IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-10290

United States Court of Appeals
Fifth Circuit
FILED
June 18, 2018
Lyle W. Cayce
Clerk

JOHN URANGA, III,

Petitioner-Appellant,

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING

Before DAVIS, HAYNES, and COSTA, Circuit Judges.

W. EUGENE DAVIS, Circuit Judge:

Treating the Respondent's Petition for Rehearing En Banc as a Petition for Panel Rehearing, it is GRANTED. The prior opinion, *Uranga v. Davis,* 879 F.3d 646 (5th Cir. 2018), is withdrawn, and the following opinion is substituted:

John Uranga, III, Texas prisoner # 1500003, appeals the district court's denial of his 28 U.S.C. § 2254 application for a writ of habeas corpus. Uranga was convicted by a jury of possession of methamphetamine in an amount

greater than one gram but less than four grams.[1] During the punishment phase of trial, the jury determined that Uranga was a habitual felony offender and sentenced him to life imprisonment.[2] A judge of this court granted Uranga a certificate of appealability ("COA") on the following issues: (1) whether the postjudgment motion Uranga filed after the district court's denial of his § 2254 application was not an unauthorized successive § 2254 application; (2) whether the postjudgment motion was timely filed for purposes of tolling the time period for filing a notice of appeal; and (3) whether Uranga is entitled to § 2254 relief on his claim of implied juror bias during the punishment phase of his trial.

Under our COA grant, we have jurisdiction to address whether Uranga's postjudgment motion was an unauthorized successive § 2254 application and will do so here, as it affects our appellate jurisdiction.[3] Specifically, if Uranga's postjudgment motion was a timely filed motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), then the deadline for filing a notice of appeal would be tolled until the entry of the order disposing of that motion.[4] However, a purported Rule 59(e) motion that is, in fact, a second or successive § 2254 application is subject to the restrictions of the Antiterrorism and Effective Death Penalty Act ("AEDPA") and would not toll the time for filing a notice of appeal.[5]

In *Gonzalez v. Crosby*, the Supreme Court instructed that a postjudgment motion should be treated as a successive § 2254 application if the motion adds a new ground for relief or attacks the district court's previous

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[1] *Uranga v. State*, 330 S.W.3d 301, 302 (Tex. Crim. App. 2010).
[2] *Id.* at 303.
[3] *See United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000).
[4] *See* FED. R. APP. P. 4(a)(4)(A)(iv).
[5] *See Williams v. Thaler*, 602 F.3d 291, 303-04 (5th Cir. 2010).

resolution of a claim on the merits.[6] Conversely, we should not treat a postjudgment motion as a successive § 2254 application when the motion "asserts that a previous ruling which precluded a merits determination was in error—for example, a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar"[7] or when the motion "attacks . . . some defect in the integrity of the federal habeas proceedings."[8]

In his postjudgment motion, which Uranga purported to file pursuant to Rule 59(e), Uranga sought reconsideration of the denial of his prejudgment motion for leave to amend his § 2254 application. He also contended that the district court denied his § 2254 application prematurely by failing to first explicitly consider and rule on his motion for leave to amend. Thus, Uranga did not seek to add a new ground for relief, nor did he attack the district court's previous resolution of a claim on the merits. Rather, he asserted that a previous ruling (the denial of his motion for leave to amend) which precluded a merits determination was in error. Moreover, his argument that the district court denied his § 2254 application prematurely was, in effect, an attack on an alleged defect in the integrity of the § 2254 proceeding. Consequently, under *Gonzalez*, Uranga's purported Rule 59(e) motion was not an unauthorized successive § 2254 application and, if timely filed (the second issue upon which COA was granted), would toll the deadline for filing a notice of appeal until the entry of the order disposing of the motion.[9]

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[6] 545 U.S. 524, 532 (2005). Although *Gonzalez* involved a postjudgment motion under Rule 60(b), we have held *Gonzalez* applicable to postjudgment motions under Rule 59(e). *See Williams*, 602 F.3d at 303.

[7] *Gonzalez*, 545 U.S. at 532 n.4.

[8] *Id.* at 532 (footnote omitted).

[9] *See* FED. R. APP. P. 4(a)(4)(A)(iv).

