00-5794

No. _____

Supreme Court, U.S.
FILED
JAN 10 2000
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In Re: Lawrence Edward Haymes -PETITIONER

(YOUR NAME)

ORIGINAL

VS.

_____-RESPONDENT(S)

ON PETITION FOR A WRIT OF HABEAS CORPUS TO

SUPREME COURT OF VIRGINIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF HABEAS CORPUS
TO THE HONORABLE RUTH BADER GINSBERG, ASSOCIATE JUSTICE

Lawrence Edward Haymes
(YOUR NAME)

P.O. Box 500
(ADDRESS)

Mitchells, VA. 22729

(CITY,STATE, ZIP CODE)

(540) 829-6483

(Phone Number)

QUESTION(S) PRESENTED

Did petitioner incurr the loss of liberty without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States when a jury of the Circuit Court of the City of Colonial Heights, Virginia found petitioner guilty of grand larceny in violation of § 18.2-95 of the Code of Virginia wherein the record evidence could not support a finding of guilt beyond a reasonable doubt.

STATEMENT OF THE CASE

Lawrence Edward Haymes was observed and video taped in Hecht's department store in Colonial Heights, Virginia placing a Guess sweatshirt into a Hecht's shopping bag by John Stanton III, a store security employee, on December 26, 1993. (APP.46-47,59,101). Haymes was then observed leaving the store. (APP.50,60). Stanton followed Haymes into the store parking lot and attempted to detain him. (APP.51). Haymes surrendered the sweatshirt and left the scene in a vehicle driven by a female.(APP.52,67). Stanton encountered on off-duty police officer and they pursued and stopped the vehicle. (APP.55). Haymes exited the vehicle and stated to the police officer "I took it, she had nothing to do with it. Let her go." (APP.55,57). The vehicle drove off and was stopped by an off-duty sheriff's deputy as short distance away. (APP.66-67).

Upon further investigation at the scene of the vehicle stop, three men's shirts with Hecht's tickets attached were recovered from the vehicle. (APP.79). A small quantity of heroin was also found in the vehicle. (APP.96). Haymes was taken into custody.(APP.77). The driver of the vehicle was detained.(APP.77).

Haymes was indicted on charges of possession of herion in violation of Virginia Code § 18.2-95.(APP.6-7). On November 24, 1994, a jury of the Circuit Court of the City of Colonial Heights, Virginia tried the indicted offenses. The Commonwealth presented testimony of Michael Kraft, sales manager for Hecht's in Colonial Heights. Kraft identified the three shirts recovered from the vehicle as having tickets from the Colonial Heights store..(APP.100). He testified that

the value of these shirts was one at $44.99 and two at $57.99 (APP. 100). He also testified that the value of the Guess sweatshirt was $60.00 (APP.101). John Stanton, III testified that Haymes did not have permission to take the items from the store without payment. (APP.111).

At the conclusion of the Commonwealth's evidence, counsel for Haymes moved to dismiss the grand larceny indictment because the Commonwealth's evidence failed to prove the value of the item allegedly stolen was over $200.00. (APP.114). The motion was denied. (APP. 115).

The defendant did not present any evidence or testimony and rested. (APP.115). The jury was instructed and heard closing argument of counsel. (APP.120). The jury returned a verdict of guilty of possession of heroin and grand larceny. (APP.143). The jury returned and announced it was unable to reach a unanimous verdict. (APP.155). The court informed the jury its verdict must be unanimous and instructed the jury to return to its deliberations. (APP.156). The jury returned a verdict and fixed punishment at twenty years for the grand larceny and one year for the possession of heroin. (APP.158). Counsel for Haymes submitted a motion to set aside the verdicts as contrary to the law and the evidence. (APP.159). The motion was denied. (APP.160). The court imposed the punishment fixed by the jury. (APP.163).

Haymes noted his appeal and filed a Petition for Appeal to the Court of Appeals of Virginia claiming the evidence was insufficient to prove beyond a reasonable doubt that Haymes removed $220.95 worth of merchandise from the store where $160.95 of the items were recovered from a shopping bag on the front floorboard of a vehicle

driven by Haymes's daughter. (APP.B). During the time period within which Haymes could file a request for review of the denial of his petition, appellate counsel for Haymes died and the time to file the request expired. (APP.C).

A petition for writ of habeas corpus was filed in the Virginia Supreme Court claiming Haymes's right to petition for certiorari to the Virginia Supreme Court from the denial of his petition in the Court of Appeals was denied because his counsel failed to file a timely notice of appeal. This petition was granted and Haymes was granted leave to apply for an appeal (APP.D). Haymes filed a Petition for Appeal in the Virginia Supreme Court claiming that evidence adduced on the grand larceny charge was insufficient. This petition was denied and a request for a rehearing was also denied.

