

IN THE SEVENTH CIRCUIT
COURT OF APPEALS
CHICAGO; ILLINOIS. 60604

DOC NO
REC'D/FILED

2017 MAR 24 AM 9:44

CHARLES J. HOMELSEY, A/K/A
CHARLES J. HOMESLEY, AND
A/K/A CHARLES J. MAYBERRY,

PETER OPPENEER
CLERK US DIST COURT
WD OF WI

Petitioner-Appellant,

vs.

Appeal Case No. _____;
USDC Case No. 16-cv-47-bbc.

MICHAEL A. DITTMANN, Warden,
Columbia Correctional Institution,

Respondent-Appellee.

RULE 3(c) DOCKETING STATEMENT

NOW COMES Petitioner Charles J. Mayberry (DOC No. 248435-A), pro se, "In Forma Pauperis". Hereby does state that the above-entitled §2254 Petition For Writ Of Habeas Corpus matter has reached its conclusion in litigation before the United States District Court for the Western District of Wisconsin. With the Honorable District Court Judge, Barbara B. Crabb, presiding judge on February 24, 2017 entering an "Opinion And Order" Dismissing the §2254 Petition on the Grounds of "Untimeliness" and therefrom, filing a "Judgment In A Civil Case" on February 24, 2017 regarding this "Procedural Default" Dismissal of the §2254 Cause of Action. Thereby, concluding all District Court Review on the Merits, regarding the Petition included Grounds of:

A.] "Actual Innocence"-- [Newly Discovered Evidence Of The Alleged Sexual Assault Victim 'Excited Utterance Statement' That She Manufactured Her Allegations Of Sexual Assault In Order

"To Send That Nigger To Prison"]

B.] "Mental Incompetence"--[[Defendant since his early Teens has suffered from Severe Brain Damage, that has rendered Defendant Mentally Disabled, and currently functions at a First Grade Level In Reading and Math, and functions with a 2nd Grade Level Comprehension ability. That Defendant at the time of the alleged Crimes commission, was under Court Appointed "Guardianship" because of his Mental Disabilities caused inability to take care of such daily living actualities such as paying Rent, Light and Gas Bills, Etc., required to function in free society as an adult].

C.] "Denial Of A Fundamental Fair Chance To Present His Federal Constitutional Issue of "Mental Incompetency" to the Wisconsin State Court, 'Collateral Post-Conviction' Review venue because of the failure of the Wisconsin State Department Of Corrections and/or the Dane County Circuit Court System to have in place any System to assist Mentally Disable Litigants' with the litigation of their Federal Constitutional Claim(s) to the Judicial System."

D.] Harassment Of Access To Jailhouse Lawyer Assistance for the Pro Se Litigation Undertaking of the §974.06 Wis. Stats., Collateral Post-Conviction Motion Review of the "Mental Incompetency" Claim/Issue(s), Including the Immediate Refiling of the §2254 Petition Back Before The Federal District Court, from the District Court Judge, January 2013 "Dismissal" of the Initial §2254 Petition, without inquiring into the Statute Of Limitations situation involved with its "Dismissal" for the "Exhaustion" of the Mental Incompetency Claim Issue(s) before the State Judicial System on Collateral Review thereof.

Hereby, the Court Of Appeals for the Seventh Circuit now has

Jurisdiction over this "Dismissed" §2254 Litigation, upon the Entry of the February 24, 2017 Opinion and Order of the Honorable Barbara B. Crabb, presiding District Court Judge, and the "Judgment In A Civil Case" Filed thereof on February 24, 2017.

Petitioner-Appellant Charles J. Mayberry, remains incarcerated at the Columbia Correctional Institution, located at 2925 Columbia Drive, Portage; Wisconsin. 53901-0900. In the Legal Custody of the Wisconsin State Department Of Corrections, Secretary Jon Litscher.

