

Appendix

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Legal Programs Department

UNITED STATES DISTRICT COURT
EASTERN DISTRICT
OF LOUISIANA

Daimeyahn Stevenson

Plaintiff

Civil Action _____

Case No. 23-3512

v.

Louisiana Supreme Court,
Louisiana Appellate Project
Defendants

COMPLAINT

Plaintiff brings this action seeking equitable and declaratory relief from the unlawful denial of plaintiffs rights to adequately present his claims of ineffective assistance of trial counsel fairly on direct appeal, due to the operation of Louisiana rule of appellate procedure which relegates indigents with such claims to un-counseled post-conviction. Plaintiff asserts that the aforesaid rule of appellate procedure, as applied, violates plaintiffs rights to due process and equal protection under the 14th Amendment to the Constitution of the United States.

JURISDICTION

This action arises under the 14th Amendment to the Constitution of the United States Sec. 1. This court has jurisdiction pursuant to 28 U.S.C. § 1331 and Art. 3 Sec. 1 and 2 the Constitution of the United States.

FACTS/CAUSE OF ACTION

1. Plaintiff was charged by bill of information in Jefferson Parish case No. 01-4771 with one count of attempted armed robbery La.R.S. 14:27:64 and 1 Count of Armed Robbery La. R.S. 14:64 on 9-7-01. Plaintiff was arraigned on 9-10-01 and pled not guilty. On 9-18-01 plaintiff filed pre-trial

motions. On 11-14-01 plaintiff was tried by jury without any pre-trial motions having been heard, the trial ended in a mistrial. Plaintiff immediately moved for continuance when the court scheduled re-trial. The motion for continuance was denied.

Plaintiff was retried on 11-15-01 and found guilty by a non-unanimous jury. On 12-7-01 Plaintiff was sentenced to 47½ and 85 years respectively. At that time Plaintiff moved to appeal the conviction. On 5-31-02, plaintiff was found a multiple offender and given life.

2. On direct appeal, case No.02-KA-769, the Louisiana Appellate Project Appointed Bruce Whittaker to represent plaintiff. When requested by plaintiff to raise the ineffectiveness of plaintiffs. Trial counsel, Archie Creech, Mr. Whittaker informed plaintiff that such claims are appropriately raised on post-conviction not on direct appeal. Thereafter, Mr. Whittaker filed a brief on behalf of plaintiff raising only an issue of excessive sentence, despite the fact that plaintiff was seeking to appeal his conviction.

The appeal was denied on 1-28-03. The 5th Circuit Court of Appeals cited several errors of law in the brief before denying the appeal. Certiorari was denied on 10-30-03.

3. Plaintiff next file a pro se application for post-conviction relief on 11-16-05 raising the claims of ineffective assistance of appellate counsel and irreparable mistaken identity, plaintiff also requested via motion that the court reserve judgment for 90 days to allow plaintiff to supplement the claim of ineffective assistance of trial counsel. The request for reservation of judgment was made because plaintiff was not provided with a complete trial record nor any pre-trial discovery

Without evidentiary hearing or response to the motion to supplement the district court summarily denied the application on 12-07-05. Plaintiff, being unrepresented and untrained in law and without a complete trial record or discovery was unable to seek supervisory writs in the time allotted to do so, resulting in the default of plaintiffs claims of ineffective assistance of trial and appellate counsel. From that point plaintiff was barred by C.Cr.P. 930.4 and Coleman v. Thompson,

501 U.S. 722. In April of 2012, the Supreme Court of the United States issued an equitable Judgment in Martinez v. Ryan, 566 U.S. 1, which spoke squarely to plaintiffs situation. On May 1, 2014 plaintiff filed a second post-conviction seeking to assert the defaulted ineffective assistance claims. The state district court held the claims defaulted and the application untimely and denied relief on 6-13-14 without hearing. The Fifth Circuit Court of Appeal (La) affirmed for the same reasons on 7-23-14. The state supreme Court denied review on 7-31-15 citing La. C.Cr.P. 930.8.

^{FN 1.}

4. Plaintiff next sought habeas corpus relief in U.S. Eastern District 9-24-15. The state responded on 12-15-15 raising the federal Statute of limitation and procedural default defense. On 4-15-16 the magistrate recommended that the petition be dismissed as time barred.

On 5-2-16, plaintiff filed objections to the magistrates recommendation asserting that the statute of limitations should be equitably tolled in plaintiffs case under U.S.C. 2244 (d)(1) (B) because plaintiff was unfairly impeded in his ability to timely file his petition by State action in violation of plaintiff's rights to due process and equal protection under the 14th Amendment, citing the operation of the state rule of appellate procedure complained of in this action.

On 6-21-16 the district court adopted the Magistrates recommendation, ruling that the petition be dismissed for untimeliness and denying equitable tolling for failure to show exceptional circumstances or tolling grounds. The U.S. Fifth Circuit Court denied COA on 6-20-17. The Supreme Court denied Certiorari on 1-16-18.

Plaintiff avers that the foregoing is true and correct to the best of his understanding and that he is therefore without remedy at law.

5. Plaintiff avers that the rule of appellate procedure complained of in this action was promulgated by the Louisiana Supreme Court pursuant to its rule making power under La. Const. Art. 5 Sec. 5, See State v. Truitt, 500 So.2d 355 and cases cited therein.

6. Plaintiff avers that the rule of appellate procedure complained of has been adopted by the

Louisiana Appellate Project as a general policy for dealing with claims of ineffective assistance of counsel, and was applied in the plaintiffs case, where counsel was not permitted to raise the claims on direct appeal.

