

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2012
JUNE 22, 2012

MICHAEL QUATTROCCHI,

CASE NO.: 3D12-505

Appellant(s)/Petitioner(s),

vs.

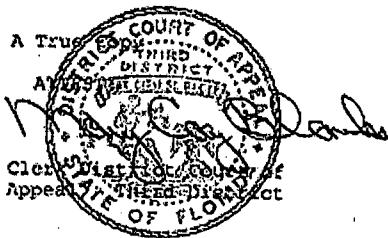
THE STATE OF FLORIDA,

LOWER
TRIBUNAL NO. 04-12958

Appellee(s)/Respondent(s).

Upon consideration, appellant's motion for
rehearing/reconsideration/clarification is hereby denied.

SHEPHERD and CORTIÑAS. JJ., and SCHWARTZ, Senior Judge, concur.



CC:
Michael E. Quattrocchi
Pamela Jo Bondi

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15624-C

IN RE: MICHAEL QUATTROCCHI,

Petitioner.

Application for Leave to File a Second or Successive
Habeas Corpus Petition, 28 U.S.C. § 2244(b)

Before: TJOFLAT, MARCUS and JORDAN, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), Florida prisoner Michael Quattrocchi has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the

application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C); *see also Jordan v. Sec'y, Dep't of Corrs.*, 485 F.3d 1351, 1357-58 (11th Cir. 2007) (explaining that our determination that an applicant has made a *prima facie* showing that the statutory criteria have been met is simply a threshold determination).

In his application, Quattrocchi indicates that he wishes to raise 17 claims in a second or successive § 2254 petition, relying on newly discovered evidence.

First, Quattrocchi alleges that inculpatory evidence at his trial was fabricated and supported by false testimony (Claim 1). He states that he relies on newly discovered evidence in the form of an "extemporaneously discovered computer purchase availability date," which he asserts demonstrates that the "date continuum" relied upon at trial, which indicated that he possessed the computer between March 13, 2002 and April 11, 2003, was fabricated. Quattrocchi contends that, because of the falsified trial evidence and false testimony, in addition to the "omission of computer and operating system information," there was no reason for him to suspect that the "date continuums were separate and to investigate further" previously.

In a document attached to his application, Quattrocchi explained that his computer's start-up date was January 26, 2003, and, hence, the March 13, 2002 through April 11, 2003 data continuum contained dates preceding the use of his computer. He also stated that the 59 alleged files, which were dated between June 5, 2002 and September 22, 2002, were never contained in the "interactive operating system environment" of his computer, where he could see them, and, thus, he could not have knowingly possessed them.

In two related claims, Quattrocchi argues that his trial attorneys were computer illiterate, which led them to be unable to distinguish "the real computer print-out evidence from the phony computer print-out evidence by the data particulars that were included, or lack thereof" (Claim

16). As to claim 16, he relies on the “computer purchase availability date,” stating that his trial attorneys had no reason to investigate the “fictitious March 13, 2002 to April 11, 2003 date continuum” due to their computer illiteracy. Further, Quattrocchi argues that the trial judge abused his discretion by failing to replace Quattrocchi’s computer-illiterate attorneys with ones who were computer literate, thereby failing to protect Quattrocchi’s right to effective assistance (Claim 17). Quattrocchi contends that, if not for the newly discovered computer purchase availability date, “the degree of ineffectiveness, abuse of discretion, and the materiality of the evidence involved would not have been known.”

Quattrocchi also asserts that he was denied effective assistance when his trial counsel failed to cross-examine the state’s computer expert as to the computer’s “incorrect” operating system (Claim 11).

