No. 03-6734

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
AUG 27 2003
OFFICE OF THE CLERK

IN RE

LARRY MAJOR CLAY — PETITIONER

VS.

BETTY MITCHELL — RESPONDENT(S)

ON PETITION FOR AN EXTRAORDINARY WRIT TO

UNITED STATES DISTRICT COURT

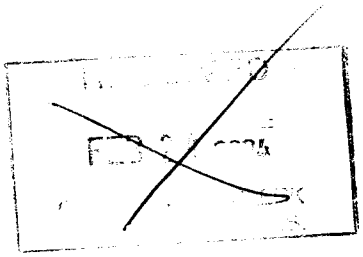
PETITION **FOR** WRIT OF HABEAS CORPUS

LARRY MAJOR CLAY

P.O.Box 8000

CONNEAUT, OHIO 44030

(440) 593-5000



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QUESTION(S) PRESENTED

WHETHER THIS CASE IS ONE OF SUCH IMPERATIVE PUBLIC IMPORTANCE WHEN AN AMERICAN CITIZEN IS DEPRIVED OF HER OR HIS CONSTITUTIONAL RIGHTS BY THE LOWER COURTS FAILURE TO FOLLOW THE MANDATE OF THE UNITED STATES SUPREME COURT TO MAKE AND JOURNALIZE A JUDICAL DETERMINATION OF THE PROPRIETY OF THE COURTS JURISDICTION AS A THRESHOLD MATTER BEFORE PROCEEDING AT ALL TO REACH THE MERITS OF THE CASE?

WHETHER THIS CASE IS ONE OF SUCH IMPERATIVE PUBLIC IMPORTANCE WHEN THE LOWER COURTS DECLINED TO DETERMINE AND OR ADJUDICATE THIS CASE ON THE MERITS WHEREIN THE RECORD REFLECTS THAT AN INNOCENT AMERICAN NEGRO HAD PROVIDED SUSTANTIAL CREDIBLE EVIDENCE SUPPORTING THAT THE CONVICTION WAS PREDICATED ON APPEAL TO KEEP IN THE DARK THAT COURT OFFICIALS IN THE STATE OF OHIO BELITTLED A PUBLIC SERVANT'S RACIAL MOTIVATED ASSAULT AGAINST HIM AND CONCEALMENT RATHER THAN DISCLOSURE OF KNOWN MANUFACTURED MATERIAL EVIDENCE?

LIST OF PARTIES

THE NINTH DISTRICT COURT OF APPEALS

Rather than determining whether or not, the lower Court had jurisdiction to try this case, instead, this Court stated, "... The court finds that the motion for reconsideration in this case neither calls attention to an obvious error nor raises an issue that we did not consider properly. This motion is denied." By referrence see: Ex. 013 (Found in the Record).

The date on which the highest state court decided my case was August 17, 1974. A copy of that decision appears at App. F.

A timely petition for rehearing was thereafter denied on the following date: April 9, 1997, and a copy of the order denying rehearing appears at App. F. The jurisdiction of the Court is invoked under 28 U.S.C. § 1257(a).

There are extraordinary circumstances present that warrant the use of this Court's discretionary powers.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

5th Amend.....13-51

6th Amend.....13-16-39-51-58

14th Amend.....13-39-48-51

ARTICLE I § 16..... 48

28-U.S.C. § 2254(d)..... 59

28-U.S.C. § 1746(2)..... 61

STATEMENT OF THE CASE

This is another wonderful american story, the rail-roaded conviction of Larry Major Clay ("Clay"), which arises from Clay's attempt, in pro se, to overturn his UnConstitutional criminal conviction; wherein, the record reflects that "in retaliation against Clay, A.P.D. officer John Lewis ("Lewis"), threatened further prosecution which consequently occurred when Clay became a suspect, in a drive-up shooting," by unfortunately choosing to get a ride from the Arlington Plaza (an human error), and where the questionable vehicle was pulled over by

Lewis. Thereafter, Clay, who was laying face down on the ground, when Lewis jammed his knee into Clay's back and severely beat him in his face and head, with a service revolver. (Drawing Blood). Furthermore, after Lewis' racial motivated assault against Clay, Lewis would be assigned to the case, as the prosecution's only Investigating Officer; whereas, Lewis withheld from his investigator's report, the eyewitness' account that supported Clay's innocence. Lewis manufactured material evidence against Clay that was in forms of Sworn Complaints and a Police Incident Report.

A True Bill Indictment was returned by the grand jury premised upon Lewis' falsified documentation and by, two (2) different signatures, supposedly was signed by the foreperson for the grand jury. All of which ultimately lead to a " sham trial" for charges of Attempted Aggravated Murder; Fleeing & Eluding; Carrying Conceal Weapon; & Resisting Arrest with Specifications.

In an attempt to belittle Lewis' violation of Clay's Federal Civil rights, the court appointed Defense Counsel, Paul R. Hoffer and the prosectuor, Roe Fox, who represented the state of Ohio and Summit County, both withheld exculpatory material evidence from the trier of facts, and with orchestrated perjuried testimony committed by the prosecutor's selected witnesses, an innocent American Negro (Clay), was rail-roaded into prison.

With substantial credible Evidence in support, Clay filed with the court of Common Pleas. a Petition for Wrir of error and a Petition for Post Conviction Relief. (Both actions denied).

