No. 0210734

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

Supreme Court, U.S.
FILED
MAY 12 2003
OFFICE OF THE CLERK

In Re: PHILLIP REESE BUSH
PETITIONER

vs.

GEORGE TRENT, WARDEN
RESPONDENT.

PETITION FOR WRIT OF HABEAS CORPUS TO THE

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Phillip Reese Bush
Mount Olive Complex
One Mountainside Way
Box #5
Mount Olive, West Virginia

QUESTIONS PRESENTED

1. WHETHER THE COURT OF APPEALS ERROR IN REFUSING TO GRANT PETITIONER'S AUTHORIZATION TO FILE A SECOND OR SUCCESSIVE APPLICATION IN THE DISTRICT COURT AFTER PRESENTING A PRIME FACIE SHOWING THAT THE APPLICATION SATISFIES THE REQUIREMENTS UNDER 28 U.S.C. SECTION 106, AMENDING 28 U.S.C, SECTION 2244 (B).

2. WHETHER THE FOURTH CIRCUIT COURT OF APPEALS REFUSED TO GRANT PETITIONER'S SECOND OR SUCCESSIVE APPLICATION OF THIS COURT'S PRECEDENT IN STROMBERG V. CALIFORNIA, 283 U.S. 359, 51 S.Ct. 532 (1931), WHEN CONSIDERING PETITIONER'S APPLICATION TO THE DISTRICT COURT

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 7

CONCLUSION 15

INDEX TO APPENDICES

Appendix A	United States Fourth Circuit denial of second or successive application. March 25, 2003.
Appendix B	Order for Certiorari denied by United States Supreme Court. March 3, 2003.
Appendix C	Opinion of the West Virginia Supreme Court of Appeals denying Petition for Appeal. November 6, 2002.
Appendix D	First Order of the Circuit Court denial. December 3, 2001.
Appendix E	Second Order of the Circuit Court denial. January 17, 2002.
Appendix F	Third Order of the Circuit Court denial. March 13, 2002.
Appendix G	West Virginia Supreme Court of Appeal Order denying relief of direct appeal. January 11, 1984.
Appendix H	Circuit Court Order denying habeas relief . October 13, 1988.
Appendix I	West Virginia Supreme Court of Appeal Order denying Petition for Appeal. December 5, 1989.
Appendix J	United States district magistrate for the Northern District granting relief. May 24, 1991
Appendix K	United States district Judge adopting the magistrate's findings and recommendation. July 19, 1991.
Appendix L	Fourth Circuit in Bush v. Legursky, 966 F.2d 897 (4th Cir. 1992), reversed district court's decision and denied relief.
Appendix M	United States Fourth Circuit denied rehearing. July 8, 1992.

JURISDICTION

Petitioner filed a petition for authorization to United States Court of the Fourth Circuit to file a petition for a Writ of Habeas Corpus to the Northern District Court February 21, 2003. The Court refused to grant petitioner's authorization March 25, 2003. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 2241 and 2242 of the Habeas Corpus Act.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment Due Process, United States Constitution.

STATEMENT OF CASE

On September 19, 1982, the bodies of Charles Goff and Kathleen Williams were discovered in a car at Evergreen Cemetery in Fairmont, West Virginia. Both individuals having died from gunshot wound. There were no eyewitness accounts to what happened. However, the petitioner later became a suspect in the murder of both individuals. The petitioner was indicted on two counts of murder during the November, 1982 Term of the Circuit Court of Marion County, West Virginia. Upon the petitioner's Motion for Change of Venue, the proceedings were transferred to the Circuit Court of Ohio County, West Virginia. The State proceeded to trial on both counts under the felony murder rule. Petitioner was convicted and sentence to two life without mercy sentences to run consecutively.

Trial commenced on March 21, 1983. At trial, the principal nonscientific witness against the petitioner was Clarington Brown. Brown testified that while he and the petitioner were incarcerated together in Belmont county jail, the petitioner told him he was going to set-up victim Charles Goff and kill him. Tr. March 22, 1983, 2nd day of trial. Other State's witnesses throughout the three-day trial testified to the petitioner's alleged plan to obtain merchandise from Goff, his former bondsmen, and petitioner's anger toward Goff for not putting up money to get the petitioner out of jail. The petitioner was later bailed out by John Cox on September 14,

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
March 25, 2003

No. 03-126

In Re: PHILLIP REESE BUSH

Movant

O R D E R

Movant has filed a motion pursuant to 28 U.S.C. Section 2244 for authorization to file a successive application for relief.

The Court denies the motion.

Entered at the direction of Judge Luttig, with the concurrence of Judge Wilkinson and Judge Niemeyer.

For the Court,

/s/ Patricia S. Connor

CLERK

App. A

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

PHILLIP BUSH,

Petitioner,

vs.

CIVIL ACTION NO. 95-C-43
MARTIN J. GAUGHAN, JUDGE

GEORGE TRENT, WARDEN,
WEST VIRGINIA PENITENTIARY,

Respondent.

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OHIO COUNTY, WV

ORDER

Now before this court is an Amended Motion for Relief From Orders filed by Petitioner, Phillip Bush ("Bush"). Specifically, Bush moves this court to reconsider its previous rulings denying habeas corpus relief in this matter. In support of his amended motion, Bush submitted an affidavit of Mark D. Stolorow, a forensic scientist and Executive Director of Orchid Cellmark, formerly known as Cellmark Diagnostics ("Cellmark"). Mr. Stolorow believes that the court's previous rulings are factually erroneous in that (1) the court incorrectly distinguished between "seminal fluid" and "semen;" and (2) Trooper Midkiff's trial testimony was inaccurate. *See* Affidavit of Mark D. Stolorow dated February 22, 2002.

The court has carefully reviewed Mr. Stolorow's affidavit and the various Cellmark reports and has also carefully considered the alleged discrepancy between Trooper Midkiff's trial testimony and her earlier lab reports. Despite the alleged discrepancy, the court still maintains that Trooper Midkiff's testimony was not unfairly prejudicial to Bush. Trooper Midkiff never associated the fluid found on the swabs with Bush or any particular individual, nor eliminated anyone from consideration. The only possible effect that

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

CIRCUIT

PHILLIP R. BUSH,

'01 DEC 3 AM 8 47

Petitioner,

COURT OF OHIO COUNTY
BRENDA L. HILLER

vs. CIVIL ACTION NO. 95-C-43
MARTIN J. GAUGHAN, JUDGE

GEORGE TRENT, WARDEN,
WEST VIRGINIA PENITENTIARY,

Respondent.

O R D E R

Now before this court is a Supplemental Petition for Writ of Habeas Corpus filed by Petitioner, Phillip R. Bush ("Bush") pursuant to W. Va. Code § 53-4A-1 (2000). Bush believes that he should be entitled to a new trial since the State presented the erroneous testimony of Trooper Sabrina Gail Midkiff ("Trooper Midkiff") at his 1983 trial to support the State's theory that one of the murder victims was raped before being shot. Subsequently, Bush was convicted on two counts of felony-murder.

The court has carefully considered the instant petition, the exhibits, and other documentary evidence attached thereto, as well as the transcript of Bush's 1983 trial ("the record"), and the pertinent legal authorities. The court concludes, for the following reasons, that Bush's supplemental petition should be **DENIED**, and all relief requested therein is hereby refused.