02-1155

No. _____

Supreme Court, U.S.
FILED
JUN 04 2003
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IN THE

SUPREME COURT OF THE UNITED STATES

In Re: Rasheed Hamidullah a.k.a. Herman Landers

Petitioner,

ORIGINAL

PETITION FOR AN EXTRAORDINARY WRIT PURSUANT

28 U.S.C. § 1651(a) and UNITED STATE SUPREME COURT RULE 20(a).

RESPECTFULLY SUBMITTED

Rasheed Hamidullah

RASHEED HAMIDULLAH a.k.a. Herman Landers (PRO SE)
Crossroads Correctional Center (4A-204)
1115 East Pence Road
Cameron, Missouri.
64429

Dated 5, 24, 2003.

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LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whose judgment is the subject of this petition is as follows:

In Re: Rasheed Hamidullah, a.k.a., Herman Landers

Petitioner.

RELIEF SOUGHT FROM THIS COURT BY PETITIONER

Pursuant 28 U.S.C. & 1651(a) and U.S. Supreme Court Rule 20, petitioner request that this Honorable Court issue an Writ of Habeas Corpus pursuant 28 U.S.C. & 2254(d)(1); vacate the decision of the U.S. District Court for the Western District of Missouri denying petitioner's original request for a Writ of Habeas Corpus; remand petitioner's case back to the U.S. Court of Appeals for the Eight Circuit with instructions for further remand back to the U.S. District Court, W.D., with further instructions to address the underlying claims on petitioner's issues involving ineffective assistance of trial counsel and appellate counsel on direct appeal at the state court level.

JURISDICTIONAL STATEMENTS

This Court has authority to hear this case under Article III, Sections 1 and 2 of the U.S. Constitution, also under U.S. Supreme Court Rules 20; 10(c); 11 and 14. This Court also has authority under 28 U.S.C. &1651(a) &1251 and U.S. Const., Amdt. 11 and under the Fifth, Sixth and Fourteenth Amendments to the U.S. Const., as well as, all of this Court's case law cited herein.

STATEMENT OF JUSTIFICATION TO GRANT THIS PETITION

To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's jurisdiction, that exceptional circumstances warrant the exercise of this Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other Court. Petitioner states that he cannot seek the relief he is asking from this Court in any other Court; and that he firmly believes that he does meet the other provisions of Rule 20.

Questions Presented
For Review

1. "Whether the Eighth Circuit's decision to deny petitioner's request for a Certificate of Appealability and Motion for rehearing in violation of this Court's case law Slack v. McDaniel, 529 U.S. 473 (2000)?"

2. "Did the Eighth Circuit err in denying petitioner's request for a COA and Rehearing (under the particular circumstances of petitioner's case), conflicts with this Court's doctrine in Slack v. McDanial, and Eighth Circuit doctrine upholding Slack v. McDanial, in Morris v. Dormire, 217 F. 3d 556 (8th Cir. 2000)?"

3. "Did the Eighth Circuit's decision in denying petitioner's request for a COA and rehearing, conflicts with authoritative decisions of other Court of Appeals that have addressed similar issues. Saffer v. Johnson, 237 F. 3d 411 (5th Cir. 2000); Jack v. Kaiser, 229 F. 3d 1163 (10th Cir. 2000); U.S. v. Brooks, 230 F. 3d 643 (3th Cir. 2000); Franklin v. Hightower, 215 F. 3d 1196 (11th Cir. 2000); Portfield v. Bell, 258 F. 3d 484 (6th Cir. 2001)?"

4. "Was the District Court required to specifically identify the correct controlling U.S. Supreme Court case law under 28 U.S.C. & 2254 (d)(1) and (2) OF "unreasonable application," and "contrary to" firmly established federal law as determined by this court, and under the statute under AEDPA (as amended -- April 24, 1996?")

5. "By failing to specifically identify the correct controlling U.S. Supreme Court case law, and applying that case law to the specific issues petitioner raised, was petitioner denied a proper standard of review on federal habeas corpus reliaf?"