The Ninth District Court of Appeals affirmed the conviction, the Supreme Court of Ohio declined jurisdiction, the United States District Court denied Habeas Corpus Relief, the Sixth Circuit Court of Appeals denied a Certificate of appealability, and never has clay's aforementioned series of events ever been determine or adjudicated on the merits.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LARRY MAJOR CLAY,	)	CASE NO. 5:00-CV-314
	)	
Petitioner,	)	
	)	
v.	)	Judge James S. Gwin
	)	
BETTY MITCHELL, Warden,	)	
	)	OPINION
	)	
Respondent.	)	

On February 2, 2000, Larry Clay filed a petition seeking a writ of habeas corpus. Under Local Rules 72.1 and 72.2 the case was assigned to Magistrate Judge Gallas. On August 24, 2001, Magistrate Judge Gallas issued his report and recommendation that Clay's petition be denied [Doc. 19]. Petitioner Clay filed a timely objection to Magistrate Judge Gallas's recommendation. After conducting an independent review of the petition, the Court finds no merit in Clay's objections and denies his petition for a writ of habeas corpus.

I.

In his report, the Magistrate Judge recommends denying Petitioner Clay's petition for habeas

APP A

corpus on the merits. As grounds for the denial, Magistrate Judge Gallas first says there was sufficient evidence to support Clay's convictions. The Magistrate Judge says Clay was not prejudiced by his original appellate counsel's failure to perfect an appeal because he was granted new counsel and given leave to file a delayed appeal.

With respect to Clay's trial, the Magistrate Judge says that the admission of a non-testifying accomplice's confession was harmless error because of the overwhelming evidence of his guilt. Additionally, Magistrate Judge Gallas says a prosecutor's derogatory comment during closing argument did not unfairly infect the trial. The Magistrate Judge also says Clay was not prejudiced by the prosecutor's withholding of the names of two eyewitnesses. Defense counsel was able to subpoena and interview the witnesses and use their testimony at trial.

Finally, Magistrate Judge Gallas says Clay received effective assistance of counsel during his trial. Specifically, trial counsel did not file a motion to suppress a statement made to the arresting officer because there was no real basis to support the motion. Nor was Clay prejudiced by the admission of the statement. Trial counsel did not err by failing to challenge the use of Clay's alleged uncounseled prior convictions at sentencing because the motion would have been futile. The Magistrate Judge also says the trial counsel's investigation and trial tactics were sufficiently part of a strategy to draw attention to inconsistent identification evidence.

Clay objects to the Magistrate Judge's report and recommendation. Clay says the Magistrate Judge did not consider evidence submitted in his petition. He also says the Magistrate Judge wrongly denied him an evidentiary hearing so that he could further develop evidence in support of his claims.

On January 13, 1993, Jamar Hooks pulled up outside DeAudra Donald's house. As Donald came

out of the house with her children, a brown car pulled in front of Hooks's car. Petitioner Clay and Stanley Hale jumped out of the brown car and started shooting at Hooks's windshield. Neighbors who saw the incident called the police. Officer John Lewis heard the bulletin on the police radio and began following the brown car. As Lewis pursued the car, he observed a gun that had been thrown into the street. He also saw a man jump out of the back door of the car and run away. Officers Donny Williams and Ronald Black heard the radio dispatch and joined in the chase. When the brown car stopped, first Hale, then Clay, emerged from the front passenger door and started running. Williams tackled Clay and Lewis arrested him. Motorists retrieved two guns from the street where the brown car had driven and turned them in to the police.

On April 7, 1993, Clay was convicted of aggravated murder, carrying a concealed weapon, failing to comply with a police officer's order, and resisting arresting. The Magistrate Judge's report lays out the lengthy appeals process Clay has conducted since his conviction. The Court notes that there is strong support for the respondent's argument that Clay procedurally defaulted his ineffective assistance of appellate counsel claim and failed to exhaust his state remedies on his other claims.

A review of the record shows that Clay raised his claims of ineffective assistance of trial counsel and insufficient evidence to support a conviction on his direct appeal to the state court of appeals. However, once the state court of appeals denied his direct appeal on August 17, 1994, Clay never appealed those issues to the Ohio Supreme Court or ever sought leave to file a delayed appeal to the Ohio Supreme Court. Therefore, Clay has not exhausted state remedies with respect to these claims. *See* 28 *U.S.C. § 2254(b); see also Rogers v. Howe*, 144 F.3d 990, 992 (6th Cir. 1998). A habeas petition presenting both exhausted and unexhausted claims must be dismissed. *Rockwell v. Yukins*, 217 F.3d 421, 423 (6th Cir. 2000) (citing *Rose v. Lundy*, 455 U.S. 509, 518–19 (1982)).

No. 02-3844

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LARRY MAJOR CLAY, Petitioner-Appellant, v. BETTY MITCHELL, Warden, Respondent-Appellee.	)	ORDER

FILED
JUL 08 2003
LEONARD GREEN, Clerk

Before: BOGGS and GILMAN, Circuit Judges; MARBLEY, District Judge.*

Larry Major Clay has filed a motion that has been construed as a motion for reconsideration of this court's order entered on April 9, 2003, which denied his application for a certificate of appealability.

Upon consideration, the court has concluded that it did not act under any misapprehension of law or fact in denying a certificate of appealability. Fed. R. App. P. 40(a). Accordingly, the motion for reconsideration is denied.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

*The Honorable Algenon L. Marbley, United States District Judge for the Southern District of Ohio sitting by designation.

APP. C