Cover Sheet

Docket no: 03-9415

ORIGINAL

Supreme Court, U.S.
FILED
MAR - 3 2004
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IN THE SUPREME COURT

① OF THE United STATES Washington D.C.

Office of The Clerk
SUPREME COURT OF The united States
Washington. D.C. 20543-0001

"In re [RICHARD BELSER]" Petitioner

28 U.S.C §§ 2241 Writ of Habeas Corpus Petition

from Warden Gwendolyn Mosely" Respondent

The UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT of Alabama
Northern Division Civil Action No: 03-A-328-N

ON Petition For writ of
Habeas Corpus 28 U.S.C. §§ 2241

Pro: Se: Richard Belser
~~200~~ 200 Wallace Drive
Clio Alabama 36017
Easterling Corr. Facil.
AIS. 154937

Date Feb 14, 2004

Petitioner prepares his writ of Habeas Corpus 2241 as authorized under Rule 2012 to be prescribed by rule 14; pertinent quotation's of specific portions of the record or summary thereof, with specific references to the places in the record where the matters appear, e.g. court opinions ruling. Error's of the record, when petitioner does not have copy's of recorder.

Appeal and Error §1321 - habeas corpus
Exhausting other remedies.
the United States Supreme court will Review such habeas corpus proceedings on the merits where Petitioner failure to timely apply. See Darr v. Burford. 339 US 200, 204. 94 Led 761 70 S Ct 587. -4 Led 2d 355, 80 S Ct. 375.

RECEIVED
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SUPREME COURT, U.S.

Questions

(1) Isn't it not permissible, For a trial court to commit Error when they have Foreseeable knowldge at the ERROR at the court entering it renders that court without Subject matter Jurisdiction with Regard to that Aspect at the cause at ERROR, that is prejudicial In Substantial Evidence.

(2) IF Subject matter jurisdiction is thus Lacking MAY that defect be challenged in Alabama, After the time For Appellate review has expired, OR IS 2241 Habeas Corpus to this United States Supreme Court Washington D.C. the Appropriate Matter on the Issue at Subject Matter Jurisdiction

(3) IF the ERROR passing on the Subject matter of Jurisdiction of Voluntaryness at a Statement is impermissible Then For Lack at Subject matter Jurisdiction by the trial Court at Montgomery Alabama 36108 Prosecutor and Judge, may An Attack on this issue be successfully based on this ERROR at LAW, In Lack aff and want at Subject matter Jurisdiction at Voluntaryness at a Statement before it can be used For any Purpose at trial.

(4) IF its ERROR in determination at Law at Fact on a Silent Record on which the Determination at the Courts Jurisdiction in the Particulars case Depend. Then isn't it Also Error in the exercise at Jurisdiction, where the Court has General Jurisdiction at the case and the Person.

(5) Isn't It impossible For a defendant to have waived an objection. Stating that the trial Court does not have General OR Subject matter Jurisdiction, when Defendants Filed a motion to Suppress all Illegally obtained Statements Before Trial And that Issue was never ruled on during or before or after trial.

Even though defendants was Provided Attorneys and made numerous oral motion For Judgement at Acquittal and A motion For Judgement at Acquittal test the sufficiency at the Evidence, And thereby the Issue at Voluntaryness is Saved For Appellate Review.

(5)

Pro:se: Richard Belser States that in this concise Statement He sets Facts And Puts this court on Judicial notice as to those Facts In the Records

Question

(1) Isn't It Reversible Error. to not determine the Question of Law on the Issue of Voluntariness Before - A Statement Is Submitted to the Jury as Substantive Impeachment Evidence

Question

(2) Isn't It a denial of Effective of Assistance of counsel. when there is a conflict of Interest Between Client and Lawyer on direct appeal when First appellate Lawyer takes a Job as Secretary For the trial Sentencing Judge while handling your direct appeal, and that Lawyer Anna R. Harrison Acts as a Advocate For the State By Filing And Anders Brief in Favor of the State, And then Asks to be Excluded From Appellate Lawyer appeal process Because of conflict of interest and then She Is Allowed to be Excused But the Anders Brief She Filed Still Remains As Pro:se Richard Belser direct Appeals Briefs, in violation of process Due-process on appeal whereto:

Question

(3) Isn't It a denial of Effective of Assistance of counsel when Second Appellate counsel Filed with the Alabama court of Criminal Appeals A Letter Stating He Agree with the Last Attorney's Brief which was and Anders Brief.

