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ORIGINAL

CAUSE NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAY 14 2003
OFFICE OF THE CLERK

OCTOBER TERM 200_

IN RE CHARLES,
Petitioner

PETITION FOR AN

EXTRAORDINARY WRIT

OF HABEAS CORPUS

Shirley Ann Charles, pro-se
Mountain View Unit
TDCJ-ID #692618
2305 Ransom Road
Gatesville, Texas 76528

QUESTIONS PRESENTED

I.

WHETHER, A STATE PRISONER CONVICTED OF A NON_CAPITAL OFFENSE, UTILIZE THE STATUTORY PROVISION OF THE EXTRAORDINARY WRIT OF HABEAS CORPUS INSCRIBE OF SUPREME COURT RULE 20.01, TO INVOKE THIS COURT'S JURISDICTION PURSUANT TO §1651(a) TO REVIEW A COURT OF APPEALS' JUDGMENT ENTERED DENYING AUTHORIZATION FOR LEAVE TO A STATE PRISONER TO FILE A SECOND OR SUCCESSIVE HABEAS PETITION?

II.

WHETHER, A STATE PRISONER, UNDER THE GUARANTEES OF DUE PROCESS AND THE EQUAL PROTECTION CLAUSES OF THE UNTIED STATES CONSTITUTION AMENDED AS THE FIFTH AND FOURTEENTH AMENDMENTS, IS ENTITLE TO RELY ON SUPREME COURT'S SUBSEQUENT BAILEY v. UNITED STATES, RETROACTIVLEY APPLICABLE DEFINITION OF WHAT CONDUCT CRIMINALIZE'S "USE" OF A FIREARM DURING AND IN RELATIONS TO A DRUG TRAFFICKING OFFENSE, TO MAKE A SHOWING OF ACTUAL INNOCENCE, TO OVERCOME SUCH PROCEDURAL DEFAULTS, I.E., SUCCESSIVE AND ABUSE OF WRIT?

list of parties

Shirley Ann Charles,

Petitioner

RESPONDENTS

THE STATE OF TEXAS

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§

§

JANIE COCKRELL, DIRECTOR OF

THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE_

INSTITUTIONAL DIVISION

§

§

§

THE TEXAS DEPARTMENT OF PARDONS AND

PAROLES

Service throught her States Attornery General's Office

INDEX OF APPENDICES

Appendix A - The published opinionof the Texas State Court of Appeals Ninth District at Beaumont, Texas.

Appendix B - The unpublished opinion In the Unied States Court of Appeals for the Fifth Circuit entered September 8, 1999 , denying the Certificate of Appealability.

Appendix C - The unpublished opinion In the Untied States Court of Appeals for the Fifth Circuit entered January 11, 2000, denying Motion for an order Authorizing the United States District Court For the Eastern District of Texas, Beaumont Division to consider a **successive** §2254 application.

Appendix D - The unpublished opinion in the Supreme Court of the United States entered on November 27, 2000, denying thee petition for a writ of habeas corpus.

Appendix E - The unpublished opinion in the United States District Court for the Western District of Texas, Waco Division, entered January 22, 2001, transferring the habeas application to the United States District Court for the eastern District of Texas Beaumont Division.

Appendix F - The unpublished opinion in the United States District Court for the Eastern District of Texas, Beaumont Division, entered February 14, 2001, **dismissing** the habeas application after transfer without prejudice as a **successive** petition.

Appendix G - The unp8ublished opinion in the United States Court of Appeals for the Fifth Circuit entered August 15, 2002, denying the Certificate of Appealability.

Appendix H - The unpublished opinion in the United States Court of Appeals for the Fifth Circuit entered September 16, 2002, denying the petition for rehearing or rehearing en banc considered as a petition for reconsideration.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR EXTRAORDINARY

WRIT OF HABEAS CORPUS

Petitioner respectfully prays that an extraordinary writ of habeas corpus issue to review the judgment below.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit on the Petition for re-hearing and re-hearing en banc construed to be a Motion for Reconsidertion is unreported. A copy is attached to the petition as Appendix H.

The decision of the United States Court of Appeals for the Fifth Circuit on the Certificate of Appealability is unreported. A copy is attached to the petition as AppendixG.

The order of the United States District Court for the Eastern District of Texas, Beaumont Division is unreported. A copy is attached to petition as Appendix F.

The order of the United States District Court for the Western District of Texas, Waco Division is unreported. A copy is attached to the petition asAppendix E.

jurisdiction conferred by Title 28 U.S.C. §1331.

REASON FOR GRANTING THE PETITION

Comes now, Shirley Ann Charles, the petitioner, a state prisoner herein after referred, to petition this Supreme Court to invoke it's appellate jurisdiction pursuant to Title 28 U.S.C. §1651(a) to review the judgment entered by the United States Court of Appeals for the Fifth Circuit's denial of motion authorizing leave to a state prisoner to file a second or successive habeas petition, for discretional abuse, reasoning that a state prisoner, has not shown that jurists of reason would find it debatable whether a district court was correct in dismissing a §2254 habeas on the grounds that it was successive habeas petition without the authorization of a court of appeals.

The petitiner, a state prisoner, relies on Ex Parte Parks, 93 U.S. 18 Otto 23 L.Ed. 787 (1876) of which this Suprmee Court held that the Supreme Court can issue the writ of habeas corpus **ONLY** to review the action of some inferior court or officer....

And thus, the petitioner, a state prisoner, to justify the granting of any suh writ must show the following, to-wit;

I.

How the writ will be in aid of this court' appellate jurisdiction....

The roads blocks of the AEDPA §2244(3)(E) has barred the petitioner, a state prisoner, from petitioning this court for a review by certiorari of Rule 10(a)(c) the Fifth Circuit's judgment entered denying authorization to a state prisoner, leave to file a second or successive habeas. However, the Statutory provisions of §1651(a) allows the Supreme Court to invoke it appellate jurisdiction to review the actions of a court of appeals for abuse of it's discretionary powers.

The Fifth Circuit's denial to authorize a state prisoner leave to file a second or successive habeas corpus when raising the legality of her conviction and the duration of her sentence has resulted from a constitutionally defective jury charge in light of Bailey is in direct conflict with the Fifth Circuit's holding in Reyes-Requena v. U.S., 243 F.3d 893 (5th Cir. 2001) In Reyes-Requena, the Fifth Circuit granted a **federal prisoner** authorization to use the federal habeas to bring a second or successive habeas petition to challenge the legality of his conviction or sentence raising a valid Bailey claim to make a showing of actual innocence, is a blatant violation of a state prisoner's rights to due process and equal protection of Supreme Court's Bailey. And the Fifth Circuit's reasoning for such a denial that a state prisoner could not make a showing of a denial of a consitutional right and failure to show