

IN THE
SUPREME COURT OF THE UNITED STATES

TIMOTHY L. RODRIGUEZ - PETITIONER

vs.

DEWAYNE BURTON - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

1st


Timothy L. Rodriguez #267838
R. A. Handlon Corr. Facility
1728 W. Bluewater Hwy.
Ionia, Michigan 48846

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner, Timothy L. Rodriguez, respectfully preys that a writ of certiorari be issued to review the judgment, Order of the United States Court of Appeals in the above-entitled cause on March 31, 2017.

ORDER BELOW

On March 18, 2014, the Petitioner filed a Complaint for Habeas Corpus with the Ionia County Circuit Court, pursuant to MCR 3.303(A)(2) and (B).

On April 15, 2014, the Ionia County Circuit Court denied Petitioner's Complaint, for Habeas Corpus. See (Attached Appendix H.)

On May 2, 2014, Petitioner filed a Complaint for Habeas Corpus in the Court of Appeals. On May 29, 2014, the Assistant Attorney General filed a Brief in Respondent-Appellee on behalf of DeWayne Burton.

On June 8, 2014, Petitioner filed a Reply to the Respondent's Brief. On August 22, 2014, The Michigan Court of Appeals denied Petitioner's Complaint for Habeas Corpus without Explanation. See (Attached Appendix I.)

On September 10, 2014, Petitioner filed a timely Motion for Explanation of the Court of Appeals Order of August 22, 2014.

On September 24, 2014, the Court of Appeals issued an Order Denied the Motion for Clarification without Explanation. See (Attached Appendix J).

Petitioner timely filed an Application for Leave to Appeal with the Michigan Supreme Court.

On March 3, 2015, the Michigan Supreme Court issued an Order Denied his Application for Leave to Appeal. See (Attached Appendix K.)

November 28, 2016, Petitioner filed a Motion to Proceed in Pauperis on Appeal with the Western District of Michigan.

On December 21, 2016, the United States Court of Appeals for the Sixth Circuit, issued an Order Denied The Notice of Appeal filed on December 2, 2016 is late. Fed. R. App. p.4(a), 26(a). It is therefore ordered that Petitioner show cause in writing not late than twenty-one days from date of this Order why it should not be dismissed. See (Attached Appendix L.)

On December 27, 2016, Habeas Corpus of the Western District of Michigan issued an Order and Notice of Deficiency, denied. See (Attached Appendix M. Order and Notice of Deficiency).

On January 6, 2017, Petitioner filed a federal court certificate of prisoner account activity; Motion to Proceed in Forma Pauperis on Appeal; Affidavit in Support of Motion to Proceed in Forma Pauperis on Appeal, Rule form-4; Application to proceed without prepayment of fees and affidavit proof of service with the Western District of Michigan.

On January 16, 2017, Petitioner filed an Motion for Certificate of Appealability with the United States Court of Appeals for the Sixth Circuit.

On January 23, 2017, the Western District of Michigan Order Granting Leave to Proceed in Forma Pauperis on Appeal. See (Attached Appendix N.)

On February 2, 2017, Petitioner filed a Motion for Guidance with the United States Court of Appeals for the Sixth Circuit.

On March 31, 2017, The United States Court of Appeals issued an Order that the appeal is Dismissed. See (Attached Appendix O.)

On April 13, 2017, Petitioner filed a Motion for Clarification of the March 31, 2017, Court's Order Dismissed.

On May 03, 2017, The United States Court of Appeals issued an letter in response to the Petitioner's Motion for Clarification. United States Court of Appeals stated: Your appeal was dismissed for lack of jurisdiction due to a late notice of appeal, not for failure to pay the filing fees.

STATEMENT OF JURISDICTION

Petitioner seeks review of the March 31, 2017, Order of the United States Court of Appeals. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Federal Constitutional Provisions

The Sixth Amendment of the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury ..." U.S. Const. amend VI.

The Fourteenth Amendment to the United States Constitution provides in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law ..." U.S. Const. amend XIV.

The Fourth Amendment of the United States Constitution provides that no warrant shall be issue but upon probable cause, supported by Oath or affirmation. U.S. Const. amend IV.

QUESTIONS PRESENTED

ISSUE I.