7. Plaintiff avers that it is the strict policy of the Louisiana Appellate Project to not appoint counsel on Post-Conviction to raise claims of ineffective assistance of counsel that are not permitted to be raised on direct appeal, or any other claims, without exception. As a result plaintiff was forced to attempt to litigate the claims pro se on post-conviction, and without a complete trial record or discovery.

8. Plaintiff avers that by the operation of the complained of rule of appellate procedure, and it's enforcement through the policy of the Louisiana Appellate Project, as described above, plaintiff has been deprived and continues to be deprived of, rights guaranteed by constitution of United States, particularly, plaintiffs rights to due process and equal protection under the 14th Amendment.

9. Plaintiff avers that he has no remedy at law to redress the wrongs suffered as set forth in this complaint. Plaintiff has suffered and will continue to suffer irreparable injury as a result of the unlawful acts and policies of the defendants alleged herein unless plaintiff is granted the relief he requests.

Prayer for Relief

10. Wherefore, plaintiff prays that this court grant him the following relief:

A. Adjudge and declare that the rule of appellate procedure and policy of the Louisiana Appellate Project enforcing said rule, as applied in plaintiffs case, are in violation of the rights of the plaintiff under the Constitution of the United States.

11. That the court issue a mandatory injunction directing the appropriate state court to provide the plaintiff with an adequate opportunity to present his claims of ineffective assistance of trial and appellate counsel guaranteed by the constitution of United States.

12. That the court issue a mandatory injunction directing the Louisiana Appellate Project to

provide plaintiff with a complete copy of his trial record/transcript as was originally requested by motion for appeal.

13. That the court maintain jurisdiction in this cause until the unconstitutional circumstance complained of herein no longer exist and the court is satisfied that they will not recur.

14. Grant such other and additional relief as the court may deem just and proper.

Respectfully submitted,


Daimeyahān Stevenson
Louisiana State Penitentiary
Angola, LA. 70712

Dated

PLEASE SERVE:

Chief Justice, John L. Weimer
Louisiana Supreme Court
400 Royal Street, Ste 4200
New Orleans, LA 70130-8102

James Looney, Ex Dir.
Louisiana Appellate Project
P.O. Box 3340
Covington, LA. 70434-3340

CERTIFICATE OF SERVICE

I, Daimeyahn Stevenson, hereby certify that I have forwarded a copy of the above Complaint, to James Looney, Ex. Dir, Louisiana Appellate Project, P.O. Box 3340, Covington, LA. 70434-3340, Chief Justice John L. Weimer, Louisiana Supreme Court, 400 Royal Street, Ste 4200, New Orleans, LA 70130-8102, by placing same in the institution's U.S. Mail depository, properly addressed and with proper, first-class postage affixed, this _____ day of _____ 2022.

Camp D, Raven _____
Louisiana State Penitentiary
Angola, Louisiana 70712

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Daimeyahn Stevenson

Plaintiff

Civil Action _____

Case No. _____

v.

Louisiana Supreme Court,
Louisiana Appellate Project

Defendants

To: James Looney, Ex. Dir. Louisiana Appellate Project:

You are hereby summoned and required to serve upon Daimeyahn Stevenson #218645, plaintiff, whose address is Louisiana State Penitentiary, Angola 70712, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court

Date _____

(This summon is issued pursuant to Rule 4 of the Federal Rule of Civil Procedure)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Daimeyahn Stevenson

Plaintiff

Civil Action _____

v.

Case No. _____

Louisiana Supreme Court,
Louisiana Appellate Project

Defendants

To: Chief Justice John L. Wimer, Louisiana Supreme Court:

You are hereby summoned and required to serve upon Daimeyahn Stevenson #218645, plaintiff, whose address is Louisiana State Penitentiary, Angola 70712, an answer to the complaint that is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court

Date _____

(This summon is issued pursuant to Rule 4 of the Federal Rule of Civil Procedure)

B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DAIMEYAHN STEVENSON

CIVIL ACTION

VERSUS

NO. 22-3512

LOUISIANA SUPREME COURT AND
LOUISIANA APPELLATE PROJECT

SECTION "B" (3)

ORDER AND REASONS

Before the Court is a Report and Recommendation of the Magistrate Judge recommending that Daimeyahn Stevenson's pro se complaint be dismissed without prejudice for failure to prosecute. Rec. Doc. 7. This report was filed on November 30, 2022, giving plaintiff until December 14, 2022 to file objections. As reasons, it cited Stevenson's failures to notify the court of his address changes and comply with a previously issued order to either pay the filing fee or submit an application to proceed as a pauper no later than November 23, 2022. See Rec. Doc. 4.

After that Report and Recommendation was issued, the Court received from plaintiff an application dated November 16, 2022 to proceed as a pauper. Moreover, that application was contained in an envelope indicating plaintiff's new address. That envelope bore a postmark of December 14, 2022, and the application was eventually filed on December 16, 2022. Rec. Doc. 9.

In light of those foregoing intervening developments,

IT IS ORDERED that the Report and Recommendation is dismissed as moot.

IT IS FURTHER ORDERED that the Clerk of Court update plaintiff's address of record to reflect his return address as indicated in Rec. Doc. 9 at p. 7.

IT IS FURTHER ORDERED that plaintiff's pleading is hereby construed as a petition for habeas relief pursuant to 28 U.S.C. § 2254.¹

IT IS FURTHER ORDERED that plaintiff's application to proceed as a pauper is **GRANTED**.

IT IS FURTHER ORDERED that the Warden (or other authorized official) of David Wade Correctional Center in Homer, Louisiana withdraw from plaintiff's facility account and forward to this Court the \$5.00 filing fee for the habeas petition, payable to the Clerk of Court for the Eastern District of Louisiana, pursuant to plaintiff's previously filed authorization and certificate. See Rec. Doc. 9 at 4-5.

