No 03-6093

ORIGINAL

Supreme Court, U.S.
FILED
AUG 06 2003
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NA'IM A. ABDUL-MATEEN, PETITIONER

VS.

CAROL HOWES, RESPONDENT

PETITION FOR A WRIT OF HABEAS CORPUS

BY: NA'IM A. ABDUL-MATEEN, IN PRO SE
MDOC NO. 148380
LAKELAND CORR. FACILITY
141 FIRST STREET
COLDWATER, MICHIGAN 49036

JULY 28, 2003

QUESTIONS PRESENTED

I. THE TRIAL COURT FAILED TO ARTICULATE ON THE RECORD ADEQUATE FINDINGS OF FACTS THEREBY, THE STATE COURTS DENIED PETITIONER DUE PROCESS IN FAILING TO ACKNOWLEDGE HIS CLAIM OF NEWLY DISCOVERED EVIDENCE THAT THE PROSECUTION WITHHELD FROM THE DEFENSE AN EXCULPATORY STATEMENT FROM RES GESTAE WITNESS MANDY WADE WHICH WOULD HAVE EXONERATED PETITIONER.

II. PETITIONER IS ENTITLED TO APPELLATE REVIEW WHEN HE RAISED A JURISDICTIONAL ERROR ON COLLATERAL APPEAL THAT THE TRIAL COURT WAS WITHOUT JURISDICTION TO HOLD AN EVIDENTIARY HEARING REGARDING A MISSING RES GESTAE WITNESS AFTER THE TIME ALLOTTED FOR DOING SO.

III: A BREAKDOWN IN THE APPELLATE MECHANISM RESULTED IN A LACK OF A FULL AND FAIR HEARING ON A FOURTH AMENDMENT CLAIM IN THE STATE AND FEDERAL COURTS.

No. _____

IN THE

SUPREME COURT FOR THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF HABEAS CORPUS ISSUE AFTER REVIEW OF THE JUDGMENT BELOW.

OPINIONS BELOW

STATE COURTS:

THE NOVEMBER 12, 2001, OPINION AND ORDER OF THE WAYNE COUNTY CIRCUIT COURT DENYING RELIEF FROM JUDGMENT APPEARS AT APPENDIX-A TO THIS PETITION AND IS UNPUBLISHED.

THE MAY 8, 2002 ORDER OF THE MICHIGAN COURT OF APPEALS DENYING APPLICATION FOR LEAVE TO APPEAL APPEARS AT APPENDIX-B TO THIS PETITION AND IS UNPUBLISHED.

THE DECEMBER 4, 2002 ORDER OF THE MICHIGAN SUPREME COURT DENYING APPLICATION FOR LEAVE TO APPEAL APPEARS AT APPENDIX-C TO THIS PETITION AND IS UNPUBLISHED.

FEDERAL COURTS:

THE MAY 22, 2003 ORDER OF THE UNITED STATES COURT OF APPEALS DENYING PETITIONER'S PETITION FOR AN ORDER THAT WOULD AUTHORIZE THE DISTRICT COURT TO CONSIDER A SECOND OR SUCCESSIVE HABEAS CORPUS PETITION UNDER 28 U.S.C. §2254 APPEARS AT APPENDIX-D TO THIS PETITION.

REASONS FOR ISSUANCE OF WRIT

EXCEPTIONAL CIRCUMSTANCES

PETITIONER SUBMITS THAT THIS PETITION IS BROUGHT PURSUANT TO S.CR.R. 20.4(A) AND EXHIBITS EXCEPTIONAL CIRCUMSTANCES WHICH JUSTIFIES THE GRANT OF WRIT OF HABEAS CORPUS AND THAT ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER COURT. THE REASONS ARE SET FORTH AS FOLLOWS:

1. A FAILURE IN THE STATE APPELLATE MECHANISM TO RECOGNIZE AND PROPERLY ADJUDICATE A CLAIM OF ACTUAL INNOCENT BASED UPON NEWLY DISCOVERED EVIDENCE OF A BRADY VIOLATION.

2. THE AFFIRMANCE OF PETITIONER'S CONVICTIONS AND SENTENCES WAS A RESULT OF THE TRIAL COURT BEING WITHOUT PROPER JURISDICTION TO HOLD AN EVIDENTIARY HEARING.

3. A BREAKDOWN IN THE APPELLATE MECHANISM RESULTED IN A LACK OF A FULL AND FAIR HEARING ON A FOURTH AMENDMENT CLAIM IN THE STATE AND FEDERAL COURTS.