WAS THE PETITIONERS FOURTH AND FOURTEENTH RIGHT TO DUE PROCESS VIOLATED DUE TO A RADICAL DEFECT THAT OCCURRED AFTER THE PETITIONER WAS ARRESTED ON A WARRANTLESS ARREST, FOR INVESTIGATION AND QUESTIONING AND HELD AGAINST HIS WILL FOR 13 DAYS WITHOUT A COMPLAINT OR AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE, WITH NO WARRANT, AND NO ARRAIGNMENT WITHIN THE 48 HOURS OF HIS UNLAWFUL ARREST?

Petitioner Answers, "Yes."

Lower Court Answers, "No."

Michigan Court of Appeals Answers, "No."

Michigan Supreme Court Answers, "No."

Habeas Corpus Answers, "No."

Sixth Circuit Court of Appeals Answers, "No."

U.S. Supreme Court Answers, "?"

ISSUE II.

DID THE DECEMBER 10, 1997, COMPLAINT AND WARRANT ADEQUATELY STATE PROBABLE CAUSE FOR THE ISSUANCE OF AN ARREST WARRANT WHICH VIOLATED PETITIONERS FOURTH AMENDMENT RIGHTS CREATING A RADICAL DEFECT THAT RENDERED THE TRIAL COURTS PLEADINGS ABSOLUTELY VOID FOR LACK OF PROBABLE CAUSE AND LACK OF SUBJECT MATTER JURISDICTION?

Petitioner Answers, "Yes."

Lower Court Answers, "No."

Michigan Court of Appeals Answers, "No."

Michigan Supreme Court Answers, "No."

Habeas Corpus Answers, "No."

Sixth Circuit Court of Appeals Answers, "No."

U.S. Supreme Court Answers, "?"

ISSUE III.

WAS THE PETITIONER FOURTH AND FOURTEENTH AND RIGHT TO DUE PROCESS VIOLATED WHEN THE COMPLAINT AND WARRANT THAT WAS AUTHORIZED WAS NOT BY A NEUTRAL AND DETACHED MAGISTRATE?

Petitioner Answers, "Yes."

Lower Court Answers, "No."

Michigan Court of Appeals Answers, "No."

Michigan Supreme Court Answers, "No."

Habeas Corpus Answers, "No."

Sixth Circuit Court of Appeals Answers, "No."

U.S. Supreme Court Answers, "?".

STATEMENT OF FACTS

On April 13, 1998, Petitioner, Timothy L. Rodriguez was convicted by a jury and found guilty of first-degree premeditated murder, contrary to MCL 750.316C, and conspiracy to commit first-degree murder, contrary to MCL 750.157a; and possession of a firearm during the commission of a felony, contrary to MCL 750.227b. He was sentenced as a second habitual offender, contrary to MCL 769.10.

On June 10, 1998, the Honorable Thomas S. Eveland, sentenced Petitioner to concurrent terms of mandatory life, and consecutive two years imprisonment for felony firearms.

Petitioner was held against his will for 13 days for investigation and questioning. There was no complaint, no affidavit in support of probable cause, and no warrant as guaranteed by our constitution, equal protection and due process of law. The complaint and warrant did not adequately state probable cause for the issuance of an arrest warrant and the complaint, and the warrant that was authorized was not issued by a neutral and detached Magistrate.

This case warrants several issues with constitutional and due process violations. However, the core issue in this case is whether the Eaton County District Court acquired legal jurisdiction by the filing of an invalid complaint therefore creating a jurisdictional defect that should have rendered the proceedings absolutely void. The lower court and the Appellate Court never answered the questions presented in Petitioner's Complaint for Habeas Corpus.

REASONS FOR GRANTING THE PETITION

ISSUE I.

CERTIORARI IS NECESSARY BECAUSE THE STATES PERSIST IN REACHING INCONGRUENT RESULTS WHEN INTERPRETING THIS COURT'S DECISION, DUE TO A RADICAL DEFECT THAT OCCURRED AFTER PETITIONER WAS ARRESTED AND QUESTIONING ON A WARRANTLESS ARREST, WHERE HE WAS HELD AGAINST HIS WILL FOR 13 DAYS WITHOUT PROBABLE CAUSE. THERE WAS NO COMPLAINT, NO AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE, NO WARRANT, AND NO ARRAIGNMENT WITHIN THE 48 HOURS PERIOD AS GUARANTEED BY THE CONSTITUTION, EQUAL PROTECTION, AND DUE PROCESS OF LAW.

STANDARD OF REVIEW

The question presented is whether the State can detain a person against his will for investigation and questioning for a period of 13 days without a complaint, no affidavit in support of probable cause, no warrant, and no arraignment. This is a question of law. question of Law are reviewed de novo. County of Riverside v McLaughlin, 500 US 44; 111 S.Ct 1661; 114 L.Ed2d 49 (1991); People v Whitehead, 238 Mich App 1, 3-4; 604 NW.2d 737 (1999).

