CAUSE NO.

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1999

FILED
JUL 26 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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IN RE: JUAN SORIA

PETITION FOR WRIT OF HABEAS CORPUS FILED AS AN ORIGINAL MATTER PURSUANT TO 28 U.S.C. SEC. 2241 AND FOR AN APPROPRIATE WRIT PURSUANT TO 28 U.S.C. SEC. 1651 (A)

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ISSUES PRESENTED

I.

WHETHER PETITIONER HAS SATISFIED THE REQUIREMENTS OF 28 U.S.C. § 2244 (b)(2) IN CONNECTION WITH HIS CLAIM THAT PETITIONER IS NO LONGER COMPETENT TO BE EXECUTED?

II.

WHETHER THE DENIAL OF LEAVE TO FILE A PETITION FOR WRIT OF HABEAS CORPUS VIOLATES ART. 1 SEC. 9 OF THE UNITED STATES CONSTITUTION?

III.

WHETHER THE EIGHTH AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT FORBIDS PETITIONER'S EXECUTION WHEN PETITIONER DOES NOT COMPREHEND THE NATURE OF THE DEATH PENALTY, DOES NOT UNDERSTAND THAT HIS EXECUTION IS IMMINENT, AND DOES NOT UNDERSTAND WHY HE IS TO BE EXECUTED.

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CAUSE NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

In Re JUAN SORIA

The Petitioner Juan Soria, respectfully prays that a writ of habeas corpus issue pursuant to this Court's jurisdiction to entertain original petitions for a writ of habeas corpus.

OPINION BELOW

The Court of Appeals for the Fifth Circuit did not issue an opinion on this case but merely issued an order denying Mr. Soria leave to file a successor writ of habeas corpus.

JURISDICTION

This Court's jurisdiction is based upon 28 U.S.C. Sec. 2241; Rule 20.4 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651(a).

STATEMENT OF THE CASE

Petitioner was convicted of capital murder under Tex. Penal Code Sec. 19.03(a)(2). The Texas court reversed and held the evidence to support the jury's finding of future dangerousness was insufficient. ***Soria v. State***, No. 69,679 slip op. (Tex.Cr.App. June 8, 1994) (per curium) (unpublished). In an opinion on the State's motion for rehearing, the Texas court affirmed Petitioner's conviction and reinstated the death sentence. ***Soria v. State***, 933 S.W.2d 46 (Tex.Cr.App.1996), cert. denied, 520 U.S. 1253, 117 S.Ct. 2414, 138 L.Ed.2d 179 (1997).

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Petitioner sought relief through a petition for a writ of habeas corpus filed in the United States District Court for the Northern District of Texas pursuant to 28 U.S.C. §2254. The District Court denied relief and refused to grant a certificate of appealability (hereafter referred to as COA) to Petitioner. Petitioner gave notice of appeal and sought a certificate of appealability from the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. §2253. On March 16, 2000, the Court of Appeals denied the Petitioner's application for COA in a published opinion, ***Soria v. Johnson***, 207 F3d 232 (5th Cir. (Tex.) 2000). Petitioner then sought relief in a petition for writ of certiorari filed in the United States Supreme Court. That Court denied the petition on July 25, 2000. ***Soria v. Johnson***, ___ U. S. ___, (No. 99-10042, decided July 25, 2000).

Petitioner sought to file a Subsequent application for writ of habeas corpus in the Texas Court contending he is presently incompetent to be executed. Attached to such writ was the written affidavit of Dr. Richard Schmitt, a licensed psychologist, who indicated that, in his opinion, Petitioner was incompetent. The Texas Court denied leave to file this post-conviction process. Petitioner then sought leave from the United States Court of Appeals for the Fifth Circuit to file a petition for writ of habeas corpus in the United States District Court for the Northern District of Texas. Again, petitioner's motion was denied.

REASONS FOR GRANTING THE WRIT

Mr. Soria posits two claims to this Court: (1) that he met the requirements of 28 U.S.C. § 2244 (b)(2) to file his petition for writ of habeas corpus and, (2) that the Eighth Amendment forbids his execution because he is currently unable to comprehend the nature of the death penalty, that his execution is imminent, and why it is that the State seeks to execute him..

