03-6913

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA IN WASHINGTON, D.C.

_____TERM 2002

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

NO. 01-41429

In Re, Willie Donnell Beasley
Appellant-Petitioner

VS

Janie Cockrell, Director,
Texas Department of Criminal Justice
Institutional Division
Appellee-Respondant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
FOR THE 5TH CURCUIT
CIVIL NO. 6:00-CV-739

APPELLANTS PETITION FOR A EXTRAORDINARY
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C.A. § 2241

Oral Argument Requested

Willie Donnell Beasley # 830844
P.O. Box 4500
M.W.Michael Unit
Tenn. Colony, Texas 75886

Question Presented

1.

Whether the Inferior Courts improperly applied the law regarding it's ruling to not investigate and make proper findings of facts and conclusions of law on Petitioner's Conflict of Interest Claim? See Page: 1

2.

Whether trial Courts deficient performance in failing and refusing to call favorable and material witnesses resulted in Ineffective Assistance of Counsel and thus violating numerous substantive and Constitutional Rights? See Page. 3

3.

Whether trial Court and reviewing Courts improperly applied the law when failing to make appropriate findings of facts and conclusions of law in regards to Petitioner's Jury Misconduct Claims, such error denied Petitioner substantive Due Process Rights? See Page: 5

4.

Whether Trial Courts had enough evidence to support the Petitioner's Conviction See Page: 6

Appendix A

5th Circuit Court Orders

Oct 28, 2002- Memorandum on Motion to Leave

Oct 8, 2002- Petition for Rehearing En Banc

Sept 11, 2002- Memorandum from 5th Cir.

Aug 23, 2002- Petition for Reconsideration

July 23, 2002- Appellant's Advisory to the Court

July 2, 2002- Petition for Rehearing Under Fed. Rule

June 7, 2002- Order Denying Request for C.O.A.

April 19, 2002- Memorandum from the 5th Cir.

April 16, 2002- Memorandum from the 5th Cir.

April 12, 2002- Memorandum from the 5th Cir.

April 4, 2002- Order by the Clerk dismissing Appeal

Jan 10, 2002- Typewritten Copy of Memo by the 5th Cir.

Dec 28, 2001- Memorandum from the 5th Cir.

Appendix B

U.S. District Court Orders

Dec 13, 2001- Second Motion to Proceed I.F.P.

Dec 11, 2001- Order Denying C.O.A.

Nov 27, 2001- Order Dismissing Petition

Oct 25, 2001- Report and Recommendation of U.S. Magistrate

Oct 22, 2001- Notice of Case reopening

Oct 22, 2001- Order granting Relief

Sept 12, 2001- Order asking for affidavit from the Attorney General

Jan 25, 2001- Final Judgment

Opinions Below

Appellant Willie Donnell Beasley was convicted of the offense of Aggreavated Robbery as a Habitual Offender and sentenced to 40 years in prison.

Oct. 8, 2002

By order of the U.S. Court of Appeals petition for Rehearing En Banc was denied by Hon. Judge Rhesa Barksdale.

Sep. 11, 2002

Petition for Rehearing En Banc returned for resubmission.

Aug. 23, 2002

Petition for Reconsideration for C.O.A. and I.F.P. was denied

July 2, 2002

Petition for Rehearing under Fed. R. App. P. 40 has expired with no further entertainment signed by Connie Caludia Deputy Clerk.

July 23, 2002

Appellant Motion for C.O.A. and to proceed I.F.P. was denied by Hon Judge Rhesa H. Barksdale on June 7, 2002 order for a C.O.A. to Appeal Courts Denial of Appellants 28 U.S.C.A. §2254 petition.

April 19, 2002

Motion and request for Rehearing En Banc on the order of the clerk's office with no action taken signed by Donna Mendez Deputy Clerk.

April 16, 2002

Order granting reinstatement of Appeal signed by Tabitha Casimier Tobias Deputy Clerk

April 12, 2002

Memorandum from 5th Circuit treating correspondence dated March 29, 2002 treated as Motion to reinstate Appeal Motion for I.F.P. proceedings received on 1-7-02 has been filed. Signed by Donna Mendez, Deputy Clerk

March 25, 2002

Appellants Argument and Authorities

Conflict of Interest

Appellant argues there was a Conflict of Interest between himself and his Court Appointed Attorney, Ms. Teresa A. Drum, who represented Appellant at trial. Aside from the fact there existed a close friendship between Ms. Drum and Asst. D.A. Shari Moore; Ms. Drum was also employed by the County as a City Attorney for Gun Barrel City, Texas. (See: Exhibit A). The Courts erred in its decision not to investigate the Appellant's claim of Conflict of Interest which is recognized under the 6th and 14th Amendments of the U.S. Constitution, under Due Process and the right to effective assistance of counsel which is also recognized by the Honorable Court.

