

21-5251

ORIGINAL

No. 20-7683

Supreme Court, U.S.
FILED

JUL 22 2021

OFFICE OF THE CLERK

8:19-CV-03218-JMC

IN THE

SUPREME COURT OF THE UNITED STATES

SPENCER WISEY — PETITIONER
(Your Name)

WARDEN WALLACE ^{VS.} OF
KIRKLAND CORR. INST. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE UNITED STATES

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

NOR

PETITION FOR WRIT OF CERTIORARI

SPENCER WISEY
(Your Name)

P2-B-192
KIRKLAND CORR. INST.

(Address)

4344 BROAD RIVER RD.

(City, State, Zip Code)

COLUMBIA, S.C. 29210

(Phone Number)

QUESTION(S) PRESENTED

1. Whether or not the courts committing fraud.

2. Whether or not petitioner filed timely objections

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

WARDEN WALLACE OF
KIRKLAND CORR. INST
and

SPENCER WITSEY, PETITIONER

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STATUTES AND RULES

28 U.S.C. § 2254

OTHER

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

☐ For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix pg 27 to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix pg 12 to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

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☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was ~~APRIL 23, 2021~~ APRIL 23, 2021

☐ No petition for rehearing was timely filed in my case. yes

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 8, 2021, and a copy of the order denying rehearing appears at Appendix pg 11.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

NONE I STARTED OUT AND FILED A LAWSUIT FIRST, WHICH WAS TURNED INTO A HABEAS CORPUS

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

pg 28 U.S.C. § 2254

STATEMENT OF THE CASE

PETITIONER SPENCER UTSEY, proceeding pro se, filed the instant action against Respondent Warden of KIRKLAND CORRECTIONAL INSTITUTION seeking a petition for writ of Habeas Corpus (the "Habeas Petition") pursuant to 28 U.S.C. § 2254 alleging that, inter alia, 5.C. Code § 24-13-1001 (West, 2020) is unconstitutional statute. (ECF No. 1 at 2).

In accordance with 28 U.S.C. § 636 (b) and local civil Rule 73.02 (b)(2)(g) (O.S.C.), the matter was referred to the United States Magistrate Judge for pretrial handling. On December 12, 2019, the Magistrate Judge issued a Report and Recommendation ("Report") recommending that the court dismiss without prejudice petitioner's instant petition and without requiring Respondent to file a return. (See ECF No. 12 at 7.) Petitioner filed objections to the Magistrate's Report and Recommendation which are presently before the court. (See ECF No. 14).

The petitioner filed timely objections to the Report and Recommendation which the U.S. Court of Appeal admitted to. Report and Recommendation filed 10/16/19. See attached ~~notice of judgment~~ filed 4/23/21 pg 2 in its entirety.

REASONS FOR GRANTING THE PETITION

Reasons are within question 1 and 2 and because the court will not admit truth that petitioner first writ of habeas corpus was ~~not~~ ruled on the statute of limitations and not the merits and made me, petitioner petition the U.S. Court of Appeals for the COA, certificate of appealability to file a second habeas corpus knowing the U.S. District Court, Judge Child and Austin that petitioner first habeas was ruled on by statute of limitation and not the merits but they are stating it was decided by the merits which it wasn't and also U.S. Court of Appeals for the 4th circuit, Judge Motz, Judge Wynn and Senior Judge Shedd and below for court Patricia S. Connor, Clerk. This is in clear violation of judicial misconduct.

Here the petitioner has failed to demonstrate that extraordinary circumstances beyond his control or external to his own conduct prevented him from filing his petition within the statute of limitations. Instead petitioner appears to argue that the limitations period began to run in 2012 or 2013 [Doc 1 at 13]. However as discussed above, the limitations period began to run either in 2003 or 2006, depending on whether the court uses the date the court filed the order of dismissal in petitioner's first PCR application, March 3, 2003, or the date the order of dismissal was served on PCR counsel, January 10, 2006. Using either of the dates, the petition in this case is time barred and petitioner has failed to demonstrate that extraordinary circumstances beyond his control prevented him from filing the petition within the statute of limitations. Therefore, the court determines the petition should be dismissed as time barred.

Conclusion and Recommendation

Wherefore, based upon the foregoing the court recommends that respondent's motion for summary judgment be granted and the petition be denied.

It is so recommended
signed April 18, 2014

All citations

NOT REPORTED IN F. Supp. 3d, 2014 WL 4825625

Whether or not

1. The Courts Committing Fraud

I do hereby come before court that this wasn't the subject that the report and recommendation of magistrate Judge Austin wasn't objected to. The subject was that the judge Austin did not rule on petitioner issues and the case was not ruled on, on the merits and this was not petitioner 2nd habeas.

