IN THE

SUPREME COURT OF THE UNITED STATES

No. 2003 -

DION JAMES, a/k/a Delvin Percy James,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Jack Bruce Swerling
Suite 301
1720 Main Street
Columbia, South Carolina 29201
Telephone: 803-765-2626
Attorney for Petitioner

QUESTIONS PRESENTED

1. Did the district court abuse its discretion in denying petitioner's motion for mistrial, after a government witness improperly referred to petitioner's probationary status, allowing the jury to infer guilt based on conviction of prior criminal activity?

2. Did the court of appeals improperly ignore the prejudicial reference to petitioner's probation, as well as significant deficiencies in the government's proof of any involvement by petitioner in the crime charged, thereby incorrectly determining that the evidence was sufficient to sustain his conviction?

NO. 03-6555

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
AUG 26 2003
OFFICE OF THE CLERK

CHARLIE DANIELS
PETITIONER

VS.

CHRISTOPHER EPPS/MIKE MOORE
RESPONDENTS

PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF HABEAS CORPUS

Pro Se Litigant
Charlie Daniels

Charlie Daniels #15327
Unit-R-205-B
WCCF-2999-Hwy-61-N
Woodville, Ms 39669

QUESTIONS PRESENTED

(A). WHETHER PETITIONER WAS DENIED DUE PROCESS AND EQUAL PROTECTION OFTHE LAW BY WAY OF PETITIONER BEING FOUND GUILTY OF A CRIME OF WHICH HE DID NOT DO.

(B). WHETHER PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BY WAY OF COUNSEL FAILURE TO INVESTIGATE AND CALL POTENTIAL WITNESSES IN HIS BEHALF.

(C). THAT IF THIS COURT FAIL TO CONSIDER THE CASE ON THE MERITS IT WOULD CAUSE A MISCARRIAGE OF JUSTICE.

JURISDICTION

The judgment and opinion of the United States Court of Appeals for the Fifth Circuit was entered on July 10th, 2003. See appendix as exhibit "A" attached hereto. Because of the enactment of the **"Antiterrorism and Effective Death Penalty Act"** (AEDPA) Petitioner have no other avenue to petition this Court except by way of filing a petition under rule 20.2; 28 U.S.C. §1651(a); §§2241 and 2242. Jurisdiction is conferred by way of the above mentioned.

STATEMENT OF THE CASE

Petitioner will only present portion of this twenty (20) year old case. The instant case originated by way of Petitioner filing a state post-conviction (PC) in the Mississippi Supreme Court on July 26th, 2002.

On August 16th, 2002, The Mississippi Supreme Court denied Petitioner PC relief on the grounds that (1) His claims were untimely filed pursuant to Mississippi Code Annotated §99-39-5(2) and (2) That the new discoverd evidence in which he exhibited in his PC was without merits. See appendix as exhibit "D". In that PC that was before the state Supreme Court, Petitioner argued that he was denied his 6th Amendment right to effective assitance of counsel and that as a result of being denied that right, he was convicted for a crime that he did not commit.

On September 16th, 2002, Petitioner filed a habeas petition in the Southern District Court of Mississippi. And that Court on September 23rd, or perhaps the 24th of 2002, issued an order instructing Petitioner to **"SHOW CAUSE AS TO WHY HIS PETITION FOR WRIT OF HABEAS CORPUS,28 U.S.C. §2254, SHOULD NOT BE SUMMARILY DISMISSED".** See appendix as exhibit "E".

On October 4th, 2002, Petitioner filed a **"Motion In Response"** to the District Court order instructing him to show casue why his habeas corpus should not be summarily dismissed.

It wasn't until October 29th, 2002, that the District court responded and issued an order. And in that order the District Court said that "uopn liberal review of the **"Petition and Response"** the Court has determined that the Respondents shall file an answer". See appendix as exhibit "F".

On November 14th, 2002, the Attorney General Office answer the habeas petition. Their answer was styled **"Motion To Dismiss Pursuant To 28 U.S.C. §2244(b),** or **Alternatively, Pursuant to 28 U.S. §2244(d).** Simply put, the Attorney General Office claimed that Petitioner was not entitled any relief because his claim had ran afoul the AEDPA by way of having file two previous

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60509

U.S. COURT OF APPEALS
FILED
JUL 10 2003
CHARLES R. FULBRUGE III
CLERK

IN RE: CHARLIE DANIELS

Movant.

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

Before HIGGINBOTHAM, DAVIS, and PRADO, Circuit Judges.

BY THE COURT:

Charles E. Daniels, Mississippi prisoner #15327, seeks authorization to file a successive habeas corpus petition challenging his conviction for attempted armed robbery. Daniels argues that he has obtained newly discovered evidence that establishes his innocence.

Daniels has not made the prima facie showing required to obtain authorization to file a successive habeas corpus application. See 28 U.S.C. § 2244(b)(2), (3). Daniels has not shown that the factual predicates of his claims were not previously discoverable or that his "newly discovered evidence" shows by clear and convincing evidence that no reasonable trier of fact would have found him guilty of armed robbery.

APPENDIX "A"

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 CAMP STREET
NEW ORLEANS, LA 70130

July 28, 2003

Mr Charles E Daniels
Mississippi Department of Corrections
Wilkinson County Correctional Center
#15327
2999 Highway 61 N
PO Box 1079
Woodville, MS 39669

No. 03-60509 In Re: Daniels
USDC No.

Dear Mr. Daniels:

28 U.S.C. Section 2244(b)(3)(E) does not permit review of the denial of your request to file a successive petition. We are taking no action on your "Petition for Rehearing En Banc."

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: _____
Donna Mendez, Deputy Clerk
504-310-7677

BR-9

APPENDIX "B"