When he had a meritious Issue is of Voluntarynesses Statement; Issue. which was never ruled on Before or during trial Even though a motion to Suppress all Illegal obtained Statements was Filed prior to trial.

whereto: in Brown v. Allen 344 US 443.97 Led 469 73 Sct 397 - where the Facts are in Dispute. the Federal court must Hold An Evidentiary Hearing if the habeas applicant did Recieve a Full And Fair Hearing in a State court either at the time of trial or in a collateral Proceeding. A Federal Evidentiary Hearing is mandatory - unless the State court has had Full hearing and Found Relevant Facts. the State court of Alabama. Has not Found Relevant Facts and no Hearing in State court or and collateral proceeding concerning voluntariness of statement

Docket no. _____

THE UNITED STATES SUPREME COURT
Washington D.C. Office of the
Clerk ... 20543-0001

In re [Richard Belser] Petitioner
v.s
Warden Qwendolyn mosely Respondent

Motion For 28: U.S.C. §§2241 Writ of ~~Habeas~~ Corpus Rule 12.2.

Come: I Now! Pro: Se: Richard Belser who Brings this court's attention to the Above Ingoing Styled motion And Petition For 28: U.S. §§ 2241 Writ of Habeas Corpus.

Whereto: I Ask This Court to Grant the motion For the Ingoing 28 U.S.C. §§2241 Petition For Writ of Habeas Corpus. For the Following Ingoing Reasons As Explained in next page on Issue of Rule 20.1 Show of Writs Aid of Courts Appellate jurisdiction, exceptional circumstances v Aux Rule 20.4(a) Reason no application made in District Court.

Whereto: this court Is put on Judicial notice as to the Record of Affirmed on direct appeal in Montgomery Alabama, where Alabama Court of Criminal Appeal Allowed Anna R. Harrison to withdraw as appellate counsel, Because of Client Lawyer conflict of Interest. And Left Anderson Brief And N. R. Harrison Filed, For Belser's direct Appeal, and Second attorney Tim Burgess Filed no merit Letter, and was ~~Allowed to~~ without draw on direct Appeal, And Criminal Court of Appeals of Montgomery Alabama Documents this In direct Appeal memorandum Filed ~~as~~ an unpublished memorandum opinion. Belser ~~v.s State~~ [CR-98-0188 May 5th 1999, - So. Ad. CR. App. 1999, I Ask that you take Judicial notice of That part of Alab. Criminal Courts of Appeals Record.

(9) # INEFFECTIVENESS OF COUNSEL, ON APPEAL.

Whereto: Prosse: Richard Belser Also, Stated that He Had Received Ineffective Assistance at two Appellate counselors.

when the First Counsel Anna R Harrison Had Conflict of Interest with Client Richard Belser. Because she was my 1st Appellate Lawyer, she Filed a no meritic Anders Brief in Favor of the State, And while she was on my Appeal She took a Job Working For my Sentencing Judge Sally Greenhaw As her Personal Secretary, which Prejudiced my Appeal, And she was Allowed to ... withdraw From my Appeal But her Anders Brief was left As my Appeals Brief in a denial of due Process, of Ineffective of Assistance of Appellate Counsel, Lawyer Client Conflict of Interest,

when Anna R. Harrison Left As Appellate Lawyer Because of Client Lawyer Conflict of Interest, then Her Anders Brief Should Not Have been Allowed to Stand As a Representation of my Appeal when there was a new Appellate Counsel Appointed Tim Burgess. who Stated He will File a letter, And He did File a letter Stating He Agree with the Anders Brief which was Already on File on my Appeal.

