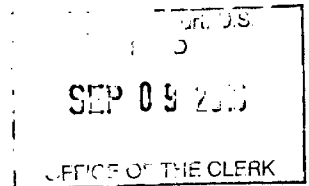


CASE NO. 19-5209

IN THE
SUPREME COURT OF THE UNITED STATES

In re: RECARDO WIMBUSH,
THERIAN WIMBUSH



THERIAN WIMBUSH - Petitioner
RECARDO WIMBUSH - Petitioner

V.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA (U.S.D.C. N.D. Ga.),
JAMES N. HATTEN, Clerk, U.S.D.C. N.D. Ga.,
UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT (U.S. COA 11th Cir.),
DAVID J. SMITH, Clerk, USCOA 11th Cir.,
~~SCOTT S. HARRIS, Clerk, U.S. Supreme Court~~ 9/14/19
Respondents.

MANDAMUS
PETITION / APPLICATION FOR ~~TAJUNCTION~~

THERIAN WIMBUSH

#1001955340

PULASKI STATE PRISON

P.O. BOX 839

Hawkinsville, GA 31036

RECEIVED

SEP 13 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

RECARDO WIMBUSH

#1001955757

WASHINGTON STATE PRISON

P.O. BOX 206

Davisboro, GA 31018

RELATED CASES: 19-5209, 19-5210

*** resubmitted 9/14/19

xxx resubmitted 10/11/19

AUGUST 4, 2019

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Can co-indicted, co-tried, co-convicted and sentenced, exactly the same, codefendant husband and wife file a JOINT federal 28 USC § 2254 habeas corpus petition in the United States District Court, jointly appeal to the United States Court of Appeals and JOINTLY petition for Certiorari in the Supreme Court of the United States?
2. Does the denial by the federal court forums, particularly, by the clerks of court, of the right to file joint petitions deprive petitioners of access to the federal court forums?

BRIEF INTRODUCTION

On May 11, 2018, Recardo Wimbush and Theron Wimbush filed an Emergency Joint Petition for Habeas Corpus, pursuant to 28 USC 2254, in the United States District Court for the Northern District of Georgia. After being ordered by the Magistrate judge, Russell G. Vineyard, to amend the petition ~~on the~~ and resubmit on the proper form provided by the Clerk, on June 15, 2018, petitioners filed their Emergency Amended Petition for Writ of Habeas Corpus, jointly.

On June 19, 2018, the Magistrate judge, issued an order directing the clerk to open a new civil action for Recardo Wimbush, thereby separating petitioners petitions.

On October 25, 2018, the Joint Notice of Appeal and Application for Certificate of Appealability, filed in the United States District Court on October 23, 2018, was docketed in the United States Court of

Appeals for the Eleventh Circuit. The clerk of said court, David J. Smith, separated the cases again, assigning two separate case numbers. Petitioners filed a motion to consolidate the appeals on November 7, 2018.

On June 19, 2019, petitioners attempted to file a joint petition for writ of certiorari in this court and the entire filing was returned by Jacob Levitan stating that Ricardo Wimbush could not be joined in the action, as a direct result of the previous courts separating, and refusing to join the habeas corpus matter.

On July 17, 2019, Theron Wimbush's petitions for writ of certiorari were docketed to the 2019 Court Term and assigned case/docket numbers 19-5209, and 19-5210.

LIST OF PARTIES

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

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- APPENDIX D - Emergency Amended Petition for Writ of Habeas Corpus (JOINT)
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IN THE
SUPREME COURT OF THE UNITED STATES
MANDAMUS
PETITION FOR WRIT OF ~~INJUNCTION~~

Petitioners respectfully pray that a writ of MANDAMUS ~~injunction~~ issue to establish precedence on JOINT 28 USC § 2254 habeas corpus petitions.

OPINIONS BELOW

The correspondence from Case Analyst for the Supreme Court of the United States is included at Appendix A to this petition. (Jacob Lewton)

The order of the United States District Court for the Northern District of Georgia appears at Appendix B to this petition.

JURISDICTION

The jurisdiction of this Court is invoked under 28 USC § 1651.

Petitioners note that this petition is directly related to docket number 19-5209, docketed on July 17, 2019 filed on June 19, 2019.