A motion to alter or amend a judgment under Rule 59(e) must be filed within 28 days of the entry of the judgment.[10] The district court's judgment denying Uranga's § 2254 application was entered on March 11, 2014; therefore, the deadline for filing a Rule 59(e) motion was April 8, 2014. The district court, however, did not receive Uranga's motion until April 17, 2014. Uranga asserts that his motion nevertheless was filed timely under the prison mailbox rule.

In *Houston v. Lack*, the Supreme Court held that a *pro se* prisoner's notice of appeal under Federal Rule of Appellate Procedure 4(a)(1) is deemed filed as of the date the notice is delivered to prison officials for mailing.[11] We have extended the prison mailbox rule to other submissions of *pro se* inmates, including Rule 59(e) motions.[12] *Houston's* holding was eventually codified in Federal Rule of Appellate Procedure 4(c) and Rule 3(d) of the Rules Governing § 2254 cases.

Uranga contends that his Rule 59(e) motion was timely filed because it was delivered to prison officials for mailing on April 7, 2014, as stated in the motion's certificate of service. However, Uranga himself did not deliver the motion to prison officials. Another inmate named Gordon Ray Simmonds, who was assisting Uranga with his § 2254 application, delivered the motion to prison officials for mailing. Simmonds also signed Uranga's name to the Rule 59(e) motion. Although the prison mailroom logs reflected that the mailroom did not receive the motion until April 14, 2014, Uranga submitted the declaration of Simmonds who explained the reasons for the delay.

The district court did not reject Simmonds' explanation for the delay in the mailroom's receipt of the Rule 59(e) motion. Instead, the district court

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[10] FED. R. CIV. P. 59(e).

[11] 487 U.S. 266, 275 (1988).

[12] *See Brown v. Taylor*, 829 F.3d 365, 368 (5th Cir. 2016); *cf.* FED. R. APP. P. 25(a)(2)(C) (adopting prison mailbox rule for inmate filings in federal appellate courts).

reasoned that the motion would have been timely had Uranga *himself* signed and delivered the motion to prison officials for mailing on or before April 8, 2014. The district court determined that because Simmonds was a non-party and not a licensed attorney, he lacked authority under Federal Rule of Civil Procedure 11(a)[13] to sign the motion on Uranga's behalf. The district court further determined that the prison mailbox rule does not apply when a prisoner gives his motion to another prisoner to deliver to prison officials for mailing. We disagree.

First, in determining that Simmonds lacked authority to sign Uranga's motion, the district court failed to note the specific rules applicable to § 2254 proceedings allowing someone other than the prisoner or a licensed attorney to sign a habeas petition under certain circumstances. Rule 2(c)(5) of the Rules Governing § 2254 cases provides that the habeas petition must "be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242." That statute, in turn, provides that "[a]n application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended *or by someone acting in his behalf*."[14]

We have noted that the authority under § 2242 of a so-called "next friend" to apply for a writ of habeas corpus on behalf of another may be established when the habeas application explains "(1) why the detained person did not sign and verify the petition and (2) the relationship and interest of the

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[13] Federal Rule of Civil Procedure 11(a) provides that "[e]very pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name – or by a party personally if the party is unrepresented."

[14] 28 U.S.C. § 2242 (emphasis added). Although this matter does not involve the initial § 2254 application, we believe this statute may be applied to any filing made on behalf of a prisoner in a § 2254 proceeding, including a postjudgment motion under Rule 59(e).

would be 'next friend.'"[15] In this matter, Uranga submitted Simmonds' declaration to the district court in which Simmonds gave a detailed account of why it was necessary for him to sign Uranga's Rule 59(e) motion and his relationship with Uranga. Specifically, Simmonds explained that he and Uranga were unable to meet due to a lockdown situation at the prison so in light of the impending deadline for filing a Rule 59(e) motion, Simmonds signed Uranga's name to the Rule 59(e) motion. We find that these facts constitute an adequate explanation of the necessity for resorting to the "next friend" device and that Simmonds had authority under § 2242 to sign Uranga's Rule 59(e) motion.[16]

Second, in determining whether the prison mailbox rule applies, the relevant question for our consideration is whether the declaration of transmission to prison officials contemplated by the rules and our precedents requires the inmate himself to be the one to transmit the document to the prison officials responsible for the internal inmate mailing system. The Supreme Court has focused on the date the prison officials received the document.[17] We find no requirement of personal delivery by the prisoner himself and note that at least one other circuit evaluated the date based upon when the document was handed to the appropriate prison officials regardless of who did the handling.[18] We reaffirm that the operative date of the prison mailbox rule remains the date the pleading is delivered to prison authorities.

