03-10196

Supreme Court, U.S.
FILED
FEB 17 2004
OFFICE OF THE CLERK

FILE NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE CHARLES PHILLIP.HOLLOWAY
PETITIONER,
V
WILLIE O,SMITH, RESPONDENT,

ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS

Charles Phillip, Holloway #153480
CHARLES PHILLIP.HOLLOWAY.153480
IONIA MAXIMUM CORRECTIONAL FACILITY
1576 W.Bluewater Hwy
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A True Copy Served Upon:

MR.MIKE COX
Michigan Attorney General
525 W.Ottawa Street
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On Behalf of Respondent Smith,
All Parties are Represented on the cover sheet,

RECEIVED
FEB 24 2004

"QUESTIONS PRESENTED FOR REVIEW"

I.Where Petitioner's conviction was obtained through the use of false evidence,known to be such by representatives of the state,Must it fall under the Fourteenth Amendment,because it directly effected the judgment of the jury,and caused them to convict petitioner of a crime of which he's actually innocent.Depriving him of a fair and impartial jury in violation of the Sixth Amendment?

Petitioner Answers (Yes)

Respondent Answers (No)

II.Was Petitioner denied his federal constitutional right's to a fair trial and due process of law when the prosecutor committed the intentional misconduct of failing to correct a false in-court identification and perjured testimony that he **knew** was false,and **knowingly** used the perjured testimony to argue for petitioner's illegal conviction?

Petitioner Answers (Yes)

Respondent Answers (No)

III.Where Trial Counsel failed to object when prosecution witness Poe falsely identified petitioner in-court,and gave perjured testimony to support the false identification,and failed to object when the prosecutor committed the intentional misconduct of failing to correct the false identification and perjured testimony that he **knew** was false,and **knowingly** used the perjured testimony to argue for petitioner's illegal conviction,Did he render effective assistance of counsel at trial?

Petitioner Answers (No)

Respondent Answers (Yes)

IV.Was Petitioner denied the effective assistance of appellate counsel on his appeal of right when appellate counsel failed to raise issue's which were obvious on the record that were 'dead-bang winners' and required reversal?

Petitioner Answers (Yes)

Respondent Answers (No)

"ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT/STATEMENT OF THE CASE,RULE 20.1"

Petitioner,Was charged in a Four Count Information with First Degree Felony Murder,MCLA 750.316;Assault With Intent to Murder,MCLA 750.83;Criminal Sexual Conduct First Degree,MCLA 750.520(b)(I);And Felony Firearm,MCLA 750.227 (b),at the conclusion of a two week jury trial,Petitioner was found guilty as charged on November 25th.1980,And Sentenced to Life,15 to 35;10 to 30, Plus 2-Years;

Adequate Relief cannot be obtained in any other form or from any other court,because I was prejudiced by my appellate counsel's failure to raise the herein claims in my appeal as of right,Which denied me my appeal of right, Appellate Counsel filed my appeal of right in the Michigan Court of Appeals on November 8.1981,And he did not raise these Issue's,However,My conviction and sentences were affirmed by the Michigan Court of Appeals on November 8. 1982,See.People v Holloway,Nos.**56367,56368**,(Mich.Ct.App.Nov,18.1982)(Opinio at this point,Appellate Counsel refused to appeal my case to the Michigan Supreme Court,He informed me that he was only required to appeal the case to the court of appeals,and that,since the Michigan Court of Appeals had affirmed my conviction,I could obtain appellate review by filing a letter request for review in the Michigan Supreme Court,So as of right,I sought review in the Michigan Supreme Court by filing a letter request for review on November 29.1982,It was denied on August 16.1983,See.People v Holloway,No. **70621**,(Mich.Aug.16,1983)(Order);In 1983,I filed an application for writ of habeas corpus in the United States District Court for the Eastern District of Michigan,raising all the issue's that were originally raised by appellate counsel,I voluntarily dismissed it to pursue additional state court remedies,(Note,I lost the docket No.for the habeas pleadings);So I went back to the state courts with new issues,but,due to my ignorance and inexperience in criminal law,I erroneously bypassed the trial court and filed an application for leave to appeal directly to the Michigan Court of Appeals,On April 1.1985 the court denied the application,CA Docket No.**84014**;(Note,During a transfer between prison's in 1987 all of my legal materials,including the transcripts were lost by the Michigan Department of Corrections employees and was never found),I made a note of these fact's in my first habeas petition.(See,**APPENDIX-D,Petition for Writ of Habeas Corpus,Page-3**),See also.(**APPENDIX-E,District Court Order and Opinion denying the Writ of Habeas Corpus,Page-4,Wher the District Court Judge took Note of the fact that**

