

IN THE SUPREME COURT OF THE UNITED STATES

No. 23 - 7635

DOUGLAS JACKSON
PETITIONER,

v.

NATHAN HOFFMAN
RESPONDENT.

MOTION FOR REHEARING

NOW COMES, PETITIONER DOUGLAS JACKSON, IN PRO SE, REQUESTING A REHEARING FROM THIS COURT'S OCTOBER 7, 2024, DENIAL OF HIS PETITION FOR A WRIT OF CERTIORARI BECAUSE OF INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR CONTROLLING EFFECT OR TO OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED.

STATEMENT OF FACTS

ON MAY 5, 2015, AFTER MULTIPLE JOURNEYS UP, AND DOWN, THE

THE STATE APPELLATE LADDER, JACKSON FILED A PETITION FOR WRIT OF HABEAS CORAUS UNDER 28 USC § 2254, WHICH WAS HELD IN ABEYANCE TO PERMIT HIM TO RETURN TO THE STATE COURTS TO EXHAUST ADDITIONAL CLAIMS WHICH HAN NOT YET BEEN PRESENTED TO SUCH COURTS. (ECF No. 5.).

ON JUNE 15, 2018, THE DISTRICT COURT DECIDED TO LIFT THE STAY AND SET DEADLINE FOR RESPONDENT TO ANSWER JACKSON'S AMENDED HABEAS PETITION. (ECF Nos. 31, 34). ON JUNE 17, 2019, RESPONDENT FILED ITS ANSWER, ECF No. 61. ON SEPTEMBER 20, 2019, DECIDED TO STAY JACKSON'S HABEAS CORPUS PROCEEDING. (ECF No. 84). ALL OF JACKSON'S REQUEST TO HAVE THE STAY LIFTED AND REQUEST TO AMEND HIS HABEAS PETITION OVER THE LAST FIVE YEARS HAVE BEEN DENIED BY THE DISTRICT COURT. (ECF Nos. 88, 122, 131, 155, 166.).

ON DECEMBER 12, 2023, THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FILED JACKSON'S NOTICE OF APPEAL FROM THE DISTRICT COURT'S NOVEMBER 2, 2023, OPINION AND ORDER. ON FEBRUARY 1, 2024, THE COURT OF APPEALS ENTERED ITS ORDER AND JUDGMENT DECIDING THAT IT LACKED JURISDICTION AND DISMISSED THE APPEAL. REHEARING WAS DENIED MARCH 25, 2024. ON JUNE 4, 2024, THIS COURT FILED JACKSON'S PRO SE PETITION FOR A WRIT OF CERTIORARI, WHICH WAS DENIED ON OCTOBER 7, 2024. THIS PETITION FOR THE REHEARING OF THAT DENIAL FOLLOWS.

ARGUMENT

I. THE DISTRICT COURT'S SEPTEMBER 22, 2022, REASONS FOR REFUSING TO LIFT ITS STAY NOW HAVE NO PRACTICAL SIGNIFICANCE.

DISCUSSION

SINCE THE DISTRICT COURT'S SEPTEMBER 22, 2022 ORDER, (ECF NO. 131), THE WAYNE COUNTY CIRCUIT COURT ADJUDICATED JACKSON'S POSTCONVICTION MOTION FOR RELIEF FROM JUDGEMENT. (REVIEW 6/02/23 WAYNE CNTY.CIR.CT. OPINION AND ORDER, ATTACHED AS EXHIBIT 1).

SINCE THE DISTRICT COURT'S SEPTEMBER 22, 2022 ORDER AND THE WAYNE COUNTY CIRCUIT COURT'S JUNE 2, 2023 OPINION AND ORDER JACKSON DID APPEAL THE WAYNE CIRCUIT COURT'S DECISION IN THE MICHIGAN COURT OF APPEALS AND THE MICHIGAN SUPREME COURT. (SEE 12/13/23 MICH. CT. APP. ORDER; AND 4/05/24 MICH. SUP. CT ORDER, ATTACHED AS EXHIBIT 2).

