

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

Filed June 24th, 2005

GREGORY EDWARD WRIGHT, PETITIONER,

V.

**DOUGLAS DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,
RESPONDENT.**

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

Pending before this Court is Wright's motion to alter or amend the judgment of this Court filed on April 8, 2005. In this motion, Wright asks this Court to reconsider its judgment denying relief, issued on March 28, 2005. Specifically, Wright asserts that this Court was incorrect in its analysis of his claim that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to disclose an alleged immunity agreement with prosecution witness Llewellyn Mosley and his claim that his rights under the Confrontation Clause were violated when the trial court admitted into evidence an oral statement a co-defendant made to a police officer.

The purpose of a motion to alter or amend the judgment under Rule 59(e) of the Federal Rules of Civil Procedure is to correct errors of law or present new evidence. *Waltman v. Int 7 Paper Co.*, 875 F.2d 468,473 (5th Cir. 1989). In his motion, with respect to the Court's resolution of the *Brady* claim, Wright disagrees with the Court's ruling that no immunity agreement existed between Mosley and the State and disagrees with this Court's ruling that there was no prejudice because Mosley's testimony was corroborated by other evidence, but

does not allege an error in law. Accordingly, Wright has not shown that this Court's judgment should be altered or amended with respect to this claim.

With respect to his Confrontation Clause claim, Wright does cite to a new case, *Crawford v. Washington*, 124 S.Ct. 1354 (2004), as support for this claim. In *Crawford*, the Supreme Court held that the Confrontation Clause of the Sixth Amendment prohibits the admission into evidence of out-of-court testimonial statements, such as statements given to a police officer, unless the witness is unavailable and there was a prior opportunity to cross-examine the witness. *Id.* at 68-69. Wright, however, does not address the fact that this claim was dismissed by this Court on the procedural ground that the state denied the claim on an independent and adequate state law ground, and Wright has failed to overcome this procedural bar because he does not allege, much less establish, that it would be a fundamental miscarriage of justice not to address this claim on the merits in light of this new case. *See Schlup v. Delo*, 513 U.S. 298 (1995). Moreover, notwithstanding this procedural bar, it is an open question as to whether a *Crawford* claim would apply retroactively on habeas review under *league v. Lane*, 489 U.S. 288 (1989). While neither the Supreme Court nor the Fifth Circuit has specifically ruled on this issue, four Courts of Appeals have held that *Crawford* claims are not retroactive and therefore not cognizable on federal habeas review, *see Murillo v. Frank*, 402 F.3d 786 (2005), *Dorchy v. Jones*, 398 F.3d 783,788 (6th Cir. 2005), *Mungo v. Duncan*, 393 F.3d 327 (2nd Cir. 2004), *cert. denied*, 125 S.Ct. 1936 (2005), *Brown v. Uphoff*, 381 F.3d 1219 (10th Cir. 2004), *cert. denied*, 125 S.Ct. 940 (2005), while the Ninth Circuit has ruled that such claims are retroactive. *See Bockting v. Bayer*, 399 F.3d 1010 (9th Cir. 2005).

But, even were Wright to overcome this potential procedural bar as well, any *Crawford* error would be harmless under the standard set forth in *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993), because it did not have a substantial and injurious effect on the jury's guilty verdict. In

that regard, Wright's co-defendant John Adams told Detective Tripple, testified to at trial by Tripple, that Wright first used Adams' knife to stab the victim in her bed and, after it broke, retrieved another knife from her kitchen and used that knife to murder the victim. (R. 45:234). Even without this statement, however, there was substantial evidence supporting Wright's conviction for capital murder, including: 1) Wright's bloody fingerprint was found at the scene of the murder (R. 47:98-99); 2) two knives with blood consistent with the victim's DNA profile were found in and around the shack where Wright lived (R. 46:43-4, 46, 97; R. 47:140; R. 48:9-14); 3) a pair of jeans was found at Wright's shack with blood consistent with the victim's DNA profile, as well as gold paint, on them (R. 47:3 1-2, 53-6, 146); 4) empty cans of gold spray paint were found in Wright's shack, along with other jeans with gold paint on them, and Wright was known to have paint on his face and clothes and was wearing jeans with gold paint on them when he was arrested (R. 45:82; R. 46:37, 38-9, 142-43, 1 51-56); 5) Wright's blood was found on the steering wheel and dashboard of the victim's car (R. 46: 1 7 1 -72; R. 47: 136-37); 6) Wright was seen with the victim the night before her murder and was known to be living at her house at the time (R. 45:29-45, 46-9, 58-9, 60-3); 7) Wright was seen in the victim's car in the early morning hours after her murder and, along with Adams, exchanged several items identified as belonging to her for crack cocaine (R. 45:131-34, 148-49, 153, 156); and 8) the victim's weed eater was later retrieved from the home where they smoked the crack cocaine and a tire from the victim's car was found in the empty lot next door (R. 44: 135-36; R. 45:189-90; R. 46:52-4, 138-39). Given the amount of other evidence supporting Wright's conviction, John Adams' self-serving statement regarding the knives did not have a substantial and injurious effect on the verdict.

Thus, while Wright disagrees with both this Court's characterization of these claims and

its analyses of these two claims, this Court finds that Wright has neither pointed to a legal error nor presented new evidence. Accordingly, the Court is of the opinion that Wright's motion should be DENIED.

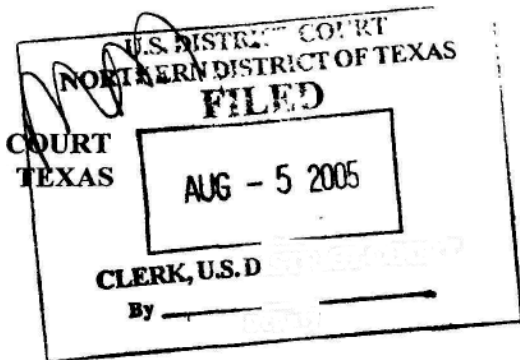
It is so ORDERED.

24th day of June.



Signed this
2005.

ED KINKEADE
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT FOR THE NORTHERN DISTRICT OF DALLAS DIVISION
DISTRICT COURT

Deputy
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3:01-CV-0472-K

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GREGORY EDWARD WRIGHT, Petitioner,

VS.

DOUGLAS DRETKE, Director TDCJ, Respondent.

CERTIFICATE AS TO APPEALABILITY

Considering the record in this case, pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253(c), the Court hereby finds and orders:

IFP STATUS;

(X)

the party appealing is GRANTED *in forma pauperis* status on appeal, the party appealing is DENIED *in forma pauperis* status on appeal for the following reasons:

- the Court certifies, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith.
- the person appealing is not a pauper because he has paid the appellate filing fee; the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the Court. (See Notice of Deficiency and Order entered on _____).

COA:

a Certificate of Appealability is GRANTED on the following issues:

(X)

a Certificate of Appealability is DENIED. The Court hereby incorporates by reference the Findings, Conclusions, and Recommendation of the United States Magistrate Judge dated March 10, 2004, the order adopting these findings dated March 28, 2005, and the Order Denying the Motion to Alter or Amend the Judgment dated June 24, 2005, in support of its finding that Petitioner has failed to make a substantial showing of the denial of a federal constitutional right. *See Hernandez v. Johnson*, 213 F.3d 243, 248 (5th Cir. 2000).

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SIGNED this*5!day of

ED KINKEADE
UNITED STATES DISTRICT
JUDGE