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Cooper v. Price

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 98-2134

BRUCE A. COOPER,
Appellant

v.

JAMES PRICE, WARDEN;
THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA;
THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Civil Action No. 98-cv-03009
(Honorable James McGirr Kelly)

Argued January 15, 2002

Before: SCIRICA, GREENBERG and BRIGHT*, Circuit Judges

(Filed: February 5, 2002)

*The Honorable Myron H. Bright, United States Circuit Judge for the
Eighth Judicial
Circuit, sitting by designation.
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Office of District Attorney

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Philadelphia, Pennsylvania 19102

Attorneys for Appellees

OPINION OF THE COURT

PER CURIAM.

Appellant Bruce Cooper was found guilty by a jury of second degree murder and robbery in 1985 and sentenced to a mandatory term of life imprisonment. His direct appeal was dismissed by the Superior Court for failure to file a brief. In August 1988 he filed a state post-conviction petition and counsel was appointed to represent him. After several evidentiary hearings, the trial court denied the petition and the Superior Court affirmed. The Pennsylvania Supreme Court denied Cooper's petition for allowance of appeal on July 12, 1996.

On June 11, 1998, almost two years later, Cooper filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he raised a juror misconduct claim, a claim that the prosecutor withheld exculpatory evidence, and a claim that counsel rendered ineffective assistance in violation of the Sixth Amendment in failing to present a competent defense and in failing to pursue a direct appeal. The District Attorney of Philadelphia answered the petition and raised the one-year statute of limitations defense under 28 U.S.C. § 2244(d)(1). The Magistrate Judge recommended that the petition be dismissed as time-barred, and the District Court agreed, adopting the Magistrate Judge's report as the opinion of the court. The petition was denied by order entered on November 23, 1998 and Cooper appealed.

On June 9, 1999, we granted a certificate of appealability, and ordered the parties to show cause why the order should not be vacated and the matter summarily remanded for consideration of appellant's equitable tolling arguments, as set forth in his reply to the respondent's answer and his objections to the Report and Recommendation, in light of

this Court's decision in *Miller v. New Jersey State Dep't of Corrections*, 145 F.3d 616 (3d Cir. 1998). Following the submission of responses, we appointed counsel to represent Cooper and the appeal proceeded to briefing.

We will vacate the order of the District Court, and remand the matter for further proceedings in accordance with *Miller v. New Jersey State Dep't of Corrections*, 145 F.3d 616, 618 (3d Cir. 1998) (equitable tolling appropriate where principles of equity would make rigid application of habeas statute of limitations unfair). On remand the District Court should address Cooper's argument that he was not aware of the decision denying his petition for allowance of appeal until September 1997, the copy of a letter from the state supreme court dated September 30, 1997 advising him that his petition had been denied on July 12, 1996, his argument that prison officials searched his cell and removed and destroyed legal materials relating to his criminal case which also delayed the filing of his habeas petition, and the grievance-related and other materials submitted in support of this argument.

The District Court appears to have overlooked these arguments, and we will not consider them, or the extensive rebuttal offered by the appellees (Appellees' Brief, at 17-30), because they involve a mixed question of law and fact and are best addressed by the District Court in the first instance. See *Meyers v. Gillis*, 93 F.3d 1147, 1152 (3d Cir. 1996). We express no view on the merits of Cooper's arguments.

We will vacate the order of the District Court entered on November 23, 1998, and remand the matter for further proceedings.

TO THE CLERK:

Please file the foregoing opinion.

Circuit Judge

DATED:

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 98-2134

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JUDGMENT

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel on January 15, 2002.

*The Honorable Myron H. Bright, United States Circuit Judge for the Eighth Judicial Circuit, sitting by designation.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered November 23, 1998, be, and the same is hereby vacated and the case remanded for proceedings consistent with this opinion. All of the above in accordance with the opinion of this Court.

ATTEST:

Clerk

DATED: 5 February 2002