

No. 18-6864

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

NOV 16 2018

OFFICE OF THE CLERK

Thomas Whitlow — PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eight Circuit, St Louis, Mo.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thomas Whitlow

(Your Name)

Thomas Whitlow Pro-Se

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(City, State, Zip Code)

n/a

(Phone Number)

QUESTIONS PRESENTED

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- #1, IS THE CRIMINAL COMPLAINT VOID WHEN IT WAS BASED ON STATEMENTS FROM SPECIAL AGENT TERRANCE TAYLOR STATEMENTS THAT WERE KNOWINGLY FALSE AND EXHIBITED RECKLESS DISREGARD FOR THE TRUTH TO DETERMINE PROBABLE CAUSE AND LATER AT TRIAL HE TESTIFIED CONTRARY TO HIS SWORN AFFIDAVIT?
- #2, WAS THE INDICTMENT INSUFFICIENT ESP:WHEN IT FAILED TO STATE AN OFFENSE?
-
- #3, DID THE INDICTMENT FAIL TO ALLEGE EACH MATERIAL ELEMENT OF THE OFFENSE?
- #4, DID THE DISTRICT COURT LACK SUBJECT MATTER OF JURISDICTION?
- #5, DID THE DISTRICT COURT COMMIT FRAUD IN THIS CASE?
- #6, CONSIDERING THE CRIMINAL COMPLAINT WAS BASED ON FALSE STATEMENTS,AND THE INDICTMENT FAILED TO STATE AN OFFENSE,AND DID NOT ALLEGE EACH MATERIAL ELEMENT OF THE OFFENSE,AND LACKED SUBJECT MATTER JURISDICTION, CAUSING FRAUD ON THE COURT,WOULD ALL THIS QUALIFY AS A VOID JUDGMENT?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 10/26/18 and 11/2/18

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 10/26/18, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment of the US Constitution provides that no person shall be required to answer for a capital or otherwise infamous offense unless on indictment of a grand jury---that no person be deprived of life, liberty or property with out Due Process of Law ---.

Sixth Amendment of the US Constitution includes such rights as the right for speedy trial and public trial by an impartial jury, right to be informed of the nature of the accusation,---, the right to assistance of counsel and compulsory process.

STATEMENT OF THE CASE

WHITLOW claims, the investigator, prosecutor made false claims in the criminal complaint, which led to the arrest and indictment. WHITLOW claims, they violated his Due Process of Law, Fair Trial all under the Fifth and Sixth Amendment. Making the indictment being based on untrue statements, in turn voiding the indictment, making WHITLOW being in prison violating his Liberty rights. The record shows each claim within this petition. Both the lower court and the appeals court has avoided these issues face-on, they even fail to answer it. In the Rule 60 (b) Order denying it, on page 1 at par 1 the court states-**Although the defendant is not specific, the only matters in his case subject to relief under Rule 60 (b) are the Courts order (filing 340) and Judgment (filing 341) denying his motion to vacate (filing 334) pursuant to 28USC2255.**

The court clearly stated (subject to relief under Rule 60 (b)), but yet failed to grant any such relief, even known the Rule 60 was filed pro-se.

Guilt nor Innocence is of no issue here, its the procedures used to arrest/indict/try/sentence the petitioner WHITLOW.

If you view the records stated, WHITLOW feels, the Supreme Court will Grant his petition.

ELEMENTS TO BE PROVEN BY THE GOVERNMENT

For wire fraud under 18USC1343.To prove wire fraud,the Government must prove,

- 1)Intent to defraud,
- 2)Participation in a scheme to defraud and,
- 3)The use of a wire in furtherance of the fraudulent scheme.

United States v Rice 699 F3d 1043,1047 (8th,2012).

See; SEALED CRIMINAL COMPLAINT 414CR3015 Doc 1 Filed 2/7/2014,on

p1. Defendants did knowingly and intentionally attempt and conspire with each other and other persons,both known and unknown,to commit an offense against the United States,namely,wire fraud,Title 18,United States Code,Section 1343,a violation of Title 18,United States Code,Section 1349.

INTENT ELEMENT must be proven by the Government,it is split in two parts;Mens Rea and Actus Reus.

