

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

SAMUEL FUENTES

v.

Civil Action No. 94-0228-T

GEORGE A. VOSE, JR.,
in his capacity as Director,
Department of Corrections of
the State of Rhode Island and
Providence Plantations

&

JEFFREY PINE, in his
capacity as Attorney General
for the State of Rhode Island
and Providence Plantations

MEMORANDUM AND ORDER

ERNEST C. TORRES, United States District Judge.

This is an petition for a writ of habeas corpus brought by Samuel Fuentes pursuant to 28 U.S.C. § 2254. For the reasons that follow, the petition is denied and dismissed.

FACTS

In October of 1978, Fuentes was convicted of first degree murder in the Rhode Island Superior Court¹. He appealed to the Rhode Island Supreme Court alleging inter alia that his rights

¹Three courts have recounted in detail the circumstances of the crimes which were committed and the facts which led to the investigation and ultimate prosecution of Fuentes. See Fuentes v. Moran, 733 F.2d 176, 177-79 (1st Cir. 1984); Fuentes v. Moran, 572 F.Supp. 1461, 1463-66 (D.R.I. 1983); State v. Fuentes, 433 A.2d 184, 186-89 (R.I. 1981). A tale thrice told is sufficient.

under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution were violated. That appeal was denied. State v. Fuentes, 433 A.2d 184 (R.I. 1981). Fuentes, then, filed a habeas corpus petition in this Court, alleging violation of his rights under the Fifth, Sixth and Fourteenth Amendments. After conducting a hearing, then-District Judge Selya, dismissed the petition. Fuentes v. Moran, 572 F. Supp. 1461 (D.R.I. 1983). Fuentes' appeal from the dismissal was rejected by the First Circuit, which affirmed the District Court in all respects. Fuentes v. Moran, 733 F.2d 176 (1st Cir. 1984).

This petition, too, is based on what Fuentes claims were violations of his Fifth, Sixth and Fourteenth Amendment rights. The gist of Fuentes' claim is that his confession was improperly admitted into evidence because it was obtained by police after he expressed a desire to terminate questioning by police.

DISCUSSION

Adjudication of successive² habeas corpus petitions by a state prisoner is governed by 28 U.S.C. § 2244(b). Section 2244(b) provides that once a federal judge has denied a petition for habeas corpus after a hearing, "a subsequent application for a writ of habeas corpus . . . need not be entertained . . . unless the application alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ." Id.³

² A successive petition is one which raises issues which have already been decided on the merits in a previous habeas petition. That should be contrasted with an abusive habeas petition ("abuse of the writ"), which does not raise issues already decided but which raises issues which were available to the petitioner and should have been litigated in the initial habeas petition but were not. "Abuse of the writ" also refers to misconduct on the part of the petitioner which disentitles him to the equitable relief of habeas corpus. In either case a federal district court may properly dismiss the petition. Kuhlmann v. Wilson, 477 U.S. 436, 445 n. 6, 106 S.Ct 2616, 2622 n.6, 91 L.Ed.2d 364 (1986) (plurality opinion); Sanders v. United States, 373 U.S. 1, 15-19, 83 S.Ct 1068, 1077-79, 10 L.Ed.2d 148 (1963).

³ Section 2244(b) states:

When after an evidentiary hearing on the merits of a factual issue, or after a hearing on the merits of an issue of law, a person in custody pursuant to the judgment of a State court has been denied by a court of the United States of a justice or judge of the United States release from custody or other remedy on an application for a writ of habeas corpus, a subsequent application for a writ of habeas corpus in behalf of such person need not be entertained by a court of the United States or a justice or judge of the United States unless the application alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ, and unless the court, justice or judge is satisfied that the applicant has not on the earlier application deliberately withheld the

In Sanders v. United States, 373 U.S. 1, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963), the United States Supreme Court addressed the issue of successive petitions for habeas corpus under the predecessor to Section 2244(b). In Sanders the Supreme Court held that successive habeas petitions should be dismissed where "(1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application." Sanders, 373 U.S. at 15, 83 S.Ct. at 1077.

The Supreme Court revisited the issue after Congress altered the statutory scheme by creating separate statutes to govern petitions by state and federal prisoners. See Kuhlmann v. Wilson, 477 U.S. 436, 106 S.Ct. 2616, 91 L.Ed.2d 364 (1986) (plurality opinion). In Kuhlmann the Court said that, in enacting Section 2244(b) in its current form, "Congress intended for district courts, as a general rule, to give preclusive effect to a judgment denying on the merits a habeas petition alleging grounds identical in substance to those raised in the subsequent petition." Id. at 451, 106 S.Ct. at 2625. The Court referred, with approval, to cases holding that successive petitions should be entertained only in "rare instances." Id. at 451, 106 S.Ct. at 2625-26

newly asserted ground or otherwise abused the writ.

(discussing Rule 9(b) of the Rules Governing § 2254 Habeas Corpus Proceedings). The Kuhlmann Court made it clear that consideration of a successive petition is warranted only "where the prisoner supplements his constitutional claim with a colorable showing of factual innocence." Id. at 454, 106 S.Ct. at 2627.

In this case, Fuentes' claims are virtually identical to those previously rejected by Judge Selya. See Fuentes v. Moran, 572 F.Supp. 1461 (D.R.I. 1983), aff'd, 733 F.2d 186 (1st Cir. 1984).

Furthermore, Fuentes neither alleges nor makes any

colorable showing of factual innocence. Accordingly, the petition for a writ of habeas corpus is denied and dismissed.

IT IS SO ORDERED.

Hon. Ernest C. Torres
United States District Judge

Date: October , 1994