

TEXAS COURT OF CRIMINAL APPEALS

Ex parte Troy Lee Perkins

Ex parte Perkins · No. WR-?; W07-00645(A), W07-71769-S(A), W07-71970 & 9 · Decided May 5, 2015

OPINION

Perkins, Troy Lee

PER CURIAM.

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COURT OF CRIMINAL APPEALS

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THE STATE OF TEXAS § IN THE 282N° J~JAI.J.1!

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TROY LEE PERKINS § DALLAS COUNTY, TEXAS

AFFIDAVIT OF BRET MARTIN

STATEOFTEXAS §

§

COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared BRET MARTIN, whom I identified by his Texas driver's license, and after being duly sworn, stated as follows: "My name isBretMartin. I am over twenty-one (21) years of age, of sound mind, have never been convicted of crime involving moral turpitude and am competent to make this affidavit because I have personal kno~ledge of the facts stated herein and they are true and correct. "I am a lawyer licensed to practice in the State ofTexas since November 1995. I have practiced criminal law in Dallas since that time both as an Assistant District Attorney and as a lawyer in private practice. I have been in good standing with the State Bar of Texas at all times. "I was appointed to represent a man by the name of Troy Lee Perkins back on March 27, 2007. Mr. Perkins was being charged with four separate aggravated robberies, in Cause numbers F07-00645, F07-71769 and F07-71770 & 90. The offenses carried a range of punishment between 15 years confmement in the Texas Department of Criminal Justice and life. due to the Defendant having an enhancement paragraph resulting from a previous trip to the penitentiary. The Defimdant was initially offered 40 years in TDC by the prosecutor handling the case. "I interviewed Mr. Perkins and discussed with him the merits of each ofthe cases against him. We also discussed all of his options that he had available to him. Those options were 1.) to try to work out a plea bargain in the case; 2.) to plead guilty and allow the court or ajUI)' to set his punishment if he did not like the plea bargain offers; 3.) plead not guilty and present his case to the Judge to decide his guilt or innocence; or 4.) plead not guilty

and present his case to a jury and allow them to decide his guilt or innocence. I also explained to Mr. Perkins that there was videotape evidence of him committing these offenses and the difficulties that such evidence would present. Mr. Perkins decided to proceed to a jury trial. 027 -- ... ---r------. --- Scanried Aug 06, 2010 He understood the factual allegations against him as well as all of the consequences of the decisions which he was making. "On the morning of January 7, 2008, we gathered in the 282nd District Court in preparation for a jury trial and the jury arrived and we were soon to begin the voir dire process. At that time, the Assistant District Attorney made an offer to Mr. Perkins to drop his enhancement paragraph and give him 12 years on each of the four cases. That was three years below the statutory minimum that he could receive from the jury and 28 years below the prosecutor's initial recommendation. "During my representation, Mr. Perkins appeared to be of sound mind and good judgment. Mr. Perkins understood the serious nature of the offenses and the consequences of proceeding to jury trial. He also understood that these cases would require him to serve a minimum of 50% of his sentence because of the deadly weapon finding. He was provided legal representation the entire time he was incarcerated and had communication with me throughout the entire process. Mr. Perkins and I discussed his mental health history and he acknowledged and agreed that while that was a part of his medical history, that in no way contributed to his committing of the offenses. Furthermore, I am certain that there was no mental health problems involved in his understanding or his decision making. Regarding both sides reaching this plea bargain agreement. It was simply the best manner in which to resolve these very dangerous crimes. The Defendant was well informed and absolutely understood the options that he had and the consequences of each and every choice that was available to him." fl cf"lu.e.ve..r J -lu.r, 1---t r • A Further. Affiant sayeth naught. I?S 1/1fo . '7 P3 c)cl.rd.frrJI- sRETE. MARTIN SWORN TO AND SUBSCRIBED BEFORE ME. this 1 tl day of J c.. . 2010. My commission expires: 028

EX PARTE IN THE 282nd JUDICIAL

~'11STRICKT COURT OF

TROY LEE PERKINS § DALLAS COUNTY, TEXAS

STATE'S RESPONSE TO APPLICATION

FOR WRIT OF HABEAS CORPUS

The State, having considered the allegations contained in Appliqmt's Application for Writ of Habeas Corpus in the above-numbered and entitled cause, makes the following response: I.

