03-5026

Supreme Court, U.S.
FILED
JUN 0 3 2003
OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
APRIL TERM 2003

TO THE HONORABLE SUPREME COURT JUSTICE ANTONIN SCALIA

RE: HUBBARD V COCKRELL, DIRECTOR, TDCJ-ID

U. S. DISTRICT COURT NO.
3:03-CV-0028-L
U. S. FIFTH CIRCUIT COURT OF APPEALS NO.
03-10217

BOBBY LEE HUBBARD

PETITIONER

VERSUS

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL APPLICATION FOR WRIT OF HABEAS CORPUS 28 U. S. C. § 2241

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
LAST COURT TO RULE ON PETITIONER'S CASE

BOBBY LEE HUBBARD 334817
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75886

Bobby L. Hubbard

Bobby Lee Hubbard 334817

QUESTION(S) PRESENTED

I

ACTUAL INNOCENT

Does not the state's star witness and complaint officer, Jerry Wayne Foster's testimony taken directly from petitioner's trial and appellate records and/or statment of facts reveal and shows as a matter of law that petitioner was entrapped by Foster, Foster's superiors and members of the District Attorney's office in petitioner's delivery convictions ; proving petitioner to be actually innocent of said delivery convictions cause numbers F82-75082-SIR and F82-83280-LIR.

II

DENIAL OF DUE PROCESS

Does not the Fifth Circuit Court of Appeals refusal to grant petitioner's motion for authorization to file a second or successive petition, that raises a claim and/or ground for relief that was unavailable to petitioner at the time petitioner filed his prior or previous habeas petition, deny petitioner due process, guaranteed petitioner by the United States Constitution Amendments 5th and 14th.

JUSTIFICATION IN THE COURT GRANTING EXTRAORDINARY WRIT

1

AID OF THE COURT'S APPELLATE JURISDICTION

In this petitioner's 28 U. S. C. § 2241 original application for writ of habeas corpus, petitioner contest and/or appeals to this Honorable Supreme Court, the unjust ruling issued by the United States Court of Appeals for the Fifth Circuit, denying petitioner's motion for authorization to file a second or successive petition.

Court's rules or,once the Appeals court deny a motion for authorization, petitioner can not file a motion for reconsideration, petition for rehearing, nor can petitioner petition this Honorable Court by writ of Certiorari; the only way this Honorable Supreme Court jurisdiction can be invoked is by and through an extraordinary writ, petitioner's 28 U. S. C. § 2241 writ of habeas corpus bestowed jurisdiction upon this Honorable Court; thereby in aid of the Court's appellate jurisdiction.

2

EXCEPTION CIRCUMSTANCES WARRANT THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS

Petitioner's actual innocent claim is brough under ground of evidence that this Honorable Supreme Court has yet to address or issue a decision and/or standards for the lower court to abide by.

Evidence previously known by petitioner, presented in two (2) prior petitions; first 2254 habeas raised as ground for relief number 4 denial of a defense [defense of entrapment a constitutional error], argued that testimony presented in open court by officer Jerry Wayne Foster proved entrapment as a matter of law; first 2254 habeas denied as being time barred (AEDPA) § 2244 (d); second 2254 habeas brought under Slack V McDaniels, 120 S. Ct. 1595 (2000); incorrect procedural ruling, ground for relief number 5 [denial of a defense, defense of entrapment and the proving of actual innocent] argues testimony of officer Foster proves entrapment as a matter of law; the Fifth Circuit denied motion for authorization to file a second or successive petition. The

Fifth Circuit denied this petitionere's second motion for authorization under grounds that, evidence was previously known by petitioner and has been raised in prior habeas petitions. SEE Fifth Circuit's order issued March 18, 2003, attached and made a xxxxx part of this instrument as exhibit (A)

Petitioner's evidence presnted in support of his actual innocent claim is not newly discovered evidence, evidence that has not been reviewed nor adjudicated on its merits, due to the fact petitioner's prior habeas petitions were dismissed under procedural default.

Thereby petitioner's actual innocent claim being brought under an issue of not newly discovered evidence, evidence previously know by petitioner, evidence raised in priors habeas petitions, an issue this Honorable Supreme Court has not addressed,; the ends of jusfice warrants the exercise of this Honorable Court's discretionary power.