6. "Had the proper standards of review been applied on the issues petitioner raised in his federal habeas petition had been applied, would petitioner been granted habeas corpus relief, under issues enumerated as issues [A through P] in petitioner's original habeas petition, traverse, and all subsequent supplemental fillings?"

7. "Whether the District Court erred in giving [deference] to the state courts opinion from petitioner's state court direct appeal on the issues where the state court failed to cite to [any] U.S. Supreme Court case law, or [any] state law that relied on federal constitutional principles under 2254(d) as detailed in recent decisions by both the Second Circuit and Ninth Circuits in Washington v. Shriver, 240 F. 3d 101 (2d Cir. 2001); Delgado v. Lewis, 223 F. 3d 976 (9th Cir. 2000)?"

8. "Did the District Court err in giving [deference] to the issues raised in petitioner's state court (motion[s] to recall the mandate) on the issues of ineffective assistance of appellate counsel. The state court denied petitioner's recall mandate by [Summery] order, citing no rationale, no U.S. Supreme Court case law, no state precedents applying Federal constitutional principles In-light-of Washington and Delgado did the District Court err in giving [deference] to the state

court on the recall mandate?"

9. "Whether by giving deference to the state court's summary denials, and direct appeal, whether this violated or conflicted with the Second and Ninth Circuit's decisions in Washington v. Shriver, and Delgado v. Lewis, supras?"

10. "Whether the U.S. District Court for the State of Missouri, and the Eighth Circuit Court of Appeals, have implemented a practice of routinely summarily denying a petitioner on Federal Habeas Corpus Relief, without ever going to the merits of the claims?"

11. "Whether the U.S. District Court and Eighth Circuit's practice of Summarily denying a Federal Habeas Petitioner and widespread wholesailingly adopting word-for-word the state court's opinions, without ever going to the merits of the claims, whether this practice is in direct conflict with the Second Circuit's Case Law on how a Federal Court should review Habeas Petitions, as outlined in Rudenko v. Costello, 286 F.3d 51 (2d Cir. 2002)?"

STATEMENT OF THE CASE

Mae Nurse was a temporary resident at The Real Truth Shelter in Kansas City during the month of January, 1995. (Tr. 328). On the evening of January 18th, Mae went outside the shelter to smoke. (Tr. 329). She saw Herman Landers, who she recognized because he also had stayed at the shelter, approach her from across the street. (Tr. 329-330). They talked for awhile, then Mae said that she needed to go to the liquor store across the street to buy more cigarettes. (Tr. 330-331). Herman asked if he could walk with her, and Mae said okay. (Tr. 331).

Mae testified that upon reaching the store, Herman said that he wanted to introduce her to a friend, and they walked to a car parked nearby. (Tr. 334). There, Herman grabbed Mae's arm, pushed her inside the car, and told the driver to go. (Tr. 334-335). Mae was screaming, and Herman told her to shut up. (Tr. 335). He directed the driver to an abandoned house a short distance away. (Tr. 336). Then he got out of the car and also pulled Mae out. (Tr. 336).

They entered the house, and Herman pushed Mae up the stairs to the second floor. (Tr. 339). He directed her to a room with a mattress on the floor. (Tr. 342). Herman Pushed her onto the to mattress, and Mae started screaming again. (Tr. 342) Herman pulled out a knife, placed it on her throat, and told her that if she did not stop screaming, he would cut her. (Tr. 342).

Herman pulled off Mae's clothes and tried to penetrate her vagina with his penis, but he could not get an erection.

(Tr. 344). He put his fingers inside her and twisted them around. (Tr. 344). Mae felt pain and pulled away. (Tr. 345). Herman began choking her, and Mae grabbed his penis and twisted it. (Tr. 345). Herman then bit Mae on her leg until she released his penis. (Tr. 345).

Herman again put the knife on Mae's throat then placed his now semi-erect penis inside her vagina. (Tr. 347). When he ejaculated some fifteen to twenty minutes later, he put his clothes on and told her that he was sorry. (Tr. 348). Mae put her clothes on and told Herman that she was going to call the police. (Tr. 348). Mae walked out of the house and headed for the shelter. (Tr. 348-349). Herman followed her for half of a block, then disappeared. (Tr. 348-349).