LEGAL ISSUE

On November 27, 1997, Petitioner was arrested on a warrantless arrest and held against his will for 13 days in the Eaton County jail for investigation and questioning. There was no arraignment, no complaint to detail why Petitioner was being held, no warrant, and no affidavit in support of probable cause. This is illegal in violation of his Fourth Amendment rights. Gerstein v Pugh, 420 US 103,114; 95 S.Ct 854; 43 L.Ed2d 54 (1975); County of Riverside v McLaughlin, 500 US 44 (1991). If probable cause determination is delayed beyond 48 hours, an unreasonable delay is presumed and the burden shifts to the prosecutor to demonstrate the existence of a bona fide emergency or other extraordinary circumstances to avoid a finding of

constitutional error. Riverside, US at 57; People v McCray, 210 Mich App 9,12; 533 NW.2d 359 (1995), and People v Whitehead, 236 Mich App 1, 3-4; 604 NW.2d 737 (1999).

Petitioner argues that there was no probable cause to arrest him, no consent to journey to the police station and no prior judicial authorization for detaining him; the investigative detention at the station and fingerprinting violated Petitioner's rights under the U.S. Const Ams IV, XIV, Mich Const 1963, art 1, §§ 11, 17. Arresting someone for "investigation" or "questioning" is an illegal police practice long condemned by the United States Supreme Court and Appellate Courts of this State. In Brown v Illinois, 422 US 590,605; 95 S.Ct 2254; 45 L.Ed2d 416 (1975). This Court "noted its emphatic disapproval" of similar police conduct in People v Washington, 99 Mich App 330; 297 NW.2d 915 (1980). More recently, this Court reaffirmed its condemnation of arrest for "questioning" or "investigation". People v Kelly, 231 Mich App 627,634; 588 NW.2d 460 (1998). See (Attached Appendix A).

In the instant case Petitioner was "questioned" and "interrogated" for 13 days for a crime he did not commit. Petitioner's Miranda rights were never read to him until his arraignment on December 10, 1997, when he was formally arrested by way of a felony complaint and warrant filed on December 10, 1997. From November 27, 1997, to December 10, 1997, Petitioner was not allowed to leave and was denied any contact with his family whatsoever. For somewhat different fact situations where the Courts have held that actions which delay a person's release may constitute false imprisonment, See Linnen v Benfield, 114 Mich 93; 72 NW 1 (1897) and Oxford v Berry, 204 Mich 197; 170 NW 3 (1918). The right of a person, deprived of liberty, to challenge in the

Courts the legality of their detention is safeguarded by the constitution of the State. An officer of the State who detains a under command of the State may not by indirection accomplish what the Constitution forbids to the state.

Stowers v Wolodzko, 386 Mich 119; 191 NW.2d 355 (1971).

REASONS FOR GRANTING THE PETITION

ISSUE II.

CERTIORARI IS NECESSARY BECAUSE THE STATES PERSIST IN REACHING INCONGRUENT RESULTS WHEN INTERPRETING THIS COURT'S DECISION. ON DECEMBER 10, 1997, COMPLAINT AND WARRANT DID NOT ADEQUATELY STATE PROBABLE CAUSE FOR THE ISSUANCE OF AN ARREST WARRANT AND THEREFORE VIOLATING PETITIONERS FOURTH AMENDMENT RIGHTS CREATING A RADICAL DEFECT THAT RENDERED THE TRIAL COURTS PLEADINGS ABSOLUTELY VOID FOR LACK OF PROBABLE CAUSE AND LACK OF SUBJECT MATTER JURISDICTION.

STANDARD OF REVIEW

The question presented is whether the complaint and warrant stated probable cause for the issuance of an arrest warrant. This is a question of law. Questions of Law are reviewed *de novo*. Whitaley v Warden, Wyo, State Penitentiary, 401 US 560; 91 S.Ct 1031; 28 L.Ed2d 306 (1971).

