

No. 21-5702

ORIGINAL

Supreme Court, U.S.
FILED

AUG 31 2021

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IN THE
SUPREME COURT OF THE UNITED STATES

RONALD L. WEBSTER— PETITIONER
VS.

SCOTT DAUFFENBACH, Warden, and PHILIP J. WEISER, Attorney
General of the State of Colorado— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Tenth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR

CASE) PETITION FOR WRIT OF CERTIORARI

Ronald L. Webster (CDOC#52775)

(Your Name)

Fremont Correctional Facility (FCF)

(Address)

Canon City, CO 81215

(City, State, Zip Code)

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QUESTION(S) PRESENTED

Whether the United States Court of Appeals Erred by failing to Issue a Certificate of Appealability (COA) Pursuant to 28 U.S.C. § 2253(c)(1)(A), because Webster can show both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." LIST OF PARTIES *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Mr. Webster answers in the affirmative.

[X] 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:

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Small v. Endicott, 998 F.2d 411 (7th Cir. 1993)

Overton v. United States, 925 F.2d 1282, 1284 (10th Cir. 1991)

Haines v. Kerner, 404 U.S. 519 (1972)

STATUTES AND RULES

28 U.S.C. § 2253
28 U.S.C. § 2244
28 U.S.C. § 2254

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 *Webster v. Dauffenbach*, 2021 U.S. App. LEXIS 15073; or, [] has been designated for publication but is not yet reported; or, [X] is unpublished.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 *Webster v. Dauffenbaugh*, 2021 U.S. Dist. LEXIS 97569; or, [] has been designated for publication but is not yet reported; or, [X] is unpublished.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 May 20, 2021.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 7, 2021, and a copy of the order denying rehearing is unavailable due to the fact that the Tenth Circuit did not register its filing.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

At issue is whether the Tenth Circuit should have issued a COA pursuant to 28 U.S.C. § 2253(c)(1)(A), with respect to an application of a procedural bar in a federal habeas action, precluding review of claims not properly raised in the state courts due to their failure to construe Webster's pro se postconviction pleadings in a liberal manner..

STATEMENT OF THE CASE

Petitioner was arrested and charged for alleged sexual and drug-related offenses involving two teenage girls. He was accused of having engaged in sexual activity with the girls in exchange for providing them with drugs. A jury found him guilty of one count of sexual assault on a child pattern of abuse, one count sexual assault on a child, two counts of contributing to the delinquency of a minor, and one count of distributing of a controlled substance. The trial court sentenced him to an aggravated term of twenty-four years to life in the Colorado Department of Corrections.

On direct appeal before the Colorado Court of Appeals (CCA), Webster's conviction and sentence was affirmed, *People v. Webster*, (Colo. App. No. 11CA2278, Aug 14, 2014) (not published pursuant to C.A.R.35(f)). The Colorado Supreme Court (CSC) denied his petition for a writ of certiorari on March 23, 2015.

On August 12, 2015, Webster filed a State Post-Conviction Motion (SPCM) in accordance with Colo. R. Crim. Proc. Rule 35(c). The petition was characterized as voluminous, both multi-layered and generalizing with respect to the assignment of alleged errors, i.e., trial court, trial and appellate counsel. Webster alleged actual innocence also as a basis for reversing his conviction.

On December 31, 2015, the State Post-Conviction Court (SPCC), issued an Order summarily dismissing the SPCM, based on its "distilling" the substance into several indistinct claims, as well as rejecting several on procedural grounds. Webster did not seek a reconsideration of the Order as the habeas court indicated he should have though he did appeal.

