Docket No. 03-9472

ORIGINAL

IN THE UNITED STATES SUPREME COURT

Supreme Court, U.S.
FILED
MAR 11 2004
OFFICE OF THE CLERK

SEAN MCQUIDDY,

Petitioner

V.

LEE CONNERS, Warden,
U.S. PENITENTIARY, at
Leavenworth, Kansas

District Court No. 00-CV-267

PETITION FOR WRIT OF HABEAS CORPUS

FOR THE PETITIONER:

Sean McQuiddy, Pro se
No. 15275-075
U.S. Penitentiary
P.O. Box 1000
Leavenworth, Ks. 66048

QUESTION PRESENTED

WHETHER THE PETITIONER WAS DENIED DUE PROCESS OF LAW, WHEN THE TRIAL JUDGE AND ATTORNEY AT THE TRIAL, FAILED TO ADVISE HIM THAT HE COULD NOT WITHDRAW HIS GUILTY PLEA, OR WRITTEN CONFESSION IF THE TRIAL JUDGE REFUSED TO ACCEPT THE PLEA BARGAIN AGREEMENT ?

WHETHER THE PETITIONER WAS DENIED DUE PROCESS OF LAW, WHEN THE TRIAL COURT AND THE APPELLATE COURT REFUSED TO ALLOW AN APPEAL OF THE §2255 MOTION TO SET ASIDE THE JUDGMENT, WHEN THE DISTRICT COURT REFUSED TO ISSUE A CERTIFICATE OF APPEALABILITY AND THE SIXTH CIRCUIT COURT OF APPEALS HAS REFUSED TO RENDER A DECISION ON THE PENDING MOTION FOR A CERTIFICATE OF APPEAL ABILITY?

WHETHER THE SIXTH CIRCUIT COURT OF APPEALS HAVE JURISDICTION TO REVIEW ON APPEAL THE FINAL JUDGMENT FROM THE DISTRICT COURT ON THE SUBJECT INVOLVING DOWNWARD DEPARTURE?

WHETHER A WRITTEN CONFESSION IS IN VIOLATION OF DUE PROCESS OF LAW FOR SELF INCRIMINATION, WHEN THE DISTRICT COURT REFUSED TO ACCEPT THE PLEA BARGAINING AGREEMENT AND THERE IS NO OTHER EVIDENCE TO SUPPORT THE GUILTY VERDICT?

WHETHER RELIEF CAN BE GRANTED IN CRIMINAL CASES UNDER RULE 60, OF FEDREAL RULES ON CIVIL PROCEDURE, BY MOTION FOR RELIEF FROM JUDGMENT; OR MOTION TO VACATE AND SET ASIDE CONVICTION?

EXTRAORDINARY CIRCUMSTANCES

The Petitioner, Sean McQuiddy, pro se, respectfully submits his application for writ of habeas corpus to show this court that it is futile to make such an application to the district court, for reasons, the petitioner has filed his Motion to Vacate on March 29, 2000 (Docket Sheet, Entry #1) and the district court refused to dispose of the pending motion, and the Sixth Circuit Court refused to issue mandamus to compel it to do so. However, the district court rendered a decision on the §2255 application, several years later, by denying the application and refusing to issue a Certificate of Appeal ability and denying the Motion for Leave to Appeal in Forma Pauperis.

A family member posted the required fee of $105.00 in November of 2003 and the petitioner filed his Motion for a Certificate of Appeal ability to issue and the appellate court has failed or refused to render a decision on the pending motion, thereby denying the petitioner of access to the appellate court by direct appeal.

The Motion for a Certificate of Appeal Ability was filed in the appellate court, based on the fact, the government and the district court acted to conspire and tricked the petitioner into submitting a written confession in the absence of any evidence to prevent his mother from being prosecuted under a promise from the government and signed an agreement to allow the government to confiscate his home and other property, which the government and the court had no intentions to honor and failed to advise him that he could not withdraw his guilty plea or written confession, if the court rejects his plea bargaining agreement. The petitioner's mother was prosecuted which was a contributing factor that caused her death in 2003. There was no intention by the government and the court to honor the agreement and the courts abused their discretion and powers to deny an

direct appeal in this case, and the actions in the district court has created a conflict a decision on the same subject matter in the U.S. Court of Appeals for the Ninth Circuit, in case, *Desire v. Attorney General of California*, at 969 F.2d 802 (9th. Cir., 1992).

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF HABEAS CORPUS

The Petitioner, Sean McQuiddy, pro se, respectfully submits this application for extraordinary writ of habeas corpus, to show this court that he is being held in the custody of Lee Conners, Warden of the United States Penitentiary at Leavenworth, Kansas, illegally and in violation of the equal protection and due process clauses of the United States Constitution and an application in the district court is futile, based on the fact, he has submitted a Motion to Vacate Sentence pursuant to 28, §2255USC on March 29, 2000, and the court refused to dispose of the said application and the Sixth Circuit Court of Appeals has refused to issue a mandamus to compel the district court to act, so he can exercise his right to an appeal; an order was eventually entered, denying the application and leave to appeal in forma pauperis, as well as refusing to issue a certificate of appeal ability and a review in this court is necessary to resolve the conflict with the Sixth Circuits view on "lack of jurisdiction" to review a constitutional violation in the refusal to depart downward from an imposed sentence; and whether a conviction is void when the court and the attorney of record failed to advise the petitioner that he could not withdraw his written confession if the court refused to accept his plea bargaining agreement.

