

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 02, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-30030 In re: Donald Williams
USDC No.

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Mary Stewart

By: _____
Mary C. Stewart, Deputy Clerk
504-310-7694

Mr. Donald L. Williams

United States Court of Appeals
for the Fifth Circuit

No. 22-30030

IN RE DONALD L. WILLIAMS,

Movant.

Motion for an order authorizing
the United States District Court for the
Eastern District of Louisiana to consider
a successive 28 U.S.C. § 2254 application

Before ELROD, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:

Donald L. Williams, Louisiana prisoner # 93824, moves for authorization to file a successive 28 U.S.C. § 2254 application to file an out-of-time direct appeal challenging his 1985 convictions for aggravated rape and aggravated kidnapping. He contends that he is entitled to such authorization because his trial counsel's deficient performance constituted cause for an alleged procedural default and that he has suffered prejudice therefrom.

Williams, however, has not made a prima facie showing that (1) his claims rely on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," or that (2) the factual predicate for his claims "could not have been discovered previously through the exercise of due diligence," and "the facts underlying the claim[s], if proven and viewed in light of the evidence as a whole, would

EXHIBIT - "B"

No. 22-30030

be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2). We therefore deny his motion. *See id.* § 2244(b)(3)(C).

Williams has unsuccessfully moved for authorization to file a successive § 2254 application five prior times. *See In re Williams*, No. 01-30064 (5th Cir. Feb. 15, 2001) (unpublished); *In re Williams*, No. 03-30358 (5th Cir. May 22, 2003) (unpublished); *In re Williams*, No. 05-30109 (5th Cir. Mar. 8, 2005) (unpublished); *In re Williams*, No. 06-30027 (5th Cir. Feb. 2, 2006) (unpublished); *In re Williams*, No. 06-30587, 22 (5th Cir. Sept. 7, 2006) (unpublished). We warned Williams that the continued filing of motions that do not meet the § 2244(b) standards may result in sanctions. *See Williams*, No. 06-30587 at 2. Williams has not heeded this court’s warning.

Accordingly, IT IS ORDERED that his motion is DENIED and a SANCTION IS IMPOSED. Williams is ORDERED to pay a monetary sanction in the amount of \$100, payable to the clerk of this court. The clerk is directed not to accept for filing from Williams any motion for authorization to file a successive § 2254 application until the sanction is paid unless he first obtains leave of court.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 19, 2022

#93824
Mr. Donald L. Williams
Louisiana State Penitentiary
General Delivery
Angola, LA 70712-0000

No. 22-30030 In re: Donald Williams
USDC No.

Dear Mr. Williams,

We have docketed the motion for authorization to file a successive petition, and ask you to use the case number above in future inquiries.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Monica R. Washington, Deputy Clerk
504-310-7705

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case No. 22-30030

In re Donald L. Williams,
Movant

12/22/21

Re: Donald Williams v. Timothy Hooper, Warden
LSP, Case No: 305-606 "A"
Writ of Habeas Corpus

Dear Clerk:

Enclose, please be advised you will find hereto attached to this letter, request for permission to file second and successive Writ of Habeas Corpus, petition for Writ of Habeas Corpus ad Testificandum and order, to filed under the above name and number cause, also will you please provide me with stamped copy of the same.

Sincerely

Donald Williams

Donald Williams #93824

TU, LSP

Angola, La., 70712

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DONALD WILLIAMS,
PETITIONER

VERSUS

TIMOTHY HOOPER, WARDEN
LOUISIANA STATE PENITENTIARY
RESPONDENT

REQUEST FOR PERMISSION TO FILE
SECOND SUCCESSIVE WRIT OF HABEAS CORPUS
PURSUANT TO 28 U. S.C. SECTION 2254



Donald Williams #93824

General Delivery

Angola, Louisiana, 70712

EXHIBIT - "A"

Now into court comes, Donald Williams herein after petitioner presents this Motion for Authorization to file a second or successive petition for Writ of Habeas Corpus. The petitioner admits that he has filed previous petitions for Writ of habeas corpus pursuant to 28 U. S. C. 2254 into the United States District Court, Easter District of Louisiana challenging the U. S. constitutionality of his 1983 aggravated rape and aggravated kidnapping conviction.

REASON FOR GRANTING PERMISSION

TO FILE SECOND OR SUCCESSIVE PETITION

Petitioner Donald Williams #93824 has comply with the court requiring defender to put all his claims into one appeal.

This narrows the grounds on which successful habeas claims can be made allowing claims only to succeed when the petitioner Donald Williams #9382 convictions were contrary to " clearly established federal law or an unreasonable determination of the facts in light of the evidence. 28 U. S. C. 2252.