Mens Rea-Guilty Mind..The state of mind that the prosecution, to secure a conviction,must prove that a defendant had when committing a crime;criminal intent or recklessness,the mens rea for theft is the intent to deprive the rightful owner of the property.

Mens Rea-Is the second of two essential elements of every crime at common law,the other being actus reus.

#1, CRIMINAL COMPLAINT

In Case# 414CR3015 Doc 1 Dated 2/7/2014 p1-12. WHITLOW was charged with 18 U.S.C./1349 & 2, (Defendants did knowingly and intentionally attempt and conspire with each other and other persons, both known and unknown, to commit an offense against the United States, namely, wire fraud, Title 18, United States Code, Section 1343, a violation of Title 18, United States Code, Section 1349).

This criminal complaint is based on these facts; See attached affidavit of Special Agent Terrance Taylor, Department of Homeland Security/Homeland Security Investigations (HSI).

See; page 7 at #15, (On October 8th, 2013, Detective Koenig-Warnke and I monitored ten consensually monitored telephone conversations between, TEMPEST AMERSON, and YOLANDA CLEMONS and THOMAS WHITLOW. The conversations entail YOLANDA CLEMONS and THOMAS WHITLOW setting up a wire fraud transfer from an unknown victim and having TEMPEST AMERSON receive the funds. TEMPEST AMERSON did not complete the financial transaction.)

Special Agent TERRANCE TAYLOR committed perjury when he testified contrary to his sworn Affidavit seen at:

See; Trial Transcript Dated November 19th 2014 in Case#414CR3015 on page 313 and 314, esp: at-

p313 a 14-16, Was any evidence confiscated linking or involving Mr WHITLOW to the charges or to the co-conspirators of the conspiracy?

p314 a 1, A= Physical evidence, no..

p314 a 2-4 Regarding the phone calls that's been received into evidence, you cannot say for a fact that

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it was Mr WHITLOW involved in that conversation
that was recorded, can you?

p314 a 5, A= That---I cannot.

The Criminal Complaint was based solely on Special Agent Terrance Taylors sworn affidavit. Violating Rule 801(d)(1)(2), Prior Inconsistent Statements, under the penalty of perjury. It is essential that a complaint set forth with particularity facts alleged to constitute a crime. *United States ex rel Spader v Wilentz* (1960 DC NJ) 25 FRD 492, *affd* (1960 CA3 NJ) 280 F2d 422, *cert den* (1960) 363 US 875, 5L Ed 2d 97, 81 S Ct 120.

Complaint is invalid where it does not state essential facts constituting offense charged and where it is sworn to before notary public. *Brown v Duggan* (1971 WD Pa) 329 F Supp 207.

Failure of complaint to recite that affiant had personal knowledge of facts and failure to present essential facts for a magistrate to make a determination as to probable cause. *United States v Freeman* (1958 SD Ind) 165 F Supp 121, 58-2 USTC 9939, 3 *after* 2d 826.

Oral information given to magistrate before warrant is issued cannot buttress complaint which does not set forth facts showing probable cause that offense was committed and that defendant committed it. *United States v Interbartolo*, (1961 DC Mass) 192 F Supp 587, 61-1 USTC 15336, 7 *after* 2d 1880.

Under the Federal Rules of Criminal Procedures, a complaint requesting an arrest warrant must contain essential facts constituting the offense charged, Fed. R. Crim. P. 3. Information supporting probable cause must be truthful, *Franks v Del* 438 US 154, 165 (1978). Statements that are knowingly false or exhibit a reckless disregard for the truth must NOT be used by the magistrate to determine probable cause.

FLAW IS-Special Agent Terrance Taylor committed perjury and swore to an affidavit, known as the Criminal Complaint. His testimony clearly shows, he testified contrary to his sworn affidavit. Making the complaint void on its face and within its four corners. The Criminal Complaint should be dismissed.

#2, THE INDICTMENT IS INSUFFICIENT & FAILS TO STATE AN OFFENSE.

In case #414CR3015, The court stated, that it will find an indictment insufficient only if an "essential element-of substance-is omitted". (15-1587, p27-28).

