NO. 03-5214

IN THE

SUPREME COURT OF THE UNITED STATES

In re DARRELL LYNN BANKSTON - PETITIONER

VS.

ROBERT L. JOHNSON, ET AL - RESPONDENTS

Supreme Court, U.S.
FILED
JUN 26 2003
OFFICE OF THE CLERK

ON PETITION FOR WRIT OF HABEAS CORPUS

FILED

5th. cir. United States Court of Appeals

(Name of last Court Ruled on merits of the case)

PETITION FOR WRIT OF HABEAS CORPUS

under 28 USC § 1651 (a)

DARRELL LYNN BANKSTON # R1725
2999 Hwy. 61 NORTH
WOODVILLE, MS. 39669
601-888-3199 # Phone

LIST OF PARTIES

[ ] All parties appear 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 judgment is the subject of this petition is as follows:

- ROBERT L. JOHNSON, COMMISSIONER MISS. DEPT. OF CORRECTIONS
  723 NORTH PRESIDENTS ST.
  JACKSON, MS. 39202

- JOANNE M. McLEOD
  MICHAEL C. MOORE
  OFFICE OF ATTORNEY GENERAL, STATE OF MISSISSIPPI
  POST OFFICE BOX 220
  JACKSON, MS. 39202

STATEMENT OF THE CASE

Petitioner Bankston on/about April 6th 1999, filed with the United States District Court, NORTHERN DISTRICT OF MISSISSIPPI HIS PETITION UNDER 28 USC § 2254 SEEKING A WRIT OF ~~HABEAS~~ CORPUS QUESTIONING THE CONSTITUTIONALITY OF THE CONVICTION(S) and SENTENCE(S) HE RECEIVED IN THE STATE TRIAL COURT OF PANOLA COUNTY MISSISSIPPI.

MAGISTRATE JUDGE EUGENE BOGEN PRESIDED OVER BANKSTON'S ~~HABEAS~~ PETITION; AND, AFTER ORDERING THE RESPONDENTS, OFFICE OF ATTORNEY GENERAL STAT OF MISSISSIPPI TO ANSWER; AND AFTER HEARING THE PETITION AND ANSWER MADE REPORT AND RECOMMENDATIONS.

THE MAGISTRATE CONCLUDED THAT PETITIONER HAD FAILED TO REBUTT THE PRESUMPTION OF CORRECTNESS TO WHICH THE STATE COURTS ARE ENTITLED.

ON/ABOUT DEC. 13TH, 1999, PETITIONER FILED HIS OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATIONS. THE DISTRICT COURT ALLEN W. PEPPER, JR. HEARD THE OBJECTIONS OF PETITIONER. THE COURT THEN RULED THAT

STATEMENT OF THE CASE

PETITIONER HAD FAILED TO EXHAUST HIS STATE REMEDIES IN STATE COURT, DISMISSING THE PETITION WITHOUT PREJUDICE.

RESPONDENTS FILED A MOTION TO ALTER OR AMEND JUDGEMENT. THE DISTRICT COURT, AFTER HEARING RESPONDENTS MOTION ADOPTED THE RECOMMENDATIONS OF THE MAGISTRATE AND, GRANTED RESPONDENTS MOTION. AND ON/ABOUT FEB. 06. 2001 THE DISTRICT COURT ENTERED AN ORDER WHICH DISMISSES PETITIONER'S HABEAS PETITION UPON CONCLUDING THAT PETITIONER HAD COMMITTED PROCEDURAL DEFAULT FOR PURPOSES OF FEDERAL HABEAS REVIEW.

PETITIONER FILED SEVERAL MOTIONS TO ALTER OR AMEND JUDGEMENT. ULTIMATELY, ON NOV. 28th, 2001, THE DISTRICT COURT DENIED ALL MOTION BY PETITIONER. ON/ABOUT 1-10-02 PETITIONER FILED HIS NOTICE OF APPEAL. APPEALING THE DENIAL OF HIS HABEAS PETITION AND SUBSEQUENT MOTIONS TO 5TH. CIR. COURT OF APPEALS.

THE COURT OF APPEALS ULTIMATELY DENIED PANKSTON A C.O.A, INDICATING THAT PETITIONER'S BRIEF WAS DEFICIENT. AS PANKSTON HAD FAILED TO ARGUE THAT THE DISTRICT COURT ERRORED IN ANY WAY, AND THAT PANKSTON'S RULE 60(b) MOTION DOES NOT BRING UP THE UNDERLYING CLAIMS FOR REVIEW.

STATEMENT OF THE [redacted] CASE

ON/ABOUT JUNE 18th 2002, THE 5TH CIR. ISSUED IT'S MANDATE DENYING [redacted]/PETITIONER A C.O.A.,

ABOUT/ON SEPT. 04TH, 2002, [redacted] FILED FOR A REHEARING IN THE 5TH CIR. THE COURT GRANTED [redacted] MOTION TO PROCEED OUT-OF-TIME; BUT DENIED HIS MOTION FOR COUNSEL AND TO RECONSIDER IT'S MANDATE OF [redacted] JUNE 18TH, 2002.

V.

END STATEMENT OF THE CASE.

QUESTION(S) PRESENTED

1.) DID COURT OF ~~APPEALS~~ ABUSE IT'S DISCRETION, OR, ERROR IN NOT DIRECTING PRO SE PRISONER PETITIONER TO CORRECT HIS DEFICIENT BRIEF?

2.) DID COURT OF APPEALS ERROR OR, MISCONSTRUE PETITIONER Fed. R. Civ. P. 59(e) MOTION AS A RULE 60(b) MOTION?

