No. 03-7145

Supreme Court, U.S.
FILED
OCT 16 2003
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE LESTER EVANS

PETITION FOR WRIT OF HABEAS CORPUS
28 U.S.C. §2241

LESTER L. EVANS
PRO SE
09252-021 UNIT F
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 699
ESTILL, SC 29918

ISSUE PRESENTED

Petitioner is in custody in violation of his Fifth Amendment rights to due process of law where law enforcement misconduct influenced the deliberations of the United States Attorney in pursuing prosecution of petitioner by withholding statements of other defendants regarding petitioner, and by providing misleading information in agency reports to further conceal this evidence.

OPINIONS BELOW

United States v. Lester Lamont Evans, No. 97-8195, 130 F.3d 445 (Table)(11th Cir., November 3, 1997), Affirmed.

United States v. Lester Lamont Evans, Case No. CR296-16, Judgment in Criminal Case, entered March 10, 1997, Anthony A. Alaimo, United States District Judge

Lester Lamont Evans v. United States of America, §2255 Motion to Vacate, filed December 8, 1997; Denied June 16, 1998, Anthony A. Alaimo, United States District Judge; Certificate of Appealability Denied, August 31, 1998, Anthony A. Alaimo, United States District Judge; Certificate of Appealability Denied, United States Court of Appeals for the Eleventh Circuit, June 23, 1999; Application For Leave To File A Second Or Successive Motion To Vacate, Set Aside, Or Correct Sentence 28 U.S.C. §2255,§2244(b)(3)(A), Denied March 15, 2000, Eleventh Circuit Court of Appeals; Motion Pursuant To 28 U.S.C. §1651, "All Writs Act," Dismissed August 24, 2001.

STATEMENT OF JURISDICTION

This Court has jurisdiction to consider writs of habeas corpus pursuant to 28 U.S.C. §2241(a) and 28 U.S.C. §1651.

REASONS FOR NOT MAKING APPLICATION TO DISTRICT COURT WHICH APPLICANT IS HELD

Application was not brought in district court where applicant is held because district court where applicant is held is located in the Fourth Circuit and because petitioner has filed a previous §2255 motion. The Fourth Circuit adheres to 28 U.S.C. §2244 which requires second or successive habeas petitioners to meet certain requirements of showing either newly discovered evidence which establishes by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense, or a new rule of constitutional law made retroactive for collateral review by the Supreme Court (see In Re Vial, 115 F.3d 1192 (4th Cir. 1997)). This application must be certified by a panel of the appropriate court of appeals. Petitioner does not meet these statutory requirements, however, does make a prima facie showing of a denial of a constitutional right substantially affecting pretrial and trial proceedings. Section 2244 does not require a second or successive motion be certified by a panel of the appropriate court of appeals if the motion is filed directly to the Supreme Court.

CONSTITUTIONAL PROVISION

The constitutional provision relied on in this case is the Fifth Amendment's due process provision which states that no person shall be deprived of liberty without due process of law.

APPENDIX

DO NOT PUBLISH

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
NOV 03 1997
THOMAS K. KAHN
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 97-8195
Non-Argument Calendar

D. C. Docket No. CR296-16-2

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LESTER LAMONT EVANS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia

(November 3, 1997)

Before ANDERSON, BIRCH and CARNES, Circuit Judges.

PER CURIAM:

Appellant Lester Lamont Evans appeals his convictions for one count of conspiracy to possess with intent to distribute cocaine, one count of aiding and abetting possession with intent to distribute cocaine, and one count of carrying a firearm in connection with a drug trafficking offense. These charges arose out of a drug sting operation in which Evans' co-conspirators purchased one kilogram of cocaine, which was to be turned over to Evans, from an undercover agent.

Evans argues that as to the conspiracy and aiding and abetting convictions, there was insufficient evidence to show that he had the intent to distribute the cocaine, an element of both offenses. Because he claims that there was insufficient evidence to support his convictions on the predicate drug trafficking offenses, Evans also contends that his conviction for carrying a firearm during a drug trafficking offense should be reversed.

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the government and draw all reasonable inferences in the government's favor. United States v. Young, 906 F.2d 615, 618-19 (11th Cir. 1990). Evans acknowledges that this circuit has held that an intent to distribute drugs may be inferred from the possession of a large quantity of drugs. See, e.g., United States v. Gardiner, 955 F.2d 1492, 1495 (11th Cir. 1992). However, Evans argues that the possession of a large quantity of drugs alone, without

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
MAR 12 2002
THOMAS K. KAHN
CLERK

No. 01-15062
Non-Argument Calendar

D. C. Docket No. 01-00068-CV-2

LESTER L. EVANS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(March 12, 2002)

Before ANDERSON, Chief Judge, DUBINA, and COX, Circuit Judges.

PER CURIAM:

Lester L. Evans, a federal prisoner proceeding pro se, appeals the district court's dismissal of his petition for relief pursuant to the All Writs Act, 28 U.S.C. § 1651(a). He claims that his prior unsuccessful motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255, and our refusal to grant certification for a successive § 2255 motion, allowed the district court to issue any writ required to achieve justice.

The denial of a petition for a writ presents issues of law, which we review de novo. *See Sims v. Singletary*, 155 F.3d 1297, 1304 (11th Cir. 1998). The All Writs Act provides an avenue for relief when there are no other statutory remedies available. *See Pennsylvania Bureau of Corrs. v. U.S. Marshals Serv.*, 474 U.S. 34, 41-42, 106 S. Ct. 355, 360 (1985). A federal prisoner's challenge to his conviction is properly brought in a § 2255 motion, unless "the remedy by motion is inadequate or ineffective to test the legality of his detention," in which case he may be able to challenge his conviction pursuant to 28 U.S.C. § 2241. 28 U.S.C. § 2255. However, § 2255 is not rendered "inadequate or ineffective" because the motion is procedurally barred or the movant has previously filed a § 2255 motion, which was denied. *See Wofford v. Scott*, 177 F.3d 1236, 1245 (11th Cir. 1999). We have held that § 2255 is inadequate or ineffective only under a limited set of circumstances not present in

this case. *See Wofford*, 177 F.3d at 1244. Because Evans had a statutory remedy under § 2255, relief was not available pursuant to the All Writs Act.

Because a federal prisoner must challenge his conviction in a motion brought pursuant to § 2255, which was not rendered unavailable or ineffective because of Evans' prior, unsuccessful § 2255 motion, the district court properly dismissed his petition under the All Writs Act.

AFFIRMED.