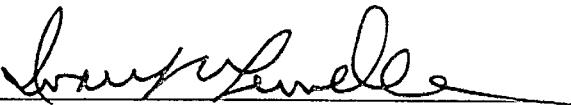
IT IS FURTHER ORDERED that plaintiff's habeas petition is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter

¹ Plaintiff does not specify the nature of his action in his pleading. However, he essentially asks this federal court to order the state court to provide him with an opportunity to present claims of ineffective assistance of trial and appellate counsel, all arising from his 2001 conviction, sentence, and subsequent denials of appellate and post-conviction efforts. Rec. Doc. 9-1 at 4-5. Because it concerns the handling and challenges the ultimate legitimacy of his state criminal judgments at the trial and appellate levels, his pleading is properly construed as habeas petition.

jurisdiction because it is a second or successive § 2254 petition² which was filed without the required authorization from the United States Fifth Circuit Court of Appeals.³

IT IS FURTHER ORDERED that nothing in this Order and Reasons shall prevent plaintiff from filing with the United States Fifth Circuit Court of Appeals a proper motion for authorization to file a second or successive habeas petition.

New Orleans, Louisiana this 9th day of January, 2023



SENIOR UNITED STATES DISTRICT JUDGE

² Plaintiff filed a prior habeas petition challenging the same state criminal judgment, and that petition was dismissed with prejudice as untimely filed. See *Stevenson v. Cain*, Civ. Action No. 15-4776, 2016 WL 3511722 (E.D. La. Apr. 15, 2016), adopted, 2016 WL 3430675 (E.D. La. June 21, 2016), certificate of appealability denied *sub nom. Stevenson v. Vannoy*, No. 16-30817, 2017 WL 4679417 (5th Cir. June 20, 2017), cert. denied, 138 S. Ct. 745 (2018).

³ An applicant must move in the appropriate court of appeals for authorization before filing a second or successive habeas petition in a federal district court. 28 U.S.C. § 2244(b)(3)(A). The United States Fifth Circuit Court of Appeals has held that § 2244(b)(3)(A) acts as a jurisdictional bar to a district court's asserting jurisdiction over any successive habeas petition until such authorization has been granted. *Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003). Where, as here, a second or successive petition has been filed without the required authorization, it is proper for the district court to dismiss the petition without prejudice for lack of jurisdiction. See *In re Herzog*, 444 F. App'x 63, 65 (5th Cir. 2011) (explaining that, if a second or successive habeas petition "is filed in the district court before leave of this Court has been obtained, the district court may either dismiss the motion for lack of jurisdiction, or it may transfer the motion to this Court").

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DAIMEYAHN STEVENSON

CIVIL ACTION

VERSUS

NO. 22-3512

LOUISIANA SUPREME COURT AND
LOUISIANA APPELLATE PROJECT

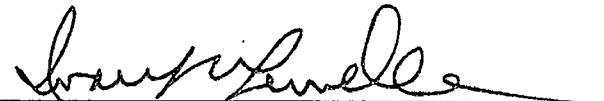
SECTION "B" (3)

JUDGMENT

The Court, having considered the petition, the record; the applicable law and for the written reasons previously assigned;

IT IS ORDERED, ADJUDGED, AND DECREED that the federal application for habeas corpus relief filed by Daimeyahn Stevenson is DISMISSED WITHOUT PREJUDICE.

New Orleans, Louisiana this 9th day of January, 2023.



SENIOR UNITED STATES DISTRICT JUDGE

C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30097

DAIMEYAHN STEVENSON

VERSUS

LOUISIANA SUPREME COURT and
LOUISIANA APPELLATE PROJECT

APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA NO. 22-cv-3512

ORIGINAL BRIEF ON BEHALF OF APPELLANT

Daimeyahn Stevenson # 218645
DAIMEYAHN STEVENSON/Pro-Se
D. WADE CORR. CTR. H-2-B
670 Bell Hill Road
Homer, Louisiana 71040

TABLE OF CONTENTS

PG.

TABLE OF AUTHORITIES	ii
JURISDICTION	1
STATEMENT OF ISSUES	1, 2
STATEMENT OF CASE	1
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	3
CONCLUSION	9
CERTIFICATE OF SERVICE	9, 10
APPENDIX	SEPERATE

TABLE OF AUTHORITIES

CASE LAW

Boddie v. Connecticut, 401 U.S. 371.....	pg. 6
Castaneda v. Falcon, 166 F.3d 799.....	pg. 8
Coe v. Chesapeake Expl. LLC, 695 F.3d 311.....	pg. 5
Coleman v. Goodwin, 833 F.3d 547.....	pg. 4, 6
Frew v. Janek, 780 F.3d 320.....	pg. 7
Gonzalez v. Crosby, 545 U.S. 524.....	pg. 5, 6
Gully v. First Nat. Bank, 299 U.S. 109.....	pg. 8
State v. Truitt, 500 So.2d 355/.....	pg. 4
Wallace v. Mississippi,.....	pg. 5

CONST. LAW

Louisiana Constitution Article 5, Section 5.....	pg. 3
United States Constitution Amendment 14.....	pg. 2, 3, 4, 6

STATUTORY LAW

28 U.S.C. § 1291.....	pg. 1, 9
28 U.S.C. § 1331.....	pg. 1, 3, 8, 9
28 U.S.C. § 2244(b).....	pg. 2, 5
28 U.S.C. § 2244 (b)(3)(A).....	pg. 2, 8
28 U.S.C. § 2254 (d).....	pg. 5

JURISDICTIONAL STATEMENT

The United States District Court for the Eastern District of Louisiana had original jurisdiction in this action pursuant to 28 U.S.C. § 1331, where an as applied constitutional challenge was presented to a State Rule of Appellate procedure by means of a well pleaded civil complaint.

