

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ADAM MURRAY COSTELLO,
PETITIONER

V.

L.T. CASE NO: 16-CF-000371

STATE OF FLORIDA,
RESPONDENT

**MOTION TO OBTAIN A STAY OF JUDGMENT AND SENTENCE BY
SUPERSEDEAS BOND PENDING REVIEW OF PETITION FOR WRIT OF
HABEAS CORPUS**

COMES NOW, Petitioner, ADAM MURRAY COSTELLO, pro se, and respectfully moves this Honorable Court to grant his motion pursuant to 28 U.S.C. §2251(a)(1); 28 U.S.C. §1331; 18 U.S.C. §3148; FRCrP. Rule 38(c), Rule 46(c); Habeas Corpus Rule 12; FRCvP. Rule 60(b)(4)&(6), Rule 60(d)(1), Rule 62(b)&(d), and Rule 81(a)(4).

In support of the above, the Petitioner would present the following:

Petitioner has filed a Petition for Writ of Habeas Corpus in this Court. This motion is simultaneously filed so that the Court may grant the relief requested in this motion to stay judgment and sentence while his petition is under review.

Petitioner's claims in his Habeas Petition are substantive and far more than fairly debatable. These include, but are not limited to: Actual Innocence, that the Trial Court never actually charged Petitioner with a crime and therefore lacked subject matter jurisdiction to enter a judgment, conviction or sentence. There are also many claims and sub-claims of Ineffective Assistance of Trial Counsel (hereinafter "IATC") that are egregious and on the face of the record. (See Petition for Writ of Habeas Corpus).

As Petitioner's Post-Conviction Counsel (hereinafter "PCC") failed to raise substantial IATC claims, they are entitled to equitable review under *Martinez v. Ryan*.

In this case, due to the IATC that caused Petitioner to enter into a plea that is invalid and void, he was not afforded Direct Appellate review. Further, because PCC failed to raise any of the substantial IATC claims listed in the Petition for Writ of Habeas Corpus, it prevented any of the claims from being reviewed in the State Courts on their merits.

Because of the circumstances created through no fault of his own by the ineffectiveness of both trial counsel and PCC, petitioner was never afforded a full and fair review of the claims that would more than likely exonerate the petitioner.

In this instance, the Petition for Writ of Habeas Corpus is essentially the equivalent of a Direct Appeal, where petitioner would easily have qualified for a stay of judgment and sentence by supersedes bond in the state courts, had trial counsel properly preserved these errors in the trial court.

Therefore, petitioner requests that this Honorable Court use its inherent equitable powers to grant a stay of judgment and sentence while his petition for writ of habeas corpus is under review.

Habeas Corpus proceedings are governed by equitable principles. *See **Danforth v. Minnesota**, 552 U.S. 264, 278 (2008)*. This Court is disposed to consider habeas petitions as “law and justice” require under 28 U.S.C. §2243 and ***Holland v. Florida**, 130 S.Ct. 2549, 2560, 2561 (2010)*.

Habeas Corpus is civil in nature (*See **Fisher v. Baker**, 203 U.S. 174, 181 (1906)*) and in accordance with Rules Governing Habeas Corpus in §2254 cases, Rule 12 states:

“The Federal Rules of Civil Procedure, to the extent they are not inconsistent with any statutory provision of these rules, may be applied to a proceeding under these Rules.”

From the Federal Rules of Civil Procedure Rule 81(a)(4) regarding special writs:

“These rules (Federal Rules of Civil Procedure) apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in these proceedings:

- (A) Is not specified in a federal statute, the Rules Governing Section 2254 cases....; and
- (B) Has previously conformed to the practice in civil actions”

Habeas corpus is a matter of right. If petitioner would have been afforded effective assistance of counsel, e would not have pled but rather, proceeded to trial, and if found guilty, would have “de novo” review by direct appeal. A direct appeal is a matter of right, and had petitioner been afforded a direct appeal, would have also qualified for supersedeas bond. Due to the circumstances in this instance, petitioner seeks the stay of judgment and sentence by supersedeas bond in his habeas corpus proceeding.

Title 28 U.S.C. §2251(a)(1) regarding a stay of state court proceedings states:

(1) “**Pending Matters** – A justice or judge of the United States before whom a Habeas Corpus proceeding is pending, may, before final judgment...., or *pending appeal* , stay any proceeding against the person detained in any state court or by or under the authority of the state for any matter involved in the habeas corpus proceeding.”

This authorizes a justice or judge to stay any proceeding (including the execution of judgment and sentence) of a state court for any matter involved in the habeas corpus proceeding while under the judge or justices review.

The jurisdiction and authority arises from Title 28 U.S.C. §1331 which states:

“The district courts shall have original jurisdiction of all civil actions arising under the constitution, law, or treaties of the United States.”

This includes Habeas Corpus proceedings for civil action for imprisonment that violates the Constitution. Original jurisdiction confers powers to make decisions in the interest of justice.

The Federal Rules of Criminal Procedure Rule 38(b)(1) and Rule 46(c), authorize the release of a prisoner pending appeal. The provisions of 18 U.S.C. §3143 govern this release from custody.