Additionally, Quattrocchi raises multiple claims unrelated to the alleged newly discovered evidence, asserting that there was no “legitimate” probable cause for his arrest (Claim 2); that his bond was judicially approved, but “administratively inoperative” for over three-and-a-half years (Claim 3); that his constitutional right to freedom of speech was denied because his computer hardware, software, and intellectual property were confiscated, and he was prevented from continuing to participate in the arts because he was wrongfully incarcerated without bond for over three-and-a-half years (Claim 4); that his computer hardware, software, and intellectual property were never returned to him, nor was he justly compensated for them (Claim 5); that he was not adequately informed of the charges against him (Claim 6); that the trial judge abused his discretion by denying a motion to suppress based upon the “mistake of fact” that the detective said that he found “child” pornography, when he only said that he found pornography (Claim 7); that the description of the charges to the jury were generally incomplete,

incomplete as to the element of possession, contained a handwritten word, and did not contain precedent regarding knowing possession (Claims 8, 9, 10); and that there was an error in the scoring of his prior convictions for purposes of sentencing (Claims 12 and 13).

Further, he raises a claim regarding a probate proceeding, asserting that he was denied his constitutional rights when he was listed as "deceased" (Claim 14), and he further contends that the state did not have jurisdiction to place him into custody, apparently because he was considered administratively "deceased" in the probate proceeding. (Claim 15).

Quattrocchi attached multiple exhibits to his application. First, he attached a state appellate court's opinion affirming his convictions in a *per curiam* affirmance. Second, he included a motion for rehearing he submitted to the state appellate court. Finally, he included a motion for rehearing filed in the state trial court, with supporting documents. Quattrocchi does not identify the alleged newly discovered evidence, and it is not apparent from the application what the evidence specifically contains or how it demonstrates that the trial evidence was falsified.

A claim raised in an application to file a second or successive § 2254 petition that was also presented in a prior § 2254 petition is due to be dismissed. *In re Mills*, 101 F.3d 1369, 1371 (11th Cir. 1996).

An applicant seeking leave to file a second or successive habeas petition must show some good reason why he was unable to discover the facts supporting his application prior to the filing of his first habeas petition. *In re Boshears*, 110 F.3d 1538, 1540 (11th Cir. 1997). Even if he makes this initial showing, however, the newly discovered evidence must demonstrate the applicant's actual, factual innocence of the crime of conviction. *See id.* at 1541.

As an initial matter, several of Quattrocchi's claims are due to be denied because he raised them in his initial § 2254 petition. *See Mills*, 101 F.3d at 1371. Specifically, in his initial § 2254 petition, Quattrocchi raised claims 3, 5, 6, 7, 8, 9, 10, 11, 14, and 15. Accordingly, Quattrocchi may not raise those claims in a successive § 2254 petition. *See Mills*, 101 F.3d at 1371.

Moreover, claims 2, 4, 12, and 13 concern probable cause, freedom of speech, and sentencing issues, but those claims are unrelated to the alleged newly discovered evidence. Hence, the factual predicates for those claims do not rely on the purported newly discovered evidence, and, therefore, the evidence does not provide a basis for granting the application as to those claims. *See 28 U.S.C. § 2244(b)(2)(B)*. Because Quattrocchi does not indicate that these claims rely on any other newly discovered evidence or on a new rule of constitutional law, claims 2, 4, 12, and 13 do not meet the statutory criteria. *See id. § 2244(b)(2)(A)-(B)*.

Quattrocchi's remaining claims—claims 1, 16, and 17—also fail to meet the statutory criteria. *See id. § 2244(b)(2)(B)*. Quattrocchi relies on the purported newly discovered evidence showing that the timeframe of Quattrocchi's computer possession presented at trial was falsified, but Quattrocchi would have known at the time of his trial when he possessed his computer and whether he possessed it during the alleged timeframe. Hence, if Quattrocchi is correct that the trial evidence was doctored, he would have known this at the time of his trial. Accordingly, the evidence that he relies upon is not newly discovered for purposes of § 2244(b)(2)(B), because Quattrocchi knew the facts supporting his claims at the time of his trial. *See Boshears*, 110 F.3d at 1540. Furthermore, Quattrocchi does not present the purported newly discovered evidence, and he fails to demonstrate from his description of the evidence that it shows that the trial

evidence was falsified or that he is actually, factually innocent of the crimes of conviction. See *id.* at 1541.

Accordingly, because Quattrocchi has failed to make a *prima facie* showing of the existence of either of the grounds set forth in § 2244(b)(2), his application for leave to file a second or successive petition is hereby DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**