03-7873

NO._____

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2003

IN RE JOHN LEE GENTRY, JR.

PETITION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM UNDER 28 U.S.C. § 2241

JOHN LEE GENTRY, JR. #172171
PETITIONER/PRO-SE
THUMB CORRECTIONAL FACILITY
3225 JOHN CONLEY DRIVE
LAPEER, MI. 48446-2987

MICHAEL COX
MICHIGAN ATTORNEY GENERAL
G. MENNEN WILLIAMS BUILDING
P.O. BOX 30217
LANSING, MI. 48913

QUESTIONS PRESENTED

Does the structural error of constructive denial of counsel at trial constitute exceptional circumstances that warrant this Court's discretionary powers to issue habeas writ, where counsel's ability to competently practice law was materially impaired by his drug and alcohol addicition?

Petitioner answers, yes.

Respondent answers, no.

STATEMENT OF FACTS

Procedural History:

On March 15, 1983, Petitioner, John Lee Gentry, Jr., was tried and convicted by jury in the Genesee County Circuit Court on the charge of First Degree Murder, contrary to Michigan Complied Laws ("MCL") 750.316; Michigan Statutes Annotated ("MSA") 28.548. (People v. Gentry, Case No. 82-31777-FY). On April 20, 1983, he was sentenced to a term of mandatory life in prison. During the trial and sentencing proceedings he was represented by retained attorney, James J. Zimmer (P-22732).

Prior to sentencing, Petitioner retained another attorney, Jerome F. O'Rourke, who acted as co-counsel, and independently represented Petitioner on direct appeal. (People v. Gentry, COA No. 71032). On April 3, 1985, the Michigan Court of Appeals affirmed the conviction and sentence. See Ex. A. Petitioner sought leave to appeal this judgment, through counsel, in the Michigan Supreme Court and on October 28, 1985 the application was denied. (People v. Gentry, 423 Mich. 854 (1985)). See Appendix Docket Entry ("DE") # 66.

Collateral Attack:

Thereafter, Petitioner filed a pro-se petition for writ of habeas corpus in the United States District Court for the Eastern District of Michigan. (Gentry v. Foltz, Case No. 86-CV-40099FL). On July 23, 1986, the district court denied the petition. On July 7, 1987, the Sixth Circuit Court of Appeals affirmed the district court's judgment. (Gentry v. Foltz, 815 F.2d 77 (CA 6, 1987). Petitioner then filed a

petition for a writ of certiorari to the Sixth Circuit Court of Appeals in the United States Supreme Court. (Gentry v. Foltz, 899 L.Ed.2d 141 (1987)). The petition was denied on October 8, 1987. Id.

Zimmer's Drug Addiction/Criminal Conduct & Suspension:

On August 27, 1987 the Flint Journal Newspaper published an article entitled: "Cocaine Addiction Nearly Ruined His Life Attorney Testifies." See Ex. C. The article reported the trial in the United States District Court for the Eastern District of Michigan, wherein several defendants were charged under 28 U.S.C. § 848 with operating a continuing criminal enterprise. Attorney Zimmer was implicated in the crime, but under an immunity agreement, testified for the prosecution. Id. During his testimony, Zimmer revealed that there was a period around 1981 when he was buying and using sometimes two or three grams of cocaine per day and that he once sold $7,000.00 worth of the drug to help finance his habit. Id. The newspaper report quoted Zimmer's statement that "[he] couldn't even get out of bed without that crap." Id. Zimmer further testified to lying to a federal grand jury in that case. Id.

As a result of Zimmer's trial testimony in the federal case, on February 19, 1988 a Formal Complaint was filed with the Attorney Discipline Board by Attorney Grievance Commission ("AGC") Administrator, Michael A. Schwartz. (AGC v. Zimmer, ADB No. 30-88); see also Ex. D. The complaint alleged in count one that in or about October, 1981 Attorney Zimmer sold four ounces of cocaine to Ronald Harris at the City of Detroit. Ex. D ¶ 3(B). Count two alleged that on or about April 29,

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September 22, 1989

ATTORNEY GRIEVANCE COMMISSION
RECEIVED
1989 SEP 25 PM 1:33

Attorney Grievance Commission
243 W. Congress - Ste. 256
Marquette Building
Detroit, Michigan 48226

ATTENTION: DEBORAH J. GASKIN
GRIEVANCE ADMINISTRATOR

RE: JAMES J. ZIMMER, a Member of the State Bar of Michigan
YOUR FILE NO. 2092/89
REQUEST FOR INVESTIGATION

Dear Ms. Gaskin:

The following is the response of James J. Zimmer to the Request for Investigation served upon him by letter dated August 25, 1989.

