

APPENDIX 1

United States Court
of Appeals for the
fifth Circuit

No. 22-40353
Summary Calendar

United States Court of
Appeals Fifth Circuit

FILED

November 29, 2022

Lyle W. Cayce
Clerk

United States of America,
Plaintiff—Appellee,

versus

Isaac Kipkurui Biegon,

Defendant—Appellant.

Appeal from the United States District
Court for the Eastern District of Texas
USDC No. 4:00-CR-31-6

Before Stewart, Duncan, and Wilson,
*Circuit Judges. Per Curiam:**

Isaac Kipkurui Biegon was convicted by a jury of conspiracy to commit interstate transportation of stolen property and interstate transportation of stolen property. He was sentenced in May 2001, to concurrent nine-month terms of imprisonment, followed by a three-year term of supervised release.

* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

No longer in custody, in March 2022, Biegon filed a pro se petition for a writ of error coram nobis. The district court denied the coram nobis petition; further, the district court treated Biegon's "Amended Petition" as a motion for reconsideration, which it also denied.

On appeal, Biegon argues that the district court erred in denying coram nobis relief. He contends that he is innocent and that he was denied the right to a fair trial, resulting in a miscarriage of justice. Renewing issues raised in the district court, Biegon claims that, in connection with his convictions, the Government committed various forms of prosecutorial misconduct, that his trial counsel was ineffective in several respects, and that his retained appellate counsel failed to pursue his direct appeal. He avers that he became motivated to pursue these claims attacking his convictions in May 2021, after his application to enroll in a program to pursue a law degree was denied on account of his conviction record.

As the district court determined, Biegon filed a 28 U.S.C. § 2255 motion in 2001, which was dismissed without prejudice for failure to prosecute. The district court determined that Biegon was not entitled to coram nobis relief because he would have been aware of his claims concerning his conviction at the time he filed his § 2255 motion, and that Biegon had not shown that he could not have reasonably pursued his claims at that time.

On appeal, Biegon notes that he litigated his § 2255 motion on a pro se basis, and he asserts that he lacked the necessary legal knowledge to raise his claims. However, as we have noted, § 2255 motions "routinely involve pro se litigants."

Alford v. United States, 709 F.2d 418, 425 (5th Cir. 1983). Biegon fails to establish that sound reasons exist for his failure to seek appropriate relief earlier. *See United States v. Dyer*, 136 F.3d 417, 422 (5th Cir. 1998). Because the claims he now advances reasonably could have been raised in his § 2255 motion, Biegon fails to make the required showing of a complete miscarriage of justice. *See United States v. Esogbue*, 357 F.3d 532, 535 (5th Cir. 2004).

In view of the foregoing, the judgment of the district court
is

AFFIRMED.

JUN 27 2001

DAVID J. MALAND, CLERK
WRIT CR BY DEPUTY 06

4:01 CV 201

4:00 CR 31

Ex parte () UNITED STATES DISTRICT COURT
() FOR EASTERN DISTRICT OF TEXAS
Isaac Kipkurui Biegon () SHERMAN DIVISION

APPLICATION FOR POST CONVICTION WRIT OF HABEAS
CORPUS SEEKING RELIEF FROM GUILTY VERDICT.

To The Honorable Judge Said Court:

Now comes my name is Isaac Kipkurui Biegon, defendant in the above styled and numbered cause, by and through of Court record: I present this Writ of Habeas Corpus seeking relief from the guilty verdict and adjudication of guilt pursuant to the article v&8 of the Texas Constitution, and It's support of what I am showing in the following:

I FACTUAL HISTORY

1. I came to the United States in 1983 by F1 visa. While been here in this country, I attended Ranger Junior College and earned an Associate Degree. I continued my education at the University of Texas Arlington with a major in Economics. I earned a BS Degree in 1990. During the time I lived in this country. I was a business owner of Zookan Travel Agency.
2. On or about Feb. 1999, I was questioned by FBI about the matter of:
 Count 1-Conspiracy to commit Interstate Transportation of stolen property.
 Count 2-Interstate Transportation of stolen property.
3. One year after I was subsequently the order of this Court that the Court found me guilty and was sentenced to a period of 9 months in jail. This order was made on October 2000. After the Court ordered, I was soon in custody of Sherman Federal Facility. It is despite my courage and conviction of the American ideals of life, liberty and pursuit of happiness, that I remained locked up and denied my freedom. It remain tragic that I am a person who has suffered great personal losses including business, reputation and denied the essence of all that I fought for simple freedom and equal justice.
4. Honorable Michael Heiskell who was counsel of record at trial and Honorable Bobbie Peterson, who was counsel of record at sentence hearing. In the matter of fact I did not voluntarily entered copies of documents entitled waiver of jury, felony plea of guilt\Nolo Contendere\Indictment\Information, plea agreement.

