



No. 08-2347

- 2 -

this withheld exculpatory viewing; and, [his] trial counsel failed to move pretrial for suppression of in-court identification of [him] or move for a mistrial when this withheld exculpatory identification evidence was first introduced at trial”; 2) his “counsel failed to move for a mistrial when newly discovered exculpatory evidence came to light during jury deliberations, where such evidence is an admission of guilt and/or evidence of perjury by the prosecution’s witness, Clee Jackson”; and 3) his “counsel did not request the cautionary accomplice instruction for witness, Clee Jackson, where this witness testified, at a minimum, to his role as an accessory after the fact, all physical evidence pointed to him as the actual perpetrator, and where he fit the physical description of the perpetrator, as given by the eyewitnesses.” The district court denied Butler’s habeas corpus petition on June 14, 2005. The district court subsequently granted a certificate of appealability as to Butler’s first and second grounds for relief. On February 20, 2007, this court affirmed the district court’s denial of Butler’s habeas corpus petition. *Butler v. Renico*, 255 F. App’x 939 (6th Cir. 2007). The United States Supreme Court denied Butler’s petition for a writ of certiorari on October 1, 2007.

On October 14, 2008, Butler filed another § 2254 habeas corpus petition, in which he raised the following four grounds for relief: 1) he “came in free willy to talk to the police about this case” but the police did not talk to him until he was proceeding to leave at which time the police “said they have a statement from somebody, then they locked [him] up”; 2) he was not given “any rights, just charged for this crime”; 3) a woman named Anne Lynn was subpoenaed “to court to say it was [him]”; and 4) counsel was ineffective for failing to pursue “suppression [of] in-court identification.” A magistrate judge concluded that Butler’s petition was second or successive and transferred the case to this court on October 20, 2008, because Butler had not obtained authorization from this court to file the petition.

On November 20, 2008, Butler filed the instant motion seeking permission to file a second or successive § 2254 petition for a writ of habeas corpus. In a second or successive habeas corpus petition, Butler apparently intends to raise the following ground for relief: his Fourth and Fourteenth Amendment rights were violated when he was arrested without probable cause and without a warrant

No. 08-2347

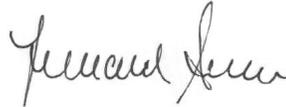
- 3 -

and supporting affidavit. The state has indicated that it does not intend to respond to Butler's motion.

Butler's motion does not satisfy the requirements of § 2244(b). The ground for relief that Butler intends to assert in a second or successive habeas corpus petition is subject to dismissal because it was not raised in his prior habeas corpus petition and Butler has failed to show that it relies upon a new rule of constitutional law or is based upon facts that could not have been discovered earlier and which are sufficient to establish that a reasonable factfinder would not have found him guilty of the crimes for which he was convicted. *See* 28 U.S.C. § 2244(b)(2).

Therefore, we deny Butler's motions for permission to file a second or successive § 2254 habeas corpus petition in the district court and for appointment of counsel.

ENTERED BY ORDER OF THE COURT

A handwritten signature in cursive script, appearing to read "Leonard Green".

Leonard Green  
Clerk