First and foremost, Respondent denies the allegations of the Grievant that he was addicted to cocaine at the time of Grievant's trial for first degree murder, or that he demonstrated any signs of addiction or substance abuse at the time of the trial. As the Commission is aware, Respondent was in fact addicted to cocaine and alcohol for a limited period of time during his professional career and is currently a recovering alcoholic. However, Respondent adamantly maintains that he was not addicted to cocaine at the time of the Grievant's trial.

Respondent's alcohol and cocaine addiction, and the misconduct arising therefrom, has previously been the subject of a grievance proceeding. In the Formal Complaint in ADB # 30-88 (AGC # DP 35-88), Respondent was charged with misconduct arising out of a sale of cocaine and arising out of Respondent's testimony before the Grand Jury. The misconduct alleged in ADB # 30-88 is the misconduct discussed and described in the newspaper articles attached to the instant grievance. In defense of Case No. 30-88, Respondent sought probation and presented proofs to Wayne County Hearing Panel #5 to the effect that he had been addicted to cocaine and alcohol for a limited period of time during his

(Exh. D, pg. 1-4) Ex. I 10

professional career and that that addiction had been the cause of the misconduct alleged in that matter. Extensive testimony was presented to the Hearing Panel relative to the nature, extent, and time period of Respondent's addiction and accompanying disability. Testimony at the time of the hearing clearly revealed that Respondent's addiction was not present during the time period of the instant Grievant's trial. As the Commission is undoubtedly aware, Wayne County Hearing Panel #5 has currently taken ADB Case No. 30-88 under advisement and is considering the appropriate amount of discipline to be imposed upon the Respondent relative to the misconduct which occurred as a result of Respondent's cocaine and alcohol addiction.

Respondent further submits that at the time of trial, contra to Grievant's assertions, he did not exhibit signs of cocaine addiction or substance abuse. Respondent did not make frequent trips to the restrooms to snort cocaine nor did he appear at trial with powdery substances coating his mustache or beard. Further, at no time did he fall asleep during the course of trial. Attached to this response is a letter provided by Daniel Stamos, a Genesee County Prosecuting Attorney. In that correspondence, Daniel Stamos states that he was the Genesee County Prosecuting Attorney who prosecuted the Grievant on the first degree murder charge. Mr. Stamos indicates therein that at no time does he recall Respondent exhibiting any behavior at trial which was suggestive of a substance abuse problem. Further, per Mr. Stamos, the defense presented by Respondent at trial was presented in a competent and professional manner.

Respondent submits that although Grievant was convicted of first degree murder and received a life sentence, he was provided with a vigorous and effective defense at trial. Respondent strongly denies that the Grievant was denied effective assistance of counsel. In the instant grievance, Grievant makes a blanket assertion that he was denied effective assistance of counsel. However, Grievant fails to allege any specific actions on the part of Respondent which resulted in his being denied effective assistance of counsel. Grievant does make a passing comment that Respondent failed to notify Grievant of a plea, failed to file a proper notice of defense, and failed to endorse witnesses. Each of these assertions are without merit. The defense in the underlying criminal case was one of self-defense. Accordingly, no notice of defense was required. The incident arose out of a shooting. All res gestae witnesses were endorsed by the prosecution and testified at trial. Respondent is unaware of any other witnesses that should have or could have been endorsed.

Contra to Grievant's assertions, Grievant was, in fact, offered

No. 01-1529

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

SEP 25 2001

LEONARD GREEN, Clerk

In re: JOHN LEE GENTRY, JR.,

Movant.

ORDER

Before: BATCHELDER and COLE, Circuit Judges; GWIN, District Judge.*

John Lee Gentry, Jr., a pro se Michigan state prisoner, moves the court pursuant to 28 U.S.C. § 2244(b)(3)(A) for an order authorizing the district court to consider a second or successive habeas corpus petition to be filed under 28 U.S.C. § 2254.

Upon review, we conclude that Gentry has not satisfied the requirements of 28 U.S.C. § 2244(b).

Accordingly, we hereby deny Gentry's motion seeking permission to file a second or successive habeas corpus petition in the district court.

ENTERED BY ORDER OF THE COURT

Leonard Green

Clerk

*The Honorable James S. Gwin, United States District Judge for the Northern District of Ohio, sitting by designation.

Ex. X