The Supreme Court of the United States has jurisdiction over this cause of action pursuant to 28 U.S.C. § 1251(a) and this application is cognizable under the original jurisdiction of this court. On April 26, 1996, the Anti-Teerorism and Effective Death Penalty Act was signed into law. See 28 U.S.C. § 2244. The Act places significant new restrictions on applications for federal habeas corpus review to the district courts. See 28 U.S.C. § 2244 (d)(1)(A)-(D). One of those restrictions is a time limit on applications to the district courts for federal habeas corpus review of one year from the date of the last state court judgment. See 28 U.S.C. § 2244(d)(1)(A). This Court, however, held that original jurisdiction petitions for habeas corpus review made more than one year after the last state court judgment was rendered are not proscribed because "Section 106(b)(3)'s 'gatekeeping' system does not apply to this Court becasue it is limited to applications 'filed in the district court." Felker v. Turpin, 116 S.Ct. 2333, 2337 (1996).

Accordingly, this court's authority to entertain original jurisdiction petition for habeas corpus derives solely from Rule 20.4(a) of the Supreme Court Rules and 28 U.S.C. § 22554.

Felker, 116 S.Ct. at 2336. The standard for such petitions are that the applications comply with 28 U.S.C. §2241 and 2242 and include a statement for the "reasons for not making the application to the district court..." and if the relief sought is from a judgment of a state court, the application shall set forth "specifically how and when the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U.S.C. § 2254(b)." Felker, 116 S. Ct. at 2337. Furthermore, to justify the granting of the writ, "the petitioner must show exceptional circumstances warranting the exercise of the Court's discretionary powers and must show that adequate relief cannot be obtained in any other form or from any other court." Id.

A petition for appeal was filed in the Virginia Court of Appeals claiming that the evidence was insufficient to support a conviction for grand larceny because the value of the merchandise allegedly taken was less than $200.00 on April 7, 1995. (APP. A) The Court of appeals' determined that the evidence was competent, was not inherently incredible, and sufficient to prove petitioner guilty of grand larceny and denied the petition on July 17, 1995. (APP. B)

Petitioner filed a request for review in Virginia Supreme Court claiming the evidence produced on the grand larceny charge was insufficient on November 21, 1996. (APP. A). The Supreme Court denied that request in January 1997.

The factual basis for the claim herein was developed and presented in the Virginia Court of Appeals and Virginia Supreme Court. The decision of the Virginia Supreme Court in light of the facts of the

evidence presented was unreasonable. Accordingly, the Virginia Supreme Court decision is not to be accorded a presumption of correctness because the finding was unreasonable and, therefore, erroneous. See 28 U.S.C. § 2254(e)(2)(West Supp. 1998); BURDEN V. ZANT, 498 U.S. 433, 438 (1991).

First, the Virginia Supreme Court failed to recognize a meritorious insufficieny of evidence claim on direct appeal. As this Court discussed at length in Jackson v. Virginia, 443 U.S. 307 (1979), "state appellate review undoubtedly will serve in the vast majority of cases to vindicate the due process protection that follows from Winship..." Id. at 322. The Virginia Court of Appeals and the Virginia Supreme Court failed to recognize the claim regardless of the duty upon the courts to correctly adjudicate these claims. As such, the federal courts are the last "bulwark against convictions that violate fundamental fairness." Engle v. Issac, 456 U.S. 107,126 (1982).

Petitioner's application herein is not submitted to the District Court for the Eastern District of Virginia because the statutory time limit within which to submit the application expired in January 1998, one year after the Virginia Supreme Court denied the request for a rehearing and is thereby time barred by the AEDPA. Furthermore, this application presents a question if not resolved in this forum will infect the fairness, integrity, and public reputation of this Court with the taint of permitting the conviction in a state court of one who is actually innocent of the crime of grand larceny and was sentenced to the maximum penalty allowable under law to go without redress. See e.g., Murray v. Carrier, 477 U.S. 478, 495-96 (1986); McCleskey v. Zant, 499 U.S. 467, 494 (1991); Sawyer v. Whitley, 505 U.S. 333, 340, (1992); Herrera v. Collins, 506 U.S. 390, 398 (1993);

Schlup v. Delo, 513 U.S. 298, 322 (1995); Calderon v. Thompson, 523 U.S.--, 118 S.Ct.--,140 L.Ed.2d 728 (1998); Bousley v. United States, 523 U.S.--, 118 S.Ct.--, 140 L.Ed.2d 840 (1998).

This petition presents "exceptional circumstances" as contemplated by Rule 20 of the Rules of the Supreme Court. In the October 1995 Term in Schlup v. Delo, supra, the Court considered a claim that the petitioner was actually innocent of the underlying crime, not only actually innocent of the punishment imposed. In that case, the Court determined, in the context of a collateral challenge to whether Schlup was actually innocent of the crime of murder, to establish "actual innocence" a petitioner must show that "in light of all evidence, it is more likely than not that no reasonable juror would have convicted him". Id at 328.

In the October 1998 Term, in Bousley v. United States, supra, the Court also considered a claim that the petitioner was actually innocent of the underlying crime. In that case, the Court determined, in context of a collateral challenge to the voluntariness of Bousley's plea of guilty, that all the evidence, including evidence outside the record, must be considered. 140 L.Ed2d at 840.

