03-5371

Supreme Court, U.S.
FILED
JUN 17 2003
OFFICE OF THE CLERK

In The

Supreme Court Of The United States

October Term, 2002

No._____

In re William H. Gorman,)
Petitioner,)
)
v.)
)
James Erwin,)
Respondent.)

Petition For A Writ Of Habeas Corpus To The United States Supreme Court Pursuant to 28 U.S.C. Sections 1651(a), 2241(a), 2242, And Supreme Court Rules Of Civil Procedure Rule 20

William H. Gorman-A181-146
Petitioner, Pro-Se
Chillicothe C.I.
P.O. Box 5500
Chillicothe, Ohio 45601-0990

It may be amended or supplemented as provided by the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

STATEMENT OF THE CASE

Procedural History Of The Case:

The Petitioner, William H. Gorman, hereinafter Gorman, was convicted in the Hamilton County, Ohio Court of Common Pleas under Case No. B-841653 on August 16, 1984. Appeal was made to the First District Court of Appeals for Hamilton County, Ohio under Case No. C-840707. This appeal was denied on October 23, 1985.

Gorman next filed a petition For A Writ Of Habeas Corpus under Case No. C2-93-931 with the U.S. District Court, Southern District of Ohio, Eastern Division on September 27, 1994. This Petition was denied on March 27, 1995, citing failure to exhaust state remedies.

Gorman next filed a timely appeal with the Sixth Circuit Court of Appeals and an Application For A Certificate Of Probable Cause under Case No. 95-3504 which was denied citing failure to exhaust state remedies.

Gorman next filed a timely Petition For A Writ Of Certiorari with the United States Supreme Court on December 20, 1995 under Case No. 95-7222. This was denied on March 25, 1995 citing failure to exhaust state remedies. A Reconsideration was also filed which was denied on May 13, 1996.

Gorman then filed a Petition To Vacate Or Set Aside Sentence (Post-Conviction) with the Hamilton County, Ohio Court of Common Pleas under Case No. B-841653 on August, 1996. This Petition was denied on October 15, 1996 for failure to document claims.

This denial of the Post-Conviction Petition was timely appealed to the

First District Court of Appeals for Hamilton County, Ohio on February 10, 1997 under Case No. B-841653 and was assigned Case No. C-960966. The Court affirmed the Common Pleas decision denying the Petition for failure to document on October 10, 1997.

Gorman next filed a timely Memorandum Of Jurisdiction with the Ohio Supreme Court under Case No. 97-2291 on November 4, 1997. This Memorandum was denied on January 21, 1998.

Gorman next filed an Application For Reopening Under Appellate Rule 26(B) with the First District Court of Appeals For Hamilton County, Ohio under Case No. B-851653 and Case No. C-840707 in April, 1998. This was denied on July 23, 1998, ruling that it was untimely as it had not been filed within 90 days of the October 23, 1985 date when Case No. C-840707 was ruled on.

Gorman next filed a timely Memorandum Of Jurisdiction with the Ohio Supreme Court under Case No. 98-1722 on August 20, 1998. This Memorandum was denied citing no constitutional question was involved on October 7, 1998.

Gorman then refiled his habeas corpus petition with the Sixth Circuit Court of Appeals on December 12, 1998 under Case No. 98-4479. The Sixth Circuit Court of Appeals ruled on June 11,1999 that this was not a sucessive petition and no order was required to refile this case in the Distrcit Court.

Gorman's habeas corpus petition was ultimately transferred to the District Court For The Southern District of Ohio-Western Division and given Case No. C-1-00-326 on April 19, 2000. Gorman and the Respondent, James Erwin, hereinafter Erwin, then filed a host of motions in this Court. The District Court ruled on September 24, 2002 that Ground Five and Eight were still unexhausted in state court. Gorman appealed this decision to the Sixth Circuit Court of Appeals on October 15, 2002 where it was assigned Case No. 02-4195. Gorman also attempted to exhaust Ground Five and Eight in State Court by filing a Motion For Delayed Appeal in the Ohio Supreme Court on December 6, 2002 under Case No. 02-2091 which was

opposed by Erwin as untimely. The Ohio Supreme Court denied Gorman's motion without a hearing on January 15, 2003. The Sixth Circuit affirmed the District Court's Order of September 24, 2002 in their decision of May 7, 2003.