this was a Denial of due Process As Stated in memorandum opinion of the Criminal Court of Appeals at Montgomery, Alabama, case no. CR-98-0188 May 5th 1999) So-2d. (Ala.Crim App 1999. unpublished memorandum opinion Belser v. State)

this court has Full power to Review Any Issue that Is pointed or directed towards this attention And I ASK this court to Consider this matter. when Anders v. California 386 US 738, 18 L Ed 2d 493, 87 S.Ct. 1369. which Stated that counsel's bare conclusion, As Evidenced by his letter was not enough to portect an Advocate Lawyer Appeal.

Eskridge v. Washington Bd. of Prison Terms & Paroles 357 US. 218 2 L Ed 2d 1269 1270, 78 S.Ct. 1061 Such a procedure this court says "cannot be adequate substitute For the Right to a Full Appellate Review (386 US. 743)

Available to All Defendants who may not be able to afford such an Expense At Law (2 L Ed. 2d At 127) Amend 6, R 728

728. Failure to raise issues on appeal, Failure to set out Claims at Client who wants to prosecute appeal constitutes ineffective assistance at Counsel, Doyle v. United States (1983 CA. 9 Or) 721 F 2d 1195

First Appellate Lawyer Anna R. Harrison was in ... Ala. under Ala. C. Amend 73: Atty Lacey at Brief

Defendant pro se Richard Belser was denied right to Effective assistance at Appellate counsel although counsel prepared Brief as required under Rule that in Appointed Counsel must file Brief on anything in record that might Arguably support Appeal pro se with Attorney, namely Trial on the Issue of voluntariness of the Statement used at trial For impeachment purposes. Before the Voluntariness Issue was Decided and the Issue still has not been Decided Upon. Counsel did not As Advocate For defendant, Brief any issues on government Favor. And concluded that defendant Claims were meritless as Result at which defendant was left Proceed pro se to submit the State which had Aided Belser At Trial Appellate Counsel. Brief. when Pro se: Richard Belser had Conflict of Client Lawyer Interest Robinson Black. (1987 CA 8 Neb) 842 F.2d. 1 1988 488 US. 985 (102 L Ed. 2d 109. S.Ct. 541

p 18

Prose: Richard Belser v. States
That this court, the United States
Supreme Court at Washington D.C.
Has the Jurisdiction under the
Judiciary Act at Feb 5. 1867
C 28. § 114 Stat 385-386 387
28 U.S.C. 2241 Comb 6-66 be 39th
Comb 1st Session 87 [Bill no 605
makes and Enlarge the Privilege
of the writ Habeas Corpus in
Jurisdiction of the Judges of the
United States Supreme Court. It is
a bill of the Largest Liberty Cong
Globe. 39th Comb 1 Sess 4151 1866

This Supreme Court Held That
it is Error to dismiss the
Application For habeas corpus
without an evidentiary hearing
This Supreme Court First determ
An evidentiary hearing as one in
which one tried issues of basic,
primary, OR historical FACTS,
but not mixed questions of
Facts and law, which Require
the application of a legal
Standard to the Historical-Fact
determinations.

Whereto: this United States
Supreme court at Washington
D.C, Stated in the case at
Townsend v. Sain 372. U.S. 293,
9. L Ed 2d 770. 83 S. Ct. 745

On Appeal and Error § 806. -
Habeas Corpus § 121 - review at Fact
(19) on review at a State court Judgement
Conviction a defendant at Crime,
State Factual determination not Fairly
Supported by the Record are not Conclusive
at Federal Federal rights. And the
United States Supreme court will Correctly
Scrutinize the State court Record where
the Fundamental liberties of the person
are claimed to have been infringed
in determining the necessity of an
an evidentiary hearing in habeas
corpus proceedings instituted by a State
prisoner, the duty of a federal District Judge
in the same.

