ORIGINAL

Docket No. 03-5602

Supreme Court, U.S.
FILED
JUL 28 2003
OFFICE OF THE CLERK

IN THE UNITED STATES SUPREME COURT

SEAN MCQUIDDY,

Petitioner

V.

LEE CONNERS, Warden,
U.S. PENITENTIARY, at
Leavenworth, Kansas

PETITION FOR WRIT OF HABEAS CORPUS

FOR THE PETITIONER:

Sean McQuiddy, Pro se
No. 15275-075
U.S. Penitentiary
P.O. Box 1000
Leavenworth, Ks. 66048

QUESTION PRESENTED

WHETHER THE PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN THERE HAS BEEN NO APPEAL FILED FROM A CRIMINAL CONVICTION AND THE DEFENDANT WAS NOT INFORMED THAT HE HAD A RIGHT TO AN APPEAL, WHEN THE COURT HAD NOT RELEASED HIM FROM THE CASE?

WHETHER THE PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN A WRITTEN CONFESSION WAS GIVEN UNDER THE ADVICE OF THE ATTORNEY OF RECORD, BASED ON A PROMISE FOR A LESSER SENTENCE, WHEN THERE WAS NO OTHER EVIDENCE TO SUPPORT THE CONVICTION?

WHETHER THE PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, WHEN HE WAS DENIED THE RIGHT TO A JURY TRIAL; THE RIGHT TO HAVE COMPULSORY PROCESS TO HAVE WITNESSES TESTIFY FOR HIM; AND TO BE CONFRONTED BY HIS ACCUSERS?

WHETHER THE COURT OF APPEALS HAVE JURISDICTION TO HEAR APPEALS, BASED ON "ABUSE OF DISCRETION" IN DOWNWARD DEPARTURE CASES FROM THE DISTRICT COURT?

WHETHER THE REFUSAL TO DEPART DOWNWARD VIOLATES THE FIFTH AMENDMENT FOR SELF INCRIMINATION, WHEN THE CONVICTION IS BASED SOLELY ON THE WRITTEN CONFESSION?

WHETHER A WRITTEN CONFESSION IS COERCED, IN VIOLATION OF DUE PROCESS OF LAW, WHEN OBTAINED BY PROMISING A LESSER SENTENCE, BUT OBTAINS THE MAXIMUM SENTENCE AND THE PROMISE IS NOT HONORED?

WHETHER RULE 60, OF FEDERAL RULES ON CIVIL PROCEDURE FOR RELIEF FROM JUDGMENTS IS APPLICABLE TO CRIMINAL JUDGMENTS, WHEN THE JUDGMENTS ARE VOID OR VOIDABLE?

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF HABEAS CORPUS

The Petitioner, Sean McQuiddy, pro se, respectfully submits this application for extraordinary writ of habeas corpus, to show this court that he is being held in the custody of Lee Conners, Warden of the United States Penitentiary at Leavenworth, Kansas, illegally and in violation of the equal protection and due process clauses of the United States Constitution and an application in the district court is futile, based on the fact, he has submitted a Motion to Vacate Sentence pursuant to 28, §2255USC on March 29, 2000, and the court has refused to dispose of the said application and the Sixth Circuit Court of Appeals has refused to issue a mandamus to compel the district court to act, so he can exercise his right to an appeal; and a review in this court is necessary to resolve the conflict with the Sixth Circuits view on "lack of jurisdiction" to review a constitutional violation in the refusal to depart downward from an imposed sentence.

Orders Below

July 28, 1998, Judge Higgins imposed a life sentence, based on a confession and refusal to depart. [Joint Appendix, P.1]

March 16, 1999, the court of appeals dismissed the appeal from the original motion to vacate sentence. [Joint Appendix, P. 6]

April 01, 2003, the court of appeals refused to issue a writ of mandamus to compel the district court to dispose of a pending motion to vacate, which is based on ineffective assistance of counsel. [Joint Appendix, P. 8]

JURISDICTION

The petitioner respectfully request this court to exercise its appellate jurisdiction to issue an extraordinary writ of habeas corpus, pursuant to 28, §1651, USC, on grounds relief in the district court is futile and a review in this court is necessary to protect his constitutional rights to due process of law, where he was denied effective assistance of counsel at the trial level and denied the right to an appeal.

CONSTITUTIONAL PROVISION

Fifth Amendment:

" No person . . .; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Sixth Amendment:

" In all criminal prosecutions, the accused shall enjoy . . .public trial, by an impartial jury of the state and district wherein the crime shall have been committed, . . .; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

The petitioner was arrested on the charges on page 1 of the Joint Appendix and there was no evidence to support the charges against him. The government threatened to prosecute his mother on the charges, unless the petitioner signed a written confession on the charges and on documents authorizing the government to seize his personal property.

