

TEXAS COURT OF CRIMINAL APPEALS

Ex parte James Agbeze

Ex parte Agbeze · No. PD-1597-15 · Decided December 11, 2015

SUMMARY

This document is a petition for discretionary review filed in the Texas Court of Criminal Appeals on behalf of James Agbeze. It challenges the denial of Article 11.072 habeas corpus relief concerning an alleged Brady violation, actual innocence, and the sufficiency of the evidence underlying a theft conviction. The petition argues that the habeas court abused its discretion in denying relief.

OPINION

PER CURIAM.

PD-1597-15 PD-1597-15 COURT OF CRIMINAL APPEALS AUSTIN, TEXAS Transmitted
12/10/2015 7:59:20 PM Accepted 12/11/2015 12:37:59 PM ABEL ACOSTA NO. _____

PD CLERK IN THE COURT OF CRIMINAL APPEALS OF TEXAS
_____ EX PARTE JAMES AGBEZE Petitioner,

_____ Petition in Cause No.
1288928 from the TH 180 District Court of Harris County, Texas and the Court of Appeals for the
14TH District of Texas _____

PETITION FOR DISCRETIONARY REVIEW

_____ TOM ABBATE 440

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tom@tomabbatelaw.com SBOT # 24072501 ATTORNEY FOR PETITIONER December 11, 2015

IDENTITIES OF PARTIES AND COUNSEL PETITIONER: JAMES AGBEZE PRESIDING
JUDGE: HON. CATHERINE EVANS 180th District Court Harris County Criminal Justice Center

1201 Franklin, 18th Floor Houston, Texas 77301 (713) 755-6344 HABEAS COUNSEL FOR
STATE: MR. STAN CLARK Assistant District Attorney Harris Co. District Attorney's Office

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IN THE COURT OF CRIMINAL APPEALS OF TEXAS

_____ EX PARTE JAMES AGBEZE Petitioner,

_____ Petition in Cause No. 1288928 from the TH 180 District Court of Harris County, Texas and the Court of Appeals for the 14TH District of Texas _____

PETITION OF DISCRETIONARY REIVEW TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS OF TEXAS James Agbeze, petitions the Court to review the judgment affirming The denial of his Application for Writ of Habeas Corpus Pursuant to Article 11.072 of the Texas Code of Criminal Procedure 5 STATEMENT REGARDING ORAL ARGUMENT Oral argument would assist to resolve whether the evidence was legally sufficient to support the conviction obtained against the Petitioner in this case.

STATEMENT OF THE CASE During the investigation of the conviction at issue, Appellant was approached by one of the investigators in this case, who solicited him for a bribe. Appellant was informed that if the requested funds were provided, a report would be generated allowing him to avoid prosecution for the crime at issue in this case. Appellant refused to provide the bribe, and was then informed by the investigator that he would face prison time for failing to do so.

Subsequently, Appellant was indicted for submitting a series of fraudulent Medicaid reimbursement claims. The jury convicted Appellant of theft of property by a government

contractor with an aggregated value of \$1,500 or more, but less than \$20,000, assessed punishment at seven years community supervision, and imposed a \$10,000 fine.

The trial court ordered Appellant to spend 90 days in jail as a condition of community supervision and to pay \$18,169.45 in restitution. On the appeal of the trial, Appellant argued that (1) there was insufficient evidence to prove that he intentionally or knowingly committed theft or that individual over-charges were part of a larger criminal scheme to allow the theft amounts to be aggregated and tried as one offense and that (2) the trial court abused its discretion in ordering him to pay \$18,169.45 in restitution.

The Court of Appeals denied Applicant's grounds for relief and affirmed the judgment of the trial court. Applicant then filed a Petition for Discretionary Review with the Texas Court of Criminal Appeals, but was denied. Applicant's subsequent Motion for Rehearing was also denied. During the pendency of the above appeals, the investigator in question was indicted for bribery.

The investigator entered a plea of guilty to the charge and was convicted under the terms of a plea bargain. Subsequently, Appellant filed the instant Application for Writ of Habeas Corpus pursuant to Article 11.072 alleging that he was actually innocent of the crime and that the state had committed a Brady violation by failing to disclose the corruption of its investigator to trial counsel.

After the submission of affidavits, the habeas court entered findings of fact and conclusions of law dismissing Appellant's allegations and ordering that all requested relief be denied.

