

No. 20-7123

Supreme Court, U.S.

FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH REX HEDDLESTEN-PETITIONER

VS.

SCOTT CROW, DIRECTOR-RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ORIGINAL

KENNETH REX HEDDLESTEN

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PHONE NUMBER NOT AVAILABLE

QUESTION(S) PRESENTED

In my Combined Opening Brief and Application for a Certificate of Appealability to the United States Circuit Court of Appeals-Tenth Circuit I raised three issues that are relevant facts of the case based on the Report and Recommendation and Order from the US District Court-Western District of Oklahoma dismissing my Petition for Writ of Habeas Corpus as untimely. From those issues my questions for the Honorable Supreme Court Justices arise.

1. When was my conviction final?
2. When did the limitations period under 28 U.S.C. 2244(d)(1)(D) actually start?
3. Did the Caddo County District Court have jurisdiction to decide and render judgment in my case? I acknowledge that this question in and of itself is not directly related to the Districts Courts ruling that "No reasonable jurist could conclude the district courts procedural ruling was in correct." However, I am under the impression that Jurisdiction is one issue that is never waived and can be addressed at any time. If that is incorrect I hope the Honorable Justices will remember that I am a layperson not formally educated or trained in the practice of law and request that my Petition be considered under the protection of Haynes v Kerner, 92 S. Ct. 594, (1972). In filing this petition I established three rules for myself to follow: first, be honest and don't claim anything that isn't true; second, don't pretend to be anything I am not; and third (KISS) keep it simple stupid, a reminder to myself that I am not a lawyer.

LIST OF PARTIES

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

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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STATUTES AND RULES

28 U.S.C. 2244 (d)(1)(A); 28 U.S.C. 2244 (d)(1)(D); 28 U.S.C. 2243; 28 U.S.C. 2254 *ii, 2, 3, 4, 5,*

OTHER

Blacks 's Law Dictionary.

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Websters New World Dictionary, Fourth Edition.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 24, 2020.

[X] No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

STATEMENT OF THE CASE

On May 12, 2020 Petitioner filed a Petition under 28 U.S.C. § 2254, for a Writ of Habeas Corpus documenting six grounds that indicated a “substantial showing of the denial of a constitutional right.” Miller-El v Cockrell, 537 U.S. 322, 336 (2003). On May 29th 2020, the Honorable Magistrate Judge Gary Purcell filed a Report and Recommendation in which he recommended the Petition be dismissed as untimely. On June 16, 2020 Petitioner filed an Objection to the Report and Recommendation focusing on the failure of Petitioner’s Appellate Counsel to “advance any of the grounds presented in Caddo County District Court on March 10, 2010 at Petitioner’s” hearing on an Application to Withdraw his Plea. On June 19, 2020 the Honorable District Judge David L. Russell issued an order and judgment adopting the Report and Recommendation’s conclusion that “The Court finds reasonable jurists would not debate the Court’s determination (1) that the habeas petition is time barred under 2244(d)(1) (A) and (2) petitioner is not entitled to tolling of the statute of limitations period. “The Court therefore declines to issue a Certificate of Appealability.” The Western District failed to address the Petitioner’s argument that his conviction under Murray v Carrier was not final on direct appeal on April 11, 2011.

On June 29, 2020 the Petitioner filed a Notice of Intent to Appeal to the Tenth Circuit. On August 24, 2020 the Honorable Circuit Judges Briscoe, Baldock, and Carson issued an order denying Certificate of Appealability concluding that under Slack v McDaniel, (2) “No jurist of reason would find it debatable whether the district court was correct in its procedural ruling.” While the Honorable Justices of the Tenth Circuit addressed the arguments presented in the District Courts Report and Recommendation and Order. The Honorable Justices failed to

address the Petitioners arguments that his conviction was not final under 2244(d)(1)(A), but under 2244(d)(1)(D) it was final on June 28, 2019, when the final constitutional violation raised in March 2010 was adjudicated by the states highest court. It is from that order that this Petition for Writ of Certiorari is requested.

