ORIGINAL

03-5857

Supreme Court, U.S.
FILED
JUN 19 2003
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

_____TERM 2003

cause no. 02-40322

In Re Barry Powell

Barry Powell, 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 Circuit
Civil No. 6:01-CV-235

Appellant's Petition for a Extraordinary
Writ of Habeas Corpus
Pursuant to 28 U.S.C.A. 2241-2242

Oral Argument Requested

/s/ Barry Powell

QUESTION(S) PRESENTED

(1) DID THE TRIAL COURT ABUSE IT'S DISCRETION BY DENYING THE PETITIONER HIS MOTION TO SUPPRESS THE EVIDENCE AND IN DOING SO DENIED THE PETITIONER HIS EQUAL PROTECTION RIGHT TO THE LAWS TO THE CONSTITUTION;

(2) DID THE PROSECUTOR ENGAGE IN MISCONDUCT KNOWINGLY ABUSING HER DISCRETION TO INFLAME AND MISLEAD THE JURY TO OBTAIN FAVOR BY PREJUDICE TO THE PETITIONER AND OBTAIN AN ENHANCED CONVICTION;

(3) DID THE ARRESTING OFFICER ENGAGE IN SELECTIVE ENFORCEMENT OF THE LAWS BY ABUSE OF HIS DESCRETION TO DENY THE PETITIONER HIS EQUAL PROTECTION OF THE LAWS;

(4) DID THE COURT ABUSE ITS DESCRETION IN ADMITTING EVIDENCE OF AN EXTRANEOUS OFFENSE AT TRIAL BECAUSE THE EVIDENCE PRESENTED BY THE PROSECUTION WAS INSUFFICIENT TO SUPPORT THE PETITIONERS CONVICTION;

(5) WAS THE PETITIONER VIOLATED OF HIS MARANDA RIGHTS BY THE OFFICER WHEN THE PETITIONER WAS IN CUSTODY, HANDCUFFED AND HAD NOT BEEN INSTRUCTED OF HIS MIRANDA RIGHTS BY THE OFFICER;

(6) WAS THE PETITIONER DENIED EFFECTIVE ASSISTANCE OF COUNSEL AND EVEN PREJUDICED AT TRIAL AND ON PETITIONERS APPEAL;

(7) DID THE UNITED STATES APPEALS COURTS ABUSE THEIR DISCRETION IN DENYING THE PETITIONER RELIEF WHEN IT IS EVIDENT THERE IS UNRESOLVED CONSTITUTIONAL DISPUTES ON THE PETITIONERS "GREAT WRIT";

OPINIONS BELOW

Appelant, Barry J. Powell, was convicted of possession of a controlled substance with intent to deliver and sentenced to sixty (60) years in prison.

§

2254 Habeas Corpus filed May 31, 2001 - Cause No. 6:01CV235
United States District Court
For the Eastern District of Texas
Tyler Division

Civil Action No. 6:01CV235 - Order to pay filing fee - June 7, 2001

Civil Action No. 6:01CV235 - Respondant's order to show cause - July 25, 2001

Civil Action No. 6:01CV235 - Dismissed without prejudice - August 27, 2001 - The order referring this case to United States Magistrate judge, Judith K. Guthrie, is hereby vacated.

Civil Action No. 6:01CV235 - Order vacating final judgment - case reopened - Case was improvidently dismissed on 9/7/2001 - William M. Steger, U.S. District Judge, ordered that the order of dismissal (Docket entry #13) and final judgment (Docket entry #14) are vacated.

Civil Action No. 6:01CV235 - Respondent, Janie Cockrell's order for extension of time was granted 25 days, up to and including the 4th day of October, 2001 - Filed 9/11/01

Civil Action No. 6:01CV235 - Respondent, Cockrell's second motion for extension of time - Extension of 32 days to November 5, 2001- Granted on October 10, 2001

Civil Action No. 6:01CV235 - Respondent, Cockrell's motion to substitute counsel for the Director with Brief in support - November 27, 2001

Civil Action No. 6:01CV235 - Order Granting Respondent Cockrell's motion for substitute counsel - December 7, 2001

Civil Action No. 6:01CV235 - Ordered that the District has until January 11, 2002 to submit a copy of the records from the trial and appeal, including the Clerk's records and Court Reporter's transcripts - December 7, 2001

Civil Action No. 6:01CV235 - Order granting petitioner's motion for extension of time - Filed January 4, 2002

Civil Action No. 6:01CV235 - Final Judgment - Ordered that the petition for a Writ of Habeas Corpus is dismissed with prejudice - January 31, 2002 - Filed February 1, 2002

Civil Action No. 6:01CV235 - Notice of Appeal filed February 19, 2002 to the United States Court of Appeals for the 5th Circuit from the denial of petitioner's application for Writ of Habeas Corpus entered January 31, 2002

Civil Action No. 6:01CV235 - Order denying Certificate of Appealability (COA) - Filed February 26, 2002