THEREFORE, THE DISTRICT COURT'S STATEMENT THAT, " THERE IS NO INDICATION IN HIS MOTIONS THAT THE WAYNE COUNTY CIRCUIT COURT ADJUDICATED HIS MOTION ON REMAND, NOR IS THERE ANY ALLEGATION OR DOCUMENTATION THAT HE APPEALED ANY DENIAL OF THE MOTION TO THE MICHIGAN COURT OF APPEALS OR MICHIGAN SUPREME COURT." (ECF NO. 131, PAGEID.

7601), HAS NO PRACTICAL SIGNIFICANCE NOW.

THESE FOREMENTIONED STATE COURT INTERVENING ORDERS SHOULD WARRANT THIS COURT'S REHEARING.

ARGUMENT

II. THE UNITED STATES COURT OF APPEALS' FEBRUARY 1, 2024, REASONS FOR DISMISSING JACKSON'S APPEAL NOW HAVE NO PRACTICAL SIGNIFICANCE.

DISCUSSION

BASED ON THE DISTRICT COURT'S SEPTEMBER 20, 2019, ORDER STAYING JACKSON'S HABEAS CORPUS PROCEEDING AND ADMINISTRATIVELY CLOSING THE CASE TO ALLOW HIM TO EXHAUST HIS GROUNDS FOR RELIEF, AND THE DISTRICT COURT'S REINSTATEMENT OF ITS SEPTEMBER 22, 2022 ORDER, THE U.S. COURT OF APPEALS ERRONEOUSLY AND UNREASONABLY DETERMINED THAT IT LACKED JURISDICTION OVER JACKSON'S APPEAL.

THE COURT OF APPEALS SAID THAT, THE DISTRICT COURT'S ORDER STATED: "NOTHING IN THIS ORDER... SHALL BE CONSIDERED A DISMISSAL OR DISPOSITION OF THIS MATTER," CITING JACKSON V. PARISH, NO. 15-cv-11622, 2019 WL 4573799, at *4 (E.D. Mich. Sept. 20, 2019).

BUT THE DISTRICT COURT'S ORDER ALSO STATED: THE PROCEEDINGS ARE STAYED.... PETITIONER SHALL MOVE TO REOPEN HIS HABEAS PETITION WITHIN SIXTY (60) DAYS OF THE CONCLUSION OF HIS STATE POST-CONVICTION PROCEEDINGS." (ECF No. 84, PAGEID. 6932). (SEE 9/20/19 U.S. DIST. CT. ORDER, ATTACHED AS EXHIBIT 3). HERE, JACKSON RESTATE AND INCORPORATE BY REFERENCE HIS ARGUMENT IN ISSUE I HERE.

THE INTERVENING CIRCUMSTANCES SHOWN IN ARGUMENT I PROOFS THAT JACKSON DID APPEAL THE WAYNE COUNTY CIRCUIT COURT'S ADJUDICATION OF HIS MOTION FOR RELIEF FROM JUDGMENT ON REMAND TO BOTH OF MICHIGAN'S APPELLATE COURTS. SEE MICH. CT. R. 6.509; MICH. CT. R. 7.203; MICH. CT. R. 7.302. THE RESPONDENT NOR HAS THE DISTRICT ^{COURT} IDENTIFIED WHICH OF JACKSON'S FEDERAL CLAIMS OR OTHERWISE ARE NOT EXHAUSTED. (SEE FEDERAL EXHAUSTED CLAIMS, ATTACHED AS EXHIBIT 4).

BECAUSE JACKSON HAS FAIRLY PRESENTED HIS FEDERAL CLAIMS TO EACH OF THE STATE COURTS THIS COURT SHOULD GRANT JACKSON'S REQUEST FOR REHEARING.

ARGUMENT

III. THE UNITED STATES COURT OF APPEALS HAS

JURISDICTION TO HEAR APPEALS BY HABEAS
CORPUS LITIGANTS CHALLENGING STAYS OF UN-
EXHAUSTED HABEAS PETITIONS UNDER THE COLLATERAL
ORDER DOCTRINE.