On appeal, the CCA refused to address these issues not specifically headed as "ineffective appellate counsel" claims, suggesting that Webster should be held to a higher standard, and that it would be improper to construe his SPCM broadly (*Webster*, No. 16CA0808). The CCA did not cite to *Haines v. Kerner*, 404 U.S. 519 (1972). In fact the CCA faulted Webster by insinuating that he abandoned the issue:

"At no time prior to filing his notice of appeal did Webster advise the postconviction court that it had misconstrued his IAC claims against his appellate counsel because he did not know he did until the COA ruling. Because Webster is not an attorney he did not have the knowledge that he could ask the State Court to reconsider its ruling accordingly. As a result, the postconviction court was not given an opportunity to consider whether appellate counsel was ineffective for the reasons Webster now raises."

Webster, No. 16CA0808 at 8.

The Colorado supreme court denied the petition for a writ of certiorari on June 3, 2019.

On December 9, 2019 Webster filed the 28 U.S.C. § 2254 Application, asserting the following claims with subparts:

- (1) Claim 1(a)-Ineffective assistance of trial counsel for failure to obtain DNA and child forensic interviewing experts, and for not objecting to providing the jury with an audiotape interview (failure by counsel to obtain DNA and child forensic interviewing experts);
 - (b) Ineffective assistance of appellate counsel by failing to raise the issues of DNA confrontation violation; admission of res gestae evidence; and allowing the jury unfettered and unsupervised access to an audiotape interview during deliberations.
- (2) Claim 2(a)-Trial court error by giving improper responses to jury questions that suggested the jury was having trouble reaching a unanimous verdict and was deadlocked, in violation of due process, a fair trial, and the right to an impartial jury; and
 - (b)-Ineffective assistance of trial counsel based on the trial court error set forth in claims 2(a).

On December 11, 2019, the U.S. District Judge directed Respondents to file a Pre-Answer Response and to address the affirmative defenses of timeliness under 28 U.S.C. § 2244(d), and exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A). Respondents filed a Pre-Answer Response on January 29, 2020. Webster filed a Reply on March 27, 2020.

The Habeas court reviewed the Pre-Answer Response and the Reply and filed an Order for Answer in part on June 22, 2020. In the June 22 Order, the Court dismissed Claim 1(b) with prejudice as procedurally defaulted in State Court and barred from federal habeas review. The Court found that Claims 1(a) and 2(a) are exhausted and instructed Respondents they may include additional arguments concerning the merits of Claim 2(b) in the Answer. *Id.* Respondents were directed to file an answer in compliance with Rule 5 of the Rules Governing Section 2254 Cases that fully addresses the merits of the remaining claims. On August 21, 2020, Respondents filed an Answer. In fact, the Habeas Court mischaracterized the nature of the claims it would consider,

by addressing the claims the applicant had contended were errors the appellate attorney committed by not raising them on direct appeal, of which both the SPCC and CCA faulted Webster for not presenting them squarely in the 35(c) petition. It should be noted that Webster's trial attorney, Martin Stuart, Esq., submitted an Memo (see Exhibit A), which detailed the issues for consideration on direct appeal, though it was obvious that the appellate attorney completely overlooked this Memo by selecting only one single issue, which was highly dubious of its merit. Webster emphasized that because of this omission, that his SPCM was effectively a substitution for his direct appeal. This was an explicit rationale for consideration of the claims of error, resulting in his wrongful conviction.

However, it was construed that the claims were inappropriately contended against the trial attorney when the trial attorney preserved those issues in trial by objecting to them which caused the Respondents to seek an order of clarification, in which they "did not intend to concede that such claims against trial counsel are exhausted." Additionally, the Respondents went further by "respectfully request[ing] an order of clarification allowing Respondents an opportunity to respond to the claims as interpreted by the court that was never done." See Answer at 5, 6, and 7.

Despite this apparent confusion, and according to Webster and his records, he has never received any such order of clarification by the Habeas Court, nor a follow up by the Respondents. It is likely this issue was ignored causing Webster to miss his opportunity to respond to that order. Nonetheless, on January 4, 2021, Applicant filed a pleading titled, "Narrative Summary of the Evidence," which addresses the credibility of the DNA evidence ghost hearing that he appeared at that has been *said* it never happened in the morning of July 8, 2011.

