No. 03-5192

In The
Supreme Court of The United States
October Term

ORIGINAL

FILED
JUL 1

Ex Parte, James Ishmael Tibbs,
Petitioner

V.

Janie Cockrell, (Director) TDCJ-ID
Respondent

Procedure On Petition For ~~Extraordinary~~ Writ

Provisions of 28 U.S.C.A. § 2254 (b), Exceptional Circumstances, warrant the exercise of this Court's discretionary powers and adequate relief can not be obtained in any other form or from any other Court.

This writ is rarely Granted.

James Tibbs

JAMES ISHMAEL TIBBS,
Petitioner Pro Se
Dalhart Unit
HCR 4 Box 4000
Dalhart, Texas 79022-9340

QUESTIONS:

...Appendix (D)... 28 U.S.C.A. § 2254 (e)(i)

"It should be noted that, Applicant was charged with, "digital penetration", by inserting his finger".....

"Applicant has made no showing that, the act for which he was convicted of would yield DNA results as, penile penetration might have, unless of course, he wishes to confess to that act".....

Sen. Bill 3, 77TH, Leg., Tex. Code of Crim. Proc. 64.04 findings...in part...

"After examining results of DNA tests, the court should hold a hearing and make findings, results are favorable if, had the results been available before or during trial, and a reasonable probability that, the person would not have been prosecuted or convicted.

Fed. R. Civ. P. 12 (b)(6); Fed R. Civ. P. 8 (a)(2).

In Appendix (D), did the trial court erroneously resolve genuine issues of Law and Facts of Law?

Johnson V. Stovall, 233 F3d 486, (7TH Cir. 2000), 28 U.S.C.A. § 2254 (d)(1)(2).

State witness, Damien Grisham, presented evidence of Rape by saying, Petitioner Raped Bonnie Grisham, also, Flo Worsham, from the Baptist Hospital in Beaumont, Texas, brought Medical Records, State's Exhibit #1, evidence.

The jury was led to believe that, physical, biological, material evidence, was present, in the form of DNA, or speci-

mens from the Rape Kit, identified Petitioner, Tex. C. C. P. 64.01 and 64.03.

Petitioner, James Ishmael Tibbs, on this, the 26TH, day of March, 2003, swears, under penalty of perjury, in compliance with 28 U.S.C.A. § 1746; 18 U.S.C.A. § 1621, that, the following statements are true and correct.

QUESTIONS:

On October or November of 1989, I never caused any digital or penile penetration of the vagina of Bonnie Grisham, while temporarily living at College Street, in Beaumont, Texas.

I, specifically requested to take any Medical Tests before my 1994 trial. However, I was denied equal protection of the Laws, the right to timely challenge the allegations, Murry V. Carrier, 477 U.S. 478 (1986),; Amado V. Zant, 486 U.S. 214 (1988), @ 224-227.

Sen. Bill 3, 77TH Leg., Tex. C. C. P., ch. 64. DNA Testing eff. April 5TH, 2001 was not available, 28 U.S.C.A. § 2254 (A)(i)(ii).

Pursuant to In Re Winship, 397 U.S. 358, 364, (1970), reasonable doubt standard, Sullivan V. Louisiana, 113 S.Ct. 2078, 2081, (1993).

Did, "concrete substance", apply to presumption of innocence, before or during the trial, when Petitioner was denied

any testing available?

Did the trial court distinguish the more serious crime of Rape, from the less serious crime of indecency that, Petitioner would have been entitled to ?

Did the State's Attorney have sufficient evidence to present to a jury for a criminal proceeding?

In light of a comparison of Petitioner's, sworn testimoney and DNA samples at the Texas Department of Public Safety., 5805 N. Lamar Blvd., Austin, Texas, 78752, and DNA samples of Bonnie Grisham, at Baptist Hospital in Beaumont, Texas, would the evidence at trial, been favorable before, during, or now if., a comparison was made?

Is DNA testing, a new Rule of Constitutional Law, made retroactive to Petitioner's, case on Collateral Review, by the Supreme Court that, was previously unavailable? 28 U.S.C.A § 2254 (A)(i).

The retroactive application of DNA testing is a genuine issue of Law and Facts, Fed. Rules of Civil Proc. 8 (a)(2), in Petitioner's case as, an affirmative defense render DNA testing Constitutional, by application of Federally Protected Civil Rights, clearly established in the 5TH, 6TH, & 14TH Amendments U.S.C.A. Rights.

Could it be said, pursuant to 28 U.S.C.A. § 2254 (B):

The Facts underlying Petitioner's claim would be sufficient to establish by clear and convincing evidence that, but

STATEMENT OF THE CASE

Petitioner was tried by a jury in Jefferson County, Beaumont, Texas, and was found guilty on June 3RD, 1994, of aggravated sexual assault, punishment was assessed at nineteen, (19), years confinement in the TDCJ-ID.

On December 12TH, 2001, Petitioner, Pro Se, filed a timely Motion For DNA Testing, without notice to Petitioner, the trial court denied the Motion, on January 18TH, 2002, The 9TH District Court, refused to Grant an Appeal, see Exhibit (A).

On February 2ND, 2002, Petitioner, filed an 11.07 Writ, relief was denied on April 2ND, 2002...Appendix (D)...

On May 13TH, 2002, Petitioner, filed a Federal 28 U.S.C.A. § 2254 Writ. The U.S.D.C. dismissed on June 11TH, 2002 as, a successive or second writ without authorization.

On September 9TH, 2002, Petitioner, sought authorization from the 5TH Cir. Court of Appeals, On October 1ST, 2002, the Court of Appeals denied authorization to file a second or successive, 28 U.S.C.A. § 2254 Writ...Appendix (A)...

On October 30TH, 2002, Petitioner, filed for a C.O.A., to the U.S. Court of Appeals. On January 14TH, 2003, that, request for a C.O.A., was denied. A rehearing was filed timely and denied on February 13TH, 2003,...Appendix (A).

This Honorable U.S. Court of Appeals, has jurisdiction until May 12TH, 2003, pursuant to 28 U.S.C.A. § 1254 (1).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41116

U.S. COURT OF APPEALS
FILED
OCT 1 2002
CHARLES R. FULBRUGE III
CLERK

In Re: JAMES ISHMAEL TIBBS,

Movant.

Motion for an order authorizing
the United States District Court for the Eastern
District of Texas to consider
a successive 28 U.S.C. § 2254 application

Before HIGGINBOTHAM, DUHÉ, and STEWART, Circuit Judges.

BY THE COURT:

James Ishmael Tibbs, Texas prisoner # 702590, seeks authorization from this court to file a successive petition under 28 U.S.C. § 2254, in which Tibbs challenges his 1994 conviction for aggravated assault. Tibbs fails to show that his claim that he was denied DNA testing is an issue based either upon newly discovered evidence or upon a new rule of constitutional law made retroactive to cases on collateral review by the United States Supreme Court. See 28 U.S.C. § 2244 (b)(2)(A), (B)(i), (3)(C). Therefore, his motion is DENIED.