

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

Frank E. Hughley,

Petitioner,

v.

**Government of the Virgin Islands and
Asst. Attorney General Richard Schrader,
Jr.,**

Respondents.

SX-09-CV-614

Re: Case No. SX-07-CR-381

MEMORANDUM OPINION

THIS MATTER comes before the Court pursuant to an opinion from the Supreme Court of the Virgin Islands (hereinafter, "Supreme Court"), dated October 1, 2014, remanding Petitioner Frank E. Hughley's petition for writ of habeas corpus to this Court for further proceedings (hereinafter, "Supreme Court's October 1, 2014 Opinion").¹

BACKGROUND²

On December 1, 1995, after a four-day trial, a jury convicted Defendant Frank E. Hughley of six (6) counts of Unlawful Contact in the First Degree and three (3) counts of Aggravated Rape in the First Degree, in violation of sections 1708(2) and 1700(a)(1) of Title 14 of the Virgin Islands Code, respectively. The jury that convicted Hughley was allegedly comprised of all female jurors, and allegedly empanelled with the acquiescence and affirmative efforts of defense counsel who considered having an all-female jury to decide sex crimes an integral part of his trial strategy. On

¹ The Supreme Court's October 1, 2014 Opinion affirmed the Superior Court's dismissal of Hughley's motion for a sentence reduction in Civil No. 381/2007 and reversed the Superior Court's order denying Hughley's petition for writ of habeas corpus in Civil No. 614/2009 and remanded that matter to the Superior Court for further proceedings.

² The factual and procedural background are gathered from the Supreme Court's October 1, 2014 Opinion, the Superior Court order, dated November 12, 2010, denying Hughley's motion for certificate of probable cause (hereinafter, "Superior Court's November 12, 2010 Order"), and various filings in this file.

February 16, 1996, the Honorable Alphonso G. Andrews, Jr. entered judgment and sentenced Hughley to twenty-six (26) years in prison without parole.

On March 7, 1996, Hughley appealed his conviction based on ineffective assistance of counsel, which was subsequently dismissed by the Appellate Division of the District Court of the Virgin Islands for lack of jurisdiction.³ In July 1999, Hughley filed a motion for new trial, again claiming ineffective assistance of counsel as his primary basis, which was subsequently denied as untimely in October 2000.

On July 6, 2001, Hughley filed a Petition for Writ of Habeas Corpus based on ineffective assistance of counsel (hereinafter, "2001 Petition"). In 2004, Hughley filed another Petition for Writ of Habeas Corpus, which was subsequently dismissed because it was cumulative of the already pending 2001 Petition. In June or July 2006,⁴ after hearings and having found that Hughley failed to meet the requisite burden on his ineffective assistance of counsel claim, the Superior Court denied Hughley's 2001 Petition. On July 12, 2006, Hughley appealed this decision to the Appellate Division of the District Court of the Virgin Islands. In a Memorandum Opinion filed on September 30, 2011, the Appellate Division of the District Court of the Virgin Islands affirmed the Superior Court's order denying Hughley's 2001 Petition.

In July 2007, Hughley filed a "Motion for Injunction in Matter of Sentence Reduction on Premise of Change of Circumstance" in Civil No. 381/2007 (hereinafter, "Motion for Sentence Reduction"). On December 28, 2009, Hughley filed another petition for Writ of Habeas Corpus⁵ in

³ The Appellate Division of the District Court of the Virgin Islands reasoned that "ineffective assistance of counsel claims are usually not heard for the first time on direct appeal, but must be raised in a collateral proceeding because the necessary facts about counsel's representation of the defendant have not been developed," and that under these particular circumstances "the record is inadequate to consider, on direct appeal, whether appellant was denied effective assistance of counsel." *Gov't of Virgin Islands v. Hughley*, D.C. Crim.App.No. 1996/014, slip op. at 2-3 (D.V.I.App.Div. Oct. 1, 1998).

⁴ The Supreme Court's October 1, 2014 Opinion indicated that Hughley's 2001 Petition was denied in a June 30, 2006 Memorandum Opinion. The Superior Court's November 12, 2010 Order indicated that Hughley's 2001 Petition was denied on July 5, 2006.

⁵ Hughley filed this petition as a "Motion for Writ of Habeas."