this United States Supreme court
has Consistently held that State
Factual determinations not
Fairly Supported by the Record.
Cannot be Conclusive at Federal
Exhibit. Fiske v. Kansas. 274 U.S.
650; Blackburn v. Alabama. 361 US
199, 208, 209 4. Led. 2d 242, 249,
80 S Ct 274 Where the Funda-
mental liberties of the person are
Claimed to have been infringed
the court must Carefully -
Scrutinize the State-Court
Record. See e.g. Blackburn
v. Alabama (US supra, -
v. Moore v. Michigan
355 US 155. 2 L ed 2d 167. 78
S Ct 191.

Whereto: A Federal evidentiary
Hearing is Required. it Stated
on an application For Habeas
Corpus Challenging a State court
Conviction of crime. Unless the
State Court trier of Fact has had
a Full hearing reliably Found the
relevant Facts It then listed
Six instances in which a
Federal evidentiary hearing
is Required:

(1) where the merits of the
Factual dispute were not
Resolved in the State hearing
(2) where the State Factual -
determination is not Fairly
Supported by the record as
a whole;
(3) where the Fact-Finding procedure
Employed by the State Court
was not adequate to Afford a
Full and Fair Hearing
(4) where there is a Substantial
allegation of Newly-discovered
evidence:
(5) where the material
Facts were not adequately
developed at the State
Court Hearing; or
(6) where For any Reason it
Appears that the State trier
of Fact did not Afford a
petitioner a Full and Fair Hearing

Classified to U.S. Supreme
Court Digest Annotated
Appeal and Error § 1562
- unconstitutional obtained
evidence.
(1.) Fahy v. Connecticut
11 Led 2d. 171.
a State Conviction at Comm
must be Reversed when
unconstitutionally obtained
evidence Prejudicial to the
defendant was erroneously
admitted at his trial
Appeal and Error § 1563 -
Unconstitutionally obtained
evidence - Prejudicial Er
(2) in determining whether
erroneous admission of
unconstitutionally obtained
Evidence at defendant's
trial in a State trial
was Prejudicial so as to
Require reversal of
the conviction of crime
the United States Supre
court is not concerned
with whether there was
sufficient evidence of
which the defendant
could have been convi
without the Evidence
complained of; the -
Question is whether
there is a reasonable
possibility that the
evidence complained o
might have contribu
to the conviction
wherefore: the State Court of
Montgomery Alabama DID
not Even rule on the issu
at Volunteer Times at the St
ment and there was A
motion to Suppress Illeal
Before trial By me prose
Richard Belser on Oct 23 199

SUPREME COURT OF THE
UNITED STATES WASHINGTON D.C.

Richard Belser
Pro:se
Petitioner

VS.

Warden
Gwendolyn Mosely et al
Respondentes

CASE NO. _____

AFFidavit of Pro:se Richard Belser in Support of 2
28 U.S.C. § 2241 Writ of Habeas Corpus Petition. to U.S. Supreme

Come:s Now: Pro:se Richard Belser: who States that He is a 49 yrs old Black male a
currently in the custody and care of Warden Gwendolyn Mosely. Here at Easterling Co
Facility. 200 Wallace Dr. Clio, Alabama 36017. Whereto: Pro:se: Belser is currently
Being Held on 2 Life Sentences Running current. For the charges of theft of Property 1st de
And attempted Assault 1st degree.

Whereto: Belser has Been Incarcerated on the Above Styled charges Since 1997. And
thereby. He Filed Before trial a motion to Suppress All Illegal obtained Evidence an
Said motion was never Ruled on Before nor During nor After trial on the Issue
Voluntaryness of a Statement. Belser Repeatly Asked For Judgement of Acquittal thru out the
trial. Whereto: Said Statement was used at trial For impeachment Purpose by the
officer who Stated He Solicited the Statement From Belser. And the Issue of Voluntar
was never Ruled on nor was there a miranda Predicate Laid. Statement was this Statem
made After You Promised threat or Violence or used trickery or deciet or the maker
the Statement's will was over borne. Did He Ask For Counsel. Did he Call You Bac
A Second time After You Broke the First Initial contact with him.