As counsel for Petitioner prepared to submit a clemency petition on Petitioner's behalf to

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the Texas Board of Pardons and Paroles and Governor George Bush, an attempt was made to have the Petitioner examined by Richard C. Schmitt, Ph.D., a clinical psychologist for purposes of submitting that information to the Texas Board of Pardon and Paroles. Petitioner's clemency petition was based upon the historical basis for clemency, that is mercy or an act of grace, and sought to document a deterioration in Petitioner's mental and emotional condition while on death row.[1] By May of 1999, Petitioner began cutting himself with razor blades. This self mutilation resulted in several transfers to the Texas Department of Criminal Justice Institutional Division (hereafter TCDJ-ID) psychiatric unit at Jester IV. In a conversation with Petitioner on June 20, 2000, counsel advised Petitioner that Dr. Schmitt would come to interview him regarding clemency, and Petitioner had agreed to cooperate with Dr. Schmitt. In an attempt to evaluate Petitioner, Dr. Schmitt traveled to death row at the Terrell Unit in Livingston, Texas, on July 7, 2000.

Upon his arrival at the Terrell Unit, Dr. Schmitt was informed that Petitioner had cut himself and was in the process of being transferred to the Jester IV Unit (Petitioner did not know the precise day Dr. Schmitt would arrive). As a consequence, Dr. Schmitt drove to the Jester IV Unit in Richmond, Texas, in his continued attempt to evaluate the Petitioner. Because Petitioner did not arrive at that unit until late on the afternoon of July 7, 2000, Dr. Schmitt was denied the opportunity to evaluate Petitioner by TDCJ-ID.

Dr. Schmitt then arranged a telephone interview with Petitioner for Monday, July 10,

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[1] Since Martin Gurules' escape from Texas Death Row, conditions in the Texas prison have deteriorated. Prison industry was stopped. The prison went into "lock down status." Ultimately, all condemned men in Texas were transferred to a new prison unit wherein they are essentially in isolation. Petitioner's clemency petition sought to demonstrate the changes in petitioner's mental and emotional condition after these changes.

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2000. With the cooperation of TDCJ-ID staff at Jester IV, the call was completed, but was abruptly terminated. Although Dr. Schmitt suspected that the call was terminated by the Petitioner, Petitioner later denied terminating the call. In any event, the doctor was unable to evaluate the Petitioner before the deadline for supplementing the petition for clemency expired.

Up to this point, counsel did not believe that Petitioner was incompetent to be executed, although his numerous self mutilations did suggest he was mentally ill. Counsel had spoken with Petitioner on June 20, 2000, and at that time both Messrs. Harris and Taylor were present for that interview and neither believed that the Petitioner was incompetent to be executed under the standard of ***Ford v. Wainwright***, 477 U.S. 399, 106 S.Ct. 2595 (1986), or of TEX. CODE. CRIM. PROC. ANN., Art. 46.04[A].

During the latter part of the week of July 10, 2000, Mr. David Curl of the District Attorney's office of Tarrant County, contacted Counsel Taylor and asked Taylor to agree to allow the State's experts, Dr. Randall Price and Dr. Ann Turbeville, to interview Petitioner for the purpose of determining his competency. Taylor indicated that counsel Harris was the lead counsel herein and deferred any answer until Harris could be contacted (who was out of the state). By the time the matter could be addressed by counsel, the State sought a Court order from the state trial court allowing its experts access to Petitioner for purposes of an incompetency evaluation. Ultimately, a hearing was held on July 19, 2000, in Criminal District Court Number Four of Tarrant County, the convicting court, upon the state's motion. Mr. Harris participated in the hearing via telephone from New Mexico. On behalf of the Petitioner, Mr. Harris agreed to

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grant Drs. Price and Turbeville access to the Petitioner.[2] Dr. Price was to see the Petitioner later that afternoon, July 19, 2000. In exchange for this agreement, Mr. Harris was assured by the state that Mr. Soria would be kept at the Jester IV unit and Dr. Schmitt would be allowed to evaluate him on Friday, July 21, 2000. Mr. Taylor visited Petitioner on July 18, 2000, and instructed him to cooperate with all of the doctors and Petitioner agreed to do so.