Civil No. 614/2009 (hereinafter, "2009 Petition"), stating, *inter alia*, that his intent in doing so was to clarify his position "after two and one half years of waiting for the Court to decide the matter pending in Civil No. 381/2007."

The Superior Court denied Hughley's 2009 Petition by an order dated January 28, 2010. Hughley appealed this decision to the Supreme Court. Thereafter, by order of the Supreme Court, Hughley filed a "Motion for Certificate of Probable Cause" with the Superior Court, as was required at the time by the former Supreme Court Rule 14(b).⁶ In an order dated November 12, 2010, the Superior Court denied Hughley's Motion for Certificate of Probable Cause in connection with his 2009 Petition on the basis that Hughley failed to make a substantial showing of the denial of a constitutional right. Nevertheless, Hughley's appeal at the Supreme Court regarding the denial of his 2009 Petition was able to proceed because the certificate of probable cause requirement was subsequently eliminated and the amended rule went into effect immediately.⁷

Meanwhile, in Hughley's other case, Civil No. 381/2007, the Superior Court granted Respondent Government's Motion to Dismiss Hughley's Motion for Sentence Reduction on August 24, 2010. Hughley also appealed this decision to the Supreme Court.

At that point in time, Hughley had two appeals before the Supreme Court—his appeal regarding the denial of his 2009 Petition in Civil No. 614/2009 and his appeal regard the decision on his Motion for Sentence Reduction in Civil No. 381/2007. In an order dated February 22, 2011, the Supreme Court *sua sponte* consolidated the two matters. The Supreme Court subsequently granted Hughley's motion to proceed in *forma pauperis* in both appeals.

⁶ Prior to the amendments in December 2010, Virgin Islands Supreme Court Rule 14(b) stated in pertinent part, "[a]n appeal by the applicant from the order of the Superior Court denying the writ of habeas corpus may not proceed unless the adjudicating judge of the superior court issues a certificate of probable cause." After the amendments in December 2010, Virgin Islands Supreme Court Rule 14(b) no longer contains provisions requiring a certificate of probable cause.

⁷ In an order dated January 11, 2011, the Supreme Court explained that on December 22, 2010, "this Court issued Promulgation Order 2010-0003, which amended Rule 14 to eliminate the certificate of probable cause requirement and expressly stated that the amended rules 'shall immediately come into effect and apply to all pending cases'" and ordered Hughley's appeal to proceed notwithstanding the absence of a certificate of probable cause.

In its October 1, 2014 Opinion, the Supreme Court affirmed the Superior Court order dismissing Hughley's Motion for Sentence Reduction in Civil No. 381/2007 as untimely, but reversed the Superior Court order denying his 2009 Petition in Civil No. 614/2009 and remanded that matter to the Court for further proceedings.

STANDARD OF REVIEW

The Superior Court has jurisdiction "to issue writs of habeas corpus with respect to prisoners sentenced and confined by that court." 5 V.I.C. § 1303.⁸

Under section 1301 of Title 5 of the Virgin Islands Code, "[e]very person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment." A petition must satisfy the requirements set forth in section 1302 of Title 5 of the Virgin Islands Code:

- (1) It shall specify that the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty and the officer or person by whom, and the place where, he is so confined or restrained, naming all the parties, if they are known, or describing them, if they are not known.
 - (2) If the imprisonment is alleged to be illegal, the petition shall state in what the alleged illegality consists.
 - (3) The petition shall be verified by the oath of the party making the application.
- 5 V.I.C. § 1302.

DISCUSSION

In Hughley's 2009 Petition, Hughley made it clear that he sought habeas corpus relief under sections "1301, 1302, and 1303, et al. others" of Title 5 of the Virgin Islands Code, the Virgin Islands habeas corpus statute. In *Rivera-Moreno v. Gov't of the Virgin Islands*, 61 V.I. 279, 311 (V.I.

⁸ See *Parrott v. Government of the Virgin Islands*, 41 V.I. 188 (D.C.V.I. 1999) (Territorial Court [now Superior Court] retained concurrent jurisdiction with District Court over Virgin Islands habeas corpus statute, and Territorial Court's [now Superior Court's] dismissal of District Court defendant's habeas corpus petition was affirmed based on Revised Organic Act, and not merely on grounds of comity and judicial economy advanced below.); see also, *Walker v. V.I.*, 43 V.I. 265 (3d Cir. V.I. 2000) (Because 4 V.I.C. § 76(a) operated to divest District Court of jurisdiction for all civil actions, including habeas proceedings, correct forum for inmate's habeas petition under this section was not District Court but Territorial Court [now Superior Court]).

