United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 14, 2023
Lyle W. Cayce
Clerk

No. 23-70007

DAVID SANTIAGO RENTERIA,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*; STATE OF TEXAS,

Respondents—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:23-CR-2080-1

Before JONES, ELROD, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:[*]

David Santiago Renteria appeals the District Court's order on his notice of removal and moves for a stay of execution. We AFFIRM the District Court and DENY Renteria's Motion for Stay of Execution ("Motion") for the reasons discussed below.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

I. Background

The facts underpinning Renteria's conviction and sentence are quite disturbing, but no extended recounting of this horrific crime is necessary. The Texas Criminal Court of Appeals ("TCCA") provides a sufficient summary of what led to Renteria's conviction and death sentence:

> [Renteria] was a 32 year-old registered sex offender on probation for committing an indecency offense against an eight-year-old girl when he was arrested for the murder of the five-year-old girl in this case. On November 18, 2001, this five-year-old victim disappeared from a Wal–Mart store where she was shopping with her parents. The next day, her nude, partially burned body with a partially burned plastic bag over her head was discovered in an alley sixteen miles from the Wal–Mart. When she was set on fire, she already had been manually strangled. The medical examiner testified that the victim also received two blows to her head. The medical examiner also testified that the victim could have been sexually assaulted, although he found no physical evidence of sexual assault.
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> [Renteria]'s palm print matched a latent palm print that was lifted from the plastic bag covering the victim's head. A search of [Renteria]'s van revealed blood stains containing the victim's DNA. [Renteria] and his van were at the Wal–Mart when the victim disappeared. A Wal–Mart security guard briefly spoke to [Renteria], and Wal–Mart surveillance cameras showed a man wearing a light-colored hat, a dark shirt, and dark shorts walking out with the victim. Earlier that day [Renteria], wearing clothes very similar to those worn by the man walking out of the Wal–Mart store, had been at a nearby Sam's store with his father. While at Sam's, [Renteria] purchased oranges, and the victim's autopsy revealed pieces of orange wedges in her stomach.
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> [Renteria] was arrested on December 3, 2001, and he gave a written custodial statement to the police. This statement was not admitted into evidence at [Renteria]'s trial. In this

> statement, [Renteria] claimed that an "Azteca" gang member nicknamed "Flaco," whom [Renteria] had known in jail, and several other persons, whom [Renteria] did not know, were primarily responsible for the victim's murder. [Renteria] claimed that he helped these people commit the offense out of fear they would harm his family. He also claimed that his involvement in the offense was limited to luring the victim out of the Wal–Mart and helping "Flaco" and the others dispose of and burn her body after the others had murdered her.

Renteria v. State, 206 S.W.3d 689, 693–94 (Tex. Crim. App. 2006).[1] This conviction resulted in Renteria's first death sentence. *Id*. at 693. The TCCA upheld Renteria's conviction on direct appeal but reversed on punishment and remanded for a new punishment. *Id.* at 710. This second punishment trial resulted in another death sentence. *See Renteria v. State*, No. AP-74,829, 2011 WL 1734067, at *1 (Tex. Crim. App. May 4, 2011). Renteria exhausted his direct appeals and failed to obtain habeas relief. *See Renteria*, 206 S.W.3d 689; *Ex parte Renteria*, No. WR-65,627-01, 2014 WL 7191058 (Tex. Crim. App. Dec. 17, 2014); *Renteria v. Davis*, No. EP-15-CV-62-FM, 2019 WL 611439 (W.D. Tex. Feb. 12, 2019); *Renteria v. Davis*, 814 F. App'x 827 (5th Cir. 2020); *Renteria v. Lumpkin*, 141 S. Ct. 1412 (2021).

This specific appeal stems from Renteria's request for access to the District Attorney's Office's ("DAO") file, which in turn was spurred by the DAO's disclosure to Renteria of a witness statement in 2018. Renteria requested that the state trial court reconsider its execution order and moved it to compel the DAO to provide counsel access to its files. *See In re State ex rel. Hicks,* No. WR-95,092-01, 2023 WL 6074482, at *1 (Tex. Crim. App. Sept.

