ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2003

Supreme Court, U.S.
FILED
MAY 26 2004
OFFICE OF THE CLERK

NO. ~~03~~ 10669

IN RE: CHARLES H. PARKER

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

PETITIONER PRO SE

CHARLES H. PARKER
DWCC-336890-#N-5C
670 BELL HILL ROAD
HOMER, LOUISIANA 71040-2150

28 U.S.C. § 2242 STATEMENT

A request for authorization to file a second petition for writ of habeas corpus under 28 U.S. C. § 2254 in the United States District Court for the Western District of Louisiana made pursuant to 28 U.S.C. § 2244(b)(3)(A) was denied by the United States Court of Appeals for the Fifth Circuit on November 5, 2003, and by the Louisiana State Supreme Court on April 23, 2004.

A second or successive habeas corpus application cannot be submitted to the appropriate District Court without prior appellate court or this Honorable Court's authorization.

The United States Fifth Circuit Court of Appeals decisions are in contrary with other Federal Circuit Courts of Appeals and this Honorable Court in filing a second or successive habeas corpus, when, in fact, the factual predicate and due diligence are demonstrated as required by statute.

QUESTION PRESENTED

Whether a state prisoner caught in the immediate legal vacuum relative to prescription spawned by the April 1996 enactment of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) should be accorded the same "without prejudice" protection extended to state prisoners under Steward v. Martinez-Villareal, 523 U.S. 637, 118 S.Ct. 1618, 140 L.Ed. 2d 849 (1998) when filing a second or successive 28 U.S.C. § 2254 petition after their first habeas application were dismissed without prejudice for failure to exhaust state remedies.

Whether a defendant should be barred by the ineffectiveness of counsel filing the first habeas, and defendant assumes the task after firing the attorney for fraud and deceit by filing a state post-conviction application presenting it to the right tribunal at the right time and going back into the Court of Appeals for authorization to file a second habeas in Federal Court.

A copy of the November 5, 2003 denial of the United States Court of Appeals of the 28 U.S.C. § 2244(b)(3)(A) motion for authorization is attached to this petition.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a) and § 2241.

This Court has the authority under Felker v. Turpin, 518 U.S. 651, 116 S.Ct. 2333, 136 L.Ed. 2d 827 (1996) to entertain a 28 U.S.C. § 2241 petition for a writ of habeas corpus by a state prisoner denied authorization to file a second or successive 28 U.S.C. § 2254 petition by an appellate court under the provisions of 28 U.S.C. § 2244(b)(2)(B)(i)(ii).

Pursuant to Rule 20.4(a) of the Rules of the Supreme Court of the United States, this petition presents "exceptional circumstances" that warrants the Court to exercise its discretion to entertain this issue of first impression because relief cannot be obtained in any other forum in this Circuit or District.

STATEMENT OF THE CASE

1. THE FACTS

On April 29, 1989 Donald R. Parker was murdered in rural Franklin Parish, Louisiana. He had been shot numerous times with a .22 caliber weapon. No weapon was ever recovered.

Donald Parker was the brother of Charles H. Parker, the Petitioner herein. During the ensuring weeks of Donald Parker's murder, Petitioner became a suspect after learning he was the beneficiary of his life policies that were over ten (10) years old.

Petitioner was indicted for first degree murder by a Franklin Parish Grand Jury on July 16, 1989. He was arrested on July 17, 1989 in Los Angeles, California where he resided.

Petitioner retained Monroe, Louisiana attorney Paul H. Kidd, Sr., to represent him in this matter.

Petitioner was released on an unsured bond of $500,000 on January 13, 1990 following his extradition to the State of Louisiana. None of the insurance proceeds were used for bond because Petitioner was charged as the suspect.

Trial of this matter commenced on January 11, 1994 in the Fifth Judicial District Court for the Parish of Franklin, with the Honorable Glen W. Strong presiding.

A jury found petitioner guilty on February 22, 1994 of second degree murder. On June 28, 1994 Petitioner was sentenced to life imprisonment without the benefit of probation, parole or suspension of sentence. Petitioner's codefendant went free without any plea bargain or testimony because the state failed to bring him to trial in those four years or hold any hearing(s).

The Louisiana Second Circuit Court of Appeals affirmed Petitioner's conviction and sentence on September 27, 1995. See, State v. Parker, 661 So.2d 602 (La.App. 2 Cir. 1995).

The Louisiana Supreme Court denied an application for writ of review on February 16, 1996. See, State v. Parker, 667 So. 2d 1049 (La.1996).

2. **FIRST 28 U.S.C. § 2254 PROCEEDINGS**

On July 15, 1996 Petitioner, through attorney Paul H. Kidd filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Western Dis-

4. **SECOND 28 U.S.C. § 2254 PROCEEDINGS**

Pursuant to 28 U.S.C. § 2244(b)(3)(A) Petitioner filed a Motion for Authorization to File a Second 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus on September 10, 2001 in the United States Court of Appeals for the Fifth Circuit.

On September 13, 2001 the Clerk of the United States Court of Appeals advised that Petitioner's motion had been received and filed. The motion was docketed under NO. 01-31071.

On October 8, 2001 Petitioner submitted to the Fifth Circuit a "proper Motion for Authorization" and the proposed second 28 U.S.C. § 2254 petition.

On November 14, 2001 a three-judge panel of the Fifth Circuit Court of Appeals denied Petitioner's motion for authorization stating that it failed "to establish the previously-discovered factual predicate requirement."

LEGAL ARGUMENT

Assuming arguendo that Petitioner had a "factual predicate" for an ineffective assistance claim before the Louisiana Supreme Court affirmed his conviction on direct appeal on February 16, 1996, he would have been barred under established state jurisprudence from raising the Sixth Amendment claim in the direct appeal process. See, State v. Smith, 784 So. 2d 1139, 1144 (La.1999).

A state prisoner is required to exhaust all available state court remedies before a federal court may grant him habeas relief. See, O'Sullivan v. Boerckel, 526 U.S. 838, 842, 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999)(citing 28 U.S.C. § 2254(b). Accord: Keeney v. Tamayo-Reyes, 504 U.S. 1,9, 112 S.Ct. 1715(1999)