ORIGINAL

Supreme Court, U.S.
FILED
OCT 12 2000
CLERK

No. — 00-6623

IN THE

SUPREME COURT OF THE UNITED STATES

GLORIA AUCOIN — PETITIONER
(Your Name)

VS.

STATE OF LOUISIANA — RESPONDENT(S)

ON PETITION FOR A WRIT OF HABEAS CORPUS

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

RECEIVED
OCT 12 2000
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SUPREME COURT, U.S.

PETITION FOR WRIT OF HABEAS CORPUS

GLORIA AUCOIN
(Your Name)

LA. CORRECTIONAL INSTITUTE/WOMEN, P.O. BOX 26
(Address)

ST. GABRIEL, LOUISIANA 70776
(City, State, Zip Code)

(504) 342-6298
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

I. WHY WAS PETITIONER DENIED HER EQUAL PROTECTION AND DUE PROCESS RIGHTS UNDER THE 4TH, 5TH, 6TH, 8TH, AND 14TH AMENDMENTS, WHICH IN EFFECT DENIED HER DUE PROCESS AND EQUAL PROTECTION OF THE LAW TO HAVE A FAIR CROSS-SECTION OF THE COMMUNITY WHEREBY BLACKS AND OTHER MINORITIES WERE EXCLUDED FROM SERVING AS GRAND JURORS (FOREPERSONS)?

II. WHY WAS PETITIONER DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEREAS COUNSEL DID NOT FILE MOTION TO QUASH THE INDICTMENT RETURNED BY A GRAND JURY IMPANELED IN A RACIALLY DISCRIMINATORY MATTER, PLUS FAILED TO APPEAL ON THESE GROUNDS?

III. WHY DID UNITED STATES COURT OF APPEALS BAR PETITIONER UNDER PROCEDURAL BAR WHEREAS PROCEDURAL ISSUES CAN BE CONSIDERED UNCONSTITUTIONAL DUE TO INMATES LACK OF KNOWLEDGE OF THE LAW AND THE MERE FACT OF INCARCERATION WHEREAS LIMITED INFORMATION AND KNOWLEDGE ARE AVAILABLE. THIS STOPS INMATES CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS SECURED UNDER THE 6TH AND 14TH AMENDMENTS.

IV. WHY DID UNITED STATES COURT OF APPEALS DENY PETITIONERS CLAIMS CLAIMING SHE DID NOT SHOW NEW RULE OF LAW THAT HAD BEEN MADE RETROACTIVE OR UPON A PREVIOUSLY UNAVAILABLE FACTUAL PREDICATE FOR MAKING NEW CLAIM WHEN STATE V CAMBELL WAS DECIDED IN 1998 WHICH WOULD MAKE IT AVAILABLE ONLY THEN AS ONLY THEN WAS LAW MADE AVAILABLE AND A DECISION RENDERED. AND WHY WAS SHE DENIED EQUAL PROTECTION OF THE LAW, ALL PERSONS SIMILARY SITUATED SHOULD BE SIMILARY TREATED WHEREAS CAMPBELL V. LOUISIANA, WAS REVIEWED AND AN OPINION RENDERED YET THE PETITIONERS CLAIMS WERE REFUSED AND DENIED ON THE EXACT SAME ISSUES AND CLAIMS. WHICH WAS TOTALLY PREJUDICIAL.

STATEMENT OF THE CASE

Petitioner, Gloria Simon Aucoin, was indicted on November 4, 1976, by a Lafayette Parish Grand Jury for First Degree Murder. Petitioner tendered a plea of Not Guilty/Not Guilty By Reason Of Insanity. After a trial on the merits the verdict of guilty was returned, defendant was sentenced on November 19, 1977, to Life in prison without benefit of probation, parole, or suspension of sentence. On September 5, 1978, the La. Supreme Court affirmed the Conviction. State V. Aucoin, 362 So. 2d 503 (La. 1978).

Petitioner then filed Post Conviction Relief and was denied on April 21, 1999. She then applied for Writ of Certiorari to the Third Circuit Court of Appeals, State Of Louisiana and was again denied relief on June 11, 1999.

Shortly thereafter petitioner filed Habeas Corpus to the United States District Court , Western District and it was the decision of the Court to Transfer her Writ to the United States Court Of Appeals on January 27, 2000. The United States Court Of Appeals, Fifth Circuit rendered their decision that "No action was being taken on her document". This decision was rendered May 5, 2000.

Petitioner now enters your Honorable Supreme Court Of the United States, District Of Columbia contending her Constitutional Rights have been violated and the the lower courts have improperly denied, or failed to review her case in it's entirety. She further asserts that retroactivity claims and procedural bars are a way for the lower Courts to side step the issues at hand which are most important and applicable to Equal Protection of the Laws.