2014), the Supreme Court spelled out the procedural requirements for the Court to follow under the Virgin Islands habeas corpus statute:

When presented with a petition for a writ of habeas corpus, a court must first determine whether the petition states a prima facie case for relief -- that is, whether it states facts that, if true, entitle the petitioner to relief -- and also whether the stated claims are for any reason procedurally barred. If the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright, but if it appears that the writ out to issue, the Superior court shall grant [a writ of habeas corpus] without delay. (citations omitted).

The Supreme Court emphasized however, that the writ alone did not entitle the petitioner to the ultimate relief sought in the petition. *Id.* Granting the writ of habeas corpus only requires the Government to produce the petitioner for a hearing. *Id.*

1. Specification of Respondent Requirement under Title 5 V.I.C. § 1302(1)

Here, Hughley named the "Government of the Virgin Islands" and "Assistant Attorney General Richard Schrader, Jr." as Respondents, and indicated that he was an inmate at Golden Grove Adult Correction Facility. Hughley has not satisfactorily identified the proper custodial respondent in his 2009 Petition. *See Donovan v. Gov't of the V.I.*, 2013 V.I. LEXIS 21, *4-6 (V.I. Super. Ct. Mar. 25, 2013) (the petitioner has not satisfactorily identified the proper custodial respondent when the petitioner only named the "Government of the Virgin Islands" as a Respondent, copied the petition to the Office of the Attorney General, and indicated that she was an inmate at Golden Grove Adult Correction Facility); *see also, Nunez v. Gov't of the V.I.*, 2013 V.I. LEXIS 14, *4 (V.I. Super. Ct. Mar. 6, 2013) (the petitioner has satisfactorily identified the proper custodial respondent when the Petitioner named the Government of the Virgin Islands, Office of the Attorney General, and the Bureau of Corrections, all individually as Respondents and further indicated that he was an inmate at Golden Grove Adult Correction Facility). However, this error may not be fatal to Hughley's 2009 Petition.

In *Rivera-Moreno*, the Supreme Court found the petitioner to be in substantial compliance with the requirements of section 1302(1) where the petitioner only named the "Government of the Virgin Islands" and served on the Virgin Islands Attorney General but did not indicate where he was imprisoned with specificity. 61 V.I. 299-300. However, here, unlike the petitioner in *Rivera-Moreno*, Hughley never perfected service of process pursuant to the Superior Court rules.⁹

A petition for writ of habeas corpus is civil, thus, a petition for writ of habeas corpus must also comply with the applicable rules of civil procedure, including perfecting service of process pursuant to Superior Court Rule 23 *et seq.*, insofar as the procedures are consistent with the Virgin Islands habeas corpus statute. *See Alexander v. People of the V.I.*, 2015 V.I. LEXIS 9, *5 ("proper service of the Petition is mandatory"); *Donovan*, 2013 V.I. LEXIS 21 at *6.

Nevertheless, because the Government and Schrader fully participated in the proceedings despite the purported defect in service,¹⁰ they have waived any defects with respect to service of process. *See* 5 V.I.C. § 115 ("From the time of the service of the summons or the allowance of a provisional remedy the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.")

Accordingly, in light of the relevant circumstances and consistent with the Supreme Court's finding in *Rivera-Moreno*, the Court finds Hughley to be in substantial compliance with the requirements of section 1302(1).

⁹ Although Hughley included a copy of "Certificate of Service" with his 2009 Petition, it merely states:

"Petitioner, Frank E. Hughley do hereby declare and certify that the information in this Motion for Writ of Habeas/2009, are true and accurate."

¹⁰ For example, on April 18, 2011, the Government and Schrader filed a brief in response to Hughley's appeal regarding the denial of his 2009 Petition. They did not raise the issue of ineffective service in their brief.

2. Illegality Requirement under Title 5 V.I.C. § 1302(2)

Here, Hughley argued in essence that Sixth Amendment constitutional right to an impartial jury has been violated because the jury was not comprised of a reasonable cross-section of the community, thus invalidating the jury verdict and his sentence.¹¹ More specifically, Hughley argued that the all-female jury violated his due process and equal protection rights.

Hughley's 2009 Petition, provided in pertinent part:

Thus, Respondants [sic] admits that former trial counsel was aware (conscious), as well as the Respondants, [sic] to the fact that he (former trial counsel) limited Petitioner's jury to a "particular group" (all males) when former trial counsel stated that he "made it his business that **no male** would sit on the jury."

Therefore, Respondants [sic] help to establish Petitioner's claim in their statement of "entitled to a jury of his peers which included both male and female". It is held in Taylor v. Louisiana, 419 U.S. 522 [1975] that, "excluding women from juries or giving them automatic exemptions was invalid".

Likewise excluding "**all males**" from Petitioner's jury "giving them automatic exemption", was "**invalid**", and such was not [jurors] drawn from a group (both male and female) that represented a reasonable cross-section of the Virgin Islands community of St. Croix, where Petitioner was tried and convicted.

....

Hence, Petitioner's claim has constitutional grounds on the fact that on the foundation of the Respondants [sic] admittance that Petitioner's 14 Amendment Rights of due process and equal protection were violated, J.E.B v. Alabama ex rel. T.B., 511 U.S. 127 (1994)[sic], in conjunction with six Amendment violations of [a] impartial jury. Holland v. Ill., 493 U.S. 474 (1990), due to the fact that Petitioner had an all female jury.

The Court finds that Hughley's 2009 Petition states a prima facie case for relief -- that is, it states facts that, if true, entitle the petitioner to relief, Namely, Hughley alleged that his trial counsel was striking jurors based solely on his gender and nothing more. In *J.E.B. v. Alabama ex rel T.B.*,

¹¹ As noted in the Supreme Court's October 1, 2014 Opinion, "Hughley has not succinctly articulated the issues he wishes to present to this Court, and his arguments are confounding and fragmented." Nevertheless, the Supreme Court was able to glean from the record that one of the issues raised by Hughley was "whether his Sixth Amendment constitutional right to an impartial jury has been violated because the jury was not comprised of a reasonable cross-section of the community, thus invalidating the jury verdict and his sentence." The Supreme Court also pointed out that "[a]lthough Hughley did not use the word 'illegal' in his habeas petition, it is well established that *pro se* parties are held to less stringent standards and are not required to use 'magic words' in a complaint where the intent is otherwise apparent from the face of the filing."

the Supreme Court of the United States held that striking a juror peremptorily based solely on his gender, and nothing more, violates the Equal Protection Clause and is, therefore, unconstitutional. 511 U.S. at 129. This is because, "whether the trial is criminal or civil, potential jurors, as well as litigants, have an equal protection right to jury selection procedures that are free from state-sponsored group stereotypes rooted in, and reflective of, historical prejudice." *Id.* at 128.

The same protection afforded by the United States Constitution—prohibitions on gender-based peremptory strikes—is similarly in effect in the Virgin Islands courts through the Revised Organ Act § 3 (1954) (codified as amended at 48 U.S.C. § 1561 (2000)) (applying the protections of Section 1 of Fourteenth Amendment to the Territory).¹²

Thus, Hughley stated a *prima facie* case for relief that was not procedurally barred. The Court finds Hughley to be in compliance with section 1302(2).

3. Verification Requirement under Title 5 V.I.C. § 1302(3)

Hughley failed to comply with section 1302(3) in that his 2009 Petition was not verified by oath. However, under Superior Court Rule 8, "[t]he Court may amend any process or pleading for any omission or defect therein..." Thus, the Court will permit Hughley to amend his petition to rectify this defect.

CONCLUSION

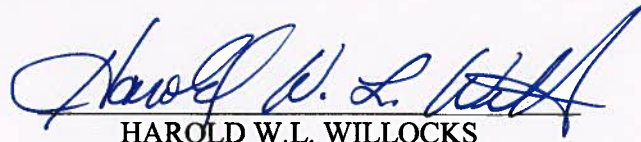
Hughley stated a *prima facie* case for habeas corpus relief that is not procedurally barred. Thus, Hughley is entitled to a writ of habeas corpus without delay. An Order consistent with this Memorandum Opinion shall follow.

¹² "The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States:...the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments..." 48 U.S.C. § 1561.

DONE and so ORDERED this 30th day of November, 2015.

ATTEST:

Estrella H. George
Acting Clerk of the Court



HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

By: 

Court Clerk Supervisor

Dated: Dec. 1, 2015