03-5468

In The
Supreme Court
Of The
United States of America

Supreme Court, U.S.
FILED
JUL 17 2003
OFFICE OF THE CLERK

In re Willie Ray Bush

Petitioner,

On Motion For Leave To Proceed In Forma Pauperis.
Declaration attached.

Submitted under Supreme Court Rules 39.1, 39.2 and 28 U.S.C. § 1746.

Willie R. Bush, (J-65918) In pro se
North Kern State Prison
P.O. Box 5000; Bldg. A1-#216 Low
Delano, CA. 93216-5000

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SUPREME COURT, U.S.

In re Willie Ray Bush, petitioner,

Under Article III of the Constitution of the United States On Petition For Writ Of Habeas Corpus As Provided By 28 U.S.C. § 2254(a) To The State of California, respondent.

Original Petition To The United States Supreme Court In Order To Correct A Miscarriage Of Justice Where Petitioner Is Actually Innocent. Submitted under U.S. Sup. Ct. Rules 12.7, 18.12 and 39.

Willie Ray Bush, (J-65918)
North Kern State Prison
P.O. Box 5000
Delano, CA. 93216-5000

Haines v. Kerner, 404 U.S. 519, 520 (1972)(pro se complaint held to less stringent standards than formal papers drafted by lawyers).

QUESTIONS

1. If a petitioner can plainly show to This Court that on appeal in the lower federal habeas courts he demonstrated that what legally amounts to a 'Brady', 373 U.S. 83 (1963), violation occurred during his trial proceedings where 'requested material evidence' needed for 'impeachment purposes' was never disclosed to the defense and the knowing use of false testimony by the prosecution on that 'non disclosed material evidence' which was never collected by the State or booked into evidence occurred and that his 'first federal habeas petition', which he supplemented with a 'colorable showing of factual innocence', was dismissed with prejudice due to the "less than fair" trial he received which subsequently resulted in a decision by the district court that was contrary to, or involved an unreasonable application of clearly established Federal laws, as determined by the Supreme Court of The United States under 28 U.S.C. § 2254 (d)(1), does foreclosure of review of petitioner's initial application constitute the continued incarceration of an innocent person from whom the presumption of innocence was never legally removed and violate both 'due process' and 'cruel and unusual punishment' clauses?

2. Did the district court contridict U.S. Supreme precedent by using the 'Trombetta' 104 S.Ct. 2528 (1984) 'failure to preserve standard of review' instead of using the 'Kyles' 115 S.Ct (1995) 'failure to disclose standard of review when it found that the State has never collected or booked into evidence 'its' best and only alleged evidence with which it could prove, "beyond a reasonable doubt," 'its' theory to convict petitioner on murder charges and which material evidence had been requested by the defense for impeachment purposes but was never made available, where a proper review to decide whether or not petitioner's habeas petition

Questions

should be granted or dismissed should have included an evidentiary hearing to determine if the State had presented sufficient evidence showing petitioner had not acted in self-defense?

3. Does an actual 'Brady' 373 U.S. 83 (1963), violation occur when the prosecution, which has based it's theory to convict on what would be evidence material to a defendants' guilt or innocence, does not produce that alleged evidence to the defense in it's request of that specific prosecution evidence which is needed for impeachment/exculpatory purposes and where the defense motioned for sanctions to suppress testimony on the nondisclosed 'material evidence' but the trial judge failed to rule on that sanctions motion and the prosecution and it's witnesses were allowed to give false and very prejudicial testimony on item[s] not in evidence?

4. When petitioner has, for impeachment/exculpatory purposes requested discovery of the States' best and only evidence with which it could prove, "beyond a reasonable doubt," it's theory to convict on murder charges and the trial court refused to either compel production of the requested material evidence or grant petitioner's sanction motion to suppress testimony on the States' nondisclosed evidence, did those circumstances manifest an 'erroneous exclusion of prosecution evidence' by the trial court that would warrant reversal of petitioners' conviction for insufficient evidence, barring retrial under the Double Jeopardy Clause?

5. Does a petitioner make a prima facie showing of actual innocence to a court of appeals when he plainly shows the court where the State has failed to remove the presumption that petitioner is actually innocent as required by the Due Process Clause in order for a State to obtain a criminal conviction while at the same time also showing 'reasonable doubt' exist as to the conviction which constitutes the equivalent of insufficient evidence that would bar retrial under the Double Jeopary Clause?

Questions

6. May unadjudicated claims brought in a 'First Federal Habeas Petition' that petitioner mistakenly failed to reiterate in an amended petition due to petitioner's attempt to comply with an 'Order' giving 'Leave To Amend' be excused by a federal habeas court's power to excuse defaulted claims through the Court's equitable discretion and not be subjected to the AEDPA's restrictions that apply to second or successive habeas petitions when petitioner felt that by reiterating claims that did not require amending he would in fact be referring to his prior petition in disregard of the district courts' 'Order' instructing him not to do so?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 16 2002

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

WILLIE RAY BUSH, Petitioner, v. GARY LINDSEY, Warden, Respondent.	No. 02-70400 D.C. No. CV-98-2086-RAP Central District of California, Los Angeles ORDER

Before: BROWNING, KLEINFELD and GOULD, Circuit Judges

The application for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition in the district court is denied. Petitioner has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

> (A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

No petition for rehearing shall be filed or entertained in this case. *See* 28 U.S.C. § 2244(b)(3)(E).

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