No. 03-6448

Supreme Court, U.S.
FILED
JUL 3 1 2003
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In Re Cullum

Larry Joseph Cullum — PETITIONER
(Your Name)

VS.

Constance Reese, Warden — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

[xx] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

The United States Court of Appeals for the Fifth Circuit.

[ ] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

(Signature)

No. 03-6448

ORIGINAL

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IN THE

SUPREME COURT OF THE UNITED STATES

IN RE CULLUM,

Petitioner,

vs.

CONSTANCE REESE, WARDEN,

Respondent.

WRIT OF HABEAS CORPUS

TO JUSTICE ANTHONY KENNEDY

IN THE COURT OF LAST RESORTS

FROM AN ADVERSE DECISION BY THE

COURT OF APPEALS FOR THE FIFTH CIRCUIT

Larry Joseph Cullum
Reg. #48858-080
F.C.I. - Medium
P.O. Box 26040
Beaumont, TX 77720

QUESTIONS PRESENTED

Question One: Whether Petitioner's Constitutional Writ of Habeas Corpus, that was specifically filed under Article 1, § 9, cl. 2, was unconstitutional **suspended** when the lower Courts impermissibly construed the Great Writ as one filed under § 2241, then dismissed it on procedural grounds without a ruling on the merits, therefore, warranting a remand to the district court for a ruling on the merits of the issues presented herein.

Question Two: Whether Petitioner's **131 year** sentence, for a non-violent **first offense,** of conspiracy to manufacture methamphetamine and manufacturing phenylacetone, when considering "NO" drugs were seized in the case, violates Petitioner's Eighth Amendment right against Cruel and Unusal Punishment, especially when considering the fact that, had each count been run concurrently, Petitioner's sentence would have been 20 years.

Question Three: Whether Ex-federal Prosecutor William Johnson's guilty plea to falsifying and manufacturing evidence in the Waco, Texas Branch Davidian trial constitutes Newly Discovered Evidence that support's Petitioner's claims that Ex-federal Prosecutor William Johnson falsified and manufactured evidence in Petitioner's trial, therefore warranting a de novo review of Petitioner's claims and the record.

Question four: Whether Petitioner's **131 year** sentence, that was based on an imaginary drug quantity finding by the district court, at sentencing, violates Petitioner's Fifth Amendment Due Process and Sixth Amendment notice and jury trial guarantee rights, when considering there was "NO" actual drugs recovered in this case, "NO" drug quantity charged in the indictment, and "NO" drug quantity determination made by the jury, and considering the fact that Petitioner timely raised this argument in the Courts below within one-year of the rulings in, **Apprendi v. New Jersey, 530 U.S. 466, 147 L.Ed.2d 435, 120 S. Ct. 2348 (2000), and, United States v. Doggett, 230 F.3d 160 (5th Cir. 2000).**

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE CULLUM,

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vs.

CONSTANCE REESE, WARDEN,

Respondent.

WRIT OF HABEAS CORPUS
TO JUSTICE ANTHONY KENNEDY
IN THE COURT OF LAST RESORTS

Petitioner, Larry Joseph Cullum, hereby respectfully prays that the Honorable Justice Anthony Kennedy, will exercise his inherent supervisory authority and issue the instant Writ of Habeas Corpus to review the judgment and order of the United States Court of Appeals, entered on July 3rd, 2003, and the previous denial of Petitioner's Writ of Habeas corpus that was initially filed in the United States District Court for the Eastern District of Texas, Beaumont Division.

OPINIONS BELOW

The Order from the United States Court of Appeals for the Fifth Circuit denying Petitioner's Writ of Error Coram Nobis, which was construed as a Petition for Rehearing, on July 3rd, 2003, is attached hereto as Appendix "A." The Opinion of the United States Court of Appeals for the Fifth Circuit Affirming the district court's judgment on December 16th, 2002, is attached hereto as Appendix "B." The Final Judgment and the Memorandum Opinion from the United States District Court for the Eastern District of Texas, Beaumont

since that date.

