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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2003

In re CARLOS G. GALLOWAY JR.

ON ORIGINAL HABEAS CORPUS PETITION
ADDRESSED TO JUSTICE JOHN PAUL STEVENS

PETITION FOR WRIT OF HABEAS CORPUS

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PETITIONER

QUESTIONS PRESENTED FOR REVIEW

WILL A SUSPENSION OF THE WRIT OCCUR IF PETITIONER CANNOT HAVE HIS CLAIM HEARD IN THIS COURT WHERE THE CLAIM COULD NOT HAVE BEEN PRESENTED IN ANY EARLIER PROCEEDING?

MAY A FINDING OF FINALITY BE PRECLUDED FOR AEDPA PURPOSES WHERE A STATE UNCONSTITUTIONALLY FORECLOSED AN INDIGENT DEFENDANT FROM ACCESS TO THE DIRECT REVIEW PROCESS ON THE BASIS OF HIS POVERTY?

DID PETITIONER'S CONVICTION BECOME FINAL WHEN THIS COURT DENIED HIS DIRECT REVIEW PETITION FOR A WRIT OF CERTIORARI?

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No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2003

In re CARLOS G. GALLOWAY JR.

ON ORIGINAL HABEAS CORPUS PETITION
ADDRESSED TO JUSTICE JOHN PAUL STEVENS

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Carlos G. Galloway Jr., in pro se, respectfully seeks a writ of habeas corpus on the ground that he is in custody in violation of the Constitution of the United States. In the alternative, Petitioner seeks relief from the judgment of the United States Court of Appeals for the Sixth Circuit, in In re Carlos G. Galloway, Jr., No. 00-4253 (May 4, 2001), which denied Petitioner authorization to raise, in a numerically second habeas corpus petition, a claim that could not have been presented in his first pro se habeas corpus petition.

STATEMENT OF THE CASE

On June 11, 1994, Petitioner was convicted, after a trial by jury, of two (2) counts of aggravated murder pursuant to Ohio Revised Code §2903.01(A) and the firearm specifications attached to each count. The trial took place in the Court of Common Pleas of Lucas County, Ohio. Petitioner pled not guilty to the charges before the trial. Petitioner was sentenced to a term of life imprisonment on both counts, to run concurrently, with parole eligibility after serving thirty (30) full years. Petitioner received a three (3) year sentence for each firearm specification which will be served concurrently with each other, but prior to and consecutive with counts 1 and 2. See, Judgment Entry of Sentence reproduced in the Appendix at A-14. Petitioner alleges that he is in custody in violation of the Constitution of the United States and and that Julius Wilson, warden of the Trumbull Correctional Facility, is the name of the person having custody over him by virtue of the claims stated above.

Following Petitioner's conviction, a timely appeal was filed on his behalf by court-appointed counsel in the Court of Appeals of Lucas County, Ohio. The appeal was unsuccessful. State v. Galloway, No. L-94-209, 1995 WL 458787 (Ohio Ct. App., August 4, 1995). See Appendix at A-16. Over the next two years, Petitioner tried to obtain a personal copy of, or access to, his trial transcripts so that he could pursue all of his available appellate and post-conviction remedies in the state courts. Petitioner had initially asked his appellate attorney to provide him with a copy of the transcript while it was in her possession. She, in turn, filed a

motion for transcript with the Court of Appeals of Lucas County, Ohio which was denied on December 22, 1994. See Decision and Judgment Entry at A-19. After asking appellate counsel again to make a copy of the transcript for him, she responded that she had to return the transcript to the court of appeals. The letter regarding that statement is reproduced in the Appendix at A-20. Following the denial of his appeal, Petitioner filed several unsuccessful motions in the trial and appellate courts (Appendix at A-21 to 41).

Petitioner, with the assistance of the Ohio Public Defender, finally obtained a complete copy of his trial transcript on September 11, 1997. This was Petitioner's very first opportunity to consult the record of his trial. Upon reviewing the transcript, Petitioner discovered the fact that appellate counsel had failed to raise two reversible errors on direct appeal that were clearly stronger than those she did present. The transcript demonstrated that Petitioner would not have been convicted were it not for a pattern of egregious prosecutorial misconduct during closing arguments and, that trial counsel failed to object to the misconduct. This was Petitioner's first indication that he had been denied a fair trial and, that he had been denied the effective assistance of counsel at both trial and on direct appeal.

