

No. 18-7916

IN THE
SUPREME COURT OF THE UNITED STATES

No. 2013-M-01725

ORIGINAL

Supreme Court, U.S.
FILED

JAN 09 2019

OFFICE OF THE CLERK

In re, **JIMMY WREN**
Petitioner,

On application for a writ of certiorari
To the Supreme Court for Mississippi

PETITION FOR WRIT OF CERTIORARI

PETITIONER:

Jimmy Wren, #66501
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QUESTIONS FOR REVIEW

1. Whether a state court has the right to bar a litigant of having access to the courts?
2. Whether due process violations toll the state's statute of limitations?
3. Whether state court departed from the accepted and usual course of judicial proceedings by refusing to consider merits in case involving a "*New Rule of Law*"?
4. Whether the enforcement of a state statute is unconstitutional when the statute is not enforced equally with the distribution of sentencing time against defendants of color as enforced against white defendants?
5. Whether the enforcement of a state statute is unconstitutional when the court has discretion to enter the maximum sentence, in the absence of mitigating circumstances being introduced to the court to justify the maximum sentence being imposed?
6. Whether there is a due process violation of cruel and unusual punishment to issue monetary sanctions on a prisoner proceeding as an indigent litigant and has no means to pay any sanctions?
7. Whether due process requires the "*New Rule of Law*" to be applied retroactively when the new rule of law is designed to correct an injustice or defect in the old law?
8. Whether legal action is frivolous when defendant tries to get equal and fair treatment under the established laws?

LIST OF PARTIES

The Petitioner, Jimmy Wren is the only Petitioner in this case.

Jim Hood, Mississippi Attorney General is the only Respondent, in this case.

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OPINION BELOW

December 6, 2018, the Mississippi Supreme Court issued an order, denying permission to submit a successive petition for post conviction relief, based on a “*New Rule of Law*” and threatened to impose harsher monetary sanction against petitioner for attempting to obtain relief from the conviction.

There was no Petition for Rehearing filed in this case.

CONCISE STATEMENT OF JURISDICTION

In aid of this Court’s appellate jurisdiction under 28, U.S.C., §1254(1) this Court has jurisdiction to act pursuant to Rule 10 of this Court Rules on grounds, the Mississippi Supreme Court has issued an opinion that is in conflict with an opinion of the United States Court of Appeals for the Ninth (9th) Circuit; and has departed from the usual course of judicial proceedings by refusing to grant a hearing on the “*New Rule of Law*”, as to call for an exercise of this Court’s supervisory powers for imposing monetary sanctions against the Petitioner without granting a hearing on the sanctions; and there was no signature on a complaint by any party, in violations of Rule 11 of the Federal Rules of Civil Procedure.

The order on review was entered on December 6th., 2018; and there was no Motion to Rehear.

STATUTORY PROVISION

28, U.S.C., §1254(1)

28, U.S.C., §2244

§97-3-65, MSS

CONSTITUTIONAL PROVISION

Eighth, Fifth and Fourteenth Amendments

All citizens of the United States have a right not to be subjected to cruel and unusual punishment; and have a right to due process and equal treatment under the law pursuant to the United States Constitution.

STATEMENT OF THE CASE

Petitioner, Jimmy Wren was brought to trial on the charge of capital rape of a child under fourteen years of age and after the court found petitioner guilty, the trial court entered the sentence to life imprisonment, which was the maximum sentence under the law.

On direct appeal, the judgment of the trial court was reversed and mandate issued on July 22, 1999.

The eighth request for leave to file a successive application for post conviction relief, was based on a "*New Rule of Law*" that was not available at the time this case was brought to trial, nor when the previous seven applications were filed.

The state Supreme Court reiterated the intent to impose additional monetary sanctions against petitioner for seeking justice, then denied the last application to file a successive application for post conviction relief, which is the reason why this application is being brought to this Court, when there has never been a signature by any party to support the sanctions, nor a show cause hearing on the sanctions issue as required under Rule 11, MRCP.

New Rule of Law

The Mississippi Rules of Criminal Procedure (MRCrP), [as amended and effective in June of 2017], require a trial court to conduct a separate hearing pursuant to Rule 26.4 (b) to present reasons why the sentence should be at the maximum level.