The United States Court of Appeals for the Fifth Circuit has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, where this is an appeal as of right from a final order of a District Court, dismissing appellants as applied constitutional challenge to a State Rule of Appellate Procedure, without prejudice, for want of jurisdiction.

The final order in this cause was issued on January 9, 2023. The Notice of Appeal was placed in the hands of the David Wade Correctional Center's Mailroom Officer on January 27, 2023.

ISSUES PRESENTED FOR REVIEW

ISSUE 1

WHETHER THE DISTRICT COMMITTED PLAIN ERROR BY DISMISSING APPELLANTS AS APPLIED CONSTITUTIONAL CHALLENGE FOR WANT JURISDICTION?

STATEMENT OF THE CASE

The instant case was initiated on September 27, 2022 when appellant filed a civil complaint in the U.S. District Court for the Eastern District of Louisiana challenging the constitutionality as applied of a state

rule of appellate procedure. On November 23, 2022 the Magistrate Judge recommended that the action be dismissed for failure to prosecute. On January 9, 2023 the District Court Judge dismissed the Magistrate's report and dismissed the action for want of jurisdiction citing 28 U.S.C. § 2244(b)(3)(A).

STATEMENT OF FACTS

ISSUE 1

Appellant brought as applied constitutional challenge to state rule of appellate procedure on the grounds that the rule violates his rights to due process and equal protection under the fourteenth amendment to the constitution of the United States. The United States District Court issued an order construing appellants constitutional challenge as a successive habeas corpus application, without citing any authority which would support such a construction, and dismissing the action for want of jurisdiction under 28 U.S.C. § 2244(b). Appellant contends that it was plain error for the District Court to construe his constitutional challenge as an application for Writ of Habeas Corpus.

ISSUE 2

As referenced previously Appellant brought his as applied

constitutional challenge in Federal District Court. The challenge was brought pursuant to 28 U.S.C. § 1331 invoking the court's original jurisdiction, as this case arises under the Fourteenth Amendment to the United States Constitution. The court ultimately dismissed the action for want of jurisdiction. Appellant contends that it was plain error for the court to dismiss the action for want of jurisdiction.

SUMMARY OF ARGUMENT

Appellant contends that the District Court committed plain error by construing appellants as applied constitutional challenge as a successive habeas corpus application. Appellant further contends that the relevant caselaw dictates a conclusion opposite of that reached by the district Court on this issue. Appellant asserts that the District Court has no legal basis, and cites no authority in support of the construction given to Appellant's pleading.

The District Court likewise is without authoritative support for its judgment dismissing appellants action for want of jurisdiction. The judgment is manifestly erroneous because it is based on a manifestly erroneous construction given to appellant's action by the District Court and is in conflict with statutory law.

ARGUMENT: ISSUE 1

Louisiana Costitucion Article 5, Section 5 states in pertinent part:

" The Supreme Court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law..." Pursuant to this Constitutionally conferred authority the Louisiana Supreme Court promulgated a rule of appellate procedure with regard to claims of ineffective assistance of trial counsel. The rule was announced in a series of cases, including State v. Truitt, 500 So.2d 355 where the court stated: " The appropriate avenue for asserting a claim for ineffective assistance of counsel is through Post-Conviction Relief, not by direct Appeal." Id. at 359.

The Louisiana Appellate Project subsequently adopted the rule as a general policy for dealing with claims of ineffective assistance of counsel claims. On September 30, 2022 Appellant brought civil action in the Federal District Court challenging the constitutionality as applied of the aforementioned rule on the grounds that the rule violated Appellant's rights to Due Process and Equal Protection under the 14th Amendment of the U.S. Constitution, where said rule denied Appellant an adequate opportunity to present his claims of ineffective assistance of trial counsel on Direct Appeal. (See Exhibit "A", See also Coleman v. Goodwin, 833 F.3d 537 _____ Griffin v. Illinois, 351 U.S. 12 at 19).

The Magistrate Judge recommended that the action be dismissed for want of prosecution. The District Court dismissed the Magistrate Judge's report as moot. The court construed the complaint as a successive habeas petition and dismissed without prejudice for want of jurisdiction. (See Judgment of District Court from January 10, 2023).

STANDARD OF REVIEW: ISSUE 1

The District Court's findings of fact are reviewed for clear error and its legal conclusions de novo. Coe v. Cheapeake Expl. LLC, 695 F.3d 311, 316. However, it is a well established rule that the appellate court, not the parties, decides which standard of review to employ. Wallace v. Mississippi, 43 F.4th 482, 495.

It is the Appellants contention that it was clear/plain error for the District Court to construe Appellants constitutional challenge as a successive habeas corpus application, where the relevant statutory and caselaw do not support, and indeed require the direct opposite, of such a construction. Although Appellant is unaware of any case in which the 5th Circuit Court of Appeals has squarely addressed the question of what constitutes an application for habeas corpus, The Supreme Court has in Gonzalez v. Crosby, 545 U.S. 524 The court explained:... "(I)t is clear that for purposes of § 2244(b) an 'application' for habeas relief is a filing that contains one or more claims" Id. at 530. The court went on to define the word "claim" in this context: "These statutes, (§ 2244(b) and § 2254(d)) and our own decisions, make clear that a 'claim' as used in § 2244 (b) is an asserted Federal basis for relief from a state court's judgment of conviction:" Id. at 530.

