

18-7207

No. (Clerk to Supp) ORIGINAL

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

In re: Andrew James Johnston,
Petitioner.

Petition For Writ of Prohibition To
The Seventh Circuit Court of Appeals

Andrew Johnston

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SUPREME COURT, U.S.

November 30, 2018

Questions Presented

1. Will this Court exert the revisory appellate power by way of writ of prohibition to the Seventh Circuit Court of Appeals that prohibits the following:

(a) The Seventh Circuit from allowing the district court to dispense with petitioner's criminal trial absent proof of service of: (6) outstanding subpoenas duces tecum by the U.S. Marshal Service filed on the docket below (the returns from the subpoenas are material to petitioner's alibi/unavailability defense);

(b) The Seventh Circuit from allowing the district court to dispense with petitioner's criminal trial without acceptance of clear and convincing legal evidence from the Illinois Secretary of State's Executive Counsel/Inspector General that no Federal Deposit Insurance Corporation insurance policy was on file in July 2017, and thus no federal jurisdiction below;

(c) The Seventh Circuit from allowing the district court to hold petitioner in pretrial detention without opposition to petitioner's release from the Government (on November 29, 2018) (Government did not take position of "flight risk" nor "danger to community," but district court still detains petitioner to date); and from allowing the district court to dispense with petitioner's trial with petitioner in pretrial detention without opposition to pretrial release;

to confine the inferior court to a lawful exercise of its jurisdiction and compel the exercise of its authority as its duty?

List of Parties

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

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Appendix F

In The
Supreme Court of the United States
Petition For Writ of Prohibition

Petitioner respectfully prays that a writ of prohibition issue to confine the inferior court below to a lawful exercise of its prescribed jurisdiction, and for of compelling it to exercise its authority when it is its duty to do so.

Opinions Below

The opinion of the United States court of appeals appears at Appendix A to the petition and is reported at Appeal No. 18-3341; or is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is reported at the Northern District of Illinois, Case No. 1:17-cr-517, Sct. No. 12617; or is unpublished.

Jurisdiction

The date on which the United States Court of appeals decided my case was October 30, 2018.

A timely petition for rehearing was denied by the United States Court of appeals on November 26, 2018, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a).

Constitutional And Statutory Provisions Involved

Fourth Amendment guarantee to be secure in one's person.
18 U.S.C. § 3142(b); § 3142(c); and § 3142(j).

Sixth Amendment right to compulsory process for obtaining witnesses in one's favour.
Federal Rule of Criminal Procedure 17(c).

Tenth Amendment expressed limit on national government's power to invade State Sovereignty for criminal prosecution.
Separation-of-powers / Checks-and-balances doctrines.

Equity will not aid a volunteer, equity aids the vigilant, not those who slumber on their rights.

Statement of the Case

(7) highly specific, material, and relevant subpoenas duces tecum have not generated any proof of their service by the U.S. Marshal nor U.S. Postal Service since April 2018 in the district court. The returns are vital to petitioner's alibi and/or unavailability defense in the event of a trial. Please see Appendix E and appeal no. 18-3311, 'petition for writ of mandamus,' Exhibits A-M.

On November 21, 2018, petitioner received Appendix E-2 from the Illinois Secretary of State Executive Counsel/Inspector General without any proof of service, and by regular mail opened prior to petitioner's receipt. Curiously, Appendix E-1 commanded the attendance and production of the witnesses on October 23, 2018, Appendix E-2 states the "Subpoena" was received November 1, 2018.

Setting off Appendix E-1 and E-2, petitioner strictly observes (6) subpoenas (Appendix E-3 through E-7) have no proof of service since April 2018, which non-service has compromised at least (3) trial dates with not one preliminary/suppression/evidentiary hearing nor pretrial release. The docket below in the district court thoroughly shows that since May 2018 the district court has been put on notice of the non-service, and has done nothing to remedy the situation despite multiple motions/requests.

Most recently on November 26, 29, 2018, the district court expressed its desire to force petitioner to stand trial on January 8, 2019 with no service of the subpoenas, i.e., no defense witnesses nor evidence to present to prove petitioner's alibi/unavailability at the time of the alleged offense - despite formally approving the defense on May 17, 2018. Also, on November 29, 2018 there was no objection nor opposition that petitioner is a "danger to community" nor "flight risk" from the government, but the district court continues to detain petitioner to date without reason.

Reasons For Granting The Petition

The States have broad authority to enact legislation for the public good - what this Court has often called a "police power." United States v. Lopez, 514 U.S. 549, 567 (1995). The Federal Government, by contrast, has no such authority and "can exercise only the powers granted to it," McCulloch v. Maryland, 17 U.S. 316, 4 Wheat. 316, 405 (1819), including the power to make "all Laws which shall be necessary and proper for carrying into Execution" the enumerated powers, U.S. Constitution, Article I, § 8, clause 18.

Additionally, "[c]ongress cannot punish felonies generally." Cohens v. Virginia, 19 U.S. 264, 6 Wheat. 264, 428 (1821). A criminal act committed wholly within a State "cannot be made an offence against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States." United States v. Fox, 35 U.S. 670, 672 (1878). Thus, jurisdiction for a federal criminal allegation under 18 U.S.C. § 2113(a) does not exist absent a showing, as a threshold matter and question of law (upon petitioner's challenge) of an insurance policy on file with the Secretary of State between the Federal Deposit Insurance Corporation and the alleged victim bank.

Prohibition at this juncture aids the Court's appellate jurisdiction by prohibiting the seventh circuit from allowing the district court to continue exceeding its prescribed jurisdiction, and in turn compels the seventh circuit to compel the district court to exercise its authority as its duty. Ex Parte Republic of Peru, 318 U.S. 578, 583-584 (1943). Petitioner has sought mandamus relief without success three times this year, and is without a remedy in any other court.

Reasons For Granting The Petition (Continued)

With respect to the Fourth Amendment claim presented herein, petitioner incorporates by reference the 'Motion For Release From Custody Pending Trial And Memorandum of Law' filed in the seventh circuit which appears in Appendix A. Petitioner also offers the fact that on November 29, 2018, the government had no objection nor opposition to petitioner's release pending trial, but the district court still detains petitioner without reason.

Furthermore, with respect to the Sixth Amendment claim presented herein, petitioner incorporates by reference the 'Petition For Writ of Mandamus' filed in the seventh circuit which appears in Appendix A, and the exhibits A-M attached thereto.

Conclusion

The petition for a writ of prohibition should be granted.

Respectfully Submitted,

Andrew Johnston

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November 30, 2018