Concise Argument

The Petitioner has been denied a separate sentencing hearing for the state to present mitigating circumstances to justify the imposition of the maximum sentence; there was no written complaint or petition submitted to the court to justify monetary sanctions at any time with a signature, as required under Rule 11 of Mississippi Rules of Civil Procedure (MRCP); nor was Petitioner allowed to defend against the sanctions as required under Rule 11.

REASONS WHY RELIEF SHOULD BE GRANTED

At the time this case was brought to trial, there was no Mississippi rule in existence that required the trial court to set a separate sentencing hearing to examine mitigating circumstances to justify the enhancement of punishment.

However, in June of 2017, Rule 26.4(b) Mississippi Rules of Criminal Procedure (MRCrP) was amended, requiring the trial courts to set a separate sentencing hearing to determine whether there is cause to justify the enhancement of the imposed sentence. Matters involving prior convictions and past criminal behavioral are the basis for such reviews at this kind of a hearing. Rule 32, MRCrP; Even though §97-3-65 Mississippi State Statute is an enhanced statute under part (ii) of that statute require a separate hearing. If a separate hearing was never held as required under Rule 26.4(b) before subjecting Petitioner to a life sentence, due process is violated and the life sentence is void and jeopardy has set in to avoid a retrial since the trial judge loss jurisdiction after the expiration of thirty (30) days after the imposition of the life sentence.

As Justice King so eloquently stated in his dissenting opinion on page 4, accompanying this application:

“Among the rights recognized by the Court as being fundamental are the rights to be free from invidious racial discrimination, to marry, to practice their religion, to communicate with free persons, to have due process in disciplinary proceedings, and to be free from cruel and unusual punishment. As a result of the recognition of these and other rights, the right to access to courts, which is necessary to vindicate all constitutional rights, also became a fundamental right.”, Citing, Joseph T. Lukens, *The Prison Litigation Reform Act: Three Strikes and you’re Out of Court-It May Be Effective, but Is It Constitutional?*, 70 Temp. L. Rev. 471-474-75 (1997).

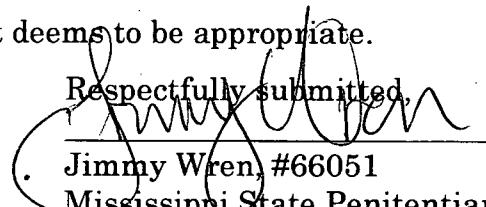
Justice King concluded by stating: "This Court must not discourage convicted defendants from exercising their right to appeal. Citing, *Wisconsin v. Glick*, 782 F. 2d 670, 673 (7th. Cir. 1986). Even the Sixth Circuit U.S. Court of Appeals has clearly said that:" A person can [not] be absolutely foreclosed from initiating an action in a court of the United States ... it is permissible to require one who has abused the legal process to make a showing that a tendered lawsuit is not frivolous or vexatious before permitting it to be filed"; citing cases, *Ortman v. Thomas*, 99 F. 3d 807, 811 (6th Cir., 1996); and *Shephard v. Marbley*, 23 F. App'x 491, 493 (6th Cir., 2001). Petitioner was never given the opportunity to show this case had merits at a hearing involving the "New Rule of Law" or "Sanctions". An order restricting and limiting petitioner of access to the court, by acting with bias and prejudice to single out the petitioner in a situation that has never been done in the history of the court, without a complaint or petition against petitioner is a violation of due process. *Brown v. Vankeuren*, 340 Ill. 118, 122 (1930); and where there are no justifiable issue presented to the court through proper pleadings, the sanction judgment is void. *Ligon v. Williams*, 264 Ill. App. 3d 701 (1994). It is the denial of opportunity to defend which renders a judgment void. *Windsor v. McVeigh*, 93 U.S. 274 (9th. Cir.).

There can be no dispute, since there is a "New Rule of Law" that is applicable to this case, Petitioner has a continuing legal duty under 28, U.S.C., §2244 to seek relief from the conviction. See case, *January v. Barnes*, 621 So. 2d 915 (1992) and the monetary sanctions judgment was REVERSED because of the continuing legal duty in that case.

RELIEF SOUGHT

It is for these reasons Petitioner is asking this Court to REVERSE the final judgment of the Mississippi Supreme Court for being a void judgment for denying the Petitioner the right to a hearing on the sanction issues; as well as the "New Rule of Law"; the monetary sanctions; and release Petitioner from further custody under the void judgment, for time served after being confined over fourteen (14) years; and all other and further relief the Court deems to be appropriate.

Respectfully submitted,


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