Orders Below

July 28, 1998, Judge Higgins imposed a life sentence, based on a confession and refusal to depart. [Joint Appendix, P.1]

March 16, 1999, the court of appeals dismissed the appeal from the original motion to vacate sentence. [Joint Appendix, P. 6]

JURISDICTION

The petitioner respectfully request this court to exercise its appellate jurisdiction to issue an extraordinary writ of habeas corpus, pursuant to 28, §1651, USC, on grounds relief in the district court is futile and a review in this court is necessary to protect his constitutional rights to due process of law, where he was denied effective assistance of counsel at the trial level and denied the right to an appeal.

CONSTITUTIONAL PROVISION

Fifth Amendment:

" No person . . .; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Sixth Amendment:

" In all criminal prosecutions, the accused shall enjoy . . .public trial, by an impartial jury of the state and district wherein the crime shall have been committed, . . .; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

The petitioner was arrested on the charges on page 1 of the Joint Appendix, and there was no evidence to support the charges against him. The government threatened to prosecute his mother on the charges, unless the petitioner signed a written confession on the charges and on documents authorizing the government to seize his personal property.

The petitioner agreed to sign the written documents and the confession in a plea bargaining agreement for a sentence not more than twenty-seven (27) years, in exchange that his mother not be prosecuted.

At the trial, the petitioner testified and cooperated with the government, but the district judge refused to depart and entered the maximum sentence of life, without parole, based solely on the written confession. There was no evidence that was connected with the petitioner to justify the judgment entered, other than the written confession that was urged and encouraged by the attorney for the petitioner. The petitioner was never advised that he would not be allowed to withdraw his written confession, if the court rejected the plea bargaining agreement.

After the hearing and the court imposing the judgment of conviction and sentence of life without parole against the petitioner, and the petitioner's mother was also prosecuted, the attorney of record did not appeal the judgment of conviction, nor advised the petitioner of the right to have an appeal.

Upon arriving in the custody of the warden, the petitioner filed his §2255 Motion to Vacate Sentence. (Docket Entry#1) A Motion for leave to file a supplement was filed on August 16, 2000. (Docket Entry#16)

In an attempt to protect and enforce his right to an appeal, the petitioner filed a petition for relief from judgment pursuant to Rule 60 of Federal Rules on Civil Procedure and Rule 8(b) of Local Rules of Court, to show the court of the ineffective assistance of counsel. (Docket Entry #16)

ARGUMENT

The petitioner was prejudiced by the ineffective assistance of counsel, by being advised to enter a guilty plea, by signing a written confession in the absence of any evidence to support a guilty plead, was denied the right to a jury trial; the right to have compulsory process issued to have witnesses testify on his behalf; the right to be confronted with the witnesses against him; and denied the right to an appeal.

The petitioner was prejudiced by the ineffective assistance of counsel, when the attorney of record did not appeal the final judgment of the trial court, which clearly shows to be in conflict with the Fifth Amendment, which protects defendants against self incrimination in criminal prosecutions.

The petitioner was prejudiced by the ineffective assistance of counsel, when the attorney of record failed to move the court for permission to withdraw the coerced written confession that was used to base the conviction on.

The petitioner was prejudiced by the ineffective assistance of counsel, when he was advised to sign the written confession, which deprived him of his Sixth Amendment rights to a jury trial and to have compulsory process issued to obtain witnesses for his defense.

The petitioner do not know the relevance of the fact, the trial judge was the law school instructor for the prosecuting attorney and the prosecuting attorney was the law school instructor for the attorney in the trial court, but this coincident has left the petitioner with the impression of bias and prejudice against him, to form a conspiracy for the purpose of depriving him of his federal protected rights to due process and equal protection under the laws that controls the judicial process for appeals.

When the Sixth Circuit Court of Appeals dismissed the appeal from the §2255 Motion to Vacate judgment for lack of jurisdiction (Joint Appendix, Page 6) to review judgments from the district court in downward departure cases, created a conflict with the purpose for which the appellate court was created. The appellate court is bound by the authority it was created for, to review for errors. If the Sixth Circuit Court of Appeals has jurisdiction to review the dismissal of the habeas corpus petition pursuant to 28 U.S.C. §2253 de novo for errors, it has jurisdiction to review district court findings of fact for clear errors. *Clemmons v. Sowders*, 34 F. 3d 352, 354 (6th. Cir., 1994). In the case at bar, the petitioner did not release the trial counsel, nor did the trial counsel request permission to be relieved of his duties to the petitioner in this case. Accordingly, since the petitioner did not have an appeal, the rule of procedural default cannot attach to the case at bar and failure of this court to consider the claims of "ineffective assistance of counsel" will result in a fundamental miscarriage of justice. *Coleman v. Thompson,* 501 U.S. 722 (1991); *Ford v. Georgia*, 498 U.S. 411, 423 – 424; and *Warner v. United States*, 975 F. 2d 1207, 1213 (6th., Cir. 1992). A defendant claiming ineffective assistance of counsel must show that the counsel's actions were not supported by a reasonable strategy and that error was prejudicial. *Strickland v. Washington,* 466 U.S. 668. There can be no dispute, the petitioner was denied the right to an appeal from a conviction that was obtained in violation of the Fifth Amendment for self incrimination and further denied his right to due process when he was not advised, he could not withdraw his guilty plea or written confession, if the court rejected his plea agreement.

A Sixth Amendment right to effective assistance of counsel at the plea bargaining stage is a claim cognizable under federal relief. *Turner v. Tennessee*, (6th. Cir., 1988)