Donald Williams argued that the state trial court had unreasonably applied clearly established federal law. Under 28 U. S. C. 2254 that being the U. S. Supreme Court decision Anders v. California, 386 U. S. 738 May 8, 1967, Cage Louisiana, 498 U. S. 39, 111 S. Ct. 328 1112 L. ed. 339 (1990); Martinez v. Ryan, 56 U. S. 1 (2012) which allows a petitioner to by pass a state post conviction court procedural bar because of counsel's errors. The State court's determination of procedur

bar was unreasonable and thus cannot stand.

CAUSE AND PREJUDICE


State procedural defaults can be excused if petitioner Donald Williams can establish a sufficiently good reason for suffering a procedural default (cause) and show that the default related to an issue or evidence important enough to have made a difference in the outcome (prejudice). Cause can be established by showing that the default was the result of the external force beyond the petitioner's Donald Williams control. Most often that will be done by showing facts that amount to ineffective assistance of counsel. Petitioner's Donald Williams appointed trial lawyer, Micheal Begoun, neglected to file a timely written motion for Direct Appeal, that can amount to cause for an untimely filing under State law. Prejudice is demonstrated by showing that the default involved something so important that it likely affected the outcome of the court proceedings in the lower courts. Prejudice requires a showing that the habeas claim in question had a reasonable chance of being granted had it been considered on the merits. Hence, one shows prejudice by proving up the merits of the claim in the same way that the petitioner Donald Williams would have done if the claim had not been procedurally defaulted.

Accordingly, if cause has been established, and if the petitioner Donald Williams has stated facts which, if true, would support the granting of habeas corpus, the petitioner, Donald Williams should be able to demonstrate prejudice sufficient to

overcome a procedural default. Until recently, a Federal Habeas petitioner couldn't rely on ineffective assistance of counsel by a habeas corpus attorney to establish cause and prejudice, because there was no right to counsel on habeas.

However, in *Martinez v. Ryan*, 566 U. S. 1, 132 s. Ct. 1309 (2012); the U.S. Supreme Court held that there is a constitutional right to effective assistance of counsel on a first habeas corpus petition. Many circuits have found that this right is available to State habeas litigants as well and applies to ineffective assistance of counsel on appeal as well as at trial.

The cause and prejudice standard articulated in *Martinez v. Ryan*, 566 U. S. 1 (2012), which allows a petitioner to by pass a State post- conviction courts procedure bar because of counsel's errors.


Donald Williams #9382
General Deliver
Angola, La., 7071

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONALD WILLIAMS

CIVIL DOCKET:

VERSUS

NO:

TIMOTHY HOOPER, WARDEN

SECTION:

PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM

The petitioner, Donald Williams, #93824, appearing herein through pro-se, respectfully represents to the court that he is indigent, is now confined in the Louisiana State Penitentiary, Angola, Louisiana, under the authority of the State of Louisiana in accordance with the laws thereof. Petitioner Donald Williams #93824, has filed a petition for habeas corpus relief in the Eastern District of Louisiana under the provisions of title 28, United States Code, Section 2254.

This matter has been allotted to the United States Magistrate Judge for an evidentiary hearing that has been set for on _____ 2021 at 2:00 p. m. before magistrate judge, _____, New Orleans, Louisiana.

It is necessary that petitioner Donald Williams #93824 appear at that time.

Wherefore, petitioner prays that this Honorable Court does forthwith order a writ of habeas corpus ad Testificandum issue to the Warden, Louisiana State Penitentiary, Angola, Louisiana requiring him to deliver or to have delivered the body of said petitioner Donald Williams #93824 to _____, New Orleans, La., at 2:00 p. m. On _____, 2021, in order to testify at the evidentiary hearing in this matter.

Respectfully Submitted this _____ day of _____ 2021.

Donald Williams
Donald Williams #93824 T.U.
Louisiana State Penitentiary
Angola, La., 7071

CERTIFICATE

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING PETITION FOR WRIT OF Habeas Corpus ad Testificandum has been served on Jason WILLIAMS, 619 s. White St. New Orleans, Louisiana 70119 by placing same in the U. S. Mail, postage pre paid, this _____ day of _____, 2021.

Donald Williams
Donald Williams #93824

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONALD WILLIAMS

CIVIL DOCKET

VERSUS

NO:

TIMOTHY HOOPER,

SECTION

ORDER

For the foregoing reasons:

It is ordered that a Writ of Habeas Corpus Ad Testificandum issue to Timothy Hooper, Warden Louisiana State Penitentiary, Angola, Louisiana, ordering him to deliver or to have delivered the body of petitioner Donald Williams #93824, who is presently incarcerated at the Louisiana State Penitentiary, Angola, Louisiana, to the courtroom of United States Magistrate Judge, 501 Magazine Street, New Orleans, Louisiana at 2:00 p. m. on the _____ day of _____ 2021.

