

19-5894

ORIGINAL

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAMON BENTLEY,

Petitioner,

v.

CONNIE HORTON, WARDEN,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit



PETITION FOR WRIT OF CERTIORARI

BY: Damon Bentley No. 311363
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

Petitioner Bentley's murder conviction rests on a clerical error committed by the Wayne County Clerk Office which denoted the wrong filing date to his post-appeal motion, filed well within the one year time requirement of 28 U.S.C. § 2244(d), thus, at her own will changed the correct filing date of the post-appeal pleadings to a date beyond §2244(d) one-year statute limit. The sua sponte changing of the filing date, by the Clerk of the Court, to the post-appeal pleadings foreclosed federal habeas corpus review of Petitioner Bentley's federal constitutional claims. Had the Clerk of the Court office correctly noted the filing date as August 26, 2005, the procedural bar of §2244(d) would not have been erroneously applied to this case by the district court foreclosing federal review of constitutional claims that warrants the granting of the writ.

The question presented is:

Whether the Fourteenth Amendment Due Process Clause is violated when a State prisoner is not given a complete and fair hearing in the district court when he files a 60(d) motion alleging fraud to expose a state trial court's clerk clerical error, which forecloses federal habeas corpus review of constitutional claims.

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PETITIONER FOR A WRIT OF CERTIORARI

Petitioner Damon Bentley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The unpublished decision of the United States Court of Appeals for the Sixth Circuit affirming the denial of 60(d) relief is reproduced at Appendix A. The unpublished decision of United States District Court for the Eastern District of Michigan denying habeas relief is reproduced at Appendix B. The unpublished decision of the United States District Court for the Eastern District of Michigan denying 60(d) relief is reproduced at Appendix C. The order of the Michigan Supreme Court denying Petitioner's application for leave to appeal is published at IBF and is reproduced at Appendix D. The unpublished order of the Michigan Court of Appeals denying Petitioner's application for leave to appeal is reproduced at Appendix E. The Wayne County (Michigan) Circuit Court's unpublished written opinion and judgment is reproduced at Appendix F. The same court's unpublished order denying Petitioner's motion for relief from judgment is reproduced at Appendix G.

JURISDICTION

The Sixth Circuit affirmed the Eastern District of Michigan's denial of the Petitioner's certificate of appealability on May 24, 2019. This Court has jurisdiction under 28 U.S.C. § 2253(c). The district court had jurisdiction over the final judgment of the Michigan Supreme Court under 28 U.S.C. § 2254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides:

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2244(d) of Title 28 U.S. Code provides:

(1) A 1-year period of limitation shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively application to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

STATEMENT OF THE CASE

1. Jermaine Burley, Petitioner Bentley's friend, was found shot to death on August 14, 2000, in a vehicle he and Petitioner Bentley agreed to do an insurance job on for a friend. The Wayne County Prosecution conceded that the case against Petitioner Bentley was entirely circumstantially because there were no eyewitnesses to the shooting, and that, there was a dispute over a drug deal, where Mr. Burley lost fifteen-thousand dollars and blamed Petitioner Bentley's supplier for the purchase of the "bad drugs" a month prior to his death. There was even an inference from the investigating police officers that Petitioner was out of town at the time of the shooting death of Jermaine Burley.

2. After his direct appeal became final Petitioner Bentley returned to the state trial court level by way of the State of Michigan post-appeal rules identified at M.C.R. 6.502 et seq.

3. Petitioner Bentley, through retained counsel, filed his post-appeal motion for relief from judgment pursuant to M.C.R. 6.502 on August 26, 2005, while within the 1-year time line of Section 2244(d). The motion was time stamped by the Wayne County Circuit Court Clerk office on August 26, 2005, at 11:15am. See Appendix H. A Praeclipe for the motion was simultaneously timely filed with the post-appeal motion as well. See Appendix I.

4. Subsequently, on October 31, 2005, Wayne County Circuit Court Judge, Michael F. Sapala, issued an order requiring the Wayne County Prosecuting Attorney office to file their response to Petitioner Bentley's post-appeal motion pursuant to M.C.R. 6.504(B)(4). See Appendix J. Thereafter, a reply by the people was subsequently filed with the state trial court.

