

Supreme Court OF Florida

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THOMAS G. B. HALL

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ORIGINAL

BY 

Frederick Webster,
Petitioner

vs.

Case No.: SC10-2135

DCA Case No.: 4D10-2551

State OF Florida,
Respondent /

Petitioner's Jurisdictional Brief

By Frederick Webster, Pro Se

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United States Const. 14th Amend.

Preliminary Statement

In this proceeding Petitioner, Frederick's Webster will be referred to as Petitioner and or Webster. The Respondent, State of Florida will be referred to as Respondent and or State.

Reference to the Appendix exhibits will be by the symbol "App. Ex" with appropriate lettering to each designated exhibit.

Statement OF The Case And Facts

Petitioner stood jury trial in the Seventeenth Judicial Circuit Court for the crimes listed in an amended three count indictment. The indictment charged the following: count one, first degree felony murder, count two, second degree felony murder, and count three, burglary of an unoccupied structure. Eventually Webster was convicted on all counts as charged. On direct appeal Webster's conviction for second degree felony murder was reversed and all remaining convictions affirmed. See Webster v. State, 530 So2d 124 (Fla. 4th DCA 1989).

On June 24, 2010, Webster filed petition for writ of habeas corpus in the Fourth District Court of Appeal. In the habeas corpus petition Webster challenged the legality of the indictment on which he was tried on basis that the indictment failed to charge the felony murder for which he was tried for. Webster further claims that the trial Court committed fundamental error by charging the trial jury with fundamentally defective jury instruction which fails to instruct the jury on the essential material elements of the offense which the state must prove to convict Webster.

On July 20, 2010, the District Court entered its order summarily denying the habeas corpus petition on its merit (App. Ex. A). The DCA further stated in its written opinion that the claims presented in the habeas corpus petition are ordinarily presented in trial court collateral proceeding.

and thus Petitioner is cautioned that he will face sanction pursuant to *Spencer*, 751 So2d 47 (Fla. 1999) if Petitioner again bring such claims in habeas corpus petition (App. Ex. A). A plain interpretation of the written opinion of the District Court's order clearly suggest that the claims presented in the habeas petition are not cognizable in habeas corpus petition and to present such claims in habeas corpus petition would constitute an abuse of the writ warranting sanctions.

Therefore, Petitioner contends that the written opinion of the District Court is directly and expressly conflict with other district courts and the Supreme Court on the same point of law relevant to his claims being cognizable under habeas corpus proceeding, *intra*.

On August 5, 2010, Petitioner filed a motion for rehearing in the DCA. To no avail on September 29, 2010, the DCA rendered its order denying rehearing (App. Ex. B). Thus, this Court's discretionary jurisdiction is timely sought by Petitioner.

Summary Argument

The written opinion of the District Court of Appeal which conclusively finds that a fundamentally defective indictment which fails to charge an offense is not cognizable in habeas corpus petition is directly and expressly conflicts with the opinion of other district courts and the Supreme Court on that same point of law. The District Court's opinion is further in conflict with other said courts on the point of law which allow fundamentally defective jury instruction to be reviewed via habeas corpus proceedings, *infra*.

Argument

The Discretionary Jurisdiction Of The Supreme Court May Be Sought To Review Decisions Of District Court Of Appeal That Expressly And Directly Conflict With A Decision Of Another District Court Of Appeal Or Of The Supreme Court On The Same Question Of Law, Fla. R. App. P. 9.030 (a) (2) (A) (iv)

The Florida Supreme Court's discretionary review jurisdiction can be invoked only from a district court "that expressly addresses a question of law within the four corners of the opinion itself" by "containing a statement or citation effectively establishing a point of law upon which the decision rests." *Florida Star v. B.J.F.*, 530 So2d 286, 288 (Fla. 1988). In those cases where the district court has not explicitly identified a conflicting decision, it is necessary for the district court to have included some facts in its decision so that the question of law addressed by the district court in its decision can be discerned by the Supreme Court. In this case at bar, the District Court has included in its decision that the claims presented in the habeas corpus petition are ordinarily brought in collateral proceedings in the trial court. Webster challenged the legality of the indictment on which he was tried on in that the indictment wholly fails to charge the felony murders on

which he was tried on. The Florida Supreme Court has ruled "a conviction on a charge not made by the indictment or information," even if valid under Florida law, "is a denial of due process of law" and "is a defect that can be raised at any time-before trial, after trial, on appeal, or by habeas corpus." *State v. Gray*, 435 So2d 816, 818 (Fla. 1983); *White v. State*, 973 So2d 638 (Fla. 4th DCA 2008); *Crain v. State*, 894 So2d 59, 69 (Fla. 2004); *N. H. M. v. State*, 974 So2d 484, 485-86 (Fla. 2d DCA 2008).

Webster has a due process right under the United States 14th Amendment to the U.S. Constitution to have the jury instructed on every essential element constituting the charge he must defend against. *Greeds v. State*, 64 So2d 915 (Fla. 1953); *Mc Cain v. State*, 985 So2d 1029 (Fla. 2d DCA 2008). Habeas corpus review is available to review fundamentally defective jury instructions to trial jury. See *Zeno v. State*, 910 So2d 394.

Conclusion

Wherefore, based on the foregoing facts arguments and authorities, Petitioner prays that this Court will grant him discretionary review in the above styled case.

Oath/Signature

I, Frederick Webster, do certify under penalty of perjury that I have read the foregoing jurisdictional brief and has personal knowledge of the facts and matters set forth therein and that each and all of these facts and matters are true and correct.

Date November 24, 2010

151 Frederick Webster

Frederick Webster, pro se

Certificate Of Service

I Hereby certify that a true and correct copy of the above styled Jurisdictional Brief has been furnished via U.S. mail this 24th day of November, 2010 to Hon. Bill McCollum, Attorney General at 1515 N. Flagler Drive, West Palm Beach, Florida 33401-3432.

Frederick Webster

Frederick Webster

Appendix Exhibit - A

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

July 20, 2010

CASE NO.: 4D10-2551
L.T. No. : 85-9614 CF10B

FREDERICK WEBSTER

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the Petition for Writ of Habeas Corpus filed June 14, 2010, is hereby denied on the merits; further,

This is petitioner's sixth petition for writ of habeas corpus filed in this court since the trial court issued its 2005 order barring future pro se filings by petitioner. Petitioner is cautioned that his continued filing in this court of matters which would ordinarily be directed to the trial court through a collateral motion will result in the same sanction of this court no longer accepting his pro se filings. See *State v. Spencer*, 751 So. 2d 47 (Fla. 1999).

WARNER, TAYLOR and HAZOURI, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

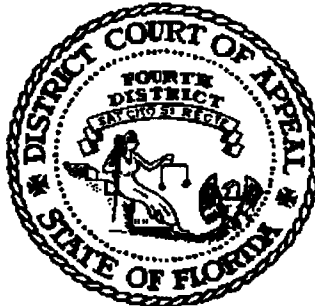
Served:

Frederick K. Webster

Attorney General-W.P.B.

dl

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



Appendix Exhibit-B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

September 29, 2010

CASE NO.: 4D10-2551
L.T. No. : 85-9614 CF10B

FREDERICK WEBSTER

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that petitioner's motion filed August 5, 2010, for rehearing is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Frederick K. Webster

Attorney General-W.P.B.

kb

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