WHITLOW contends that the indictment in this case is a bare bones indictment presented without any factual statement of his involvement of violating the law, no elements of the conspiracy can be proven in a court of law. (Hrg T May 15, 2015, 8:13-8:17). WHITLOW asserts that the indictment was so defective that no reasonable construction can it be said to charge the offenses of conspiracy to commit wire fraud. WHITLOW contends that all counts against him should have been dismissed based on the insufficiency of the indictment.

A claim that the indictment fails to state an offense may be brought at any time. US v Rosa-Ortiz 348 F3d 33, 36 (1st, 2003). A defendant may move to dismiss an indictment when such indictments involve, government-vindictive-prosecutorial misconduct in a grand jury proceeding.

SUFFICIENCY of INDICTMENTS; Rule 7(c)(1) of the Federal Rules of Criminal procedure requires an indictment be "plain", "consise" and "definite" written statement of the essential facts constituting the offense charged. An indictment is not sufficient if it fails to state a material element of the offense. *US v Landham* 251 F3d 1072, 1082 (2001).

FLAW IS- Due to the insufficiency and failure to state an offense in the indictment, makes the indictment void.

#3. THE INDICTMENT MUST ALLEGE EACH MATERIAL ELEMENT OF THE OFFENSE.

In case #414CR3015, the indictment must allege each material element of the offense. If it does not, it fails to charge that offense. The omission of an element is such a critical omission that the Federal Rules of Criminal Procedure require it to be noted by an appellate court sua sponte. *Brown* 995 F2d 1505. The lacking material elements violates the defendant's fifth and sixth amendment, and the record will reflect this. See (Rule 60B).

The failure to charge an essential element of a crime is by no means a mere technicality. *United States v King* 587 F2d 956, 963 (9th, 1978). It is not amenable to harmless error review. *United States v Spruill* 118 F3d 221, 227 (4th, 1997).

United States v Brown 995 F2d 1493 (10th,1993),failure of the indictment to allege all the essential elements of an offense--is a jurisdictional defect requiring dismissal..United States v Gavle 967 F2d 483,(11th,1992).

FLAW IS-WHITLOW states,the indictment failed to allege each material element of the offense.In turn violating his fifth and sixth amendment rights and must be dismissed.

#4, THE COURT LACKS SUBJECT MATTER OF JURISDICTION.

In Case#414CR3015,WHITLOW argues that the United States failed to establish Federal Criminal Jurisdiction over the matter.Concисely the Grand Jury lacked sufficient evidence to indict him.

WHITLOW statesby failing to establish federal criminal jurisdiction, is fraud on the grand jury.This court has jurisdiction to dismiss this indictment when there is a presumption that no jurisdiction exists and as the gate-keeper,can dismiss the indictment.18USC3231.

WHITLOW expressed extension of the federal criminal jurisdiction will not be presumed,but must be clearly expressed in the statute.The Grand Jury was denied full disclosure of the essential elements.Absent the requisite jurisdictional elements.

The Grand Jury was NOT capable of returning a valid constitutional indictment, or a valid constitutional conviction of guilt beyond a reasonable doubt. *Winship* 397 US 361-62, *Duncan v Louisiana* 391 US 145, 20 LEd 2d 491 (1968), *Prenti v US* 206 F3d 960, *Adams v US* 87 L Ed 1421 319 US 312 (1943), *Jackson v Virginia* 443 US 307 (1979). Also in operating in the defacto jurisdiction in violation of 18 USC 3231 S Ct 317 (1940).

FLAW IS-WHITLOW argues, the lacking Federal Criminal Jurisdiction in this matter has violated his constitutional rights and must be dismissed.

#5. FRAUD ON THE COURT.

WHITLOW argues in case #414CR3015, that the court committed fraud. Which are;

- 1) First; To determine if the court made findings of fact and conclusions of law on the issues presented. Every court is required to identify the facts of your case and determine the law that is applied to the **facts**, if the court fails to do that, its obvious that the court is attempting to manipulate the proceedings and steer the case toward the prosecution. Findings and conclusions are required in both pretrial and post trial processes.

