No. 03 6936

Supreme Court, U.S.
FILED
OCT 07 2003
OFFICE OF THE CLERK

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

In re Anthony Carl Lewis,

Petitioner,

ON PETITION FOR WRIT OF HABEAS CORPUS

In Pro Se
Anthony Carl Lewis E26732
480 Alta Road 13-213 Lower
San Diego CA 92179 0002
(619) 661-6500 Ext. 6313

RECEIVED
OCT 7 - 2003
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED FOR REVIEW

Whether this Court should grant the instant petition for writ of habeas corpus on a claim of actual innocence for the offenses of first-degree murder (two counts) and attempted murder (one count) which were sustained in state court in that the United States District Court for the Central District of California incorrectly affirmed the convictions in state court contrary to the decisions of this Court in Schlup v. Delo, 513 US 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995), and Herrera v. Collins, 506 US 390, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993).

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
APR 23 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ANTHONY CARL LEWIS,

Petitioner - Appellant,

v.

ROBERT J. HERNANDEZ, Warden,

Respondent - Appellee.

No. 02-56907

D.C. No. CV-02-07880-R
Central California
(Los Angeles)

ORDER

Before: HUG and RAWLINSON, Circuit Judges.

The request for a certificate of appealability is denied. *See* 28 U.S.C. § 2253(c)(2). All pending motions are denied.

If petitioner wishes to file a second or successive 28 U.S.C. § 2254 petition in the district court, petitioner must first move this court for an order authorizing the district court to consider that petition. *See* 28 U.S.C. § 2244(b)(3). If petitioner files an application in this court for the authorization order, petitioner must show that:

> (A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been

discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).

The Clerk shall serve on petitioner with this order a copy of the unofficial form successive petition request.

No motions for reconsideration, modification, or clarification of this order shall be filed or entertained.

NO. 03-6972

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
OCT 2 0 2003
OFFICE OF THE CLERK

IN RE WILLIAM SIMPSON BRUCE III

PETITION FOR WRIT OF HABEAS CORPUS

William Simpson Bruce III
C-73513, B2-215
P. O. Box 1040
Salinas Valley State Prison
Soledad, California 93960-1040
No Phone Number

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OCT 2 0 2003
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether I was denied due process of law and equal protection to the law in violation of the Fourteenth Amendment of the Constitution of the United States when the trial court denied me 18 months of presentence credit?

2. Whether the California Courts denied me due process of law in violation of the Fourteenth Amendment of the United States Constitution when they failed to apply the standards established By the California Supremem Court in People v. Bruner 40 Cal. Rptr. 2d 534 (Cal. 1995) to my case.

3. Whether I was denied due process of law by the U.S. Court of Appeals for the NInth Judicial Circuit in application for leave to file successive habeas corpus petition because 28 U.S.C §2244(b)(2)(B)(ii) requires that "...but ffor Constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense," and that my claim of denial of presentence credit, which ultimately resulted in 18 months of illegal restraint in violation of the laws and Constitution of the UNited STates, was "...a fundamental miscarriage of justice," but which is not relevant to "actual innocence?'

4. Whether avenue for relief should be codified to allow successive habeas filers to enter through the AEDPA "Gatekeeping Mechanism" pursuant to the "fundamental miscarriage of justice."

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 13 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

WILLIAM S. BRUCE, III,

Petitioner,

v.

DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS,

Respondent.

No. 03-71595

ORDER

Before: RYMER, THOMAS and SILVERMAN, Circuit Judges

The application for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition in the district court is denied. Petitioner has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

> (A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

No petition for rehearing or motion for reconsideration shall be filed or entertained in this case. *See* 28 U.S.C. § 2244(b)(3)(E).