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[15] *Weber v. Garza*, 570 F.2d 511, 513-14 (5th Cir. 1978).

[16] *See Warren v. Cardwell*, 621 F.2d 319, 321 n.1 (9th Cir. 1980) (determining that resort to "next friend" device was appropriate when petitioner "could not sign and verify the petition because prison was 'locked down'" and circumstances were "urgent").

[17] *Houston*, 487 U.S. at 275.

[18] *See Hernandez v. Spearman*, 764 F.3d 1071, 1074 (9th Cir. 2014). The respondent argues that Rule 3(d) of the Rules Governing § 2254 cases restricts application of the prison mailbox rule to filings made personally by the inmate-petitioner. Rule 3(d) provides: "A paper filed by an inmate in an institution is timely if deposited in the institution's internal mailing system on or before the last day of filing. If an institution has a system designed for legal

Therefore, Uranga's Rule 59(e) motion, which Simmonds delivered on Uranga's behalf to prison officials for mailing on April 7, 2014, was timely filed and tolled the deadline for filing a notice of appeal until the entry of the order disposing of the motion.[19] There is no dispute that Uranga's notice of appeal was filed timely from the entry of the order denying his motion.

The last issue upon which COA was granted involves Uranga's claim that he was denied an impartial jury during the punishment phase of trial because one of the jurors was impliedly biased against him.[20] During the punishment phase, the State introduced evidence of Uranga's two prior felony convictions and several unadjudicated offenses.[21] Evidence revealed that Uranga had driven his car onto someone's lawn to elude police. This extraneous offense was captured by the video camera in the police vehicle that was chasing Uranga.[22] After the videotape was played to the jury, one of the jurors realized that it was his lawn that had been damaged by Uranga's car during the chase and "reported his surprising discovery to the trial court."[23]

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mail, the inmate must use that system to receive the benefit of this rule." The respondent submits that because the first sentence of the rule states "an inmate," but the second sentence states "the inmate," then the prison mailbox rule applies only when the petitioner himself delivers his pleading to prison authorities. We are not persuaded. Moreover, we note that Federal Rule of Appellate Procedure 4(c), which also codified *Houston*'s holding, uses "an inmate" throughout the rule.

[19] *See* FED. R. APP. P. 4(a)(4)(A)(iv).

[20] Uranga also argues that the juror in question was biased against him during the entire trial, and not just during the punishment phase. He asserts that the juror was actually his neighbor, held animosity against him, and had made reports to the police alleging that Uranga was selling drugs out of his house. However, this issue is beyond the scope of our COA grant. By asserting this claim in his opening brief, Uranga, in essence, is seeking a rehearing of this Court's ruling on his motion for a COA. A petition for rehearing must be filed within 14 days of this Court's ruling, and Uranga's opening brief was filed more than five months later. *See* FED. R. APP. P. 40(a)(1). Therefore, we do not consider this claim.

[21] *Uranga*, 330 S.W.3d at 302.

[22] *Id.* The videotape of the car chase "suggest[ed] that Uranga [had] committed the crimes of evading arrest and criminal mischief" under Texas law. *See Uranga v. State*, 247 S.W.3d 375, 377 (Tex. App.—Texarkana 2008) (citations omitted).

[23] *Uranga*, 247 S.W.3d at 377.