The petitioner agreed to sign the written documents and the confession in a plea bargaining agreement for a sentence not more than twenty-seven(27) years, in exchange that his mother not be prosecuted.

At the trial, the petitioner testified and cooperated with the government, but the district judge refused to depart and entered the maximum sentence of life, without parole, based solely on the written confession. There was no evidence that was connected with the petitioner to justify the judgment entered, other than the written confession that was urged and encouraged by the attorney for the petitioner.

After the hearing and the court imposing the judgment of conviction and sentence of life without parole against the petitioner, and the petitioner's mother was also prosecuted, the attorney of record did not appeal the judgment of conviction, nor advised the petitioner of the right to have an appeal.

Upon arriving in the custody of the warden, the petitioner filed his §2255 Motion to Vacate Sentence. (Docket Entry#1, Joint Appendix, P. 10) A Motion for leave to file a supplement was filed on August 16, 2000. (Docket Entry#16, Joint Appendix, P.11)

In an attempt to protect and enforce his right to an appeal, the petitioner filed a petition for relief from judgment pursuant to Rule 60 of Federal Rules on Civil Procedure and Rule 8(b) of Local Rules of Court, to show the court of the ineffective assistance of counsel. (Joint Appendix, P. 12)

ARGUMENT

The petitioner was prejudiced by the ineffective assistance of counsel, by being advised to enter a guilty plea, by signing a written confession in the absence of any evidence to support a guilty plead, was denied the right to a jury trial; the right to have compulsory process issued to have witnesses testify on his behalf; the right to be confronted with the witnesses against him; and denied the right to an appeal.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

JUDGMENT IN A CRIMINAL CASE

UNITED STATES OF AMERICA
V.

SEAN McQUIDDY

CASE #: 3:97-00107-02
Judge Higgins

ERNEST WILSON WILLIAMS
DEFENDANT'S ATTORNEY

THE DEFENDANT:

o pleaded guilty to counts 4, 12, 36, and 17 of the Third Superseding Indictment.

Accordingly, the defendant is adjudged guilty of such counts, which have the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 846	Conspiracy to distribute cocaine and crack cocaine	08/15/97	4
18 USC 1956(a)(1)(A)(i)	Money laundering	02/97	12
18 USC 922(g)(1) and 18 USC 924(a)(2)	Convicted felon in possession of handguns	07/03/96	17
18 USC 1956(a)(1)(B)(ii)	Money laundering	12/18/95	36
18 USC 2	Aiding and abetting	02/97	12, 17, 36

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

o Counts 2, 7, 8, 9, 10, 14, 15, 16, 18, 25, 26, 27, 34, 37, 38, and 41 of the Third Superseding Indictment are dismissed as to this defendant only on the motion of the United States. On motion of the United States, the Indictment, Superseding Indictment, and Second Superseding Indictments are dismissed as to this defendant only.

√ It is ordered that the defendant shall pay a special assessment of $100, for Count 4, $100 for Count 12, $50 for Count 36, and $100 for Count 17, totaling $350, which shall be due IMMEDIATELY. All assessments shall be paid to the U.S. District Court Clerk.

IT IS FURTHER ORDERED that the defendant shall notify the United States District Court for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's S.S. #: 415-17-0166
Defendant's D.O.B.: 12/01/66
Defendant's USM #: 15275-075

Defendant's Mailing/Residence Address:
248 Haynes Park Drive
Nashville, TN 37218

7/24/98
Date of Imposition Sentence

Signature of Judicial Official

THOMAS A. HIGGINS, USDJ
Name & Title of Judicial Official

7/28/98
Date

This document was entered on the docket in compliance with Rule 55, FRCrimP, on 7-29-98 By:

No. 02-6472

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

APR 01 2003

LEONARD GREEN, Clerk

In re: SEAN MCQUIDDY,

Petitioner.

ORDER

Before: MERRITT, KENNEDY, and DAUGHTREY, Circuit Judges.

The petitioner is a federal inmate who filed a motion to vacate sentence in the district court in March 2000. He now seeks from this court a writ of mandamus directing the district court to rule on the merits of that motion.

The district court docket sheet shows that an answer to the motion to vacate sentence was filed in June 2000, and that a reply was filed in July 2000. The petitioner filed a motion to supplement in August 2000 and the respondent filed a response to that motion in September 2000. After that time, no activity is shown in the case until after the present mandamus petition was filed in this court. On January 22, 2003, the magistrate judge assigned to the case granted the motion to supplement and directed a response. That response was filed on March 4, 2003, and the case remains in that procedural posture.

The traditional use of a mandamus petition is "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943). A petitioner seeking the writ must demonstrate either a clear abuse of discretion on the part of the lower court or conduct amounting

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