Thereafter, the habeas court reviewed the Application, the Answer, the state court record, and the January 4, 2021, pleading, determining that the Application can be resolved on the parties' briefing without an evidentiary hearing. On January 19, 2021, the habeas court issued an Order that the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, is dismissed with prejudice. Further Ordering that the issuance of a Certificate of Appealability pursuant to 28 U.S.C. § 2253(c) is denied.

Thereafter, Webster immediately filed a pleading marked as "Motion for Post-Judgment Relief" contending that the habeas court committed clear error for having dismissed Claim 1(b) as procedurally defaulted, and that the habeas court should have construed whether this claim was properly presented in the SPCM, and thus satisfying the fair presentation requirement. On February 16, 2021, the habeas court issued an Order denying Webster's post-judgment motion, reasoning, principally, that Claim 1(b) was dismissed because it was

not raised in the SPCM before the state district court and, therefore, it was not properly exhausted and is now procedurally defaulted in state court. Webster has contended all along that he did in fact raise the claim 1(b), albeit in a haphazardly manner, and that had either the state courts or habeas court construed it liberally, *vis a vis* the Haines Rule, so aptly named for the seminal decision that this Court unanimously held in *Haines v. Kerner*, 404 U.S. 519 (1972), that a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.*, at 520-521, quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). While this holding directly applied to whether a civil complaint states a cognizable § 1983 claim, Webster now asks this Court to mandate that the Colorado district and appellate court must apply the Haines Rule when considering pro se postconviction pleadings, since had they done so here, Webster's habeas claim 1(b) should have considered on its merit.

On April 7, 2021, Webster filed his "Combined Opening Brief and Application for a Certificate of Appealability" of which the Tenth Circuit issued an Opinion on May 20, 2021, denying the request for a COA, and thereby dismissing the matter. Webster promptly filed a Petition for rehearing, which was denied July 7, 2021. The instant petition now follows.

REASONS FOR GRANTING THE PETITION

There exists the need for guidance from this Court to set forth, with respect to particular clarity, that the state district and appellate courts assessing postconviction pleadings filed by pro se litigants be construed liberally, thereby applying the Haines Rule, as well to the lower federal habeas court's review of Webster's pro se filings in state court. Because the Haines Rule is often applied in civil actions, there is no mandate from this Court that the State of Colorado apply the Haines Rule when assessing pro se postconviction relief pleadings, of which must be construed broadly.

Specifically, whether Webster's *pro se* state court filings should have been construed in a liberal manner, so as to accord him substance over form, thereby demonstrating that jurists of reason would in fact have found it debatable that he properly raised his federal habeas claims before the state courts for purposes of fair presentation and exhaustion, thus alleviating him of the procedural bar imposed against him.

The issue here concerns whether the Order, dated January 19, 2021, finding that habeas claim 1(b), which contains three points of contention, i.e., DNA confrontation Clause violation, inadmissible *res gestae* evidence, and impermissible use of audiotape, were procedurally barred, was proper, and whether Webster properly demonstrated cause and prejudice for his procedural default. See *Coleman v. Thompson*, 501 U.S. 722, 749-50 (1991).

Here, the issue turns on whether, after a careful reading of his poor syntax and sentence construction and or his unfamiliarity with pleading requirements may have been missing an important element that may not have occurred to him in his 35(c) motion. Webster did in fact raise the issue of ineffective assistance of appellate counsel for only raising one claim in his direct appeal and failing to raise all the other claims, as raised on the appeal of the denial of the postconviction motion. The habeas court laid blame on trial counsel ineffectiveness, though it was incorrect, given that the appellate lawyer was to blame. What added to this confusion, was the fact that the habeas court misapplied the context of the claim as indicated by the Respondents: "the explanation of claims in the [habeas] order to answer appears to differ slightly from the claims as explained in the petition and in Respondent's pre-answer response. Specifically, the order's description of claim 1(a) includes a claim of ineffective assistance of trial counsel based on a failure to 'raise the issues of DNA confrontation violation, *res gestae* evidence, and jury access to an audiotape interview.'" As such, the Respondents correctly pointed out that the DNA confrontation violation and *res gestae* evidence was asserted only as representing ineffectiveness by appellate counsel". Answer at p 4. The significance of the mischaracterization by the habeas court when reviewing the petition, is that audio tape interview claim was considered under

