

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**MICHAEL N. MILBY
CLERK**

**P.O. BOX 61010
HOUSTON, TX 77208**

May 10, 2005

Mr. Charles R. Fulbruge III, Clerk
U.S. Court of Appeals, Fifth Circuit
600 Camp Street, Room 102
New Orleans, LA 70130

IN RE: CA-H-04-1900
Lockett vs Dretke

Dear Mr. Fulbruge:

In connection with this appeal, the following is transmitted.
Please acknowledge receipt on the enclosed copy of this letter.

Copy of the notice of appeal and docket entries.

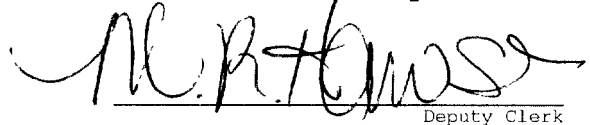
In regard to this appeal, the following information is furnished:

This case is proceedings *in forma pauperis*.

District Judge is : Sim Lake

This case was decided without a hearing, no transcripts.

Very Truly Yours,
Michael N. Milby, Clerk


Deputy Clerk

cc: all parties

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cc: all parties

COURT HOUSTON DISTRICT OF TEXAS
HOUSTON DIVISION

KARSTON LOCKETT
PETITIONER

VS.

STATE OF TEXAS
TDCS-ID
RESPONDANT

CIVIL ACTION NO. H-04-1900

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
FEB 14 2005
MICHAEL N. MILBY, CLERK OF COURT

PETITION FOR CERTIFICATE OF APPEALABILITY

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now KARSTON LOCKETT, PETITIONER in the above-styled cause, and files this PET. for Certificate of Appealability of the denial of his PETITION for WRIT of HABEAS CORPUS.

I.
The showing required for the issuance of a CERTIFICATE OF APPEALABILITY

Obtaining a Certificate of Appealability requires a substantial showing of constitutional error. 28 U.S.C. 2253(c)(2); Winkard v. Johnson, 97 F.3d 751, 756 (5th Cir) 1996. This entails that the question(s) at issue could be resolved in the petition favor, or (c) "adequate to deserve encouragement of further proceedings. Lozada v. Deeds, 498 U.S. 430, 432, 111 S. Ct. 860, 862, 112 L. Ed. 2d 956 (1991)

II.
THE QUESTION(S) AT ISSUE

QUESTIONS

III. Was the Trial Court in error when it allowed an unproven extraneous offense permissible to be heard during petitioner's punishment hearing?

IV. Is the defendant afforded effective assistance of counsel when his defense counsel does not make an objection to an unproven extraneous offense?

V. Is the defendant afforded a fair & impartial trial when the state prosecutor's witness testifies to materially false & unreliable information?

VI. Is the defendant afforded Due Process of law when an unproven extraneous offense is permissible and allowed to be heard during his punishment phase?

VII. Is the defendant afforded effective assistance of counsel, when counsel attended a live line-up for petitioner for the unproven extraneous offense and was knowledgeable that petitioner was not I.D.'s in the line-up for the extraneous offense?

VIII. Is the Trial Court committing misconduct when it allows an unproven extraneous offense to be permissible against the Pet. during petitioner's punishment phase?

IX Is the STATE prosecution committing misconduct when it ask the Trial Court to allow it permissible to consider an unproven extraneous offense during the petitioner's punishment phase?

X Does the unproven offense become relevant to petitioner's sentencing SINCE it was permissible by the court during his punishment phase?

XI Did the Trial court take into consideration the unproven extraneous offense during pet's punishment phase?

XII Did the court error in making a finding as to whether petitioner actually committed the extraneous offense beyond a reasonable doubt?

XIII Did the Trial Court find extraneous offense relevant to defendant's punishment phase?

III QUESTIONS & REASONS

Was the Trial Court in error when it allowed an unproven extraneous offense permissible to be heard during Petitioner's punishment hearing? The Trial Court is in error because, had petitioner gone to a (jury trial) the jury would have had to debate and make a finding to whether pet committed the extraneous offense because they are the fact finder being that the trial judge was the sole fact-finder he should have done so because that is his responsibility.

HOZADA VS DEEDS

IV.

