 2000. The Eighth Circuit denied the application on July 24, 2000.

On August 22, 2000, Chambers filed another application to filed a second or successive federal habeas petition in the Eighth Circuit, again alleging that Ieppert perjured himself and that the State suppressed evidence. Chambers v. Luebbers, No. 00-3031 (8th Cir.). The court denied the application on September 6, 2000. Id.

After unsuccessfully litigating the Ieppert claim three times in federal court, Chambers, through retained counsel, filed a Missouri Supreme Court Rule 91 petition for writ of habeas corpus

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[4] The Eighth Circuit decided the appeal in that case on October 18, 2000. The court affirmed the dismissal of the § 1983 suit with respect to all defendants accept Bernard Bailey, finding the claims raised therein to be meritless. Tyler v. Carnahan, No. 99-3739 (8th Cir. Oct. 18, 2000).

in the Missouri Supreme Court on August 28, 2000, again raising the Ieppert claim. State ex rel. Chambers v. Allen D. Luebbers, No. SC82981 (Mo. banc). On September 1, 2000, the Missouri Supreme Court issued a show-cause order directing respondent to file suggestion in opposition to the petition. Respondent filed those suggestions on September 11, 2000. On October 3, 2000, the Missouri Supreme Court summarily denied the Rule 91 habeas petition. There is a certiorari petition from that judgment presently pending in this Court. Chambers v. Luebbers, No. 00-6925 (U.S.).

Thereafter, on October 5, 2000, the Missouri Supreme Court scheduled Chambers's execution for November 15, 2000.

On November 9, 2000, Chambers filed yet another application to file a second or successive habeas petition in the Eighth Circuit again raising the Ieppert claim and the claims contained herein. Chambers v. Luebbers, No. 00-3678 (8th Cir.). That application was denied on November 13, 2000.

C. Discussion

1. The application of 28 U.S.C. § 2244(b) to Chamber's petition does not have an impermissible retroactive effect.

Chambers contends that the gate-keeping provisions of 28 U.S.C. § 2244(b), which control the filing of successive habeas corpus petitions, cannot be applied in this case because their application has an impermissible retroactive effect. Chambers argues that because his first habeas corpus petition was filed before the effective date of the AEDPA, any future habeas petition wants to file is governed by pre-Act law. These contentions are without merit.

In Lindh v. Murphy, 521 U.S. 320,117 S.Ct. 2059, 138 L.Ed.2d 481 (1997), this Court held that the 1996 amendments to chapter 153 of Title 28, and more specifically, 28 U.S.C. § 2254(d), did not apply to cases that were pending at the time the Act became law. The Court held that such an application would violated proscription against the retroactive application of statutes as delineated

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IN THE
SUPREME COURT OF THE UNITED STATES

In Re:	)	
	)	**This is a capital case.**
JAMES W. CHAMBERS,	)	**Execution scheduled for**
	)	**November 15, 2000**
Petitioner.	)	
	)	**NO.** 00-7004
	)	

PETITIONER'S REPLY BRIEF IN SUPPORT OF HIS PETITION FOR A WRIT OF HABEAS CORPUS AND APPLICATION FOR STAY OF EXECUTION

Petitioner James W. Chambers states as follows in reply to the State of Missouri's opposition to his habeas petition and application for a stay of execution.

I. THIS CASE PRESENTS THE COURT WITH AN OPPORTUNITY TO RESOLVE A CONFLICT AMONG THE CIRCUITS REGARDING WHETHER THE APPLICATION OF THE SUBSTANTIVE GATEWAY PROVISIONS OF 2244(b) HAVE AN IMPERMISSIBLE RETROACTIVE EFFECT UPON A HABEAS PETITIONER WHO COULD PROCEED UNDER PRE-AEDPA LAW.

It can hardly be disputed that Mr. Chambers' original habeas petition presents a substantial question regarding the retroactive effect of the substantive gateway provisions of 2244(b). As noted in the original application, both the Third and Sixth Circuits have, in cases in a similar procedural posture to Mr. Chambers' case, held that the substantive gateway provisions have an impermissible retroactive effect.

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IN THE SUPREME COURT OF THE UNITED STATES

In Re:	)	
	)	**This is a capital case.**
JAMES W. CHAMBERS,	)	**Execution scheduled for**
	)	**November 15, 2000**
Petitioner.	)	
	)	**NO.** 00A431
	)	

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SUPREME COURT, U.S.

TO: The Honorable Clarence Thomas, Associate Justice of the United States Supreme Court and Circuit Justice for the Eighth Circuit

APPLICATION FOR STAY OF EXECUTION PENDING DISPOSITION OF PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner, James W. Chambers, respectfully requests that the Honorable Justice Thomas in his capacity as Circuit Justice for the Eighth Circuit, pursuant to 28 U.S.C. § 2101(f), stay his execution pending this Court's disposition of petitioner's petition for a writ of habeas corpus that is being filed in conjunction with this application. In support of this application, petitioner states the following grounds:

1. Petitioner is a Missouri death row inmate who is challenging his conviction and sentence of death pursuant to 28 U.S.C. Section 2241. The procedural history of the case is set forth in the petition for a writ of habeas corpus that is being filed herewith.

2. As is more fully set forth in the accompanying habeas petition, petitioner believes that the issues presented here are substantial and would warrant this Court's

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