post Conviction Writ of Habeas Corpus Pg.1

5. I have no chance whatsoever to state sufficient facts upon which can hereby to my matters.
6. The Court has failed to present any Constitutional question or questions which would entitle me to relief, the allegations against me at that time.
7. I never accepted responsibility for both charges, the conspiracy to commit Interstate Transportation of stolen property, and Interstate Transportation of stolen property, nor the buying or sales of the stolen property.
8. I submit to this Court that the original guilty verdict by jury on Oct. 2000, was made without the effective assistance of counsel. I have been made aware that the guilty's verdict would effectively cause "Removal from The United States Of America", When the sentence is finished under section 240 of INA without any applicable form of relief.
9. The mistaken's advise from my attorney turn out to be worst. It's would cause deportation and mandatory detention. Also based on the reliance of my counsel and failure of the Court to properly admonish me of the consequence of this matter, I was entered the aforementioned guilty verdict.
10. Due to this action, I now faces indefinite incarceration and possible deportation by the Immigration and Naturalization Service. And as if my original Court ruling is allowed to stand, my life will continue to be incarcerated beyond the terms of my punishment and the debt to the society.
11. Was I been advise of the consequence of guilty verdict? Nor was I accepted by this Court thoroughly and properly admonished "the guilt" as to the meaning and consequences as if they found me guilty?
12. Or was this Court has been convinced that if they found me guilty I have to understand the consequence of the said guilt by the Court?
13. I did not knowingly and voluntarily entered the plea and without false statements of the investigators, and in-effective legal representation there is strong possibility that the conviction would not have been made upon me. And now I am bearing the consequence of undue restrain against my liberty in the United States of America.
14. Is it appparent from these facts, as are verified by the the Affidavit attached, that the guilty verdict against me entered on 19th october 2000, was made in fair part by the Court of United States District Court, Eastern District Of Texas? And also the advise of counsel was not within the range of competence demanded of attorney's in a criminal manner of this type.

11 ARGUEMENT AND AUTHORITIES

1. I am entitled to this direct appeal as are of the rights pursuant to the Sixth and Fourteenth Amendments of The United States Constitution, *Evitts V Lucey*, 469us387(1985), and article 1, section 10 of the Texas Constitution [Ex Parte Dietzman, 990 s.w2d 305(crim.app.1990)]

Post Conviction Writ Of Habeas Corpus Pg.2

2. It is clear that I am seeking review of my conviction and that I have been denied this right only as a result of trial's in-ability to handle my case effectively. Moreover the Courts failure to advice me of the consequence of my conviction and in-effective legal representation allow me to relief of this verdict by Habeas Corpus.

3. The sole purpose of this Writ of Habeas Corpus, is to determine the lawfulness of confinement or illegal restrain, [Ex parte McGowen, 645 S.W.2d 286 (crim.1983)]. Habeas Corpus relief is available to review jurisdictional defects or a denial of one's fundamental constitutional rights [Ex parte Russels, 738 S.W.2d 644 (crim.App.2001)]. In seeking Habeas Corpus relief, the applicant assumes his burden of proving his factual allegations by a preponderance of the evidence [Ex parte Biegon cr31, (cri.App 2001)].

4. Although this Court does not have power to grant the relief sought in this case [Ex Parte Ybara, 629 S.W.2d 943 (crim.App 1982)], it does have power to recommend that the applicant be afforded an out of time appeal, and it is respectfully requested that this court should so recommend.

111 CONCLUSION AND PRAYER

1. I submit that there are unresolved controverted issues of fact to be resolved by an evidentiary hearing and I am entitled to an out of time appeal, as a matter of law in view of the allegations contained in this application and the assertion that contained in the attached affidavit.

2. WHEREFORE, PREMISES CONSIDER, I pray that this Court make its Finding of Fact and Conclusions of Law, find that the applicant was denied his rights to the effective assistance of counsel on direct appeal under the Sixth and Fourteenth Ammendments to the United States Constitution, and Article 1, section 10 of Texas State Constitution, and recommend that I will be afforded an out of time appeal in the aforementioned causes.

RESPECTFULLY SUBMITTED,

ISAAC BIEGON
Isaac Kipkurui Biegon

CERTIFICATE OF SERVICE

This is to certify that on 6-15-01 a true and correct copy of the above and foregoing document was served on The United States District Court for Eastern District of Texas, Sherman Division at 200N.Travis st 100 Sherman Texas 75090.
By regular U.S mail

Post Conviction Writ Of Habeas Corpus Pg.3

WRIT CR 400 31 06

Ex Parte

Isaac Kipkurui Biegon

() United States District Court
()
() For Eastern District Of Texas
()
() Sherman Division.

ORDER OF SETTING

On _____, 2001, came on to be heard the application of Isaac Kipkurui Biegon for a Writ of Habeas Corpus, and it appearing to the court that said defendant is entitled to the hearing on the said application, it is THEREFORE ORDERED that the clerk for this court issues a Writ of Habeas Corpus and have Isaac Kipkurui Biegon before me in the court room of the _____ Court, on _____ 2001, at _____ o'clock.

Judge Presiding