[1] Renteria maintains that he kidnapped the victim and helped place her body after Barrio Azteca gang members killed her under duress, and that he did not believe the kidnapping would result in her murder.

18, 2023), *reh'g denied* (Oct. 26, 2023). Renteria requested and received a hearing regarding these requests. *See id.* The state trial court vacated its execution order and ordered the DAO to make its files available to Renteria. *See In re State ex rel. Hicks*, 2023 WL 6074482, at *2.

The DAO sought mandamus relief in the TCCA, which it granted because the state trial court lacked authority to vacate the order and warrant, and also lacked jurisdiction to compel the DAO from complying with the requested discovery order. *See id.* at *2–3. Renteria moved for rehearing and a stay of execution, which the TCCA denied. Order, *In re State ex rel. Bill D. Hicks*, No. WR-95,092-01 (Tex. Crim. App. Oct. 25, 2023).

Renteria then filed a Notice of Removal ("Notice") in the District Court where he complained of the TCCA's ruling on his request for mandamus relief and the proceedings in the trial court. The District Court initially scheduled a motion hearing, but then granted the State's subsequent for Motion for Summary Remand and remanded the case to state court. Renteria moved for reconsideration, which the District Court denied. Renteria then appealed the District Court's orders and filed his Motion.[2]

II. The Appeal

A. Removal Standard

Renteria premises his appeal on the District Court's denial of his request for 28 U.S.C. § 1433(1) removal and consequent remand to state court.[3]

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[2] Renteria did not file a motion to stay in the District Court, Fed. R. App. P. 8(a)(1) (requiring same), failed to demonstrate that doing so would be impracticable, Fed. R. App. P. 8(a)(2)(A), and failed to append documentary proof of a motion to stay and an order denying same in the district court, or a statement of why such proof cannot be provided. 5th Cir. R. 8.1.

[3] "We review *de novo* a district court's order remanding a case to state court." *Admiral Ins. v. Abshire*, 574 F.3d 267, 272 (5th Cir. 2009). "We may affirm the district court's rulings on any basis supported by the record." *TOTAL Gas & Power N. Am., Inc. v.*

Section 1433(1) provides that a state court criminal prosecution may be removed to federal court if the prosecution is against "any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States." 28 U.S.C. § 1433(1). Only rights arising "under a federal law providing for specific civil rights stated in terms of racial equality" qualify. *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975) (cleaned up). Important here is 28 U.S.C. § 1455(b), which requires that, except for good cause, a notice of removal "shall" be filed on the earlier of (1) thirty days after arraignment in state court or (2) any time before trial. 28 U.S.C. 1455(b)(1).

Renteria, the removing party, bears the burden of proof on his motion to remand. *See Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). We review the state court record at the time of removal, and "[a]ny ambiguities are construed against removal because the removal statute should be *strictly* construed in favor of remand." *Id.* (citing *Acuna v. Brown & Root, Inc.*, 200 F.3d 335, 339 (5th Cir. 2000) (emphasis added)). If it appears on the face of the notice of removal and any exhibits that removal should not be permitted, "the court *shall* make an order for summary remand." 28 U.S.C. § 1455(b)(4) (emphasis added).

B. Renteria's Notice of Removal Is Untimely and Outside of Section 1433(1)'s Scope.

Renteria's Notice is decades late and fails to seek the removal of a "prosecution"—the proceeding that 28 U.S.C. § 1443(1) creates a removal vehicle for. *See* 28 U.S.C. § 1443(1); *Renteria*, 2011 WL 1734067, at *1; *Prosecution*, Black's Law Dictionary (11th ed. 2019) ("A criminal proceeding in

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FERC, 859 F.3d 325, 332 (5th Cir. 2017) (citing *Taylor v. City of Shreveport*, 798 F.3d 276, 279 (5th Cir. 2015)).