STATEMENT OF THE CASE

PETITIONER, NA'IM A. ABDUL-MATEEN, WAS CONVICTED IN THE STATE OF MICHIGAN, CITY OF DETROIT, AND COUNTY OF WAYNE, OF FIRST DEGREE MURDER, MCL 750.316; MSA 28.548, ONE COUNT OF FELONY FIREARM MCL 750.227B; MSA 28.424(2) AFTER A JURY TRIAL IN THE WAYNE COUNTY CIRCUIT COURT, THE HONORABLE CHARLES KAUFMAN, PRESIDING (ON RETRIAL).

ON APRIL 13, 1983, PETITIONER WAS SENTENCED TO A TERM OF LIFE IMPRISONMENT, AND THE MANDATORY CONSECUTIVE TWO (2) YEAR TERM, RESPECTFULLY.

IN NOVEMBER, 2000, AFTER NUMEROUS APPEALS, PETITIONER FILED A MOTION FOR RELIEF FROM JUDGMENT IN THE TRIAL COURT. THE ISSUE RAISED WAS:

DEFENDANT IS ENTITLED TO NEW TRIAL BASED ON EVIDENCE WHICH WAS NEWLY DISCOVERED AFTER THE TIME OF FILING HIS PREVIOUS MOTION.

IN FEBRUARY, 2001, PETITIONER SUPPLEMENTED HIS MOTION FOR RELIEF FROM JUDGEMENT WITH THE FOLLOWING ISSUE:

WHEN THE PROSECUTION FAILED TO SEEK AN EVIDENTIARY HEARING AFTER

THE DEFENDANT'S CONVICTION WAS REMANDED TO THE TRIAL COURT IN 1985, DEFENDANT WAS ENTITLED REVERSAL UNDER PEOPLE V. PEARSON, 404 MICH. 698 (1979).

In September, 2001, Petitioner again supplement his original motion for relief from judgment with the following issue:

> DEFENDANT IS ENTITLED TO REVERSAL OF HIS CONVICTIONS AND SENTENCES WHERE HE DID NOT RECEIVE [A] FULL AND FAIR HEARING ON THE ISSUE THAT THE SEARCH IN HIS CASE VIOLATED THE UNITED STATES AND MICHIGAN CONSTITUTIONS.

On November 12, 2001 an Opinion and Order of the Wayne Count Circuit Court was issued denying relief from judgment.

The Opinion of the Court addressed the procedural aspects of determining the motion and finding:

> Defendant has not shown '(a) good cause for failure to raise such grounds on appeal or [in] the prior motion, and (b) actual prejudice from alleged irregularities that support the claim for relief.' (Page-3 of Opinion and Order of the Court).

Though the trial court made reference to the four-prong standard of determining newly discovered evidence, it was only in reference to the mention in the motion of the waiver of the good cause requirement.

On May 8, 2002, an Order of the Michigan Court of Appeals was issued denying leave to appeal.

On December 4, 2002, an Order of the Michigan Supreme Court was issued denying application for leave to appeal.

On May 22, 2003, an Order was issued by the United States Court of Appeals for the Sixth Circuit denying Petitioner's petition for an order that would authorize the district court to consider a second or successive petition for writ of habeas corpus under 28 U.S.C. §2254.

No. 03-1033

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

MAY 22 2003

LEONARD GREEN, Clerk

In re: NA'IM A. ABDUL-MATEEN,

Movant.

ORDER

Before: BOGGS and DAUGHTREY, Circuit Judges; OBERDORFER, District Judge.*

Na'im A. Abdul-Mateen, also known as Ronald Bennett, has applied for an order that would authorize the district court to consider a second or successive habeas corpus petition under 28 U.S.C. § 2254. *See* 28 U.S.C. § 2244(b)(3).

Upon review, we conclude that Abdul-Mateen is not entitled to relief insofar as his proposed claim is based upon claims that were already decided against him in his prior § 2254 action. *See* 28 U.S.C. § 2244(b)(1); *Abdul-Mateen v. Hofbauer*, No. 98-2323, 2000 WL 687653 (6th Cir. May 19, 2000) (unpublished). Moreover, Abdul-Mateen has not shown that his proposed claim is based on new evidence or a previously unavailable rule of constitutional law that could be applied retroactively to his case. *See* 28 U.S.C. § 2244(b)(2).

Accordingly, the application for leave to file a second or successive § 2254 motion is denied.

ENTERED BY ORDER OF THE COURT

Clerk

*The Honorable Louis F. Oberdorfer, United States District Judge for the District of Columbia, sitting by designation.