I made note that the Michigan Department of Corrections had lost all of my legal materials);The 1987 loss of my legal materials prevented me from discovering the herein raised claims before the Antiterroism and Effective Death Penalty Act 28.U.S.C.2244(b) Took effect on April 24.1996,And before MCR 6.502(G)(1) Took effect on August 1,1996,Which prohibits me from filing a second or successive petition in the federal or state court's,because the Wayne County Clerk made me wait Twelve (12) Calender Year's before she issued me another copy of the court file which I received on March 12,1999.(See.**APPENDIX-K,Letter from the Wayne County Clerk acknowledging sending the new copy of the court file**),However,I Could not go to the United States District Court with the with new issues I originally dismissed the first habeas petition to pursue the additional state court remedies on,because the legal materials needed to establish and support the claims I was going to raise was lost by the Michigan Department of Corrections,Thus,Having no other avenue available to me,I again committed procedural default by filing a application for leave to appeal in the Michigan Court of Appeals on February 28,1991,The Court again denied leave to appeal.CA Docket No.**135505**;On June 5,1995,Without any transcripts or records needed to raise or support a claim.I Filed a frivolous motion for relief from judgment raising the claim of an error in the filing of the complaint and warrant in the trial court in an attempt to create a new appellate issue because my legal materials had been lost,at the time I filed the motion on June 5,1996,MCR 6.502(G)(1) limiting me to filing one motion for relief from judgment with respect to my conviction and prohibiting the filing of a second or successive had not been created,it became effective on August 1,1996 While my motion was pending,And the trial court denied the motion for relief from judgment by Order dated September 16.1996,Docket No.**80-026689-FM**;.I Did not appeal the decision to the Michigan Court of Appeals,because I didn't know that I had to exhaust my state court remedies on the claims,So on October 7,1997,I Filed a petition for writ of habeas corpus in the United States District Court for the Western District of MichiganSouthern Division,Docket No.**1-98-CV-733**,(See.**APPENDIX-D**,Original Habeas Petition);The District Court dismissed the petition on October 5,1998.(See.**APPENDIX-E**,District Court Order and Opinion), At the time I filed the petition,I did not know that 28 U.S.C.2244(b) Became effective on April 24,1996,Nor did I know that 28 U.S.C.2244(b) Prohibi-

dismissed the application for lack of jurisdiction,On grounds that I cannot appeal the denial or rejection of a second or successive motion for relief from judgment under MCR 6.502(G)(1).COA Docket No.246702;,I Filed an application for leave to appeal the Court of Appeals decision in the Michigan Supreme Court on April 2,2003,by Order dated August 29,2003,The Court denied the application on grounds that it was prohibited by the one motion only requirement of MCR 6.502(G)(1),SC Docket No.123596A;,After exhausting my state court remedies on these claims.On September 30,2003,I Filed a motion in the United States Court of Appeals for the Sixth Circuit.Asking the Court to Authorize the filing of a Second or Successive Petition for Writ of Habeas Corpus to obtain federal review of these federal constitutional claims, by Order dated: JANUARY 28 ,2004 ,The Court denied the motion,USCOA Docket No.03-2251,

Adequate Relief cannot be obtained from the state court's,because relief is prohibited by MCR 6.502(G)(1) Which prohibits successive motions for relief from judgment;,Adequate Relief cannot be obtained from the Federal District Court's because 28 U.S.C.2244(b) Prohibits me from filing a second or successive habeas petition in the United States District Court,And the United States Court of Appeals for the Sixth Circuit exercising it's gate keeping functions,denied me Authority to File a second or successive petition in the district court which is not appealable,Due to no fault of my own,all of my legal materials had been lost on a transfer between prisons in 1987,Which prohibited me from raising these claims in my motion for relief from judgment in the state court's on June 5,1996,And the petition for writ of habeas corpus in the United States District Court on October 7,1987,These claims were not discovered untill late 1999 because I did not receive the new copy of the court file unitll March 12,1999.(See,APPENDIX-K,Letter from the Wayne County Clerk),

Thus,Since Adequate Relief cannot be obtained in any other form or from any other court.The Supreme Court can Grant the writ in aid of its appellate jurisdiction,See.,U.S.Sup.Ct.Rule.20.1,.United States Constitution,Artical III;To Correct a fundamental miscarriage of justice,because I was convicted of a crime of which I'm actually innocent.Through the use of false evidence known to be such by representatives of the state,It must fall under the Fourteenth Amendment,As it denied me a federally guaranteed fair trial,And due process of law in violation of the Fourteenth Amendment of the United States Constitution,