Factual Background Of The Case:

Gorman, his wife, and oldest son had a domestic argument on March 24, 1984. The Blue Ash, Ohio Police were called to resolve the dispute. This was but one of many between the wife and oldest son but this time the Blue Ash, Ohio Police were called, the wife alleging that Gorman had assaulted her. They responded and examined the wife who had not been assaulted. Gorman was not charged or arrested. The wife filed for divorce and divorce papers were delivered to Gorman on April 10, 1984 at his home. The wife took the 4 children and went to the Allen Paul House in Cincinnati, Ohio the same day. The daughter was examined on April 16, 1984 at Children's Hospital in Cincinnati, Ohio and found to be a normal, virgin, 8 year old, Appendix pages 76 to 78. Gorman was called to his attorney's office on April 17, 1984 and told the wife had made allegations of sexual abuse against him. Gorman next met with his wife at the Hamilton County Domestic Relations Court on April 26, 1984. The wife's mother called Gorman that night at his home and the next day at work. She also called Gorman's brother and his wife the next day at their home and their place of business. She demanded a better financial settlement, $3,000.00 lump sum to move with and $300.00 a week in child support, or they would make "public" charges of sexual abuse. Gorman had immediately called his attorney when the threats were made and was told to ignore them. Gorman was arrested on May 9, 1984 and charged with the rape of his daughter. A trial was scheduled for July 16, 1984 but this was changed to August 13, 1984 by the Court. Gorman had a 3 day trial and was convicted on August 16, 1984. Gorman was sentenced to the maximum on all counts, all sentences to be served consecutive to each other. An appeal was filed and the conviction was affirmed on October 23, 1985. Gorman's attorneys advised him it would cost $40,000.00 to $80,000.00 to appeal to the

Ohio Supreme Court. Gorman was by now indingent, no appeal was filed by the attorneys. Gorman could not appeal pro-se as he had no Court Records and knew he was unlikely to get any from the Court.

Gorman was contacted by a high school friend in August, 1992 and offered the assistance of an attorney, William G. Fowler, to perfect a delayed appeal to the Ohio Courts under Appellate R.26(B). Fowler met with Gorman at C.C.I. in January, 1993 and agreed to perfect an appeal, obtain Gorman's Court Records, and file for a Commutation of Gorman's sentence. By July, 1994 it was apparent to Gorman that Fowler did not intend to do anything. Gorman had tried to obtain what records his trial and appellate attorneys had in their files. He was told by both attorneys that they had nothing in their files that pertained to his case, nothing at all, Appendix 65 and 66. Gorman was advised to write to the Clerk of Courts for his records which he did and was advised that the Clerk is under no obligation to make prisoners public record of his case available by mail to anyone including the prisoner even if they are paid for which Gorman could not do anyway as he is indingent. They would have to be paid for and picked up in person by a representative of the prisoner. Gorman next filed a motion with the Court for a copy of his records, free, so he could file a pro-se appeal. This motion was summarily denied. Gorman had long known that without his court records it would be impossible for his case to get a fair hearing in court. He would not be able to present even the specific portions of his case he was appealing and some of the issues were on matters not on the record that would require the assistance of an attorney, expert witnesses, and private investigator(s) to document and present to the court. Gorman had been closed out of the appeal process in Ohio because of his indingency.

Gorman had been denied the effective assistance of counsel by his trial and appellate attorneys and now the State of Ohio had denied him the same right to appeal afforded to other prisoners who could afford to purchase their

No. 02-4195

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

MAY - 7 2003

LEONARD GREEN, Clerk

WILLIAM H. GORMAN,

Petitioner-Appellant,

v.

JAMES ERWIN,

Respondent-Appellee.

ORDER

William H. Gorman, an Ohio prisoner proceeding pro se, moves for pauper status, for the appointment of counsel, and for injunctive relief on appeal from a district court judgment dismissing his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. The filing of the notice of appeal has been construed as an application for a certificate of appealability. *See* Fed. R. App. P. 22(b).

Upon review, the court denies the application for a certificate of appealability because a plain procedural bar was present in this case, and the district court was correct to dismiss the petition as a mixed petition. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lundy*, 455 U.S. 509 (1982); *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir. 1994). A jurist of reason would not conclude either that the district court erred in dismissing the habeas petition as a mixed petition or that Gorman should be allowed to proceed further. *Id.*

APPENDIX-2

SUPREME COURT OF THE UNITED STATES

STATE OF OHIO)
) SS: SWORN AFFIDAVIT OF WILLIAM H. GORMAN
COUNTY OF ROSS)

The Affiant, WILLIAM H. GORMAN, swears under penalty of perjury that he is competent to give this Affidavit, that he is over the age of eighteen (18) depose and state:

1. The Petitioner states that he has been illegally convicted through the abusive use of the criminal process and that he is truly innocent of the allegad crimes he was convicted of.

2. All the facts in this Petition are true and correct and an Evidentiary Hearing is needed to prove to the Court that the Justice System was used by the Petitioner's wife and her mother to secure a favorable divorce settlement.

3. The Petitioner was convicted because he was denied rights guaranteed by the United States Constitution and the State of Ohio Constitution.

4. The Affiant, Petitioner, states that a miscarriage of justice has befallen him as a result of the denial of rights guaranteed by the United States and State of Ohio Constitution.

The Affiant Further Sayeth Naught.

Affiant William H. Gorman
William H. Gorman

Sworn to and Subscribed in my presence a Notary Public on this 8TH day of July, 2003 as so.

My Commission expires: NOTARIAL SEAL STATE OF OHIO Rita Roman Notary Public In and for the State of Ohio My Commission Expires January 29, 2008.

Rita Roman
Notary Public