Sussex II State Prison

No 03-5887

Supreme Court, U.S.
FILED
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Pg 1

IN THE

SUPREME COURT OF THE UNITED STATES

JUNE TERM 2003

DENNIS RAY GRAVES,
Petitioner,

V.

EDDIE PEARSON, Warden
Respondent.

PETITION FOR EXTRAORDINARY WRIT

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

U.S. SUPREME COURT PETITION FOR
EXTRA ORDINARY WRIT

DENNIS RAY GRAVES / 24427 Mossdale Lane
Waverly, Virginia 23891

QUESTION PRESENTED

A. Would it Violate Due Process to label a 2254 Habeas Corpus filing from a Coram Vobis, as being a ~~Successive~~ 2254 filing, when inturn Coram Vobis is to be the avenue to exhaust claims by 2254 never adjudicated because the claims Weren't of Trial Record substance? Would a prior filed 2254 Habeas on claims available effect a second habeas being the first Habeas, on the unexhausted unavailable Coram Vobis Claims?

PETITION FOR EXTRA ORDINARY WRIT TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, Dennis Ray Graves, respectfully Prays that A extra Ordinary Writ issue to review the judgement and opinion of the United States Court of Appeals for the FOURTH CIRCUIT entered in the above entitled Causes on March 25, 03

I.

The memorandum opinion of the Court of Appeals is attached to appendix A, along with the District Court and other opinions.

II.

JURISDICTION

The opinion of the U.S. Fourth Circuit was filed March 6, 2003. The jurisdiction of this court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 2254(1).

IV.

STATEMENT OF FACTS

The year of 1982 Petitioner, Dennis Ray Graves, went to trial in the Montgomery County Circuit Court, of Christiansburg, Virginia. There were numerious Court errors that would not be introduced at Graves 1982 Jury Trial. The errors were not of record substance to be preserved for appeal purpose, herefrom, the record of Graves trial would not reflect the stated errors, from stated there would be no way for Graves Habeas Corpus Counsel to incerporate the errors on filing Graves first 2254 Habeas petition. Upon ~~Graves fiting a second or Successive Habeas~~ Corpus Graves would be procedurally barred or defaulted at the Courts choosing or discreation, the Courts Choice, not to give review to Graves second habeas filing. However, Graves would be intitled review by Coram-Vobis procedure. The Courts refuse to grant Graves Coram-Vobis, Coram-Vobis is for errors not of Trial-Record substance for preservation. However, on Graves-

- filing his "First" 2254 Habeas Corpus from a denial of Graves Coram-Vobis, the Habeas is labeled as a second or successive habeas filing, when inturn this is Graves first habeas corpus 2254 filing from the Coram Vobis. The U.S. District Court refuses to entertain [illegible] habeas, - The U.S. Fourth Circuit refuses to grant the District Court permission to entertain Graves habeas. Technically, Graves is being denied due-process in a denial of access to utilize the Courts of the United States. Graves Case is one intitles Graves release from prison. At Graves preliminary trial, as Graves is charged of Rape, the medical-examiner testified there was no rape, penetration, sex, bruises, or occurence of a sex-crime or indicated sex acts, however, the medical-examiner wasn't called to testify at Graves jury trial. Also, (2) two weeks after Graves trial, of preliminary stages, a Completely negative exculpatory DNA test returned. However, both the DNA test and Medical examiners testimony both completely exculpatory would be withheld from the jury members at Graves jury trial.

U.S. Fourth Circuit in Coles V. Peyton, 389 F. 2d 224 ruled cases as Graves must be reversed. 21 Am. Jur-2d-Criminal Law 225. The U.S. Fourth Circuit also found it to be ineffective Counsel to withhold exculpatory reports as Graves. see; Washington V. Murray, 952 F.2d 1472 (4th Cir. 1991). Also theres many other plain reversible errors in Graves Case that want be needed here to Show Graves is intitled reversal. Graves jury wasn't given Mandatory General Court instructions some 16 sets... Some 40 instructions Violated U.S. Code Rule 30, and U.S. Fourth Circuit rule local 30. Two or more instructions a case must be reversed, if the instructions aren't given or given wrongly. Graves wasn't present for Voir-Dire Selection mandates further Graves Case be reversed.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RECEIVED
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SUPREME COURT, U.S.

No. 02-7564

DENNIS RAY GRAVES,

Petitioner - Appellant,

versus

EDDIE PEARSON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (CA-02-1048)

Submitted: February 20, 2003 Decided: February 26, 2003

Before LUTTIG, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Dennis Ray Graves, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Dennis Ray Graves seeks to appeal the district court's order dismissing without prejudice, and as second or successive, his petition filed under 28 U.S.C. § 2254 (2000). An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2254 petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 534 U.S. 941 (2001).

We have reviewed the record and conclude for the reasons stated by the district court that Graves has not made the requisite showing. See Graves v. Pearson, No. CA-02-1048 (E.D. Va. filed Aug. 28, 2002; entered Aug. 29, 2002). Accordingly, we deny a certificate of appealability and dismiss the appeal. We further deny Graves' motion for the appointment of counsel. We dispense with oral argument because the facts and legal contentions are