5. On June 19, 2006, the state trial court judge issued a fourteen-page opinion and order which denied Petitioner Bentley's post-appeal motion on the grounds raised. See Appendix F and G. In this opinion the state trial court judge erroneously stated that Petitioner Bentley's post-appeal motion was filed on November 10, 2005. Id at p. 2. This erroneous finding of facts untolled Petitioner's 1-year statute of limitation of Section 2244(d), and led to a findings by the district court and subsequently the 6th Circuit Court of Appeal that the instant case was untimely per §2244(d) and never reached the merits of any of Petitioner's constitutional claims raised in his petition.

6. Following his exhaustion of his state remedies, dismissal of habeas corpus petition as untimely and subsequent certificate of appealability, Petitioner filed a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b) and (d) alleging respondent's counsel committed fraud when she filed the Rule 5 materials containing the wrong filing date of his post-appeal motion with the state trial court.

7. The district court, without holding an evidentiary hearing, denied Petitioner's 60(b) allegations as being untimely from the 2009 dismissal of the habeas petition and rejected Petitioner's independent action under 60(d) holding that "there was no fraud upon the Court" that led to the dismissal of habeas corpus petition per §2244(d). See Appendix B at p. 3.

The court adjudicated the 60(d) allegations on the merits, and did not identify any record evidence on which its decision is based. (See *id*). The district court thereafter would not grant a certificate of appealability. (See Appendix B).

8. Petitioner appealed to the Sixth Circuit, but the court affirmed the denial of the motion for relief judgment per 60(b) and (d) on May 24, 2019. (Appendix A).

REASONS FOR GRANTING CERTIORARI

Damon Bentley is serving in prison for forty-six years and ten months to eighty years, plus, three years and four months to five years, plus, a mandatory consecutive two year term, respectively because the Wayne County Circuit Court Clerk made a clerical error regarding the date his post-appeal motion for relief from judgment was filed with the state trial court.

The notation of the wrong date, by the clerk, of the post-appeal filings untolled Mr. Bentley's 1-year statute of limitation identified at §2244(d). Compare Appendix F, G and H with Appendix D at p. 2. Respondent's counsel, the State of Michigan, the district court and the Sixth Circuit, all concedes that Mr. Bentley did file a post-appeal motion for relief from judgment with the state trial court. However, they all would hold the post-appeal motion was filed on November 10, 2005, (App. B at pp. 3, 5-6, App. C at p. 1), as oppose to, the Clerk's stamped filing date of August 26, 2005. (See App. F and G.)

The district court refused to reach the merits of Mr. Bentley's federal constitutional claims because of the Respondent's argument that "His post-appeal motion was filed on November 10, 2005."

Had Respondent's counsel not made this fraudulent argument to the district court, the merits of His petition would have been addressed and he would have been entitled to relief. The erroneous notation of the filing date of Mr. Bentley's post-appeal motion, by the state trial court clerk allowed respondent's counsel to make the fraudulent argument which the district court relied to dismiss the petition with prejudice. But for the state trial court clerk's error and respondent's counsel argument Mr. Bentley's 1-year statute of limitation per §2244(d) would have stayed tolled. This is a clear-cut "interference by state officials" under this Court's precedent. See *Reed v. Ross*, 468 U.S. 1, 16 (1984); *Murray v. Carrier*, 477 U.S. 478, 488 (1986).

Respondent's counsel failure to correct the state trial court's clerk clerical error regarding the filing date of the post-appeal motion but, to persist in the clerical error, knowing it to be fraudulent (See Appendix H), just to have Mr. Bentley's petition dismissed---is also fraud "interference by state officials" which compliance with §2244(d)---indeed devastated--Mr. Bentley's defense of his petition. Reed, 468 U.S. at 18. Simply put, the state trial court's clerk untolled Mr. Bentley's 1-year time line to file his petition for writ of habeas corpus. If the district court had considered Rule 8.105(B) of the Michigan Court Rules of 1985, it would have proceeded to the merits of the petition filed by Mr. Bentley and rejected Respondent's counsel argument. But, it did not.

The fraud was correctly challenged but, without a hearing, a relevant matter that relate to it were never considered by the lower courts.

