

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES BUNCH

CIVIL ACTION

VERSUS

NO: 06-30582

RICHARD STALDER

MOTION TO PROCEED AND SHOW CAUSE
FOR SECOND AND SUCCESSIVE WRIT OF HABEAS CORPUS

MAY IT PLEASE THE COURT:

NOW COMES, James Bunch, pro-se petitioner, in the above titled matter, who respectfully moves this Honorable Court to "allow" leave to proceed with a second and/or successive Writ of Habeas Corpus for the reasons set forth herein.

JURISDICTION

Jurisdiction is properly before this Court in accordance to 28 U.S.C. § 2241 et al to § 2254, and the 1st, 5th, 6th and 14th Amendments to the United States Constitution, along with Rule 9(B) of Section 2255 proceedings.

STATEMENT OF FACTS

On December 17, 1981, petitioner James Bunch was indicted for one (1) count of First Degree Murder in violation of La.R.S. 14:30, in that he killed one Tyrone Woodard and attempt murder of another person.

On March 17, 1982, petitioner was tried by a 12 member jury and found guilty as charged. Shortly thereafter, petitioner was sentenced to serve the remainder of his "Life" in prison without benefit of parole, probation and/or suspension of sentence. Petitioner then appealed. See, State v. Bunch, 426 So.2d 188 (La. 1983). His direct appeal was affirmed.

CLAIM FOR REVIEW

Petitioner states that, his claims should be heard:

- 1). Because they fall under the Rule 9(B) exceptions;
- 2). They are newly discovered after conviction;
- 3). Petitioner has exhausted all state remedies;
- 4). The claims brought forth in petitioner's prior Petition for Habeas Corpus were never adjudicated upon the merits.

SUCCESSIVE PETITION

Petitioner states that, the rules governing a second and/or successive petition are found in the F.C.J.R.P. Rule 9(B) which reads as follows:

"A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and prior determination were on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constitutes an abuse of the writ."

Petitioner states that, controlling weight may be given to a denial of a prior application for habeas corpus or § 2255 if:

- 1). The same grounds presented in a subsequent application was determined adversely to the applicant or the prior application;
- 2). The prior determination was on the merits and;
- 3). The ends of justice would not be secured by reaching the merits of the subsequent application.

The prior denial must have rested on the adjudication of the merits of the grounds presented in the subsequent application. See, Hobbs v. Pepnesack, 301 F.2d 875.

This means that, if factual issues were raised in the prior application and it was not denied on the basis that the files and records conclusively resolved the issues, the petitioner is entitled to relief thereof. See, Motley v. United States, 250 F.2d 110 (C.A.5th Cir. 1956); also, Hallowell v. United States, 197 F.2d 926 (C.A. 5th Cir. 1952).

Even if the same grounds were rejected on a prior application on the merits, it is still open to the applicant to show that the ends of justice would be served by permitting the redetermination of the grounds. See, Townsend v. Sain, 372 U.S. 293, 300, 83 S.Ct. 745.

No matter how many applications for collateral relief a prisoner has made, the principle cannot apply if a different ground is presented by the new application. So too, it cannot apply if the same ground was earlier presented but not adjudicated on the merits.

Petitioner states that, his first application under No. 97-3688, was never resolved upon the merits of his claim.

Petitioner claim falls under the new constitutional rule in House v. Bell, No. 04-8990, ___ S.Ct. ___, June 12, 2006.

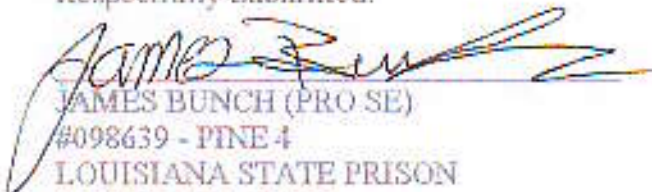
Petitioner is presenting an actual innocence claim in order to invoke the gateway to the habeas exception to procedural bar rule, requires new reliable evidence that was not presented at trial. The habeas court "must" assess the likely impact of all the evidence on reasonable jurors.

Petitioner states that, he has brought his Brady claim forth in just such a way as to show that, when the evidence is assessed as a whole by reasonable jurors, they could not have found the defendant guilty as charged beyond a reasonable doubt.

PRAYER

For the reason stated above, with Laws and Facts to support therewith, petitioner prays this Honorable Court "GRANT" him leave to proceed with his original claim in his Application for Writ of Habeas Corpus.

Respectfully Submitted:


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LOUISIANA STATE PRISON
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CERTIFICATE OF SERVICE

I, JAMES BUNCH, hereby certify that a copy of the foregoing has been served upon the State of Louisiana by placing a copy in the U.S. Mail on this 10 day of July 2006, addressed to the Honorable Attorney General.


JAMES BUNCH