STATEMENT OF THE REASONS

The defendant in the following paragraphs will explain how she has complied with 28 U.S.C. 2241 and 2242, She will also attempt to persuade the courts on the exceptional circumstances warranting a review in the United States Supreme Court.

The defendant has in fact exhausted all her State and Federal remedies. All proof of decisions is attached in appendix A through E. The last Court the defendant entered and was given a judgement on was The United States Court Of Appeals For The Fifth Circuit, see Appendix-E. This court clearly made a decision not to hear the Case and in it's denial, front page Appendix-E, it clearly states in part, "Because Aucoin has not made a prima facie showing that her claims rely upon a new rule of Constitutionalllaw that has been made retroactive by the Supreme Court or upon a previously unavailable factual predicate for making a new claim," In essence the defendant contends that on such an important Constitutional question the Federal Courts will not make a decision and Writ of Habeas Corpus back to the Federal Courts in this case would be unentertained because as stated by the Federal Court Of Appeals , "A new rule of constitutional law", is what needs to be shown and that is and will not be available until the United Supreme Court makes a ruling on this case.

Furthermore the defendant expresses that her petition does indeed warrant a review under extraordinary writ of Habeas Corpus whereas retroactivity is an issue which is clear and precise as to the Federal Court of appeals denial on the simple fact that a "higher court" has not ruled. The only higher authority is the United States Supreme Court and this makes this a clearly extraordinary

case and the U.S. Supreme Court is warranted in hearing this case and making the final decision. Defendant further avers that an important question of law, as to the retroactivity of this case is an immense question of Federal law that has not been, but should be settled by this court. The defendant would like to further assert that their are many similar cases in the Court system, as of now on the Campbell, issues and their application to similar cases which are presently in state courts as well as Federal courts and the reviewing of this case, State V. Aucoin, would be in aid of this court's appellate jurisdiction. It could also clear up some of the guidelines and questions of law many others are seeking at the present time. Ms. Aucoin has not made a prima facie showing that her claims rely upon a new rule of Constitutional law that has been made retroactive because there is none.

Furthermore, Amendment 5 of the constitution provides that, "All persons born and naturalized in the United States are citizens therein and shall be afforded, "Equal Protection of the Law". Petitioner contends that all persons similarly situated should be similarly treated and that is a further extraordinary point and question of law which needs to be addressed. Petitioner contends that she has similar right to review and a decision whereas all other courts in this case have refused to address and or either sent it up to a higher court which again has refused to hear it. She further asserts that it is unconstitutional to review Campbell and not her which bares the exact same issues. It is clear that upon the courts close examination this court should agree that a Petition For Extraordinary Writ of habeas corpus is the correct way to proceed with this case.

APPENDIX -E

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-30129

FILED
APR 4 2000
CHARLES R. FULBRUGE III
CLERK

IN RE: GLORIA SIMON AUCOIN,

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 GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

BY THE COURT:

Pursuant to 28 U.S.C. § 2244(b), Gloria Simon Aucoin, Louisiana state prisoner # 84690, moves for an order authorizing the district court to consider a successive habeas corpus application. Aucoin states that she intends to raise as issues in her successive application whether the grand jury foreperson was unconstitutionally selected and whether she received ineffective assistance of counsel because her attorney failed to file a motion to quash the indictment based upon discrimination in the selection of the grand jury. Because Aucoin has not made a prima facie showing that her claims rely upon a new rule of constitutional law that has been made retroactive by the Supreme Court or upon a previously unavailable factual predicate for making a new claim, the motion is DENIED. See § 2244(b)(2).

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

February 4, 2000

Ms Gloria Simon Aucoin
Louisiana Correctional Institution for Women
#84690
Highway 74
PO Box 26
St Gabriel, LA 70776

No. 00-30129 In re: Aucoin
USDC No. 99-CV-2226

The district court has transferred your second or successive 28 U.S.C. § 2254 petition, to this court for a determination as to whether your successive action should be allowed. I have been directed to advise you of the following matters, see In re Tony Epps, 127 F.3d 364 (5th Cir. 1997).

Under 28 U.S.C. § 2244(b)(3) you must first receive this court's permission before you can file such an action.

You have **30 days** from the date of this letter to file with this court a motion for authorization to proceed in the district court and to furnish the documentation shown below. The motion may not exceed 20 pages in length pursuant to FED. R. APP. P. 27(3)(d)(2). Please use the case number shown above in your motion. If you fail to file a motion for authorization within this 30 day period, this court will enter an order denying you permission to proceed in the district court.

If you wish to file a second or successive § 2254 petition in the district court, you must make a prima facie showing that you satisfy either of the two conditions found in 28 U.S.C. § 2244(b)(2).

(A) that your claim relies on a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; **or,**

(B) the factual predicate for your claim could not have been discovered previously through the exercise of due diligence, **and** the facts underlying your claim, if proven by clear and convincing evidence, would be sufficient to establish that a reasonable trier of fact would not have found you guilty of the underlying offense.