The Federal statute that requires the court to make findings of fact and conclusions of law is F.R.Civ.P.52(a).

- 2) Second; Is to identify court is to determine if the courts made findings on all issues presented in your case. A court is required to make findings on each and every issue presented. Failure to do so, leaves the case open and does not allow you to have a valid appeal. The Federal statute is F.R.Civ.P.54(b). This requirement is **jurisdictional**, as no valid appeal may be had with issues remaining open in the lower courts.

- 3) Third; Is to look at the transcripts and determine if the proceedings were steered to the prosecution.

Fraud on the court should...embrace only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court, so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in such absence of such conduct. **Derjanjuk v Petrovsky** 10 f3d 338 352 (6th, 1993), **Robinson v Audi** 56 F3d 1259, 1266-1267 (10th 1995). Proof of Fraud upon the court must be by clear and convincing evidence. **Thomas v Parker** 609, F3d 114, 1120 (10th, 2010).

FLAW IS- WHITLOW claims the court and its officers committed fraud, by knowing, the indictment, affidavit, and warrant was based on false claims by the Special Agent Terrence Taylor. These claims has been argued, in direct appeal, 2255, Rule 60, and ignored.

#6. VOID JUDGMENT

WHITLOW argues, the Judgment is void in Case#414CR3015. When the default was entered without Constitutionally adequate notice, the judgment is in any event infirm on Due Process grounds. A judgment is void, only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounts to plain language of power constituting a violation of due process. **United States v Boch Oldsmobile Inc** 909 F2d 657,661 (1st,1990). In order for a judgment to be void, there must be some jurisdictional defect in the court's authority to enter the judgment, either because the court lacks personal jurisdiction or because it lacks jurisdiction over the subject matter of the claim. **Puphal v Puphal** 105 Idaho 302,306,669 P2d 191,195 (1983). A void judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties. **Rook v Rook** 233 Va.92,95,353,SE2d 756,758 (1987). The law is well settled that a void order or judgment is void even before reversal. **Valley v Northern Fire and Marine Inc Co** 254 US 348,41 S Ct.116 (1920). Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the action. **Melo v US** 505 F2d 1026.

There is no discretion to ignore lack of jurisdiction. **Joyce v US 474,2D 215**. The Burden shifts to the court to prove jurisdiction. **Rosen v Lambert 469 F2d 416**. The court must prove on record all jurisdiction facts related to the jurisdiction asserted. **Latana v Hopper 102 F2d 188 Chicago v New York 37 F Supp 150**. The law provides, once federal jurisdiction has been challenged, it must be proven. **100 S.Ct. 2502 (1980)**. Jurisdiction can be challenged at any time. **Bassa v Utah Power and Light Co. 495 F2d 906,910**. A judgment must be void if the court acted in a manner inconsistent with due process.

FLAW IS- WHITLOW claims, the court fails to establish jurisdiction, and in turn made the judgment void. From the Criminal Complaint to the Insufficient Indictment that failed to state an offense to the lack of Material Elements of the offense and the lacking Subject Matter of Jurisdiction to the Fraud on the Court, as one or coupled as more than one, would amount to a void judgment, in this case.

REASONS TO GRANT CERTIORARI

WHITLOW asks the United States Supreme Court to review his Certiorari Petition, because the issues has been argued on Direct Appeal, Post Motion 2255, and Rule 60 as all the courts has erroneously ignored the law and blatantly violated WHITLOWS Due Process of his Fifth and Sixth Amendments. When the record proves 1) The criminal Complaint is void on its face, 2) The Indictment is Insufficient and fails to State an offense, and 3) The Indictment failed to allege each Material Element of the offense, and 4) The Court lacks Subject Matter of Jurisdiction, and 5) The Court committed fraud, making 6) The Judgment Void. So in viewing this petition, any one or more than one issue coupled, clearly will establish WHITLOWS constitutional rights were in fact violated and warrant a reversal. The United States Supreme Court has Superior Jurisdiction to hear such matters. These issues argued, will also assist others with the same claims.

CONCLUSION

WHITLOW asks that his Certiorari be Granted.

Submitted by, Thomas Whitlow as Pro-Se Dated 11/16 2018.

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