005921

NO. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2000

IN RE: STANLEY BOYD, Petitioner,

vs.

DAVE DORMIRE, et al; Respondent.

Supreme Court, U.S.
FILED
AUG 25 2000
CLERK

PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

Stanley Boyd
Reg. No. 151986
Jefferson City Corr. Center
P.O. Box 900
Jefferson City, MO 65102

QUESTION PRESENTED

Whether Mr. Boyd has met the statutory requirements of 28 USC §2244(b) for filing a second habeas corpus petition where newly discovered evidence cast into serious doubt the adequacy of the procedures use to determine whether Mr. Boyd was competent to stand trial.

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2000

PETITION FOR EXTRAORDINARY WRIT OF
HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Comes Now Petitioner Stanley Boyd, pro se, pursuant to 28 USC § 1651(A) and 28 USC § 2241, and seeks an Order from this Court permitting him leave to file a new claim petition for a writ of habeas corpus under 28 USC § 2254. In support therefor.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a) and 28 U.S.C. § 2241 as this case present exceptional circumstances warranting the exercise of the Court's discretionary powers to correct since adequate relief cannot be obtained in any other form or from any other court, state or federal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2244(b)

EXCEPTIONAL CIRCUMSTANCES

This is a case asserting a claim of factual innocence under the standard enumerated in ***Schlup v. Delo***, 115 S.Ct. 851 (1996), codified by 28 USC § 2244. Petitioner was convicted in State court after a jury trial on one count of capital murder, § 565.001, RSMo (Repealed 1984), and sentenced to life without the possibility of probation or parole for fifty years, under § 565.008, RSMo (Repealed 1984). Petitioner judgment of conviction and sentence were affirmed and is published at ***State v. Boyd***, 706 S.W.2d 461 (Mo. App. 1984). Petitioner motion for post-conviction relief was denied and is published at ***Boyd v. State***, 759 S.W.2d 849 (Mo. App. 1988).

Mr. Boyd asserts that his conviction and sentence are the result of a constitutional infirmities in the competency proceeding, and that his new evidence is reliable and sufficiently probative to make it more likely than not that no reasonable fact-finder would have voted to find him competent to stand trial absent the constitutional infirmities. The underlying constitutional violation is premise on the State knowingly use of false evidence to persuade and/or influence the competency hearing judge decision to find Mr. Boyd competent to stand trial in violation of the due process clause. See ***Giglio v. U.S.***, 92 S.Ct. 763 (1972); ***Napue v. Illinois***, 79 S. Ct. 1173 (1959). Mr. Boyd also has discovered credible evidence that the State Circuit Court for the City of St. Louis, had issued a court order directing that Mr. Boyd be committed to a Mental Hospital for examination and evaluation. However, the order was never carry through. This can be attributed to ineffective assistance of trial counsel as counsel had an affirmative duty to assure that his client rights were protected during all phases of the proceedings. See ***Strickland v. Washington***, 104 S. Ct. 2052 (1984). Mr. Boyd will argue that these

constitutional violations substantially affected his most fundamental rights, as the conviction of one who is incompetent to stand trial violates the very essence of due process. See ***Cooper v. Oklahoma***, 116 S.Ct. 1373 (1996);[1] ***Medina v. California***, 112 S.Ct. 2572, 2581 (1992); ***Drope v. Missouri***, 95 S.Ct. 896, 903-904 (1975); ***Pate v. Robinson***, 86 S.Ct. 836, 838 (1966); ***Dusky v. United States***, 80 S.Ct. 788 (1960); and ***Griffin v. Lockhart***, 935 F.2d 926, 929-930 (8th Cir. 1991).

Mr. Boyd acknowledges that the ***Napue and Strickland*** claims are new and subject to 28 U.S.C. § 2244 restrictions. Therefore, Mr. Boyd proffer new reliable evidence of his factual innocence that he believes meets the gateway test of the provisions set for in 28 U.S.C. § 2244, codified by ***Schlup v. Delo***, 115 S. Ct. 851 (1995), that would permit habeas review of te otherwise abusive claim.

Mr. Boyd new evidence consist of (1) documentation from a custodian of records for the Fulton State Hospital establishing that Mr. Boyd has never been committed there for evaluation and examination as contended by the State and relied upon by the competency hearing judge in rendering his determination of competency; (2). evidence in the form of an affidavit from Mr. Boyd's trial counsel to affirm that Mr. Boyd was unable to assist his attorney in the preparation of the defense during the pretrial proceedings, or assist in the defense during the trial proceedings; and (3) a Order from the St. Louis Circuit Court directing that Mr. Boyd be committed for examination and evaluation before any trial on the matter.

