No. 006041

ORIGINAL

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

LEWIS E. BROWN, PETITIONER

VS.

N. BURL CAIN, WARDEN/RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS

RECEIVED
AUG 25 2000
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SUPREME COURT, U.S.

SUBMITTED BY:

LEWIS E. BROWN
LOUISIANA STATE PENITENTIARY
PRISON NO: 73428 - ASH - 1
ANGOLA, LOUISIANA 70712

QUESTIONS PRESENTED FOR REVIEW

1. Was it a violation of the petitioner's fundamental rights when clerk officials in Caddo Parish obstructed habeas corpus review by knowingly submitting fraudulent records to federal courts?

2. Does the Rule of Successive Applications apply in federal habeas applications when the State submitted false records and clerks forged a trial court judge's signature?

3. Was Defense Counsel ineffective when he failed to contemporaneously object to Racial Discrimination in the selection of Grand Jury Forepersons and did not object to an unconstitutional indictment brought persuant to La.C.Cr.P. Art. 413(B)?

4. Are courts duty bound by oath of office to rule on the constitutionality of a State Statute after a specific challenge to the constitutional validity of the Statute is properly challenged in State and Federal Courts?

STATEMENT OF THE CASE

In April of 1972, the trial court judge selected the grand jury foreperson prior to impaneling the other eleven jurors and the petitioner was indicted for violating LSA-R.S. 14:42, aggravated rape. The foreperson in Louisiana has exclusive control of the grand jury, calling and sitting at all meetings and casts an equal vote in the indictment process.

A jury trial was commenced on May 22, 1972. Twelve jurors and one alternate were selected. During the selection of the jury, the district attorney appointed the petit jury foreperson and dismissed the only Black person qualified to serve. The district attorney stated that he overheard the juror say something about the case. No qualification as to what the juror might have said or to whom the juror was speaking to, and no objection by defense attorney.

After the jury was completed and an alternate juror was qualified, the district attorney nodded to defense counsel and Mr. Peyton Moore, Esq., left the table where the petitioner was seated and had a conference with the district attorney.

Mr. Moore returned to the table where the petitioner was seated and stated: "None of your witnesses are available, and with that jury, the district attorney will get a conviction and you'll be sentenced to death."

After a brief discussion Mr. Moore further stated: "I can get you a plea

bargain for twelve and one half (12 ½) years." The petitioner accepted.

Afterwards, the attorneys and the court held a bench conference and judge Alexander dismissed the jury immediately calling the petitioner to the bench and the first question was asked.

Q. Mr. Brown, are you pleading guilty to aggravated rape?

A. No Sir, I'm not.

The State objected to petitioner's plea, and Judge Alexander asked defense counsel:

Q. Is that correct?

A. "Yes, it is."

The petitioner denied the factual basis. The judge completed the colloquy, asking if defense wanted a pre-sentence investigation; defense answered no. Sentencing was set for Friday, May 26, 1972. After lunch on May 22, 1972, the court was reconvened and in a separate hearing, the judge sentenced the petitioner to "life in Angola, subject to the provisions of the law."

The Provisions of the Law in Louisiana stated ten years and six months, if approved by the Warden and Secretary. Prison records showed June 1, 1982 as release date. In 1976, the petitioner learned that the Provisions of the Law affecting Life Sentences had been resolved by the courts to be invalid. On habeas, the state presented falsified records, and all claims thereafter submitted to federal courts were denied as successive petitions.

MINUTE ENTRY
June 19, 2000

FILED
USDC, WESTERN DISTRICT OF LA
ROBERT H. SHEMWELL, CLERK
DATE 6/27/00
BY CED

MAGISTRATE JUDGE ROY S. PAYNE
300 FANNIN STREET, SUITE 4300
SHREVEPORT, LA 71101-3087

SHREVEPORT DIVISION

LEWIS E. BROWN — CIVIL ACTION NO.00-0211

versus — JUDGE WALTER

BURL CAIN, WARDEN — MAGISTRATE JUDGE PAYNE

* *

Petitioner, Lewis E. Brown, was ordered on March 7, 2000 to obtain authorization from the Fifth Circuit Court of Appeals to file a second or successive petition for habeas corpus relief in this Court, because Petitioner has already had one habeas petition (No. 77-0104) denied on the merits on June 14, 1977. See 28 U.S.C. § 2244(b)(3). Brown's petition was stayed for sixty (60) days in order to allow him to proceed in the Fifth Circuit.

The sixty (60) day stay period has ended and Petitioner has failed to obtain a certificate from the Fifth Circuit to proceed in the instant case.

Accordingly;

IT IS ORDERED that the petition submitted by Petitioner be **STRICKEN** from the record.

RSP

COPY SENT:
DATE: 6/27/00
BY: CED
TO: Sec'y
Brown

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-30311

U.S. COURT OF APPEALS
FILED
MAY 2 2000
CHARLES R. FULBRUGE III
CLERK

IN RE: LEWIS E. BROWN,

Movant.

Motion for an order authorizing
the United States District Court for the Western
District of Louisiana to consider
a successive 28 U.S.C. § 2254 application

Before REAVLEY, DAVIS, and STEWART, Circuit Judges.

BY THE COURT:

Lewis E. Brown, Louisiana state prisoner # 73428, requests that this court grant him authorization to file a successive 28 U.S.C. § 2254 habeas corpus application. Brown alleges that the selection of the grand jury foreperson violated his equal protection rights and that his counsel provided ineffective assistance by failing to challenge the selection of the grand jury foreperson. Although Brown relies on the Supreme Court decision of Campbell v. Louisiana, 523 U.S. 392 (1998), he has not made a prima facie showing that the Supreme Court has made this decision retroactive to cases on collateral review. See In re Smith, 142 F.3d 832, 835 (5th Cir. 1998). Since Brown has not made a prima facie showing that these claims comply with the requirements of 28 U.S.C. § 2244(b)(2), his motion is DENIED relative to them. The motion is DENIED relative to Brown's claim

that the district attorney falsified court records because he has raised this claim in previous federal habeas corpus applications. See 28 U.S.C. § 2244(b)(1).

IT IS FURTHER ORDERED that Brown's motion for the appointment of counsel is DENIED.