00-5784

NO._____

Supreme Court, U.S.
FILED
DEC 6 1999
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

ORIGINAL

"In re OMAR DOOLITTLE, Petitioner,

vs.

DAVE DOREMIRE, Respondent."

PETITION FOR WRIT OF HABEAS CORPUS

TO THE UNITED STATES SUPREME COURT

THE EIGHTH CIRCUIT COURT OF APPEALS

Omar Doolittle

Omar Doolittle
Reg.#189762
Missouri Eastern
Correctional Center
18701 Old Highway 66
Pacific,MO. 63069-9799

Pro se

QUESTIONS PRESENTED FOR REVIEW

I. SHOULD ALL OF THE UNSEVERED COUNTS OF A CONVICTION RESULT IN A NEW TRIAL ON ALL COUNTS WHEN ONE OF THE COUNTS IS REVERSED ON A DEFECTIVE JURY INSTRUCTION, DUE TO THE OVER-LAPPING PREJUDICIAL AFFECT BASED ON THE SIMILAR COUNTS. IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS.

II. IS MISSOURI'S JURY INSTRUCTION DEFINING THE ELEMENTS OF FIRST DEGREE ROBBERY DEFECTIVE AND MIS-LEADING AND CONFUSING, THUS IN VIOLATION OF THE DUE PROCESS CLAUSE(S) OF THE FIFTH AND FOURTEENTH AMENDMENTS DUE TO THE LACK OF BOTH/EITHER A DISJUNCTIVE OR CONJUNCTIVE.

III. DID THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI ERR IN DECLARING A PROCEDURAL BAR EXISTED, PREVENTING THE DISTRICT COURT FROM REVIEWING THE MERITS OF THE PETITIONER'S INEFFECTIVENESS OF COUNSEL CLAIMS, EVEN THOUGH THEY HAD BEEN REVIEWED ON THE MERITS BY THE MISSOURI COURT OF APPEALS. IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS.

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JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was December 2,1998.

[x] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ on _____

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651, 2241, 2254

[x] For cases from **state courts:**

The date on which the highest state court decided my case was Feb. 21,1995. A copy of that decision appears at Appendix D.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

EXHAUSTION PURSUANT TO 28 U.S.C. 2254(b)

Per the requirements of 28 U.S.C. 2254(b), the petitioner has submitted documentary exhibits verifying that the claims that are submitted herein have been first submitted to the appropriate Court of Appeals in the State of Missouri, wherein they were addressed on the merits.

The petitioner then filed a petition for a writ of habeas corpus in the U.S. District Court, Eastern District of Missouri, where in was denied on January 21,1998.

The petitioner then filed a timely notice of appeal and a petition for a certificate of appealability. Both were denied by the district court on February 11,1998.

The Eighth Circuit Court of Appeals sustained the district court's denial of the petitioner's appeal, as well as his petition for rehearing/rehearing en banc.

THE REQUIREMENTS OF 28 U.S.C. 2241 & 2242

The "reasons for not making application to the district court of the district in which the applicant is held."

DISCUSSION

The reasons the petitioner is not submitting this habeas corpus petition to the district court in this district is that the petitioner has submitted a petition pursuant to 28 U.S.C. 2254. It was denied, and followed up by a later denial of petitioner's appeal by the Eighth Circuit Court of Appeals.

However, due to factors beyond the petitioner's influence and control prevented him from submitting a timely petition for certiorari.

STATEMENT OF THE CASE

The petitioner was tried by a jury in the Circuit Court of Greene County and convicted on November 12th, 1992, after the first trial ended in a mistrial on October 27,1992, on two counts of Robbery First Degree, one count of Armed Crimial Action, and one count of Attempted Robbery in the First Degree, based on the following facts as established at trial.

On October 16, 1991, a man entered a convience store in Springfield, Missouri, at approximately 3:00 a.m., and held a broken bottle up to the clerk and demanded that she give him all the money. This was recorded on a videotape. The victim handed over the money and was not harmed.

Later that very same day a mam entered a convience store and demanded the store's money from the cash register, pointing a knife at the store clerk. Again, the clerk here wasn't injured, and the robber left with the money.

Again, later that same day, a man entered another Springfield, Missouri convience store, and put something in the clerk's back, and threatened to kill him if he turned around.

However, the Clerk did turn around, and finding no weapon, the robber fled. The clerk was not injured. This incident was also recorded on videotape.

After investigating the crimes, and viewing the videos, the police compiled a photo-line-up, and petitioner was identified, and was later arrested.

