02-11159

No. _____

Supreme Court, U.S.
FILED
MAY 15 2003
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN M. FERENC — PETITIONER
(Your Name)

vs.

MICHAEL MOORE — RESPONDENT(S)

ON PETITION FOR A WRIT OF [redacted] TO

Habeas Corpus

U.S. COURT OF APPEALS FOR THE 11TH CIR.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF [redacted]

Habeas Corpus

JOHN M. FERENC
(Your Name)

BAY CORRECTIONAL FACILITY
(Address)
5400 BAYLINE DR.
PANAMA CITY, FL. 32404
(City, State, Zip Code)

NOT AVAILABLE
(Phone Number)

QUESTIONS PRESENTED

COULD THE ESCAMBIA COUNTY CIRCUIT COURT, THE ASSISTANT STATE PROSECUTOR, THE POLICE, AND THE INTERNAL REVENUE SERVICE SEIZE MY PROPERTY AND MONEY AND DENY ME MY RIGHT UNDER THE CONSTITUTION AND NUMEROUS CASE LAW, AND DENY ME MY RIGHT TO EMPLOY A LEO THOMAS, ATTORNEY, FROM PENSACOLA, FLORIDA TO DEFEND ME AGAINST CHARGES OF ATTEMPTED BURGLARY WHILE ARMED, POSSESSION OF BURGLAR TOOLS, CARRYING A CONCEALED FIREARM - CHARGES I DID NOT COMMIT; AND, THE COURT RECORD SUPPORTS MY INNOCENCE?

LIST OF PARTIES

[ ] ALL PARTIES IN THE CAPTION OF THE CASE ON THE COVER PAGE

[X] ALL PARTIES DO NOT APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. A LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGEMENT IS THE SUBJECT OF THIS PETITION IS AS FOLLOWS:

THE SECRETARY OF DEPARTMENT OF CORRECTIONS HAS BEEN NAMED AS THE RESPONDENT, BUT THE ATTORNEY GENERAL FOR FLORIDA REPRESENTS THE STATE OF FLORIDA. HE SHOULD BE SERVED IN THIS CASE.

STATEMENT OF THE CASE

I WAS CONVICTED OF ATTEMPTED BURGLARY WHILE ARMED POSSESSION OF BURGLARY TOOLS AND CARRYING A CONCEALED FIREARM IN PENSACOLA, FLORIDA ON AUGUST 18, 1983 (I BELIEVE) - SEE THE SENTENCE PAPERS - Exhibit B.

THE NECESSARY DIRECT APPEAL WAS MADE TO THE FIRST DISTRICT COURT OF APPEAL ON THE ISSUE OF DENIAL OF MY 4TH AMENDMENT RIGHTS TO MY OWN MONEY AND ASSESTS WITH WHICH TO EMPLOY COUNSEL OF MY CHOICE. SEE EXHIBIT C (CASE AV-452)[1] IN THE 1ST DISTRICT COURT OF APPEAL FOR FLORIDA AT TALLAHASSEE.

AN APPEAL TO THE FLORIDA SUPREME COURT ON A WRIT OF DISCRETIONARY REVIEW WAS DENIED.

I THEN FILED A WRIT OF CERTIORARI WITH THIS UNITED STATES SUPREME COURT RAISING THE SAME ISSUE - THAT I WAS DENIED ACCESS TO MY MONEY AND ASSETS SO I COULD EMPLOY MR. LEO THOMAS, ATTORNEY SEE EXHIBIT M. THIS COURT DECLINED TO GRANT MY WRIT OF CERTIORARI.

[1] JOHN M. FERENC v STATE OF FLORIDA

AND FOR THE LAST 20 SOME ODD YEARS OF MY FALSE AND ILLEGAL IMPRISONMENT I'VE BEEN STUDYING THE LAW AND STRUGGLING WITH WRITS OF HABEAS CORPUS IN THE UNITED STATES FEDERAL COURT - MY LATEST ATTEMPT TO SEEK JUSTICE IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION IS CASE NO 3:02 CV 199/LAC/MCR JOHN M. FERENC VS MICHAEL W. MOORE — SEE EXHIBIT O.

THEN, OF COURSE I APPLIED TO THE UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT FOR AN APPLICATION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE HABEAS CORPUS PETITION 28 U.S.C. § 2244 (b) BY A PRISONER IN STATE CUSTODY. THE WRIT OR APPLICATION WAS DENIED AND MY LEGAL GROUNDS EVADED AGAIN BY THE COURTS — SEE

EXHIBIT W. EXHIBIT W EXPLAINS HOW I HAVE BEEN ABUSED BY THE COURTS FOR THE LAST 20 plus YEARS BY EVASION OF THE ISSUE — A COMPLETE EVASION TACTIC BY THE COURTS.

NOW HERE I AM AGAIN REQUESTING THIS UNITED STATES SUPREME COURT TO ADDRESS THE QUESTION AND THE ISSUE I HAVE RAISED + RAISED + RAISED.