From this point forward, I, Kenneth Rex Heddlesten, as the Petitioner will refer to myself in the first person, not the third. It is far easier for me to write from the first person than just identifying myself as Petitioner. I sincerely hope in my ignorance I am not violating any standards of decorum by asking permission to dispense with "legalese" and just write things as if it were a story. I am uneducated and untrained in the practice of law and do not want to pretend to be. It is with the utmost respect for the Honorable Justices of the Supreme Court that I submit this Petition for Writ of Certiorari in order to address the three questions previously stated. In filing this petition I established three rules for myself to follow. First, be honest and don't claim anything that isn't true. Second,

First. The District Court incorrectly determined the date of my convictions as April 11, 2011. The District Court applied 28 U.S.C. 2244(d)(1)(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" and arrived at Monday April 11, 2011. While that determination would have been correct in any other direct review, I argued that it was not under MURRAY v CARRIER, 477 U.S. 478, 91 L Ed 2d 397, 106 S Ct. 2639, "failure to raise a claim on appeal reduces the finality of appellate proceedings, deprives the appellate court of an opportunity to review trial error, and under cuts the state's ability to enforce its procedural rules. As with procedural defaults at trial these costs are imposed on the state regardless of the kind of attorney error that led to the procedural default." The failure of Oklahoma Indigent Defense System Attorney Robert Jackson to raise my claims to withdraw my plea in Caddo County District Court on March 10, 2010, prejudiced my from having my constitutional claims adjudicated by

the Oklahoma Court of Criminal Appeals (OCCA). That error also prejudiced the State of Oklahoma from the opportunity to review trial error. Under that condition 28 U.S.C. 2244(d)(1)(A) would not apply to this case. If not that then when did my convictions become final. This brings us to the next question.

Second. Was the ex-post facto plain error presented as Ground 4 in my Petition for Writ of Habeas Corpus a factual predicate under 28 U.S.C. 2244(d)(1)(D) before June 28, 2019. Under that statutory rule “The AEDPA of 1996 as contained in 2244 U.S.C. 2244(d) provides in part that: (1) A one year period of limitation shall apply to an application for a Writ of Habeas Corpus by a person in custody pursuant to the judgment of the State Court. The limitation period shall run from the latest of- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence. It is my contention that the factual predicate of my claims did not become discovered through due diligence until June 28, 2019. It seems apparent on Page 14 #18 of my Petition for Habeas Corpus that U.S.C. 2244(d)(1)(D) is the pertinent statutory rule to address the timeliness. Furthermore, as I researched what a factual predicate is both legally and logically, I found some interesting facts about it. According to Black’s Law Dictionary the closest definition available was for the term predicate fact- a fact from which a presumption or inference arises. For further clarification, I sought guidance from a Webster’s New World College Dictionary, Fourth Edition, and was unable to find a definition for “factual predicate”. However, when separated the meaning becomes clearer:

factual (1) of or containing facts (2) having the nature of fact; real; actual.

predicate (2) Logic- something that is affirmed or denied about the subject of a proposition.

When reviewing these definitions it is a fact that a fact is a fact and not a theory. Bazinga! Sheldon Cooper, The Big Bang Theory, CBS, 2007-2019. I mean no disrespect to this

Honorable Court, it is just that I have found humor to be a most useful tool in helping me deal with the situation I put myself in. So, under the meaning of predicate as above I assert that a predicate is something related to a proposition that has been affirmed or denied. Under this definition it is not possible to have a factual predicate based on a theory. In logical writing when we develop a Proposition of Error, the predicate underlying that proposition does not become a fact until it is affirmed or denied. Therefore until that proposition of error is **decided** one way or the other it is still just a theory and not a fact.