Petitioner's attorney did not file a motion to sever prior to trial. He was identified by all three of the store clerks as the robber. Also, at the two Fast-N-Friendly stores the videos were also shown at trial, over the objections of the defense. The petitioner's defense was mistaken identity, and the petitioner's position was that the tapes were inconclusive, although the jury did hear a tape of the petitioner confessing. At trial the petitioner did not take the stand, and was offered initially a plea bargain of 20-years, but was advised by his attorney not to accept it.

Petitioner filed a timely notice of appeal, then filed his 29.15 postconviction motion alleging ineffectiveness of counsel, the most meritorious that counsel did not file a motion to sever. Relief was denied. And an appeal was filed.

Petitioner then filed his direct appeal, alleging most meritoriously that the attempted robbery jury instruction was defective, and that the motion court erred in denying postconviction relief. Direct appeal was denied on July 29, 1994. Petition for Rehearing, or Transfer was subsequently filed and denied. Thereafter, Transfer to the Missouri Supreme Court was filed, arguing that the attempted robbery instruction was defective. The Supreme Court of Missouri agreed and reversed the attempted robbery count, on February 21,1995.

5/19/97	--	Notice: Case referred to Pro Se office to Prisoner Pro Se (sb)
5/19/97	1	PETITION FOR WRIT OF HABEAS CORPUS pursuant to 28:2254 w/ req to proceed ifp (PROV filed pursuant to Court en banc Order of 12/3/68). Def's Order to pet w/Auth. Case Transferred from USDC Eastern District of Missouri Case no 97-CV-775-FRB (sb)
5/28/97	2	DEFECTS ORDER by Judge Gary A. Fenner P 411 724 538 w/ Auth (cc: all counsel) (ce)
6/2/97	3	REMARK: Signed Auth form of Doolittle (ce)
6/2/97	--	RETURN of certified receipt card bearing number P 411 724 538 addressed to Omar Doolittle showing receipt of order [2-1] on 5/29/97 (ce)
6/12/97	4	Inmate Accounting Information for petitioner Omar Doolittle (br2)
6/30/97	5	ORDER by Judge Gary A. Fenner that pet is granted ifp, and resp. show cause w/n 30 days .(cc: all counsel) (ce)
7/25/97	6	Response by respondent Dave Dormire to Order to show cause w/ exh. (ce) [Entry date 07/31/97]
8/1/97	7	ORDER by Judge Gary A. Fenner That pet. file a reply to the State's resp. w/n 30 days. (cc: all counsel) (ce)
8/21/97	8	Traverse by petitioner Omar Doolittle (ce)
1/21/98	9	ORDER by Judge Gary A. Fenner that this petition for a writ of habeas corpus is denied, and this case is dismissed with prejudice.terminating case (cc: all counsel) (ce) [Entry date 01/22/98]
1/22/98	10	CLERK'S JUDGMENT this petition for writ of habeas corpus is denied; case dismissed with prejudice. Entered on: 1/22/98 (cc:All Counsel) (ce)
2/9/98	11	NOTICE OF APPEAL by petitioner Omar Doolittle from Dist. Court decision [10-1] Filed 1/22/98 Entered 1/22/98 (ce)
2/9/98	12	MOTION by petitioner Omar Doolittle for certificate of appealability (ce)
2/11/98	13	ORDER by Judge Gary A. Fenner denying motion for leave to proceed on appeal ifp and certificate of appealability [12-1] (cc: all counsel) (ce)

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

OMAR DOOLITTLE, Petitioner,	)	
vs.	)	Case No. 97-3251-CV-S-4-P
DAVID DORMIRE, et al., Respondents.	)	

ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner brought this case under 28 U.S.C. § 2254 to test the constitutionality of his convictions in the Circuit Court of Greene County, Missouri, for robbery, armed criminal action, and attempted robbery. The Missouri Supreme Court affirmed petitioner's convictions for robbery and armed criminal action, reversed his conviction for attempted robbery, and dismissed petitioner's appeal from the denial of his motion for post-conviction relief. State v. Doolittle, 896 S.W.2d 27 (1995).

As grounds for relief, petitioner claims that he was denied effective assistance of counsel at trial and on appeal from the denial of his motion for post-conviction relief. See Doc. No. 8 (traverse in which petitioner most clearly sets out his claims).

Regarding petitioner's complaint about trial counsel, "[a] habeas petitioner is required to pursue all available avenues of relief in the state courts before the federal courts will consider a claim." Sloan v. Delo, 54 F.3d 1371, 1381 (8th Cir. 1995), cert. denied, ___ U.S. ___, 116 S.Ct. 728 (1996). "If a

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APPENDIX C