STATEMENT OF CASE

On May 11, 2018, petitioners Ricardo Wimbush and Therian Wimbush filed an Emergency Petition for Writ of Habeas Corpus, pursuant to 28 USC § 2254 in the United States District Court for the Northern District of Georgia.

After granting petitioner, Therian Wimbush leave to proceed in forma pauperis, the Magistrate judge ordered

petitioner to AMEND her petition "by naming the warden of Pulaski State Prison as the proper Respondent to this action and by completing in detail and submitting the habeas corpus form petition that will be provided to her by the Clerk of Court."

On June 15, 2018, petitioners filed their Amended Petition for Writ of Habeas Corpus, listing the Governor of the State of Georgia, the Georgia Corrections Commissioner, the warden of Pulaski State Prison, and the Warden of Washington State Prison as Respondents, and Therian Wimbush and Ricardo Wimbush as petitioners. (See Appendix "D")

On June 19, 2018, the Magistrate judge entered an order directing the clerk to "(1) correct the docket sheet to show that Therian Wimbush is the sole petitioner in this § 2254 habeas action; and (2) open a new civil action number with Ricardo Wimbush as the sole petitioner and file a copy of the amended § 2254 petition, and attached exhibits under that number." See Appendix "B."

On June 26, 2018, the Magistrate Judge entered an order directing the Clerk to "Terminate Governor Nathan Deal, Commissioner Gregory C. Dozier, and Warden Nathan Brooks as respondents to this action." See Appendix "C."

On October 23, 2018, after having both habeas corpus petitions dismissed and certificates of Appealability denied, petitioners filed their "Joint Application for Certificate of Appealability and Notice of Appeal" in the United States District Court for the Northern District, by way of the United States Court of Appeals for the Eleventh Circuit. Said appeal was docketed in the United States Court of Appeals on October 25, 2018. See Appendix "E."

On October 25, 2018, the United States Court of Appeals for the Eleventh Circuit docketed two separate appeals, case no.'s: 18-14465-D and 18-14467-D, having assigned both to the same judge.

On March 1, 2019, the United States Court of Appeals for the Eleventh Circuit denied petitioners Applications for Certificate of Appealability. Said orders of denial can be found in Appendix 'A' of case no. 19-5209 docketed in this Court on July 17, 2019.

On May 7, 2019, Justice Thomas granted petitioner, Therian Wimbush, case no. 18-14465-D, an extension of time to file her petition for writ of certiorari. However, due directly to Therian Wimbush's placement in Lockdown and ALL of her legal materials being confiscated and the denial of access to mail and email privileges, a motion for extension of time was not separately filed for Ricardo Wimbush in case no. 18-14467-D.

Nevertheless, petitioners submitted a joint petition for writ of certiorari to this Court on June 19, 2019. Said joint petition was returned unfiled, by Case Analyst Jacob Levitan, stating essentially that because no extension of time was granted in case no. 18-14467-D, and that the time for filing a petition for writ of certiorari had expired in case no. 18-14467-D, that the petition had to be amended so as to NOT include Ricardo Wimbush, in order for it to be filed. (See Appendix "A")

On July 1, 2019, petitioner, Therian Wimbush, resubmitted her petition having only edited/changed the cover page and the certificate of service, so as to NOT include Ricardo Wimbush. However, the Court can take judicial note that the orders of the United States Court of Appeals and of the United States District Court for Ricardo Wimbush are still

Included in Appendix "A" and Appendix "B" of case no. 19-5209. In fact, petitioners have attached the original cover sheet and certificate of service pages in Appendix "A" of this petition.

The petition for writ of certiorari ~~was~~ docketed on July 17, 2019, case no. 19-5209, and 19-5210 with ONLY Theron Wimbush listed as the sole petitioner.

Petitioners note that if the District Court and the United States Court of Appeals had not separated their cases, Ricardo Wimbush would be a petitioner in case no. 19-5209, in this Honorable Court.

REASONS FOR GRANTING THE WRIT

Federal Court Rules

Pursuant to Federal Rules of Civil Procedure Rule 20, persons may join in one action as plaintiffs if:

- (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, and
- (B) any question of law or fact common to all plaintiffs will arise in the same action.

Pursuant to Federal Rules of Appellate Procedure Rule 3(b)(1), when two or more parties are entitled to appeal from a district court judgment or order, and their interest make joinder practicable, they may file a JOINT Notice of Appeal.

