NO. 03-6851 ORIGINAL

Supreme Court, U.S.
FILED
AUG 19 2003
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD LEE BEACHUM - PETITIONER

VS.

ROBERT ULIBARRI Warden, - RESPONDENT

UNDER SECTION 2241

COMES NOW Petitioner Ronald L. Beachum pro-se pursuant to § 2241 and U.S. Supreme Court Rule 21. A, do dispose and State the following as reasons for this extra-ordinary Writ.

1. Petitioner has been incarcerated for more than twenty (20) years and during the course of said years, previous petition(s) for habeas Corpus per §§ 2254 & 2241 have been presented to the U.S. District Court of New Mexico and U.S. Court of Appeals of Colorado (10th Cir.) in reference to his Sentence being in violation of the Double Jeopardy Act and Due Process Clause and Equal Protection Clause to the U.S. Constitution, U.S. Supreme Court Doctrines and Congressional Act. All of said petition(s) were dismissed upon affirmative defenses, (i.e., Successive petitions, federal Court having no authority over State sentencing procedure and Statute of limintation, per AEDPA. had expired).

Jurisdiction is invoked under: 28 U.S.C. §1251(a), §1651(a)(b) 28 U.S.C. §2101(a)(c)(d) and 28 U.S.C. § 2106. In further Support to present petition Petitioner States the following:

[redacted] have filed previous petition(s) for Habeas Corpus under [redacted] U.S.C. § 2254 and § 2241 with respect to this Sentence.

a. NAME OF COURT: United States Dist. Ct. District of New Mexico
b. NATURE OF PROCEEDING: § 2254 Habeas Corpus
c. GROUNDS RAISED: Whether the Fifth Judicial District Court Violated the Double Jeopardy Clause. Whether the Fifth Judicial District Court erred in Sentencing on three (3) Consecutive Sentences for the Same act of C.S.P., erred in pronoucing Sentence adsent of petitioner.
d. RESULTS: Transferred to U.S. Court of Appeals (10th Cir.) for authorization to file Second or Successive petition and dismissed.
e. DATE OF RESULTS: October 16, 2000.
f. CITATION OR NUMBER of ORDER entered pursuant to such disposition: CV-99-1382

a. NAME OF COURT: United States Court of Appeals (10th Cir.)
b. NATURE OF PROCEEDING: Motion To Remand Case Back To District Court for improper transfer.
c. GROUNDS RAISED: The United States District Court improperly transferred this case after it had been filed and litigation had Commenced in Court one (1) year, U.S. Dist. Ct. improperly transferred case under § 2244(b)(3)
d. RESULTS: Denied authorization under 28 U.S.C. §2244(b)(3)(E).
e. DATE OF RESULTS: December 13, 2000.
f. CITATION OR NUMBER of ORDER entered pursuant to such disposition: No-00-2444

a. NAME OF COURT: United States Court of Appeals, Tenth Circuit
b. NATURE OF PROCEEDING: § 2241 on Sentence, Double Jeopardy Violation
c. GROUNDS RAISED: Whether a violation of the Double Jeopardy Act, occurred in Sentencing of Petitioner. Whether there was an error in Sentencing Petitioner on three (3) Successive Sentences for the Same act of C.S.P. Unlawful enhancement of Current Convictions on Sentence.
d. RESULTS: § 2241 petition Construed as a § 2254 Under (AEDPA) DENIED
e. DATE OF RESULTS: September 27, 2002.
f. CITATION OR NUMBER OF ORDER entered pursuant to such disposition: 02-2219

Petitioner is not represented by Counsel.

5. Name and location of Court which imposed Sentence:
FIFTH JUDICIAL DISTRICT COURT, Chaves County, Roswell, NM.

6. Indictment or Case number: CR-80-211

7. Offenses for which Sentence was imposed:
Two (2) Counts Criminal Sexual Penetration 1st degree, one (1) Count Aggravated Burglary, one (1) Count Armed Robbery

8. Date upon which Sentence was imposed and the terms of the Sentence: October 1, 1982, (18) yrs. (18) yrs. (9) yrs. (9) yrs. Amended Judgment & Sentence March 24, 1983, (22) yrs. (22) yrs. (13) yrs. (13) yrs. to run Consecutively.