Is the defendant afforded effective assistance of counsel when his defense counsel does not make an objection to an unproven extraneous offense? No the defendant is not afforded effective assistance of counsel because, by not objecting to facts such as an unproven extraneous offense counsel falls below a reasonable standard of review and leaves the defendant to receive a prejudiced unfair trial. If counsel would have objected it would better favor pet because then offense would have to be proven to have been committed by pet and therefore it would not have been heard by trial court the testimony or witness on the extraneous offense

HOZADA V. DEEDS P. 4

V

Is the defendant afforded a fair & impartial trial when the state prosecutor's witness testifies to materially false & unreliable information? The defendant was not afforded a fair & impartial trial by the judge because, had it been a jury trial it would have been; debatable among the jurist the collaboration of the times of the victim & witness also if the testimony of the witness was perjury because it was false & unreliable information much more so jurist would have debated whether or not the witness's credibility because she could be considered the petitioner's alibi. LOZADA VS. DEODS

VI

Is a defendant afforded Due Process of law when an unproven extraneous offense is permissible and allowed to be heard during his punishment phase? Regardless if a defendant pleads guilty or not any jurist would have to debate as to whether he received Due Process of law if an extraneous offense is presented within his punishment phase and offense had not been proven to ~~be~~ have been committed beyond a reasonable doubt by defendant

LOZADA VS. DEODS

P.5

VII.

IS the defendant afforded effective assistance of counsel, when counsel attended a live line-up for pet. for the unproven extraneous offense and was knowledgeable that petitioner was not ID'd in the line-up for the extraneous offense? A panel of jurist would find reasonable doubt to debate that pet. did not receive effective assistance of counsel because, if counsel was knowledgeable of this information it would have been in pet. favor that he could have received a lesser sentence or closer to minimum because; counsel should have immediately objected at the first mention to consider the use of the extraneous offense against petitioner even if it being presented during petitioner's punishment phase since pet. was never ID'd or found guilty of the extraneous offense beyond a reasonable doubt.

HOZAWA v. DEEDSVIII

IS the Trial Court committing misconduct when it allows an unproven extraneous offense to be permissible against the PETITIONER during petitioner's punishment phase?

Yes the Trial Courts commit misconduct because, it's the trial court's responsibility to find whether the extraneous offense was committed by the petitioner

p6

It would be to the advantage and in petitioner's favor if the trial court did so as well as deem its relevance to it and how it would be used against petitioner in his punishment phase because jurist would find it debatable to have to do so, themselves & petitioner believes if so done he would not be found to have committed the atrocious offense beyond a reasonable doubt by any jurist so ~~there~~ therefore it would be deemed to have no relevance to his case or to enhance his punishment.

LOZADA V DEEDS

IX IX

Is the STATE prosecution committing misconduct when it ask the Trial Court to allow it permissible to consider an unproven atrocious offense during the petitioner's punishment phase?

State prosecution was very much in misconduct because, had it been a jurist it would have made the state prove the atrocious offense against the petitioner. By a panel of jurist making prosecution prove the offense it would have resolved in favor of petitioner because there is no jurist that could have proven beyond a reasonable he committed the offense.

p7

LOZADA VS DEEDS

~~20~~
X

Does the unpunished offense become relevant to petitioner's sentencing since it was permissible by the court during his punishment phase? Any rational jurist would debate that the extraneous offense becomes relevant to petitioner's sentencing because, ~~the~~ a jurist would not allow the victim and witness to say and testify to prejudice & injurious testimony against petitioner without proving beyond a reasonable doubt he committed offense. It would be in the favor of the petitioner to have the unpunished offense resolved so that he could receive a fair and impartial trial. LOZADA VS DEEDS

XI

Did the Trial Court take into consideration the unpunished extraneous offense during petitioner's punishment phase? Yes it took into consideration the offense it would have been in petitioner's favor that it did not because it would have given petitioner a chance at a lesser sentence. But, because the trial court heard the testimony of the victim & witness, if the trial court did NOT consider it, it would have deemed the extraneous offense irrelevant to petitioner's case because a jurist would have a debate to prove he committed offense and the jurist would have not allowed the testimony permissible in pet. punishment phase. LOZADA VS DEEDS p8

XII

Did the court error in making a finding as to whether petitioner actually committed the the extreme offense beyond a reasonable doubt? The Trial court very much erred by not making a finding to whether petitioner actually committed the offense beyond a reasonable doubt because, any jurist would have made it debatable without question to make an effort to find out whether he did or did not commit the offense any jurist would have found that there is know way beyond a reasonable doubt pet. committed the crime. Therefore it would not have been allowed to be permissible and ~~to~~ to be considered also the prejudice & inhuman testimony would not have been allowed before any rational jurist to simply be used to enhance petitioner's sentence. This would be in favor of petitioner to help him receive something closer to the minimum and would have given him a chance at a fair & impartial trial

