Motion Picture Association of America v. CrystalTech Web Hosting Inc. Doc. 1407

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DISTRICT OF ARIZONA
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United States District Court
for the District of Arizona

Douglas Boldt Petitioner vs Dora schriro respondant	CV: 06-1966-PCT-EHC-DKD Reply to respondants objection to Petitioners Pleading for an evidentiary hearing

Honorable Judge Earl H. Carroll,

Every claim I have raised is based on ineffective assistance of Counsel. As evidence by the documents attached to the back of my Pleadings for an evidentiary hearing filed in this court, I have spent years Pleading with the state Courts for an evidentiary hearing where material facts could be fully developed that would Prove my claims of ineffective assistance of counsel, and that would Prove a fundamental miscarriage of Justice, and where a record of the Proceeding Could be made for appellate review, but the state has repeatedly denied my Pleadings for a full and fair hearing.

therefore it is not my fault that the material facts have not been adequately developed in the state Courts, and when state Court has not held evidentiary hearing and has not thereafter found facts affecting constitutional claim, federal habeas Court must hold its own evidentiary

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hearing and itself find relivant facts. Pineda v. Craven, C.A. 9 (cal.) 1970 424 F2d 369. on remand 327 FSUPP 1062.

furthermore. I am Not barred from a federal evidentiary hearing because I have diligently sought a fair opportunity to Prove my claims of ineffective assistance of counsel and to Prove a fundamental miscarriage of Justice, but the state has Prevented me from doing so. See, Drake v. Portuondo, 321 F3d 338, 347 (2nd Cir 2003). McFarland v. Yukins, 356 F3d 688, 712-13 (6th Cir 2004) Bryan v. mullin, 335 F3d 1207 1215 (10th Cir 2003). And in a capital case habeas Petitioner who assurts colorable claims for relief and who has never been given an opportunity to develope a factual record on claim "is entitled" to an evidentiary hearing in the federal court. Hayes v. Woodford, 301 F3d 1054 (9th Cir 2002)

Your honor, when I filed my reply to the respondants answer, the first thing I brought to your attention is that the state had completely denied me of Due Process in violation of (U.S.C.A. 14). Because here the Government is holding me to this burden of Proof and demanding that I Prove my claims of ineffective assistance of counsel, and that I Prove a fundamental miscarriage of Justice by "clear and convincing evidence", but then the state will not grant me a full and fair hearing where this evidence can be Presented. This isn't fair! IF the district court dismisses my Petition for habeas corpus without granting me an evidentiary hearing where this evidence can be Presented, then the District Court will be denying me of Due Process in violation of (U.S.C.A. 5) and will only be further Promoting a fundamental miscarriage of Justice.

II. Contrary to respondants allegation on Page 1 of his objection at 25 into Page 2. the theory behind my assurtion of actual innocence is that I did not commit an offense of intentional or knowing child abuse - I did not throw my daughter into a crib. my conviction was fraudulantly obtained because Counsel lied to me about everything the Presiding medical examiner was saying to over come my free will. he then fabricated a false factual basis and counseled me to lie to the Court by saying I'd thrown my daughter into her crib 2 times in a row so the Court would go along with the deal and except the Plea because it was supposibly the only way my life could be spared from the death Penalty. and I followed Counsels fraudulant legal advise under Duress not knowing that he'd been lieing to me.

If it wern't for Counsels fraudulant legal advise, had I gone to trial on Count I of the indictment for the charge of intentional or knowing child abuse no reasonable juror could find me guilty of this offense, and I never would've been convicted of 1st degree murder. but the state refuses to give me a fair opportunity to Prove this!

furthermore. I may not have raised a seperate claim of actual innocence. but I most certainly have assurted my innocence in my Petitions to the state Courts. See respondants exhibit M. Page 31 at 3-5) (respondants exhibit Q Page 4. at 27) and (exhibit Q. Page 15 at 21-27). and in my Pleadings to the state for an evidentiary hearing.

III. On Page 2 at 7 of the respondants objection he says: " Nor is an evidontiary hearing required on issues that can be resolved by refrence to the state court record."

Your honor, my claims cannot be resolved by refrence to the state court record, nor is the states determination that I have not presented any material facts that would entitle me to relief fairly supported by the record, because the state has not afforded me a constitutionally fair opportunity to establish a factual record on my claims, and thereby has not given me a fair opportunitu to present evidence to prove ineffective assistance of counsel, or to prove a fundamental miscarriage of Justice.

In a capital case habeas petitioner who assurts colorable claims for relief and who has never been given an opportunity to develope a factual record on claims "is entitled" to an evidentiary hearing in the federal court. Hayes v. Woodford, 301 F3d 1054 (9th cir 2002).

IV. Page 2 at 15 the respondant states = thus petitioners own admissions at his plea hearing establish his guilt.

Contrary to this, a conviction that is obtained by use of a coerced confession given under Duress as a direct result of counsel lieing to his client to induce a guilty plea is fundamentally unfair and violates Due Process under (U.S.C.A. 14). As I said, I did not throw my daughter into her crib nor could such an event have caused these injuries. my daughters head injury was

caused by a hard "Flat" surface which is Physically inconsistant with being thrown against the lathe turned rungs of a baby crib. Therefore I am being illegally held without Probable cause in violation of (U.S.C.A. 14) because the state knows that the factual basis given to support the conviction is false! but the state will not allow me to develope a factual record to prove this.

V. Page 3 at 1, the respondant states: Also, the medical examiner testified that Taylor died from Non accidental trama and stated that it was unlikely that Taylor would have suffered her head trama by slipping out of my hands.

What the medical examiner said is that Taylors injury is truly in a non accidental kind of mode (or) in a major violent "accidental mode". (see respondants exhibit H. Page 22 at 9-14.) although the medical examiner felt it was unlikely That Taylor could have sustained her head injury from slipping from my hands, he also said, it was Possible!! (see respondants exhibit H. Page 23 at 11-17, P. 49).

Your honor, even if there is some theoretical Possibility that Taylors death could have been caused accidently as stated by the respondant on Page 3 at 4-5. wouldn't it be better just to grant an evidentiary hearing where these material facts can be fully developed, rather than taking a chance on having an innocent

person sitting in prison for the rest of his natural life for a crime he didn't commit?

wherefore I pray that the district court will grant me an evidentiary hearing and give me a fair opportunity to prove a fundamental miscarriage of justice.

Very truly
Douglas Boldt

Copy of the foregoing mailed this 19th day of July 2007
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