9. A finding of guilty was made: After a plea of not guilty by a jury.

10. I did. appeal from the judgment of Conviction:

a. NAME OF COURT: New Mexico State Supreme Court
b. RESULTS: Denied
c. CITATION OR NUMBER OF OPINION: 16,734
d. DATE OF RESULTS: December 16, 1986
e. GROUNDS RAISED: Improper use of hypnosis, Prosecutor's Comments, Insufficient evidence, Due process, Ineffective assistance of Counsel, Equal protection, Fair trial, Confrontation rights.

11. Summary on Claims which Petitioner is being held unlawfully.

a. Ground one: Whether a violation of the Double Jeopardy Act occurred in the Sentencing of Petitioner

Supporting Facts: Sentencing on both Counts I and II of Criminal Sexual Penetration separately from only one (1) alleged act of C.S.P., There was no separation in time ever demonstrated for the purpose of running Sentences Consecutive or for Charging multiple felony Counts.

B. Ground two: Whether there was an error in Sentencing Petitioner on three(3) Successive Sentences for the Same act of Criminal Sexual Penetration.

Supporting Facts: Sentencing on Count III of Aggravated Burglary, separately which is based on the Same Criminal Sexual Penetration acts alleged in Counts I and II after being indicted under the Same element. Therefore Sentence Could not be joined together for the purpose of Conviction then Separated for the purpose of Sentencing.

C. Ground three: Unlawful Enhancement of Current Sentence

Supporting Facts: Petitioner has only one(1) prior Conviction in the year of 1974. Petitioner's Sentence was enhanced on each current counts I, II, III and IV by four(4) years in the Amended Judgment & Sentence as priors.

QUESTION(S) PRESENTED

1. WHETHER A VIOLATION OF THE DOUBLE JEOPARDY ACT OCCURRED IN THE SENTENCING OF PETITIONER ON TWO(2) COUNTS OF CRIMINAL SEXUAL PENETRATION FROM ONE(1) ALLEGED ACT OF C.S.P.?

2. WHETHER A VIOLATION IN SENTENCING PETITIONER SEPARATELY FOR CRIME OF CRIMINAL SEXUAL PENETRATION AND AGGRAVATED BURGLARY WAS DOUBLE JEOPARDY AFTER BEING INDICTED UNDER THE SAME ELEMENT?

3. WHETHER A VIOLATION OF DOUBLE JEOPARDY OCCURRED UNLAWFULLY BY ENHANCEMENTS OF PETITIONER'S CURRENT CONVICTION AS PRIORS?

4. WHETHER A VIOLATION OF DOUBLE JEOPARDY OCCURRED WHEN STATE DISTRICT COURT INCREASED PUNISHMENT AFTER SENTENCE HAD BEEN PRONOUNCED SIX (6) MONTHS AFTER PETITIONER BEGUN SERVING SENTENCE BY WAY OF AMENDED JUDGMENT SENTENCE AND COMMITMENT SHEET?

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RONALD L. BEACHUM, Petitioner, v. JOE R. WILLIAMS, Warden; ATTORNEY GENERAL FOR THE STATE OF NEW MEXICO, Respondents.	No. 02-2219

ORDER

Filed September 27, 2002

Before **TACHA**, Chief Judge, **KELLY** and **HENRY**, Circuit Judges.

Ronald L. Beachum, a state prisoner in New Mexico, has filed a pleading in this court entitled "Under 28 U.S.C. § 2241" which we construe as a request for authorization to file a successive 28 U.S.C. § 2254 petition. *See Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000) (petition challenging validity of state imposed sentence is to be filed under § 2254). We deny authorization.

Mr. Beachum challenges the sentence imposed in 1982 for two counts of first degree criminal sexual penetration, one count of armed robbery, and one count of

Appendix (E)

aggravated burglary, for which he was sentenced to consecutive terms totaling 70 years. He argues that the consecutive sentences violate the Double Jeopardy Clause and that the state trial court improperly enhanced his sentence.

To obtain authorization to file a second or successive habeas petition the movant must make a prima facie showing that the grounds set forth are based on either a new rule of constitutional law made retroactive on collateral review by the United States Supreme Court that was previously unavailable, or newly discovered evidence, the factual basis for which could not have been discovered previously through the exercise of due diligence, and which would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the underlying offense. *See* 28 U.S.C. § 2244(b)(2).

Mr. Beachum does not present any new evidence or cite to a new rule of constitutional law made retroactive on collateral review by the United States Supreme Court to support the filing of another § 2254 petition.

Accordingly, authorization is **DENIED**. This order is not subject to a petition for rehearing or a writ of certiorari. *See* 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court
PATRICK FISHER, Clerk of Court