Appellants complaint presents an as applied constitutional challenge to a state rule of appellate procedure and does so on the face of the complaint in no uncertain terms. (See Exhibit "A"). It does not attack any state court judgment. It does, however, seek to enforce rights guaranteed by the constitution of the United States, specifically Appellants rights to Due Process and Equal Protection which appellant asserts were denied him by the operation of the state rule of appellate

APPENDIX ↑

procedure complained of. Nevertheless, the district court seeks to avoid jurisdiction by arbitrarily construing Appellants civil complaint as an application for habeas relief, stating, "Plaintiff does not specify the nature of his action in his pleading. However, he essentially asks this Federal court to order the state court to provide him with an opportunity to present claims of ineffective assistance of trial and appellate counsel Because it concerns the handling and challenges the ultimate legitimimacy of his state criminal judgments at the trial and appellate levels, his pleading is properly construed as a habeas petition." (See Judgment January 9,2023 FN2).

The court is correct that appellant seeks the opportunity to present his claims of ineffective assistance of counsel. Appellant maintains that he is entitled to this opportunity as of right and that this right is guaranteed by the equal protection and due process clauses of the 14th Amendment,(FN3), and that appellant has been, and continues to be unlawfully prevented from exercising this guaranteed right by the operation of the state rule of appellate procedure complained of. This is not synonymous with asserting a federal basis for relief from a state court judgment under Gonzalez supra.

In Boddie v. Connecticut, 401 U.S. 371 the Supreme Court observed: "Our cases further establish that a statute or rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although it's general validity as a measure enacted in the legitimate exercise of state power is beyond question." Id. at 379.

It was held by this court in Coleman v. Goodwin, 833 F.3d 537 that: "Louisiana's procedural system makes it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise a claim of (IATC) on direct appeal..." Id. at 543.

The rule of appellate procedure challenged in Appellants complaint is the procedural system addressed in Coleman supra.

Appellant submits that it was clearly erroneous for the District Court to construe appellant's as applied constitutional challenge to a state rule of appellate procedure as a second or successive habeas corpus application, and, in accordance with the relevant case law the district court's judgment should be vacated.

ARGUMENT: ISSUE 2

It is Appellant's contention that the district court committed plain error by dismissing appellant's civil complaint for want of jurisdiction.

Appellant respectfully submits that he has shown that, under the law, his civil complaint is not a habeas corpus application and cannot reasonably be construed as such.

STANDARD OF REVIEW : ISSUE 2

The district court's determination that it lacked jurisdiction is a legal conclusion. "Legal Conclusions are reviewed de novo." Frew v. Janek, 780 F.3d 320, 326 (5th Cir. 2015).

Appellant's civil complaint was brought pursuant to 28 U.S.C. § 1331 Federal Question Jurisdiction, which states: "The Federal District Court shall have original jurisdiction over all civil actions arising under the constitution, laws or treaties of the United States."

The question of whether or not the district court had jurisdiction is dispositive. Appellant maintains that the district court did in fact have jurisdiction by law and that the court's conclusion that it did not was wholly arbitrary.

The Supreme Court has provided guidance on this subject in Gully v. First Nat. Bank, 299 U.S. 109 the court held: "To bring a case within the statute (§ 1331), a right or immunity created by the constitution or laws of the United States must be an element and an essential one, of the plaintiff's cause of action. The right or immunity must be such that it will be supported if the constitution or laws of the United States are given one construction or effect, and defeated if they receive another, a genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto, and the controversy must be disclosed on the face of the complaint, unaided by the answer or by the petition for removal." Id. at 112, 113. (Internal Citations Omitted).

Appellant asserts his civil complaint meets these requirements and that this fact is undisputed. In Castaneda v. Falcon, 166 F.3d 799 (5th Cir.) this court observed." We must always be sure of our appellate jurisdiction and, if there is doubt we must address it, *sua sponte* if necessary." Id. at 801

The district court cited 28 U.S.C. § 2244(b)(3)(A) as supporting authority for its conclusion that the court lacked jurisdiction. Sub-Section 2244(b)(3)(A) concerns the filing of a second successive habeas corpus application, but as appellant has shown, because his civil action challenges a state rule of appellate procedure and not a state court judgment of conviction it cannot be and is not a habeas corpus application. Because the district construed appellant's action as a habeas corpus application, this court's appellate jurisdiction is implicated. Appellant

brought his civil action pursuant to 28 U.S.C. § 1331 and maintains that this was the appropriate jurisdiction. Appellant was directed by the Clerk of Court on March 2, 2023 to file a Motion For COA along with my brief within (40) days. It is my intent to give this court express notice ~~that~~ that I am not seeking a (COA) because this is an appeal as of right pursuant to 28 U.S.C. § 1291 and not § 2253.

Because the district court erroneously construed appellant's civil complaint to be a successive habeas and dismissed for want of jurisdiction based on that faulty premise, the judgment of the district court should be vacated.

CONCLUSION

WHEREFORE, all premises considered, Appellant prays that this honorable court enter judgment vacating the Judgment of the district court and remanding with an ORDER to serve summons on the Defendants.

Daimeyahn Stevenson #218645
DAIMEYAHN STEVENSON

CERTIFICATE OF SERVICE

I, Daimeyahn Stevenson do hereby state that an original true signed copy of this Appeal from the United States Eastern District Court has been sent to the Clerk of Court for the 600 S. Maestri Place, New Orleans, Louisiana 70130-3408 on this 6th day of April 2023 by the undersigned Appellant all under the penalty of perjury to the best of my knowledge,

, understanding and belief. A copy of the same has been forwarded to the Defendants on this same date.

Homer, LOUISIANA, this 12 day of April, 2023.