It is further ordered that the Warden of the Orleans Parish Prison house said prisoner until the morning of _____, 2021 and that said petitioner be returned to the Louisiana State Penitentiary, Angola, Louisiana at the completion of said evidentiary hearing.

New Orleans, Louisiana, this _____ day of _____ 2021.

Magistrate Jud

WITNESSES FOR THE DEFENDANT

Mr. Craig Colwart -- Appeal lawyer
O.T.O.P
2700 Tulane Avenue
New Orleans, Louisiana 70119 - Ph.No. 821-8101

Miriam G. Waltner - Judge
4th Cir Court of Appeal
410 Royal Street
New Orleans, La. 70130

Mr. Michael Begoun -- Trial lawyer
818 Howard Avenue - Suite 100
New Orleans, La. 70113 - Ph.No. 569-9500

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONALD WILLIAMS

NO:

VERSUS

SECTION: _____

TIMOTHY HOOPER, WARDEN

JUDGE: _____

FILED: _____

APPLICATION FOR HABEAS CORPUS

Now into court, comes Donald Williams, petitioner herein, who represents this application as follows:

1.

States that petitioner has exhausted his state court remedies as to contentions presented herein.

JURISDICTION

Jurisdiction of this court is invoked pursuant to United States constitution Article III, Judicial power, Section 2, clause 1, Subject Jurisdiction.

Wherefore, petitioner prays that the foregoing application be deemed good and sufficient and that after all due proceedings are had, that judgment be rendered in his favor and that he be granted an out of time direct appeal.

Respectfully submit

Donald Williams

Donald Williams #9382

General Deliver

Louisiana State Penitential

Angola, La., 7071

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONALD WILLIAMS

SECTION:

VERSUS

JUDGE:

TIMOTHY HOOPER, WARDEN

Magistrate

MEMORANDUM OF LAW

Now into court, comes Donald Williams, petitioner herein, who respectfully submits the following memorandum of law in support of application for habeas corpus relief filed on behalf of petitioner in this case.

INTRODUCTION

This is an action for habeas corpus relief pursuant to 28 U. S. C. Section 2254 by Donald Williams, currently incarcerated at Louisiana State Penitentiary, Angola, Louisiana, 70712.

1.

See also: Madison v. Ward, 825 So. 2D 1245 (La. App. 1. Cir. 2002 (en banc))
Cockerham v. Cain, 283 F. 3d 657 (5th Cir. 2002) facts and case cited and State ex rel.
Comier v. State, 680 so. 2D 1168 (1990).

Martinez v. Ryan, 566 U. S. 1, 132 S. ct 1309 (2012).

RELEVANT FACTS

On January 10, 1985, the State filed in open court the grand jury indictment for (1) count of alleging violating La. R. S. 1442 and R. S. 14:44.

2. On August 22 1985, the jury returned a guilty verdict as to both counts.

3. On August 27, 1985, the trial court sentence defendant Williams to life imprisonment for count one (R. s. 14:42) count two (R> S> 14:44) to run consecutively. Defense counsel entered an oral motion for direct appeal to which the court granted conditioned upon a written motion for direct appeal be submitted.

4. The records received by defendant Williams under public records Act reflected counsel never submitted a written motion for direct appeal,

5. However, in Martinez v. Ryan, 566 U. S. 1, 132 S. Ct. 1309 (2012); the U. S. Supreme Court held that there is a constitutional right to effective assistance of counsel on a first habeas corpus petition. Many circuits have found that this right is available to State habeas litigants as well, and applies to ineffective assistance of counsel on appeal as well as at trial.

The record received by defendant Williams under public records reflects counsel filed a no merit brief that did not comply with Anders v. California, 386 U. S. 738, 18 I ed, 2d 493 97 S.ct 1396 (1967). Nor was defendant Williams advised in writing b

appellant counsel Craig Colwart of his right to file a pro-se brief resulting in unconstitutional forfeiture to have the following issue heard on Direct Appeal.

6. The records received by defendant Williams under public record reflect the Circuit Court of Appeal under Docket No. KA-5034. My sentence on the 9 day October 1986.

a. Trial counsel was ineffective by not objecting to the trial court's erroneous exclusion of simple rape and attempted rape both responsive verdicts pursuant to La. Cr. P. Article 814 (c). *State v. Brown* 214 La. 18, 36 so. 2D 624 (1940); *Neder v. U.* 527 U. S. 1. 7 (1999).

B. Trial counsel was ineffective by not objecting to the testimony of Dr. Fred Dal concerning the nature and cause of the victims injuries without the state having him qualified as an expert in general medicine concerning in part of what non- testifying witnesses said becoming substantive evidence in violation of *Idho v. Wright*, 497 U. S. 805, 822 (1990).

