

86-6968                      timely/no response

Pughsley v. O'Leary

Cert to CA7 (Bauer, Cummings) (order)

Petr filed for a writ of habeas corpus, raising both fourth amendment and sixth amendment (ineffective assistance of counsel) claims. The DC denied the petition and declined to issue a certificate of probable cause. The CA7 also declined to issue a certificate of probable cause, stating that the petr had failed to make a substantial showing of the denial of a federal right. In his petition for cert, petr attacks the standard set forth in Strickland v. Washington to govern ineffective assistance claims. I'd like to reverse Strickland too, but something tells me this court won't buy the idea. Petr also claims that the DC ignored this court's holding in Kimmelman v. Morrison, 106 S. Ct. 2574, that Stone v. Powell's restriction on habeas review of fourth amendment claims does not extend to ineffective assistance claims founded on incompetent representation with respect to a fourth amendment issue. This argument does not fly. The DC found only that petr was precluded from raising a fourth amendment claim in habeas proceedings when he had raised this claim, within the context of a sixth amendment claim, on direct appeal. In addition, the DC found that petr's fourth amendment claim had no merit.

DENY

ek

July 20, 1987

S.L. 6, p.19