

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Randy Jones — PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eastern District of Missouri Eighth Cir Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Randy Jones
(Your Name)

Po Box 8000
(Address)

Forrest city AR 72335
(City, State, Zip Code)

Bop
(Phone Number)

IN THE
SUPREME COURT OF THE UNITED STATES

APRIL 2018

No. _____

RANDY A. JONES,

Petitioner,

v.,

UNITED STATES COURT OF APPEALS,

FOR THE EIGHTH CIRCUIT,

ST. LOUIS, MISSOURI,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS,
EIGHTH CIRCUIT, ST. LOUIS, MISSOURI

Petitioner, Randy A. Jones, respectfully prays that a writ of certiorari issue to review the judgment and order of the United States Court Of Appeals, Eighth Circuit, St. Louis, Missouri, entered on February 15, 2018.

QUESTION PRESENTED

Did the Eighth Circuit Court Of Appeals, by affirming the lower Court's denial of this Petitioner's 28 USC 2255 Motion, fail to preserve his Fourth Amendment right to be free from unreasonable search and seizure when the Court was presented with the government's "Surveillance Log" which clearly and unambiguously shows that the government began it's electronic surveillance TEN days before being authorized to by Court order and when it used a "Cell Site Simulator" that requires a search warrant when the Court order authorized the use of a "Pen Register" only?

OPINIONS BELOW

The order of the Eighth Circuit Court Of Appeals, St. Louis, Missouri, denying a rehearing and a rehearing en banc of its order affirming the Eighth Circuit District Court, St. Louis, Missouri, denial of this Petitioner's 28 USC 2255, dated February 15, 2018, is attached hereto at Appendix "A." The order of the Eighth Circuit Court Of Appeals, St. Louis, Missouri, affirming the Eighth Circuit District Court, St. Louis, Missouri, order denying this Petitioner's 28 USC 2255, dated December 27, 2017, is attached hereto at Appendix "B." The order of the Eighth Circuit District Court, St. Louis, Missouri, denying this Petitioner's 28 USC 2255, dated March 14, 2017, is attached hereto at Appendix "C."

JUDICIAL

Jurisdiction is conferred upon this Court by 28 USC, Section 1257 (3) to review by writ of certiorari, a final judgment rendered by the highest Court within a judicial district in which the decision could be had.

CONSTITUTIONAL PROVISIONS

The following provisions of the United States Constitution are involved: United States Constitution Amendments Number Four and Number Six.

PROCEEDINGS BELOW

On June 10, 2015, Petitioner, Randy A. Jones, was indicted on three counts.

Count One: Violations of 21 USC 841(a)(1) and 846

Count Two: Violations of 21 USC 841(a)(1) Subsection 2

Count Three: Violations of 18 USC 1956(h)

This Petitioner, upon advice of counsel, entered into a plea agreement under Rule 11(c)(1)(C), a 96 month term of imprisonment.

STATEMENT OF THE CASE

Petitioner was charged with Conspiracy To Traffic Controlled Substances, Possession With Intent To Distribute A Controlled Substance, and Money Laundering.

Petitioner did not file a direct appeal.

On December 8, 2016, this Petitioner filed a timely motion under 28 USC 2255 in the United States District Court For The Eastern District Of Missouri, St. Louis, Missouri, on the ground, relevant here, that Document Number 62 in the record, the government's activity log relevant to this case, clearly showed the government had performed a warrantless and illegal search of this petitioner's phone activity beginning on July 5, 2013. Document 62 is attached hereto at appendix "D." The order authorizing a pen register use

relevant to this petitioner's phone activity was signed by United States Magistrate judge, The Honorable Terry I. Adelman, and is attached hereto at Appendix "E," on July 15, 2013, a full 10 days after the date shown on Document 62 as the date of the first and illegal search performed by the government. Document 62 was provided to this Petitioner's attorney, Stephen Welby, during discovery but it's significance had not been recognized by Welby, and thus the challenge in this Petitioner's 28 USC 2255 was the first made to the illegal search and it was investigated by this Petitioner as a pro se litigant. At some point prior to trial, Stephen Welby was replaced as defense counsel by Mark Hammer who also had possession of Document 62 and who also failed to recognize it's significance. Only after this Petitioner's incarceration and his self education in applicable law did this Petitioner realize that Document 62 also revealed the illegal substitution of a cell site simulator for the Court ordered pen register. The order was signed by Terry I. Adelman on July 15, 2013.

It is critical that the Court understand the vast difference in the two devices.

A pen register is much less invasive, it provides data as to who one called, who called you, along with the time and date of each call.

A cell site simulator reaches much deeper into one's personal activities and can be used to record actual conversation, it can provide the

location of the phone and thus it's owner and any phone in the vicinity, and this is addition to what a pen register provides since the cell site simulator also performs all the functions that a pen register can preform. It is clear that Judge Adelman had authorized an investigation to be preformed using a PEN REGISTER and not a cell site simulator. The government got caught making an illegal search and the evidence of that illegal search comes from the government's own records, Document 62.

