Supreme Court, U.S.
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03-8878

CAUSE NO.

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 2003

IN RE: BOBBY RAY HOPKINS

PETITION FOR WRIT OF HABEAS CORPUS FILED AS AN ORIGINAL MATTER PURSUANT TO 28 U.S.C. SEC. 2241 AND FOR AN APPROPRIATE WRIT PURSUANT TO 28 U.S.C. SEC. 1651 (A)

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ISSUES PRESENTED

I.

This Court should resolve a split among the circuits – as well as panels of the Fifth Circuit – over whether a habeas petition that contains claims arising from unconstitutional state conduct that occurred during the administration of the sentence and after the disposition of a first habeas petition is "second or successive" within the meaning of 28 U.S.C. § 2244(b)(2).

II.

Whether the current method of execution used in Texas violates the Eighth Amendment to the United States Constitution as a Cruel and Unusual Punishment.

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In Re BOBBY RAY HOPKINS

The Petitioner, Bobby Ray Hopkins, respectfully prays that a writ of habeas corpus issue pursuant to this Court's jurisdiction to entertain original petitions for a writ of habeas corpus.

PROCEEDINGS BELOW

Mr. Hopkins filed a petition for habeas corpus in the Northern District of Texas [Dallas Division]. This petition was denied as a successor federal petition for writ of habeas corpus. 28 U.S.C. § 2244 (b).

JURISDICTION

This Court's jurisdiction is based upon 28 U.S.C. Sec. 2241; Rule 20.4 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651(a).

STATEMENT OF THE CASE

The State presented evidence that Mr. Hopkins had an argument over missing money with one of the victims approximately two weeks previous the murders. R. Vol. 21, 210-219. The victims' bodies were discovered on July 31, 1993 in an apartment belonging to one of the victims. There was extensive blood in the apartment. DNA testing revealed Mr. Hopkins' DNA was consistent with numerous samples. R. Vol. 23, 992-1003, Vol. 25 1090-1092, Vol. 25, 1111-1114. Two bloody towels from the victim's apartment were discovered in a culvert located between the apartment and Mr. Hopkins' home. R. Vol. 24, 710. Biological evidence on these towels was consistent with the victims and Mr. Hopkins. A knife was discovered outside the apartment and biological evidence on the knife was consistent with Mr. Hopkins.

Mr. Hopkins voluntarily approached he authorities in this case after learning they attempted to contact him. He was initially interviewed and gave his boots to authorities. Biological evidence on these boots was consistent with both victims and Mr. Hopkins. R. Vol. 22, 459. Mr. Hopkins was released but arrested shortly thereafter with regard to a probation violation.

The Fifth Circuit Court of Appeals summarized the circumstances surrounding Mr. Hopkins' interrogation:

In the weeks following the discovery of the bodies, while the State was developing the above evidence, Hopkins was ***held in isolation***. ... Apparently, it is unusual to hold such a violator in isolation. After ***fifteen days in isolation and eight interrogations by law enforcement officers*** (none of which resulted in a confession), the State called in Detective Tony Knott from New Mexico to just "talk" to Hopkins.

Hopkins considered Knott a friend and apparently the two have known each other for quite some time. Knott and Hopkins were taken to a small room on August 19, 1993, which Hopkins alleges was under the guise of letting the two of them "catch-up on old times." Prior to speaking, Knott claims to have read Hopkins his ***Miranda*** rights, though Hopkins claims not to remember this and the ***reading was not taped as required by Texas law***. During this talk, Knott made many statements to Hopkins indicating that he wanted Hopkins to tell him about the murders and that the talk was just between the two of them. During the course of this four-hour talk, Hopkins made incriminating statements, and Hopkins gave a videotaped interview to Knott. In this interview Hopkins stated that he went over to Marbut's and Weston's apartment around 4:00 or 5:00 a.m. He and Marbut began to argue, Marbut got a knife, a struggle ensued, and he ultimately stabbed her. Hopkins admitted that he was cut during the altercation and bled in the apartment.

Hopkins v. Cockrell, 325 F.3d 579, 580-582 (5th Cir. 2003) (emphasis added).

