

SUPREME COURT OF FLORIDA

Tate v. McNeil

983 So. 2d 502 (Fla. 2008) · No. SC07-689 · Decided March 13, 2008

SUMMARY

The Supreme Court of Florida dismissed James L. Tate, Jr.'s habeas corpus petition as unauthorized and considered sanctions based on his repeated filings challenging the same conviction and sentence. The court ordered the clerk to reject future pro se filings by Tate concerning that conviction unless signed by a member in good standing of The Florida Bar, while preserving his ability to seek relief through counsel.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Lewis, C.J.; Wells, J.; Anstead, J.; Pariente, J.; Quince, J.; Cantero, J.; Bell, J.
JURISDICTION	Florida
DECIDED	March 13, 2008
DOCKET	SC07-689
DISPOSITION	other
PROCEDURAL POSTURE	Tate filed a pro se petition styled as a petition for writ of mandamus, which the Supreme Court of Florida treated as a petition for writ of habeas corpus. The Court had dismissed the petition as unauthorized and retained jurisdiction to determine whether Tate should be sanctioned for repetitive filings.
STANDARD OF REVIEW	The Court reviewed the petitioner's filings and response to the show-cause order to determine whether sanctions were warranted for abuse of the Court's processes.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; precedential.
PARTIES	James L. Tate, Jr. v. Walter A. McNeil, etc.

TOPICS

- state post-conviction relief
- successive petitions
- sanctions
- appellate procedure
- writ of certiorari

PRACTICE AREAS

state post-conviction relief

appellate procedure

filing sanctions

QUESTIONS PRESENTED

1. Whether Tate showed cause why he should not be sanctioned and barred from making further pro se filings concerning his conviction and sentence.
2. Whether the Supreme Court of Florida could require that future filings concerning the conviction and sentence be signed by a member in good standing of The Florida Bar.

HOLDINGS

1. Tate failed to show cause why he should not be sanctioned because his response merely reargued the merits of claims that had repeatedly been presented in unsuccessful or unauthorized proceedings.
2. The Clerk of the Florida Supreme Court may reject future pleadings, petitions, motions, documents, or other filings submitted by Tate concerning case 93-580CFA unless they are signed by a member in good standing of The Florida Bar.

KEY QUOTATIONS

“Accordingly, in order to preserve the right of access for all litigants and promote the interests of justice, the Clerk of this Court is hereby instructed to reject for filing any future pleadings, petitions, motions, documents, or other filings submitted by James L. Tate, Jr., that are related to his conviction and sentence in case 93-580CFA, unless signed by a member in good standing of The Florida Bar.” (504)

“Under the sanction herein imposed, Tate is not wholesale being denied access to the courts.” (504)

FACTUAL BACKGROUND

Tate was convicted by a jury on December 22, 1994, of attempted first-degree murder in Martin County, Florida. His judgment and sentence became final after the Fourth District Court of Appeal affirmed. Since July 2002, Tate had initiated eighteen proceedings in the Florida Supreme Court concerning the same conviction and sentence, none of which resulted in the relief requested. His current petition and later filings repeated claims seeking to vacate the conviction and sentence.

PROCEDURAL HISTORY

Tate was convicted of attempted first-degree murder in the Nineteenth Judicial Circuit in Martin County, Florida, and the judgment and sentence were affirmed by the Fourth District Court of Appeal. After numerous unsuccessful proceedings concerning the conviction and sentence, Tate filed the present petition and several amendments. The Supreme Court dismissed the petition on October 31, 2007, ordered Tate to show cause why he should not be barred from future pro se filings concerning the conviction and sentence, and, after reviewing his response, imposed filing sanctions.

DISPOSITION

CASES CITED

- Tate v. State, 671 So. 2d 798 (Fla. 4th DCA 1996) (table)
- Baker v. State, 878 So. 2d 1236 (Fla. 2004)
- Martin v. District of Columbia Court of Appeals, 506 U.S. 1, 113 S.Ct. 397, 121 L.Ed.2d 305 (1992)
- In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991)
- In re McDonald, 489 U.S. 180, 184, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989)
- Sibley v. Fla. Jud. Qual. Comm'n, 973 So. 2d 425 (Fla. 2006)
- Lanier v. State, 908 So. 2d 332 (Fla. 2005)
- Jean v. State, 906 So. 2d 1055 (Fla. 2005)
- Armstead v. State, 817 So. 2d 841 (Fla. 2002)
- Peterson v. State, 817 So. 2d 838, 840 (Fla. 2002)
- Jackson v. Fla. Dep't of Corr., 790 So. 2d 398 (Fla. 2001)
- Rivera v. State, 728 So. 2d 1165 (Fla. 1998)
- Attwood v. Singletary, 661 So. 2d 1216 (Fla. 1995)
- Tate v. McDonough, 944 So. 2d 346 (Fla. 2006)
- Tate v. McDonough, 937 So. 2d 1100 (Fla.)
- Tate v. State, 937 So. 2d 666 (Fla.)
- Pettway v. State, 776 So. 2d 930 (Fla. 2000)
- Huffman v. State, 813 So. 2d 10 (Fla. 2000)
- Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002)
- Jenkins v. State, 385 So. 2d 1356 (Fla. 1980)

OPINION

PER CURIAM.