The lower court's conclusion to the contrary was not just wrong, it was unreasonable. The only reasonable conclusion is that the date stamped on the post-appeal motion demonstrates the date and time in-which the post-appeal motion was filed with the state trial court clerk's office.

Petitioner recognizes that this Court is generally not an error-correcting court. There is no circuit court split here, and the Sixth Circuit did not break new legal ground in its unpublished decision. But Petitioner submits that this is an exceptional case that well warrants this Court's attention, through summary reversal or otherwise.

Although Michigan is not a death-penalty state, Petitioner conviction, if not subjected to constitutional challenge, will leave a man confined within prison because of state interference by which made compliance with §2244(d) impracticable. The State admitted that a post-appeal motion was filed by Petitioner to exhaust his state remedies. The State also admitted that his post-appeal exhaustion attempts were completed. So the only reasonable conclusion for the record is that the Petitioner is serving in a prison cell for 46 years and 10 months because a state trial court's clerk clerical error tolled his statutory time line under Section 2244(d). These are extraordinary circumstances indeed.

The Court's review in this case would also make clear to the lower courts that the Fourteenth Amendment plays a critical role in protecting all state defendants---not just Mr.---from clerical errors tolling Section 2244(d) 1-year time period in which a state prisoner has to file his petition with the Federal court. The Court noted in *Reed v. Ross*, 468 U.S. 1, 16 (1984) that "the good cause requirement may also be waived if some interference by officials made compliance impracticable." The Court should grant review to confirm the critical role the state trial court's clerk plays to protect state prisoners in tolling Section 2244(d) 1-year time line.

I.

60(d) Relief is Warranted When a Respondent's Counsel Knowingly Persist in a State Trial Court Clerk's Fraudulent Clerical Error Which Untolled Petitioner's Section 2244(d)(2) One-Year Clock, in which, Petitioner Had to File His Writ, Thus, Leading to Dismissal of His Writ of Habeas Corpus as Untimely.

A.

The Eastern District Determination that Petitioner's Post-Appeal Motion for Relief from Judgment was Filed on November 10, 2005, is "Contrary To" the Facts of the Case and Although Petitioner Successfully Rebutted the State Trial Court's Factual Finding with Clear and Convincing Evidence.

The Fourteenth Amendment to the United States Constitution guarantees to every criminal defendant due process and equal protection of the laws. To establish a due process or equal protection violation, a defendant must show that his petition was heard in a meaningful manner and the laws were not applied equally to him---and that "had it been he would have obtained favorable relief." See *Matthews v. Eldridge*, 424 U.S. 319, 333, 47 LEd2d 18, 96 SCt 892 (1976).

The Court has made clear that "citizens must be afforded due process before deprivation of life, liberty or property. *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976).

This includes a clerical error which untolled §2244(d)(2) one-year statutory time limitation. In *Artuz v. Bennet*, the Court explained that "an application is properly filed when its delivery acceptance are in compliance with the applicable laws and rules governing filings." 531 U.S. 4 (2000). The went on to hold that: these usually prescribe, for example, the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, *Id.*

In Michigan, County of Wayne, 3rd Judicial Circuit Court, a defendant pleadings is properly filed "when they and a Motion Praeclipe form are received by the Clerk of the Court and receives a date-time stamp on the face of the pleadings." See MCR 8.105(B) and Wayne County, 3rd Judicial Circuit, Local Court Rule 2.119.

Here, petitioner did all that was required of him to properly file His post-appeal motion for relief from judgment with the state trial court Clerk's office. See App. F, G and H. Petitioner provided the lower courts with material which meets the "clear and convincing evidence" standard of Section 2254(d)(2). Although this Court has not yet addressed the interplay between these two provisions, See Wood V. Allen, 558 U.S. 290 (2010), petitioner would submits this case provides the Court with a reason to do now.

For a properly filed post-appeal motion to be received by the Clerk, it must be date-time stamped on its face which Petitioner's pleadings are. But as the lower court hold "there was no fraud upon the Court." (See App. C at p. 3).

