

No. 21-5533

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEXTER DURRELL COOPER,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

FILED
Jan 21, 2022
DEBORAH S. HUNT, Clerk

O R D E R

Before: GILMAN, KETHLEDGE, and MURPHY, Circuit Judges.

Petitioner Dexter Durrell Cooper appeals from the district court's denial of his motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. He moves for release pending appeal and to expedite a decision on that motion. In addition, he proffers six memoranda in support of his motion for release. The government responds in opposition to release and Cooper replies.

Federal Rule of Appellate Procedure 23 governs release from the denial of a motion to vacate. To obtain release, Cooper must demonstrate not only that he raises a substantial claim on appeal, but also show "some circumstance making th[e] application exceptional and deserving of special treatment in the interests of justice." *Aronson v. May*, 85 S. Ct. 3, 5 (1964) (Douglas, J., in chambers); *see also Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990). A federal prisoner who appeals the denial of a motion to vacate under § 2255 must first obtain a certificate of appealability. 28 U.S.C. §§ 2255(d); 2253(c)(1). The court will issue a certificate of appealability only if a

APPENDIX A case# 21-5533

No. 21-5533

-2-

movant makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Cooper's central argument in support of release is that the government failed to disclose additional information relating to the 911 call and incident report surrounding his arrest, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). He specifically points to the fact that the call was "officer initiated." The government responds that, even if it was withheld, the additional documentation is immaterial because the responding officer testified that he was responding to the sound of nearby gunshots when he located Cooper.

Cooper was denied a certificate of appealability by the district court, which strongly suggests that he has not raised a substantial issue on appeal. *See* 28 U.S.C. § 2253(c). In addition, the government persuasively argues that the alleged new evidence does not undermine the district court's denial of Cooper's motion to suppress—a denial that we affirmed. His additional assertion of actual innocence is unavailing in light of his guilty plea.

The motion for release pending appeal is **DENIED**, and the motion to expedite is **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX A Case # 21-5533

Noth

IN THE

Bismillah

SUPREME COURT OF THE UNITED STATES

DEXTER D. COOPER - PETITIONER

VS.

Date: 4-17-2022

UNITED STATES SIXTH CIR
COURT OF APPEALS - RESPONDENTS

MEMORANDUM IN SUPPORT:

Motion For WRIT OF
CERTIORARI Per
RULE 11

case # 21-5533 PENDING
IN U.S.C.A. 6 Since 5-27-21

Hon. SUPREME COURT OF THE UNITED STATES, petitioner Cooper Motions this Hon Court to exercise judicial discretion per to Rule 10 due to the fact U.S. District Court & U.S. Sixth Cir Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Hon. Court's Supervisory power.

Supreme Court Rule 11 States that Court will grant pre-judgment Certiorari only in a few, extraordinary cases.

Supreme Court Rule 11 sets a two-pronged standard for when the Supreme Court will consider a grant of Certiorari in a case prior to a judgment in the United States Court of Appeals in which it is pending. To Secure pre-

Judgment Certiorari in a case in the United States Court of Appeals, the petitioner must show:

- The case is of such imperative public importance that it justifies a deviation from normal appellate practice; and
- The case presents facts that make immediate determination by the Supreme Court imperative.

Petitioner case stems from a Terry Encounter in the early morning hours of Sept. 22, 2016. Unit 220 D SGT. Palmer was parked in the middle of the street on OAK Hill Dr. Cooper stops at the 3-way stop sign & turns right on to OAK Hill the opposite direction Unit 220 D SGT. Palmer faced. The ofc. makes a U-TURN & began to follow from a far off distance. Cooper turn blinker on & makes a left at the Second Street he approached which was Carlisle & pulled into the driveway at this residence 443 Carlisle. Unit 220 D pulls up short after Cooper exited his vehicle & standing on the door steps of 443 Carlisle. Palmer exited his Patrol car & stated that he was investigating a call of shots fired & ofc & Palmer asked for Cooper's ID & never returned it. Cooper was seized at that point.

Terry v. Ohio 392 U.S. 1 states that an officer must have an articulate reasonable suspicion that a crime has occurred, about to occur or is in afoot. Palmer had neither requirement. Cooper didn't find out until later, much later that the sole charge of Arrest that night was far more serious than what Cooper thought was his Arrest charge at that time. Cooper was told that he was under arrest for the possession of drugs alleged to have been found in his pocket after a total of 3 Frisk obvious not just searching for weapons per Terry. Brady v. Maryland

373 U.S. 83 this Hon. Court held @ Footnote [3] We Now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment irrespective of the Good faith or bad faith of the prosecution. The principle of Mooney v. Holohan 294 U.S. 103 is NOT punishment of Society for Misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair. Please see attached

Exhibit #5 ~~Initial TV R#325 App. For Certificate of Appellability @ Arrest Information:~~

Arresting Officer: Brill (Affiant of Search warrant)

Arrest Date/Time: 09/22 2016 : 02:00 AM

Book Date/Time: 09/22 2016 : 02:58 AM

See: Current Charge: C.C.D.W. (Carrying. Concealed. Deadly. Weapon.) petitioner Cooper's Plea agree factual basis a(b) "Officers Applied for a Search warrant"

See: Attached Exh# 28 Search warrant Affidavit approved @ 3:43 PM 9-22-16
IN a FRANKS hearing, the Court is asked to determine whether the involved police ofc lied in obtaining a search warrant. FRANKS v. Delaware, 438 U.S 154 (1978). A defendant is entitled to a FRANKS evidentiary hearing if he (1) "MAKES a substantial preliminary showing that a False Statement KNOWINGLY & INTENTIONALLY, or with reckless disregard for the truth was included by the affiant in a warrant affidavit & (2) "the allegedly false statement is necessary to the finding of probable cause".

