Cotton v. Thaler Doc. 15

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

| RICKY COTTON, | § | |
|---------------------------------------|---|---------------------------------|
| | § | |
| Petitioner, | § | |
| | § | |
| V. | § | Civil Action No. SA-10-CV-87-XR |
| | § | |
| RICK THALER, Director, | § | |
| Texas Department of Criminal Justice, | § | |
| Correctional Institutional Division, | § | |
| | § | |
| Respondent. | § | |

ORDER

On this day, the Court considered Petitioner's "Notice of Appeal on Denial of his Application to Proceed *In Forma Pauperis*" (Docket Entry No. 7). The Court construes Petitioner's document as a motion to reconsider the Magistrate Judge's order. The motion is DENIED.

Statement of the Case

Petitioner Ricky Cotton filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Cotton was convicted in the 186th District Court of Bexar County, Texas, of murder and sentenced to twenty-five years in prison.

Procedural History

Petitioner filed a motion to proceed *in forma pauperis* when he submitted his petition for a writ of habeas corpus.¹ He also moved the Court to order the production of all trial records and transcripts.² The motions were automatically referred to Magistrate Judge John W. Primomo

¹Application to Proceed In Forma Pauperis, Feb. 1, 2010 (Docket Entry No. 1).

²Mot. for the Production of the Trial Record & Transcripts, Feb. 1, 2010 (Docket Entry No. 3).

pursuant to Appendix C of the Local Rules for the Western District of Texas and 28 U.S.C. § 636(b)(1). The Magistrate Judge denied petitioner's application to proceed *in forma pauperis*, noting that the petition had a current balance of \$268.69 in his account and receives an average deposit of \$29.17 per month, which is sufficient to pay the \$5.00 filing fee.³ The Magistrate Judge ordered Respondent to provide the Court with all copies of state court records necessary for a determination of the issues raised in Cotton's petition but denied Petitioner's motion to the extent he requested that Respondent produce the documents to him.⁴ Cotton filed a "Notice of Appeal on Denial of In Forma Pauperis" in which he asks the District Court to reconsider the Magistrate Judge's order denying his application to proceed in forma pauperis.⁵ Within the document, Petitioner also objects to the Magistrate Judge's order denying his motion for the state to produce trial documents and transcripts.

Legal Standard

"A judge of the court may reconsider any pretrial matter... where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

Analysis

The Court construes Cotton's "appeal" as a motion for the District Court to reconsider the Magistrate Judge's pretrial orders. Petitioner argues that he has been allowed to proceed *in forma pauperis* in a previous proceeding before this Court. The docket sheet in *Cotton v. Hilbig*, No. SA-95-CV-147-OLG (W.D. Tex. filed Feb. 17, 1995), indicates that Petitioner did not proceed *in forma*

³Order, Feb. 22, 2010 (Docket Entry No. 5).

⁴Order, Feb. 22, 2010 (Docket Entry No. 4).

⁵"Notice of Appeal on Denial of In Forma Pauperis," Mar. 18, 2010 (Docket Entry No. 7).

pauperis; he paid the \$5.00 filing fee. In any case, Cotton's financial status when he filed his

previous action in 1995 is irrelevant. The Magistrate Judge determined that Cotton had \$268.69 in

his account and received an average deposit of \$29.17 per month, which is enough to afford the

\$5.00 filing fee. The Magistrate Judge's order on Petitioner's application to proceed in forma

pauperis is neither contrary to law nor clearly erroneous.

Although Plaintiff references the Magistrate Judge's order denying his motion for the state

to produce trial documents and transcripts, he does not argue why this order is clearly erroneous or

contrary to law. In any case, the Court has reviewed the Magistrate Judge's order and finds that it

should be upheld.

Conclusion

Petitioner's motion for the District Court to reconsider the Magistrate Judge's pretrial orders

is DENIED.

It is so ORDERED.

SIGNED this 25th day of May, 2010.

XAVIER RODRIGUEZ

UNITED STATES DISTRICT JUDGE

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