No. ORIGINAL

In The Supreme Court Of The United States

October Term, 2000 00 5469

Ex parte: Wayne Morris Reeves Jr., Petitioner

Motion For Leave To Proceed In Forma Pauperis
And Declaration In Support Of Motion

To The Honorable Justices Of Said Court

Comes Respectfully Now, Wayne Morris Reeves Jr., the Petitioner in the above styled cause, presents this Motion and request leave to proceed in forma pauperis with the filing of the attached Petition for Writ of Habeas Corpus. As a sanctioned litigant for filing frivolous lawsuits and civil appeals, the Petitioner has been refused to proceed pro-se and and in forma pauperis in the U.S. Courts subject to the jurisdiction of the U.S. Court of Appeals for the 5th Circuit to file his habeas corpus claims. In support of this Motion, the Petitioner would respectfully show this Honorable Court the following:

Affidavit In Support Of Motion For Leave To Proceed In Forma Pauperis

Supreme Court, U.S.
FILED
JUL 31 2000
OFFICE OF THE CLERK

I, Wayne Morris Reeves Jr. #603172, being first duly sworn, depose and say that I am the Petitioner in the above styled cause, that in support of my Motion for Leave to Proceed In Forma Pauperis, I state that because of my poverty, I am unable to pay the costs of this case or to give security therefor; and

No. [redacted]

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

EX PARTE: WAYNE MORRIS REEVES JR., PETITIONER

ON PETITION FOR WRIT OF HABEAS CORPUS

FROM THE STATE OF TEXAS

IN THE 194TH JUDICIAL DISTRICT COURT

OF DALLAS COUNTY, TEXAS

Respectfully Submitted;

X Wayne M. Reeves

WAYNE M. REEVES JR. #603172
M.W. STILES UNIT, 3060 FM-3514
BEAUMONT, TEXAS 77705

PETITIONER / PRO-SE

Questions Presented

1. In this habeas corpus action, the petitioner's present sentence is enhanced by the use of (2) prior convictions. Is the petitioner unlawfully confined and restrained of his liberty by the State of Texas in violation of the 1st, 5th, 6th, 8th, and 14th Amendments to the U.S. Constitution where that in:

A. Cause No. 343764: In the 176th Judicial District Court of Harris County, Texas, the petitioner's plea of guilty or nolo contendere was not knowingly and intelligently made; the evidence is insufficient to support his conviction and his plea; the evidence is insufficient to support the sentence; the petitioner's probation was revoked past the limitation period of the term of probation; and he was denied effective assistance of counsel in regards to all the foregoing claims.

B. Cause No. F88-89,532-IH: In the 1st Judicial District Court of Dallas County, Texas, the petitioner was denied to be tried by an impartial jury and that his conviction is the product of racism where that the jury consisted of (11) white persons and one hispanic person; the evidence is insufficient to support the conviction; and the petitioner was denied effective assistance of counsel on appeal where that the substitute appeal attorney filed a frivolous appeal and she also abandoned his appeal.

2. Under the petitioner's present conviction which uses the (2) foregoing prior convictions to enhance his present sentence, is the petitioner unlawfully confined and restrained of his liberty by the State of Texas in violation of the 1st, 5th, 6th and 14th Amendments to the U.S. Constitution, where

That in Cause No. F91-03898-RTH: In the 194th Judicial District Court of Dallas County, Texas, the Petitioner was denied his right of appeal by coercion; the evidence is insufficient to support his plea and the conviction; the Petitioner's plea of nolo contendere was not voluntarily made and was made by coercion; he was denied the right of self-representation; his conviction is the product of racism; and he was denied effective assistance of counsel in regards to all of the foregoing claims.

3. Is the Texas Penal Codes, 3.12.42: Penalties for Repeat and Habitual Felony Offenders, constitutionally infirm and violates due process because the statute is not governed by limitations?

