No. 05A1030

In the
SUPREME COURT of the UNITED STATES

SEDLEY ALLEY,

Applicant,

v.

WILLIAM R. KEY, Clerk, Criminal Court of the Thirtieth Judicial District of Tennessee,

and

WILLIAM L. GIBBONS, District Attorney General of the Thirtieth Judicial District of Tennessee,

Respondents.

RESPONSE IN OPPOSITION TO APPLICATION FOR ORDER REQUIRING PRESERVATION OF EVIDENCE

Applicant, Sedley Alley, has applied to this Court under 28 U.S.C. § 1651 for a writ of preservation as to certain evidence in the possession of the Tennessee state courts pending disposition of this appeal. For the reasons set forth herein, Alley's request should be denied. The preventive writ he seeks is not necessary in aid of the federal court's jurisdiction and, in addition, would constitute an unnecessary intrusion

upon the continuing jurisdiction of the Tennessee state courts to administer the evidence at issue.

On April 5, 2006, Alley filed an action in the United States District Court under 42 U.S.C. § 1983 seeking injunctive relief in the form of access to certain items of physical evidence introduced at his state criminal trial — now part of the state court record and thus in the possession of the state trial court — for the purpose of conducting DNA analysis, which he contended would "exclude [him] as having committed" the 1985 murder of Suzanne Collins and thus provide a "basis for relief through an application for executive clemency, commutation, or reprieve." [U.S.D.Ct. Doc. Entry Nos. 1 and 6 at p. 6] Alley claimed that to deny him access to the requested evidence would violate his constitutional rights to procedural due process, substantive due process, his due process right to the production of exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and his rights under the Eighth and Ninth Amendments. [*Id.* at pp. 8-14]

Like many states, Tennessee makes specific provision for state prisoners to obtain post-conviction DNA analysis that may provide potentially exculpatory results. And, as noted in the district court's opinion, Alley previously sought, and was denied, state post-conviction relief in the form of access to biological evidence in this case

for DNA testing under Tennessee's Post-Conviction DNA Analysis Act of 2001.[1] [Doc. Entry No. 19, pp. 3-4] *See Alley v. Tennessee*, No. W2004-01204-CCA-R3-PD, 2004 WL 1196095 (Tenn. Crim. App. May 26, 2004) (app. denied Oct. 4, 2004) (holding that Alley failed to demonstrate a reasonable probability that he would not have been prosecuted or convicted or that his verdict or sentence would have been more favorable as a result of the DNA analysis sought).

On April 20, 2006, the district court dismissed Alley's complaint for failure to state a claim upon which relief may be granted, concluding that: (1) Alley failed to demonstrate that the "life interest" he asserted to support his procedural due process claim "bestows upon him 'the post-conviction legal right to access or discover the evidence relating' to his conviction;" (2) there is "no substantive due process right of access to evidence to present claims in executive clemency proceedings or otherwise that could form the basis for an action under § 1983;" (3) *Brady* and the due process principle it vindicates provide Alley no "due process right to post-conviction release of evidence related to his conviction;" and (4) neither the Eighth

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[1]The Post-Conviction DNA Analysis Act of 2001, codified at Tenn. Code Ann. §§ 40-30-301 *et seq.* provides a procedure for a person convicted of certain enumerated offenses, including first degree murder, to petition the post-conviction court for DNA analysis of any evidence in the possession or control of the prosecution, law enforcement, laboratory or court that is related to the investigation and/or prosecution that resulted in the judgment of conviction. Tenn. Code Ann. § 40-30-303.

nor Ninth Amendments require the "release of evidence to bring claims of innocence in clemency" or otherwise provide a basis for relief under § 1983. [Doc. Entry No. 19, pp. 20-30] Alley appealed.

He subsequently filed motions in both the district court and the court of appeals for an injunction prohibiting "any person" from handling, touching, removing or even examining (among other things) the 25 items of evidence listed in his complaint under the guise of a desire to "preserve" the evidence pending the outcome of his appeal.[2] Both courts denied relief. The district court observed that Alley did not allege, let alone demonstrate, any likelihood that either defendant Key or Gibbons "intends to harm, taint, or otherwise damage the evidence at issue during his appeal." [U.S.D.Ct. Doc. Entry No. 25: Order Denying Motion to Preserve All Evidence Pending Final Resolution of Appeal, p. 4] Likewise, the Sixth Circuit, "seeing little threat to the preservation of the evidence under the status quo," declined to issue any injunctive/preventive relief.

Alley now applies to this Court under 28 U.S.C. § 1651 for an order providing:

> All such evidence shall remain in the custody of Respondent Key in its current state and location; and that any an all such evidence shall be fully preserved, and not opened, examined, touched, tainted, damaged,

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[2]As noted above, the evidence at issue is contained within the state court record and is presently located in the Office of the Shelby County Criminal Court Clerk. [Doc. Entry No. 6, p. 7]

> harmed, or removed in any way by any person or source whatsoever, pending the final disposition of this matter on review in the United States Court of Appeals for the Sixth Circuit and/or the United States Supreme Court.

Section 1651 ("All Writs Act") grants the federal courts the power to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." This Court has interpreted the provision to give federal courts the power "to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." *United States v. New York Telephone Co.*, 434 U.S. 159, 172 (1977). Alley's request should be denied because he has failed to establish any justification for the broad injunctive relief his seeks.

First, the district court properly determined that Alley has no constitutional right to access and/or test the state court evidence at issue in this case. *Herrera v. Collins*, 506 U.S. 390 (1993), cannot be read to establish a constitutional basis for the post-conviction remedy Alley seeks. If, as *Herrera* reiterates, claims of innocence based on newly discovered evidence provide no independent constitutional claim, then surely there exists no constitutional right to post-conviction "discovery" of evidence to demonstrate factual innocence. Alley's reliance on *Brady v. Maryland*, 373 U.S. 83 (1963), is also misplaced, since he makes no allegation that he was

denied access to material exculpatory evidence during his criminal prosecution or that he did not receive a fair trial. The analytical framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), is relevant only to the extent an individual possesses a legally recognized liberty or property interest. Alley has shown none, nor can he under this Court's Eighth Amendment jurisprudence. Finally, there is nothing shocking to the conscience or arbitrary about a trial court clerk's refusal to release evidence, introduced in criminal proceedings and now part of the state appellate record,[3] which he holds subject solely to the orders of the state trial court. In short, Alley has identified no persuasive authority from this Court or any other to suggest any likelihood of success in his appeal from that decision.

Further, and moreover, even assuming there exists some constitutional basis for post-conviction DNA analysis, the testing sought in this case would not establish Alley's factual innocence in any event. Sedley Alley confessed to the 1985 kidnapping, aggravated rape and murder of Suzanne Collins.[4] After his arrest on the morning her body was found, Alley led law enforcement officials on a walk-through of the crime scene, identifying the place where Collins' body was found and the tree

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[3]Tenn. R. App. P. 24(a) provides: "The record on appeal shall consist of . . . the original of any exhibits filed in the trial court . . . ."

[4]The facts of Alley's crime are set forth in detail in the opinion of the Tennessee Supreme Court on direct appeal from his convictions and death sentence. *Alley*, 776 S.W.2d at 508-10.

from which he obtained the branch used in his sadistic attack.[5] Suzanne Collins' hair and blood matching her ABO type were found on Alley's car. Three witnesses identified Alley's car, both by sight and sound, as the one involved in her abduction. At trial, Alley contended that he was not guilty by reason of insanity, specifically that one of his "alternate personalities" — referred to as "Power," "Death," and/or "Billie" — was in control at the time of the offense such that "Sedley" could neither appreciate the wrongfulness of his conduct nor conform his conduct to the requirements of the law. *State v. Alley*, 776 S.W.2d 506, 510 (Tenn. 1989). Alley made no claim of factual innocence in state post-conviction or federal habeas corpus proceedings. *Alley*, 958 S.W.2d 138 (Tenn. Crim. App. 1997) (app. denied Sept. 29, 1997); *Alley v. Bell*, 307 F.3d 380 (6th Cir. 2002), *cert. denied*, 540 U.S. 839 (2003). Indeed, not until April 2004, thirty days before a previous execution date, did Alley

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[5]Nineteen-year-old Suzanne Marie Collins, a lance corporal in the United States Marine Corps, was stationed at the Millington, Tennessee, Naval Base. At approximately 10:00 p.m. on the night of July 11, 1985, she left her barracks to go jogging on the base. Shortly before 6:00 a.m. the following morning, her body was found in a nearby park. She had multiple injuries to her skull consistent with blows from the rounded end of a screwdriver, bruises on her neck, consistent with strangulation, and bruises and abrasions over her entire body front and back. She had also suffered severe internal injuries and bleeding as the result of the insertion of a thirty-one-inch long, broken tree limb into her vagina, more than once and to a depth of twenty inches. While the cause of death was multiple injuries, the pathologist testified at trial that the victim was alive when the tree limb was inserted into her body.

claim for the first time that another person committed the murder. This Court has recognized that eleventh-hour claims of innocence should be "treated with a fair degree of skepticism." *Herrera*, 504 U.S. at 423 (O'Connor, J., concurring).

To the extent Alley seeks to maintain the status quo pending disposition of his appeal, an order of this Court is unnecessary. The evidence is already subject to the control of the state judiciary, the clerk of court being a mere "hand of the [state trial] court." *See Ray v. Tennessee*, No. M1999-00237-COA-R3-CV, 2000 WL 388718 (Tenn. App. Apr. 18. 2000) ("When a trial court clerk possesses property as an officer of the trial court, the clerk's possession of such property is subject to the trial court's orders."). Thus, the injunctive relief Alley requests would not tie the hands of the parties to this action — their hands are already stayed in absence of a state court order directing otherwise. Instead, the relief requested would effectively interfere with the continuing jurisdiction of the Tennessee state courts to administer the evidence at issue and, thus, offends principles of comity and federalism.

While the district court ultimately concluded that it had jurisdiction of Alley's complaint under 42 U.S.C. § 1983, the state trial court has continuing jurisdiction over the evidence in question. Under Tennessee law, a court clerk lacks independent authority to release and/or dispose of evidence in his possession as an officer of the court, such possession being subject to the court's orders. *State v. Cawood*, 134

S.W.3d 159, 163-64 (Tenn. 2004) (citing *Ray, supra,* No. M1999-00237-COA-R3-CV, 2000 WL 388718 (Tenn. App. Apr. 18. 2000) (Court clerk is "the mere hand of the court; his possession is the possession of the court, and to interfere therewith is to invade the jurisdiction of the court itself."). Moreover, even after a criminal case has concluded, a state trial court's authority to determine the custody and control of evidence held in the court clerk's office — not only whether custody and control may be granted to another, but also the terms and conditions of such custody — continues. *Ray v. State*, 984 S.W.2d 236, 238 n.4 (Tenn. Crim. App. 1997) (trial court's authority includes the right to exercise control over physical evidence after a case has been concluded).

Where, as in this case, federal and state courts have concurrent jurisdiction over the subject matter of an action, comity dictates that this Court refrain from granting relief that interferes with the state court's pre-existing jurisdiction over the *res* in absence of any evidence that federal jurisdiction is, in fact, threatened. *See, e.g., Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 295 (1970) (injunction is necessary in aid of a court's jurisdiction only if "some federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case."). *See also Erhardt v.*

Boaro, 113 U.S. 537, 539 (1885) (preventive writ to preserve property appropriate "in cases where irremediable mischief is being done or threatened"). Alley makes no claim that any such threat exists, nor could he on this record.

Particularly where there is little, if any, likelihood of success on the merits of Alley's appeal, let alone any showing (beyond a bare assertion that it is "in the custody of an adverse party"[6]) that the broad relief requested is necessary in aid of the jurisdiction of the federal court, the extraordinary and unwarranted interference with state court jurisdiction he requests should be denied.

Moreover, to the extent the Court deems injunctive relief appropriate pending the appeal of this matter, Alley's present request is overly broad and should be limited. Far from seeking the mere "preservation" of the evidence for possible DNA analysis (or, more specifically, preventing the intentional destruction of the evidence in question), Alley asks this Court to direct that it not be "opened, examined, touched, tainted, damaged, harmed, or removed in any way by any person or source whatsoever, pending the final disposition of this matter on review . . . and pending final disposition of this matter on review . . . ." To grant such broad relief would prevent even routine functions within the trial court clerk's office and is unnecessary

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[6]As stated above, the named defendants in this case wield no power to dispose of the evidence at issue beyond that permitted by the Criminal Court of the Thirtieth Judicial District of the State of Tennessee.

to preserve the jurisdiction of the federal courts pending the disposition of Alley's appeal.

CONCLUSION

For all of these reasons, application for a writ of preservation should be denied.

Respectfully submitted,

PAUL G. SUMMERS
Tennessee Attorney General

MICHAEL E. MOORE
Solicitor General

HEATHER C. ROSS
Senior Counsel

JENNIFER L. SMITH
Associate Deputy Attorney General
Counsel of Record
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-3487

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent by fax and by first-class mail, postage prepaid, to Paul R. Bottei, Office of the Federal Public Defender, 810 Broadway, Suite 200, Nashville, TN 37203, on the 11th day of May, 2006.

Jennifer L Smith

JENNIFER L. SMITH
Associate Deputy Attorney General