LEGAL ISSUE

The December 10, 1997, complaint and warrant did not adequately state probable cause for the issuance of an arrest warrant and therefore violating Petitioner's fourth amendment rights. MCL 764.1a; Whitaley v Warden, Wyo, State Penitentiary, 401 US 560, 563-566; 91 S.Ct 1031; 28 L.Ed2d 306 (1971); Giordemello v United States, 357 US 480,486; 78 S.Ct 1245; 2 L.Ed2d 1503 (1958); Overton v Ohio, 122 S.Ct 389 (2001); Rule 4 of the Federal Rules of Criminal Procedure. Also see a more recent case of State of Ohio v Christine Jones, 2012 Ohio 1301; Ohio App LEXIS 1134 (2012), See (Attached Appendix A). The United States and Michigan Constitutions Fourth Amendment provide that "no warrants shall be issue but upon probable cause, supported by oath or affirmation." The United States Supreme Court requires that complaint or affidavit filed in support of an arrest warrant to contain sufficient information to allow an independent judgment by the issuing judicial officer as to whether there is probable cause to support the issuance of a warrant.

In the instant case Petitioner argues that the complaint consists of nothing more than Detective Daniel Prueter's conclusion that Timothy Rodriguez perpetrated the offense described in the Complaint. The warrant should also fail because it is nothing more than a "photo copy of the complaint and an overlay of Honorable Paul F. Berger's signature." Furthermore, the prosecutor violated MRPC 3.8(a) by prosecuting a charge that the prosecutor knew was not supported by probable cause.

"Decency, security, and liberty alike demands that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to declare that in the administration of the criminal law the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." Mr. Justice Butler, 1927, Olmstead v United States, 277 US 438; 48 S.Ct 564,575; 72 L.Ed 944 (1928).

In the case sub judice Petitioner was charged, arrested, and convicted on an illegal criminal process, used by the Eaton County Prosecutor's office, which did not include a criminal complaint which is necessary to start all criminal proceedings in Michigan. This is basic Michigan law: "The court determines whether it has subject matter jurisdiction of an offense in a particular case only by reference to the allegations listed in the complaint." cf. Grubb Creek Comm v Drain Comm'r, 218 Mich App 665,669 (1996). A felony information is predicated upon a signed complaint and warrant. A complaint must state the substance of the accusation and reasonable cause to believe that the person accused committed the offense. People v Glass, (After Remand), 464 Mich 266,277 (2001).

The Petitioner would like to make this Court aware that by the records and dates, that he was unlawfully arrested on November 27, 1997; and fingerprint on 11/28/97. Petitioner argues he was held for 13 days against his will without being read his Miranda rights, and without Probable Cause. There was no Complaint or Warrant. Also petitioner was never brought before the Magistrate within 48 hours of his unlawfully arrested. See (Attached Appendix B. Arrest Card).

Petitioner argues There was no Complaint or Warrant issued until 12/10/97. See (Attached Appendix C, Complaint), and (Appendix D. Warrant). Petitioner was never Arraigned, but looking at his Register of Actions shows that his Arraignment was held on 12/10/97. See (Attached Appendix E. Register of Actions). Petitioner requested for the alleged Transcript of this Arraignment supposedly held on 12/10/97. The Eaton County Clerk of the Court's Ms. Lori Lafaue responded to the petitioner's letter stating: "Circuit court does not show record of an arraignment transcript dated 12/10/97. The only District Court transcript we have is the transcript of preliminary examination entered on 1/7/98." If the Court would closely look at the date on the Register of Actions it would show that the alleged Arraignment was held on 12/10/97. This clearly shows the Court that the Petitioner was never Arraigned.

Also Eaton County Clerk of the Court Ms. Lori Lafaue stated: "The only District Court transcript we have is the transcript of preliminary examination entered on 1/7/98." See (Attached Appendix F. Clerk Lori Lafaue of the Court's letter). If the Court would look at the Register of Actions, it clearly shows a total different date. It shows 12/16/97, Preliminary Examination was held, and the same on the Petitioner's, paper, not 1/7/98. See (Attached Appendix G. Preliminary Examination). (Also see Line 17-20. This was my First Arraignment.)

