NO. 006998

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

EX PARTE MICHAEL WALKER PETITIONER

-VS-

RESPONDENT(S)

Supreme Court, U.S.
FILED
NOV 13 2000
CLERK

PETITION FOR WRIT OF HABEAS CORPUS

Michael Walker, 187971
(Your Name)

P.O. Box 200
(Address)

Hinton, OK. 73047
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

Whether or not Petitioner is entitled to an out-of-time appeal because he was not provided with a "certified" copy of the lower court's order denying him relief on his Application for Post-Conviction Relief by the Court's Clerk for more than (3) years after said decision was entered by the lower district court through no fault of Petitioner.

Whether Petitioner should be held accountable for allegedly failing to respond to the state appellate court's order to respond within (30) days to show cause for failing to provide the court with a "certified" order as rules provide, when Petitioner was unable to get a "certified" order from the Court Clerk and where the Appellate Court directed the lower court clerk to forward them a copy of said "certified" order but the Clerk failed to follow said directive and where Petitioner did write a letter to the appellate court explaining why he could not forward to them a "certified" order but where said letter did not have Petitioner's case number on it and it went unnoticed and was never considered by the state appellate court when the case was dismissed.

LIST OF PARTIES

All parties to this case appear in the body of this instant Petition.

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STATEMENT OF THE CASE
AND
REASONS FOR GRANTING THE WRIT

On 2/12/97, the District Court of Sequoyah County, Oklahoma, denied the Petitioner's Application for Post-Conviction Relief. The Judge's Secretary sent Petitioner a copy of the order and told me that if I wanted the order "certified" to ask the Court's Clerk. I took an immediate appeal to the Oklahoma Court of Criminal Appeals in PC-97-343. Said court issued me an order directing me to provide cause for not providing them with a "certified" order within (30) days. This May 8, 1997 order is attached hereto as Exhibit "E". In said order, the appellate court also ordered the Sequoyah District Court Clerk to forward a "certified" order to them within (10) days. (See Exhibit "E"). Immediately after receiving this May 8th order, I wrote a letter to the court clerk and sent her a copy of the appellate court's order and requested that she send to me a "certified" copy of the 2/12/97 order as quickly as possible. (Exhibit "G"). I never heard back from the court clerk so on May 20, 1997, I wrote a letter to the appellate court attempting to explain to them that I was unable to get a response or a "certified" order from the district court clerk. (Exhibit "F" hereto). Then, on 8/12/97 the appellate court entered an order dismissing my case, no. PC-97-343 for my failure to provide them with cause within (30) days of the May 8th, 1997 order. (Exhibit J). I attempted to file a petition for rehearing but it was returned as the court rules do not provide for a rehearing in post-conviction appeals. I then took the issues themselves through the federal court, court of appeals, and then to the U.S. Supreme Court on Petition for Certiorai, but was denied thereon on October 4, 1999. Then, on January 27, 2000, I sent another letter to the district court clerk requesting a "certified" copy of the 2/12/97 order. (Exhibit "H"). I never received a response to that letter so I wrote yet another one on March 7, 2000 with the same request. (Exhibit "A"). Again, I never received a response. Then, I took and wrote a letter to District Court Judge Edmondson and explained that I hadn't received a "certified" order and I couldn't get responses from the Court's Clerk. (Exhibit "B"). Judge Edmondson then wrote a letter to the Court Clerk and requested they immediately forward a "certified" copy of the 2/12/97 order to me so I could continue with my appeal process. (Exhibit "C"). Soon thereafter, I received the "certified" order of 2/12/97 of which I was seeking for more than (3) years since it was first issued against me.

[It is very important to note that several times between 2/12/97 and March 30, 2000, I did write several letters and received several "certified" appellate orders of my appeal but never once did I receive a "certified" order of the district court. See Exhibits "I" & "J" & "K"). This shows that I did make several good faith attempts to obtain the necessary "certified" order to appeal the case. See Exhibit "L" also.]

Now, immediately after receiving the 2/12/97 district court order stamped "certified" on March 30, 2000, I filed on April 12, 2000, an Application for Post-Conviction Relief requesting an Out-Of-Time Appeal pursuant to Rule 2.1(E) of the Oklahoma Court of Criminal Appeals and several case decisions. On April 17, 2000, the district court denied the application on the same day as the state responded and recommended it be denied. I was denied an appeal through no fault of my own as the Court Clerk of Sequoyah County failed to forwrad to me a timely "certified" order so I could timely file my appeals until March 30, 2000. See Rule 5.2(C)(1) of

the Oklahoma Court of Criminal Appeals. (See Exhibit "L" also).

