Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

IN RE: HANI E. KHOURI Petitioner

VS.

STATE OF IOWA SUB NOMINE; Respondent
JOHN AULT, WARDEN

PETITION FOR EXTRAORDINARY WRIT TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR EXTRAORDINARY WRIT

Hani W. Khouri
HANI W. KHOURI
ANAMOSA STATE PENITENTIARY
406 N. HIGH STREET
ANAMOSA, IOWA 52205-0010
Petitioner – pro-se

QUESTIONED PRESENTED

Was the Eighth Circuit Court of Appeals in error by considering Petitioner's Motion for equitable relief from judgment obtained by fraudulent representation, as an application for successive habeas corpus petition and denying relief?

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NO._____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 2003

HANI KHOURI **Petitioner**

Vs.

STATE OF IOWA SUB NOMINEE JOHN AULT, WARDEN **Respondent**

PETITION FOR EXTRAODINARY WRIT TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner, Hani Khouri respectfully, prays that an extraordinary writ issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit refusing Petitioner's motion to vacate, and set aside and equitable relief. This filing was considered and treated by the Court as a petition for authorization to file a successive habeas corpus petition in the District Court and as is such was denied on 11/4/2002. The Petitioner is serving a life sentence without any parole and without the Eighth Circuit authorization cannot petition the Circuit Federal Court for habeas corpus relief neither can obtain any adequate relief in any other form from any other court.

OPINIONS BELOW

The opinion of the Court of Appeals is an unpublished opinion and appears at Appendix A to this petition. The opinion of the United States District Court is an unpublished opinion and appears at Appendix J(3) to this petition. The opinion of the Iowa Supreme Court is reported at 503 N.W.2d 393 (Iowa 1993) and appears at Appendix S (3) to this petition.

JURISDICTION

The Court of Appeals' opinion in this matter was filed on 11/4/2002 and is set forth in Appendix "A". This Court's jurisdiction is invoked under title 28, U.S.C. 1254(1) and 28 U.S.C. 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 1 to the United States Constitution is set forth in Appendix U

Amendment 5 to the United States Constitution is set forth in Appendix U (1)

Amendment 6 to the United States Constitution is set forth in Appendix U (2)

Amendment 8 to the United States constitution is set forth in appendix U (3)

Amendment 14 to the United States Constitution is set forth in Appendix U (4)

STATEMENT OF THE CASE

The Petitioner herein request this court to issue an extraordinary writ based on the circumstances involved in the Petitioner's appeal process and his inability satisfactory relief due to the appellate court's misinterpretation of the Petitioner's filing in this matter.

On July 29, 1991 the Linn County District Court, herein charged the Petitioner via trial information with murder in the first degree.

The Petitioner was accused of killing Jacqueline Chancy on July 14, 1991. Mrs.Chancey was shot in her car in downtown Cedar Rapids, Iowa.

The case went to a jury on February 3rd., 1992; Defense Counsel failed to give notice of a diminished capacity defense, and as a result requested a jury instruction on the defense of "extreme emotional disturbance". At that time the defense was not recognized under Iowa Law, no motion was made to adjudicate the validity of the defense, nor was any notice of the defense given prior to trial.

The trial court rejected the proposed jury instruction of "extreme emotional disturbance" and trial counsel presented no other defense.

The trial court, as well as the jury instructions constructively amended petitioner's trial information and as a result, the offense of manslaughter as charged was elevated to first-degree murder.

The jury was further allowed to infer the elements of premeditation, deliberation, malice and specific intent where there was none, as none of these elements was charged in the trial information.

Despite the fact that no physical evidence was presented such as the fact that the Petitioner had the gun in his possession, or residue on the Petitioner's hand, or the Petitioner's finger prints on the gun, the Petitioner was found guilty of murder in the First Degree, and was sentenced to life in prison without parole, while the maximum punishment for manslaughter is five years in the State of Iowa.

A sentence "so out of proportion to the offense as to shock sentiment and violate the judgment of reasonable people" "would be cruel and unusual." **JACKSON v. UNITED STATES, 102 F.2d 473, 488 (Ca.9, 1900); TERRITORY v. KETEUM, 10 N.M. 718, 723, 65 P. 169, 171 (1901). (By the Honorable Justice Scalia) HARMELIN v. MICHIGAN, 111 S.Ct. 2680, 2695-96 (1991).**

The Petitioner then appealed his conviction claiming inter alia that the extreme emotional disturbance defense was improperly denied, and that the prosecutor had made improper comments and statements during closing arguments. The Petitioner further presented claims of ineffective assistance of trial counsel.

Although the Petitioner wrote his Appellate Counsel (Shari Barron) a letter on 12/20/92 and asked her, to raise the issue of the difference between the offenses charged and the conviction, she failed to do so. (Appendix P).

Petitioner's conviction was affirmed by the Supreme Court of Iowa on direct appeal, however the issue of ineffective assistance of trial counsel [which the petitioner raised and preserved] was then preserved for postconviction relief in order to allow the District Court to conduct an evidentiary process. **STATE v. KHOURI, 503 N.W.2d 393 (Iowa 1993).** (It should be noted here that in a pre-trial hearing, Petitioner told the Court he was incompetent to stand trial. Without any type of competency hearing or any type of lawful action or hearing the Petitioner was forced to stand trial.

Not only was the Petitioner incompetent at the time of the trial process, but the Petitioner also has a hearing handicap, and as he did not have his hearing aid, was unable to actively participate in the proceedings against him, and as such was unable to understand the majority of the proceedings.