All that remains for the United States District Court for the Western District of Wisconsin to address in this "Procedural Defaulted" §2254 Review, other than Issuance of the "Certificate Of Appealability" Which Appellant, at this time is being prevented from drafting up do to the Illegal Seizure of all of Appellants' Case File Documents from CCI Jailhouse Lawyer, Oscar B. McMillian #042747-A, by CCI Staff Members, Housing Unit #8 Manager, Mr. Michael Fink; CCI Inmate Complaint Investigator, Ms. Linda Alsum-O'Donovan, and Lt. Parenteau. These individual(s) have been in possession of Every Single Sheet of Paper/ Legal Files that were in Jailhouse Lawyer McMillian's Cell as of February 21, 2017. At this time, the named individual(s) are engaged in Photocopying and Photographing all Legal Material(s) of Jailhouse Lawyer Oscar B. McMillian #042747-A, and those whom he is providing legal assistance to. This "Seizure was executed" under the "Rote" and Manufacture assertion of Housing Unit Manager Michael Fink that Jailhouse Lawyer McMillian was over the DOC/CCI allowed 8000 Cu. In., In-Cell Storage Allowed Limit (However, as of todays date, Jailhouse Lawyer McMillian, has not been provided the opportunity to demonstrate that his "Legal Materials" will fit within' the 20x20x20" Legal Materials Measuring Box of the DOC In-Cell Required "Prisoner" Placement

undertaking for showing of Amount of In-Cell Possessed Legal Material(s) of an Individual DOC Prisoner).

At this time, prisoner McMillian is unaware of just when he will be granted access to the seized legal case files of his Legal Assistance Engagement(s), including Appellants' §2254 Petition For Writ of Habeas Corpus litigation materials file(s). And since CCI Prison Administrative Official(s), believe that the Court System is to weak kneed to punish State Prison Official(s) for their Intentional Disregard of Prisoners' Legal Rights, Prisoner McMillian has been informed that he can complain to the Courts all he wants, they will still hold on to the seized legal materials/case files until they are damn well ready to return them, if they return them at all, according to Unit Manager Mr. Michael Fink, and Inmate Complaint Investigator, Mrs. Linda Alsum-O'Donovan statements hereon.

Based upon the intentional illegal seizure of the Case File of this §2254 Habeas Corpus litigation, and the flat refusal of CCI Prison Official(s) to return said §2254 Case File even to the Appellant himself, let alone to Jailhouse Lawyer McMillian, Appellant is being prevented from having access to the material(s) necessary to draft up the required "Certificate Of Appealability" Issuance request to the District Court Judge, regarding the Judges' February 24, 2017 "Procedural Default" Dismissal of the §2254 Petition, based upon the "Incompetent" Assistance receipt therewith of the Courts "Forced Counsel" Representation, because of the Courts' desire to avoid addressing the running harassment of Jailhouse Lawyer McMillian's assistance exercises during the Respondents' "Motion To Dismiss" Litigation before the U.S. Federal District Court for the Western District of Wisconsin.

Prisoner further needs to seek "Leave to Proceed In Forma Pau-

peris before the Court Of Appeals, regarding this Appellate Review of the District Courts' February 24, 2017 "Opinion And Order" of Dismissal As Untimely/Statute Of Limitation Violative conclusion. But fisst must acquire a Free Copy of the Motion For Leave To Proceed In Forma Pauperis - "Affidavit Of Indigency" Form from the Circuit Court, for the copies Jailhouse Lawyer McMillian had on had were also seized during the February 21, 2017 move against him by CCI Staff. While noting that Prisoner McMillian should not have exposed another CCI Guard/Co-Work for Throwing Inmates Out-Going Mail in the Garbage Can, which resulted in CO Bart's being Fired on December 13, 2016.

Thus, pursuant to Circuit Rule 3(c) of the Seventh Circuit Court of Appeals, Appellant states that this Court of Appeals has "Jurisdiction" of this District Court "Dismissed" §2254 Petition For Writ Of Habeas Courts action, regarding the "Procedural Default" on the Grounds of "Untimeliness" of the Filing of the §2254 Petition "Refiling" by this Mental Disability Suffering Pro Se Prisoner.

Dated this 20 day of March, 2017. Portage; Wisconsin.

CJM-OBM/File.

Respectfully Submitted By:

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