The trial court conducted a hearing, questioning the juror outside the presence of the remaining jurors regarding the incident.[24] The juror indicated that he had not known who damaged his lawn until he saw the video, but that this information would not influence him in any way.[25]

Uranga then moved for a mistrial, arguing that because the juror's property was damaged by his actions, "it would have to affect [the juror] in [determining] punishment."[26] The trial court denied Uranga's request for a mistrial.[27] On appeal, Uranga argued that the Texas Court of Criminal Appeals had adopted the "implied bias" doctrine in limited circumstances and that such bias should be imputed to the juror in his case.[28] The Texas Court of Criminal Appeals, however, held that "[n]either the federal nor the state constitution has been held to require an 'implied bias' doctrine."[29] Instead, the court "held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias."[30] The court further held that the hearing conducted by the trial court on the issue of actual bias in this case was appropriate and adequate and that "[t]here was no requirement of a mistrial on a theory that bias must be implied to the juror."[31] The court consequently affirmed Uranga's conviction and sentence.[32]

Under 28 U.S.C. § 2254(d)(1), habeas relief may not be granted on a claim that was adjudicated on the merits by a state court "unless the adjudication of the claim . . . resulted in a decision that was contrary to, or

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[24] *Uranga*, 330 S.W.3d at 302.
[25] *Id.* at 302-03.
[26] *Id.* at 303.
[27] *Id.*
[28] *Id.* at 306.
[29] *Id.* at 304.
[30] *Id.* at 306 (quoting *Smith v. Phillips*, 455 U.S. 209, 215 (1982)) (internal quotation marks omitted).
[31] *Id.*
[32] *Id.* at 307.

involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." In this case, the "last reasoned state court decision"[33] determined that neither the federal nor state constitution provides for a claim of implied juror bias. Thus, the state court adjudicated Uranga's implied bias claim on the merits in that it determined the claim was not cognizable in the first instance. Consequently, we must defer to the state court's decision under § 2254(d)(1), unless its decision "was contrary to . . . clearly established Federal law, as determined by the Supreme Court."

The respondent argues that the doctrine of implied juror bias is not clearly established federal law and that this Court would have to create, in violation of *Teague v. Lane*,[34] a new constitutional rule in order to grant relief in this case. Uranga asserts that this circuit has adopted the rule that implied juror bias is a clearly established constitutional principle based on our decision in *Brooks v. Dretke*.[35] The respondent counters, however, that *Brooks* was bound by our earlier opinion in *Andrews v. Collins*,[36] which recognized that the Supreme Court has never embraced the implied bias doctrine.

Both sides presented persuasive arguments and cite language from our cases that can be read to support each side of the argument. Other circuits are split on the question. The Fourth and Ninth Circuits have found that the doctrine is clearly established law, and the Sixth Circuit takes a position it is not clearly established.

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[33] *See Wilson v. Sellers*, 138 S.Ct 1188, 1194 (2018) (holding "that federal habeas law employs a 'look through' presumption" in determining "the reasons for the [state] higher court's decision" denying habeas relief).

[34] 489 U.S. 288 (1989).

[35] 444 F.3d 328, 329-33 (5th Cir. 2006) (on denial of petition for rehearing en banc).

[36] 21 F.3d 612 (5th Cir. 1994).

In this case, however, it is unnecessary for us to delve into this question based upon the peculiar facts in this record. The facts on which Uranga relies in this case to establish that he suffered presumed bias are outside the extreme genre of cases Justice O'Connor pointed to in her concurring opinion in *Smith v. Phillips*[37] that would be sufficient to trigger application of the implied bias doctrine. In her concurrence, Justice O'Connor explored the cases where a hearing may be inadequate for uncovering a juror's bias:

> While each case must turn on its own facts, there are some extreme situations that would justify a finding of implied bias. Some examples might include a revelation that the juror is an actual employee of the prosecuting agency, that the juror is a close relative of one of the participants in the trial or the criminal transaction, or that the juror was a witness or somehow involved in the criminal transaction.[38]

In *Brooks*, the juror in question was arrested during the trial because he brought a weapon into the courthouse with him.[39] The prosecuting authority, arguing for a conviction in the case being tried, had the prosecutorial discretion to pursue the juror on the weapons offense.[40] The juror's natural concern about whether the prosecutor would exercise his discretion to pursue charges against him was enough for the panel to conclude that it amounted to presumed bias that could not be corrected by the court's questions and instructions.[41]

This situation, where the juror/homeowner learned that the defendant had committed a misdemeanor by driving across his yard and causing damage that could be repaired for less than $500, does not fall in the same genre of cases given by Justice O'Connor in her concurrence or the juror's concern in

