

New appeals, old arguments

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Reprimanded for repeated unethical behavior and chastised for poor work on a death penalty appeal, Fort Worth lawyer Richard Alley was banned from practicing before his hometown federal court for one year.

The 2002 judgment, notable for its unusually blunt condemnation of Alley's legal skills, also removed Alley as the federal appeals lawyer for condemned inmate Edward Lagrone.

"The (Lagrone) petition overall is poorly done," U.S. Magistrate Charles Bleil wrote. "Approximately half of it appears to have been pulled nearly verbatim and indiscriminately from the state court papers and other briefs and documents Alley has prepared or collected in the course of his legal practice."

Despite the stinging rebuke, Alley remained available to handle similar death penalty appeals in state courts, submitting writs of habeas corpus that, like Lagrone's, contained large portions that were copied from other sources.

Alley's 2005 writ for Cary Kerr, for example, was larded with 29 pages copied straight from Kerr's direct appeal, even though the Texas Court of Criminal Appeals cannot consider such claims on a writ.

Direct appeals examine trial errors such as improper jury instructions; habeas writs are meant to contain new evidence or facts that can overturn a conviction or death sentence.

Another 64 pages of Kerr's writ were taken from writs Alley had filed for other death-row inmates, making almost no reference to Kerr or his trial.

In total, the copied issues accounted for 75 percent of the writ's arguments.

The Tarrant County trial judge, Everett Young, made short work of Alley's writ and its 35 issues challenging Kerr's conviction and sentence, recommending that the Court of Criminal Appeals deny the petition because its arguments did not belong in a writ, had already been rejected by the appeals court or contained "no new compelling argument or authority."

Alley introduced no information from outside the trial record, a fatal flaw for habeas writs, according to American Bar Association guidelines for capital punishment lawyers.

"The old facts and the old arguments . . . are unlikely to motivate (an appeals) court to make the effort required to stop the momentum the case has already gained in rolling through the legal system," the guidelines state.

Other Alley writs show similarities to the Kerr writ.

A 1999 writ for Bobby Wayne Woods, who raped and killed an 11-year-old girl, raised 27 issues, 15 of which were already considered in the direct appeal, court records show.

A 2003 Alley writ for convicted rapist and murderer Dale Scheanette raised 27 "points of error," 14 taken from the direct appeal with no additional evidence provided and 13 that belonged in the direct appeal because they were based on the trial record, according to the trial court's findings.

Alley, a 24-year lawyer, said he repeats direct-appeal claims because if he didn't, the issues would not be available to raise in federal court, the next step in the process after the Texas Court of Criminal Appeals denies a writ.

The same rationale, Alley said, prompts him to include issues that he believes should have been raised by the direct appeal lawyer.

But a legal expert said Alley is wrong.

A federal habeas petition can include issues taken from the direct appeal, so the repetition is unnecessary, said Rob Owen, a University of Texas law professor and habeas practitioner. What's more, Alley's strategy risks more than it accomplishes, he said.

If the Court of Criminal Appeals rules that trial court mistakes do not belong in a writ, those issues are no longer preserved for federal court review, Owen said.

A better course would be to allege "ineffective assistance of counsel" from the direct appeal lawyer, then list the mistakes. Put that way, the issues would remain eligible for federal review no matter how the state court rules, Owen said.

In a letter from death row, Kerr said he filed five unsuccessful grievances against Alley with the State Bar of Texas, which is charged by state law with disciplining lawyers. Complaints to the Court of Criminal Appeals also went unanswered, he said.

Kerr, convicted in the 2001 rape and murder of a woman in the Fort Worth suburb of Haltom City, said Alley filed the writ without visiting him in prison or responding to numerous letters.

"I do not know him at all or even what he looks like," Kerr wrote.

But Alley said he and Kerr spoke by telephone and "communicated extensively by mail. It may not be face to face, but there is always a lot of communication."

Alley also said he hires an investigator to ferret out information not found in the trial record. But he complained that Tarrant County judges are not likely to approve mitigation experts because they say the job of checking a defendant's mental, social and psychological history is done at the trial.

"I do the best I possibly can on all these cases," Alley said. "We raised as many issues that we could raise based on the evidence in front of us."

Alley's federal court rebuke stemmed from a complaint that Alley had overbilled the U.S. government for his habeas representation of Lagrone, executed in 2004 for a 1991 triple murder.

An investigation by Bleil, the U.S. magistrate, found no proof of overbilling, but Bleil recommended that Alley repay \$6,587 of his \$18,587 fee, which he called "excessive in light of the worth and usefulness of the petition submitted." That suggestion was not accepted by the U.S. judge.

"No one disputes Alley's intelligence, but his work is frequently 'sloppy' because he overextends himself, causing the quality of his work to suffer," Bleil wrote. "Alley has admitted that he has a busy practice, which leads to inaccuracies in his work."

Bleil also found that Alley "glossed over" the nature of two State Bar of Texas rebukes in his application to accept appointments from Northern District of Texas federal courts, particularly a 1985 reprimand for making a false statement on a federal court document, presenting false evidence to a state district court and counseling a client in conduct he knew to be illegal, according to court documents.

Alley also was reprimanded in 1992 for failing to properly safeguard a client's property.

Alley testified at a hearing that his lack of details on the application was unintentional due to time pressure. But Bleil found that, whether by “deception or lack of regard for accuracy,” the misleading application was part of a pattern of unprofessional and unethical behavior.

In accepting the majority of Bleil’s findings in a 2002 order, U.S. District Judge Joe Kendall levied an indefinite suspension until Alley reapplied for membership, “fully disclosing details of all disciplinary actions, including this one.”

Alley appealed, and Chief Judge A. Joe Fish later reduced his suspension to one year.

In an interview, Alley disputed Bleil’s conclusions and noted that Fish threw out the magistrate’s finding that Alley was unable to conduct litigation properly.

Fish, however, denied Alley’s challenge to the conclusion that Alley “repeatedly engaged in a practice of unprofessional and unethical behavior.”

The magistrate discussed those points “in painstaking detail,” Fish ruled.