None of these Questions were answered in a Jackson v. Denno Suppression Hearing
on the Issue of Voluntarally. of the Illegally obtained and Illegal used Statement. the issue was
Heard Before the Jury. And the Judge Sally Green have Charged the Jury Before
it Retired that it was some Evidence Substantial Evidence As too A Statement
made to a Police office used as Evidence In testimony at this trial. And the
Jury. was Instructed on it's uses. For Impeachment Purposes. And they used it
to convict Pro:se. Richard Belser in a denial of due Process. where The
Statement was never Found to be Ruled Voluntary For use as of any type trial
Purpose's

Whereto: Belser had Filed a motion to Suppress All Illegally obtained Statement
Before trial. Whereto For the trial court not to Rule on the motion By have
a hearing out side the presence of the Jury. It was a due process violation
of 4.5.6.14. Amendment. And in violation of Self incrimination. Because
Belser was questioned About the Statement in Front of the Jury Before it was
Ruled on As Inadmissible or admissible as voluntary or Involuntary

Whereto: this clearly violates Alabama Rules of Evidence Rule 103 Ruling on evidence. - Where too: the Judge should have used a motion in limine to prevent the Jury from hearing the prejudicial evidence.

Whereto: on appeal, Belser was given Attorney Anna R. Harrison who filed and Anders brief and then took a job working for the sentencing Judge as a pers. secretary, and, thereby caused client lawyer conflict of interest, and she was allowed to withdraw from my direct appeal. But her Anders brief was left in place, as my direct appeals brief in violation of lawyer client conflict of interest when she left. then my appeal process should have been started anew. By the incoming attorney Tim Burgess. But second attorney Tim Burgess only filed a no merit letter agreeing with the Anders brief, when neither lawyer acted as appellate lawyer's advocates. By filing an anything in the record that has merits, and the issue of voluntariness of the statement was a meritorious issue that had never been ruled upon in violation of procedural due process of law. Alabama Rule's of Evidence Rule 103.

Whereto: Both appellate counsel's was ineffective of assistance of counsel in their individual capacity, and immediate relief of Habeas corpus 2241 should be granted because the State nor lower federal courts have given pro se Richard Belser any relief, and for this court not to use its inherent powers to grant relief would be a fundamental miscarriage of justice because the merits of what I complain of herein this affidavit can be seen on the face of the record.

(1) A motion to suppress all illegally obtained evidence is still in the State Court records filed before trial never been ruled on.

(2) on the initial appeal in the record, a letter from lawyer Anna R. Harrison to the criminal court of appeals stating she wish to withdraw because of client lawyer conflict of interest she took a job working for the sentencing Judge, and the appeals brief on record is that of attorney Anna R. Harrison who was allowed to withdraw because of conflict of client lawyer interest.

(3) the memorandum on direct appeal shows a letter stated filed by 2nd attorney Tim Burgess, and they excerted it as a brief in support of the Anders brief filed by attorney Anna R. Harrison who had client lawyer conflict of interest. Its so stated in the original memorandum and opinion filed on direct appeal. By the Alabama criminal court of appeals unity Alabama Belser v. State of Alabama CR-98-0188

* Conclusion *

All the incoming is clear error on the record's state and appeals court, and it was immediate 2241 Habeas corpus relief.

Done.

* Certificate of Service *

This is to certify that I pro se Richard Belser has filed and affidavit in support 28 USC 2241 writ of Habeas corpus. Done thru first class pre-paid prohibition mail. Sworn to under the penalties of perjury as true and correct.

Feb 14, 2004.

Respectfully Submitted
Richard Belser
200 Wallace Drive Clio Alabama 36017