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[37] 455 U.S. 209, 222 (1982).
[38] *Id.*
[39] 418 F.3d 430, 430-31 (5th Cir. 2005).
[40] *See id.* at 435.
[41] *See id.*

Brooks that he would be charged with a weapons offense. Although Uranga did cause some damage to the juror's lawn during the car chase, the damage was minimal. As described by the juror, "[t]he ground was moved up a little bit."[42] Moreover, the juror testified that he did not intend to pursue any charges and that he could fix the damage himself.[43] This incident does not rise to the level of the extreme situations wherein courts have previously imputed juror bias.[44]

Based on the foregoing, the judgment of the district court denying Uranga's 28 U.S.C. § 2254 application is AFFIRMED.

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[42] *Uranga,* 330 S.W.3d at 302.

[43] *Id.*

[44] *See Solis v. Cockrell*, 342 F.3d 392, 399 n.42 (5th Cir. 2003) (listing cases where implied juror bias doctrine was applied and comparing to cases where the doctrine was refused).

HAYNES, Circuit Judge, dissenting:

I respectfully dissent from the determination to grant a panel rehearing and affirm, rather than reverse, the district court. I agree with the majority opinion up until the issue of the implicit juror bias; at that point, I diverge.

Certainly the issue of implicit bias has caused some disagreement among the circuits. But I conclude that we are bound by *Brooks v. Dretke*, 418 F.3d 430 (5th Cir. 2005) which does not conflict with *Andrews v. Collins*, 21 F.3d 612 (5th Cir. 1994) for the reasons stated in *Morales v. Thaler*, 714 F.3d 295, 304 n.7 (5th Cir. 2013). While *Andrews* does initially contain conflicting language regarding whether the Supreme Court has ever explicitly adopted the doctrine of implied juror bias, the decision (like the majority opinion here) ultimately focused on Justice O'Connor's concurring opinion in *Smith v. Phillips*, 455 U.S. 209, 222 (1982), describing the "extreme situations that would justify a finding of implied bias." 21 F.3d at 620. Given the lack of actual conflict, we are bound by *Brooks*.

Turning to the facts of this case, the majority opinion concludes that Uranga's situation is not sufficiently "extreme"[1] to warrant relief. I respectfully disagree. The jury in this case was tasked with determining a sentence for Uranga. As part of the sentencing phase of the trial, the prosecution introduced the videotape in question of a car chase that rips through the juror's lawn. In closing argument, the prosecution describes Uranga's criminal history and specifically mentions the car chase immediately before stating: "I'm asking that you, with this history, give him a life sentence." The jury did so.

[1] The state court never addressed this issue factually, having erroneously concluded that the law did not permit an implicit bias analysis.

Our original opinion correctly determined that this situation was sufficiently extreme to warrant relief holding:

> The videotape offered by the State during the punishment phase of Uranga's trial clearly showed that Uranga had damaged the juror's lawn during the car chase. Although the resulting property damage may have been minimal, the damage nonetheless was personal to the juror, as it affected the premises of his home. Moreover, the juror was unaware of how the damage had been caused and learned, for the first time, upon viewing the videotape during the punishment phase of trial that Uranga was the perpetrator of the damage. We believe that these particular facts "inherently create[d] in [the] juror a substantial emotional involvement, adversely affecting [his] impartiality" toward Uranga.[2] We conclude that this case presents one of those "extreme situations" in which we are justified in finding a violation of the Sixth Amendment based on implied juror bias. Consequently, although Uranga's conviction for possession of methamphetamine must stand, his sentence of life imprisonment cannot, at this point.

Uranga v. Davis, 879 F.3d 646, 653 (5th Cir. 2018)[3]. The juror in this very case was a victim of this very defendant in a crime deemed relevant by the prosecution to sentencing this defendant to life. Pretty extreme, it seems to me. I would deny the petition for panel rehearing and stand with the original opinion. Because the majority opinion determines otherwise, I respectfully dissent.

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[2] *See Solis v. Cockrell*, 342 F.3d 392, 399 (5th Cir. 2003) (internal quotation marks and footnote omitted).

[3] This is the opinion vacated by the majority opinion here.