

Scanned Feb 07, 2008

APPLICANT

BILLY DALE BOND

APPLICATION NO. WR-54,015-02

APPLICATION FOR 11.07 WRIT OF HABEAS CORPUS

ACTION TAKEN

DENIED WITHOUT WRITTEN ORDER.

Carbara P. Hevey
JUDGE

2/6/08
DATE

TCCA# WR-54,015-02

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CAUSE NO. B96-229

THE STATE OF TEXAS

§

IN THE DISTRICT COURT

VS.

§

KERR COUNTY, TEXAS

BILLY BOND

§

198TH JUDICIAL DISTRICT

STATE'S RESPONSE TO APPLICATION FOR WRIT OF HABEAS CORPUS

Now comes the State of Texas by and through her District Attorney and in response to Habeas Corpus filed in the above styled and numbered cause would state unto the Court as follows:

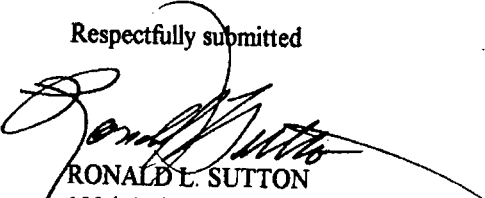
I.

That the State denies each and every allegation contained in the Writ of Habeas Corpus filed in this cause.

WHEREFORE, PREMISES CONSIDERED the State prays that said application be in all things denied.

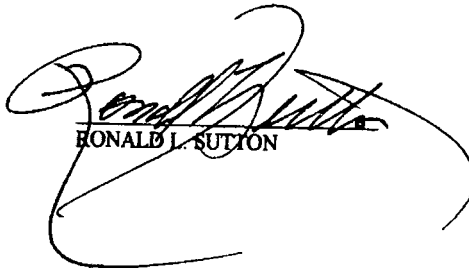
Signed this 12th day of December, 2007.

Respectfully submitted


RONALD L. SUTTON
198th Judicial District Attorney

CERTIFICATE OF SERVICE

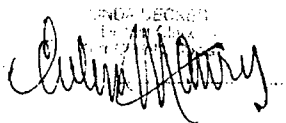
A true and correct copy of the foregoing STATE'S RESPONSE TO APPLICATION FOR WRIT OF HABEAS CORPUS was mailed to the defendant, on DEC 13, 2007.


RONALD L. SUTTON

FILED

10:07 a.m.

DEC 14 2007



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TCCA# WR-54,015-02

CLERK'S CERTIFICATE OF NOTIFICATION OF APPLICATION OF HABEAS CORPUS
CCP 11.07 3[c]

CAUSE NO. B96-229

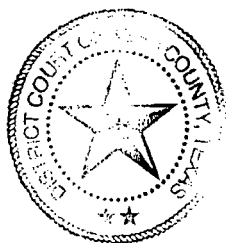
STATE OF TEXAS
VS.
BILLY BOND

§ IN THE 198TH DISTRICT COURT
§ OF
§ KERR COUNTY, TEXAS

This is to certify that the above numbered and entitled Post Conviction Writ of Habeas Corpus was filed in the court on the Nov 15, 2007, and that a copy of said petition was served upon the district attorney on the Nov. 16, 2007; and further, as clerk of this court, I hereby certify that the following orders were entered by the trial court to wit: within a 20 day time limit from the filing of this petition.

Pursuant to the Provision of Art. 11.07, 2[c], supra, the trial court's failure to act within the time limits as prescribed by statute constitutes a finding that there are no previously unresolved fact material to the legality of the applicant's confinement.

So certified on this the 20th day of December, 2007.



LINDA UECKER, DISTRICT CLERK
KERR COUNTY, TEXAS

By


Simona Garza, Deputy

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 10-50704

IN RE: BILLY DALE BOND,

Movant

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

Before CLEMENT, SOUTHWICK, and HAYNES, Circuit Judges.

PER CURIAM:

Billy Dale Bond, Texas prisoner # 1068620, moves this court for authorization to file a successive 28 U.S.C. § 2254 application to challenge his 2001 conviction and sentence for aggravated sexual assault. Bond asserts that he would raise the following issues in his § 2254 application: (1) his sentence violated article 42.12 of the Texas Code of Criminal Procedure; (2) his trial counsel rendered ineffective assistance; and (3) the assistant district attorney engaged in prosecutorial misconduct.