On Wednesday, July 19, 2000, Dr. Price attempted to evaluate the Petitioner and Petitioner refused to cooperate. On July 21, 2000, Dr. Schmitt returned to Jester IV and Petitioner refused to speak to him or acknowledge his presence. Petitioner's sisters and mother visited with Petitioner over the weekend and reported to counsel that Petitioner's condition had further deteriorated. The family requested that Dr. Schmitt make another attempt to evaluate Petitioner. On July 25, 2000, the first day Dr. Schmitt had available to travel to the prison, he, in the company of Mr. Harris, traveled to the Terrell Unit to see if Petitioner would be persuaded to talk to Dr. Schmitt with Mr. Harris present.[3] After some initial hesitation, Petitioner (who had slashed himself again on the evening of July 23, 2000) participated in an interview with Dr. Schmitt. Dr. Schmitt's opinion of Petitioner's condition is contained in his affidavit which is attached hereto, and is incorporated for all purposes. Petitioner at this time does not appear to be competent to be executed. He does not understand that he is to be executed, that his execution is imminent or why he is to be executed.

I.

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[2] Ultimately, only Dr. Price would be sent by the state to examine the Petitioner, Dr. Turbeville having a conflict.

[3] Mr. Harris had represented Mr. Soria since 1996 and from longevity on the case had developed a greater level of trust with the Petitioner.

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IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. 38,470-02

EX PARTE JUAN SORIA, Applicant

ON PETITION FOR A WRIT OF HABEAS CORPUS AND MOTION FOR RELIEF UNDER ARTICLE 46.04[A] FROM TARRANT COUNTY

The order was delivered per curiam.

ORDER

This is a petition for habeas corpus relief filed pursuant to Article 11.071, Sec. 5, V.A.C.C.P., as well as under Article 46.04[A], V.A.C.C.P., in which Applicant contends that he is presently incompetent and cannot, therefore, be executed.

On July 1, 1986, Applicant was convicted of the offense of capital murder. Punishment was assessed at death. Applicant's conviction was affirmed on appeal. Soria v. State, 933 S.W.2d 46 (Tex. Crim. App. 1996), *cert. denied*, Soria v. Texas, 117 S.Ct. 2414 (1997). Applicant's execution is set for this date, July 26, 2000.

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Applicant has filed the instant application seeking a stay of execution in relation to a challenge to his competency to be executed under Article 46.04, V.A.C.C.P. The trial court has not entered a finding of incompetency but, rather, after a hearing, has entered findings of fact and conclusions of law in which it is found and concluded that Applicant has failed to meet his burden of proof required under the article in showing present incompetency in that he did not raise a substantial doubt as to his competency to be executed. Upon the finding and conclusion that Applicant has not met his burden of proof we deny his motion for stay of execution.

Applicant also filed this pleading under the authority of Article 11.071, § 5, V.A.C.C.P. We have reviewed the pleadings and find that they fail to satisfy an exception under Article 11.071, § 5, and, accordingly, dismiss the application for habeas corpus relief as an abuse of the writ.

IT IS SO ORDERED THIS THE 26TH DAY OF JULY, 2000.

En banc
Do Not Publish
Mansfield and Keller, JJ., not participating.

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CONCLUSIONS OF LAW

1. Soria's attempt to present his complaint under TEX. CODE CRIM. PROC. ANN. art. 11.071 is not cognizable. Such a claim is foreclosed by the adoption of TEX. CODE CRIM. PROC. ANN. art. 46.04. Moreover, such a claim does not attack the validity of his conviction and therefore, could never be a basis for habeas relief.

2. Even if Soria's habeas application were not barred, it is a subsequent writ.

3. The Court finds as a matter of law that Soria's motion under TEX. CODE CRIM. PROC. ANN. art. 46.04 does not raise a substantial doubt of Soria's competency to be executed.

THEREFORE THE MOTION IS DENIED.

Signed this the 26th day of July 2000.

JOE DRAGO, III,
Presiding Judge
Criminal District Court Number 4
of Tarrant County, Texas

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UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
JUL 26 2000
CHARLES R. FULBRUGE III
CLERK

No. 00-10799

IN RE: JUAN SORIA,

Movant.

Motion for an order authorizing the United States District Court for the Northern District of Texas, Fort Worth Division to consider a successive habeas 28 U.S.C. § 2254 application

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Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

BY THE COURT:

Movant, Juan Soria, has petitioned this Court for leave to file a subsequent petition for writ of habeas corpus in the district court and has also requested a stay of execution pending the determination of his proposed writ of federal habeas corpus. Upon consideration of his request, the motion for leave to file subsequent petition for writ of habeas is DENIED. See In re Davis, 121 F.3d 952 (5th Cir. 1997); 28 U.S.C. § 2244(b)(2). The motion for stay of execution is DENIED.

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