



United States Court of Appeals for the Fifth Circuit

A True Copy
Certified order issued Feb 26, 2021

Jyle W. Guyce
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 19-20717

MICHAEL GEOFFREY PETERS,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CV-645

ORDER:

IT IS ORDERED that Appellant's motion to dismiss for lack of subject-matter jurisdiction, count no. 3 of the indictment, is DENIED.

IT IS FURTHER ORDERED that Appellant's motion for discovery is DENIED.

IT IS FURTHER ORDERED that Appellant's motion for federal protection against the State of Texas is DENIED.

IT IS FURTHER ORDERED that Appellant's motion for a certificate of appealability is DENIED. In a lengthy opinion, the district

Appendix D

court rejected Peters's claims because they were unexhausted, procedurally defaulted, or failed on the merits. Peters request for a certificate of appealability does not address the reasons listed by the district court. He instead argues he is actually innocent, but even if that could overcome some of the procedural rulings, Peters has not shown that any newly discovered evidence would make it more likely than not that no juror would have convicted him. Because Peters has not shown that the district court's ruling is debatable, a certificate of appealability should not issue.

IT IS FURTHER ORDERED that Appellant's motion to admit new evidence with unfiled supplemental documents is DENIED.

IT IS FURTHER ORDERED that Appellant's emergency request for relief is DENIED.

IT IS FURTHER ORDERED that Appellant's motion for whistle blowers protections against state retaliation is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to expedite the appeal is DENIED.

IT IS FURTHER ORDERED that Appellant's motion for bail pending appeal is DENIED.

IT IS FURTHER ORDERED that Appellant's motion for the removal of the strikes obtained is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to appoint counsel and a private investigator is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to change venue is DENIED.

IT IS FURTHER ORDERED that Appellant's motion for special emergency injunctive relief is DENIED.

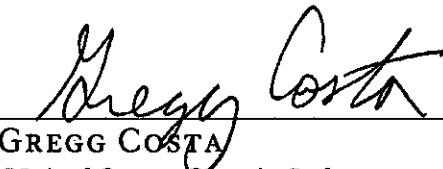
IT IS FURTHER ORDERED that Appellant's motion for an evidentiary hearing upon reversal is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to curb criminal interference by the defendants stopping the submittal of Appellant's evidentiary exhibits from being submitted to the Fifth Circuit is DENIED.

IT IS FURTHER ORDERED that Appellant's motion for leave to submit supplemental evidence is GRANTED.

IT IS FURTHER ORDERED that Appellant's motion for leave to submit supplemental evidence with unfiled supplemental document is GRANTED.

IT IS FURTHER ORDERED that Appellant's motion to admit supplemental evidence is GRANTED.



GREGG COSTA
United States Circuit Judge

United States Court of Appeals for the Fifth Circuit

No. 19-20717

MICHAEL GEOFFREY PETERS,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CV-645

Before JONES, COSTA, and WILSON, *Circuit Judges.*

PER CURIAM:

A member of this panel previously denied appellant's motions to dismiss for lack of subject-matter jurisdiction, for discovery, for federal protection against the State of Texas, for a certificate of appealability, to admit new evidence, for emergency request for relief, for whistle blowers protection against State retaliation, to expedite the appeal, for bail pending appeal, for removal of strikes obtained, to appoint counsel and a private investigator, to

No. 19-20717

change venue, for special emergency injunctive relief, for an evidentiary hearing upon reversal, and to curb criminal interference by the defendants stopping the submittal of Appellant's evidentiary exhibits from being submitted to the Fifth Circuit.

IT IS ORDERED that the motion is DENIED.

ENTERED

September 26, 2019

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL GEOFFREY PETERS, §
TDCJ #2019190, §
§

Petitioner, §
§

v. §
§

CIVIL ACTION NO. H-18-645

LORIE DAVIS, §
§

Respondent. §
§

OPINION AND ORDER

State inmate Michael Geoffrey Peters (TDCJ #2019190) filed a petition for a writ of habeas corpus by a person in state custody under 28 U.S.C. § 2254. Respondent, Lorie Davis, filed a motion for summary judgment. Peters (hereinafter, “Petitioner”) filed a response.

I. Background and Petition

On October 21, 2014, a Montgomery County grand jury returned an indictment against Petitioner in Case No. 14-07-08207-CR, charging him with three counts of retaliation. Dkt. ##43-21 at 31. On April 27, 2015, the trial court called the case to begin pre-trial motions and voir dire and Petitioner’s attorney (hereinafter, “Duckworth”) announced that Petitioner had again determined that he wanted to fire Duckworth and represent himself. *See* Dkt. #43-14 at 4-16. After discussing the issue with Petitioner, the trial court allowed Petitioner to represent

Appendix C

himself and trial commenced with voir dire. *Id.* Shortly thereafter, Petitioner reinstated Duckworth as counsel. *Id.* at 77. On April 30, 2015, a jury found him guilty of counts one and three. *See* Dkt. #45-35 at 276. 281. As a result, the 221st District Court in Montgomery County, Texas, entered a judgment against Petitioner for thirty-five years' imprisonment. *Id.* Petitioner appealed the judgment and the Texas Ninth District Court of Appeals affirmed the judgment on June 1, 2016. *See* Dkt. #43-3.

