ORIGINAL

03-8497

Supreme Court, U.S.
FILED
JAN 12 2004
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IN THE

SUPREME COURT OF THE UNITED STATES

MALCOLM C. MOFFETT-PRO SE,PETITIONER

VS.

JANIE COCKRELL ,RESPONDENT

ON PETITION FOR A WRIT OF HABEAS CORPUS TO

UNITED STATES DISTRICT COURT EASTERN DTRICT OF TEXAS

PETITION FOR WRIT OF HABEAS CORPUS

MALCOLM C. MOFFETT

HIGHWAY 98 S P.O.BOX 9200

NEW BOSTON,TX .75570

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QUESTION(S) PRESENTED

ISSUE NUMBER ONE

WHETHER OR NOT APPLICANT SIX AMENDMENT CONSTITUTIONAL RIGHT WAS VIOLATED BY TRIAL COUNSEL FAILURE TO INVESTIGATE RELEVANT FACTS,AN INTERVIEW POTENTIAL AND EYEWITNESSES?

No._____

MALCOLM C.MOFFETT Pro Se
Petitioner
V.

Janie Cockrell

§ IN THE
§ UNITED STATES
§ SUPREME COURT
§
§
§

In re MALCOLM C.MOFFETT
Petition for writ of habeas corpus
28 U.S.C.2254

Now Comes,MALCOLM C. MOFFETT,YOUR PETITIONER PURSUANT TO RULE 20 OF SUPREME COURT RULES,PROCEDURE ON A PETITION FOR AN EXTRAORDINARY WRIT.In the interest of justice, The petitioner seeks a writ authorized by 28 U.S.C.§ 1651(a) §2241,or 2254.

STATEMENT OF THE CASE

The appellant is attacking a conviction out of Polk County,Texas in the 258th Criminal District Court of Polk County Texas for the offense of Murder.On Successive Petition for writ of Habeas Corpus,Petition for Writ of Habeas Corpus was filed in POLK COUNTY DISTRICT COURT,13,752B And was EILED IN COURT OF CRIMINAL APPEALS OF TEXAS,Writ no.38,644-02. The United States District Court for the Eastern District of Texas.USDC No. 5:03-cv- 78, The District Court on Petitioner's Motion transferred Second Or Successive 28 U.S.C.§2254 Petition. on September 22-03 Fifth Circuit No.03-41210 and No.03-41295 In re:Moffett/USDC NO.5:03-cv-78 On October 9,2003 Petitioner Motion for authorization to file a successive 28U.S.C §2254 application was **DENIED**.Texas Court of Appeals invoked 11.07,4 and dismissed writ on Nov.2.02

THE FIFTH CIRCUIT

No. 03-41210
c/w No. 03-41295

U.S. COURT OF APPEALS
FILED
OCT 09 2003
CHARLES R. FULBRUGE III
CLERK

IN RE: MALCOLM C. MOFFETT,

Movant.

Motion for an order authorizing
the United States District Court for the Eastern
District of Texas to consider
a successive 28 U.S.C. § 2254 application

Before GARWOOD, JOLLY, and JONES, Circuit Judges.

BY THE COURT:

Malcolm C. Moffett, Texas prisoner #606860, has filed a motion requesting authorization to file a successive 28 U.S.C. § 2254 application challenging his conviction for felony murder. In his proposed 28 U.S.C. § 2254 application, Moffett seeks to assert numerous claims of ineffective assistance of trial counsel.

A claim presented in a second or successive habeas corpus application under 28 U.S.C. § 2254 that was not presented in a prior application shall be dismissed unless the application makes a prima facie showing that either: (1) the claim relies on a new rule of constitutional law that was made retroactive

APPENDIX, C

to cases on collateral review by the Supreme Court and was previously unavailable, or (2) the factual predicate for the claim could not have been discovered previously through due diligence and that the underlying facts, if proven, would be sufficient to establish by clear and convincing evidence that a reasonable trier of fact would not have found the applicant guilty of the underlying offense. See 28 U.S.C. § 2244(b)(2), (b)(3)(C). Moffett has failed to make the required prima facie showing for authorization to file his successive claims.

To the extent that Moffett is arguing that the unsworn declaration from one of the witnesses constitutes newly discovered evidence, Moffett fails to demonstrate that this information could not have been discovered previously through the exercise of due diligence. Furthermore, a state prisoner is not entitled to authorization to file a successive 28 U.S.C. § 2254 application based on his ignorance of the law. See 28 U.S.C. § 2244(b)(2); see also Saahir v. Collins, 956 F.2d 115, 118-19 (5th Cir. 1992).

Accordingly, Moffett's motion for authorization to file a successive 28 U.S.C. § 2254 application is DENIED.

APPENDIX C