The District Judge, the Honorable E. Richard Webber, denied Petitioner's 28 USC 2255 Motion and in regard to Petitioner's complaint that Document 62 showed an illegal search, the Court remained silent. Judge Webber instead focused on the complaint that the government has peformed a search prior to the order being provided allowing that search to commense. Judge Webber stated in his order denying relief that the Petitioner had failed to provide the Court with a copy of Document 62 and thus had failed to support it's claim.

This Petitioner filed a Motion requesting a reconsideration of the denial of his 28 USC 2255 in part based upon the fact that Document 62 was a part of the record and thus readily available to the Court. However, this Petitioner assured the Court he would include a copy of Document 62 to support his claim.

This Petitioner complained in his Motion For Reconsideration that;

- 1) The date discrepancy on Document 62 showed an illegal search had

been performed by the government.

2) That the use of a cell site simulator, when the Court's Order had authorized a pen register, constituted an illegal search.

The Court allowed the reconsideration and after some consideration the Court Ordered the government to explain record showing a search had occurred prior to it being ordered by the Court as evidenced in Document 62. The illegal search occurred a full 10 days prior to the Order allowing a search to be performed using a pen register.

The government responded to the Court stating that the date of 7-5-2013 on Document 62 was just a "typo." No hearing was instituted to ascertain the validity of the government's bald and self serving statement nor was this petitioner allowed the protections afforded a defendant during a hearing, i.e. the right to question those who would testify about the alleged typo, nor to be allowed to inspect any documents that the government might rely upon to support it's claim. The Court fully accepted the bald and self serving claim of a typo by the government and again denied this Petitioner's 28 USC 2255 Motion.

This Petitioner then applied to the Eighth Circuit Court Of Appeals for a COA to issue based on the date of the illegal search and the use of a cell site simulator when the Court's Order had allowed the government to employ a pen register only. The Court denied the application for a COA.

This Petitioner then filed a motion requesting a rehearing and a rehearing en banc and that was denied on February 15, 2018.

Petitioner remains incarcerated at the federal prison at Forrest City, Arkansas.

REASONS FOR GRANTING THE WRIT

THE EIGHTH CIRCUIT COURT OF APPEALS ABDICATED IT'S DUTY TO PROVIDE VIGILANT OVERSIGHT OF THE LOWER COURT'S DECISION WHEN BY DENYING THIS PETITIONER RELIEF THE COURT OF APPEALS PROVIDED SANCTUARY FOR THE DISTRICT COURT'S ERRORS ALLOWING THE GOVERNMENT TO INTRODUCE AND USE AS LEVERAGE TO GAIN A PLEA AGREEMENT THE POISONOUS FRUIT FROM AN ILLEGAL SEARCH IN VIOLATION OF THE FOURTH AMENDMENT TO THE CONSTITUTION.

Clearly this Petitioner's Fourth amendment right to be free from illegal search has been violated. Document 62 shows two Fourth Amendment violations.

1) The date of the first search, 7-5-2013, predates any order allowing for a search to take place and does so by a full 10 days. The government's bald and self serving claim of a typo has not been established by clear and convincing evidence nor has this Petitioner been provided the opportunity to challenge the governments claim.

2) A cell site simulator was used in the absence of a warrant allowing it's use and this fact is supported by Document 62.

If the Court gives any credence to the government's response that the date of 7-5-2013 was a typo then the Court was obligated to hold a hearing so that this Petitioner could examine the evidence that the government claims would support it's claim and so that this Petitioner could examine any witnesses the government might present to support it's claim.

The second violation is even more egregious. the use of a cell site simulator, an extremely invasive search engine, in place of the Court authorized pen register is an illegal substitution; In Re Application Of United States For An Order Authorizing The Installation And Use Of A Pen Register And Trap And Trac Device, 2012 WL 2120492 (S.D. Tex June 2, 2012) and here it has been freely admitted that the cell site simulator has been substituted for a pen register and the government's own search activity log establishes this as a fact.

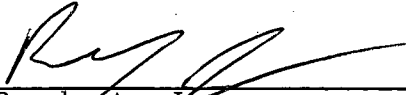
This petitioner asks the Court to provide a ruling on ineffective assistance of counsel on the part of Stephen Welby and Mark Hammer, defense counsel. Both counselors failed this Petitioner by not recognizing either of the Fourth Amendment violations shown herein and thus they failed in their duty as anticipated by the Sixth Amendment. At the very least this petitioner would not have pled guilty and

entered into a 11(c)(1)(C) plea agreement and instead would have challenged the government to prove its case without the benefit of the results of an illegal search and without the benefit of any leads that were brought about by information gained illegally. This ruling is needed in order that both attorney's who failed this Petitioner can be held to account for their unprofessional errors and for the damage done to this Petitioner.

CONCLUSION

Based upon the foregoing points and authorities, the Petitioner respectfully requests this Honorable Court to grant the within writ and reverse the judgment of the Court below.

Respectfully submitted,



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3-27-18
Date