REASONS FOR GRANTING WRIT

This petition meets all the conditions required by rule 20(1) of this Courts rules as explained below.

1. The writ will be in the aid of this Court's appellate jurisdiction for the following reasons:

a) The Eighth Circuit Court of Appeals judgment of 11/4/2002 (Appendix A) and considering and treating Petitioner's rule (60) of the Federal Rules of Civil Procedures motion for relief from judgment and equitable relief (Appendix A-1) as a successive habeas Application in the District Court and denial of authorization is in conflict with the Second Circuit Court of Appeals opinion in **RODRIGUES v. MITCHELL, 2nd. Cir. No. 99-2170 (L), 6/6/01**, as the Second Circuit stated, "THE GRANT OF SUCH A MOTION WOULD NOT HAVE THE EFFECT OF INVALIDATING THE state conviction, it would merely reinstate the previously dismissed petition for habeas corpus, opening the way for further proceedings seeking ultimately to vacate the conviction.

b) The Eighth Circuit judgment conflicts and is contrary to this Court's reasoning and holding in **HAZEL-ATLAS GLASS CO. v. HARTFORD-EMPIRE CO. 64 S.Ct. 997, 101 (1944)** as this Court stated "tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant, it is a wrong against the institution set up to protect and safe guard the public, an institution in which fraud cannot complacently be tolerated consistent with the good order of society." "Surely it can not be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent they must always be mute and helpless victims of deception and fraud."

HAZEL-ATLAS GLASS CO. v. HARTFORD-EMPIRE CO. 64 S.Ct. 997, 1001 (1994) and "a litigant who has engaged in misconduct is not entitled to the benefit of calculation which can be little better than speculation, as to the extent of wrong infliction on his opponent." **ROSIER v. FORD MOTOR CO. 573 F.2d 1332, 1346 (5th. Cir. 1978), citing MINNEAPOLIS ST. PAUL AND S.S. MARY RY. CO. v. MOQUIN 283 U.S. 520, 521-22, 51 S.Ct. 501, 75 L.Ed. 1243, (1931)** more important, the actor and wrongdoer in the above mentioned cases was not a public servant and State representative as in this case.

c) The judgment of the Eighth Circuit Court of Appeals of 3/5/2001, (Appendix K) denying Petitioner's request for certificate of appealability and dismissing his habeas corpus petition with prejudice for failure to make substantial showing of the denial of constitutional rights is based on the District Court order and certification of 12/14/2000 (Appendix J-3) "without reviewing any Sate records whether furnished mysteriously by Respondent upon Petitioner's request of the Court (Appendix T) docket no. 15 (Appendix T) or by Petitioner, docket no. 18 (Appendix T)." is in conflict with the Ninth Circuit Court of Appeals opinion in **HARRIS v. PULLEY, 692 F.2d 1189, (9th. Cir. 1982)** "Unless a District Court examines all relevant parts of State records, a Court of Appeals cannot affirm a district court judgment dismissing a habeas corpus petition." **HARRIS v. PULLEY, 692 F.2d 1189, (9th. Cir. 1982)**

EXCEPTIONAL FACTS AND CIRCUMSTANCES:

a) Petitioner is living under State of oppression, and almost twelve years serving a life sentence without parole for a crime he did not commit and charges were never made against him in the trial information, malice, premeditation, deliberation or specific intent as is required by section 707.1 and 707.2 of the Iowa Code for the offense to be a murder. (Appendix N)

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

HANI WADIH KHOURI,	)	
	)	
Applicant,	)	No. ~~5618~~ LA2 3847
	)	
vs.	)	
	)	RULING
STATE OF IOWA,	)	
	)	
Respondent.	)	

Hani Wadih Khouri (Khouri) filed a pro se application for post conviction relief on August 12, 1993. He was charged originally with first degree murder on July 29, 1991, in connection with the shooting of Jacqueline Lee Chacey on July 14, 1991. Khouri and Ms. Chacey were involved in a romantic relationship for several years prior to the shooting. Months before the shooting Khouri suffered many financial hardships and their relationship began to get rocky. From the evidence presented at trial it appears Applicant had Ms. Chacey followed and was quite jealous of her involvement with another man. Khouri shot Ms. Chacey five times while both of them sat in her vehicle. The shooting happened in the midst of downtown Cedar Rapids in the presence of numerous eyewitnesses.

Khouri was arrested and charged. The jury returned a verdict of guilt of First Degree Murder on February 12, 1992, and on February 21, 1993, he was sentenced to life in prison. He appealed and the Iowa Supreme Court affirmed his conviction on July 21, 1993.

Attorney Phil Mears was appointed to represent Khouri in the post conviction proceeding on August 18, 1993. The case was dismissed pursuant to Iowa Rule of Civil Procedure 215.1 on December 29, 1995, but reinstated by the court, since it had been set for trial on February 14, 1996. A motion to amend the petition was filed on September 18, 1996, and that amendment was approved by the court on October 3, 1996. Khouri brings several claims in this post conviction action, most of them related to ineffective assistance of trial counsel. He also claims appellate counsel was ineffective.

The trial in the post conviction case was held on December 9 and 11, 1996. Khouri appeared with attorney Mears and the State of Iowa was represented by Assistant Linn County Attorney Todd Tripp. Evidence was taken and a briefing schedule established, which was extended on occasion.

Khouri raised the issue of an expert to examine him concerning his mental status and a formal motion was filed March 3, 1997. He seeks the appointment of an expert to opine about Khouri's mental status at the time of the offense. The motion is denied, for the same reasons that the entire application is denied, as set forth below.

APPENDIX
(S)