It is also very important to note that the appellate court wrongfully dismissed my case in PC-97-343 as I had replied to the May 8, 1997 order on May 20, 1997 explaining that I was unable to get a "certified" order from the district court clerk. I'm a simple laymen and am forced to have the assistance of inmates and I simply forgot to put a case number on the May 20, 1997 order. It would not have been hard for the appellate court clerk (with today's technology) to punch up my name on her computer and see that I only have one case pending before said court and add the case number onto my letter. I forgot to put my case number on said letter but that isn't enough reason to bar my issues from being heard on appeal. I did show cause and my appeal was wrongfully dismissed. Again I did seek rehearing in good faith to try and explain all of this but was denied. It is not my fault for this default and I am entitled to an out-of-time appeal.

I feel that whatever happened between the period from 2/12/97 and March 30, 2000, is irrelevant to the fact that I was denied through no fault of my own of a "certified" copy of the 2/12/97 order because the district court clerk and secretary did not follow the rules of the courts. (See Exhibit "L").

It is very important to note that at this point in time I was being shipped around to private prisons in Texas where there were no law libraries or trained law clerks to help me. We were basically on 24-hour lockdown status within the unit for the one year I was there. I was then shipped back to Oklahoma to another overcrowded private prison where I also had little access to a law library or a trained law clerk. I've always had to rely on other inmates to assist me and these other inmates claimed to know what they were doing but they did not. Instead of filing a formal pleading or response to the state appellate court's order of May 8, 1997, we sent a letter which didn't have my case number on it. As a result, the appellate court wrongfully dismissed my appeal.

It is also important to note that several times the state district court clerk would stamp filed the appellate order but not the correct district court order. Notice the dates on these wrong orders where the district court clerk attempted to get around stamping the right 2/12/97 order. These facts are very relevant to my case.

It is also very important to note that in Judge Edmondson's letter (Exhibit "C" hereto), Judge Edmondson clearly stated that Defendant needed the "certified" order so that he could proceed forward with his appeal. This statement clearly states that Petitioner can proceed forward with his appeal (perhaps through a proper request for out-of-time appeal such as this) from the denial of his post conviction application. The Court's secretary and the Court's Clerk are the ones at fault for my not properly appealing in state appellate court and the blame for such default must rest with the state. It would be a complete injustice to hold petitioner accountable for what the secretary and the court clerk failed to follow proper rules of the court.

Further, Petitioner states that the state court adjudications of his requests for out-of-time appeals cannot be taken as correct and cannot be given any deference in this case because of the fact they are incorrect and inconsistent with the facts of this case. Both court shold petitioner at fault for not appealing properly and for not responding within (30) days as requested by the appellate court on May 8, 1997. However, Petitioner did respond on May 20, 1997 but simply did not have his case number on the leter.

This Petitioner had recently lost the law clerk who was assisting him at that point in time and he simply attempted to file a response (letter) to the court clerk himself. Petitioner is unschooled in the law and is a simple layman. Had the appellate court clerk liberally construed his letter and taken into account these facts, plus the fact that Petitioner is in prison without the assistance of trained counsel, the appellate court clerk could have simply added Petitioner's case number to the letter and the case would have proceeded, instead of being dismissed improperly. Petitioner only had one case pending before said appellate court at that time. Instead the letter went unanswered and unnoticed while sitting in Petitioner's appellate file. His case was ultimately dismissed through no fault of Petitioner. Both state court orders are not to be given any deference.

Therefore, Petitioner respectfully went to the 10th Circuit Court of Appeals on a Request for Leave to File a Second and Subsequent Petition for Writ of Habeas Corpus due to these new facts and evidence on 8/9/00 and on these same grounds. However, Petitioner's request in case number 00-7086 in the 10th Circuit was denied on 09 / 14 /00 . Under current federal court rules Petitioner is unable to file a second habeas corpus petition in federal court because the Court of Appeals denied him leave to do so. So, Petitioner files this Original Petition for Habeas Corpus in the U.S. Supreme Court, under the authority as cited herein, and is entitled to be heard therein by said Court.