REASONS FOR GRANTING THE WRIT

Mr. Hopkins posits two issues to this Court: (1) that the method of execution in Texas is cruel and unusual and (2) that this claim can be brought as an original petition for writ of habeas in the United States District Court.

I.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

IN RE BOBBY RAY HOPKINS,
Petitioner,

On Original Petition for Writ of Habeas Corpus
and Application for Stay of Execution

RESPONDENT'S BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION TO ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS AND APPLICATION FOR STAY OF EXECUTION

Petitioner Bobby Ray Hopkins ("Hopkins"), a Texas death row inmate, through the instant habeas petition, challenges the constitutionality of the method of execution in Texas. However, Hopkins is arguably barred from raising the present claims because he cannot meet the requirements of 28 U.S.C. § 2244(b), which prohibit successive habeas actions in federal court absent special circumstances. Moreover, Hopkins' claim is procedurally barred because it was dismissed as successive by the Texas Court of Criminal Appeals and, as set forth below, is patently meritless. As a result, Hopkins' request for habeas relief and a stay of execution should be denied.

STATEMENT OF THE CASE

The Texas Court of Criminal Appeals affirmed Hopkins' conviction and sentence in an unpublished opinion on October 1, 1997. *Hopkins v. State,* No. 71,922 (Tex. Crim. App. 1997). Hopkins then filed a state application for writ of habeas corpus in the trial court relief. I SHTr 3-123.[1] The application was denied by the Court of Criminal Appeals based on the trial court's findings. *Ex parte Hopkins,* No. 38,173-01 (Tex. Crim. App. Sep. 16, 1998) at cover and Order.

On June 17, 1999, Hopkins filed a federal habeas petition in federal district court

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[1] "SHTr" refers to the state habeas transcript – the transcript of pleadings and documents filed with the court during state habeas proceedings – preceded by volume number and followed by page numbers. "RR" refers to the state record of transcribed trial proceedings, preceded by volume number and followed by page numbers. "Tr" refers to the transcript of pleadings and documents filed with the court during trial, preceded by volume number and followed by page numbers. "SX" refers to the numbered exhibits offered by the State and admitted into evidence at trial, followed by exhibit number.

essentially raising the same claims he presented on state habeas review. DE 6.[2] On September 28, 2001, the district court entered a judgment denying habeas relief. *Hopkins v. Cockrell*, No. 3:98-CV-2355-P (N.D. Tex.) at DE 18. Hopkins appealed this judgment to the United States Court of Appeals for the Fifth Circuit, which affirmed in a published opinion delivered on March 20, 2003. *Hopkins v. Cockrell*, 325 F.3d 579 (5th Cir. 2003). This Court subsequently denied Hopkins' petition for writ of certiorari on October 20, 2003. *Hopkins v. Dretke*, 124 S. Ct. 430 (2003).

Hopkins filed a second application for habeas relief in the United States District Court for the Northern District of Texas the day of his execution. Following a conference call, the district court dismissed the petition without prejudice. *Hopkins v. Dretke*, No. 3:04-CV-0300-N (N.D. Tex.). Thereafter, Hopkins appealed to the court below, but the court denied Hopkins application as a successive habeas petition. *Hopkins v. Dretke*, No. 04-70007 (5th Cir. 2004). Hopkins then filed the instant original writ petition.

STATEMENT OF FACTS

On the evening of July 30, 1993, Sandi Marbut and her nineteen-year old cousin Jennifer Weston had some friends over at their apartment, and Sandi drove the last guest home about 4:00 a.m. the next morning. 21 RR 125-37. Between 4:00 and 5:00 a.m., Hopkins entered the apartment. SX 205 at 52-53. Sandi was in the downstairs living room on the couch. 21 RR 54-55; 26 RR 1375, 1380. Hopkins attacked Sandi, stabbing and cutting her approximately forty times. 23 RR 668, 672; 26 RR 1375; SX 205 at 52-57. The evidence of defensive wounds indicated that she struggled and fought to survive. 23 RR 685. The evidence also indicated that she was probably conscious for several minutes during the

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[2] "DE" refers to federal district court docket, followed by entry numbers.