Daimeyahn Stevenson
DAIMEYAHN STEVENSON #218645
D. WADE CORR. CTR. H2 - B
670 Bell Hill Rd.
Homer, Louisiana 71040

Anna Dawson #159232
David Wade Correctional Center
Classification Department

Date: 4-12-23

D

United States Court of Appeals for the Fifth Circuit

No. 23-30079

United States Court of Appeals

Fifth Circuit

FILED

May 22, 2023

DAIMEYAHN STEVENSON,

Lyle W. Cayce
Clerk

Petitioner—Appellant,

versus

LOUISIANA SUPREME COURT; LOUISIANA APPELLATE PROJECT,

Respondents—Appellees.

Application for Certificate of Appealability
the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CV-3512

ORDER:

Daimeyahn Stevenson, Louisiana prisoner # 218645, was convicted of attempted armed robbery and armed robbery and was sentenced to 47 years of imprisonment and life imprisonment, respectively. He now challenges the dismissal of a complaint he filed in the district court, which the district treated as an unauthorized successive 28 U.S.C. § 2254 application.

Stevenson contends that his district court pleading appropriately raised an as-applied challenge to the constitutionality of Louisiana law that requires claims of ineffective assistance of trial counsel to be brought in postconviction proceedings rather than on direct appeal. He asserts that it

was error for the district court to recharacterize his complaint and dismiss it as an unauthorized successive § 2254 application. Although Stevenson maintains that he does not need a certificate of appealability (COA) in order to appeal, because his district court pleading complained of detention arising from a state court judgment, he is required to obtain a COA. *See* 28 U.S.C. § 2253(c)(1)(A).

To obtain a COA, Stevenson must make “a substantial showing of the denial of a constitutional right.” § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Where, as here, the district court’s denial of federal habeas relief is based on procedural grounds, this court will issue a COA “when the prisoner shows, at least, 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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Stevenson has not made the requisite showing. Accordingly, his request for a COA is DENIED.

Cory T. Wilson
CORY T. WILSON
United States Circuit Judge

E

E

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO: _____

IN RE:
DAIMEYAHN STEVENSON

PETITION FOR WRIT OF MANDAMUS

NOW INTO COURT COMES Daimeyahn Stevenson (Relator) Pro-se, who hereby petitions this Honorable Court to issue a Writ of Mandamus to the Honorable Judge Ivan Lemelle of the United States District Court for the Eastern District of Louisiana directing him:

- (1.) To reinstate, and proceed to try and adjudge, according to the law and right of the case, civil action No. 22-3512, said to have been dismissed by order of said Judge between Diameyahn Stevenson, Plaintiff, and the Louisiana Supreme Court, ET AL., defendants.
- (2.) To have summons served on the Defendants.

Relator hereby avers that judgment is due pursuant to law and rule provided herein. In support relator shows the court the following:

JURISDICTION

The jurisdiction of this court is invoked pursuant to the Federal Rules of Civil Procedure, Rule 21; The All Writs Act of 28 U.S.C. § 1651; and 28 U.S.C. § 1291.

ISSUE PRESENTED

Whether the district court had a duty to lawfully exercise its prescribed jurisdiction to determine a Federal Question properly before it, which challenged the constitutionality of a State rule of appellate procedure as applied.

FACTS PRESENTED

The Louisiana Constitution Article 5 § 5 states in pertinent part:

"The Supreme Court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with Law..."

Pursuant to this constitutionally conferred authority, the Louisiana Supreme Court promulgated a rule of appellate procedure with regard to claims of ineffective assistance of trial counsel. The rule was announced in a series of cases including, State v. Truitt, 500 So.2d 355 where the court stated:

"The appropriate avenue for asserting a claim for ineffective assistance of counsel is through post-conviction relief, not by direct appeal. Id. at 359."

This rule was subsequently adopted by the Louisiana Appellate Project as the general policy for handling claims of ineffective assistance of trial counsel raised by indigents.

Under this policy, if an indigent defendant wishes to raise the ineffectiveness of his/her trial counsel on direct appeal, the indigent is informed by the appellate project that the claim is to be raised on post-conviction. However, once the claim is removed from the process of direct appeal, no counsel is provided to the indigent; It is the strict policy of the Louisiana Appellate Project to NOT appoint counsel

on post-conviction under any circumstances. In this manner, the indigent defendant is deprived of the assistance of counsel on direct appeal as to the claim of ineffective assistance at trial, in all but the rarest of cases. Moreover, in the vast majority of cases the claim is summarily denied without hearing or response from the accused counsel.

This is the rule of appellate procedure applied in Relator's case and which serves as the cause of action in relator's civil complaint. It is relator's position that the above mentioned rule of appellate procedure operates as an impediment created by State action which has deprived relator of an adequate opportunity to present his claim of ineffective assistance of trial counsel fairly on both direct appeal and post-conviction, in violation of relator's right to Due Process and Equal Protection under the 14th Amendment to the United States Constitution.

On September 30, 2022 Relator brought civil action in the United States District Court for the Eastern District of Louisiana, challenging the constitutionality of the aforementioned rule of appellate procedure as applied in relator's case. (See Exhibit "A").

Relator's civil action was brought pursuant to 28 U.S.C. § 1331 and sought injunctive and declaratory relief from the irreparable and continuous injury caused by the appellate procedure complained of (See Exhibit "A"). The clear purpose of relator's civil action was and is:

(1.) That the District Court determine the constitutionality of the aforesaid rule of appellate procedure as applied in relator's case and that the court declare its judgment.

(2.) To enforce relator's constitutional right to present his claims of ineffective assistance of trial counsel fairly, which is guaranteed by the Due Process and Equal Protection Clauses of the 14th Amendment.

This information appears on the face of relator's civil action and in no uncertain terms.

On January 9, 2023 the district court issued an order construing Relator's civil action as an application for habeas corpus, and finding that it was second or successive habeas corpus. The court dismissed the action for want of jurisdiction. (See Exhibit "B"). The court cited no authority in support of the construction given by the court to relator's civil action. Relator maintains that the judgment of the district court is egregiously erroneous as is shown infra.

