

No.

IN THE
SUPREME COURT OF THE UNITED STATES

SCOTT SMITH

— PETITIONER

vs.

SHANE JACKSON, WARDEN

— RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH

PETITION FOR WRIT OF CERTIORARI

Scott Smith, *In Pro Se*
LRF 883833

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QUESTION PRESENTED

WAS PETITIONER DENIED HIS FUNDAMENTAL AND CONSTITUTIONAL RIGHT TO DUE PROCESS AS GUARANTEED UNDER BOTH STATE AND FEDERAL CONSTITUTIONS, WHEN THE FEDERAL SIXTH CIRCUIT COURT OF APPEALS NOT ONLY DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, BUT ALSO APPROVED THE LOWER COURT'S DEPARTURE, WHICH CALLS FOR THIS HONORABLE COURT'S EXERCISE OF SUPERVISORY POWER TO CORRECT THIS MANIFEST INJUSTICE?

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

all parties to the proceeding in the court whose judgment is the subject of this

Michigan Attorney General

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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.

OPINION BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 15, 2018. The jurisdiction of this Court is invoked under **28 U.S.C. §1254(1)**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Const, Am V – No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

US Const, Am VI – In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

US Const, Am XIV, Section 1 – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Supreme Court Rule 10 – Considerations Governing Review on Certiorari –

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power,

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. [Emphasis added].

STATEMENT OF THE CASE

Petitioner respectfully submits that the Sixth Circuit Court of Appeals abused its discretion when it departed from the accepted and usual course of judicial proceedings, and then, approved such a departure by the lower court – which invokes this Honorable Court’s supervisory power to correct a manifest injustice.

The case at issue is the violation of the 180-day rule that Petitioner faced while incarcerated on an unrelated felony conviction. Throughout his criminal proceedings in the State Trial Court, Petitioner, in a separate motion hearing, argued that the State lost jurisdiction when it violated the precepts of the 180-day rule. The Trial Court, although impressed with Petitioner’s argument, opted to follow the prosecution’s position and ignored the statutory and constitutional mandates involved.

The State Appellate Courts did not address the issue, but gave a one-liner ruling upholding Petitioner's conviction. Thus, the issue was not only preserved but exhausted for Federal review.

The applicable 180-day rule in Michigan states:

MCL 780.131 – Notice of untried warrant, indictment, information, or complaint; notice of place of imprisonment; request for final disposition; statement; delivery by certified mail; applicability of section – (1) Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice shall be delivered by certified mail. (2) This section does not apply to a warrant, indictment, information, or complaint arising from either of the following (a) A criminal offense committed by an inmate of a state correctional facility while incarcerated in the correctional facility. (b) A criminal offense committed by an inmate of a state correctional facility after the inmate has escaped from the correctional facility and before he or she has been returned to the custody of the department of corrections.

MCL 780.132 – Request; notice to prisoners – The department of corrections shall notify each prisoner of any request forwarded under the provisions of section 1 [MCL 780.131] of this act.

MCL 780.133 – Failure to prosecute; dismissal with prejudice – In the event that, within the time limitation set forth in section 1 [MCL 780.131] of this act, action is not commenced on the matter for which request for disposition was made, no court of this state shall any longer have jurisdiction thereof, nor shall the untried warrant, indictment, information, or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

The mandates of the above quoted rules were not complied with by Michigan Officials. These Officials over this Ward of the State violated the mandate in **Bail Bond Forfeiture**, 496 Mich 320, 323; 852 NW2d 747 (2014), where the Michigan Supreme Court ruled, “when a statute provides that a public officer shall undertake some action within a specified period of time, and that period of time is provided to safeguard another’s rights … it is mandatory that such action be undertaken within the specified period of time and stating that noncompliant public officers are prohibited from proceeding as if they had complied with the statute.”

The State’s violation of the rules cost the State jurisdiction over Petitioner, the only remedy being dismissal of the pending charge. As such, Petitioner invoked the ruling in **Marbury v. Madison**, 5 U.S. 1 137, 163 (1 Cranch 137) 2 L.Ed. 60, 69 (1803), where this Court held that, “It is a general and an indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded. … For it is a

settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress.”