which an accused person is tried"). So, instead of attempting to remove a prosecution, Renteria attempts to remove a postconviction proceeding. But he fails to identify caselaw demonstrating that such removal is permissible or whether the District Court could even consider it. Indeed, many courts considering § 1455 hold that it does not provide for post-conviction removal. *See, e.g.*, *Williams v. Corrigan*, No. 22-2096, 2023 WL 3868657, at *2 (6th Cir. May 12, 2023) ("Williams's removal petition was untimely given that it was filed [fifteen] years after his conviction."); *Kansas v. Gilbert*, Nos. 22-3213 & 22-3230, 22-3229 & 22-3249, 2023 WL 2397025, at *1 (10th Cir. Mar. 8, 2023) ("[B]ecause the criminal cases that Gilbert attempted to remove from state court were closed, the district court correctly concluded it had no choice but to dismiss the cases."); *Delaware v. Desmond*, 792 F. App'x 241, 243 n.1 (3d Cir. 2020) (agreeing with district court's conclusion that postconviction removal petition was untimely).

Section 1455 sets forth a clear timeline for notices of removal: they "*shall* be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause." 28 U.S.C. 1455(b)(1) (emphasis added). The time to file such a notice was over two decades ago, when Renteria was indicted, convicted, and sentenced to death. *Renteria*, 2011 WL 1734067, at *1. The record indicates no good cause for Renteria to remove a postconviction proceeding under a statute that provides for *pretrial* removal over two decades after the provided-for timeframe. 28 U.S.C. § 1455(b)(1).

Renteria attempts to circumvent this fatal flaw by arguing that the District Court relied on "dicta" from *State of Ga. v. Rachel*, 384 U.S. 780 (1966) and references to legislative history. Neither argument demonstrates error. Four observations make this clear.

First, Renteria's assertion that § 1455(b)(1) provides for removal at any time (even decades postconviction) fails to hold water. Once more, the statute provides for removal of criminal prosecutions *before trial*. 28 U.S.C. § 1455(b)(1). And again, our review of the record fails to reflect the good cause needed to allow for removal over two decades postconviction. Renteria fails to provide any binding authority to the contrary, and indeed the persuasive authority that exists pertaining to § 1455 militates against his argument. *See supra* at 6.

Second, to the extent that § 1455 could be considered ambiguous, the canons of statutory construction confirm that it does not permit postconviction removal. Renteria's broad construction of "at a later time" fails to comport with the rest of the statute's language, which requires defendants to submit notices of removal pretrial. *See Yates v. United States*, 574 U.S. 528, 543–45 (2015) (discussing *noscitur a sociis*, which requires courts "to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress," and *ejusdem generis*, which holds that "where general words follow specific words in a statutory enumeration, the general words are usually construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words") (cleaned up). It does not follow that a statute which mandates pretrial submission of a notice of removal would simultaneously allow for such notice to be filed over two decades postconviction—such an interpretation would allow the exception to swallow the rule. Even if the "good cause" exception allowed for such an extension (and it is not clear that it does), the record before us does not demonstrate good cause.

Third, Renteria's suggestion that no final judgment has occurred in his case because his death sentence has yet to be carried out (and that, consequently, his Notice was submitted in a timely manner) fails to pass muster. This argument conflates finality of a capital judgment with its execution, and

Renteria provides no meaningful support for his suggestion that capital "criminal prosecutions" are never final "until the sentence is actually carried out."

Fourth, Renteria's effort to remove his postconviction proceeding under § 1455 is an impermissible attempt to use the federal court system to nullify the TCCA's mandamus judgment, as he ultimately seeks another ruling on gaining access to the DAO's file—an issue on which the TCCA already rendered judgment. *See, e.g.*, *Pruett v. Choate*, 711 F. App'x 203, 206 n.10 (5th Cir. 2017) (citing *Moye v. Clerk, DeKalb Cty. Superior Court*, 474 F.2d 1275, 1276 (5th Cir. 1973)). Such an effort runs afoul of the *Rooker-Feldman* doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923) (holding that the jurisdiction of the district court is strictly original); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 476, 482 (1983) (holding that a United States district court has no authority to review final judgments of a state court in judicial proceedings).