On September 11th, 1989, Petitioner was found guilty be a jury of the following: **Count 2:** Conspiracy to Possess With Intent to Distribute Methamphetamine, in violation of Title 21 U.S.C. § 841(a)(1), no specific subsection of 841, and no drug quantity, was charged in the indictment; **Counts 3 through 9:** Manufacturing of Phenylacetone, in violation Title 21 U.S.C. § 841(a)(1), no specific subsection of 841, and no chemical quantity, was charged in the indictment; **Counts 25 through 26:** Filing False Tax Returns, in violation of Title 26 U.S.C. § 7206.

On March 8th, 1990, Federal Judge Walter S. Smith, Jr., in spite of the Recommendation in the Presentence Investigation Report (PSI) for a sentencing range of **40 to 51 months,** which was based in part because this was Petitioner's **first offense for a non-violent crime,** and over Petitioner's objections, sentenced Petitioner to **131-years.** It should be noted that if all Counts of conviction would have been ran concurrent, Petitioner's sentence would have been **20 years.**

Subsequently, Petitioner exhausted his direct appeal and all collateral appeal options, before filing a Writ of Habeas Corpus, pursuant to Article I, § 9, cl. 2, in the district court that has jurisdiction over the institution where Petitioner is confined, which is the subject of the instant Writ. It should be noted that no ruling was made on the merits of Petitioner's claims either in the district court or in the United States Court of Appeals for the Fifth Circuit.

To avoid ruling on the merits, the district court impermissibly construed Petitioner's Constitutional Writ of Habeas Corpus, that was specifically filed under Article I, § 9, cl. 2, as one filed under the statutory provision of Title 28 U.S.C. § 2241, and dismissed it on procedural grounds, rather than address the merits. It is Petitioner's position that misconstruing the Great Writ effectively suspended it, in violation of the plain language set forth in Article I, § 9, cl. 2.

Therefore, Petitioner has satisfied the requirements of Title 28 U.S.C. § 2242, by stating the reasons why Petitioner brings this Writ to Justice Anthony Kennedy,

rather than going back to the district court of the district in which Petitioner is held, which would clearly be futile and to no avail, which leaves the instant Writ to Justice Anthony Kennedy in the Court of last resorts Petitioner's only viable option.

STATEMENT OF CASE

The conspiracy in this case started when Petitioner leased some land to Co-defendant Schneider, who was the King Pen and the government's key witness. The property had a barn on it, where Mr. Schneider and another Co-defendant, John Robinette began to manufacture phenylacetone in hot water heaters, which the Co-defendants later turned into methamphetamine.

Petitioner's involvement began when he discovered some empty chemical containers and trash that he was alerted to because of the smell of ether, which has a loud odor. Realizing that trash was the results of drug manufacturing, Petitioner was faced with two choices, either call the authorities and risk arrest and punishment because the unlawful activity had taken place on Petitioner's property, or clean up the mess and hope the problem would go away.

What Petitioner is guilty of is poor judgment, because out of fear, he elected to clean up the left overs and confront Mr. Schneider. In order to appease Petitioner, Mr. Schneider gave Petitioner a small amount of money, and then later literally black mailed Petitioner with the threat of going to jail, and giving Petitioner more money for the use of his property and to clean up the additional messes.

Petitioner's involvement was short lived. Because of animosity between Petitioner and Mr. Schneider and the growing pressure of the negative situation, Petitioner and Mr. Schneider had several disagreements that resulted in Mr. Schneider moving his drug manufacturing operation to Wimberly, Texas, which ended Petitioner's involvement in the conspiracy. However, the government charged Petitioner with the conduct from Wimberly, Texas, and the sentence judge sentenced Petitioner to the conduct from Wimberly, Texas stating that it was reasonably foreseeable to Petitioner.