983 So.2d 502 (2008) James L. TATE, Jr., Petitioner, v. Walter A. McNEIL, etc., Respondent. No. SC07-689. Supreme Court of Florida. March 13, 2008. Rehearing Denied May 27, 2008. James L. Tate, Jr., pro se, Bowling Green, FL, for Petitioner. PER CURIAM. James L. Tate, Jr., an inmate in state custody, filed a pro se "Petition for Writ of Mandamus," which has been treated as a petition for a writ of habeas corpus.[1] For years, Tate has been futilely seeking vacation of his conviction and sentence in case 93-580CFA in the Nineteenth Judicial Circuit in and for Martin County, Florida.

Tate's instant petition also seeks to vacate that conviction and sentence. According to Tate's petition, he was tried by a jury, and on December 22, 1994, he was convicted of attempted first-degree murder in the Nineteenth Judicial Circuit, in and for Martin County, Florida.

On March 27, 1995, the district court per curiam affirmed the judgment of guilt and sentence imposed by the trial court. See *Tate v. State*, 671 So.2d 798 (Fla. 4th DCA 1996) (table). Since Tate's conviction and sentence became final, he has filed numerous petitions in this and other courts related to his conviction and sentence in case 93-580CFA. Tate filed the instant petition on April 9, 2007; he also filed amendments or supplements to the petition on May 29, 2007, June 8, 2007, and June 22, 2007.

After Tate's petition had been submitted to the Court for consideration, in August and September 2007, Tate filed several other filings that essentially reiterated his claims for relief. *503 On October 31, 2007, the Court issued an order dismissing Tate's petition in this case, pursuant to *Baker v. State*, 878 So.2d 1236 (Fla.2004).

In so doing, the Court expressly retained jurisdiction to pursue possible sanctions against Tate, and on the same date, the Court ordered Tate to show cause why he should not be barred from filing any further pro se requests for relief related to his conviction and sentence in case 93-580CFA.

In his response to the order to show cause, Tate argues that the Court should refrain from barring him for two reasons. First, he maintains that he is innocent of the crime for which he was convicted in case 93-580CFA.

Second, he argues that there were multiple constitutional violations and procedural infirmities in the criminal proceedings below. Having considered Tate's response, the Court finds Tate has failed to show cause why he should not be sanctioned.

In so doing, the Court now imposes sanctions as prescribed below. Since July 2002, including this petition, Tate has initiated eighteen separate proceedings in this Court. The Court has never granted Tate the relief he has requested. See *Tate v. McDonough*, No. SC07-689 (Fla. Oct.31, 2007) (habeas corpus petition dismissed as unauthorized); *Tate v. McDonough*, 944 So.2d 346 (Fla.

2006) (habeas corpus petition dismissed as unauthorized); *Tate v. McDonough*, 937 So.2d 1100 (Fla.) (habeas corpus petition denied as successive), cert. denied, ___ U.S. ___, 127 S.Ct. 504, 166 L.Ed.2d 377 (2006); *Tate v. State*, 937 So.2d 666 (Fla.) (mandamus petition dismissed pursuant to *Pettway v. State*, 776 So.2d 930 (Fla.2000)), cert. denied, ___ U.S. ___, 127 S.Ct.

501, 166 L.Ed.2d 374 (2006); *Tate v. McDonough*, 935 So.2d 1220 (Fla.2006); *Tate v. McDonough*, No. SC06-672 (Fla. Apr. 21, 2006) (habeas corpus petition transferred); *Tate v. McDonough*, No. SC06-565 (Fla. Apr. 10, 2006) (habeas corpus petition transferred); *Tate v. Crosby*, No. SC04-1214 (Fla. Jul.25, 2005) (mandamus petition denied pursuant to *Huffman v. State*, 813 So.2d 10 (Fla.2000)); *Tate v. State*, 905 So.2d 126 (Fla.2005) (discretionary review denied); *Tate v. State*, No. SC03-1337, 886 So.2d 227 (Fla.