A state prisoner seeking to file a second or successive § 2254 application must obtain authorization from this court to do so. 28 U.S.C. § 2244(b)(3)(A). With regard to new claims, we may authorize a successive § 2254 application only if the prisoner makes a prima facie showing that either: (1) his claims rely on a new rule of constitutional law that was made retroactive to cases on collateral review by the Supreme Court and was previously unavailable or (2)

No. 10-50704

the factual predicate for his claims could not have been discovered previously through due diligence and the underlying facts, if proven, would establish by clear and convincing evidence that, but for constitutional error, no reasonable trier of fact would have found him guilty of the underlying offense. § 2244(b)(2), (b)(3)(C). "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." § 2244(b)(1).

Because Bond's proposed claims that his counsel rendered ineffective assistance and that the district attorney engaged in prosecutorial misconduct were raised in 2005 in his original § 2254 application, which was dismissed as untimely, we will not consider them. See § 2244(b)(1). Further, although Bond's claim that his sentence was illegal does not appear to have been raised in his original § 2254 application, it was raised in a subsequent, successive application. In any event, Bond does not assert that this proposed claim relies on a new rule of constitutional law or that the factual predicate for his claims could not have been discovered previously through due diligence. Thus, he has failed to make the prima facie showing required to obtain leave to file a successive § 2254 application. See § 2244(b)(2), (b)(3)(C).

Accordingly, IT IS ORDERED that Bond's motion for authorization to file a successive § 2254 application is DENIED.

FILED

SEP 19 2008

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

BILLY BOND, TDCJ # 1068620,

Petitioner

V.

NATHANIEL A. QUARTERMAN,
Texas Department of Criminal Justice
Correctional Institutions Division Director,

Respondent

Civil Action
No. SA-8-CA-748-OG (NN)

Petitioner Billy Bond's Motion to Proceed In Forma Pauperis (IFP) is **DENIED** and **Petitioner shall pay the filing fee within twenty (20) days**. Petitioner's IFP Application shows he receives average deposits of \$41 per month which is sufficient to pay the \$5 filing fee.

Petitioner was convicted in Kerr County in 2001 for aggravated sexual assault and was sentenced to thirty-five years in *State v. Bond*, No. B96-229 (Tex. 198th Jud. Dist. Ct., *jmt. entered* Oct. 13, 2001). Petitioner's conviction was affirmed on October 8, 2003. *Bond v. State*, No 4-3-218-CR (Tex. 4th Ct. App.). His petition for discretionary review was denied on March 3, 2004. On July 23, 2008, Bond filed a State habeas corpus application that was denied on August 13, 2008. Bond's 2254 Habeas Corpus Petition contends his counsel was ineffective for failing to properly advise Petitioner on the procedures for filing a petition for discretionary review.

Petitioner Bond's federal Petition is apparently barred by the one-year statute of limitations of ✖
§ 2244(d). Title 28 U.S.C. § 2244(d)(1) provides "[a] 1-year period of limitation shall apply to an
application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State
court." See Kiser v. Johnson, 163 F. 3d 326, 328-29 (5th Cir. 1999) (district court may raise §

"Appendix C"

2244(d) limitations defense sua sponte). Bond's conviction became final November 7, 2003, when his time for seeking discretionary review with the Texas Court of Criminal Appeals expired. See Tex. R. App. P. 202(b) (providing such a petition must be filed within thirty days following the court of appeals judgment). His federal Petition is dated September 5, 2008. There was more than a four year and nine month interval between the time Bond's conviction became final and the filing of his § 2254 Petition. His State habeas corpus application filed in 2008 had no effect on limitations because limitations had already expired. See 28 U.S.C. § 2244(d)(2).

Furthermore, there is no basis for Bond's Petition. Bond complains that his counsel failed to (advise him of the proper procedures for filing a petition for discretionary review, however [the record shows Bond's counsel in a letter dated October 16, 2003 informed Bond of the affirmance of his conviction, advised Bond that counsel's representation was concluded, and advised Bond he had thirty days until November 7, 2003 to file a petition for discretionary review,] which was correct. See Tex. R. App. P. 202(b). Petitioner failed to explain how his counsel was deficient.

Therefore, **this Court directs Petitioner Bond to show cause within twenty (20) days why his Habeas Corpus Petition should not be dismissed as barred by limitations and without merit.** If Petitioner fails to pay the filing fee or respond to this Order, his Petition shall also be dismissed for failure to prosecute and failure to comply with the Orders of this Court pursuant to Fed. R. Civ. P. 41(b). See *Martinez v. Johnson*, 104 F. 3d 769, 772 (5th Cir. 1997).

DATED: September 19, 2008


NANCY STEIN NOWAK
United States Magistrate Judge

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