Petitioner maintains the exceptional circumstances standard of Rule 20 is satisfied in this case. The claim of a violation of a fundamental right of due process of law when presented by one who is actually innocent of the crime for which he was convicted on insuffificent evidence is a miscarriage of justice. This Court's original jurisdiction lies to aid in appellate review of this claim. Art. III, U.S. Const.

The United States Supreme Court has determined that in a challenge to a state criminal conviction pursuant to 28 U.S.C. §2254, the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt. Jackson, 443 U.S., at 324: Evans-Smith, 19 F.3d at 910.

The Jackson test requires that guilt should never be found except on a rationally supportable "state of near certitude." Wright v. West, 931 F.2d 262,268 (4th Cir.), rev'd on other grounds, 112 S.Ct. 2482 (1992). In applying the Jackson test, the Fourth Circuit determined that "Favoring the prosecution with all inferences does not mean that we must ignore evidence that is in the record..." Evans-Smith, 19 F.3d at 909 n.29.

GRAND LARCENY AS DEFINED BY VIRGINIA LAW IS AS FOLLOWS:

> Any person who...(ii) commits simple larceny not from the person of another of goods and chattels of the value of $200.00 or more... shall be guilty of larceny punishable by imprisonment...for not less than one nor more than twenty years...

Code 1950, §18.2-95. See Jones v. Commonwealth, 3 Va.App. 295, 301 (Va.App. 1986); Wright v. Commonwealth, 196 Va. 132, 139 (1954).

The question presented in this case is whether the evidence could allow any rational trier of fact to conclude beyond a reasonable doubt that Haymes removed merchandise valued at $200.00 or more from the store. In conducting this inquiry this Court must consider the record in its entirety.

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday *the* 7th *day of* November, 1996.

Lawrence Haymes, No. 227254, Petitioner,

against Record No. 961276

Warden of the Keen Mountain Correctional Center, Respondent.

Upon a Petition for a Writ of Habeas Corpus

On May 20, 1996 came the petitioner, in proper person, and filed a petition for a writ of habeas corpus in the above-styled case.

On consideration whereof, and it appearing to the Court from the answer of the Attorney General of Virginia that Lawrence Haymes was denied his right of appeal, a writ of habeas corpus is hereby awarded the petitioner limited to the issue of the denial of his right to appeal, with leave granted him to file a notice of appeal and to apply to this Court for an appeal from the order entered on July 17, 1995 by the Court of Appeals of Virginia (Record No. 0435-95-2). The petitioner's remaining allegation is dismissed without prejudice. Petitioner's request that this Court restore his right to request oral argument before a three-judge panel of the Court of Appeals is denied.

On further consideration whereof, it is ordered that the Circuit Court of the City of Colonial Heights appoint counsel for

this appeal and that all computations of time as required by the rules of this Court and applicable statutes shall commence from the date of entry of the order of the circuit court so appointing counsel.

The Clerk of this Court shall certify copies of this order to the petitioner, to the respondent, to the Clerk of the Circuit Court of the City of Colonial Heights, to the Attorney General of Virginia and to the Clerk of the Court of Appeals of Virginia, which certification shall have the same force and effect as if a writ of habeas corpus were formally issued and served.

A Copy,

Teste:

David B. Beach, Clerk

By: Patricia D. Krueger
Deputy Clerk

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RECEIVED
JUN 24 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In re LAWERENCE HAYMES - PETITIONER

MOTION FOR LEAVE TO FILE
PETITION FOR WRIT OF HABEAS CORPUS

Petition asks leave to file the attached petition for writ of habeas corpus pursuant to Rule 17 of the Rules of the Supreme Court of the United States and in support thereof submits the following.

1. Petitioner seeks to invoke the original jurisdiction of the Court pursuant to 28 U.S.C. §§ 1251 and 1651 (West 1999)

2. The Court may consider this application in aid of the Court's appellate jurisdiction as provided in Rule 20 of the Rules of the Supreme Court of the United States.

3. Rule 20 provided that to justify the granting of a writ of habeas corpus, petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers.

4. Petitioner contends that because in this case a miscarriage of justice has occurred in that he has been convicted of a crime of which he actually innocent, exceptional circumstances exist which warrant the exercise of the Court's

discretionary powers under Rule 20.

5. Petitioner claims that relief cannot be obtained in the District Court or Court of Appeals because under 28 U.S.C. § 2244(d) the limitation period has expired within which petitioner could file a petition. The Court has determined that the provisions of § 2244(d) do not apply to proscribe a petition which is brought out of time under § 2244(d).

WHEREFORE, petitioner prays the Court grant leave to file the attached petition for writ of habeas corpus and direct the Clerk of the Court to file the petition and grant any other and further relief as deemed necessary as allowed by law.

DATED: July 20, 2000

Respectfully submitted,

Lawrence Haymes

LAWERENCE HAYMES, Petitioner
P.O. Box 500
Mitchells, VA 22729
(540) 829-6483