DISCUSSION

THIS SUBSTANTIAL GROUND WAS NOT PRESENTED BUT IT IS
IMPORTANT TO THE PUBLIC AND OTHER PRO SE HABEAS CORPUS
LITIGANTS WHO, LIKE PETITIONER JACKSON, ARE BEING HELD IN PRISON
AS THE RESULT OF A STATE COURT JUDGMENT THAT IS UNCONSTITUTIONAL.

THE COURT OF APPEALS ACKNOWLEDGED THAT THE DISTRICT COURT'S
SEPTEMBER 20, 2019 ORDER STATED THAT NOTHING IN THE ORDER SHALL
BE CONSIDERED A DISMISSAL OR DISPOSITION OF THE MATTER, AND THAT
THE DISTRICT COURT STAYED THE HABEAS PROCEEDING AND ADMINISTRATIVELY
CLOSED THE CASE.

ON DECEMBER 16, 2019, THE DISTRICT COURT ENJOINED JACKSON
FROM FILING ANY NEW MOTIONS OR PLEADINGS IN THE CASE UNTIL OR
UNLESS HE IS UNSUCCESSFUL IN OBTAINING RELIEF IN THE STATE
COURTS. (ECF No. 95, PAGEID. 7024). UNDER COOPERS & LYBRAND V.
LINESAY, 437 US 463, 468 (1978), THE DISTRICT COURT CONCLUSIVELY
DETERMINED THAT THE 28 USC § 2254 CLAIMS WERE SUBJECT

TO THE EXHAUSTION REQUIREMENT.

CLEARLY, THE SEPTEMBER 20, 2019; DECEMBER 16, 2019; NOR SEPTEMBER 22, 2022 ORDERS DO NOT RESOLVE THE HABEAS CASE. THEY ARE NOT DISPOSITIVE OF ANY ISSUE RAISED IN JACKSON'S HABEAS PETITION. THE DISTRICT COURT EXPRESSLY INDICATES THE TRANSIENT NATURE OF THE ORDERS BY INDICATING THE STAY WILL REMAIN IN EFFECT UNTIL JACKSON EXHAUST HIS FEDERAL CLAIMS. ALTHOUGH THE DISTRICT COURT'S ORDERS MAY NOT HAVE BEEN THE FINAL WORD ON THE MERITS OF THE HABEAS PETITION, THEY DO CONCLUSIVELY DETERMINE A DISCREET LEGAL QUESTION. THAT IS, (1) PETITIONER FAILS TO SHOW THAT THE DELAYS IN ADJUDICATING HIS STATE POST-CONVICTION MOTION, BOTH INITIALLY AND ON REMAND FROM THE MICHIGAN SUPREME COURT, PRESENT EXCEPTIONAL CIRCUMSTANCES THAT JUSTIFY EXCUSING THE EXHAUSTION OF STATE COURT REMEDIES. (ECF No. 131, PAGEID. 7603.);

(2) PETITIONER PRESENTS NO EVIDENCE SHOWING THAT THESE DELAYS WERE DUE TO MALFEASANCE OR BAD FAITH ON THE STATE TRIAL OR APPELLATE COURTS' BEHALF. (ECF No. 131, PAGEID. 7608); PETITIONER ALSO FAILS TO SHOW THAT THE STATE IS CLEARLY RESPONSIBLE FOR ALL THE DELAYS. ID.; AND (3) PETITIONER'S FAILURE TO ADEQUATELY PURSUE HIS CLAIMS IN STATE COURT DISQUALIFIES HIS CASE FROM CONSIDERATION UNDER THE NARROW EXCEPTION TO THE EXHAUSTION

REQUIREMENT. ECF No. 131, PAGEID. 7609, 7610).

HAVING DETERMINED THAT IT MAY EXERCISE SUCH AUTHORITY OVER AN UNEXHAUSTED HABEAS PETITION, THE DISTRICT COURT UNDOUBTEDLY EXPECTED THAT ITS ORDERS REFUSING TO LIFT ITS STAY WOULD RESOLVE THE QUESTION OF WHETHER IT MAY HOLD AN UNEXHAUSTED HABEAS PETITION IN ABEYANCE. (ECF Nos. 88, 95, 122, 131, 155, 166.).