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 3, 2003

Mr Larry Joseph Cullum
Federal Correctional Institution
Beaumont - Medium
#48848-080
4550 Hebert Road
PO Box 26040
Beaumont, TX 77720

No. 02-41023 Cullum v. Dobre
USDC No. 1:02-CV-338

Dear Mr. Cullum:

We have received your "Writ of Error Coram Nobis." You are reminded that there are no provisions in the rules of this Court for the filing of *Writ of Error Coram Nobis*. However, as allowed under Haines v. Kerner, 404 U.S. 519,92 S.C. 594 (1972), your document has been construed as a request for reconsideration of the court's order of February 13, 2003 which struck your deficient petition for rehearing en banc, and we take no action on same. The time for filing a timely motion reconsideration under 5th Cir. R. 27 has expired.

As a matter of clarification, you indicate in your motion that the court's order of February 13, 2003 was incorrect because you *did* "timely" corrected the deficiencies to your petition for rehearing en banc; we disagree. While a subsequent petition for rehearing en banc was received on February 4, 2003, it failed to contain the required corrections. Accordingly, the deficient petition for rehearing en banc was submitted to the court for non-compliance.

If you want your "Writ of Error Coram Nobis" returned, you must notify us within 15 days; otherwise, it will be recycled.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

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

EOD JUN 13 2002

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U.S. DISTRICT COURT
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TX EASTERN-BEAUMONT
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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

LARRY J. CULLUM	§	
VS.	§	CIVIL ACTION NO. 1:02cv338
JONATHON DOBRE	§	

MEMORANDUM OPINION

Petitioner Larry J. Cullum, a federal prisoner confined in Beaumont, Texas, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.[1]

Factual Background and Procedural History

Petitioner was convicted of multiple criminal offenses in the United States District Court for the Western District of Texas. On March 8, 1990, petitioner was sentenced to a total of 131 months imprisonment. The convictions were affirmed on appeal. *United States v. Devine*, 934 F.2d 1325 (5th Cir. 1991).

Petitioner has filed two unsuccessful motions to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner has also filed two requests for leave to file a second Section 2255 motion. The United States Court of Appeals for the Fifth Circuit denied both requests.

The Petition

Petitioner contends there is newly discovered evidence that prosecutors manufactured and

[1] Petitioner states that he is proceeding under the Suspension Clause, Art. I, § 9, cl. 2 of the United States Constitution, and requests that this action not be construed as a Section 2241 petition. However, the Suspension Clause itself does not give the federal courts jurisdiction to grant habeas relief. Because the federal courts do not possess inherent common law jurisdiction, the power to grant a writ of habeas corpus must be authorized by statute. *Ex parte Bollman*, 8 U.S. 75 (1807).

2

ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

In re:

BASIL SINCLAIR,

On Habeas Corpus.

_____/

ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

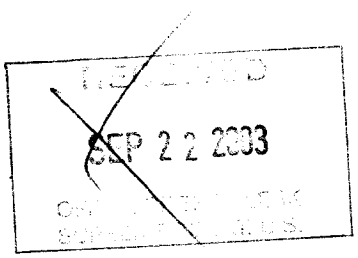
PETITION FOR WRIT OF HABEAS CORPUS 28 U.S.C. § 2241

BASIL SINCLAIR, K-46329
(Your Name)

P.O. Box 715071
(Address)

Represa, CA 95671-5071
(City, State, Zip Code)

N/A



QUESTION(S) PRESENTED

1. Whether petitioner's right to due process of law, as guaranteed by the Fourteenth Amendment of the United States Constitution, was infringed by the District Court's denial of his request to place the case in abeyance.

2. Whether petitioner has been denied a fundamental constitutional right under the Sixth Amendment to the United States Constitition by denial of effective assistance of trial counsel.

3. Whether petitioner has been denied fundamental constitutional rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitition by the withholding of a material witness by the prosecution.