When Mae returned to the shelter, she reported the rape to the evening manager, Gladstone Tucker. (Tr. 307,349). Mae was crying, and her clothes were dirty and torn. (Tr. 306). She descrided the man who had raped her to Gladstone, and Gladstone believed that the assailant may have been Herman Landers, a sometime resident at the shelter. (Tr. 307-308). Gladstone reported the crime to the police. (Tr. 307).

Police officer Brian Rawley arrived at the shelter a short time later, and Mae told him what happened. (Tr. 376, 387). Rawley did not believe that Mae was not under the influence of any drugs. (Rr. 376-386). One of the staff at the shelter suggested that the person who assaulted Mae could have been Herman Landers. (Tr. 388). Rawley then broadcasted a description of the suspect over the police radio. (Tr. 388).

Meanwhile, another police officer, Robert Quillin, responded to a call from an apartment near the shelter. (Tr. 415). A woman at the apartment said that Herman Landers had recently entered the residence wearing dirty and torn clothes and had locked himself in the bathroom. (Tr. 415-417). Quillin knocked on the bathroom door and told Herman that if he did not come out, he would knock down the door. (Tr. 417). After a few seconds, Herman came out. (Tr. 417). Quillin saw that Herman's appearance matched the description of the rape suspect, and he arrested him. (Tr. 418). Quillin then searched him and found a pocketknife in his pocket. (Tr. 419). He brought Herman to the shelter to see if Mae could identify him. (Tr. 419).

At the shelter, police shined a flashlight on Herman while Mae watched through a window. (Tr. 351, 393). Mae said that Herman was the man who raped her. (Tr. 352, 393). She also identified the pocketknife as the knife Herman put against her throat. (Tr. 420). Mae then went to a hospital where bite marks on her leg were treated, and a vaginal swab was prepared. (Tr. 450, 452, 465). Police also cut test samples out of the panties Mae was wearing and out of the stained mattress in the abandoned house. (Tr. 422-424, 465). Seminal fluid was found on each of the samples. (Tr. 465). Crime lab officers found enough fluid on the material cut from Mae's panties to produce a DNA profile. (Tr. 465). The test showed that the DNA profile from the seminal fluid found on the panties matched Herman's DNA profile. (Tr. 466).

A dentist, Dr. Ronald Guier, also took impressions of

REASONS FOR GRANTING THE PETITION

On the first three questions presented to this Court for consideration for Certiorari, petitioner maintains that both the Federal District Court, and the Eighth Circuit Court of Appeals erred and violated this Court's doctrine in denying petitioner's request for a certificate of appealability pursuant & 2253(c)(1)(A)(2). Also, the Court of Appeals denial of rehearing and/or rehearing en banc pursuant Rule 35(a)(1)(2)(b)(1)(A) and (B). Petitioner raised numerous issue involving "procedural matters" on federal habeas corpus review. These involved petitioner's right to the federal habeas corpus process. This envolved the process.

Petitioner made the specific argument that he was denied access to the writ of habeas corpus. Petitioner argued that because the District Court failed to identify and apply U.S. Supreme Court case law to each of the issues raised, that the Court did not comply with the proper standard of review, this denied petitioner access to the writ of habeas corpus. This Court has stated:

> "When the District Court denies a habeas petition on procedural grounds without reaching the prisoner's underlying claim, a COA should issue when the prisoner shows, at-least, that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurist of reason would find it debatable whether the District Court was correct in it's procedural ruling." (Emphasis added).

See, Slack v. McDanial, 529 U.S. 473, 480 (2000). The District Court in it's opinion has denied petitioner procedural grounds. The District Court has failed to conduct a "contrary to ," or " unreasonable application" analysis, i.e., "FAILED TOFOLLOW PROPER PROCEDURE!" When failing to conduct the proper analysis, the Court failed to get to the underlying claims. It should be noted, that all