The entire affidavit is False & meets FRANKS where petitioner is entitled to a FRANKS evidentiary hearing. Please see attached Exh#1 cover pg. of Dexter D. Cooper's Reply to United States Response in Opposition To Cooper's 2nd Motion for Release Pending Appeal where petitioner Cooper Presented Record Evidence of Photo's from AFFiant's personal

Body Cam & his direct observation prior to Signing & Drafting the Affidavit for Search Warrant. This Hon. Court held in United State v. ARVIZU 534 U.S. 266 that Pertinent Circumstances included personal observations, the photo's are just that. Additionally 28 U.S.C.S. § 2255(b) Prompt hearing is also required due to the fact the Motion, files & Records of the case pg R#36 Body Cam does not Conclusively show that the prisoner is entitled to NO Relief; Factual Dispute Magis Found Cooper's Ineffective Counsel claim #6 was — unsupported by the Record @ R#318 ID 2994-2995 & Dist. Court Adopted that Error § Sixth Cir has yet to Rule on C.O.A.

Also please see: Scott V. Harris 550 U.S. 372 where this Hon Court held "The Supreme Court Found that a videotape capturing the events in question quite clearly contradicted the version of the story told by the driver & adopted by the Court of Appeals". In petitioner Cooper's case videotape eg. Body CAM quite clearly contradicted the findings of Magis Atkins that Dist. Court adopted & Sixth Cir after over Approx 9 Month AFTER AUSA Reply to Cooper's App. For C.O.A. has yet to Rule for pass the 120 day limitation of 28 U.S.C. § 2266 Limitations Periods for Determining Applications & Motions.

In Appendix (B) pg 4 of Ground 1 Brady claim last par Magis states that "Cooper does not show that ANY Brady evidence was presented to him after his direct appeal see: Attack OFFender Index Exh# 5 & several More Exh# @ R# 289 that were Brady Suppressed. See: Strickler v. Greene, 527 U.S. 263 eg OFFender Index WAS suppressed.

The video photo's in Exh# one Factually disputes what the Magis Found Unsupported, that the Dist Court Adopted & Sixth Cir has yet to Rule on See: Townsend v. Sain 372 U.S. 293 factual dispute & A Federal Dist. Court must grant an evidentiary hearing where the state court has not actually reached & decided the issues of Fact tendered by the applicant & Necessity of hearing 1-6 Specifically #3-6

All Gov. witnesses testified 7-10-17 that 224A Mascue made the Terry Stop on BRYAN & Glenn & Palmer testified how "I heard him eg (224A Mascue) make a traffic stop on the radio when I first got out with Mr. Cooper. So I think as I was making contact at the house BRYAN & Glenn Place". See: Dist. Court R# 202 @ line 20-25 ID# 1479. See: Pyle v. Kansas & suppression of evidence ie The offender Index suppressed & Palmer's location @ 12:38:19 R# 144-1 ID# 1132 that list Two stops & UFC. 46616 ie. Palmer 1st to Arr. at Both, this is b/c Palmer never changed the location with E-911 & Dispatch tracked his every move in real time See: Attached Exh# 144-1 #1133 @ 224A: VISUAL & 224A: LEFT ON BRYAN @ 12:38:37 ses responding to Dispatch announcement by Palmer @ 12:38:19 eg. TUDS & Limestone which is real time & location see attached L.P.D Response #3 explaining C.A.D. see R# 144-1 at ID# 1133 CAD System Narrative CHANGED Several times in effort to suppress dispatch pertinent info & later make perjury testimony to fit changes.

See: R#325 ID# 3050 @ OFFender Index in Case History of CS# 16f 2424
that the Judge was aware of contained Charge to be 7 when there was
legally only one the remaining 6 came from illegal search & seizure that was
UNreasonable per 4th. See: AGUILAR V. TEXAS 378 U.S. 108

The evidence in this case was obtained e.g. seized prior to ~~SEARCH~~
warrant by State authority See: ELKINS V. UNITED STATES, 523 U.S. 614

The Dist. Court is wrong & reasonable jury would clearly see that by
One look @ OFFender Index & the search warrant affidavit Both
attached See: SLACK V. Mc DANIEL, 529 U.S. 473

Certificate of Service


Dexter Cooper

I swear a true copy
has been mailed to Hon
U.S. Supreme Court Clerk
to provide to party of
interest.

Date 4-17-22

**Additional material
from this filing is
available in the
Clerk's Office.**