NO.# 03-7018

Supreme Court, U.S.
FILED
SEP 25 2003
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IN THE

SUPREME COURT OF THE UNITED STATES

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ROBERT DALE GRAY

PETITIONER,

VS.

N.L. CONNOR, WARDEN,
U.S. PENITENTIARY, LEAVENWORTH, KANSAS

RESPONDENT.

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EMERGENCY WRIT OF HABEAS CORPUS

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BRIEF OF PETITIONER

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ROBERT DALE GRAY, #09162-045
P.O. BOX 1000
U.S. PENITENTIARY, LEAVENWORTH
LEAVENWORTH, KANSAS. 66048.

PRO SE FOR PETITIONER.

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I.

QUESTIONS PRESENTED

I. WHETHER, THE WARDEN AT THE UNITED STATES PENITENTIARY, LEAVENWORTH KANSAS IS PERMITTED TO USE AN INSTITUTIONAL LOCKDOWN TO IMPEDE ONE'S ACCESS TO THIS COURT BY SEIZURE AND CONFISCATION OF ALL LEGAL PAPERS, TRANSCRIPTS, POSTAGE STAMPS, LAWBOOKS, AND PREPARED LEGAL DOCUMENTS ADDRESSED TO THIS COURT IN THE NATURE OF A PETITION FOR WRIT OF CERTIORARI WHICH IS DUE TO BE FILED ON A CERTAIN DATE (JUNE 10, 2003)?

II. WHEN A GOVERNMENT AGENT ACTING ON BEHALF OF THE UNITED STATES GOVERNMENT AIDS AND ABETS THE SAME IN PREVENTING THE FILING OF A PETITION FOR A WRIT OF CERTIORARI ON A CERTAIN DATE, IS A PETITIONER ENTITLED TO AN EMERGENCY WRIT OF HABEAS CORPUS AND RELIEF GRANTED IN THE NATURE OF AN EVIDENTIARY HEARING BACK IN THE UNITED STATES DISTRICT COURT TO ADDRESS HIS ACTUAL AND FACTUAL INNOCENCE OF A SENTENCE IMPOSED IN EXCESS OF THE STATUTORY MAXIMUM WHERE PETITIONER"S INDICTMENT FAILS TO STATE EITHER A QUANTITY, TYPE, OR SCHEDULE OF DRUGS AS REQUIRED BY 21 USC 841 & 846?

OPINIONS BELOW

The Petitioner previously filed a Writ of Habeas Corpus in the United States District Court for the District of Kansas, pursuant to 28 USC 2241 on the grounds that a New Watershed Rule of Criminal Procedure announced by both the Eighth Circuit Court of Appeals (and every other Federal Circuit Court of Appeals), which was a substantial change in statutory construction under 21 USC 841(a)(1) & 846, established that his life sentence was in excess of that allowed by law and violated his Constitutional Rights under the Fifth, Sixth & Eighth Amendments to the U.S. Constitution. He alleged that his Indictment was devoid of any drug quantity, type of drug, or a penalty provision, and that the most he could have been sentenced to was two years under 21 USC 841(d)(2). The District Court dismissed the claim on the grounds that Petitioner could not bring the matter under 28 USC 2241, but had to raise the matter under 28 USC 2255 even though the Petitioner had already filed a 28 USC 2255 Petition years before which had been denied.

The Court took no Notice of Petitioner's claim that this issue could only be raised under 28 USC 2241, unlawfully suspending the Writ of Habeas Corpus under 28 USC 2241 on or about August of 2002, (the exact date of this decision is unknown since the Warden has seized all of Petitioner's Papers relating to this Matter).

Petitioner appealed to the Tenth Circuit Court of Appeals timely, but the Tenth Circuit equally denied Petitioner Relief, (even though the government never responded) on or about March 10, 2003, and refused to apply DAVIS VS. U.S., 417 U.S. 333 (1974).

STATEMENT OF THE CASE

ROBERT DALE GRAY, a federal prisoner at the United States Penitentiary Leavenworth, Kansas, brought a 28 USC 2241 Petition in the United States District Court for the District of Kansas alleging that he was actually and factually innocent of the "life" sentence imposed upon him by a federal court as it was in excess of the statutory maximum of 21 USC 841 & 846 where no drug quantity, type of drug, or schedule of drug, or penalty provision was set forth in the indictment, nor stipulated to him by his guilty plea or otherwise.

Furthermore, Petitioner contended that the new rule of law announced in BURTON VS. U.S., 148 L.Ed.2d 3-4 (October 2, 2000), juxtaposed with **DAVIS VS. U.S., 417 U.S. 333 (1974),** required that the Great Writ of Habeas Corpus issue where both the Eighth and Tenth Circuit Courts of Appeals had clearly changed their precedent as to interpretation of 21 USC 841 & 846 offenses, arguing U.S. VS. JAMO JENKINS, 231 F.3d 445 (8th Cir. 2000)(holding that "where substantial constitutional issues were at stake, the Courts of Appeals could grant 28 USC 2255 relief, resentecing Jenkins to no more than five years under 21 USC 841(b)(1)(D)).

The case was assigned to U.S. Magistrate Judge, Catherine A. Walter who thereafter recommended that Petitioner Grays request for relief be denied without a show cause Order being served upon the government's counsel; Petitioner filed objections.

On July 1, 2002, U.S. District Judge Richard Dean Rogers overruled Petitioner's objections and adopted the Report and Recommendation of Magistrate Walters.

Petitioner appealed to the Tenth Circuit Court of Appeals after a timely Notice of Appeal was filed on July 30, 2002.