No. 007334

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2000

Supreme Court, U. S.
FILED
DEC 4 2000

In re **WILLIAM WILLIAMS**
Petitioner

Versus

BURL CAIN, Warden
Respondent

PETITION FOR A WRIT OF HABEAS CORPUS

Respectfully Submitted By:

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SUPREME COURT, U.S.

William Williams #101793
CCR/TU Upper F 2
Louisiana State Penitentiary
Angola, Louisiana 70712

QUESTIONS PRESENTED FOR REVIEW

I.

Whether ***Campbell v. Louisiana***, _ U.S. _, 118 S.Ct. 1419, 140 L.Ed. 2d 551 (1998) is a new rule of constitutional law that was previously unavailable to Louisiana's *white* criminal defendants?

II.

Whether Federal District and Circuit Courts can apply ***Teague v. Lane***, along with other relevant Supreme Court pronouncements, to determine retroactivity of new rules announced by this Court, rather than waiting for this Court to make a specific explicit retroactivity determination of each new rule of Constitutional law?

III.

Whether the new rule of constitutional law announced by this Court in ***Campbell v. Louisiana***, ___ U.S. ___, 118 S.Ct. 1419, 140 L.Ed. 2d 551 (1998) has been made retroactive by this Court to petitioners seeking collateral review of their convictions under ***Teague v. Lane***, 489 U.S. at 319, 109 S.Ct. at 1080 (1989)?

IV.

Whether petitioner's due process and equal protection rights were violated by the systematic exclusion of blacks from appointment to the position of grand jury foreperson?

V.

Whether Louisiana Code of Criminal Procedure, Article 413(B) is unconstitutional as written and applied?

VI.

Whether petitioner's court appointed attorney rendered ineffective assistance when he failed to challenge the Louisiana grand jury selection process prior to trial by motion to quash the indictment?

PARTIES TO THE PROCEEDINGS IN THE COURTS BELOW

PETITIONER:

1. **William Williams #101793**
   CCR/TU Upper F 2
   Louisiana State Penitentiary
   Angola, LA 70712

RESPONDENT:

2. **Burl Cain**, Warden
   Louisiana State Penitentiary
   Angola, LA 70712

3. **Michael Harson**
   District Attorney, 15th Judicial District
   Courthouse, 800 Buchanan St.
   P.O. Box 3306
   Lafayette, LA. 70502-3306

4. **Richard Ieyoub**
   Attorney General, State of Louisiana
   P.O. Box 94095
   Baton Rouge, LA 70804-9095

APPLICATION OF SUPREME COURT RULE 20.1

The United States Supreme Court Rules, Rule 20.1, provides that:

> "Issuance by the Court of an extraordinary writ authorozed by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

With this rule in mind, petitioner submits the following, to wit:

Issuance of this writ will aid in the Court's appellate jurisdiction in that it will clarify a dispute between the United States Appellate Courts, as well as expediating accurate and efficient implication of the Anti-Terrorism Effective Death Penalty Act of 1996. 28 U.S.C. § 2244(b)(2)(A) reads as follows:

> (2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—
>
> > (A) the applicant shows that 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; . . .

Currently, the United States Court of Appeal, Third Circuit, is interpreting this statute to mean that the United States Appellate Courts can rely upon this Court's rulings in cases such as ***Sullivan v. Louisiana*** and ***Teague v. Lane*** to say that this Court has "made" cases such as ***Cage v. Louisiana*** retroactive to cases on collateral review. This interpretation gives a broad meaning to the word "made" as it is used in the statute, allowing for a finding of retroactivity without an explicit ruling by this Court.

Contrary to the Third Circuit's interpretation, the United States Court of Appeal, Fifth Circuit has consistently held only an explicit ruling applying a particular case retroactive on collateral review

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS INVOKED

In May 2000, petitioner, William Williams, who is in the custody of the State of Louisiana, pursuant to the judgment of a state court, filed a motion in the Court of Appeals, Fifth Circuit, in accordance with 28 U.S.C. § 2244(b)(2)(C), requesting authorization to file a successive petition for a writ of habeas corpus.