Now provided that 2244...(D) is the correct statutory rule, I believe that June 28, 2019 is the date on which the factual predicate(s) underlying my claims triggered the one year time limitation. On question #2 lets analyze my claim that my sentence is in violation of ex-post facto laws. My paid attorney Debra Hampton first raised this as a proposition of error under a Sixth Amendment claim of ineffective assistance of appellate counsel, subsection B. The only reference available prior to the filing of that Application for Post Conviction Relief is found in my original grounds for withdrawing my plea presented in Caddo County District Court on March 10, 2010. It was presented as a theory related to my plea being unknowingly entered because of the change in the statutes used to prosecute me. While these references to the change in the statute could be subjectively interpreted as a factual predicate, I argue that because the error was not clearly identified as an ex-post facto violation it could not have been a factual predicate under 2244(d)(1)(D) until it was presented as a theory on May 12, 2018 and decided on June 28, 2019. I have researched numerous circuit court rulings that indicate that a factual predicate is not left to subjective interpretation and have actually provided conflicting rulings on what and when factual predicates could have been discovered. If I'm allowed to proceed further, I will provide each of the cases I have reviewed and a more in-depth analysis, otherwise this Petition could become way to wordy and I want to keep it

simple. One of my rules for filing legal paperwork is keep it simple stupid, "Bazinga". That is just to remind me that I am not a legal scholar and shouldn't try to be.

Three. If we agree that the claims contained in my Petition for Writ of Habeas Corpus triggered the one year limitations period on June 28, 2019, then we can address whether or not the Caddo County District Court had jurisdiction to decide and render judgment in my case to begin with. Even if one determines that the Court had *in personam* jurisdiction because I resided in Caddo County, how do we resolve the issue that I was an intricate part of the Caddo County Drug Court Team and worked closely with the Judges and District Attorney's on a weekly basis. No one ever told me I could ask for a special prosecutor. While my attorney and I did discuss Judge Van Dyck presiding over the District proceedings, I was given the impression that if I asked for him to recuse I would probably end up with a judge that would not know me and therefore worse off. I admit I put myself in this position and I am responsible for the actions that put me in this situation. No one is to blame but me, but does two wrongs make a right. Had the Caddo County DA immediately requested a special prosecutor and had the Caddo County Judges *sua sponte* recused I am 100% sure the outcome of my case would have been different. Had my attorney Jason Glidewell known what needed to be done on the question of jurisdiction and had my appellate attorney Robert Jackson known how to address the jurisdiction the Oklahoma Court of Criminal Appeals would have been required to remand the case and require a complete change of venue. That would not have prejudiced me in getting my claims adjudicated in a timely manner nor would it have prejudiced the State of Oklahoma from being able to review trial error at a time when those issues could have been resolved. Unfortunately the legality of my conviction remains in question. As Justice Stevens opined in Murray v Carrier, US @ 500... "The Writ of Habeas Corpus is the fundamental instrument for safe guarding individual freedom against arbitrary and lawless state action" Harris v Nelson, 394 US 286, 290-291; 22 L.Ed 2d 281, 89 S.Ct.

1082 (1969). In 1867, Congress provided the Writ of Habeas Corpus for state prisoners, the Act gave federal courts “power to grant writs of Habeas Corpus in all cases where any person may be restrained of his or her liberty in violation of the Constitution, or any treaty or law of the United States” The Court... shall dispose of the matter as law and justice require. 28 U.S.C. 2243.

REASONS FOR GRANTING THE PETITION

The Guide for Prospective Indigent Petitioners for Writs of Certiorari I have received in Section XIII states “It is important to Read and Rule 10 and address what compelling reasons exist for the exercise of the Courts discretionary jurisdiction.” As one who has been diligent in following the instructions I have been given, to the best of my understanding, I admit that I am having difficulty with figuring out Rule 10 is actually asking from me. While I have a B.S in Psychology and an M.S. in Applied Clinical Psychology, I did not attempt to obtain a Ph. D because I didn’t feel it was necessary to pile it higher and deeper to help people. “Bazinga”. No offense meant to those who have a Ph. D. It is more likely that even if I had a Ph. D. I would still have difficulty with Sections A, B, and C, of Rule 10. I will, however, attempt to provide logical reasons for the Court to “exercise their discretionary jurisdiction.” based on my understanding of Section XII of the The Guide for Prospective Indigent Petitioners for Writs of Certiorari. “Try to show not only why the decision of the lower court may be erroneous, but the national importance of having the Supreme Court decide the question(s) involved.”