The intermediate appellate court summarized the facts presented at trial, as follows:

Lieutenant Wakeman with the Texas Rangers testified on behalf of the State. In June of 2014, the Montgomery County District Attorney's Office contacted Wakeman regarding "a potential threat towards Judge Tracy Gilbert[,"] and the district attorney's office advised Wakeman "of some videos that had been posted on YouTube that were threatening in nature[]" and available to the public. Wakeman explained that in the YouTube videos the speaker identified himself as Peters and provided his name and address. After Wakeman compared the driver's license photograph of Peters to the videos, she determined that Peters was the individual in the YouTube videos. Wakeman testified that according to the videos, Peters "had had some sort of a ... divorce and a child custody trial []" in Judge Gilbert's family court, and Peters "was, obviously, not pleased with the outcome."

The State introduced into evidence Exhibit 1 which included a compilation of many hours of Peters's YouTube videos. Peters made no objections to the admission of Exhibit 1. Several segments of the videos were played for the jury. Wakeman testified that the YouTube videos were posted online starting around February 2013, when Peters's family law case was still pending, and the YouTube videos continued to be posted online through June 22, 2014. Wakeman agreed that Peters was "lashing out" at Judge Gilbert, a doctor from Houston and her husband, another judge who also presided over Peters's case,

the Texas Medical Board, Governor Perry, and the Baylor Medical System.

One portion of Exhibit 1 that was played for the jury included a YouTube video posted by Peters on February 21, 2013. Wakeman identified Peters as the person in the video. Wakeman explained that Peters appeared to be talking about his divorce case in the 418th District Court. Wakeman testified that another YouTube video dated March 17, 2013, and posted by Peters, was titled "Lies and Fraud and Children's Medical Records[,]” wherein Peters spoke about picketing at Texas Children's Hospital and that the hospital served him with a no trespass warning for the hospital. According to Wakeman, a May 31, 2013 YouTube video posted by Peters was titled "This is a Promise[.]” Wakeman was concerned about the "This is a Promise" video because it was directed at a doctor at Texas Children's Hospital who Peters claimed had done something that angered him with respect to the family law case. Wakeman testified that the video post amounted not just to a threat, but constituted a "promise [.]” Wakeman also testified about the nature of other videos. According to Wakeman, in some of the YouTube videos Peters often would ask people to donate money, Peters talked about a doctor with whom he was upset and who had treated his son, and Peters made requests such as asking the President to "clean up" the "corruption" in Texas courts and the medical system. Wakeman testified that one of the two videos she was contacted about initially was titled "Please help me decide if I should go to prison[.]” and it was posted on June 10, 2014. A segment of that video was also played for the jury. Wakeman explained that this video stood out because "the title in and of itself says something that, basically, he's considering going to prison for something[.]” and that a person has to commit a crime to go to prison.

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A portion of another video, also dated June 10, 2014, titled "Stealing children through lies[.]” was also played for the jury. Wakeman explained that therein Peters states that "whatever I do next I am sure will have serious consequences[]” and that Peters will "[r]isk [his] life again like [he] did in Iraq." Wakeman agreed that these statements sounded like he was making the statements in a threatening manner. Wakeman also agreed that Peters's statements that "You wonder why people go nuts in this Country, all of a sudden they go off; ... you're not stealing my son and getting away with it," and, "You give me very little choice and I can't sit back and let you steal my only son[.]” appeared to be a threat to the people Peters believed had

wronged him. Additional segments of other YouTube videos from Exhibit 1 were played for the jury, including part of a video posted June 13, 2014, titled "Judge Tracy Gilbert child molester[.]"

According to Wakeman, the district attorney's office also notified Wakeman about an online comment by a person with the same profile picture as Peters's YouTube account. Wakeman said the comment was posted to a Yahoo news article about two Las Vegas police officers who had been ambushed and killed by two gunmen. Wakeman testified that Peters's comment "call[ed] the people who had killed the police officers heroes and stated that he wished he would have been there to see the blood run from their veins, or their bodies, their stinking bodies[.]" According to Wakeman, she factored this comment into her investigation because its violent nature, coupled with the videos Peters had posted, "gave sort of [an] indication what his state of mind was at that point." Wakeman testified that there had been "[a]n escalation in events from the first videos that were posted on YouTube through the date of the last phone calls to Judge Gilbert's house."

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Wakeman learned that Peters had called Gilbert's residence on June 14, 2014, and that Peters spoke with Gilbert's wife. Wakeman spoke with Judge Gilbert's wife about the phone call. Judge Gilbert also advised Wakeman that Peters called Gilbert's residence again on July 26, 2014, and Judge Gilbert told Peters not to call his residence again. Wakeman explained that Judge Gilbert told Wakeman that Peters called two more times that day and left two messages. Judge Gilbert forwarded three photographs to Wakeman, each showing a display of a telephone number that registered on Judge Gilbert's caller ID when Peters called Judge Gilbert's home. Judge Gilbert also provided Wakeman with two audio recordings of the voicemail messages Peters left. Phone records for a phone number in the name of "Michael Peters[.]" were admitted into evidence. Wakeman testified that she listened to the two voicemails and that in one of the voicemails it sounded like the caller said, "see you soon." According to Wakeman, the phone number on Judge Gilbert's caller ID matched Peters's phone number and the phone records showed calls from Peters's phone number to Judge Gilbert's phone number on July 26, 2014. After reviewing Peters's YouTube videos, Wakeman was able to identify Peters as the caller that had left the voicemails.

Wakeman agreed that when determining whether Peters was a legitimate threat, she considered the YouTube videos, the statements Peters made in the past, the comments regarding other people involved,