In its opinion dated August 9, 2000, which is attached as Appendix "A", the Court of Appeal held that it would not permit the filing of a successive petition because Williams had not made the required *prima facie* showing that his motion was based on a new rule of constitutional law, made retroactive on collateral review by the Supreme Court, that was previously unavailable, or is based on newly discovered evidence which would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found him guilty. 28 U.S.C. § 2244(b)(2) & (3).

Consequently, petitioner Williams has no remedy at law save this Court's authority to issue a writ of habeas corpus, under 28 U.S.C. § 2241 and 28 U.S.C. § 2254. The dispute here is a proceeding seeking relief for an immediate and redressable injury, i.e., the wrongful detention in violation of the Constitution of the United States. Accordingly, in accordance with these statutes, and pursuant to this Court's opinion in ***Felker v. Turpin***, ___ U.S. ___, 116 S.Ct. 2333 (1996), petitioner, Williams invokes the original jurisdiction of this Court.

STATEMENT OF THE CASE

On June 19 and June 26, 1981, petitioner was charged by grand jury indictments in two Louisiana Parishes with the crimes of aggravated kidnaping, aggravated rape and armed robbery in violation of La. R.S. 14:44, 14:42 and 14:64. Petitioner was found guilty on May 31, 1983, by a twelve (12) person jury. Petitioner was thereafter sentenced to 2 Life sentences and 30 years without the benefit of parole or probation. Said conviction and sentence were affirmed on appeal. See, ***State v. Williams***, 445 So.2d 1264 (La. App. 3Cir. 1984), *writ denied*, 449 So.2d 1346 (La. 1984).

After the United States Supreme Court's mandate issued in ***Campbell v. Louisiana***, petitioner sought and discovered the races of the grand jury foremen in both parishes in which he had been indicted. Upon determining that both indictment were issued by grand juries infected with racial discrimination petitioner filed for state post-conviction relief. On June 4, 1999, the Louisiana District Court denied relief and petitioner sought review in the Court of Appeal. On October 18, 1999, the Louisiana Court of Appeal, Third Circuit, denied relief, holding that petitioner had failed to establish a prima facie case of racial discrimination. Petitioner then sought a Writ of Certiorari in the Louisiana Supreme Court. On June 2, 2000, the Court denied the writ without comment.

Having exhausted his State Court remedies, Williams turned to the United States Court of Appeals, Fifth Circuit. In July 2000, Williams filed a motion for an order authorizing the United States District Court, Western District of Louisiana to consider a successive § 2254 application. This petition raised the same ***Campbell*** claims that were raised in the state court proceedings. The Court of Appeals denied Williams' motion. The Court found that Williams had not satisfied the standards for authorization set forth in 28 U.S.C. § 2244(b)(2) & (3), as such Williams would not be granted authorization to pursue his Constitutional claim in federal court.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-30848

U.S. COURT OF APPEALS
FILED
AUG 09 2000
CHARLES R. FULBRUGE III
CLERK

IN RE: WILLIAM WILLIAMS,

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 REYNALDO G. GARZA, SMITH, and PARKER, Circuit Judges.

BY THE COURT:

William Williams, Louisiana prisoner #101793, seeks permission to file a successive 28 U.S.C. § 2254 petition. He wishes to assert that: (1) at the time of his conviction, Louisiana authorized trial judges to pick grand jury forepersons and blacks were systematically excluded from the role of foreperson by this practice; and (2) that he was denied the effective assistance of counsel due to counsel's failure to challenge the trial judge's discriminatory practice of appointing grand jury forepersons. Because Williams has not made a prima

facie showing that his claims rely upon a new rule of constitutional law that has been made retroactive by the Supreme Court or upon a previously unavailable factual predicate, the motion is DENIED. See 28 U.S.C. § 2244(b)(2).