03-7854

No. _____

Supreme Court, U.S.
FILED
NOV 25 2003
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Habeas Corpus

IN RE Clifford A. Gooden — PETITIONER
(Your Name)

vs.

John Mathes (warden) ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The united states district court for the Southern district of Iowa
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Clifford A. Gooden III
(Your Name)

Iowa State Penitentiary - Box 316
(Address)

Fort Madison, IA. 52627
(City, State, Zip Code)

(319) 372-5432
(Phone Number)

QUESTION(S) PRESENTED

1.) Is an appellate attorney required to raise all of a defendant's meritorious issues on direct appeal whether a defendant requests them or not; and if the issue(s) are not raised due to ineffectiveness of appellate counsel, is a defendant required to show prejudice from the omitted claims in support of an ineffective appellate counsel issue?

2.) Does a defendant have a 6th and 14th amendment right to have all of his meritorious issues fairly presented and preserved on direct appeal, by competent appellate counsel, for the purpose of satisfying procedural exhaustion requirements?

3.) Was appellate counsel, Penelope Sauhrada, ineffective for misrepresenting the material facts of petitioner's intent and knowledge of his involvement into the incident in her appeal brief?

4.) Is petitioner required to pursue state post-conviction court to exhaust his constitutional claims after those claims were fairly presented on further review and denied by the Iowa supreme court?

5.) Even though petitioner did not request an evidentiary hearing in the state courts on his constitutional claims, can the federal court still conduct a federal evidentiary hearing on, otherwise, exhausted constitutional claims?

6.) Is petitioner's ineffective appellate counsel issue, alleging a constitutional right to have appellate counsel raise all meritorious issues on direct appeal, for the purpose of satisfying procedural exhaustion requirements, a cognizable basis for federal habeas relief?

7.) Does petitioner's one year federal statute of limitation continue to run even after he timely filed his federal habeas petition?

STATEMENT OF THE CASE

Mr. Gooden filed two separate motions for appointment of new appellate Counsel during the Course of his direct appeal stage Complaining about Attorney Penelope Souhrada's deficient performance in representing his appeal. both motions were denied. See Appendix F(a) and F(b).

After the Iowa Court of appeals affirmed Mr. Gooden's Conviction, he thereafter filed a timely pro se application for further review to the Iowa supreme Court. in that application he alleged a single issue of ineffective assistance of appellate Counsel, supported by the sixth and fourteenth amendment to the united states Constitution, and relevant federal and supreme Court Cases surrounding her failure to raise all of Mr. Gooden's requested and unrequested appeal issues. He also raised a separate issue of ineffective appellate Counsel Claim for misrepresentation of material facts of his intent and knowledge of **his** involvement into the incident in her appeal brief. the supreme Court denied further review on January 4, 2002. See Appendix F(c).

Mr. Gooden then filed his federal pro se habeas Corpus petition pursuant to § 2254 to the Southern district federal Court on March 11, 2002. he additionally filed a supporting brief to his federal habeas petition. in that brief he alleged the same exact federal Constitutional Claims of ineffective assistance of appellate Counsel which was previously raised and preserved in his pro se application for further review to the Iowa supreme Court. the federal district Court found that none of petitioner's

Previously
issues were defaulted, see Appendix D, 10/29/02 Court order p.4, but it considered the issues unexhausted because petitioner did not pursue state post-conviction. it ultimately dismissed the habeas corpus petition on November 19, 2002. Mr. Gooden's notice of appeal was subsequently timely filed on November 19, 2002, without a certificate of appealability. the federal district Court incorrectly construed the notice of appeal to include a request for certificate of appealability and denied the unincluded certificate. see Appendix B, 11/19/02 Court order P. 2. however, pursuant to the court order, Mr. Gooden did file a timely certificate of appealability to the eighth Circuit Court of appeals pursuant to federal Rules of Appellate Procedures 22(b) and 28 U.S.C. § 2253 (c)(2), requesting to raise six Constitutional Claims preserved in the state and federal district Court. equally, Mr. Gooden's brief requesting for certificate of appealability explicitly set fourth all six Constitutional claims verbatim to his previous brief in support of his habeas petition and his pro se brief resisting the state's motion to dismiss. the eighth Circuit Court of appeals denied and dismissed the entire appeal without an opinion on March 14, 2003. see Appendix A. Mr. Gooden then applied for an application for rehearing pursuant to Federal Rules of Appellate Procedures 40. in that application, he requested an en banc panel to reconsider his Constitutional issues in his previously submitted Certificate of Appealability denied by a previous panel of that Court. that application was

denied on April 10, 2003. see Appendix C. therefore jurisdiction is properly invoked under 28 U.S.C. § 1651, for this court to consider Petitioner's Claims in this Extraordinary writ.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 02-3920

Clifford Gooden,	*	
	*	
Appellant,	*	
	*	Appeal from the United States
v.	*	District Court for the
	*	Southern District of Iowa.
John Mathes, Warden,	*	
	*	
Appellee.	*	

The petition for rehearing by the panel filed by Appellant Gooden is denied.

(5193-010199)

April 10, 2003

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

Appendix "C"

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 02-3920

Clifford Gooden,

Appellant,

vs.

John Mathes, Warden,

Appellee.

* Appeal from the United States
* District Court for the
* Southern District of Iowa

Before LOKEN, MURPHY, and RILEY, Circuit Judges

JUDGMENT

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

(5361-010199)

March 14, 2003

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

Appendix "A"