The State’s inaction and the lower Federal Courts’ erroneous decisions that this constitutional issue was only a “State” issue resulted in the taking of Petitioner’s liberty in a manner inconsistent with due process of law as espoused in ***Antoine v. Atlas Turner, Inc.***, 66 F.3d 105, 108 (6th Cir. 1995), and holding that, “A judgment is void under 60(b)(4) ‘if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.’” ***In re Edwards***, 962 F.2d 641, 644 (7th Cir. 1992). ”

See further this very Court’s ruling in ***Arbaugh v. Y & H Corp.***, 546 U.S. 500, 506-507, 514, 126 S.Ct. 1235, 1240, 1244, 163 L.Ed2d 1097, 1104-1105, 1109 (2006), where this Court held: “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. See ***Kontrick v. Ryan***, 540 U.S. 443, 455, 124 S.Ct. 906, 157 L.Ed2d 867 (2004). ... Subject matter jurisdiction, because it involves a court’s power to hear a case, can never be forfeited or waived. ***United States v. Cotton***, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed2d 860 (2002). Moreover, courts, including this Court, have an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party. ***Ruhrgas AG v. Marathon Oil Co.***, 526 U.S. 574, 583, 119 S.Ct. 1563, 143 L.Ed2d 760 (1999).”

The Sixth Circuit Court of Appeals and the lower Federal Courts have taken a position that is far removed from the original Sixth Circuit decision rendered in **Trigg v. Tennessee**, 507 F.2d 949, 954 (6th Cir. 1974), which adopted this Honorable Court's decision in **Moore v. Arizona**, 414 U.S. 25, 94 S.Ct. 188, 38 L.Ed2d 183 (1973), and expounding on the fact that the 180-day rule for a prisoner with a pending detainer has constitutional implications under the 14th Amendment. It was this Court's very holding in **Moore**, adopting the reasoning of **Barker v. Wingo**, 407 U.S. 514, 533, 92 S.Ct. 2182, 33 L.Ed2d 101 (1972), where this Court held:

"Because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in speedy trial is specifically affirmed in the constitution." **Id.**, **Moore**, 414 U.S. at 26, 94 S.Ct. at 189-190, 38 L.Ed2d at 186.

Yet, by the time Petitioner appealed to the Sixth Circuit in 2018, that Court seemed to have forgotten its mandate; thus, denying Petitioner of Due Process, claiming that Petitioner's 180-day rule issue was only a "State" issue.

The Sixth Circuit ignored its mandate; especially when considering that this issue is not a State issue, but rather a constitutional issue because Petitioner's very liberty is at stake. What makes this issue so egregious is the fact that since, **Trigg v. Tennessee, supra**, the Sixth Circuit upheld both **Moore v. Arizona, supra** and **Trigg**, in the cases of **Cain v. Smith**, 686 F.2d 374, 380-381 (6th Cir. 1982); **Atkins v. Michigan**, 488 F.Supp 402, 409-410 (E.D. Mich. 1980); **Takacs v. Engle**, 768 F.2d 122, 127-128 (6th Cir. 1985) and

most recently in 2016 in ***United States v. Sutton***, 184 F.Supp2d 503, 513-514 (E.D. KY, 2016).

The Sixth Circuit mandate was corrupted by its own doings and that of the lower Federal courts. As a result, under AEDPA, the Sixth Circuit Court of Appeals and the lower Federal Courts decided this issue in a manner that is contrary to, or an unreasonable application of clearly established law as determined by the United States Supreme Court espoused in ***Williams v. Taylor***, 529 U.S. 362, 397, 120 S.Ct. 1495, 1515, 146 L.Ed2d 389 (2000).

As such, Petitioner avers that what has occurred is also is contrary to the doctrine of fundamental fairness as espoused in ***Blackburn v. Alabama***, 361 U.S. 199, 206, 80 S.Ct. 274, 280, 4 L.Ed2d 242 (1960), citing ***Lisenba v. California***, 314 U.S. 219, 236, 62 S.Ct. 280, 290, 86 L.Ed 166 (1941), and in ***Rochin v. California***, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed 183 (1952).

Petitioner believes that he has established that he was denied his constitutional right to due process of law under this Honorable Court's mandates argued herein.

REASONS FOR GRANTING THE PETITION

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. The petition for a writ of certiorari should be granted as Petitioner was denied his fundamental constitutional due process rights and protections.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Dated: December 10, 2018

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