Relator appealed the district court's judgment, sending Notice of Appeal on January 31, 2023. The appeal was docketed by the Clerk of Court of the Fifth Circuit Court of Appeals on February 9, 2023. On March 3, 2023, Relator received a letter from the Clerk of the Fifth Circuit Court of Appeals informing relator that in order to proceed on appeal relator must first file an application for a certificate of appealability. (See Exhibit "C"). By a letter in response, Relator explained to the Clerk that relator's civil action is an applied constitutional challenge to a state rule of appellate procedure brought pursuant to 28 U.S.C. § 1331 and not a habeas corpus application, therefore relator's appeal is an appeal as of right pursuant to 28 U.S.C § 1291. (See Exhibit "D").

Relator maintained the above stated position on appeal relying on ^{FN 1} Gonzalez v. Crosby's definition of a habeas corpus application to show that relator's action cannot be a habeas corpus application. Relator

steadfastly maintained that, because his civil action presents a constitutional challenge to a state rule of appellate procedure and not a state court conviction, relator is not required to seek a certificate of appealability before being allowed to appeal (See Exhibit "E"). On May 22, 2023 5th Circuit Judge Cory Wilson essentially affirmed the district court judgment by issuing an order in which Judge Wilson ruled that:

"[B]ecause his (Relator's) district court pleading complained of detention arising from a state court judgment he is required to obtain a C.O.A." (See Exhibit "F").

After finding that the requisite showing was not made, Judge Wilson concludes the order by stating:

"Accordingly his request for a C.O.A. is denied." (See Exhibit "F").

On June 13, 2023 Relator received a communication from the Clerk of the Fifth Circuit Court. Inside the envelope was a letter addressed to the Clerk of the Eastern District Court stating:

"Enclosed is a copy of the judgment issued as the mandate." (See Exhibit "G").

However, no copy of the judgment was enclosed, but in the lower left section of the letter is typed: "cc: (letter only) Daimeyahn Stevenson." Relator took this to mean that he was meant to receive only the letter and not a copy of the judgment.

REASON WHY THE WRIT SHOULD ISSUE

Relator asserts that the District Court has so far departed from the normal and accepted course of judicial proceedings, as to call for

the exercise of this court's supervisory jurisdiction and that the circuit court judge has sanctioned such a departure.

In the instant case, Relator presented the district court with a federal question challenging a state rule of appellate procedure as applied in Relator's case. (See Exhibit "A").

This constitutional challenge was through civil action pursuant to 28 U.S.C. § 1331, This section provides as follows:

The district courts shall have original jurisdiction of all civil actions arising under constitution, laws or treaties of the United States.

The gravamen of Relator's civil complaint is that the rule of appellate procedure complained of has deprived relator of an adequate opportunity to present his claims of ineffective assistance of counsel at trial and on direct appeal in violation of relator's right to Due Process and Equal Protection under the 14th amendment to the Federal Constitution, See Ross v. Moffitt, 417 U.S. 600 at 616.

The District Court seeks to avoid the adjudication of this weighty issue by employing a clever device. By construing Relator's civil complaint as a successive application for writ of habeas corpus the district court would appear to have evaded jurisdiction, but in doing so the court was required to disregard both binding precedent and statutory law, which is indeed what occurred.

In Gonzalez v. Crosby, 545 U.S. 524 the Supreme Court conclusively defined what constitutes an application for writ of habeas corpus, speaking of 2254(d) and 2244(b), the court explained:

"[F]or purposes of sub. sec. 2244(b), an application for habeas corpus relief is a filing that seeks an adjudication on the merits of the petitioner's claim. " Id. at 530 citing Woodford v. Garceau, 538 U.S. 202.

The court went on to define the word "claim" in the context of sub. sec. 2244(b):

'These statute, [2254(d) and 2244(b)] and our own decisions, make clear that a "claim" as used in sub. sec. 2244(b) is an asserted Federal basis for relief from a state court judgment of conviction.' Gonzalez, supra. at 530.

Relator's civil complaint presents an as applied constitutional challenge to a state rule of appellate procedure and does so on the face of the complaint in a straight forward manner. It does not attack any state court judgment of conviction and therefore cannot reasonably or lawfully be construed as a habeas corpus application. Relator submits that the district court's judgment, for the above stated reasons, is in conflict with Supreme Court precedent.

'It is a paradigmatic abuse of discretion for a court to base its judgment on an erroneous view of the law.' Schlup v. Delo, 513 U.S. 298, 233 (O'Connor, J., concurring).'

Relator asserts that the district court's refusal to exercise its lawful jurisdiction can only be remedied through the exercise of this court's supervisory jurisdiction, where relator has no other adequate means to attain the relief to which he is entitled.

'A mandamus gives no right, but only puts the party in a way to try his right.' Marbury v. Madison, 5 U.S. 137, 152.

The district court in this case was presented with a constitutional question by means of a well pleaded civil complaint, this fact is undisputed. Relator asserts that pursuant to 28 U.S.C. § 1331, the district court was required to determine the merits of this issue. This Honorable Court has recognized as much. In the case of IN Re Estelle, 516 F.2d 480 the court observed:

'[I]t is clear that an extraordinary writ may be appropriate to prevent a trial court from making a discretionary decision where a statute effectively removes the decision from the realm of discretion.' Id. at 438.

Speaking on the Nature of Extraordinary writs this court explained:

'To some extent they are supervisory in nature and are used to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.' Id. at 438.

28 U.S.C. § 1331 gives the district courts exclusive jurisdiction of all civil actions arising under the constitution, laws or treaties of the United States. A civil action arising under the 14th Amendment is precisely what relator properly presented to the district court. Relator asserts that the district court was not at liberty to disregard binding law by refusing to declare relator's rights guaranteed by the 14th Amendment.

