No. 03-7964

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
DEC 10 2003
OFFICE OF THE CLERK

IN RE: HADDRICK BYRD - PETITIONER

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SUPREME COURT, U.S.

V.

ROBERT SHANNON, SUPERINTENDENT; PENNSYLVANIA STATE POLICE, CENTRAL REPOSITORY; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA - RESPONDENTS

ON PETITION FOR EXTRAORDINARY RELIEF TO THE THIRD CIRCUIT COURT OF APPEALS

PETITION FOR EXTRAORDINARY RELIEF

Haddrick Byrd
AF-5828
SCI-Frackville
1111 Altamont Boulevard
Frackville, PA. 17931

QUESTIONS PRESENTED

I. IS A CITIZEN ENTITLED TO REDRESS BASED ON NEWLY DISCOVERED EVIDENCE UNDER 28 U.S.C. §§ 2244(b)(2)(B)(i)(ii), AND (d)(1)(B), WHEN THE CITIZEN WAS DECEIVED AND TRIED ON FALSE CHARGES BY THE COMMONWEALTH ?

(Suggested Answer, Yes.)

II. CAN A CITIZEN BE CONFINED BEYOND THEIR LAWFUL MAXIMUM TERM IN VIOLATION OF THE U.S. CONSTITUTIONS' EIGHTH AMENDMENT ?

(Suggested Answer, No.)

III. DID THE LOWER FEDERAL COURT CIRCUIT COMMIT ERROR IN APPLYING THE ACTUAL INNOCENCE STANDARD ANNOUNCED IN BOUSLEY V. U.S., WHEN PETITIONER'S CLAIM OF ACTUAL INNOCENCE WAS ENTITLED TO REVIEW UNDER THE STANDARD ANNOUNCED IN SCHLUP V. DELO ?

(Suggested Answer, Yes.)

IV. CAN A CITIZEN BE HELD UNLAWFULLY IN VIOLATION OF PENNSYLVANIA'S CRIMINAL HISTORY RECORD INFORMATION ACT WHEN THE COMMONWEALTH NEVER FILED FORMAL NOTICE OF CHARGES TO JUSTIFY THE DETENTION ?

(Suggested Answer, No.)

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PRELIMINARY STATEMENT

This is an appeal where the federal district court dismissed petitioner's second or successive petition for habeas corpus relief, under the antiterrorism and effective death penalty act. See 28 U.S.C. §§ 2244(b)(2)(B)(i)(ii), and (d)(1)(B).

An appeal was taken to the Third circuit court of appeals seeking a certificate of appealability pursuant to 28 U.S.C. § 2253, and/or 2244(3)(A)(B)(C)(D)(E), and (d)(1)(B) in this case. Because even though the district court addressed petitioner's claims of newly discovered evidence, actual claim of innocence, and failure of the Pennsylvania State Police to safeguard and maintain petitioner's records under Pennsylvania's criminal history record information act. See 18 Pa..C.S.A. §§ 9101-9183. The district court addressed the claims without petitioner first seeking pre-clearance from the Third circuit court of appeals.

Therefore, the Third circuit court of appeals denied the petitioner's request for a certificate of appealability. However, they noted that they agreed with the district court's findings as well. So based on their position and the exceptional circumstances of this case, petitioner submits that review of this matter warrants the court's supervisory or discretionary powers over these claims.

Therefore, petitioner is seeking extraordinary relief from this court in conjunction with its appellate jurisdiction, because the petitioner has exhausted all available State and Federal remedies and has no other review process available to him in which to obtain relief from any other court.

STATEMENT OF THE CASE

On March 25, 2000, petitioner sent a challenge form SP4-165 to the Pennsylvania State Police Central Repository ("PSP"), to challenge the inaccuracy of his criminal history record information ("CHRI") pursuant to 18 Pa..C.S.A. §§ 9101-9183 of the act.

On April 14, 2000, the PSP ruled that the challenge was invalid. On April 24, 2000, petitioner filed an administrative appeal with the Pennsylvania Office of Attorney General ("OAG"), pursuant to 18 Pa..C.S.A. §§ 9152(e)(1-2).

On September 27, 2000, petitioner appeared for a scheduled administrative appeal hearing conducted by the OAG regulatory, compliance and intelligence section, with the PSP central repository as the respondent's in the case.

On June 22, 2001, the OAG issued an order from the administrative appeal hearing held on September 27, 2000, stating that petitioner's claims were without merit. On July 16, 2001, petitioner filed a petition for review with the commonwealth court of Pennsylvania, pursuant to 18 Pa..C.S.A. § 9152(e)(3) and 42 Pa..C.S.A. § 763.

On September 19, 2001, petitioner filed his brief with the commonwealth court of Pennsylvania, pursuant to Pa.R.A.P. 2111 and 2114-2119 as instructed by the court. And on January 8, 2002, the PSP filed their brief in opposition to the petitioner's brief with the court.

On April 2, 2002, the commonwealth court of Pennsylvania denied the petitioner's petition for review in this matter. On April 16, 2002, the petitioner filed a petition for allowance of appeal with the State Supreme Court. And on August 13, 2002, the State Supreme Court denied petitioner's request for allowance of appeal.

On August 23, 2002, petitioner filed a petition for habeas corpus relief in the United States District Court for the Middle district of Pennsylvania where he is being unlawfully confined pursuant to 28 U.S.C. § 2241.

