00-6754

Supreme Court, U.S.
FILED
JAN 11 2000
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

NORMAN GREGORY, ——PETITIONER

VS.

ORIGINAL

WILLIAM J. LOVE, et al., ——RESPONDENT(S)

PETITION FOR WRIT IN AID OF APPELLATE JURISDICTION AND/OR WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(Name of Court that last ruled on merits of the case)

(C.A. Nos. 99-3359/99-3360)
(W.D. Pa. Civ. No. 99-cv-0534)

Norman Gregory
(Your Name)

370 Prison Road, # AP-8138
(Address)

WAYNESBURG, PA 15370-9941
(City, State, Zip Code)

(Phone Number)

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QUESTION(S) PRESENTED

THAT:

The entirety of state process was rendered ineffective to protect petitioner's constitutionally guaranteed Due Proess Rights. Thusly, invoked a Fundamental Miscarriage of Justice. 28 U.S.C.A. § 2254(a)(b)(c)(d)(1 to 8)(e)(f).

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

WILLIAM J. LOVE, Superintendent,

Attorney General Of The Commonwealth Of Pa.
564 Forbes Av, Manor Bldg.
Pittsburgh, Pa 15219-2903

District Attorney Office
401 Allegheny County Courthouse
Pittsburgh, Pa 15219

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APPENDIX A : Magistrate Judge's report & recommendation of April 13, 1999, C.A. N. 99-0534, recommended petition of habeas corpus be transferred to the United States Court of Appeals for the Third Circuit as an Application to file a successive petition at 28 USCA § 2244(b)(3).

APPENDIX B : The United States District Court Judge Donald E. Ziegler's Memorandum Order of May 11, 1999, denied after a claimed 'de novo review" and adopted as the opinion of the court.

APPENDIX B- Magistrates Report, No.95-937-3/5/96---Memorandum Order 3/29/96.

APPENDIX C : Magistrate Judge's report & recommendation of May 27, 1992, C.A. No. 91-889, recommended petition for writ of habeas corpus be dismissed, with a certificate of probable cause denied, because petitioner has not exhausted available state court remedies. (Appendix continued (C) below.)

APPENDIX D : The United States Court Of Appeals for Third Circuit assessing (W.D. Pa. 99-cv-0534), that issued an (stare decisis) ORDER dated May 25, 1999, upon two issued numbers, first, No. 99-3359/for transferred successive petition, § 2244, et al., ORDERING it **shall not apply**; secondly, No. 99-3360 for habeas corpus § 2254, **shall apply.**

APPENDIX E : The U.S. Court Of Appeals 3rd Cir. submitted a additional hybrid Order dated Aug, 30, 1999, for same session foregoing matters reversing successiveness, was reasserted without analytical framework, claiming present § 2254, denied---based upon first habeas denial on the merits. Retroactively bar asserting case of Minarik 166 F.3d 591, 599-608 (3rd Cir. 1999).

APPENDIX F : The U.S. Court Of Appeals Clerk of court issued a statement of Sept, 17, 1999, advised that petition for "Rehearing" for No. 99-3360, under 28 USCA § 2254, granted or denied for Appealability no action shall be be taken. And matters are not subject for certiorari. Under 28 USCA § 2244(b)(3)(E).

App. C, continues; The U.S. District Ct. Judge Glenn, memorandum orderof June 22, 1992, dismissed petition adopted as the opinion of the court. (Claiming at page one of report, which suppressed petitioner's "OBJECTIONS" at No. 91-889), Who claimed no Objections were filed, (petitioner did file Objections, dated June 7, 1992, hereto shown at (Ex. DC-1), (certified mail No. P 800 769 009)(claimed habeas was denied as **mixed petition** at report at dated 4/13/99, p. 2, and n. 1.

HISTORICAL FACTS OF THE CASE

Petitioner, pro se, and forma pauperis, pursuant of Supreme Court's Rules 20 & 22, and 28 U.S.C. 1651(a), in aid of jurisdiction agreeable to the usages and prinicples of fact and law bought under the all Writs Act, for just reasons accordingly.

On July 20, 1999, petitioner submitted a petition under U.S.C.A. Sec. § 2254 et al., to district court receiving magistrate's formulated report and recommendations at 4/13/99, which recommended habeas corpus be transferred to the U.S. Third Circuit of Appeals as an applicatcn to file a successive petition, pursuant to 28 U.S.C. § 2244(b)(3). Said transfer specifically stipulated, for authorizing district court to adjudicate said habeas, assessing content of report consolidated all previous habeas filing at p. 2, and n. 1, and p. 3), which incorporated the following: ....