Oct.4, 2004) (mandamus petition dismissed pursuant to *Stallworth v. Moore*, 827 So.2d 974 (Fla.2002)); *Tate v. Crosby*, No. SC04-1748 (Fla. Sept. 15, 2004) (mandamus petition transferred); *Tate v. State*, 880 So.2d 1213 (Fla.2004) (request for discretionary review dismissed pursuant to *Stallworth*); *Tate v. State*, No. SC04-294 (Fla. Mar. 19, 2004) (notice of appeal transferred); *Tate v. State*, No. SC03-2457, 870 So.2d 824 (Fla.

Mar. 1, 2004) (request for discretionary review dismissed pursuant to *Jenkins v. State*, 385 So.2d 1356 (Fla.1980)); *Tate v. State*, No. SC03-1956, 861 So.2d 431 (Fla. Nov.13, 2003) (request for discretionary review dismissed pursuant to *Stallworth*); *Tate v. State*, No. SC03-1883 (Fla. Oct.4, 2004) (habeas corpus petition dismissed pursuant to *Stallworth*); *Tate v. State*, No. SC03-415 (Fla.

Mar. 19, 2003) (mandamus petition transferred); *Tate v. State*, No. SC02-1558 (Fla. Sept.25, 2002) (notice of appeal transferred). These petitions were either, like the instant petition, inappropriate for review in this Court or devoid of merit. *Tate's* response to this Court's order to show cause merely reargues the merits of his claims for relief in this case and, therefore, fails to show cause why he should not be sanctioned.

This Court and the United States Supreme Court have, when deemed necessary, exercised the inherent judicial authority to sanction an abusive litigant. See, e.g., *Martin v. District of Columbia Court of Appeals*, 506 U.S. 1, 113 S.Ct. *504 397, 121 L.Ed.2d 305 (1992); *In re Sindram*, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); *In re McDonald*, 489 U.S. 180, 184, 109 S.Ct.

993, 103 L.Ed.2d 158 (1989); *Sibley v. Fla. Jud. Qual. Comm'n*, 973 So.2d 425 (Fla.2006); *Lanier v. State*, 908 So.2d 332 (Fla.2005); *Jean v. State*, 906 So.2d 1055 (Fla.2005); *Armstead v. State*, 817 So.2d 841 (Fla.2002); *Peterson v. State*, 817 So.2d 838 (Fla.2002); *Jackson v. Fla. Dep't of Corr.*, 790 So.2d 398 (Fla.2001); *Rivera v. State*, 728 So.2d 1165 (Fla.1998); *Attwood v. Singletary*, 661 So.2d 1216 (Fla.

1995). One justification for such a sanction lies in the protection of the rights of others to have the Court conduct timely reviews of their legitimate filings. See *Martin*, 506 U.S. at 3, 113 S.Ct. 397 (imposing sanction where petitioner's filings for certiorari review had a deleterious effect on the Court's fair allocation of judicial resources); see also *Peterson*, 817 So.2d at 840 ("This Court has a responsibility to ensure every citizen's right of access to the courts....

A limitation on [the petitioner's] ability to file would further the constitutional right to access for other litigants because it would permit this Court to devote its finite resources to the consideration of legitimate claims filed by others.").

As noted by the United States Supreme Court, "[e]very paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice."

In re McDonald, 489 U.S. at 184, 109 S.Ct. 993. Upon a thorough review of Tate's filings in this Court, we conclude that Tate has abused the processes of the Court and has hindered the ability of this Court to properly resolve those matters that are properly before it.

We conclude that sanctions are merited here. Accordingly, in order to preserve the right of access for all litigants and promote the interests of justice, the Clerk of this Court is hereby instructed to reject for filing any future pleadings, petitions, motions, documents, or other filings submitted by James L. Tate, Jr., that are related to his conviction and sentence in case 93-580CFA, unless signed by a member in good standing of The Florida Bar.

Under the sanction herein imposed, Tate is not wholesale being denied access to the courts. He may petition the Court about his conviction and sentence in case 93-580CFA through the assistance of counsel, whenever such counsel determines that the proceeding may have merit and can be filed in good faith.

However, Tate's abusive filings must immediately come to an end. Further, if Tate submits any more filings that violate this order, he may be subjected to further appropriate sanctions including but not limited to the Clerk of this Court forwarding a certified copy of this Court's finding that Tate's filings are frivolous or malicious to the appropriate Florida Department of Corrections institution or facility pursuant to section 944.279(1), Florida Statutes (2007).

It is so ordered. LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur. NOTES [1] We have jurisdiction. See art. V, § 3(b)(9), Fla. Const.