You must attach the following documentation to your § 2254 motion to this court:

(1) a copy of the proposed § 2254 petition you are requesting permission to file in the district court;

(2) copies of all previous § 2254 petitions challenging the judgment or sentence received in any conviction for which you are currently incarcerated; all previous § 2241 petitions challenging the terms and conditions of your imprisonment;

(3) any complaint, regardless of title, that was subsequently treated by the district court as a § 2254 motion or § 2241 petition;

(4) all court opinions and orders disposing of the claims advanced in (2) above; and

(5) all magistrate judge's reports and recommendations issued in connection with the claims advanced in (2), above.

If, after due diligence and through no fault of your own, you cannot obtain the documents described above, you should submit an affidavit describing the steps you took to obtain them and explaining why you were unsuccessful. If possible, you should also identify by court, case name and case number any proceeding for which you cannot obtain the documents in (2) and (3) above.

The 30 day time limit within which this court must address your § 2254 motion will not begin to run until the clerk's office receives your response to this letter.

The original and three copies of the application must be mailed to:

U.S. Court of Appeals for the Fifth Circuit
Office of the Clerk
600 Camp Street
New Orleans, LA 70130

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: Claudia Farrington
Claudia Farrington, Deputy Clerk

cc: Ms Loretta Whyte

MISC-10

APPENDIX

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT

JAN 28 2000
ROBERT H. SHEMWELL, CLERK
BY DEPUTY

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

GLORIA SIMON AUCOIN — CIVIL ACTION NO. 99-2226

VERSUS — SECTION "P"

WARDEN JOHNNIE JONES — JUDGE HAIK

MAGISTRATE JUDGE TYNES

TRANSFER ORDER

Before the court is a petition for writ of *habeas corpus* filed by *pro se* petitioner, Gloria Simon Aucoin, pursuant to 28 U.S.C. § 2254 on December 3, 1999. Petitioner challenges her state court conviction and sentence for first degree murder. Petitioner was convicted of that crime on November 19, 1977, in the Fifteenth Judicial District Court of Louisiana for Lafayette Parish. She was sentenced to life imprisonment.

Petitioner asserts the following grounds in support of this *habeas corpus* petition: (1) denial of due process and equal protection as a result of discrimination in the selection of the grand jury foreman; and (2) ineffective assistance of counsel apparently for failing to file a motion to quash or otherwise object to the composition and selection of the grand jury.

Petitioner's conviction was affirmed by the Louisiana Supreme Court on September 5, 1978. *State v. Simon*, 434 So.2d 1062 (La. 1977).

Petitioner also filed for state post-conviction relief which was ultimately denied by the Louisiana Supreme Court on September 7, 1982. *State ex rel Aucoin v. Jones*, 420 So.2d 158 (La. 1982).

Thereafter, Petitioner filed a petition for federal *habeas corpus* relief in this court challenging her 1977 conviction for first degree murder, the same conviction challenged herein. *Aucoin v. Jones*, United States District Court, Western District of Louisiana, Lafayette-Opelousas Division, docket no. 84cv0097.

Exhibit "A", Docket Sheet.

Review of this court's records indicate that Petitioner asserted one claim for relief, that there was insufficient evidence of specific intent to commit murder. The case was denied on the merits by judgement of April 24, 1984. Petitioner appealed to the United States Fifth Circuit Court of Appeal which affirmed by decision dated May 2, 1985. *Aucoin v. Jones*, 759 F.2d 449 (5th Cir. 1985). Exhibit "B", Published Opinion.

Petitioner also filed another application for state post-conviction relief which was ultimately denied by the Louisiana Supreme Court on February 21, 1986. *State ex rel Aucoin v. Jones*, 482 So.2d 631 (La. 1986).

Thereafter, Petitioner filed a second petition for federal *habeas corpus* relief in this court. *Aucoin v. Warden, Louisiana Correctional Institute for Women*, United States District Court, Western District of Louisiana, Lafayette-Opelousas Division, docket no. 86cv0769. As can be seen by the exhibit attached hereto, that petition was filed on April 9, 1986 after the Louisiana Supreme Court denied review of her second application for post-conviction relief. Exhibit "C", Docket Sheet.

Review of this court's records indicate that Petitioner asserted four claims for relief, that she was not provided with a copy of her trial transcript, that trial by jury of her case was unconstitutional, that the jury was not sequestered, and that she received ineffective assistance of counsel. The case was denied by this court as an abuse of the writ by judgement of August 8, 1986. Petitioner appealed to the United States Fifth Circuit Court of Appeal which granted a Certificate of Probable Cause in December, 1986. The Fifth Circuit found that the district court abused its discretion by dismissing Aucoin's petition as an abuse of the writ, and then went on to review the merits of Petitioner's claims. In a 12 page unpublished decision the court determined that Petitioner's claims were merit less. *Aucoin v. Warden, Louisiana Correctional Institute for Women*, 824 F.2d 970 (5th Cir. 1987). Exhibit "D", Unpublished Opinion and Federal Reported Table Citation.