UNDER COHEN V. BENEFICIAL INDUS. LOAN CO, 337 US 541 (1949), A UNITED STATES COURT OF APPEALS CAN REVIEW A COLLATERAL ORDER THAT RAISES AN IMPORTANT ISSUE DISTINCT FROM THE MERITS OF THE CASE; AND IS EFFECTIVELY UNREVIEWABLE ON APPEAL FROM A FINAL JUDGMENT. BECAUSE THE DISTRICT COURT ORDERS CONCLUSIVELY DECIDE THAT ITS FIVE YEAR STAY TO PERMIT PURSUIT OF STATE REMEDIES IS A PERMISSIBLE PROCEDURAL OPTION WHEN A FEDERAL HABEAS PETITION CONTAINS UNIDENTIFIED UNEXHAUSTED CLAIM, THE PROCEDURAL QUESTION IS IMPORTANT AND SEPARATE FROM THE MERITS OF THE FEDERAL ISSUES RAISED IN THE UNDERLYING HABEAS ACTION.

SEE GULFSTREAM AEROSPACE CORP. V. MAYACAMAS CORP., 485 US 271, 277 (1988) ("IN APPLYING THE COLLATERAL - ORDER DOCTRINE ... AN ORDER REPUSING TO PROCEED WITH LITIGATION BECAUSE OF THE

PENDENCY OF A SIMILAR ACTION IN STATE COURT SATISFIES THE SECOND AND THIRD PRONGS OF THE TEST. ... SUCH AN ORDER PLAINLY PRESENTS AN IMPORTANT ISSUE SEPARATE FROM THE MERITS AND THAT IT WOULD BE UNREVIEWABLE IF NOT APPEALED NOW BECAUSE ONCE THE STATE COURT HAS DECIDED THE ISSUES IN THE LITIGATION, THE FEDERAL COURT MUST GIVE THAT DETERMINATION RES JUDICATA EFFECT.")

THUS, THE COURT OF APPEALS COULD NOT EFFECTIVELY REVIEW THE STATE'S PROPERITY AFTER JACKSON EXHAUSTS HIS STATE REMEDIES AND PRESENTS HIS EXHAUSTED PETITION TO THE FEDERAL COURTS. BECAUSE THE ORDER APPEALED IN THIS CASE SATISFIES THE REQUIREMENTS OF THE COLLATERAL ORDER DOCTRINE, THIS COURT SHOULD GRANT THIS PETITION.

ADDITIONALLY, THE INORDINATE DELAY IN JACKSON'S STATE COURT POSTCONVICTION PROCEEDING ATTRIBUTABLE TO THE STATE CONTINUE. (SEE TIME LINE COMPUTATION; 6/11/24 MOTION TO WITHDRAW AS APPOINTED COUNSEL; AND 7/23/24 REQUEST FOR SPEEDY APPOINTMENT OF COUNSEL, ATTACHED AS EXHIBIT S).

UNTIL JACKSON IS APPOINTED POSTCONVICTION COUNSEL HIS CRIMINAL CASE REMAINS IN THE WAYNE COUNTY THIRD CIRCUIT COURT.

RELIEF

FOR ALL OF THE FOREGOING REASONS THIS COURT SHOULD GRANT THIS REQUEST FOR REHEARING, AND REMEDY THE MATTER.

RESPECTFULLY SUBMITTED,

DATED: OCTOBER 24, 2024

ISI DOUGLAS JACKSON
IN PRO SE
MDOC # 748757
BARAGA CORRECTIONAL FAC.
13924 WADAGA ROAD
BARAGA, MI 49908

IN THE SUPREME COURT OF THE UNITED STATES

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PETITIONER,

11

NATHAN HOFFMAN
RESPONDENT.

CERTIFICATION OF DOUGLAS JACKSON

I, DOUGLAS JACKSON, CERTIFY UNDER PENALTY OF PERJURY
THAT THE ACCOMPANYING MOTION FOR REHEARING IS PRESENTED IN
GOOD FAITH AND NOT FOR DELAY, BUT RATHER ESTABLISH THAT
COMITY IN MY CASE IS NO LONGER WARRANTED.

EXECUTED ON: OCTOBER / Tammuz 24, 2024

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