The Predicates for a Complaint

Under Michigan law, there exists two predicate components for the issuance of an arrest warrant: (1) The presentation of a proper complaint alleging the commission of an offense, and (2) A finding of reasonable cause to believe that the individual accused in the complaint committed that offense. People v Manning, 243 Mich App 615, 621; 624 NW.2d 746 (2000). In the Petitioner case he was charged in the 56th, District Court upon an illegal scheme in violation of MCL 750.316C and conspiracy to commit first-degree murder MCL 750.157a; and MCL 750.227b where there was never a complaint prepared or filed charging Petitioner with any criminal acts. Petitioner was arrested on a warrantless arrest and held against his will for 13 days, there was no arraignment, no complaint nor any warrant. The court determines whether it has subject matter jurisdiction of an offense in a particular case, only by reference to the allegations listed in the complaint. In Grubb Creek Comm v Drain Comm'r, *supra*. The court could not have determined its jurisdiction because it was never provided a sworn complaint naming Plaintiff as the person who committed an offense, nor was there any offenses listed for the court to determine whether Plaintiff committed same. Therefore, the entire process was unconstitutional and all acts of commissions thereafter was judicially null and void, *cf. Goetz v Black*, 256 Mich 564, 569-570; 240 NW. 94 (1932). Accord. Mich Const. 1963, art 6, § 13.

Petitioner was held in custody illegally because there was never a complaint filed in the 56th, District Court which conferred jurisdiction to that court. In People v Collins, 52 Mich App 332; 217 NW.2d 119 (1974). Jurisdiction can be presented at any time, People v Cherry, 27 Mich App 672, 675; 183 NW.2d 857 (1970). See People v Clement, 254 Mich App 367, 399 (2002).

The arraigning Magistrate determines whether a warrant shall be issued on the charges listed in the complaint as provided by Michigan law, MCL § 764.1a(1) and MCL § 764.13. The statute provides that it must appear that an offense has been committed before it becomes the duty of the Magistrate to issue a warrant. Wayne County Prosecutor v Recorder's Court Judge, 119 Mich App, at 162, id. A complaint must be filed to answer the Magistrate's hypothetical question, "What makes you think that the petitioner committed the offense charged"? A complaint must provide a foundation for that judgment. Overton v Ohio, 122 S.Ct 389 (2001). The primary function of a criminal complaint in Michigan, is to move the Magistrate to determine whether a warrant shall be issued. cf. People v Hutchinson, 35 Mich App 128; 192 NW.2d 395 (1971). Consequently, in order for the criminal process to be, there must first be a criminal complaint naming the person responsible for the criminal act and commissions, the place of said criminal activity, and the offense itself. This gives a criminal defendant a notice of the accusation against him and s/he can mount his/her defense to those charges listed in the complaint. cf. Grubb Creek Comm, 218 Mich App, at 668, id. Without the criminal complaint being filed, no jurisdiction attached to any court of law in Michigan.

Here, Petitioner was arrested without a complaint, no warrant and no affidavit in support of probable cause, no arraignment. Petitioner was held for 13 days against his will on a warrantless arrest.

As far as the record before us reveals, there was no evidence in this case offered to the Magistrate to show "probable cause" for issuing the warrant consisted of a "complaint" presented to the Magistrate, signed by Detective

Daniel Pruater. The complaint and warrant was signed on December 10, 1997, 13 days after petitioner illegal arrested, violating Petitioner's U.S. Const, IV Am, and Mich Const 1963, art 1, § 11.

Petitioner was held in custody but was never advised of his rights under Miranda v Arizona, 384 US 436; 86 S.Ct 1602; 16 L.Ed2d 694 (1966). Petitioner was questioned by the non-scene detective, in violation of his Miranda rights. U.S. Const Am V, Mich Const 1963, art 1, § 17. Dickerson v United States, 530 US 428; 120 S.Ct 2326; 147 L.Ed2d 405 (2000).

Petitioner was never brought before the Magistrate within 48 hours of his unlawful illegal arrest on November 27, 1997. that the complaint and warrant therefore failed to meet minimal constitutional standard. The warrant is clearly inadequate under well-established Supreme Court case law. U.S. Const Am IV, Mich Const 1963, art 1, § 11.

Petitioner was deprived of his right to due process of law and right to privacy as guaranteed by the Fourth, Fifth and Fourteenth Amendments due to unlawful arrest.

Petitioner request this Honorable Court to grant Petitioner relief and order an Evidentiary Hearing.

REASONS FOR GRANTING PETITION

ISSUE III.

CERTIORARI IS NECESSARY BECAUSE THE STATES PERSIST IN REACHING INCONGRUENT RESULTS WHEN INTERPRETING THIS COURT'S DECISION, DUE TO A RADICAL DEFECT THAT WAS CREATED WHEN THE COMPLAINT AND WARRANT THAT WAS AUTHORIZED BUT WAS NOT ISSUED BY A NEUTRAL AND DETACHED MAGISTRATE. THEREFORE, VIOLATING PETITIONERS FOURTH AND FOURTEENTH AMENDMENT RIGHTS.