Martinez v. Ryan, 566 U.S. 1, 17 (2012), but not the DNA confrontation and res gestae claims. That is these three issues are part and parcel of the ineffective assistance of appellate counsel issue Webster had asserted first in his SPSM, of which the SPCC rejected based on the fact that he failed to include the claims as ineffective assistance of counsel, and again more succinctly on the SPCC's order denying his SPCM. The CCA simply faulted him for not squarely asserting the three claims under the heading of "ineffective assistance of appellate counsel." However, pertinent here, is the fact that Webster did in fact assert that appellate counsel was ineffective, but no court has ever actually applied the Haines Rule, with respect to construing the petition in a liberal manner, and thus, the Tenth Circuit was in err by not considering whether jurists of reason would find it debatable that Webster's SPCM (when construed liberally) did in fact properly assert the procedurally defaulted claims.

Thus, Webster argues that his pro se postconviction motion should have been held to a less stringent standard than those drafted by attorneys, and a federal habeas court must consider Webster's argument that his SPCM required a liberal construance. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); and *Cruz v. Beto*, 405 U.S. 319 (1972). Therefore, Webster's habeas action should not have been dismissed on that front.

Even under this less stringent standard, however, the pro se SPCM nonetheless may be subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means "that if the court can reasonably read the pleadings to state a valid claim on which [Webster] could prevail, it should do so", but a district court may not rewrite a petition to include claims that were never presented. *Barnett v. Hargett*, 174 F.3d 1128 (10th Cir. 1999). Likewise, a court may not construct Webster's legal arguments for him, *Small v. Endicott*, 998 F.2d 411 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985), cert. denied, 475 U.S. 1088, 106 S. Ct. 1475, 89 L. Ed. 2d 729 (1986). Webster contends, however, that all that was required is a liberal reading, which would have shown that he did in fact present the claim, squarely.

The Tenth Circuit Judge Logan, "believe[d] that this rule means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, "his confusion" of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." *Hall v. Bellmon*, 935 F.2d 1106, 1110 n.3 (10th Cir. 1991) (The Haines rule applies to involving a pro se litigant, including all proceedings § 1915(d) and summary judgment proceedings. See, e.g., *Overton v. United States*, 925 F.2d 1282, 1284 (10th Cir. 1991) (liberally construing pro se pleadings in review of summary judgment). However, there is nothing to suggest that a habeas court

should apply the so-called Haines Rule, when reviewing a pro se SPCM. Hence, the need for this Supreme Court to set forth proper guidance, since the state district and appellate court, federal habeas court and the Tenth Circuit have completely ignored it.

There "**has not been one court**" amid this entire postconviction and appellate process that has allowed Webster the opportunity to correct or amend his deficiency in his pro se SPCM. The claim 1(b), which alleges an error of a constitutional magnitude, it would be a miscarriage of justice not to allow them to be reviewed for their merits because Mr. Webster would be granted a new trial. Webster understands the courts are not an advocate of a pro se litigant and does not expect them to be, all Webster is asking for is a fair process with his pleadings to be liberally construed and not held to a skilled trained attorney standard. Thus, this Court must intervene by extraordinary edict, mandating that the State District and Appellate Courts, as well as the lower Federal habeas court, to allow a pro se applicant to correct a deficiency while applying the Haines Rule when assessing pro se postconviction pleadings. It would be a travesty and a miscarriage of justice to allow an innocent person to be in prison for a constitutional violation that was not reviewed because of an error in their pleadings. So help me GOD!

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ronald L. Ritter

Date: August 31, 2021