Then the case went to U.S. District Judge J. Michelle Childs and in her opinion and order she stated that this was petitioner's second habeas corpus and the first was ruled on, on the merits, but it wasn't it was ruled on by the statute of limitations.

Judge Childs and Austin knowing it wasn't petitioner second habeas and conspired together and committed fraud see the record and directed petitioner case to the U.S. Court of Appeals and there they did the same thing knowing the first habeas corpus F1 petitioner case couldn't be ruled as a second habeas corpus and Judge Motz, Judge Wynni Judge Shedd ruled that petitioner did not file specific objections and Clerk Patricia Conner signed the judgment and refuse to rule that this was petitioner first habeas corpus. see the record.

In case # 8:19-cv-03218-JMC, FOL her order and opinion U.S. District Judge J. Michelle Childs stated in part order dated Oct. 13, 2020 that "there is no question that

1

[PETITIONER'S] proposed [H]abeas [P]etition is, numerically, his second one. *IN RE WILLIAMS*, 443 F.3d at 235. PETITIONER'S FIRST petition seeking relief under 28 U.S.C. § 2254 was submitted to this court on May 31, 2013, see generally *UTSEY V. MCCALL*, 2014 WL 4825625 (D.S.C. Sept. 24, 2014). The instant petition for relief under 28 U.S.C. § 2254 was submitted to this court on November 12, 2019. (see ECF No. 1). see pg. 8 in its entirety.

Here the court is using fraud to state that this case was decided on the merits, *UTSEY V. MCCALL*, 8:13-cv-1433-JMC (D.S.C. Sept. 24, 2014).

GRANT the case for above for the foregoing reasons and for fraud upon the court, namely, Judge Childs and Austin, U.S. Court of Appeals Judge Wynn, Motz and Shedd, knowing for fact that this is not petitioner second habeas corpus and refuse to rule. ALSO GRANT the case for above and immediately petitioner Spencer Utsey from prison.

2. WHETHER OR NOT PETITIONER FILED TIMELY OBJECTIONS

The lower court, the U.S. COURT OF APPEALS, FOR THE FOURTH CIRCUIT, RICHMOND VA 23219, did commit fraud, & in a JUDGMENT the court did dismiss the Appeal & filed and denied certificate of appealability and stated that petitioner, utsey did NOT file specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

I have proof I filed timely objections and to the subject because the court, U.S. COURT OF APPEALS 4th CIRCUIT did rule on the issues and in order and opinion the United States District Judge ruled on these issues, the order and opinion dated OCTOBER 13, 2020, signed by Michelle Childs U.S. District Judge ruled on issues on fraud.

Hereto Judge Childs also answered the objections plainly on pg 6 of the opinion and order in case # - 8:19-cv-03218 - JMC and this is proof petitioner specifically addressed the claims and objections to the report and recommendation this is fraud upon the court to rule falsely and to state petitioner did not file objections to the report and recommendation.

Here are the judges names that signed the judgment dated March 18, 2021; decided April 23, 2021 - before not 2 and Wynn, circuit judges and Shedd Senior Circuit Judge and these judges committed fraud they knew that I filed clearly legible objections to the report and recommendation dated 12-12-19 and signed by Jacquelyn D. Austin, magistrate judge.

FOR the above GRANT the case

in its entirety and immediately release
the petitioner, Spencer Utsey from prison,
for above and below:

The Court of United States
District Court, Anderson/Greenwood, District of
South Carolina, Magistrate Jacquelyn D. Austin
did not rule on petitioner, issue and then the
case went to United States District Judge J.
Michelle Childs and she states this is petitioner
second Habeas Corpus and the first Habeas
was ruled on by the merits, but it wasn't it was
ruled on by the statute of limitation. Judge Child
knowingly it wasn't, then in her opinion and order
she directed petitioner to the U.S. Court of
Appeals, 4th Circuit, Richmond VA. Judge Motz,
Judge Wynn and Judge Shedd ruled that petitioner
did not file specific objections and Clerk
Patricia S. Conner signed the judgment and
refuse to rule that this was petitioner
first Habeas Corpus.

Here is a judgment attached Filed April
23, 2021 in case ~~10819~~ - CV - 03218-JMC.
See pg 2, The Court admits petitioner filed
timely objections to the Magistrate Judge's
Recommendation, he has waived review of
the claims pursued on appeal because his objections
did not address the same claims, MARTIN V.
DUFFY, 858 F.3d 239, 245 (4th Cir. 2017) of before
Motz, Wynn, Circuit Judges and Shedd, Senior
Circuit Judge, timely objections and objections
did not address the same claims are two different
subjects of law. For above GRANT case in its
entirety and immediately release
petitioner from prison. 4

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Spencer Wiley

Date: 7-16-21