ORIGINAL

No. 00-6397

Supreme Court, U.S.
FILED
SEP 12 2000
OFFICE OF THE CLERK

IN THE

Supreme Court of The United States

IN RE: Jerry Montgomery - Petitioner

vs.

Rondle Anderson - Respondent

ON PETITION FOR Writ of Habeas Corpus
To Seventh Circuit Appeals

Petition For Writ of Habeas Corpus

Jerry Montgomery, #862428
P. O. Box 41, I.S.P.
Michigan City, IN. 46361
Phone: N/A

Questions Presented

(A). Whether ADEPA Permits a successive habeas Petition at "anytime" to raise a defective instruction as Prescribed under Pre-ADEPA Precedence Illinois v. Somerville, 410 U.S. 458 (1973)?

(B). Whether ADEPA Permits a $500.00 Fine For Filing a Successive habeas Petition challenging the use of false Insurance Indemification allegations as evidence to Prove homicide?

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 7, 2000
Decided April 13, 2000

Before

Hon. RICHARD A. POSNER, *Chief Judge*

Hon. DANIEL A. MANION, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

No. 00-1843

JERRY MONTGOMERY,
Petitioner,

v.

RONDLE ANDERSON,
Respondent.

On Motion for an Order Authorizing the District Court to Entertain a Second or Successive Petition for Collateral Review

ORDER

For the fourth time, Jerry Montgomery has applied for an order pursuant to 28 U.S.C. § 2244(b)(3) authorizing the district court to consider a second or successive 28 U.S.C. § 2254 petition. Montgomery, who was convicted of murdering his father, now asserts that he has located new evidence showing that he was denied a fair trial because the jury instructions and verdict forms used at his trial improperly relieved the prosecution of its burden of proof and failed to conform to his indictment. Yet Montgomery fails to adequately explain why this new evidence could not have been discovered previously through the exercise of due diligence. *See* 28 U.S.C. § 2254(b)(2)(B)(i). Nor has he attempted to demonstrate that, given this new evidence, no reasonable factfinder would have found him guilty of murder. *See* 28 U.S.C. § 2244 (b)(2)(B)(ii). In our order denying his second application to file a successive habeas petition, we warned Montgomery that he would be subjected to sanctions if he initiated another collateral attack without satisfying the standards of § 2244(b). *See Alexander v. United States*, 121 F.3d 312, 315-16 (7th Cir. 1997). Montgomery's present application makes no attempt to satisfy the requirements of §2244(b).

"Any Time - No"

Appendix A.

See Back side For Fine

Accordingly, we DENY this application to file a successive collateral attack. In addition, a fine of $500 is assessed, the Indiana Department of Corrections will be notified of this fine, and until he pays that sum in full to the clerk of this court, clerks of all courts within this circuit will return, unfiled, any papers he tenders in civil litigation. Any further applications for leave to file a successive collateral attack will be deemed denied on the 30th day unless the court otherwise orders.

Appendix A