Mr. Boyd does not have remedy adequate at law to litigate the underlying constitutional claim asserted herein. However, Mr. Boyd has sought to litigate this claim

[1] Cooper v. Oklahoma, supra, clarified the standard to be applied in determining whether a defendant is competent to stand trial.

by way of writ of habeas pursuant to 28 U.S.C. § 2254, by obtaining permission for the Eighth Circuit Court of Appeals pursuant to 28 U.S.C. 2244(b). However, permission to file this new claim petition was summary denied by the Eighth Circuit Court of Appeals by summary order of July 21, 2000, without discussion. That court's disposition if the case is a non-appealable order. Mr. Boyd verily believes that he has adduced sufficient evidence to make the required threshold prima facie showing that would permit him leave to file a new claim petition for a writ of habeas corpus. Mr. Boyd further contends that this case present exceptional circumstances due to the nature of the underlying claim and the constitutional principles involved. This court should exercise its discretionary power to prevent a fundamental miscarriage of justice if left unresolved.

STATEMENT OF THE FACTS

Mr. Boyd's original appointed counsel moved for the appointment of a psychiatrist on December 16, 1983, and the order was granted under Section 552.020 and 552.030 R.S.Mo. Supp. 1980. Dr. Sadashiv Parwatikar examined Mr. Boyd on February 8, 1984, pursuant to the court's order. (C.H.T. 64). Dr. Parwatikar got no responses from Mr. Boyd in his first attempt to interview Mr. Boyd. The psychiatrist indicated that he would have to write a report and it might be "in his interest" to let him know [Mr. Boyd's] side of the story. (C.H.T. 62). Mr. Boyd responded that the police were confining him because "they think he ought to be there because he needs to be there" and that he didn't know why the police brought him there. (C.H.T. 62). After half an hour of similar conversation, Dr. Parwatikar ended the interview and asked a psychologist to administer some tests and get some background history. The psychologist reported that Mr. Boyd "cooperated fully" and that he expressed displeasure with his attorney who hadn't seen him for five weeks and "that he was not crazy or dumb" and wondered why more investigation had not been done, so he accordingly would not cooperate. (C.H.T. 63). Neither Dr. Parwatikar nor his social worker and psychologist interviewed Mr. Boyd's family members. (C.H.T. 64). Upon submission to an I.Q. test, Mr. Boyd scored between 73 and 84, classified as borderline intelligence (70 signifying mildly retarded). (C.H.T. 67). Dr. Parwatikar deemed appellant fit to proceed by way of report dated February 9, 1984.

Mr. Boyd filed an objection to this first report and successfully sought permission to have a second psychiatric examination. The court appointed Dr. Edwin Wolfgram to

do the examination. Subsequently a hearing was set to determine Mr. Boyd's competence, presided over by Judge Thomas W. Challis.

Dr. Wolfgram testified that he examined Mr. Boyd in the city jail on April 23, 1984. Mr. Boyd was then under constant surveillance due to a previous suicide attempt. (C.H.T. 5, 21). This psychiatrist conducted an hour and a half interview with Mr. Boyd, reviewed the police reports, and interviewed Mr. Boyd's parents, three of his sisters, and long term family acquaintances. (C.H.T. 5-6). Dr. Wolfgram diagnosed appellant as having a major affective disorder, "single episode, psychotic." The psychiatrist explained that this defect constituted "psychosis", the description used in psychiatric medical terminology to identify the clinical state in which "the person is not in touch with reality as reality is generally perceived and experienced by people." (C.H.T. 10). The major affective disorder may be found upon evidence of criteria including mood disturbance, sleep disturbances, loss of weight, crying spells, suicidal intent, or significant personality change. (C.H.T. 14). Dr. Wolfgram verified that Mr. Boyd could not walk for the first six and a half years of his life due to a bone deformity, which required braces. He received more extensive physical therapy to learn to walk at about age six. Mr. Boyd also had a speech impediment, which prevented him from speaking effectively until age seven and a half when he received corrective surgery on his tongue. (C.H.T. 7). Although these problems were indicative of mental problems, the psychiatrist testified, they did not then constitute psychosis. They did set the stage, however, for his subsequent psychotic personality change occurring in his mid-teen years. (C.H.T. 8, 15). Although Mr. Boyd as a young child became a "b" student, attending church regularly, and demonstrated no significant behavior problems to his family and community, this changed sharply during

his mid-teen years. (C.H.T. 15-16). He became withdrawn, refusing to eat with his family. He terminated his education and became belligerent. (C.H.T. 16). Mr. Boyd's mother confirmed this behavioral change, recalling that Mr. Boyd became withdrawn and would keep his head down, even when talking. He also began walking and running at night, yelling that he had nightmares and would see things. (C.H.T. 40 - 41). His behavior led his parents to call the police to lock him up, although they declined since he had committed no offense. (C.H.T. 42).