Table of Contents

1. Introduction ____ 1
2. Opinions Below ____ 1
3. Jurisdiction ____ 3
4. Constitutional and Statutory Provisions Involved ____ 4
5. Statement of the Case ____ 5
6. Reasons for Granting the Writ ____ 6
   A. Prior Conviction Cause No. 343764 ____ 6
   B. Prior Conviction Cause No. F88-89,532-I.H. ____ 13
   C. Present Conviction Cause No. F91-03898-R.M. ____ 20
   D. Collateral Attacks on Prior Convictions And "In Custody" Requirement ____ 32
   E. Effects of Sanction Order on "P.L.R.A." and "A.E.D.P.A." ____ 33
   F. Challenges on Sufficiency of the Evidence in State Habeas Corpus Actions ____ 34
7. Conclusion ____ 34
8. Proof of Service ____ 36

Index To Appendices

1. Appendix "A": Motion Requesting A Designation of Issues, and Order Designating Issues, in Cause No. 343764.

2. Appendix "B": Respondent's Original Answer in Cause No. 343764.

3. Appendix "C": Order in Cause No. 343764.

4. Appendix "D": Orders of the Texas Court of Criminal Appeals in Cause No. 343764.

5. Appendix "E": Findings of Facts and Conclusions of Law on Application for Writ of Habeas Corpus in Cause No. F88-89,532-I.H.

6. Appendix "F": Orders of the Texas Court of Crim-

inal Appeals in Cause No. F88-89,532-J.H.

7. Appendix "G": Findings of Facts and Conclusions of Law on Application for Writ of Habeas Corpus in Cause No. F91-03,898-RM.

8. Appendix "H": Orders of the Texas Court of Criminal Appeals in Cause No. F91-03,898-RM.

9. Appendix "I": Findings of Facts and Conclusions of Law on Application for Writ of Habeas Corpus in Cause No. F91-03,898-RM.

10. Appendix "J": Orders of the Texas Court of Criminal Appeals in Cause No. F91-03,898-RM.

11. Appendix "K": Per Curiam and Sanction Order by the U.S. Court of Appeals, 5th Circuit.

12. Appendix "L": Findings, Conclusions, and Recommendations of the U.S. Magistrate Judge in Cause No. 3:97-CV-0730-G.

13. Appendix "M": Findings of the Court and Judgment in Cause No. 3:97-CV-0730-G

14. Appendix "N": Findings, Conclusions, and Recommendations of the U.S. Magistrate Judge in Cause No. 3:97-CV-1148-H.

15. Appendix "O": Findings of the Court and Judgment in Cause No. 3:97-CV-1148-H.

16. Appendix "P": Order of the U.S. Court of Appeals, 5th Circuit, in Cause No. 3:94-CV-0379-R

17. Appendix "Q": Order of the U.S. Court of Appeals, 5th Circuit, in Cause Nos. 3:97-CV-0730 and 3:97-CV-1148, Consolidated.

18. Appendix "R": Order of the U.S. Court of Appeals, 5th Circuit, on Motion for Leave to Proceed by a Sanctioned Litigant.

19. Appendix "S": Order of the U.S. Court of Appeals, 5th Circuit, on Motion for Leave to Proceed by a Sanctioned Litigant.

20. Appendix "T": Order of the U.S. Court of Ap-

peals, 5th Circuit, on Motion for LEAVE to Proceed by a SANCTIONED Litigant.

21. Appendix "U": Order by U.S. Court of Appeals, 5th Circuit, on Rehearing of Appendix "T".

22. Appendix "V": Order of the U.S. Court of Appeals, 5th Circuit, on Motion for LEAVE to Proceed by a SANCTIONED Litigant.

23. Appendix "W": Constitutional and Statutory provisions involved.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

EX PARTE: WAYNE MORRIS REEVES JR., PETITIONER,

ON PETITION FOR WRIT OF HABEAS CORPUS FROM

THE 194th JUDICIAL DISTRICT COURT OF

DALLAS COUNTY, STATE OF TEXAS

TO THE HONORABLE JUSTICES OF SAID COURT:

COMES RESPECTFULLY NOW, WAYNE MORRIS REEVES JR., THE PETITIONER IN THE ABOVE STYLED CAUSE, PRESENTS THIS "PETITION FOR WRIT OF HABEAS CORPUS" PURSUANT TO THE PROVISIONS OF ARTICLE I, § 9 (2) TO THE U.S. CONSTITUTION, AND THE RULES OF THE U.S. SUPREME COURT, RULES 20.2 AND 20.4, ALLEGING THAT HE IS UNLAWFULLY CONFINED AND RESTRAINED OF HIS LIBERTY BY GARY L. JOHNSON, ACTING IN HIS OFFICIAL CAPACITY AS DIRECTOR OF T.D.C.J.-I.D., IN VIOLATION OF THE 1st, 5th, 6th, 8th, AND 14th AMENDMENTS TO THE U.S. CONSTITUTION. IN SUPPORT OF THIS PETITION, THE PETITIONER WOULD RESPECTFULLY SHOW THIS HONORABLE U.S. SUPREME COURT THE FOLLOWING:

OPINIONS BELOW

THE PETITIONER IS A SANCTIONED LITIGANT AND

as a punishment sanction, he is prohibitted from challenging his conviction in any U.S. District Court subject to the jurisdiction of the U.S. Court of Appeals for the 5th Circuit. Thus, the opinions presented for review are Texas State Court opinions.

1. Cause No. 346764: In the 176th Judicial District Court of Harris County, Texas and pursuant to the Petitioner's successive "Petition for Writ of Habeas Corpus, Exhausted and Unexhausted Claims," filed on or about February 8, 1995, the Harris County Assistant District Attorney filed a "Motion Requesting a Designation of Issues," and appears as Appendix "A". The trial judge granted the motion and said order is attached to Appendix "A". "Respondent's Original Answer" appears in Appendix "B". Trial court's "Order" denying successive habeas corpus petition appears in Appendix "C". And, the Texas Court of Criminal Appeals denial of successive habeas corpus petition appears in Appendix "D."

2. Cause No. F88 59,532-I.H: In the 1st Judicial District Court of Dallas County, Texas, and pursuant to the Petitioner's successive "Petition for Writ of Habeas Corpus, Exhausted and Unexhausted Claims," filed on or about April 19, 1996, the Court filed its "Findings of Facts and Conclusions of Law on Application for Writ of Habeas Corpus" denying the Petitioners successive habeas corpus petition, and appears in Appendix "E". The Texas Court of Criminal Appeals denial of successive habeas corpus petition appears in Appendix "F".

3. Cause No. F91-03,898-R.M.: In the 194th Judicial District Court of Dallas County, Texas, and pursuant to the Petitioner's successive "Petition for Writ of Habeas Corpus, Exhausted and Unexhausted Claims," fil-

ed on or about March 26, 1996, the trial judge filed his "Findings of Facts and Conclusions of Law on Application for Writ of Habeas Corpus," denying the Petitioner's successive habeas corpus petition, and appears in Appendix "G". The Texas Court of Criminal Appeals denial of successive habeas corpus petition appears in Appendix "H"

Additionally, in said causes and court numbers and pursuant to the Petitioner's successive "Petition for Writ of Habeas Corpus, Exhausted and Unexhausted Claims" filed on or about November 9, 1998, the trial judge filed his "Findings of Facts and Conclusions of Law on Application for Writ of Habeas Corpus," denying the Petitioner's successive habeas corpus petition, and appears in Appendix "I". The Texas Court of Criminal Appeals denial of successive habeas corpus petition appears in Appendix "J".

Jurisdiction

The jurisdiction of this Honorable U.S. Supreme Court is invoked pursuant to Title 28 U.S.C.A., §§2241 and 2254(a) for the following reasons:

1. The Petitioner has been sanctioned by the U.S. Court of Appeals for the 5th Circuit for filing frivolous lawsuits and frivolous appeals that he believed were meritorious. Sanction Order appears in Appendix "K". Because it has been determined that habeas corpus proceeding are civil actions, and because of such a determination, the Sanction Order extended to the Petitioner's ability to challenge his criminal conviction by way of habeas corpus actions. See Appendices "L" thru "O". Because the Sanction Order included habeas corpus actions, on several occasions the Petitioner sought leave of the U.S. Court of Appeals for the 5th Circuit to file habeas corpus actions challenging his criminal con-

victions, and for almost (4) years, the U.S. Court of Appeals for the 5th Circuit has denied all such requests made by the Petitioner. See Appendices "P" thru "V".