Furthermore, Appellants Attorney verbally motioned to with draw citing possible Conflict of Interest. However, the trial Court totally disregarded Appellants and Attorneys claim of Conflict of Interest. When defendant made a sufficient showing that a Conflict of Interest existed which adversely affects counsels representation, prejudice is presumed. (Manhalt vs. Reed, 847 F. 2d. 576 (5th Cir. 1988) see also (Cuyler vs. Sullivan, 446 U.S. 335,348, 100S.Ct. 1708, 64 L. Ed. 2d. 333 (1980). Appellant argues that the possible Conflict of Interest did become a complete Conflict when Ms. Drum had to choose between actively protecting Appellant's Rights to Trial by Jury, (A Jury not Tampered with), and reporting a fellow officer of the State, Det. Kay Langford, for possible Jury tampering. Under Cuyler the Court must presume prejudice of a Conflict of Interest adversely affects the Attorneys performance.

Appellant would like to direct the Courts attention to the following; Appellant did file his affidavit of Juror Misconduct with the Trial Court on March 10, 1999. (See: Exhibit B). The Trial Court received said affidavit and served a copy of same on Appellants Attorney (See: Exhibit C). A reading of Exhibit B clearly demonstrates that Ms. Drum knew of the Jury Tampering prior to Appellant's filing his affidavit. Ms. Drum at no time prior to Appellants filing his affidavit and at no time following the Trial Court serving her a copy of said affidavit did she move for an In Camera Hearing to Vordire Ms. Hamlett, who became Juror #6, Nor Det. Kay Langford. The Appellant would like to point out at this time that the Trial Court has a limited duty to avoid potential Conflicts of Interest which constitutes a 6th Amendment violation on the Conflict of Interest, the reviewing Court must find, (1) That Counsel actively represented

from her investigator, that clearly shows that Appellant was 38.4 miles away from the scene of the crime at the time of the alleged robbery. She failed or refused to see such evidence and did not offer any explanation.

Ineffective Assistance of Counsel

The Appellant would also like to show the Court the fact that the Appellant raised a substantial issue concerning a missing material witness for the defense. In the Appellant's original petition for Writ of Habeas Corpus, the Appellant alleged that there was favorable evidence that could have cleared him of the alleged offense of Aggravated Robbery. The Appellant made it know at time of Trial to his Counsel that he had an alibi witness to substantiate his location at time of the alleged offense. Trial Counsels failure to interview and call alibi witness who put the defendant in another location at the time of the offense constituted performance below and objective standard of reasonableness. There existed a reasonable probability that the results of the Trial would have been different absent Trial Counsels unprofessional errors and omissions, (U.S. vs. Dawson, 851 F. 2d. 923 (5th Cir. 1988), (Wade vs. Armontrout, 798 F.2d. 304 (8th Cir. 1986), (U.S. Ex Rel. Patterson vs. Neal, 678 F. Supp. 749 (N.D. Ill 1988).

The Appellant did supply his Attorney, Ms. Drum with the name of the material witness I.E., Tracy Sowells, and after Ms. Drum had Court to issue a subpoena for Mr. Sowells to be in Court on March 9, 1999, she phoned Mr. Sowells and told him that she would not be needing him. Ms. Drum also had the Appellants brother to come to Court to offer testimony but prohibited him from testifying for the Appellant. Failure to produce alibi witness under the facts and circumstances of this case constituted Ineffective Assistance of Counsel, (Tosh vs. Lockhart, 879 F. 2d. 412 (8th Cir. 1989). Trial Counsel also abandoned petitioner's only defense which was inherently prejudicial, (U.S. vs. Swanson, 943 F.2d. 1070 (8th Cir. 1991).

The Appellant also made it known, the location of the two other witnesses that could have further testified that the alleged victim had accused them of taking property from her and failure of counsel to contact and investigate all potential witnesses of possible alibi when defendant provided counsel with their names, which would have supported a defense of misidentification constituted ineffective assistance of counsel (Lawrence vs. Armontrout, 900 F. 2d. 127 (8th Cir. 1990) and (U.S. vs. Ashimi, 932 F. 2d. 643(7th Cir. 1991). Both, Mr. Sowells,

It is obviously clear that a potential conflict of interest had occurred some time during the course of the trial proceedings and that the Court as well as the Appellants Attorney has knowingly, intentionally and willfully neglected their duties and failed or refused to investigate the unapproved private communication and tampering of a juror, this court must consider and review and apply the laws which have been set forward not only by the 5th Circuit, but by the U.S. Supreme Court. If the Court of Appeals had any doubt about issuing an C.O.A. to Habeas Corpus Petitioner, it will grant it.