The petition currently before the court is a second or successive petition under 28 U.S.C. §2244. "It is clear that an application filed after a previous application was fully adjudicated on the merits is a second or successive application within the meaning of 28 U.S.C. §2244(b), even if it contains claims never before raised." *Graham v. Johnson*, 168 F.3d 762, 774 fn. 7 (5th Cir. 1999) citing *Felker v. Turpin*, 518 U.S. 651, 655-58, 662-63, 116 S.Ct. 2333, 135 L.Ed.2d 827 (1996). Thus, the focus of the inquiry is whether in the prior petition, the petitioner received an adjudication on the merits of his claims. As demonstrated above, petitioner's previously asserted claims contained in both *Aucoin v. Jones* and *Aucoin v. Warden, Louisiana Correctional Institute for Women* were fully adjudicated on the merits in this court and/or in the Fifth Circuit Court of Appeals. Hence the current application is unquestionably second and successive.[1] See also *In Re Cain*, 137 F.3d 234, 235 (5th Cir. 1998).

Before this petition may be considered by this court, the petitioner is required to obtain authorization to file this second or successive petition from the Fifth Circuit in accordance with 28 U.S.C. §2244(b)(3).[2] The record does not show that petitioner has received such authorization. Until such time as petitioner obtains said authorization, this Court is without jurisdiction to proceed.[3]

Title 28 U.S.C. § 2244 does not direct the district court to take any specific action when a second or successive petition is presented without authorization under § 2244(b)(3); nor does the statute provide a

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[1]Moreover, in an earlier case, the Fifth Circuit articulated that if a later petition raises claims that could have been raised in an earlier petition, the petition is successive. *In re Cain*, 137 F.3d 234, 235 (5th Cir. 1998). Under this standard, the instant petition is successive as all claims raised herein could have been raised in the earlier application. The legal basis for petitioner's constitutional claims was well established prior to her 1977 trial. See *Rose v. Mitchell*, 99 S.Ct. 2993, 2997-98 (1979)(noting that for nearly a century the Supreme Court has held that indictments of unconstitutionally constituted grand juries violate the Fourteenth Amendment). Moreover, there is no question that this jurisprudence had been relied upon by others as the basis of their constitutional challenge. See *Rose, supra* and cases cited therein. Thus, petitioner's failure to assert the claims in her two previous applications cannot be excused.

[2]Title 28 U.S.C. § 2244(b)(3)(A) provides, "[b]efore a second or successive application permitted by this section [28 U.S.C. § 2254] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

[3]The undersigned also notes that the petition appears to be either procedurally defaulted as it appears the state courts denied Petitioner's most recent application as untimely filed and repetitive pursuant to L.C.Cr.P. articles 930.4 and 930.8. [rec. doc. 1, pg 3]. Moreover, the application appears to be barred by the one-year limitation period codified at 28 U.S.C. §2244(d). Petitioner's conviction became final prior to the enactment of AEDPA. Accordingly, she had until April 24, 1997 to file for federal *habeas* relief. *United States v. Flores*, 135 F.3d 1000, 1006 (5th Cir. 1998); *Flanagan v. Johnson*, 154 F.3d 196 (5th Cir. 1998).

specific procedure for the district court to follow when presented with such a petition.

In *In Re Epps*, 127 F.3d 364 (5th Cir. 1997), the Fifth Circuit adopted a specific procedure to be used when a successive petition is transferred from a district court under § 2244(b)(3). In *Epps*, the district court transferred a successive petition to the Fifth Circuit for a determination whether the petition should be allowed under § 2244. The Fifth Circuit did not direct the district court to transfer successive *habeas corpus* petitions to the Fifth Circuit. However, the holding in *Epps* implies that the transfer of successive *habeas corpus* petitions to the Fifth Circuit for consideration under § 2244 is proper. Thus, the court finds that this petition should be transferred to the Fifth Circuit for consideration under § 2244. Accordingly,

IT IS ORDERED that the petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 filed by Gloria Simon Aucoin is hereby **TRANSFERRED** to the United States Court of Appeals for the Fifth Circuit.

THUS DONE AND SIGNED in chambers at Lafayette, Louisiana, this 27th day of January, 2000.

Richard T. Haik
RICHARD T. HAIK
UNITED STATES DISTRICT JUDGE

COPY SENT:
DATE: 2/1/00
BY: CED
TO: BJ-appeals
Aucoin

COPY SENT
DATE 1-28-00
BY CG
TO RTH
RVW
Barry-Appeals