Civil Action No. 6:01CV235 - Writ No. 02-40322 - Appeal to the United States Court of Appeals, Fifth Circuit, 600 Camp Street, New Orleans, Lousiana 70130 - March 5, 2002

Civil Action No. 6:01CV235 - Petitioner's motion for extension of time to file (COA) denied March 13, 2002

Civil Action 6:01CV235 - Writ No. 02-40322 - Petitioner's Certificate of Appealability (COA) to appeal the district Court's denial of his 28 U.S.C. §2254 petition - Denied July 17, 2002

Civil Action No. 6:01CV235 0 Writ No. 02-4-322 - Motion and request for rehearing by a three (3) judge panel - Motion construed untimely - Denied October 25, 2002

Civil Action No. 6:01CV235 - Motion for Extraordinary Writ - April 7, 2003 - Received by Office of the Clerk, April 15, 2003 - Returned April 17, 2003 - Rule 20.1 and Rule 20.4(a) - Does not comply with Rule 39

REASONS FOR GRANTING THE PETITION

Petitioner brings before this Honorable United States Supreme Court the Petitioner's reasons for granting this petition:

The District Court abused its discretion in denying Petitioner relief on the Magistrate Judge's incorrect assertions that the defendant did not address the issue of whether the State Court made an unreasonable determination of the facts, and or the Petitioner did not show the State's determination of his constitutional claims were "contrary to" or invalid and unreasonable applications of Supreme Court precedent.

The Petitioner would direct this Honorable Supreme Court to their own finding in William v. Taylor, 120 S.Ct. 1479 (2000); William v.-Taylor, 120 S.Ct. 1495 (2000), which the Petitioner repeatedly cited in his Federal Writ of Habeas Corpus to the Federal District Court, which can clearly be seen. Such grounds being debatable among reasonable jurists, Lozada v. Deeds, 498 US 430, 432, 111 S.Ct. 860, 862, 112L.Ed. 2d 956 (1991), such grounds could be resolved in the defendant's favor, Lozada, supra, and adequate to deserve encouragement of further proceedings.

The lower court's error in overruling the Petitioner's "Motion To Suppress Hearing", based on an erroneous decision by the trial judge, for which he misapplied the laws, thus rendering the Petitioner a denial of his due process rights and the due course of the laws. The trial court denied the Petitioner's motion to suppress, solely on Crittened v. State, 899 S.W.2d 663 (Tex.Crim.App. 1995), in which the Texas Court of Criminal Appeals held that, "an objectively valid traffic stop is not unlawful under Article 1 § 9, even though the detaining officer had an ulterior motive for making the stop." Petitioner appealed before the 6th Court of Appeals at the Eastern District of Texas, in Texarkana, and this court gave Petitioner this opinion, (at pg 9 of the Petitioner's appellant brief) stating, "we agree with Powell that Crittened does not address the dispositive issue in this case." (Appendix "C"; Pg.9, Opinion of the Court of Appeals). The trial court's ruling was unreasonable, or contrary to established federal law, thus constituting a denial of the due process/due course of the law denying Petitioner a fundamentally fair trial.

Such erroneous decisions and merit as this should not be allowed to determine the fate and out-come of a criminal proceeding. If the

ED 7/23/02

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
JUL 17 2002
CHARLES R. FULBRUGE III
CLERK

No. 02-40322
USDC No. 6:01-CV-235

BARRY JOSEPH POWELL,

Petitioner-Appellant

versus

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

Respondent-Appellee

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JUL 23 2002
DAVID J. MALAND, CLERK
BY DEPUTY

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

O R D E R:

Barry Joseph Powell, Texas prisoner # 833631, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 petition. In order to obtain a COA, Powell must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Powell asserts that the magistrate judge erred in concluding that he had not shown error in the state court's factual findings or legal conclusions, as he cited to federal law. The magistrate judge concluded that Powell had not shown that the state court's factual findings were incorrect. Powell has not shown that this conclusion was in error.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 CAMP STREET
NEW ORLEANS, LA 70130

October 25, 2002

Mr Barry Joe Powell
Texas Department of Criminal Justice
Institutional Division Michael Unit
#833631
5 miles SW of Tenn Colony on FM 2054
PO Box 4500
Tennessee Colony, TX 75886

No. 02-40322 Powell v. Cockrell
USDC No. 6:01-CV-235

We will take no action on your "motion and request for rehearing by a three judge panel." This motion appears to be simply a cover letter as it fails to contain any argument. Moreover, the motion, if construed a as a motion for reconsideration of the Court's order of July 17, 2002, is untimely. In accordance with the Court's order of August 22, 2002, an extension of time was allowed until September 30 for filing a motion for reconsideration, with the stipulation that no further extensions would be allowed. While your "motion" is not dated, the envelope indicates that it was not mailed until October 12, 2002, clearly beyond the date for filing. In light of the above, no action will be taken on this motion.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: _____
Donna Mendez, Deputy Clerk
504-310-7677

cc: Ms Coretta T Graham

BR-9