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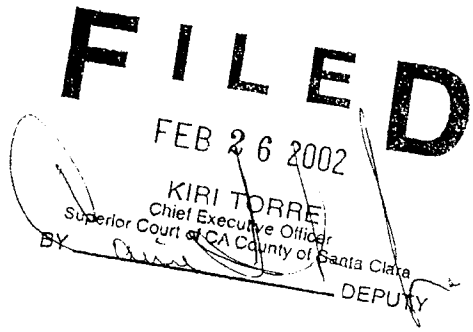
Appendix A
Exhibit



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re WILLIAM SIMPSON BRUCE III, On Habeas Corpus	No. 178021 **ORDER**

WILLIAM SIMPSON BRUCE III, (hereinafter Petitioner), petitions for a writ of habeas corpus alleging that he is entitled to presentence custody credits for time he spent in county jail. Because Petitioner served an unrelated violation of parole sentence during the time he spent incarcerated before sentencing his petition will be denied. At the time of sentencing in the present case Petitioner had served a twelve-month parole violation sentence that was imposed in part because Petitioner had failed to report to his parole officer.

"Upon sentence for a particular offense, a defendant is entitled to credit for all the time in custody prior to sentencing which is

Exhibit 12

attributable to that offense. (Pen. Code, § 2900.5, subd. (b).) Where custody is attributable solely to another offense, however, no credit is allowed." (People v. Odom (1989) 211 Cal.Ap.3d 907, 909-910.)

> [W]here a period of presentence custody stems from multiple, unrelated incidents of misconduct, such custody may not be credited against a subsequent formal term of incarceration if the prisoner has not shown that the conduct which underlies the term to be credited was also a "but for" cause of the earlier restraint. (People v. Bruner (1995) 9 Cal.4th 1178, 1194.)

Thus, "a prisoner is not entitled to credit for presentence confinement unless he shows that the conduct which led to his conviction was the sole reason for his loss of liberty during the presentence period." (Id. at 1191.) Where a defendant is in custody in two different cases,

> The first court to sentence should do so without regard to the other case, giving credit from the date the defendant was arrested on that case or a hold was placed due to it. Once that has been done, the defendant has been de facto sentenced to a term which commenced as of the arrest or hold date. When the second court imposes a sentence, if it ever does, it will not give credit for time already credited to the first sentence, avoiding duplicative credit. Thus, the defendant will receive credit once, and only once, for presentence custody time. (People v. Lathrop (1993) 13 Cal.App.4th 1401, 1405.)

It is the burden of the petitioner seeking pre-sentence custody credits to allege the facts and circumstances upon which he relies for the relief he seeks. (Compare In re Nickles (1991) 231 Cal.App.3d 415, 419 [petitioner seeking pre-sentence custody credits under Pen. Code section 2900.5 where the conduct credits are mixed has the burden of proving entitlement to credits].)

In the present case the additional actual days of custody credits that Petitioner seeks were counted as part of his violation

IN THE SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

vs.

WILLIAM SIMPSON BRUCE, DEFENDANT,

FILED

DEC - 6 1996

STEPHEN V. LOVE
County Clerk
Santa Clara County
BY CHRISTI L. ZAPIEN DEPUTY

REPORT OF
PROBATION OFFICER
No.: 178021
December 6, 1996
B. Field, D.A.
Pro Per

COURT DATA

SENTENCING COURT: Honorable Joseph F. Biafore, Jr.

COURT OF CONVICTION: Honorable Joseph F. Biafore, Jr.

CHARGE: Section 459/460(b) of the Penal Code (Second Degree Burglary)

With one prior felony conviction of Robbery (SCC #122653) within the meaning of Section 667(b)-(i)/ 1170.12 of the Penal Code (Strike Prior)

With three prior felony convictions within the meaning of Section 667.5(b) of the Penal Code (Prison Prior)

Prior #1: Unlawful Driving or Taking a Vehicle (SCC #167452)

Prior #2: Felon With a Gun (SCC #122653)

Prior #3: Burglary (SCC #89359)

DATE OF OFFENSE: November 25, 1994

DATE OF ARREST: November 25, 1994

CONVICTION: Found Guilty by jury verdict on November 5, 1996; priors found true by jury verdict November 6, 1996

CONDITIONS: None

REMAINING CHARGES: None

Exhibit 3-1