The District Court did not err in holding Renteria's Notice untimely. We AFFIRM.

C. Renteria Failed to Assert Racial Discrimination as Required by § 1443(1).

Renteria's Notice is deficient not only procedurally but substantively: he never claimed a loss of equal protection due to racial discrimination. This failure is fatal to his argument. To remove a case under § 1433(1), the removing party must show both that: (1) the right allegedly denied arises under a federal law providing for specific rights stated in terms of racial equality; and (2) the removal petitioner is denied or cannot enforce the specified federal rights in the state courts due to some formal expression of state law. *Texas v. Gulf Water Benefaction Co.*, 679 F.2d 85, 86 (5th Cir.1982) (citing *Johnson*, 421 U.S. at 219). Under § 1443(1)'s first requirement, civil rights asserted

must "arise under laws phrased specifically in terms of racial equality rather than in general terms of equality for all citizens comprehensively." *Smith v. Winter*, 717 F.2d 191, 194 (5th Cir. 1983). "Broad first amendment or fourteenth amendment claims . . . do not satisfy the test." *Id.* Section 1443(1) "does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial." *City of Greenwood, Miss. v. Peacock*, 384 U.S. 808, 828 (1966).

Renteria's attempts to obtain removal under § 1433(1) fail because he did not claim a loss of rights stated in terms of racial discrimination, and nothing in the record or Renteria's allegations indicate a loss of due process or equal protection attributable to a violation of racial equality. Instead, his complaint lies with the TCCA's jurisdictional holding. *See Howlett By and Through Howlett v. Rose*, 496 U.S. 356, 372 (1990) ("When a state court refuses jurisdiction because of a neutral state rule regarding the administration of the courts, we must act with utmost caution before deciding that it is obligated to entertain the claim. . . . The States thus have great latitude to establish the structure and jurisdiction of their own courts."); *Rhoades v. Martinez*, No. 21-70007, 2021 WL 4434711, at *2 (5th Cir. Sept. 27, 2021) ("[A] declination to rule for want of jurisdiction cannot be reframed as a denial of due process rooted in the state law.").

The District Court did not err in holding that Renteria failed both prongs of the *Johnson* § 1443 test. We AFFIRM.

III. The Motion for Stay of Execution is Denied.

We "may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. Notices of removal do not stay state court proceedings, 28 U.S.C. § 1455(b)(3), and requests for stays are "not available as a matter of right, and

equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U.S. 573, 583–84 (2006) (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)).

We consider the following when presented with a request for stay of execution:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). In a capital case, the movant is not always required to show a probability of success on the merits, but "'he must present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities [*i.e.*, the other three factors] weighs heavily in favor of granting a stay.'" *White v. Collins*, 959 F.2d 1319, 1322 (5th Cir. 1992) (alteration in original) (quoting *Celestine v. Butler*, 823 F.2d 74, 77 (5th Cir.1987)), *cert. denied*, 503 U.S. 1001 (1992); *see also Ruiz v. Estelle*, 666 F.2d 854, 856–57 (5th Cir. 1982).

We must also consider "the State's strong interest in proceeding with its judgment" and "attempt[s] at manipulation," as well as "the extent to which the inmate has delayed unnecessarily in bringing the claim." *Nelson*, 541 U.S. at 649–50. "[T]here is a strong presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Id.* at 650.

Renteria's Motion does nothing but re-urge the arguments we evaluated (and found lacking) above. And there is little question that his removal request is dilatory—it has been over two decades since his conviction and

sentencing, and half a decade since the DAO disclosed the witness statement that Renteria based his request to access its files on. One cannot help but conclude that the Motion was delayed unnecessarily, so much so that it constitutes an attempt at manipulation. *Id.* at 649–50. Finally, our review of the record confirms that neither the public interest nor balance of equities favor a stay. *Id.* We DENY Renteria's Motion.

IV. Conclusion

We AFFIRM the District Court and DENY Renteria's Motion for the reasons discussed above.