7 STATEMENT OF PROCEDURAL HISTORY This is an appeal from the Habeas Court's DENIAL OF RELIEF and FINDINGS OF FACT AND CONCLUSIONS OF LAW in Appellant's APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO ARTICLE 11.072.

Appellant filed a NOTICE OF APPEAL on MAY 7, 2015. The court of appeals rendered its decision affirming Petitioner's conviction on November 5, 2015. Petitioner did not file a motion for rehearing, and the decision of the court of appeals became its final ruling on November 20, 2015. This petition was then filed with the clerk of the court of appeals within 31 days after such final ruling.

8 QUESTION PRESENTED FOR REVIEW Did the Trial Court abused its discretion in denying Appellant's requested relief? REASON FOR REVIEW The Law Regarding Appellate Review of 11.072 Habeas Generally "Habeas corpus is an extraordinary remedy and is available only when there is no other adequate remedy at law." Ex parte Cruzata, 220 S.W.3d 518, 520 (Tex. Crim. App.

2007). Article 11.072 establishes the procedures for an applicant in Appellant's situation to seek habeas corpus relief "from an order or a judgment of conviction ordering community supervision." Tex. Code Crim. Proc. art. 11.072, § 1.

The statute expressly provides that writ relief is not available "if the applicant could obtain the requested relief by means of an appeal under Article 44.02 and Rule 25.2, Texas Rules of Appellate Procedure." *Id.* § 3(a). An applicant for habeas corpus relief must prove his claim by a preponderance of the evidence. *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex.

Crim. App. 2006); *Ex parte Scott*, 190 S.W.3d 672, 673 (Tex. Crim. App. 2006) (per curiam). In reviewing the trial court's order denying habeas corpus relief, the facts are viewed in a light most favorable to the trial court's ruling. See *Kniatt*, 206 S.W.3d at 664.

The reviewing court will uphold the trial court's ruling absent an abuse of discretion. See *id.* 9 Almost total deference is afforded to the trial court's determination of the historical facts that the record supports. See *Ex parte Peterson*, 117 S.W.3d 804, 819 (Tex. Crim. App. 2003) (per curiam), overruled on other grounds by *Ex parte Lewis*, 219 S.W.3d 335 (Tex.

Crim. App. 2007). Likewise, the reviewing court will defer to the trial court's application of the law to the facts, if the resolution of the ultimate question turns on an evaluation of credibility and demeanor. See *id.* Analysis The habeas court abused its discretion in denying Appellant's requested relief. Appellant provided evidence sufficient to show that he was entitled to a new trial based on theories of actual innocence and a Brady violation.

Further, habeas counsel reviewed all of the evidence provided by the state, and pointed out to the court that the reports generated during the investigation of Appellant failed to detail, or even mention, Nnadi's involvement.

The habeas court, however, found the affidavit of Jesse Mack to be credible despite the inconsistencies contained therein. Mack initially stated that Nnadi was involved solely as an "observer since there was an investigative auditor assigned and already working on the case." Therefore, he was not listed as a participant in the interview. Further, Mack stated that Nnadi did not have input as either an auditor or investigator at any time.

10 However, Mack also stated that he and Nnadi met with Appellant at least twice during the pendency of the investigation. Further, Mack stated that Nnadi did participate in preparing for the trial of Appellant. Therefore, Nnadi's involvement was more than solely as an observer.

Finally, the criminal complaint and corresponding affidavit show that at least the Federal Bureau of Investigations was aware of Nnadi's corruption as far back as 2007, although it appears to have decided not to do anything about the matter until 2014.

Therefore, Appellant proved his allegations by a preponderance of the evidence and the habeas court abused its discretion in denying the requested relief. 11 PRAYER FOR RELIEF ACCORDINGLY, this Court should GRANT this PETITION FOR DISCRETIONARY REVIEW

and ORDER briefs on the merits to answer the question of whether the evidence against the Petitioner was legally sufficient to support his conviction.

Petitioner further prays for all relief to which he may be entitled. Respectfully submitted,

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24072501 ATTORNEY FOR PETITIONER 12 CERTIFICATE OF SERVICE This is to certify
that on the day of DECEMBER 8, 2015 a true and correct copy of the above and foregoing
Petition for Discretionary Review was served on the Harris County District Attorney's Office,
1201 Franklin, Suite 600, Houston, Texas 77002, by FAX (713.755.5809).

TOM ABBATE CERTIFICATE OF COMPLIANCE I
hereby certify that there are 1534 words contained in this document.

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