The dramatic shift in Mr. Boyd's behavior figured prominently in Dr. Wolfgram's diagnosis of major affective disorder, as did the suicide attempts. (C.H.T. 14, 20). He classified this disorder as "single episode"; meaning that the disorder was not intermittent, but rather continued basically interrupted from his mid-teen years. (C.H.T. 6, 7). The psychiatrist made additional diagnoses of continuous alcohol abuse, episodic drug abuse, and paranoid personality. (C.H.T. 6). He ascertained that this condition worsened the pre-existing major affective disorder psychosis, and confirmed this in his interviews with Mr. Boyd's acquaintances and family. (C.H.T. 8, 9, 15, 17). During the competency hearing, Judge Challis made inquiry at the end of Mr. Boyd's evidence at the competency hearing by addressing Mr. Boyd directly. The following transpired:

> THE COURT: Bring him up. I'll ask him a question or two. Stay close. What's your name, Mr. Boyd? Did you talk to anybody at the jail? Suppose I direct you to answer. Turn around. Take him away.
>
> MR. GRALIKE (Defense Counsel): I wanted to let the Court know that's the response I've had for the past four or five months.
>
> THE COURT: Let the record show that the defendant's attorney has advised the Court that the response he's had is identical to what the Court just got in its questioning of the

> witness. The witness did not face forward on the stand. Did not look at the Court and made no response to the Court's questioning whatsoever.

(C.H.T. 52).

The state then called Dr. Parwatikar who testified that Mr. Boyd was fit to proceed to trial in that he could understand the proceedings against him, could talk about his problems in a "fairly rational" way and understood his legal predicament and had a line of defense. (C.H.T. 56). Dr. Parwatikar recalled that Mr. Boyd originally would not speak to him in the same fashion as he responded to the court at the hearing. (C.H.T. 56). The doctor disagreed with Dr. Wolfgran's diagnosis of major affective disorder, saying that "single episode" disorder would last a short period of time following a traumatic event. (C.H.T. 57-58).

On cross-examination, Dr. Parwatikar conceded that Mr. Boyd's behavior at the hearing suggested catatonic schizophrenia, a person who is extremely mute, has to be moved by others. (C.H.T. 60). He maintained, however, that it also might indicate mere refusal or pretense. (C.H.T. 61). The psychiatrist conceded that he did not interview any of Mr. Boyd's family, nor had his psychologist, and was unaware of any suicide attempts just prior to the competency hearing. (C.H.T. 64, 69). Dr. Parwatikar further conceded that the only reason his diagnosis differs from Dr. Wolfgram was that they had different histories of Mr. Boyd. (C.H.T. 70-71).

The trial court although acknowledging that the hearing presented "a most unusual case," concluded that Mr. Boyd was fit to proceed and that Mr. Boyd controlled his cooperation, being lucid when it seemed to his benefit. The court noted Dr. Wolfgram's testimony that Mr. Boyd's condition could not have changed and then - pointed to pro se motions that the court assumed were author by Mr. Boyd, which he

considered a rival to the other licensed attorneys present. (C.H.T. 72). ***The court also found that Mr. Boyd had been committed to the Fulton State Hospital for examination and evaluation.*** The court concluded by stating "I equate the defendant's attitude with a disappearance, and many people have been tried in absentia." (C.H.T. 73).

A. Newly Discovered Evidence

Evidence is new if it was not available at trial and could not have been discovered earlier through the exercise of due diligence. ***Schlup v. Delo***, 115 S.Ct. 851; and ***Amrine v. Bowersox***, 128 F.3d 1222 (8th Cir. 1997). Evidence is also new if it was not consider or presented during the trial. ***Id***. Petitioner would suggest that the following evidence fall within this category.

First, Dr. Parwatikar filed a formal report with the court's administrator on February 14, 1984. The report filed by Dr. Parwatikar contained false evidence, which the prosecutor knew was false, but did not act to correct the false information.[2] Specifically, the false evidence depicted petitioner as being committed to the Fulton State Hospital for examination where he was allegedly evaluated by Dr. Parwatikar. Mr. Boyd has recently obtained evidence from the Fulton State Hospital, which establish that Mr. Boyd has never been committed to this hospital facility. See (Appendix Exhibit 2, at p. 75). The false evidence served to influence the competency hearing trial judge decision to find petitioner competent to stand trial. See (C.H.T. at p. 73). Efforts were made to obtain this evidence on prior occasion from the Fulton State Hospital to establish that petitioner had never been committed to this facility, all to no avail. This document from Fulton

[2] A copy of Dr. Parwatikar's report was served upon the circuit attorney office.

State Hospital constitutes evidence of Mr. Boyd's factual innocence on the question of whether he should have been held over for trial.