3.) SINCE PRO SE PETITIONER NEARLY ENTIRE HABEAS PETITION WAS INARTFULLY ~~DRAWN~~ DRAWN [NOT PRESENTED CORRECTLY], did THIS IN THE INTEREST OF JUSTICE AND FUNDAMENTAL FAIR-NESS COMPEL THIS COURT TO ALLOW/ REMAND A SECOND OR SUCCESSIVE HABEAS PETITION IN THE DISTRICT COURT ON THE SAME ISSUES / GROUNDS; OR, REVIEW OF A PROPERLY DRAWN PETITION TO THIS COURT [WITH ATTACHED SUPPORTING RECORDS] OF THE CLAIMS ON ALL PETITIONERS GROUNDS FOR RELIEF?

3.(a) DOES PETITIONER 14 AMEND. RIGHT TO FUNDAMENTAL FAIRNESS COMPEL REVIEW OF ALL BANKSTON'S GROUND FOR RELIEF IN ANY FEDERAL COURT?

4. WAS DISTRICT COURT PROPER IN NOT CONSIDERING PETITIONERS CLAIM OF INEFFECTIVE COUNSEL, WHEN IN-EFFECTIVE COUNSEL WOULD CONSTITUTE CAUSE FOR [redacted] PROCEDURAL DEFAULT?

QUESTION(S) PRESENTED

5.) IS THE MISS. STATUTE UNCONSTITUTIONAL UNDER DICTATES OF 14th. AMEND. CONST. DOUBLE JEPORADY CLAUSE - FOR ALLOWING CUMULATIVE PUNISHMENT FOR THE EXACT SAME ~~OFFENSE~~ [WITH SLIGHTLY OR DIFFERENT NAME]; OR ALLOWING PUNISHMENT FOR GREATER AND LESSER INCLUDED OFFENSES; ~~OR PUTTING DEFENDANT AT ONE TRIAL UNDER MORE THAN ONE COUNT TO AN INDICTMENT~~?

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
JUN 18 2002
CHARLES R. FULBRUGE III
CLERK

No. 02-60012
USDC No. 2:99-CV-73-P-B

DARRELL LYNN BANKSTON,

Petitioner-Appellant,

versus

ROBERT L. JOHNSON, COMMISSIONER,
MISSISSIPPI DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi

O R D E R:

Darrell Lynn Bankston, Mississippi inmate # R1725, requests a certificate of appealability ("COA") and leave to proceed in forma pauperis ("IFP"). The motion for leave to proceed IFP is DENIED.

Bankston's notice of appeal was filed timely from the district court's denial of his FED. R. CIV. P. 60(b) motions. A FED. R. CIV. P. 60(b) motion filed more than ten days after entry of judgment does not suspend the time for filing an appeal of the underlying judgment and does not bring up the underlying judgment for review. FED. R. APP. P. 4(a)(4)(A)(vi); Huff v. Int'l Longshoremen's Ass'n, Local No. 24, 799 F.2d 1087, 1089-90 (5th Cir. 1986); In re Ta Chi Navigation (Panama) Corp. S.A., 728 F.2d 699, 703 (5th Cir. 1984).

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Bankston must obtain a COA before he can appeal. See 28 U.S.C. § 2253(c)(1)(A). To obtain a COA, Bankston must make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2).

In his COA brief, Bankston reiterates arguments related to his conviction and sentence. Bankston offers no argument relating to the district court's denial of his FED. R. CIV. P. 60(b) motion. Bankston also asserts a double jeopardy claim that was not raised in his 28 U.S.C. § 2254 petition. Issues that are asserted for the first time in a COA motion will not be considered. Whitehead v. Johnson, 157 F.3d 384, 387-88 (5th Cir. 1998).

Although this court applies less stringent standards to parties proceeding pro se than to parties represented by counsel and liberally construes pro se briefs, pro se parties must still brief the issues and reasonably comply with the requirements of FED. R. APP. P. 28. Grant v. Cuellar, 59 F.3d 523, 524 (5th Cir. 1995). Issues not briefed in a COA application are waived. Hughes v. Johnson, 191 F.3d 607, 613 (5th Cir. 1999). Bankston has made no attempt to show that the district court abused its discretion in denying the FED. R. CIV. P. 60(b) motion. Accordingly, a COA is DENIED.

MOTIONS DENIED.

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Emilio M. Garza

EMILIO M. GARZA
UNITED STATES CIRCUIT JUDGE

FILED
DEC 13 1999
U.S. DISTRICT COURT
ARLEN B. COYLE, CLERK
By
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF THE STATE OF MISSISSIPPI
DELTA DIVISION

DARRELL L. BANKSTON — PETITIONER

VERSUS — CAUSE NO. 2:99CV73-P-B

JAMES V. ANDERSON, et al. — RESPONDENTS

MOTION TO AMEND AND/OR SUPPLEMENT OBJECTIONS

COMES NOW, Darrell Lynn Bankston, pro se petitioner, in the above entitled civil action, who files Motion To Amend And/Or To Supplement Objections, which effectively serves to clarify areas within the **'Objections'** that this pro se petitioner submitted to this Court on or about September 12th 1999. [it should be noted that nothing within this motion waivers any legal claims within the original set of **"Objections"** nor within the original petition seeking habeas corpus relief, now before this Court]

In support thereof, petitioner would show unto this Honorable Court the following via a brief summary of the History, Scope of this Case in general, which might expand the Court's consideration and understanding to this case **[Habeas Petition], to-wit:**

BACKGROUND

1. Petitioner **(Bankston)** was convicted in the Circuit COurt of Panola County, Mississippi for the following criminal offense(s) **(a) Conspiracy to commit Larceny, (b) Attempted Grand Larceny, (c) Burglary of a Building,** and **(d) Possession of Burglar's tool.**

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