C. Trial counsel was ineffective for not objecting to the state's evidence that fails to prove a violation of La. R. S. 14:42; in so far as the victim testimony fails to show she was prevented from resisting the act by threats of great bodily harm, accompanied by apparent power of execution. *Jackson v. Virginia*, 443 U. S. 307 (1979).

D. Trial counsel was ineffective for failure to move to quash the indictment on Double Jeopardy in so far a conviction under La., R. S. 14:44 include the underlying

felony rape. *State v. Knowles*, 392 so. 2D 651 (La. 1980); *State v. Cooded*, 448 so. 2D 100, 102 (La. 1984) and *Neder v. United States*, *supra*.

7. La. C. Cr. P. Article 930.8 (a) is unconstitutionally as applied under the State-Federal due process equal protection clause in light of fact the State of Louisiana via prison officials has breached its constitutional duty to provide any competent assistance thru its legal program ran by various inmate counsel. In over 40 years resulting in the unconstitutional forfeiture under *Bounds v. Smith*, 430 U. S. 817 (1979) and *Casey v. Lewis*, 518 U. S. 343 (1996).

8. (A) La. C. Cr. P. Article 930.8 (A)(1) is unconstitutional as applied to petitioner Williams, who like petitioner *Cockerham v. Cain*, 283 F. 3D 657 (5TH Cir. 2002) convictions and sentence became final in 1986 due to same counsel (Colwart) filing a no merit brief in violation of *Anders v. California*, *supra* but unlike peititioner Williams, Cockerham was granted an out of time appeal in April 1994. Contrary to still applicable law. (Article 930. 8 (A)).

(B). Petitioner Williams, like Cockerham, is entitled to benefit from *Cage v. Louisiana*, 498 U. S. 39, 111 S. ct. 328, 112 L. ed. 2D 339 (1990). Since this same erroneous jury instructions was read to my jury. See: also LSA C. Cr. P. Article 804.

Petitioner Williams avers although his conviction and sentence on August 27, 1985, was deem legal at that time, because of appellate counsel (Colwart) failure to comply with *Anders* in filing the no merit brief and give petitioner Williams notice of his

right to file a pro se brief. This right was unconstitutional forfeited without due process. Cage v. Louisiana, supra renders his conviction and sentences unconstitutional as applied since the facts of Cockerham and petitioner Williams are exactly the same for purpose of out of time appeal and application of Cage to their conviction and sentence.

Wherefore, petitioner Williams, prays this court order Jason Williams, District Attorney for the Parish of Orleans show cause why said writ of Habeas Corpus should not be granted in the interest of justice.

Submitted by:

Donald Williams

Donald Williams #93824
General Delivery
Louisiana State Penitentiary
Angola, Louisiana, 70712

ORDER

Based on the foregoing Motion:

It is order that Jason Williams, District Attorney show cause before this Honorable Court on the _____ day of _____, 20__ at _____ o' Clock ____am., why said relief should not issue as provided by law.

It is ordered that a conflict free counsel be appointed for this indigent prisoner. It is further ordered that Warden Tim Hooper produce the physical body of Donald

Williams #93824 in this Honorable Court for said show cause hearing, signed
this ____ day of _____, 202__.

Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONALD WILLIAMS
93824

NO: _____

VERSUS

SECTION: _____

TIMOTHY HOOPER
WARDEN

MAG. JUDGE _____

REQUEST FOR PRODUCTION OF DOCUMENTS

Now into this Honorable Court comes petitioner Donald Williams #93824, who moves this court for productions of documents as an indigent prisoner in support of his 28 U. S. C. 2254 Habeas Corpus Application filed herein pursuant to State ex rel Bernard v. Criminal District Court, 653 So. 2D 1174 (La. 1995). State v. Cormier, 680 So. 2D 1168 (La. 1990) public records request.

Petitioner request the following documents:

- 1) Complete trial transcript
- 2) Written jury instructions
- 3) Poll of the jury
- 4) Copy of appellate counsel Colwart and the Clerk of Court for the 4th Circuit Court of Appeal full compliance with Anders including but not limited to proof of service upon me of the Anders Brief along with written notice of my right to file a pro se brief and the

4th circuits ruling affirming convictions and sentences.

5.) Copy of the Defense request for production of trial transcript and judgment denying the same.

Petitioner would like to bring his argument to rest herein.

This ___ day of ___ 20__

Donald Williams
Donald Williams #9382

SERVE:

- 1) Jason Williams- District Attorney
619 So. White St.
New Orleans, La., 70119
- 2) Donald Williams #93824
Louisiana State Penitentiary
Angola, La., 70712
- 3) Warden Timothy Hooper
Louisiana State Penitentiary
Angola, Louisiana, 70712