In regard to question 1 about the date of finality of one’s convictions. As I had both a paid attorney to handle my plea withdrawal hearing and a court appointed attorney on my appeal; I expected them both to know and present the most compelling legal reasons why my convictions were unconstitutional. The fact that neither questioned the jurisdiction of the Caddo County District Court in deciding and rendering judgment made it impossible for my case to receive “final” adjudication in the State’s highest Court. In REED v ROSS, 468 US 1,

82 L.Ed. 2D 1, 104 S.Ct. 2901 (1984), “any procedural default on appeal renders the Petitioner’s convictions to remain in question until **all constitutional issues** related to that conviction are addressed by the state’s highest court. With that in mind I believe it is important for the United States Supreme Court to reinforce its role in ensuring that every defendant, rich or poor, is afforded effective assistance of counsel, both at trial and on appeal, under the Sixth Amendment. Only the Honorable Justices of the Supreme Court can debate that issue. I have done the best I can at presenting what I believe are sound and fairly reasoned questions of law to be answered. I’m not sure where those questions fall in regards to Rule 10, sections A, B, and C. However I do believe the Supreme Courts opinion(s) in Murray v Carrier and Reed v Ross are clear about the results of ineffective assistance of counsel on appeal. As for Miller-El v Cockrell, I respectfully submit that the Honorable Justices of the United States Supreme Court are “jurists of reason” and “could debate whether the Petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.”

CONCLUSION

Over the past 10 years I have followed this piece of advice or that piece of advice from others and it seems that has been fruitless. I’m tired of listening to others about filing paperwork that is “legal” and proper so that I meet some unknown standards in order to have my claims reviewed on the merits. Instead, I have only been blocked because I failed to understand and follow the 1 year statute of limitations under 28 U.S.C. 2244(d)(1)(A). I believed that my claims had merit, but until I was able to exhaust every claim, including the ex-post facto violation, I could not by law proceed to federal court. Once that claim was exhausted by the state’s highest court, I file my Habias Petition, in spite of being locked down for about 5 months from August 2019 to Jan 2020. That is the reality of life in prison at Lawton Correctional Facility.

My father taught me that to be honest and accept responsibility for my actions was more important than whatever consequences I would experience from doing so. I will follow my father's advice. It seems the only way to get relief from an illegally obtained conviction after the AEDPA limit has expired is to claim "actual innocence". I cannot do that because I admitted to what had actually occurred and had hoped to receive a fair and impartial adjudication by the Caddo County prosecutors and judges that I had worked closely with since October 3, 2005. I have no animosity for how things turned out, as I believe in their own way, the prosecutors and judges intentions were to follow the law and show that even though I was a member of the Caddo County Drug Court Team that would not influence the manner in which I was adjudicated. It is unfortunate for me that on April 7, 2009, by paid attorney, Jason Glidewell, told me "They want to make an example of you." At that point he seemed to give up on challenging any of the aspects of the state's case that were later discovered to be an improper and unconstitutional adjudication. When Oklahoma Indigent Defense System attorney, Robert Jackson, failed to investigate and present those aspects to the Oklahoma Court of Clinical Appeals, that denied me fundamental fairness on appeal. All I hope is that this Honorable Court will review my case on the merits and ensure that all those who trust their attorney's to effectively and vigorously protect their client's right to fundamental fairness and due process under the U.S. Constitution. In addition I would like the State of Oklahoma to be able address my claims on the merits, after all it would only be fundamentally fair.

The petition for writ of certiorari should be granted.

Respectfully submitted,

Kenneth Rex Heddlesten

Kenneth Rex Heddlesten,
Petitioner Pro Se

Date: November, 5, 2020