Juror Misconduct (Unapproved Jury Communication)

The Appellant would like to direct the Courts attention to the fact that on March 9, 1999, the Appellant made it known to his Attorney, Ms. Drum that one of the investigators involved in the investigation of the Appellant's case was observed talking to one of the perspective juror members. This person was identified as juror #6, Ms. Paula Hamlet. See: Exhibit (B) and Exhibit (C). The Appellant's Attorney failed to report this unauthorized juror communication to the Court. Ms. Hamlet, and investigator Det. Kay Langford were observed having this conversation with one another in the Jury panel before jury selection started.

Ms. Hamlet was chosen as one of the twelve juror members. As a result of the Attorney neglecting her duties and affidavit was filed on March 10, 1999 by the Appellant. See: Exhibit (B). Please note that the Trial officials I.E. that State District Judge Jack H. Holland acknowledged receiving the Appellant's Affidavit, See Exhibit (C), but the issue of jury misconduct has never been investigated by the State and Federal Court. Instead trial courts should investigate jurors exposed to extraneous influences to determine whether there has been prejudicial impact. When the Appellant pointed out the fact of unapproved jury communication, conflict, or jury tampering during a criminal trial, the court should have initiated and inquiry to investigate the Detectives ulterior motives.

The 5th Circuit Court, it it's order, argued that Appellant did not show the jury contact concerned that matter pending before the jury and because of this, there was no error. The Appellant again argued this particular point raised by the 5th Circuit Court, was at best moot. In the case of (Remmer vs United States, 347 U.S. 277, "The Supreme Court held that any unapproved private communication, contact or tampering with a juror during a criminal trial is

Presumptively prejudicial, 1746 Id. At 229.") the important fact in this [particular circumstance, is the fact that there was unapproved private communication as well as contact, no that Appellant did not show what the unapproved communication concerned. Reasonable Jurist would find the District Courts assessment of the Constitutional claims debatable or wrong.

No Evidence to Support Conviction

Appellant would like to show there was no evidence to support his conviction. The Appellant argued that he was convicted, not because of conclusive evidence that showed that he was guilty of Aggravated robbery, but based upon a past conviction some ten to twenty years prior. The Appellant was convicted of Aggravated Robbery out of Dallas County. The Appellant further argued that the alleged identification issue was not an issue as Trial and that the alleged victim's identification of the Appellant was so far out of focus that the court had to question the testimony of the alleged victim.

When the victim was asked if she could identify the perpetrator of this alleged crime a spectator in the back of the Court Room shouted! "Yes, that's Willie Beasley!" and the alleged victim could not describe for the Court what the Appellant was wearing and Defense Counsels failure to move to correct testimony which she knew was false or misleading, constitutes ineffective assistance, (Mills vs. Scully, 653 F. Supp. 885 (S.D.N.Y. 1987). When questioned about what had taken place on November 14, 1998 the alleged victim started to testify as to someone in a field with a pick-up truck and displayed problems of remembering anything. She talked about someone trying to "who-do-her," and that someone had come in and taken mattresses from her residence.

The Appellant would also like to once again point out that the Chief Witness in the case, Eddie Pace, was the one who allegedly found the victims wallet, the same witness that the Appellant had told to his Attorney, Ms. Drum was a wanted fugitive out of Smith County, Texas. Trial Counsels failure to investigate impeachable evidence for attacking the credibility of the States Witness may constitute ineffective assistance and she had a duty to investigate leads affecting the credibility of witnesses which would serve to bolster her clients' credibility, and undercut the State's witnesses testimony, (Miller vs. Wainwright, 798 F. 2d. 426 (11th Cir. 1986) and (Williams vs. Washington, 59 F. 3d. 673 (7th Cir. 1995).

ECD 6/12/02

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Appellant's Shuck Copy
Exhibit B

U.S. COURT OF APPEALS
FILED
JUN 07 2002
CHARLES R. FULBRUGE III
CLERK

No. 01-41429
USDC No. 6:00-CV-739

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JUN 12 2002
DAVID J. MALAND, CLERK
BY DEPUTY

WILLIE DONNELL BEASLEY,

Petitioner-Appellant,

versus

JANIE COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas

O R D E R:

Willie Donnell Beasley, Texas prisoner # 870844, has moved this court for a certificate of appealability ("COA") to appeal the district court's denial of his 28 U.S.C. § 2254 petition. He also requests leave to proceed in forma pauperis ("IFP"). A COA may be issued only if Beasley makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this showing, the petitioner must "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

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IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 01-41429

U.S. COURT OF APPEALS
FILED
OCT 8 - 2002
CHARLES R. FULBRUGE III
CLERK

WILLIE DONNELL BEASLEY

Petitioner - Appellant

v.

JANIE COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION

Respondent - Appellee

Appeal from the United States District Court for the Eastern District of Texas, Tyler

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ON PETITION FOR REHEARING EN BANC

Before BARKSDALE, DeMOSS and BENAVIDES, Circuit Judges.

PER CURIAM:

(✓) No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

United States Circuit Judge

REHG-6a

RECEIVED 10-15-02 AT 10:30 A.M.