The documents submitted to the Court by Petitioner as clear and convincing evidence that his post-appeal motion was filed on August 26, 2005, Respondent does not dispute as not being date-time stamped by the state trial court clerk or filed by Petitioner, she persist in the state trial court clerk's clerical error as being true. This position posture was taken by Respondent's counsel to gain an advantage over Petitioner and have his writ dismissed with prejudice.

This was fraud: When a officer of the court knows an clerical error has been made they are to correct it not persist in the error for benefit. To do so is not justice but a travesty thereof.

The lower courts seem to have been confused about what constitutes, "properly filed and fraud on a court". The courts seemed to believe that, even though Petitioner's post-appeal motion was date-time stamped by the state trial court clerk's office, this does not rebut the November 10, 2005, date conclusion of the state trial court judge. Its fundamentally wrong. First, MCR 8.105(B) governs when pleadings are properly filed in Michigan's courts. (See MCR 8.105(B) and Wayne County Local Court Rule 2.119). Second, and likely for the same reason, there was conflicting evidence admitted from two officers of the court, without an evidentiary hearing to blankly attribute credibility to one and not the other is wrong. Finally, the clerical error made by the state trial court clerk was successfully rebutted by Mr. Bentley which is clear and convincing, that has never been disputed by Respondent's counsel, and is in support of the Respondent's counsel fraud.

In the end, Petitioner timely and properly filed his post-appeal motion for relief from judgment with state trial court clerk's office tolling the 1-year time line of 2244(d). The lower courts finding of facts are contrary to the current case records, and certiorari relief is warranted.

B.

Whether Respondent's counsel persistence in the clerical error made by the state trial court clerk's office amounts to "fraud on the court" at the Federal level is a question of exceptional importance.

Here, evidence which establishing the date and/or time in which Petitioner's post-appeal motion for relief from judgment was filed has always been in the possession of Respondent's counsel agents, the Wayne County Prosecuting Attorney's Office, (See App. G and H, respectfully). In fact, the Wayne County Prosecuting Attorney's Office has its own date-time stamp indicator. (See App. F, G and H). However, Respondent's counsel fraudulently concealed it from the lower courts, and then, argued for the petition to be dismissed with prejudice. These fraudulent misrepresentation have been identified in *Nix v. Whiteside*, 475 U.S. 157 (1986).

The Lower Courts' precedents show that "fraud on the court" is committed when: (1) on part of officer of the court; (2) that is directed to judicial machinery itself; (3) is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; (4) is positive averment or concealment when one is under duty to disclose; and, (5) deceives the court. See e.g., *Johnson v. Bell*, 605 F.3d 333 (6th Cir. 2010); *Workman v. Bell*, 484 F.3d 837 (6th Cir. 2007); *Info-Hold, Inc. v. Sound Merchandising, Inc.*, 538 F.3d 448 (6th Cir. 2008).

This case presents the Court with rare opportunity to address 60(d) allegations in the context of habeas corpus cases.

The circumstances under which this case is before this Court is the untolling--by a fraudulent clerical error--initiated by the state trial court clerk's office--and to persist in its fraudulence by Respondent's counsel, and in dismissal of the current matter as untimely is unconscionable per Section 2244(d)(2). (See App. A and B).

This Court has recognized the extraordinary circumstances of "interference by state officials" that makes compliance impracticable. See e.g., *Reed v. Ross*, 468 U.S. at 16; *Murry v. Carrier*, 477 U.S. at 488. Thus, "[i]nterference by officials" in any manner is good cause to overcome a procedural bar. *Id.* Given the extraordinary circumstances of this case, along with Respondent's counsel committed fraudulent conduct, it is important that this Court clarifies the duties of state trial court clerks in cases where date-time lines are at issue per 2244(d).

Given the Court's recent emphasis on compliance with the requirements of Section 2244(d) and the protection of habeas corpus review of state prisoner's petitions, the Court should clarify clerk's and counsel's duty to "disclose a material fact and speak truthfully" in habeas corpus litigations. The Fourteenth Amendment and this Court's precedents suggest that failing to prevent interference "will" make compliance impracticable" and violates the right due process.

This Court should grant review to confirm the critical role that a state trial court clerk plays to protect against procedural bar per Section 2244(d).

CONCLUSION

The petition for a writ of certiorari should be granted.

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Dated: August 15, 2019