HISTORY OF THE CASE

Applicant entered a plea of guilty on January 7, 2008 to the charge of aggravated robbery by using a deadly weapon. He was sentenced in this case, and for three like offenses in three other cases, to 12 years' confinement in prison. The four sentences run concurrently. Applicant waived his right of appeal. This is Applicant's first application for writ of habeas corpus. II.

ISSUES RAISED IN APPLICATION

Applicant asserts (1) he was denied special needs representation and treated without concern for his mental defect, supposedly in violation of §616.003 of the. Health & Safety 1 0 Code, (2) unspecified court procedures were not followed and his trial counsel was constitutionally ineffective, (3) he is not receiving proper psychiatric care contrary to the Eighth Amendment, (4) he is incarcerated with numerous violent persons, who constantly psychologically abuse him, contrary to the Eighth Amendment, and (5) he did not receive a speedy trial. III.

STATE'S RESPONSE

Applicant vaguely alleges some grounds that might entitle him to relief, but without sufficiently describing what occurred in his case that might constitute a constitutional violation. He further alleges things that would not affect the legality of his confinement. It is riot possible to respond intelligently to the Application. It fails to "contain sworn allegations· of fad father than mere conclusions." Cf Ex parte Young, 418 S.W.2d 824, 829 (Tex.Crim.App. 1967); see also Ex parte McCain, 67 S.W.3d 204,209 n. 10 (Tex.Crim.App. 2002) and Ex parte McPherson, 32 S.W.3d 860, 861 (Tex.Crim.App. 2000). It can be noted generally, however, that the conditions of incarceration do not involve constitutional issues. "[I]t is abundantly clear that a myriad of problems of prison administration must remain beyond the scope of proper judicial concern. Only significant deprivations ofliberty raise constitutional issues." Meachum v. Fano, 427 U.S. 215,235 n. 7, 96 S.Ct. 2532,49 L.Ed.2d 451 (1976) (Stevens, Brennan and Marshall, JJ., di~\$enting) . "A habeas claim is not ordinarily thought to 'accrue' while the inmate is housed in prison 2 because habeas claims challenge the fact or duration of confinement (or restraint) rather than the conditions of confinement." Ex parte Rieck, 144 S.W.3d 510, 519 (Tex.Crim.App. 2004). IV.

CONCLUSION

The State respectfully requests that this Court recommend denial or dismissal of the Application for Writ of Habeas Corpus on its face. Respectfully submitted,

CRAIG WATKINS
CRIMINAL DISTRICT ATTORNEY
DALLASCOUNTY,TEXAS
MARTIN L. PETERSON
ASSIST ANT DISTRICT ATTORNEY
STATE BAR NO. 15838600
FRANK CRUXTLEY COURTS BUILDING
133 N. INDUSTRIAL BLVD., LB-19
DALLAS, TEXAS 75207-4399
(214) 653-3647

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing response has been served on Applicant, Troy L. Perkins, TDCJ # 01480826, Wynne Unit, Huntsville, Texas 77349 on this 8th day of May, 2009.
MARTIN L. PETERSON. 3 - - - - - c - - - - - ~~~~~

Applicant asserts that he was denied due process due to his special needs when court procedures were not followed and he received ineffective assistance of counsel. Applicant asserts that his sentence amounts to cruel and unusual punishment because he is Findings of Fact and Conclusions of Law Page 1 Scanned Aug 06, 2010 not being afforded proper psychiatric care.

Applicant asserts that he is being threatened in TDCJ due to his psychiatric issues. Applicant asserts that he was denied a speedy trial.

RELEVANT EVIDENCE

Bret Martin, Applicant's attorney, has responded to the allegations by affidavit. The Court finds him to be trustworthy. ..