> ..."Previously, petitioner had filed a petition dkt at Civ. A. No.89-895 [2] which was denied on March 5, 1990, based upon a report and recommendation concluded that the entire petition was an attack upon **the validity of his** nolo contendere plea, **because of his drugged condition at the time** it was entered and that this issue had been litigated in the state court's and was entitled **to a presumption of correctness.** In addition, petitioner filed a petition dkt at Civ. A. No. 91-889, which was dismissed as **a mixed petition** thereto at 6/22/92, on a report and recommendation dated 5/27/92. [Appendix C], which claims at No. 91-889, that **(NO OBJECTIONS)** were ever filed to said matters, --And petitioner submits [App. C-1] of that "Objections OMITTED."

The district court's final Order dated May 11, 1999, [App. B], affirmed, the entire report as by "de novo" but petitioner has never been called down for anytype of federal hearing, indicated by report throughout this entire appeal to date.

Subsequently, upon transferred actions to Third Circuit the Clerk

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[2] Report and Recommendation No. 89-895, was lost through Institutional security search fcr contraband, without petitioner's presence between three differrent Department of Corredtions, SCI-PGH, SCI-Huntingdon, SCI-GBG, and thereby lost.

of court consolidated two combined very different statutes, upon first, 28 U.S.C. § 2244(b), "successive petition" at No. 99-3359, and; related second, 28 U.S.C.A. § 2254 et al., "habeas corpus" at No. 99-3360.

The court submitted an controlling ORDER dated May 25, 1999, [App. D], addressing both statutes upon; first, number 99-3359 set forth for § 2244 **which ORDERED time frame set forth shall not apply.** Further stating upon;

SECOND, number 99-3360 set for § 2254 et al., "habeas corpus" **this time frame of case shall apply.**

Petitioner hereby request this Supreme Court to call down the complete record, of consolidated historical facts of this case.

Viewing the assessment which Ordered reversal upon No. 99-3359, (successive petition), not to apply. Subsequently, left only transferred habeas, for third circuit to submit a authorization Order back to district court for said habeas adjuication therefrom.

But 97 days later of same session, the third circuit submitted a piecemeal additional ORDER dated Aug, 30, 1999, [App. E], completely out of sink, in effect overreaching said first ORDER, which reactivated (successiveness), without an analytical framework.

The hybrid interlocutory "ORDERS" appear in conflict with procedures, and principles of law, required for full legal defining specification, addressing each action taken upon each Order in conflict of the other.

And viewing said Order of 8/30/99, without a analytical framework, petitioner feels consolidated matters were decide in bad faith, and abusing discretion without clarifying each position set forth.

Where further unlawfully reapplying (successiveness), upon habeas

which in fact the whole main purpose for transferred habeas, for authorization Order back to district court was averted, using cited case of In Re Minarik, 166 F. 3d 599-608 (3rd Cir, 1999), claiming a legal interpretation contrary to Minarik, to bar habeas petition was not impermissibly retroactive at all, to further assert that certificate of appealability, for transferred habeas was denied.

Petitioner filed a "Rehearing" dated Sept, 14, 1999, attacking the inconsistency of contrary submission, showing omissions and misstatements in conflict with procedural due process being denied access to the court's. However, the U.S. Clerk of the court issued a dated reply at Sept, 17, 1999, [App. F], stating, (No action would be taken upon petitioner's Rehearing therefrom), reincorporated reversed actions of (successiveness) used through U.S.C. § 2244(b)(3)(E).

Which is essentially inconsistent viewing stare decisis, first Order at May 25, 1999, absent legal analysis moot---which would tend to show hybrid Order of 8/30/99, inappropiately inconsistent beyond all sound discretion, denying "minimum standards" for fundamental fairness, in conflict with due process, citing; Minarik, thereto.

Petitioner feels material fact(s) and law(s) involved, was wrongfully suppressed, as has been from the outset of this conviction, upon inconsistencies of omissions compounding all abuse of discretion therefrom at Order dated 8/30/99.

Those inconsistencies and omissions, directly correlated the totality of magistrate's 4/13/99 report, finding FRAP 16 (b), "Omission from the record, and Misstatements, may not be averted and allow any Omissions, may be corrected anytime."