Pursuant to Rule 12 of the Rules of the Supreme Court of the United States, (4) Parties interested jointly, severally

or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party not shown on the petition as joined therein at the time the petition is filed may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices.

QUESTION 1: Can co-indicted, co-tried, coconvicted and sentenced, exactly the same, codefendant husband and wife file a JOINT federal 28 USC § 2254 habeas corpus petition in the United States District Court, jointly appeal to the United States Court of Appeals, and jointly petition for certiorari in the Supreme Court of the United States?

Briefly, on January 30, 2017, petitioner filed a timely and legally sufficient Notice of Appeal challenging the Gwinnett County Superior Court's January 6, 2017 denial of ~~her~~ the directly appealable statutory speedy trial motion for discharge and acquittal. Two days later, the Gwinnett County Superior Court entered identical judgments of conviction and sentence for BOTH petitioners, on February 1, 2017, at such time that the trial court was WITHOUT JURISDICTION to do so. Two days after filing the VOID JUDGMENT of conviction and sentence, the Gwinnett Superior Court executed said VOID Judgment by transferring petitioner to the custody of the State of Georgia, by the Department of Corrections for subjection to forced slavery.

It must be noted that pursuant to OCA § 5-6-37, once a notice of appeal is timely filed, ALL parties

to ALL proceedings in the lower court are parties on appeal. Hence, not one, but BOTH, judgments of conviction are VOID for lack of Jurisdiction. Further, petitioners seek ~~to~~ ~~a~~ that this Court establish precedence concerning the ~~the~~ federal exhaustion rule, and how long is too long, and prejudicially so, for the state courts to take to exhaust a state prisoners state court remedies.

When petitioners filed their JOINT Amended Petition for Writ of Habeas Corpus in the United States District Court they invoked said right under F.R.C.P. Rule 20. See Appendix "D" to this petition. Additionally, petitioners invoked the right to file joint appeals in the United States Court of Appeals by invoking their jurisdiction under FR.A.P. Rule 3(b)(1). See Appendix "E" to this Petition

The District Court's Magistrate cited Acord v. California, No. 1:17-cv-01089-MJS (HC), 2018 WL 347770, at *1 (E.D. Cal. Jan. 10, 2018), arguing in footnote that "Other- than the signatures, the handwriting on the amended petition is the same, which suggests that one petitioner is attempting to represent them both." Yet, in the order the Magistrate states that "Therian Wimbush, an inmate at the Pulaski State Prison in Hawkinsville, Georgia, and her husband, Ricardo Wimbush, who is currently incarcerated in Washington State Prison in Davisburg, Georgia, have JOINTLY filed an amended 28 USC § 2254 petition challenging their convictions and sentences entered in the ~~Georgia~~ Superior Court of Gwinnett County."

The Magistrate concluded that, "two petitioners may not join in a single habeas corpus action. It is this ~~decision~~ non-precedential decision

by a Magistrate judge to be addressed. Petitioners, pro se, incarcerated, and indigent married, husband wife prisoners, invoked their Sixth Amendment Right to self representation, and further their First Amendment Right, to collaborate, even providing jailhouse lawyering to one another, and file JANT petitions in the federal courts.

Petitioners note also that this is not the first time that the Magistrate has separated their habeas Corpus petitions. See case no's: 1:16-cv-1961, 1962 N.D.Ga.

The Court can take judicial note of cases pending before it, case no. 19-5209, Appendices A-K, especially "A", "B", "G", "H", "I", "J", and "K" to see that Petitioners, Ricardo Wimbush and Therman Wimbush are jointly interested, but Ricardo Wimbush could not be included on the petition for writ of certiorari (also in case no. 19-5210) as the clerk ~~has~~ of this Court has authority to reject any submitted filings and petitioner had been warned that if Ricardo Wimbush was not removed then she would be refused filing. Rule 1.1 of the Rules of the Supreme Court of the United States.

Additionally, petitioners note that under Rule 12.4, that a party not shown on the petition as joined therein at the time the petition is filed may not later join in that petition.

CONCLUSION

Hence, petitioners invoke this Court rare use of its granting of the extraordinary writ of mandamus ~~injunction~~ and GRANT them relief.