STANDARD OF REVIEW

The question presented here is whether the complaint and warrant that was authorized by the same judge who presided over Petitioner's preliminary examination was not a neutral and detached Magistrate. A question of law involving constitutional rights is reviewed *de novo*. US Const Am IV; Coolidge v New Hampshire, 403 US 443,450; 91 S.Ct 2022; 29 L.Ed2d 564 (1971).

LEGAL ISSUE

On December 10, 1997, a complaint and arrest warrant was authorized by Honorable Paul F. Berger, Eaton County District Court Judge. On December 16, 1997, a preliminary examination and probable cause hearing was held. Honorable Paul F. Berger presiding. Petitioner argues that Judge Berger may have formed a bias opinion during the preliminary examination after signing the complaint and arrest warrant. He was not a neutral and detached judicial officer. The fourth amendment provides that "no warrant shall be issue, but upon probable cause, supported by oath or affirmation, and particularly describing that place to be searched and persons or things to be seized. U.S. Const Am IV.

The probable cause determination must be made by a neutral Magistrate in order "to insure that the deliberate, impartial judgment of a citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause." Wong Sum v United States, 371 US 471, 481-482; 83 S.Ct 407; 9 L.Ed2d 441 (1963); Coolidge v New Hampshire,

403 US 450; 91 S.Ct 2022 (1971); Shadwick v City of Tampa, 407 US 345; 92 S.Ct 2119; 32 L.Ed2d 783 (1972). The Shadwick Court noted that the issuing Magistrate must meet two tests: he must be neutral and detached, and he must be capable of determining whether probable cause exist for the requested arrest or search. Shadwick, 407 US at 349-350. In the instant case, Judge Berger could not have been neutral and detached while presiding over the preliminary examination.

CONCLUSION

The state authorities clearly violated an express legal requirement which was in existence at the time of the act or omission. The state did not have an affidavit of probable cause for a felony complaint attached with the original complaint to validate probable cause for the arrest warrant. Police officers who secure arrest warrants from a judge, supported only with bare bone complaints insufficient to support an independent probable cause determination, violated the Fourth Amendment.

The Judge issuing the warrant must independently review the facts should not accept without question the officer's mere conclusion that the person sought to be arrested committed the crime. The judge, not a police officer, is the party with the final obligation to independently determine that there is probable cause to issue an arrest warrant. "Recital of some of the underlying circumstances in the affidavit is essential if the magistrate is to perform his detached function and not serve merely as a rubber stamp for the police." US v Ventresca, 380 US 102; 85 S.Ct 741; 13 L.Ed2d 684 (1965).

CONCLUSION

Petitioner respectfully requests that this Honorable Court Order the Michigan Department of Corrections to release Petitioner of his illegal restraints without unnecessary delay. Order the Lower Court to quash the unlawful arrest warrant, and Order all proceedings from December 10, 1997, and thereafter null and void with prejudice.

Order a Evidentiary Hearing to allow the Petitioner his constitutional right to be heard, and Order Appointment of Counsel on this issues.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TIMOTHY L. RODRIGUEZ,)
Petitioner-Appellant,)
v.)
DEWAYNE BURTON, Warden,)
Respondent-Appellee.)

FILED
Mar 31, 2017
DEBORAH S. HUNT, Clerk

O R D E R

Before: COLE, Chief Judge; BOGGS and MOORE, Circuit Judges.

This court entered an order on December 21, 2016, directing Timothy L. Rodriguez to show cause within twenty-one days why his appeal should not be dismissed as untimely. Rodriguez failed to respond.

The district court entered its judgment on May 26, 2016. A time-tolling motion was denied on July 18, 2016. Any notice of appeal was due to be filed on or before August 17, 2016. *See* Fed. R. App. P. 4(a). The notice of appeal filed on December 2, 2016, is late.

Compliance with Federal Rule of Appellate Procedure 4(a) is a mandatory prerequisite that this court may neither waive nor extend. *Bowles v. Russell*, 551 U.S. 205, 214 (2007); *Ultimate Appliance CC v. Kirby Co.*, 601 F.3d 414, 415-16 (6th Cir. 2010). Federal Rule of Appellate Procedure 26(b) specifically provides that the time for filing a notice of appeal may not be extended except as authorized in Rule 4. We have reviewed the record and find that the exceptions authorized by Rule 4 do not apply in this case.

No. 16-2736

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Accordingly, it is ordered that the appeal is **DISMISSED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt
Deborah S. Hunt, Clerk