Therefore, Petitioner respectfully requests further consideration of this Due process, Equal Protection, and Access to the Courts issue before this respective court. This out-of-time appeal request has been properly exhausted in the state courts and the federal courts (attempted) and is now ready to be adjudicated upon before this Honorable U.S. Supreme Court. Wherefore, Petitioner respectfully request this Honorable Court to GRANT him an out-of-time appeal and to make a written findings of fact and conclusions of law as to every issue raised herein. It is so prayed.

REASONS FOR NOT MAKING APPLICATION TO THE DISTRICT COURT OF THE DISTRICT IN WHICH APPLICANT IS BEING HELD

Rule 20.4(a).

In accordance with the newly effective (AEDPA) under Title 28 USCA § 2241, et.seq. and § 2254, et.seq., this Petitioner cannot Petition the U.S. District Court for a Petition for Writ of Habeas Corpus unless the Court of Appeals grants him leave to do so on a second and subsequent petition. This Petitioner did request leave to file a second and subsequent petition due to new facts or newly discovered evidence in the 10th Circuit Court of Appeals on an issue not yet available during the pendency of his first Petition but the Court of Appeals denied leave on 09 / 04 / 00. Petitioner is now barred in the federal district court. This is Petitioner's only avenue of relief available left at this point in time.

EXCEPTIONAL CIRCUMSTANCES WHICH WARRANT THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS

Petitioner herein was denied a timely appeal from the denial of his Post-onviction Application in state court because the order mailed to him by the lower district court was not "certified" as required by court rules, and where Petitioner was not able to forward a copy of said "certified" order to the appellate court in accordance with appellate court rules and in accordance with appellate court order of May 8, 1997. Petitioner did mail a letter to the appellate court on May 20, 1997 explaining that he was unable to get a response or a "certified" order to forward to the appellate court. However, said letter went unresponded to or unnoticed in Petitioner's appellate file because Petitioner had failed to put a case number on said letter of May 20, 1997. The May 20, 1997 letter did make it into Petitioner's appellate file but then went unnoticed and unconsidered when the appellate court dismissed the case in August of 1997. Petitioner was wrongfully procedurally barred from appealing his case in state court and then again in federal court because of these facts. Then, in March of 2000 when Petitioner finally obtained a "certified" order, Petitioner rightfully applied to state district court and state appellate court for an out-of-time appeal but was denied. Petitioner requested leave of the 10th Circuit Court of Appeals to file an out-of-time appeal/Second Petition for Writ of Habeas Corpus on these new facts and new issues not previously available but was again denied. Petitioner has never been able to appeal the denial of his post-conviction applicationthrough no fault of his own. He has no avenue left which to go but on these exceptional circumstances which do warrant the exercise of this Court's discretionary powers in this Petition for a Writ of Habeas Corpus.

WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR IN ANY OTHER COURT

Petitioner does not have any remedies or avenues to appeal his case available since the 10th Circuit denied him leave to file a second or subsequent Petition for Writ of Habeas Corpus in the U.S. District Court pursuant to the (AEDPA) of 1996. There is no other form or court to give Petitioner adequate relief in this case.

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MICHAEL D. WALKER,

Petitioner,

v.

SAM CALBONE, Warden; STATE OF OKLAHOMA,

Respondents.

No. 00-7086
D.C. No. 98-CV-95-B
(Eastern District of Oklahoma)

ORDER

Filed September 14, 2000

Before **BRORBY**, **KELLY**, and **LUCERO**, Circuit Judges.

This appeal is before the court based on a request by Michael Walker under the Antiterrorism and Effective Death Penalty Act (AEDPA) for leave to file a second or successive 28 U.S.C. § 2254 in the Eastern District of Oklahoma.

After a thorough review, the court concludes that Mr. Walker has failed to make a prima facie showing that satisfies the AEDPA criteria set forth in 28 U.S.C. § 2244(b)(2)(B). *See Bennett v. United States*, 119 F.3d 468, 469-70 (7th Cir. 1997); *see also Rodriguez v. Superintendent, Bay State Corr. Ctr.*, 139 F.3d 270, 273 (1st Cir. 1998), *overruled on other*

APPENDIX "A"

grounds (adopting *Bennett's* "prima facie" standard and emphasizing "that despite its superficially lenient language, the standard erects a high hurdle"). Apart from his May 20, 1997 letter, which was available to him when he filed his first § 2254 in 1998, Mr. Walker asserts no new facts that were previously undiscoverable through the exercise of due diligence.

Accordingly, the request for leave to file a second or successive habeas petition is DENIED. No petition for rehearing will be entertained by the court. *See* 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court,
PATRICK FISHER, Clerk