04-6205

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2004

NO. _____

Supreme Court, U.S.
FILED
AUG 11 2004
OFFICE OF THE CLERK

IN RE: CHARLES H. PARKER

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241-2242

PETITIONER PRO SE

CHARLES H. PARKER
DWCC-336890-#N-5C
670 BELL HILL ROAD
HOMER, LA 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 July 7, 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(Second, Third, Seventh and Ninth) and this Honorable Court in filing a second or successive habeas corpus, when, in fact, the factual predicate and due diligence are well demonstrated in Petitioner's prior application under 28 U.S.C. § 2244(2)(B)(i).

The Fifth Circuit now says "Petitioner fails under 28 U.S.C. § 2244(2)(B)(ii)." The Fifth Circuit's ruling or decisions are in complete contrary rulings with other Federal Circuit Courts of Appeals (Second, Third, Seventh and Ninth) and this Honorable Court regarding an undisclosed plea bargain from the State to Petitioner in his criminal case.

The Fifth Circuit refuses to follow this Honorable Court's rulings in all plea bargain cases. Petitioner submitted his prior application under Massaro v. United States, 123 S.Ct. 1029 (2003), and the Fifth Circuit still denied. Help is urgently needed.

QUESTIONS PRESENTED

Whether a petitioner should be barred by the court(s) when counsel files all direct appeals from criminal convictions, and the filing of the first habeas corpus in Federal court?

Whether a petitioner should be allowed another "bite of the apple" in filing a second or successive habeas corpus because of gross ineffective assistance of counsel by way of postconviction application, which **is** required by laws and statutes?

Whether Petitioner had a constitutional right to accept a plea bargain from the State, if known to him, and not withheld by defense counsel demonstrates prejudice under Strickland, supra?

Whether it is ineffective assistance of counsel for defense counsel to tell a jury in his Opening Statement that he's going to call two crucial defense witnesses and no subpeonas are in place violating Anderson v. Bulter, 858 F.2d 16 (1st Cir. 1988) and Washington v. Smith, 219 F.3d 629 (7th Cir. 2000)?

Whether Petitioner should be held accountable for the errors, deceit and dishonesty of former defense counsel?

Whether there's a conflict of interest for counsel to represent petitioner and family members in civil matters relating to criminal issues involving an enormous amount of money violating this Honorable Court's ruling in Cuyler, supra, and even this state's ruling in State v. Franklin, 400 SO.2d 620 (La.1981)?

IN THE

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IN RE: CHARLES H. PARKER

TO: THE HONORABLE ASSOCIATE JUSTICE
OF THE UNITED STATES SUPREME COURT
ANTONIN SCALIA

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

MAY IT PLEASE THE COURT: Charles H. Parker, the Petitioner and a state prisoner appearing before the Court in proper person, request that the Court grant this petition for writ of habeas corpus to decide several issues of first impressions for the Court.

DOCUMENTS/OPINION BELOW

A copy of the proposed Successive 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus to be presented to the United States District Court for the Western District of Louisiana-Monroe Division is attached to this urgent petition.

A copy of the ruling by the Fifth Circuit Court of Appeals is attached to this urgent petition.

Supporting documents are attached to this urgent petition for this Honorable Court to review in order to grant the writ.

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. 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)(i)(ii).

Pursuant to Rule 20.4(a) of the Rule of The Supreme Court of the United States, this petition presents "exceptional circumstances" that warrants the Court to exercise its discretion to entertain these issues of first impressions because relief can not be obtained in any other forum in this Circuit because the Court of Appeals for the Fifth Circuit refuses to follow this Honorable Court's rulings. Help from this Honorable Court is needed for a resurrection from this crucifixion Petitioner has suffered.

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.

The Petitioner's case was based upon totally circumstantial evidence that Petitioner and his codefendant killed his brother to collect on life insurance policies that Petitioner was the beneficiary of same for over twelve (12) years is just absurd.

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

Petitioner retained Monroe, Louisiana attorney Paul H. Kidd to represent him in this fiasco put on by same defense counsel.

Petitioner was released on an unsecured bond of $500,000 on January 13, 1990 following his extradition to Louisiana, and later bond hearing. None of the insurance proceeds were used for bond because Petitioner was charged in the offense. The bond money was that of Petitioner's life savings.

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

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 of Louisiana failed to bring him to trial in four years. He was out on bond also.

The Trial court made a serious error by allowing testimony by an out of state prosecution witness, who was the main source of giving out Petitioner's records to law enforcement authorities without a search warrant or subpoena without any jury's determination of credible testimony. He was the main source of this indictment. Only the trial judge said "I believe his testimony is credible, and the jury would probably say the same." T.T.page 2845.

This testimony comes some four (4) months after Petitioner is found guilty of the underlying offense. The jury is already laid to rest. The testimony before the jury would have placed reasonable doubt that Petitioner, if not for constitutional error, the results would have been different. How can you have this in a court of law? The jury should have heard the direct and cross examination of the State's witness, Maurie Rainey from Los Angeles, who as an investigator for American Express and friends of the two detectives where he worked before retiring from LAPD.

The investigator Rainey conspired and colluded with LAPD and officials in Louisiana to obtain the credit card records of Petitioner without the proper forum. The jury should have heard this. Petitioner never would have been found guilty of such crime. See, 28 U.S.C. § 2244 (b)(2).

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 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." See, also Exhibit #B.

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)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
JUL 7 2004
CHARLES R. FULBRUGE III
CLERK

No. 04-30549

IN RE: CHARLES H. PARKER, JR.,

APPENDICE #B

Movant.

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

Before KING, Chief Judge, and BARKSDALE and PICKERING, Circuit Judges.

PER CURIAM:

Charles H. Parker, Jr., Louisiana prisoner #336890, seeks leave to file a successive habeas application challenging his second-degree murder conviction. Parker argues that: (1) the state court erred in denying as time-barred his state habeas application filed after his first federal habeas application and (2) his counsel was ineffective in that he failed to advise him of a plea offer and underestimated his sentencing exposure. Parker has not shown that the facts underlying the claims, 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. 28 U.S.C. § 2244(b)(2). Accordingly, IT IS ORDERED that Parker's motion for authorization to file a successive 28 U.S.C. § 2254 application is DENIED.