Second, Mr. Boyd's has obtained an affidavit from his trial counsel, Mr. Daniel Gralike. Mr. Gralike submitted this affidavit stating under oath that Mr. Boyd's was unable to assist him in the preparation of the defense due to Mr. Boyd's inability to communicate with counsel during the pre-trial and trial proceedings. See (Appendix Exhibit 3, at p. 76). Mr. Gralike's affidavit constitutes newly discover evidence of Mr. Boyd's factual innocence on the question of whether he should have been held over for trial.

Third, Mr. Boyd has discovered a Court Order directing that he be committed to a Fulton State Hospital for mental examination and evaluation. (Exhibit 6, Appendix at p. 86). This court order was never carry through.

REASONS FOR GRANTING THE WRIT

The question before this Court is whether Mr. Boyd has made a "prima facie showing" that the use of false evidence and ineffective assistance of counsel, combined with the other substantial evidence proffered in this case, establish that Mr. Boyd was forced to stand trial or denied access to further examination and evaluation on the question of his competency when it was highly likely that he was incompetent to stand trial in violation of due process. Mr. Boyd would suggest to this Court that he has carry this initial burden, which should afford him an opportunity to file a successive new claim petition for writ of habeas corpus in district court under the miscarriage of justice standard enumerated in ***Schlup v. Delo,*** supra.

Section 28 U.S.C. 2244(b)(2) provides:

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless--

> *(A) the applicant shows that 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 fact-finder would have found the applicant guilty of the underlying offense.*

Other requirements include filing an appropriate motion with the Court of Appeals, and making a "prima facie showing"[3], that the application satisfies the requirements of subsections 2244 (A) and (B). *See 2244(3) (A) through (D).* Mr. Boyd would suggest to the court that his case meet the criteria of each provision enumerated in 28 USC 2244(b)(2). In support therefor.

A. 2244(2)(A) Requirements

First, 2244(2)(A) *requires the applicant to show that 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.* Mr. Boyd would suggest to this court that he can meet this standard within the meaning of 2244(2)(A) in light of ***Cooper v. Oklahoma***, 116 S.Ct. 1373 (1996). In ***Cooper***, the United States Supreme Court decision clarified the appropriate standard to be applied on the question of whether a criminal defendant is competent to stand trial which was not available during petitioner state court proceedings; or

B. 2244(2)(B)(i) Requirements

Second, 28 USC 2244(2)(B)(i) *requires a showing that the factual predicate for the claim[s] could not have been discovered previously through the exercise of due diligence.* Petitioner would suggest to this court that he could meet this standard within the meaning of 2244(2)(b)(i). The "new evidence" that Petitioner proffered herein (Exhibit 2, supra), (Exhibit 3, supra) and (Exhibit 6, supra) was not discoverable through the exercise of due diligence.

---

[3] A prima facie case is such as will prevail until contradicted and overcome by other evidence. (Black Law Dictionary, Sixth Edition).

First, a State agency refused to disclose the information contain in (Exhibit 2, supra), upon prior requests by Mr. Boyd. The new evidence consists of information from the "Fulton State Hospital", which indicates that Mr. Boyd has never been committed to that hospital for a mental evaluation and examination. Mr. Boyd previous attempts to obtain this information from the Fulton State Hospital proved unsuccessful. For this reason, Mr. Boyd would suggest that the proffered evidence is new and that the factual predicate for the claim could not have been discovered previously through the exercise of due diligence. The new evidence depicted in (Exhibit 3, and Exhibit 6, supra), which consist of evidence from Mr. Boyd's trial counsel on his mental state during the actual trial and the Court Order directing that Mr. Boyd be committed to a mental hospital for examination and evaluation would also be considered new under the ***Schlup*** test; and

C. 2244(2)(B)(ii) Requirements

Third, 28 USC 2244(2)(B)(ii) requires a showing that 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 fact-finder would have found the applicant guilty of the underlying offense.[4]

Mr. Boyd would suggest to this court that he have met this standard within the meaning of 2244(2)(b)(ii). Specifically, the "new evidence" proffered in this case will establish that the prosecutor knowingly used false evidence during the competency hearing, which portrayed Mr. Boyd as being committed to Fulton State Hospital for mental examination and evaluation. The state introduced this false evidence by way of a

[4] For the purpose of these proceedings, the fact-finder would be the competency-hearing judge, and the underlying offense would be the issue that the hearing was design to resolve, e.g., whether petitioner was competent to stand trial.

130242

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

FILED

AUG 17 2000

MICHAEL GANS
CLERK OF COURT

No. 00-2537

Stanley Boyd,

Petitioner,

vs.

Dave Dormire,

Respondent.

On application for Permission to file a Successive Habeas Petition

Before BOWMAN, BEAM, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

JUDGMENT

Petitioner's petition for authorization to file a successive habeas application in the district court is denied. Mandate shall issue forthwith.

(5544-010199)

August 17, 2000

Order Entered at the Direction of the Court

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit