

# In the Supreme Court of Missouri

May Session, 2017

State ex rel. Bobby Bostic,

Relator,

No. SC93110      HABEAS CORPUS  
Texas County Circuit Court No. 12TE-CC00188  
Southern District Court of Appeals No. SD32302

Ronda Pash,

Respondent.

*Now at this day, on consideration of the petition for a writ of habeas corpus herein to the said respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied.*

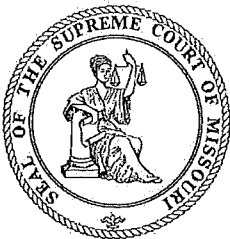
STATE OF MISSOURI-Sct.

*I, BETSY AUBUCHON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session thereof, 2017, and on the 22<sup>nd</sup> day of August, 2017, in the above-entitled cause.*

*WITNESS my hand and the Seal of the Supreme Court of Missouri, at my office in the City of Jefferson, this 22<sup>nd</sup> day of August, 2017.*

Betsy Aubuchon, Clerk

Devi S. Knaebel, Deputy Clerk





IN THE CIRCUIT COURT OF TEXAS COUNTY  
STATE OF MISSOURI

**FILED**  
JUL 03 2012  
MARCI MUSLEY  
Circuit Clerk  
TEXAS COUNTY, MO

BOBBY BOSTIC, )  
Petitioner, )  
v. ) 12TE-CC00188  
MICHAEL BOWERSOX, )  
Respondent. )

**DECISION, JUDGMENT, AND ORDER DENYING PETITION  
FOR THE WRIT OF HABEAS CORPUS**

Bobby Bostic is confined the South Central Correctional Center in Licking, Texas County, Missouri. Michael Bowersox, is the warden of that facility. The Circuit Court of St. Louis City sentenced Bostic to consecutive sentences totaling 241 years for seventeen felonies and one misdemeanor.

Bostic alleges that the general sentencing statute, §557.036 RSMo, is unconstitutional as applied to juveniles because it denies the jury an opportunity to consider mitigating evidence when deciding on a sentence (Petition at 1). The petition also alleges that the sentencing court violated the Eighth and Fourteenth Amendments to the United States Constitution and Article I Section 21 of the Missouri Constitution by using unspecified "false information" (Petition at 1). Bostic states that this Court may review the case because "Relator has

filed no petition, application or certiorari in any higher court previously to this petition relating to the issues herein.” (Petition at 2).

In the “Grounds For the Writ” section of his petition Bostic argues that in light of *Graham v. Florida*, 130 S.Ct. 2011 (2010), overturning a life without parole sentence for a Florida juvenile offender, “a national consensus has developed against petitioner’s sentence his sentence is now cruel and unusual punishment and in violation of the Eighth Amendment to the United States Constitution and Relator must be given a new sentencing hearing.” (Petition at 3). Bostic argues that in light of *Graham v. Florida* he had a right to present mitigating evidence (presumably his age) to a jury as opposed to having judicial sentencing under §557.036 RSMo (Petition at 3). Bostic also argues that the sentencing judge used false information to sentence petitioner, and that he is entitled to a reconsideration of the question of punishment in light of the true facts (Petition at 4). Bostic does not favor this Court with the specific “false information” allegedly relied on by the sentencing court.

Missouri Supreme Court Rule 91.02 requires that a petition for habeas corpus be made in the circuit court of the county of confinement. But Missouri Supreme Court Rule 91.22 bars a lower court from granting a writ of habeas corpus if a petition has been denied by a

higher court unless the order in the higher court denying the writ is without prejudice to proceeding in a lower court. *See Hicks v. State*, 719 S.W.2d 86, 88 (Mo. App. S.D. 1986) (order by Missouri Supreme Court denying habeas petition bars review by lower court unless the order states that the denial is without prejudice to proceeding in a lower court), *State v. Thompson*, 723 S.W.2d 76, 90 (Mo. App. S.D. 1987).

Bostic now raises two claims:

- 1) Section 557.036 RSMo is unconstitutional under *Graham v. Florida*, 130 S.Ct. 2011 (2010) because the statute allowed a Missouri court to judicially sentence Bostic to what amounts to life without parole for a non-homicide offense;
- 2) The sentencing judge relied on unspecified "false information" in sentencing Bostic.

Ground 1: Bostic's first ground alleges that the sentencing statute is unconstitutional because it permitted a sentence that violates the Eighth Amendment ban on cruel and unusual punishment in light of the decision in *Graham v. Florida*. In *State ex. rel. Bostic v. Bowersox*, SC91910 the Missouri Supreme Court rejected Bostic's argument that his sentence violates the Eighth Amendment ban on cruel and unusual punishment in light of *Graham v. Florida* (Resp.

Exh. 1). Bostic is again making essentially the same claim already rejected by the Missouri Supreme Court. He has merely tweaked the wording to allege that the sentencing statute as opposed to the sentence itself violates the Eighth Amendment in light of *Graham*.

Bostic's current claim is barred by Missouri Supreme Court Rule 91.22, which bars a lower court from granting a writ of habeas corpus if a petition has been denied by a higher court. See *Hicks v. State*, 719 S.W.2d (Mo. App. S.D. 1986); *State v. Thompson*, 723 S.W.2d 76, 86, 88, 90 (Mo. App. S.D. 1987). Bostic is in reality raising the same claim that has already been rejected by the Missouri Supreme Court and attempting to convince this Court overrule the Missouri Supreme Court's rejection of his claim. He cannot do that under Missouri law.

Ground 2: Bostic alleges his sentence is improper because it is based on unspecified "false information." In his direct appeal Bostic alleged that his sentence was the result of bias and a lack of impartiality (Resp. Exh. 5 18-23). The Missouri Court of Appeals rejected the claim.

In his federal habeas corpus petition, in *Bostic v. Kemna*, 4:00CV1069 FRB (Resp. Exh. 4), Bostic made the same bias argument, and added a claim that the sentencing court was punishing Bostic for going to trial (Resp. Exh. 4 15-22). The United States, District Court

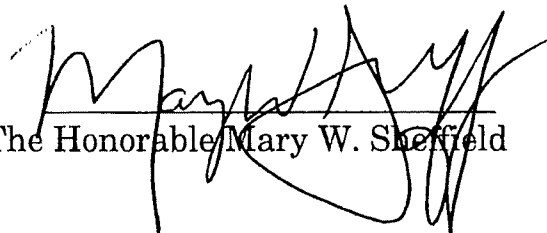
for the Eastern District of Missouri agreed with the Missouri Court of Appeals that the claim of bias by the sentencing court is without merit and found that the claim that the sentencing court punished Bostic for going to trial is procedurally barred because Bostic did not present that theory to the Missouri Court of Appeals on direct appeal (Resp. Exh. 4 at 15-22).

In *Bostic v. Bowersox*, 12 TE-CC00021, Bostic argued to this Court that his long sentence was punishment for taking his case to trial and that he was not properly certified for trial as an adult (Resp. Exh. 2). This Court denied Bostic's petition on May 25, 2012, finding the claims to be procedurally barred and without legal merit. Now Bostic has changed his claim that his sentence was based on bias, or was punishment for going to trial, to a claim that the sentence was based on unspecified "false information."

Insofar as Bostic is raising the same theory that he already presented in his direct appeal, this Court is bound by the decision of the Missouri Court of Appeals. Insofar as the claim that the sentencing decision was based on "false information" is different from the already rejected claim that the sentence was based on bias, the claim is procedurally barred. Bostic was bound to present the claim on direct appeal.

The petition for the writ of habeas corpus is denied. Bostic should not be allowed to make unending challenges to his conviction and sentence by litigating claims through the state and federal courts systems then tweaking his claims slightly and starting over again. "Out of concern over 'duplicative and unending challenges to the finality of a judgment' a person cannot utilize a writ of habeas corpus to raise - procedurally barred claims- those could have been raised, but were not raised on direct appeal or in a post-conviction proceeding." *Clay v. Dormire*, 37 S.W.3d 214, 217 (Mo. banc 2000).

7-3-12  
~~to-7-12~~  
Date

  
The Honorable Mary W. Sheffield