REASONS FOR GRANTING THE PETITION

AS CAN BE SEEN FROM THESE PAPERS: EXHIBIT O THE DISTRICT COURT HAS PERSISTANTLY REFUSED TO RECOGNIZE MY ISSUE, AND THEY SIMPLY AVOID IT. THEY SAY I HAVE RAISED THE ISSUE IN MY 1ST HABEAS CORPUS TO THEM, AND I HAVE; BUT TO NO AVAIL. THEY SIMPLY DENIED MY CONSTITUTIONAL CLAIM. THAT WAS IN REGARDS THE FACT I WAS DENIED ACCESS TO MY OWN FUNDS WITH WHICH TO HIRE COUNSEL OF MY CHOICE TO DEFEND ME AGAINST THE CHARGES IN EXHIBIT B.

THE 11TH CIRCUIT COURT OF APPEALS REFUSED TO RECOGNIZE MY CLAIM AS WELL IN MY APPEAL TO THEM IN CASE FERENC V WAINWRIGHT, 86-3095 AND I QUOTE THE COURT:

> "PETITIONER'S FINAL CLAIM IS THAT THE ITEMS SEIZED FROM HIS VAN, AT OR ABOUT THE TIME OF HIS ARREST, WHICH WERE SUPPRESSED SHOULD HAVE BEEN RETURNED TO HIM. THIS CLAIM DOES NOT PRESENT A CLAIM COGNIZABLE ON FEDERAL HABEAS CORPUS."

BUT IT IS COGNIZABLE!

THE MONEY AND ASSETS IN MY VAN COULD HAVE BEEN USED BY ME TO HIRE MR. LEO THOMAS. SEE POWELL V ALABAMA, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932) FOR THE JUDGE'S BRILLIANT

OPINION AS TO WHY COUNSEL AND ONLY COUNSEL CAN PROVIDE A PROPER DEFENSE TO CHARGES AGAINST AN ACCUSED. I WAS DENIED THAT RIGHT UNDER THE U.S. CONSTITUTION, AMENDMENT VI.

AND WHY WAS I DENIED THAT RIGHT? BECAUSE THE POLICE; THE PROSECUTING ATTORNEY; THE COURT, AND THE INTERNAL REVENUE SERVICE WOULD NOT ALLOW ME ACCESS TO MY MONEY & ASSETS; YET TWO JUDGES RULED FAVORABLE ON THE SEIZURE AND SEARCH OF MY 1982 DODGE MAXIVAN. THE FACT OF THE MATTER WAS, MY VAN WAS SEIZED BY AMERICAN POLICE WHO ACTED OUTSIDE THE LAW WHEN THEY STOLE EVERYTHING FROM ME. AND TO THIS DAY, NOT ONE RED CENT HAS EVER BEEN RETURNED.

THIS VERY COURT RULED IN CAPLIN V DRYSDALE, 491 U.S. AT 626, 109 S.Ct. AT 2652 THAT AN ACCUSED MUST BE ALLOWED TO USE HIS OWN MONEY TO DEFEND HIMSELF AGAINST CHARGES. THIS IS BASIC COMMON SENCE. EVEN A CHILD CAN REALIZE THAT. I AM A SERVICE-CONNECTED 100% DISABLED X MARINE FROM THE 2ND WORLD WAR ERA — SEE EXHIBIT A 3 ATTACHED TO MY APPLICATION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE HABEAS PETITION. SEE EXHIBIT B THERE ALSO.

WHEN THE POLICE SEIZED MY 1982 DODGE MAXIVAN THEY DID NOT KNOW THAT I WAS A 100% DISABLED X MARINE WITH AN INCOME TO ME BECAUSE OF MY SERVICE CONNECTED DISABLEMENT. THEY JUST ASSUMED

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
MAR 12 2003
THOMAS K. KAHN
CLERK

NO. 03-10992-B

IN RE: JOHN M. FERENC,

Petitioner.

Application for Leave to File a Second or Successive
Habeas Corpus Petition, 28 U.S.C. § 2244(b)

Before TJOFLAT, ANDERSON and BLACK, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), as amended by § 106 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), John M. Ferenc has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).

EXHIBIT D, PAGE 3

In his application, Ferenc indicates that he wishes to raise the following claim in a second or successive habeas petition: he was denied access to "money and assets with which to hire counsel of [his] choice." Ferenc acknowledges that he raised this claim in a prior 28 U.S.C. § 2254 petition. A § 2254 claim presented in a prior § 2254 petition "shall be dismissed," and cannot form the basis for obtaining authorization to file a second or successive petition. 28 U.S.C. § 2244(b)(1); In re Mills, 101 F.3d 1369, 1371 (11th Cir. 1996). Ferenc also admits that his claim does not rely on a new rule of law, but then cites Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 109 S.Ct. 2646, 105 L.Ed.2d 528 (1989). Caplin is not a new rule of constitutional law that previously was unavailable, as this case pre-dates Ferenc's initial § 2254 petition. See 28 U.S.C. § 2244(b)(2)(A). Although Ferenc has filed numerous supporting documents regarding the denial of his assets, those documents do not implicate his factual innocence, and, therefore, do not satisfy the statutory criteria. 28 U.S.C. § 2244(b)(2)(B).

Accordingly, because Ferenc has not made a prima facie showing of the existence of either of the grounds set forth in § 2244(b)(2), his application for leave to file a second or successive habeas petition is DENIED.

EXHIBIT D, PAGE 4