



Rhodes v. Beckwith

2018 | Cited 0 times | D. South Carolina | August 3, 2018

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA
David Elijah Rhodes, Sr.,

Petitioner, v. Warden Beckwith,

Respondent. _____

C/A No. 0:18-1902-MGL-PJG

REPORT AND RECOMMENDATION

The petitioner, David Elijah Rhodes, Sr., a self-represented state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. 1

Petitioner files this action in forma pauperis under 28 U.S.C. § 1915 and § 1915A. This Petition is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.). Having reviewed the Petition in accordance with applicable law, the court concludes that it should be summarily dismissed without prejudice and without requiring the respondent to file a return. I. Factual and Procedural Background

Petitioner indicates he pled guilty to voluntary manslaughter in the Sumter County Court of General Sessions and was sentenced to eighteen years' imprisonment on March 3, 2008. The South Carolina Public Index and this court's records show that Petitioner filed a post-conviction relief ("PCR") action in 2008, received an evidentiary hearing on the application in the Sumter County Court of Common Pleas, and was denied relief in 2011. Rhodes v. South Carolina, 2016-CP-43-

1 Petitioner actually filed this action on a standard form for petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. However, regardless of the "statutory label" chosen, all petitions for a writ of habeas corpus filed by state prisoners are governed by 28 U.S.C. § 2254. See *In re Wright*, 826 F.3d 774, 783 (4th Cir. 2016).

Page 1 of 5 0:18-cv-01902-MGL Date Filed 08/03/18 Entry Number 6 Page 1 of 5

1233. Petitioner filed a Rule 59(e) motion in that case that, according to Petitioner, was never



Rhodes v. Beckwith

2018 | Cited 0 times | D. South Carolina | August 3, 2018

addressed by the PCR court. However, Petitioner went on to appeal the PCR court's decision by way of a Johnson petition, 2

which was denied by the South Carolina Court of Appeals in 2014. Petitioner then filed a petition for a writ of certiorari pursuant to 28 U.S.C. § 2254 in this court on February 10, 2014. Rhodes v. Beckwith, C/A No. 0:14-cv-428-MGL. The court granted summary judgment in the respondent's favor.

In 2016, Petitioner filed a second PCR action in state court, alleging he was "denied right to review first PCR application." Rhodes v. South Carolina, 2016-CP-43-1233. The State filed a return and moved to dismiss the action. The PCR court dismissed this application as successive, finding Petitioner received a full adjudication on the merits in his original application.

Petitioner now bring this petition for a writ of habeas corpus, claiming that he was denied his right to due process because the court in his first state PCR application never ruled on Petitioner's Rule 59(e) motion. II. Discussion

A. Standard of Review Under established local procedure in this judicial district, a careful review has been made of the pro se petition filed in this case pursuant to the Rules Governing § 2254 Cases, 28 U.S.C. § 2254; the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-

2 Johnson v. State, 364 S.E.2d 201 (S.C. 1988) (applying the factors in Anders v. California, 386 U.S. 738 (1967), to post-conviction appeals). Anders requires that counsel who seeks to withdraw after finding the "case to be wholly frivolous" following a "conscientious examination" must submit a brief referencing anything in the record that arguably could support an appeal; furnish a copy of that brief to the defendant; and after providing the defendant with an opportunity to respond, the reviewing court must conduct a full examination of the proceedings to determine if further review is merited. Anders, 386 U.S. at 744.

Page 2 of 5 0:18-cv-01902-MGL Date Filed 08/03/18 Entry Number 6 Page 2 of 5

132, 110 Stat. 1214; and in light of the following precedents: Denton v. Hernandez, 504 U.S. 25 (1992); Neitzke v. Williams, 490 U.S. 319, 324-25 (1989); Haines v. Kerner, 404 U.S. 519 (1972); Nasim v. Warden, Md. House of Corr., 64 F.3d 951 (4th Cir. 1995) (en banc); Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983).

This court is required to liberally construe pro se petitions, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule



Rhodes v. Beckwith

2018 | Cited 0 times | D. South Carolina | August 3, 2018

8 of the Federal Rules of Civil Procedure for “all civil actions”).

B. Analysis The instant case should be summarily dismissed as a successive § 2254 petition. “[A]n individual may not file a second or successive § 2254 petition for a writ of habeas corpus or § 2255 motion to vacate sentence without first receiving permission to do so from the appropriate circuit court of appeals.” *In re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1997); see also 28 U.S.C. § 2244(b). The issue of successiveness of a habeas petition may be raised by the court sua sponte. See *Rodriguez v. Johnson*, 104 F.3d 694, 697 n.1 (5th Cir. 1997); *Davis v. McFadden*, C/A No. 0:14- 2662-RMG, 2014 WL 5305931, at *4 (D.S.C. Oct. 15, 2014) (adopting and incorporating Report and Recommendation). Thus, Petitioner must obtain a Pre-Filing Authorization from the United States Court of Appeals for the Fourth Circuit before this court may consider a second or successive § 2254 petition. See *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005) (“[B]efore the district court may

Page 3 of 5 0:18-cv-01902-MGL Date Filed 08/03/18 Entry Number 6 Page 3 of 5

accept a successive petition for filing, the court of appeals must determine that it presents a claim not previously raised that is sufficient to meet § 2244(b)(2)’s new-rule or actual-innocence provisions.”); see also *In re Williams*, 330 F.3d 277 (4th Cir. 2003). As Petitioner provides no indication that he received such permission from the Fourth Circuit prior to filing this Petition, it is subject to summary dismissal. Petitioner can obtain the forms necessary to seek authorization to file a second or successive habeas petition from the Clerk’s Office of the Fourth Circuit Court of Appeals. III. Conclusion

Accordingly, the court recommends that the Petition for a writ of habeas corpus be dismissed without prejudice and without requiring the respondent to file a return.

Paige J. Gossett UNITED STATES MAGISTRATE JUDGE
August 3, 2018 Columbia, South Carolina

The parties are directed to note the important information in the attached “Notice of Right to File Objections to Report and Recommendation.”

Page 4 of 5 0:18-cv-01902-MGL Date Filed 08/03/18 Entry Number 6 Page 4 of 5

Notice of Right to File Objections to Report and Recommendation The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).



Rhodes v. Beckwith

2018 | Cited 0 times | D. South Carolina | August 3, 2018

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk United States District Court

901 Richland Street Columbia, South Carolina 29201 Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

Page 5 of 5 0:18-cv-01902-MGL Date Filed 08/03/18 Entry Number 6 Page 5 of 5

