1-22-2009

Briston v. Wholey

Precedential or Non-Precedential: Non-Precedential

Docket No. 08-3854

ALD-66 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3854

DARRYLL LELAND BRISTON,
Appellant

v.

MATTHEW WHOLEY, ESQUIRE

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 2-08-cv-00935)
District Judge: Honorable Gary L. Lancaster

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6
December 24, 2008

Before: SLOVITER, FUENTES and JORDAN, Circuit Judges

(Opinion filed: January 22, 2009)

OPINION

PER CURIAM

On November 2, 2004, Appellant Darryll Leland Briston was convicted in the District Court for the Western District of Pennsylvania of deprivation of civil rights under color of law, theft from an organization receiving federal funds, and two counts of

obstruction of justice. The conduct at the heart of the conviction involved Briston's unlawful seizure of roughly $5,800 found during the execution of an arrest warrant when he was then chief of the Rankin, Pennsylvania Police Department. A few months after he was convicted in federal court, Briston was charged in the Allegheny County Court of Common Pleas with perjury for allegedly giving false testimony during a state investigation into the same conduct that produced his federal conviction. Briston unsuccessfully challenged the perjury charge in state court as a violation of Pennsylvania's double jeopardy statute, 18 Pa. Cons. Stat. § 111. After several continuances, Briston's state trial is currently set to begin on March 30, 2009. See Commonwealth v. Briston, CP-02-CR-0005573-2005 (criminal docket pg. 1).

On July 7, 2008, Briston filed a "Notice of Removal," which the District Court properly construed as a petition for habeas corpus under 28 U.S.C. § 2241(c)(3). Therein, Briston alleged that the ongoing state prosecution violates his Fifth Amendment protection from double jeopardy because it is based on the same conduct that resulted in his federal conviction. The District Court found that Briston had not exhausted his federal double jeopardy claim at the state level, and that he was unable to demonstrate the "extraordinary circumstances" needed to circumvent non-exhaustion. See Moore v. DeYoung, 515 F.2d 437, 443 (3d Cir. 1975). As such, the District Court found that the habeas petition's underlying claim was procedurally defaulted. We disagree.

A habeas petitioner "need not have cited 'book and verse' of the federal

constitution" in order to "fairly present" a federal claim at the state level for purposes of exhaustion. McCandless v. Vaughn, 172 F.3d 255, 261 (3d Cir. 1999). Indeed, he may present the claim through any of the following mechanisms:

> (a) reliance on pertinent federal cases employing constitutional analysis, (b) reliance on state cases employing constitutional analysis in like fact situations, (c) assertion of the claim in terms so particular as to call to mind a specific right protected by the Constitution, and (d) allegation of a pattern of facts that is well within the mainstream of constitutional litigation.

Id. at 261-62 (quoting Evans v. Court of Common Pleas, Del. County, Pa., 959 F.2d 1227, 1232 (3d Cir. 1992)). After reviewing both Briston's "Rule 18 Pa. C.S.A. § 111 Motion to Dismiss" before the Court of Common Pleas and his brief on appeal in the Pennsylvania Superior Court, it is fair to say that Briston had asserted his double jeopardy claim "in terms so particular as to call to mind" the Fifth Amendment's proscription of double jeopardy. Id. It follows, then, that he fully exhausted his federal double jeopardy claim prior to filing his federal habeas petition.

Nonetheless, the District Court correctly found that even if it were to entertain the merits of Briston's habeas petition, the "dual sovereignty doctrine" barred the relief he sought. See Bartkus v. Illinois, 359 U.S. 121, 132-33 (1959) (separate federal and state prosecutions for same conduct does not violate double jeopardy clause).

There being no substantial question presented by Briston's appeal from the dismissal of his § 2241 habeas petition, we will summarily affirm the District Court's order dismissing the case. See LAR 27.4; I.O.P. 10.6.