On October 18, 2002, the above matter was transferred in the interest of justice, to the United States District Court for the Eastern district of Pennsylvania, pursuant to 28 U.S.C. §§ 2241(d) and 2254 of the act.

On January 3, 2003, judge Dalzell issued an order instructing the OAG to file a response to petitioner's petition for habeas corpus relief by March 3, 2003.

Thereafter, on March 4, 2003, the petitioner filed his Traverse to the OAG'S answer to petitioner's petition for habeas corpus relief. And asked judge Dalzell to either certify or transfer petitioner's claims of newly discovered evidence, and actual claim of innocence to the Third circuit court of appeals for review and determination pursuant to 28 U.S.C. §§ 2244(b)(3)(A). However, on April 3, 2003, judge Dalzell issued an order denying petitioner's request for a writ of habeas corpus.

On April 15, 2003, petitioner filed a notice of appeal with the district court, and a request to proceed on appeal in forma pauperis with an additional request for a certificate of appealability. And on April 2, 2003, judge Dalzell granted petitioner's request to proceed on appeal in forma pauperis, but denied petitioner's request for a certificate of appealability which he construed as a petition for reconsideration.

On April 25, 2003, the petitioner renewed his request for a certificate of appealability with the Third circuit court of appeals. And on September 24, 2003, a panel of the Third circuit court of appeals issued an order denying the petitioner's request for a certificate of appealability.

On October 30, 2003, the petitioner filed a petition for rehearing with a suggestion for rehearing en banc, and on November 14, 2003, the sur petition for rehearing was denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HADDRICK BYRD	:	CIVIL ACTION
v.	:	
SUPT. ROBERT SHANNON et al.	:	NO. 02-7950

FILED

ORDER

AND NOW, this 3rd day of April, 2003, upon consideration of petitioner Haddrick Byrd's petition for a writ of habeas corpus, the Commonwealth's response, and Byrd's "traverse to respondent's response," and the Court finding that:

(a) Byrd is a prisoner at SCI-Frackville, where he is serving a life sentence for the murder of Isadore Levin during the early-morning services at Kesher Israel Synagogue in Philadelphia on September 1, 1974 (the "Levin murder");

(b) Byrd is also serving consecutive sentences totalling 33 ½ to 67 years for aggravated assault, robbery, and possession of the instrument of crime stemming from the robbery of the Miles-David clothing store on South Street in Philadelphia on October 29, 1974;

(c) Byrd is no stranger to this Court, having filed at least five previous habeas petitions, one of which we dismissed in 1997 as a successive petition under 28 U.S.C. § 2244(b)(2), see Byrd v. Gillis, No. 97-4697, 1997 WL 698157 (E.D. Pa. Nov. 5, 1997) (Dalzell, J.);

(d) On March 11, 2000, Byrd invoked his right under the Pennsylvania Criminal History Record Information Act, 18 Pa. C.S. § 9101 et seq., to review his criminal history record

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APR
CLERK OF COURT

(8)
10-15-02
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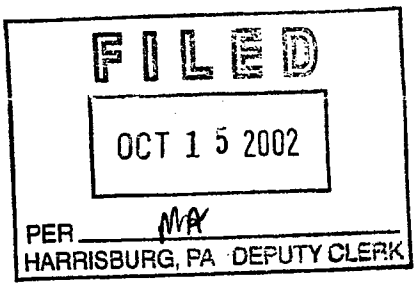
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

HADDRICK BYRD,	**CIVIL NO. 1:CV-02-1479**
Petitioner	**(Judge Rambo)**
v.	**(Magistrate Judge Smyser)**
ROBERT SHANNON, Superintendent; PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY; and THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA,	
Respondents	



MEMORANDUM AND ORDER

Before the court is an October 2, 2002, report of the magistrate judge in which he recommends that the petition filed pursuant to 28 U.S.C. § 2241 be construed as a motion filed pursuant to 28 U.S.C. § 2254 as well as § 2241. The magistrate judge further recommends that since Petitioner was convicted in Philadelphia County that the captioned action be transferred to the United States District Court for the Eastern District of Pennsylvania.

Petitioner opposed the relabeling of his petition as a § 2254 action, alleging that such a procedure would be inadequate or ineffective. He alleges that as a petition pursuant to § 2241, as a prisoner within the Middle District of Pennsylvania, he is properly before this court.

Petitions under § 2241 are considered challenges to the conditions of confinement and relate to the execution of the sentence, not the imposition of sentence itself. *Gomore v. Arnold*, 533 F.2d 871, 874 (3d Cir. 1976), *cert. denied*, 429 U.S. 851 (1976). A collateral attack upon the validity of a sentence must be brought pursuant to 28 U.S.C. § 2254.

Certified from the record
Date 10-15-02
Mary E. D'Andrea, Clerk
Per
Deputy Clerk

There is no question that petitioner in this action attacks the imposition of his sentence. In his petition he alleges that his conviction and sentence is in violation of both the United States and Pennsylvania constitutions in that the sentencing court was without jurisdiction and further that the court exceeded the statutory maximum when sentencing him.

These are clearly issues cognizable under a § 2254 petition. Accordingly, **IT IS HEREBY ORDERED THAT**:

1) The court adopts the report and recommendation of Magistrate Judge Smyser.

2) This action is transferred to the United States District Court for the Eastern District of Pennsylvania.

3) The Clerk of Court shall close the file.

SYLVIA H. RAMBO
United States District Judge

Dated: October 15, 2002.