HOADA V. DEEDS

XIII

~~XI~~ DID the Trial Court find
EXTRANEAS OFFENSE RELEVANT to defendant's
punishment phase? Yes the trial court
found the extraneous offense relevant to defendant's
punishment phase, even though the court did
not make a finding of fact whether pet.
actually committed the offense or deem it
relevant to petitioner's case it would be
prejudice to say it was not considered by
the trial court even if it was used to ~~enhance~~
enhance petitioner's sentencing it was relevant
because the trial court heard the innumerable
testimony of the victim & witness of the
extraneous offense and petitioner was never
proven to have committed the extraneous offense
beyond a reasonable doubt. It would be wrong
and unfair to petitioner to say it was irrelevant
when trial court heard the harsh testimony of
the victim and witness if the extraneous
offense was not relevant to defendant's punish-
ment phase then ~~what~~ you would have to ask
yourself why was the testimony heard if he never
was proven to have committed the crime also why
was the extraneous offense asked to be
considered and permissible by the trial court if
the trial court was not considering it it would not
have allowed it to be permissible. P. 10
(LOZADA vs DECOE)

IN THE UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KARSTON HOCKETT
PETITIONER
VS

Civil Action No.
04-1900

STATE OF TEXAS
RESPONDANT

PRAYER

Wherefore it be permissible PETITIONER prays the Court issue a CERTIFICATE OF APPEALABILITY ON each of the following QUESTION(S) and REASON(S) IN this of case for PET.

Respectfully Submitted,

Karston Dewayne Hockett
876868
WYNNE UNIT
HUNTSVILLE, TEXAS 77349

P11

PETITIONER

VERIFICATION

Karston Hockett

PETITIONER

VS

STATE OF TEXAS

RESPONDANT

I Karston Hockett, 876868, being

presently incarcerated in the WYNNE UNIT

of TDCJ-ID in Huntsville, TEXAS

declare under penalty of perjury that

DIM in the above and foregoing petition,

and I have read said petition and

actual allegations of the same are true & correct.

CERTIFICATE OF SERVICE

I, Karston Hockett, do here by certify that a true and correct copy of the above and foregoing CERTIFICATE OF APPEALABILITY has been forwarded by United States mail, postage prepaid.

PETITIONER Karston Hockett

TDCJ-ID NO. 876868

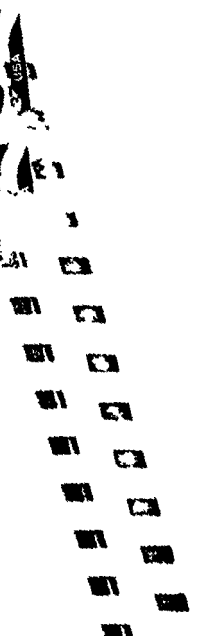
UNIT WYNNE UNIT

WYNNE UNIT

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

HUNTSVILLE, TEXAS 77349

P.12



2005 FEB 11 NORTH HOUSTON TX 770

(Postnet Mail)

US MAIL
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77060

US DISTRICT COURT
515 RUSSELL AVE
HOUSTON, TEXAS 77002-1010

APPEAL, CLOSED

**U.S. District Court
Southern District of Texas (Houston)
CIVIL DOCKET FOR CASE #: 4:04-cv-01900**

Lockett v. Dretke
Assigned to: Judge Sim Lake
Demand: \$0
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 05/10/2004
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner**Karston Dewayne Lockett**

represented by **Karston Dewayne Lockett**
#876868
Wynne Unit
Huntsville, TX 77349
PRO SE

V.

Respondent**Director-TDCJ Douglas Dretke**

represented by **Jane Madeleine Gibson Garry**
Ass't Atty Gen
Capitol Station
PO Box 12548
Austin, TX 78711-2548
512-936-1400
Email: madeleine.garry@oag.state.tx.us

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
05/10/2004	<u>1</u>	Prisoner Petition for Writ of Habeas Corpus; filed. (arobinson) (Entered: 05/10/2004)
05/10/2004	2	MOTION to proceed in forma pauperis by Karston Dewayne Lockett, Motion Docket Date 5/30/04 [2-1] motion , filed. (arobinson) (Entered: 05/10/2004)
05/19/2004	<u>3</u>	ORDER to Respond: granting petitioner's [2-1] motion to proceed in forma pauperis [2-1], entered. Clerk to serve coies of the application (#1) and this order upon respondent and upon the Atty General of the State of Texas, Attn: Mike Bozarth by certified mail. Resopndent shall file an answer within 40 days after receipt of this orderParties ntfd (Signed by Judge Sim Lake) (sguevara) (Entered: 05/20/2004)