The magistrate's report set forth at 4/13/99, consolidated **all**

prior habeas corpus, at p. 2, and n. 1,----referring to **the entire conviction** of March 2, 1983, claiming a extensive hearing took place upon a evaded [q]uestion of petitioner's competency to stand trial, yet claimed was resolved. And at n. 1, claiming first habeas had resolved matters, concluding that **the entire petition** was on attack upon **the validity of his nolo contendere** plea, [resolved] because of **his drugged condition** at the time it was entered, and the issue had been litigated in the state courts, and was entitled to a presumption of correctness. Additionally, at second habeas dkt at Civ. A. No. 91-889, was dismissed as a MIXED PETITION, where further at p. 3, the commonwealth's quoted illegal reinterpratation of 3rd PCRA, which altered petitioner's facts submitted, [**of denied counsel,**] into counsel's [ineffectiveness], for somehow abvising him to plead nolo contendere, suggesting be denied on the merits.

The magistrate's report set forth at 4/13/99, correlated a extensive ambiguous finding, not found by record clearly erroneous, establishing provisions mandated for magistrate's 28 U.S.C. § 636(b)(1) & ((3)), of defined reasons for [Evidentiary Hearing] averted through district court's final Order, Yet it claimed the court conducted a " de novo " defined review.

Petitioner wish to establish entitlement for extraordinary writ in aid of appellate jurisdiction, pursuant for 28 U.S.C. § 1651(a), to correct a fundamental ongoing miscarriage of justice, warranting the exercise of this court's discretionary powers Rule 20. 1. demonstrating that adequate relief cannot be obtained in any other form, or from any other court hereto shown.

And those Omissions formulated are as followed:

a) The magistrate's report of 4/13/99, p. 2, 1st paragraph) ambiguous generalization referred out of context of the facts, regarding NTs. March 2, 1983, reasons for petitioner's consumption of his neuroleptic daily medication of "Stelazine" --defined NTs p. 10, used in the treatment

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 99-3359

In Re: Gregory

No. 99-3360

Gregory v. Love

(WD PA 99-cv-00534)

ORDER

On 5/25/99, an appeal by Norman Gregory was docketed at No. 99-3360. The subject of the appeal is the District Court's order transferring appellant's petition for writ of habeas corpus to the Court of Appeals as a Petition for Leave to File a Second or Successive Habeas Petition;

Also on 5/25/99 the Clerk has docketed the Petition for Leave to File a Second or Successive Habeas Petition which was transferred from the District Court. The petition has been docketed at No. 99-3359.

It appearing that the two matters are related, it is hereby O R D E R E D that the appeal at No. 99-3360 and the petition at No. 99-3359 shall be consolidated for all purposes. In light of the consolidation, the time frames set forth in 28 U.S.C. Section 2244 shall not apply. The time frames applicable to appeals in habeas cases shall apply.

For the Court,

R. Douglas Sisk

Clerk

Dated: May 25, 1999

APP. D

IN RE: NORMAN GREGORY

NORMAN GREGORY
vs.
WILLIAM LOVE, ET AL.
C.A. Nos. 99-3359/99-3360

ORDER

The foregoing application under 28 U.S.C. § 2244 to file a successive habeas corpus petition under 28 U.S.C. § 2254 is denied. Because the petitioner/appellant presented his claim in a prior habeas petition, and that petition was denied on the merits, he cannot present that claim in a successive habeas petition. See 28 U.S.C. § 2244(b)(1); In re Minarik, 166 F.3d 591, 608 (3d Cir. 1999). Applying § 2244(b)(1) to bar the petitioner/appellant from presenting his claim in a successive habeas petition is not impermissibly retroactive. See Minarik, 166 F.3d at 599. Additionally, the foregoing request for a certificate of appealability is denied because the petitioner/appellant has failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Petitioner/appellant's motion to file a reduced number of exhibits is granted.

By the Court,

Circuit Judge

Dated: AUG 3 0 1999

lmc\cc: Mr. NG
RDS

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IN THE
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No. 00-6754

Norman Gregory,
Petitioner

vs.

William J. Love, et al.,
Respondent(s)

C.A. Nos. 99-3359/99-3360
W.D.Pa. Civ. No. 99-cv-0534

PETITION FOR REHEARING

COMES NOW, This 1 day of February 2001, the petitioner in the above-captioned cause, having been priorly granted forma pauperis status and remaining in that same action, and same financial condition hereby request continuance, and appeal the decision rendered for writ of habeas corpus, so denied November 27, 2000, (Exhibit # 1).

Petitioner hereby move this Honorable Supreme Court, pursuant of Rule 44. designated for "Rehearing" and in conformity with Rule 17. 1., citing; "This Rule applies only to an action invoking the Court's original jurisdiction, under article III of the Constitution of the United States, See also, U.S.C. § 1251, and U.S. Const., Amdt. 11." A petition For An Extraordinary Writ In Aid Of the Courts Appellate Jurisdiction shall be file as provided in rule 20.

Petitioner hereby submit attached Motion For Leave To File, "Rehearing" submitted in substantial good faith, limited to inter-