On September 9, 1998, Petitioner effectively filed his first pro se federal habeas corpus petition by submitting it to prison officials to be mailed to the United States District Court for the Northern District of Ohio, Western Division (see receipt for postage at A-42). Cf. Houston v. Lack, 487 U.S. 266 (1988).

60(b) motion alleged that: (1) the district court relied on erroneous factual findings in reaching its judgment; (2) the district court's failure to liberally construe Petitioner's pro se habeas petition resulted in a judgment that was erroneous as a matter of law; (3) Petitioner's conviction was not yet final when his first habeas corpus petition was dismissed; and (4) the district court's erroneous judgment had resulted in an unconstitutional suspension of the writ of habeas corpus in this case despite Petitioner's diligence in pursuing his claims.

On October 30, 2000, the district court denied Petitioner's Rule 60(b) motion for relief from judgment. See Order at A-51.

On May 15, 2001, the Sixth Circuit Court of Appeals denied Petitioner's request for a COA. See Order At A-54. A petition for rehearing en banc was denied on July 25, 2001. See Order at A-56.

Petitioner filed a timely petition for writ of certiorari in this Court which was denied on March 25, 2002. See letter regarding denial at A-57.

On December 10, 2002, Petitioner filed in the district court an original habeas corpus action under 28 U.S.C. §2241. Holding that it was effectively a third §2254 petition, the district court transferred the action to the Sixth Circuit Court of Appeals on January 15, 2003. See Order at A-58. The Sixth Circuit dismissed the action for want of prosecution on March 26, 2003. See Order at A-60.

HOW THE FEDERAL ISSUES WERE RAISED AND DECIDED BELOW

Petitioner applied for a reopening of his appeal on February 2, 1999. In the application, he asserted his right to the effec-

Case No: 03-3177

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

MAR 26 2003

LEONARD GREEN, Clerk

ORDER

In re: CARLOS G. GALLOWAY, JR.

Appellant

The District Court has transferred movant Carlos Galloway 's petition to this court as the movant has not requested nor been given permission to file a second or successive application for habeas relief under the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244. The Sixth Circuit Clerk's office notified the movant on 02/06/03 that the requirements of Sixth Circuit Rule 22 must be satisfied. The notice gave the movant a 30 day extension to cure the default(s).

The time has now expired and the movant has not cured the default(s) identified in the notice. It is, therefore, **ORDERED** that this action is dismissed for want of prosecution. Even if the default is subsequently cured, the application will not be restored to the court's active docket.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT.
Leonard Green, Clerk

Leonard Green

ISSUED
99 FEB 10 PM 1:59

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Carlos G. Galloway, Jr.,

Petitioner

Case No. 3:98CV7546

vs.

Stephen Huffman, Warden,

Respondent

OPINION AND ORDER

POTTER, J.:

This action is before the Court on Carlos Galloway's petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 and memorandum in support of habeas petition, and respondent's unopposed motion to dismiss. Petitioner is currently incarcerated at Southern Ohio Correctional Institution in Lucasville, Ohio.

As an initial matter, the Court finds that the petition may be resolved from the record. Therefore, an evidentiary hearing is not required. Townsend v. Sain, 372 U.S. 293 (1963), Amos v. Scott, 61 F.3d 333 (5th Cir. 1995); Rule 8 of Rules Governing § 2254 Proceedings. Furthermore, for the reasons hereinafter stated, petitioner's habeas petition is denied.

On June 11, 1994, after a jury trial, petitioner was found guilty of two counts of aggravated murder with firearm specifications as to each count. He was sentenced to two terms of life imprisonment with parole eligibility after serving thirty full years, to be served concurrently with each other. On the firearm specifications, petitioner was sentenced to three years of actual incarceration on each, to be served concurrently with each other, but prior to and consecutively to the sentences for aggravated murder.