05/24/2004		Rec'd executed green from Doug Dretke , Director, of TDCJ-ID frwd to filerom. (hlerma) (Entered: 05/26/2004)
05/27/2004		Rec'd completed and ret'd green card executed by Karston Dewayne Lockett on 5/24/04 (sfedele) (Entered: 05/28/2004)
05/28/2004		Rec'd executed green certified card from Asst A/G Mike Bozarth re: #3 (sguevara) (Entered: 06/01/2004)
06/04/2004		Remailed #3 to KD Lockett with new TDCJ ID # (sguevara) (Entered: 06/04/2004)
07/06/2004	4	MOTION with memorandum in support to extend time to respond to petition until August 9, 2004 by Douglas Dretke, Motion Docket Date 7/26/04 [4-1] motion , filed (sguevara) (Entered: 07/07/2004)
07/12/2004	5	ORDER granting respondent's [4-1] motion to extend time to respond to petition until August 9, 2004 answer due for 8/9/04 for Douglas Dretke , entered; Parties notified. (signed by Judge Sim Lake) (sguevara) (Entered: 07/13/2004)
07/30/2004	6	MOTION for appointment of counsel by Karston Dewayne Lockett, Motion Docket Date 8/19/04 [6-1] motion , filed. (psmith) (Entered: 08/03/2004)
07/30/2004	7	RESPONSE by Karston Dewayne Lockett in opposition to [4-1] motion to extend time to respond to petition until August 9, 2004 , filed (psmith) (Entered: 08/03/2004)
07/30/2004	8	MOTION for writ of ad testificandum , by Karston Dewayne Lockett, Motion Docket Date 8/19/04 [8-1] motion , filed. (psmith) (Entered: 08/03/2004)
08/04/2004		STATE COURT RECORDS, received and forwarded to file room. (one folder) (psmith) (Entered: 08/06/2004)
08/04/2004	9	MOTION with Brief in support for summary judgment by Douglas Dretke, Motion Docket Date 8/24/04 [9-1] motion , filed (psmith) (Entered: 08/06/2004)
08/24/2004	10	MOTION with brief in support to dismiss time barred by Karston Dewayne Lockett, Motion Docket Date 9/13/04 [10-1] motion , filed (sguevara) (Entered: 08/30/2004)
08/24/2004	11	MOTION with brief in support to deny and squash exhaustion/procedural bar by Karston Dewayne Lockett, Motion Docket Date 9/13/04 [11-1] motion , filed (sguevara) (Entered: 08/30/2004)
08/24/2004	12	MOTION with brief in support for continuance of his cause of action by Karston Dewayne Lockett, Motion Docket Date 9/13/04 [12-1] motion , filed (sguevara) (Entered: 08/30/2004)
08/24/2004	13	MOTION with brief in support to extend time to file a responsive pleadings to respondent's summary judgment until October 18, 2004 by Karston Dewayne Lockett, Motion Docket Date 9/13/04 [13-1] motion ,

		filed (sguevara) (Entered: 08/30/2004)
09/07/2004	14	ORDER granting [13] Motion for Extension of Time to File Response/Reply Responses due by 10/18/2004.(Signed by Judge Sim Lake) Parties notified.(hcarr,) (Entered: 09/07/2004)
09/09/2004	15	REQUEST for notification of outcome of previously filed motions by Karston Dewayne Lockett , filed. (Attachments: # 1 attached envelope) (sguevara,) (Entered: 09/13/2004)
10/21/2004	16	MOTION for Writ of Habeas Corpus "2254" with brief in support by Karston Dewayne Lockett, filed. Motion Docket Date 11/10/2004. (Attachments: # 1 continued 38-49# 2 continued 50-58# 3 continued 59-82# 4 continuation# 5 proposed order)(sguevara,) (Entered: 10/25/2004)
11/17/2004	17	Letter from Karston D Lockett re: filing of petition , filed. (rwestmoreland,) (Entered: 11/20/2004)
12/08/2004	18	ORDER denying [6] Motion to Appoint Counsel, denying as moot [8] Motion for Writ of Ad Testificandum, granting [9] Motion for Summary Judgment, denying [10] Motion to Dismiss, denying [11] Motion to Deny & Quash, denying [12] Motion to Continue, denying 16 Motion for Federal Writ of Habeas Corpus. Petition for Writ of Habeas Corpus is Denied. A certificate of appealability is Denied.(Signed by Judge Sim Lake) Parties notified.(djustice,) (Entered: 12/09/2004)
12/08/2004	19	FINAL JUDGMENT dismissing case with prejudice, filed.(Signed by Judge Sim Lake) Parties notified.(djustice,) (Entered: 12/09/2004)
02/14/2005	20	PETITION/MOTION for Certificate of Appealability by Karston Dewayne Lockett, filed. Motion Docket Date 3/7/2005. (Attachments: # 1 Proposed Order)(sjones,) (Entered: 02/14/2005)
02/14/2005	23	NOTICE OF APPEAL"Petition For Certificate Of Appealability" to US Court of Appeals for the Fifth Circuit by Karston Dewayne Lockett. Filing fee \$ 255, filed.(mharrison,) (Entered: 05/10/2005)
03/07/2005	21	Letter of inquiry from Karston Lockett re: certificate of appealability , filed. (Itien,) (Entered: 03/08/2005)
03/21/2005	22	Letter from Karston Dewayne Lockett re: status of certificate of appealability, filed. (dkelly,) (Entered: 03/22/2005)