3

) adquate relief can not be obatined in any other forn or from any other court

This petitioner's 28 U. S. C. § 2241 habeas is a contest and/or appeal of the United States Court of Appeals for the Fifth Circuit erroneously ruling denying petitionerès motion for authorization to file a second or successive petition; This Honorable Court being the only Court with jurisdiction and power to issue a direct order to the Fifth Circuit, making this Honorable Supreme Court of The United States the only court petitioner can obtain adquate relief.

4

HABEAS NOT FILED IN DISTRICT COURT WHICH PETITIONER IS HELD

Petitioner's complaint is against the United States Court of Appeals for the Fifth Circuit. The United States District Court for the Northern District of Texas does not have jurisdiction or power to issue a direct order to the Fifth Circuit. Therefore petitioner can not obtain relief from the District Court which petitioner is held.

REASON WHY THE HONORABLE JUSTICE SCALIA SHOULD GRANT AND PRESENT PETITIONER'S 28 U.S.C. § 2241 HABEAS TO THE JUSTICES OF THIS HONORABLE SUPREME COURT

Petitioner's main claim is actual innocent derived from the denial of a defense [defense of entrapment]; The Supreme Court's latest controlling case authority of an actual innocent claim is Schlup V Delo, 115 S. Ct.851, the court's decision in Schlup derived from newly discovered evidence,where you the Honorable Justice Antonin Scalia dissent and aver, that the court should have issued its decision in accordance to the requirements as set out by this United States Supreme Court in Sawyer v Whitely,112 S.Ct. 2514.

Petitioner's actual innocent claim is based on an issue of evidence that this Honorable Supreme Court has yet to address; evidence previously known by petitionerand presented to the lower federal courts in two (2) prior 2254 habeas, evidence that has not been reviewed nor dismissed on the merits, petitioner's two (2) prior 2254 habeas were dismissed under procedural default.

Petitioner affirmly maintains the testimony of officer Jerry Wayne Foster, the state's star witness and complaining officer, presented as evidence in support of petitioner's actual innocent claim shows and proves entrapment as a matter of law, thereby proving petitioner to be actually innocent of said delivery charges and/or convictions.

Petitioner asserts that the testimony of Officer Foster, presents evidence that fulfills the strict requirement as set out by this Honorable Supreme Court in Sawyer v Whitely, 112 S.Ct. 2514 [clear and convincing showing from the evidence presented in petitioner's trial that not for constitutional error a properly instructed jury would not have found petitioner guilty of said delivery charges and/or convictions cause numbers F82-75082-SIR and F82-83280-LIR.

STATEMENT OF THE CASE IN BRIEF

CHARGE	BRIBERY
CAUSE NO.	F82-75083-SIR
PLEA	NOT GUILTY
VERDICT	GUILTY BY JURY
SENTENCE	EIGHTEEN (18) YEARS TDC
CHARGE	DELIVERY OF HEROIN
CAUSE NO.	F82-75082-SIR
PLEA	NOT GUILTY
VERDICT	GUILTY BY JURY
SENTENCE	LIFE CONFINEMENT TDC
	$10,000.00 FINE
CHARGE	DELIVERY OF HEROIN
CAUSE NO.	F82-83280-LIR
PLEA	NOT GUILTY
VERDICT	GUILTY BY JURY
SENTENCE	LIFE CONFINEMENT TDC
	$10,000.00

PROCEDURAL HISTORY

February 23, 1998 petitioner filed his first 28 U. S. C. § 2254 habeas , United States District Court number 3:98-CV-0464-X with the Northern Division, Dallas, Texas; May 6, 1998 the District court entered a judgment, dismissing petitioner petition with prejudice as being time-barred 28 U. S. C. § 244 (d); petitioner gave notice of appeal, said notice was treated as a request for certificate of appealability; July 22, 1998 petitioner in support of his request for COA, filed petitioner's appellate briefs with the Fifth Circuit Court of appeals.

February 2, 1999 the United States Court of Appeals for the Fifth Circuit issued its order closing petitioner's appeal.