RELEVANT LAW

Burden of Proof Applicant has the burden to allege and prove by a preponderance of the evidence facts which entitle him to relief. See *Ex parte Maldonado*, 688 S.W.2d 114, 116 (Tex. Crim. App. 1985); *Ex parte Adams*, 768 S.W.2d 281, 288-289 (Tex. Crim. App. 1989). Conclusory allegations are not enough to warrant habeas relief. *Ex parte Young*, 418 S.W.2d 824 (Tex. Crim. App. 1967). Ineffective Assistance of Counsel . When an Applicant alleges ineffective assistance of counsel, Applicant must first prove that counsel's representation fell below an objective standard of reasonableness; and secondly, that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have differed. *Strickland v. Washington*, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Hernandez v. State*, 726 S.W.2d 53, 54-55 (Tex. Crim. App. 1986). The right to counsel does not guarantee errorless counsel whose competence is judged by hindsight; rather, it affords a defendant an attorney reasonably likely to render reasonably effective assistance. See *Thompson v. Oklahoma*, 488 U.S. 881, 109 S. Ct. 1968, 103 L. Ed. 2d 867 (1989). Findings of Fact and Conclusions of Law Page 2 Scanned Aug 06, 2010 State, 9 S.W.3d 808, 814 (Tex. Crim. App. 1999). Counsel's competence is presumed and Applicant must rebut this presumption by proving that his attorney's representation was: unreasonable / Wider prevailing professional norms and that the challenged action was not sound strategy. *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986); *Thompson*, 9 S.W.3d at 814. Cognizable Issues Cognizable claims on habeas are limited to two categories: (1) jurisdictional defects in the convicting court; and (2) the denial of a fundamental constitutional right. *Ex parte Williams*, 65 S.W.3d 656, 657 (Tex. Crim. App. 2001). The purpose to be served by a post conviction writ of habeas corpus is limited, and "lies only to review jurisdictional defects or denials of fundamental or constitutional rights." *Ex parte Watson*, 601 S.W.2d 350 (Tex. Crim. App. 1980). Failure to adhere to a legislative directive or mode of proceeding designed to safeguard a constitutional right will likewise be cognizable only when the omission results in the denial of a constitutional protection. *Ex parte Sadberry*, 864 S.W.2d 541 (Tex. Crim. App. 1993). Generally, conditions of confinement do not involve constitutional issues. See *Meachum v. Fano*, 427 U.S. 215, 235 n. 7, 96 S. Ct. 2532, 49 L. Ed. 2d 451 (1976). Speedy Trial Speedy trial claims are not cognizable in post-conviction habeas proceedings. *Ex parte Owenby*, 749 S.W.2d 880, 881 (Tex. Crim. App. 1988) (violation of Speedy Trial Act is non-jurisdictional defect which cannot be raised on habeas review).

FINDINGS OF FACT

The Court finds that Applicant has failed to prove that he was entitled to have his case heard

Findings of Fact and Conclusions of Law Page3 Scanned Aug 06, 2010 in a "mental illrtess court". The statute cited by Applicant provides that the county may provide for such court. It does not, however, state that all cases where a defendant is alleged to be mentally ill shall be transferred to that court. Applicant has not proven that he had a mental illrtess which I entitled his case to be transferred for disposition to that Court. Applicant's counsel indicates that Applicant was able to communicate with him regarding the case and understood the options for disposing of the case. The Court finds that Applicant has failed to prove that he received ineffective:: assistance of counsel. Applicant makes no specific allegations of ineffectiveness for counsel to respond to. However, counsel has provided an affidavit which sets out his representation in this case. Furthermore, Applicant has not stated which court procedures were not followed. With regard to issues three, four and five, the Court finds that Applicant has not raised a constitutional issue that is cognizable on habeas.

CONCLUSIONS OF LAW

The Court concludes that Applicant has failed to prove that he was entitled to have his case heard in a "mental illrtess court". The Court concludes that Applicant has failed to prove that he received ineffective assistance of counsel. Furthermore, Applicant has not stated, which court procedures were not followed. With regard to issues three, four and five, the Court concludes that Applicant has not raised a constitutional issue that is cognizable on habeas. Findings of Fact and Conclusions of Law Page4 ----- Scanned Aug 06, 2010

COURT'S RECOMMENDATION

This Court recommends that this writ of habeas corpus be DENIED. I

ORDERS OF THE COURT

In implementing the Court's Finding of Fact and Conclusions of Law, the Clerk will:

1. Prepare a transcript of papers in this cause and transmit the Court's Order and the Findings of Fact and Conclusions of Law, including the judgment and indictment, all plea papers, if any, and the Court of Appeals opinion, if any, to the Court of Criminal Appeals as provided by TEX. CODE CRIM. PROC. ANN. art. 11.07.
2. Send a copy of this Order and the Findings of Fact and Conclusions of Law to the Applicant and his counsel, if any, by depositing same in the U.S. Mail. 026 Findings of Fact and Conclusions of Law Page5