2. Because the Petitioner is a sanctioned litigant and he is denied access to the Federal courts to challenge his criminal conviction in a habeas corpus action as a condition of the sanction, he is without any remedy at law to challenge the constitutionality of his unlawful confinement and restraint by the State of Texas, and that the U.S. Court of Appeals for the 5th Circuit's Sanction Order and its refusal to allow the Petitioner to seek habeas corpus relief to his unlawful confinement and restraint is an unusual circumstance that will allow this Honorable U.S. Supreme Court to exercise its discretionary powers and issue a "Writ of Habeas Corpus" in this case.

3. Pursuant to the provisions of the "Rules of the U.S. Supreme Court, Rule 20.4(a)", and 28 U.S.C.A. §§2242 and 2254(b), the Petitioner is prohibited from filing his habeas corpus petitions in the Federal district court as a punishment sanction for filing frivolous lawsuits and frivolous civil appeals. In addition, each and every habeas claim present in the instant habeas corpus action has been presented to the Texas Court of Criminal Appeals, the highest court that may review habeas corpus claims, for purposes of exhaustion of state court remedies.

For all of the foregoing reasons, the Petitioner invokes the jurisdiction of this Honorable U.S. Supreme Court pursuant to Title 28 U.S.C.A. §§2241 and 2254(a).

Constitutional And Statutory Provisions Involved

All U.S. Constitution Amendments and Texas State Statutes are set forth in Appendix "W".

STATEMENT OF THE CASE

The U.S. District Court for the Northern District of Texas, Dallas Division, pursuant to transfer orders by the U.S. District Court for the Eastern District of Texas, Beaumont Division, had jurisdiction pursuant to 28 U.S.C.A. §§2241 and 2254. However, having determined that habeas corpus actions are civil actions and in light of the sanction order against the Petitioner rendered by the U.S. Court of Appeals for the 5th Circuit (Appendix "K") barring the Petitioner from filing any pro-se, in forma pauperis, initial civil actions and civil appeals, the Dallas Federal Court dismissed the Petitioner's habeas corpus actions seeking habeas corpus relief to his alleged unconstitutional convictions and imprisonment to the (2) prior convictions. See Appendices "L" thru "O". Additionally and in light of the sanction order, both the Eastern and Northern District Federal Courts refused to file the Petitioners habeas corpus petition challenging the unconstitutionality of his present conviction.

On or about November 6, 1991 and pursuant to his plea of guilty or nolo contendere, the Petitioner was convicted for the offense of "Violation of the Health and Safety Code; Possession of a Controlled Substance, Namely Cocaine", less than 28 gms., a Second Degree Felony. Pursuant to the provisions of the Texas Penal Codes, §12.42(d), the Petitioner's sentence was enhanced by the use of (2) prior convictions and the trial Judge sentenced the Petitioner to (25) years "confinement" in the Texas Department of Criminal Justice-Institutional Division (T.D.C.J.-I.D.). No appeal was taken in this case.

The Petitioner implemented several attacks

on his (2) prior convictions and his present conviction in state court habeas corpus proceedings, all of which were denied by the states highest court authorized to review post conviction habeas corpus actions. See Appendices "A" thru "J".

The petitioner sought habeas corpus relief to his alleged unconstitutional convictions and imprisonment by filing § 2254 applications and petitions in the federal district courts in Dallas and Houston, all of which were dismissed for failure to exhaust state court remedies. See Appendix "L", Footnote (1), and Appendix "N", Footnote (2). Having exhausted his state court remedies and in light of the sanction order, the petitioner is unable to pursue his habeas corpus claims and he is unable to obtain the relief only provided in habeas corpus actions. Thus, the instant habeas corpus action is filed in this Honorable U.S. Supreme Court pursuant to the provisions of 28 U.S.C.A. 1651(a) and 2254(a) and Rules of the U.S. Supreme Court, Rule 20.4.

Reasons For Granting The Petition

The petitioner is unlawfully confined and restrained of his liberty by the State of Texas where that his convictions were obtained in violation of the 1st, 5th, 6th, 8th, and 14th Amendments to the U.S. Constitution and in violation of Texas State laws and statutes.

A.

Cause No. 343764: In the 176th Judicial District Court of Harris County, Texas, Offense of Criminal Mischief, a third degree felony which carries any term of imprisonment from (2) years to (10) years.

On or about November 19, 1981, the petitioner was convicted for the offense of "Criminal Mis-