'It is emphatically the province and duty of the judicial department to say what the law is.' Marbury v. Madison 5 U.S. 137, 177.

Finally, Relator asserts that if the district court's judgment is allowed to stand, the appellate jurisdiction of this court will be defeated by a manifestly erroneous judgment by the district court.

The district court's determination that it lacked jurisdiction is a legal conclusion, this court reviews legal conclusions de novo. Frew v. Janek, 780 F.3d 320, 326. The fact that both the district court and the circuit court judge treated relator's civil action as a successive habeas corpus application, has profound implications for relator's right to appeal that determination, but it also negatively affects this court's jurisdiction to review that determination. Because Relator's civil action was brought pursuant to 28 U.S.C. § 1331, Relator is lawfully entitled to an appeal as of right pursuant to 28 U.S.C. § 1291. However, because the district court arbitrarily construed relator's civil complaint as a successive habeas corpus application and the circuit judge sanctioned that construction, Relator's appeal as of right pursuant to 28 U.S.C. § 1291 was unlawfully converted into an appeal by permission pursuant to 28 U.S.C. § 2253(c)(1). Thus, Relator was unlawfully required to obtain a C.O.A. by the Circuit Court Judge.

But if Relator's civil action is really a successive habeas application as the district court and circuit Judge ruled, the law would require relator to file a motion in the court of appeals asking permission to file a successive application pursuant to 28 U.S.C. § 2244(b)(3)(A) and not a C.O.A.. Relator asserts that the law itself demonstrates that both judgments are so egregiously erroneous as to be deemed a 'usurpation of power.' See In Re Estelle, 516 F.2d 480, 488 (Godbolt, J. concurring in part), citing U.S. Alkali EXP. ASSO. v. United States, 325 U.S. 196.

Moreover, even if C.O.A. were the proper recourse, it would be impossible for relator to obtain, as relator would have to make a substantial showing of a denial of a constitutional right' Barefoot v.

Estelle, 463 U.S. 880, and because the district court has refused to adjudicate the constitutional challenge raised in Relator's civil action , No such showing could ever be made. Thus an impenetrable barrier has been artificially erected to defeat appellate review. The actions of the district court and circuit court Judge represent a radical departure from the regular course of judicial proceedings.

Daimeyahn Stevenson
DAIMEYAHN STEVENSON

CONCLUSION AND PRAYER

Considering the foregoing facts, and law in support thereof, Relator prays that this Honorable Court deem appropriate the issuance of the Writ if Mandamus.

CERTIFICATE OF SERVICE

Relator hereby certifies that a true and correct copy of the foregoing Application for Writ of Mandamus was placed in the hands of the D.W.C.C. Mailroom Officer with postage prepaid and addressed to the Honorable Judge Ivan Lemelle, United States District Court, Eastern District of Louisiana, New Orleans, LOUISIANA, on this _____ day of _____, 2023.


DAIMEYHN STEVENSON

CLASSIFICATION OFFICER

F

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 11, 2024

Lyle W. Cayce
Clerk

IN RE DAIMEYAHN STEVENSON,

Petition for Writ of Mandamus to the
United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CV-3512

UNPUBLISHED ORDER

Before JONES, HIGGINSON, and Ho, *Circuit Judges*.

PER CURIAM:

Daimeyahn Stevenson, Louisiana prisoner # 218645, has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file his mandamus petition in forma pauperis (IFP). The motion for leave to proceed IFP is GRANTED.

The instant mandamus petition arises from a civil action filed by Stevenson which named the Louisiana Supreme Court and the Louisiana Appellate Project as the defendants. The district court construed Stevenson's pro se complaint as a 28 U.S.C. § 2254 application, which it dismissed without prejudice as an unauthorized successive application on January 9, 2023. Stevenson timely appealed, and this court denied his

request for a certificate of appealability. *Stevenson v. La. Sup. Ct.*, No. 23-30079 (5th Cir. May 22, 2023) (unpublished order).

Stevenson now requests that we use our mandamus authority to order the district court to reinstate his civil action and adjudicate it anew. He contends that the district court had a duty to consider the federal question raised in his complaint, and he argues that the district court erroneously construed his complaint as a habeas application.

“Mandamus is an extraordinary remedy that should be granted only in the clearest and most compelling cases.” *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show both that he has no other adequate means to obtain the requested relief and that he has a “clear and indisputable” right to the writ. *Id.* (internal quotation marks and citation omitted). Mandamus is not a substitute for appeal. *Id.* “Where an interest can be vindicated through direct appeal after a final judgment, this court will ordinarily not grant a writ of mandamus.” *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992).

Our mandamus authority does not extend to directing a district court to reconsider a ruling in a closed case. *Cf. Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, 25 (1943) (limiting mandamus authority to issuance of writs “in aid of a jurisdiction already acquired by appeal” or “to those cases which are within [our] appellate jurisdiction although no appeal has been perfected”). Further, as an appellate remedy was available to Stevenson, he may not proceed by way of mandamus. *See Campanioni*, 962 F.2d at 464.

The petition for a writ of mandamus is DENIED.



A True Copy
Certified order issued Jan 11, 2024

Jay W. Caylor
Clerk, U.S. Court of Appeals, Fifth Circuit

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 23, 2024

Lyle W. Cayce
Clerk

IN RE DAIMEYAHN STEVENSON,

No. 23-30722

Petitioner.

Petition for a Writ of Mandamus
to the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CV-3512

ON PETITION FOR REHEARING EN BANC

UNPUBLISHED ORDER

Before JONES, HIGGINSON, and Ho, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.