The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

Because petitioner is procedurally defaulted in the state courts due to his ineffective trial counsel and ineffective PCC, there exists no adequate remedy to pursue in the state courts. Therefore, the only remedy that exists is a habeas corpus

petition to the federal court. It is therefore an appeal to the federal courts of a state conviction by civil action.

The Federal Rules of Civil Procedure Rule 62(b)&(d) both authorize stays in two ways.

Rule 62(d) states:

“Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2) [*in which petitioner does not fall*]. The bond may be given upon or after filing the notice of appeal *or after obtaining the order allowing the appeal.* The stay takes effect when the court approves the bond.”

Petitioner would qualify under this Rule to obtain a stay by supersedeas bond when this court issues an Order to Show Cause permitting the civil appeal to the federal court to proceed past the preliminary juncture.

Petitioner would also qualify under Rule 62(b)(4) for a stay pending the disposition of a motion under Rule 60, for relief from a judgment or order.

Rule 62(b)(4) states:

“Stay Pending the Disposition of a Motion. On appropriate terms for the opposing parties security, the court may stay the execution of a judgment- or any proceedings to enforce it- pending disposition of any of the following motions:

(4) Under Rule 60, for relief from a judgment or order.”

Petitioner qualifies for the aforementioned regarding Rule 60 under section (d).

Federal Rules of Civil Procedure Rule 60(d) states:

“(d) **Other Powers to Grant Relief.** This rule does not limit a court’s power to:
(1) entertain an *independent action* to relieve a party from an order, judgment, or proceeding.”

The independent action is the Petition for Writ of Habeas Corpus. Therefore, the independent action under Rule 60(d) qualifies petitioner for a stay pending its disposition under Rule 62(b)(4).

18 U.S.C. §3148 and FRCrP. 38(c) contemplates that the initial determination of whether a convicted defendant is to be released pending the appeal is to be made by the district court.

Petitioner has shown the legal authority allowing this court to issue a stay of judgment and sentence.

Petitioner will now demonstrate that there is no risk that he will flee nor will he pose a danger to anyone or to the community. To satisfy this burden, petitioner would state the following:

1. Notwithstanding the contentions in the petition for writ of habeas corpus, the alleged charge of Fla. Stat. §316.027 includes no intent to harm any person.
2. Petitioner was already out on bond by bonding services from All Out Bail Bonds in Ft. Myers, FL., from September 4, 2016 until March 12, 2018, without incident.
3. Petitioner has already completed nearly 7 years of his sentence.
4. Petitioner has held a job assignment of outside grounds in exercise of his low custody from the summer of 2019 to January of 2021.

5. Petitioner has approximately 2 years remaining on his sentence and qualifies to be sent to a work-release camp as he is minimum custody.
6. Petitioner graduated from Texas Christian University with a bachelor's degree in accounting and has spent his entire career in the financial service industry and holds a sterling reputation among the field.
7. Petitioner is a contributor to society in a positive manner and is an upstanding citizen.
8. Although petitioner alleges that he is being held in violation of the United States Constitution, he nevertheless has continued participation in the Veteran's Dorm Program as a son of a veteran sponsored by the Sons of the American Legion.
9. Petitioner has never been arrested and has no prior criminal record aside from this case.
10. Petitioner has an elderly mother of whom he needs to take care of.
11. It is easily shown that the Petitioner is no flight risk and is clearly no danger or threat to the community.

Petitioner's arguments far exceed fairly debatable, and if heard on the merits, have a very high probability of success that this Honorable Court will grant the Writ of Habeas Corpus.

PARTICULARS OF JUDGMENT AND SENTENCE

On March 12, 2018, the lower court entered a judgment and conviction of guilty for the State of Florida on the "charge" of violation of Fla. Stat. §316.027. A sentence of 10 ½ years was imposed. Pursuant to the aforementioned authority

and Rules as well as petitioner's qualifications that have been met before release can be granted, petitioner humbly requests that this Court stay the execution of his judgment and sentence pending the review of his petition for writ of habeas corpus and approve a supersedeas bond.

Petitioner has already exhausted large monetary assets for both ineffective trial counsel and PCC, that he asks, if possible, that he be released on his own recognizance given the circumstances surrounding his case, charge, claims in his petition, and clear evidence that he is no threat to the community and no flight risk.

However, if this Court does not find that request reasonable, petitioner is amenable to any reasonable security that this Court deems just and proper in this instance.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant his motion and approve a supersedeas bond by being released on his own recognizance or in whatever way or amount this Court deems just and proper relief.

Respectfully Submitted,

Adam Costello – B16188
Charlotte Correctional Institution
33123 Oil Well Road
Punta Gorda, Florida 33955

CERTIFICATE OF SERVICE

I certify that on _____ I mailed an original Petition under 28 U.S.C. §2254 Writ of Habeas Corpus, Motion to Expand the Record, and Motion for Stay of Judgment by Supersedeas Bond and attachments along with two copies to:

United States District Courts
Middle District
Jacksonville Division
Bryan Simpson U.S. Courthouse
300 N. Hogan St. Ste. 9-150
Jacksonville, Florida 32201

Attorney General
3507 E. Frontage Road
Suite 200
Tampa, FL. 33607

Adam Murray Costello DC#: B16188
Charlotte Correctional Institution
33123 Oil Well Rd.
Punta Gorda, FL 33955