

No. 18-7898

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 24 2018
OFFICE OF THE CLERK
SUPREME COURT U.S.

Latwang Janell Reid ElBey
EX. REL. LATWANG JANELL REID - PETITIONER

VS.

STATE OF NORTH CAROLINA et al;
ERIK A. HOOKS SECRETARY FOR NORTH
CAROLINA DEPARTMENT OF PUBLIC SAFETY - RESPONDENTS
PRISONS.

ON PETITION FOR WRIT OF CERTIORARI TO

WILSON COUNTY SUPERIOR COURT

PETITION FOR WRIT OF CERTIORARI

Latwang Janell Reid ElBey
EX. REL. LATWANG JANELL REID

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Question(s) Presented

- 1.) Did Judge MILTON F. FITCH, JR. err by denying the petitioner the right to a hearing and the opportunity to be heard when the petitioner filed for a show cause order with the Motion for a Preliminary Injunction / Temporary Restraining Order.
- 2.) Did Judge MILTON F. FITCH, JR. Commit an "abuse of discretion" by entering a "judgement" Upon a "writ of habeas corpus" while denying the petitioner a hearing and the opportunity to be heard when the petitioner is challenging the illegal detention of his imprisonment and the courts jurisdiction
- 3.) Did Judge MILTON F. FITCH, JR. err by entering a judgement that is clearly in "Conflict of Interest" with the "summons" issued by the clerk of court ordering the defendants to answer the plaintiff's complaint within (30) days after proper "service of process" had been executed.

LIST OF PARTIES

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 judgement is the subject of this petition is as follows:

THE HONORABLE MILTON F. FITCH, JR.

THE HONORABLE WALTER H. GODWIN, JR.

DANIEL M. HORNE JR., Clerk

Morgan, J.

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TABLE OF AUTHORITIES CITED

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IN THE
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PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For Cases from State Courts

The opinion of the highest state court to denying discretionary review appears at Appendix C to the petition.

The opinion of the North Carolina appeals Court denying discretionary review appears at Appendix B to the petition.

JURISDICTION

For cases from state courts :

The date on which the highest state court decided and or denied discretionary review in my case was the 5th day of June 2018. A Copy of that decision appears at Appendix C.

The jurisdiction of this Court is invoked under the United States Constitution Article 3 section 2. and also 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION(S)

Article 1. section 9 clause 2.

Article 3. section 2.

5th Amendment

14th Amendment

UNITED STATES CODE(S)

28 U.S.C. § 1257(4).

NORTH CAROLINA CONSTITUTION

Article 1. section 21.

Article 4. Section 13 (1).

STATEMENT OF THE CASE

- 1.) On the 20th day of November 2017 the petitioner filed a civil action With the Superior Court Clerks office Wilson County, attached was a show Cause order; "Motion for preliminary injunction", and a "Temporary restraining Order"; on the 15th day of December 2017 the presiding judge MILTON F. FITCH, JR. entered a judgement ordering that the motion be summarily denied see: Appendix A.
- 2.) On the 1st day of Janurary 2018; the petitioner filed a notice of appeal With the Superior Court Clerks office Wilson County. See: Appendix D
- 3.) On the 31st day of January 2018, petitioner filed a motion to be deemed as an indigent for appeal purposes, and a motion for an extension of time to file the proposed record on appeal with the Superior Court Clerks office Wilson County; On the 29th day of March 2018; The presiding judge WALTER H. GODWIN, JR. entered a order denying said motion. See: Appendix E

4.) On the 15th day of April 2018 the petitioner filed Motions to be deemed indigent for appeal purposes, and for an extension of time to file the proposed record on appeal with the clerk's office of the North Carolina Court of appeals on the 20th day of April 2018 the clerk of the North Carolina Court of appeals entered an order dismissing the motions. See: Appendix F

5.) On the 8th day of May 2018 the petitioner filed a "Motion for Temporary stay", "a Writ of Supersedeas", and a "Writ of Certiorari" with the Clerk of the North Carolina Court of appeals; on the 9th day of May 2018 the clerk entered a order denying said Motion and Writs. See: Appendix B

6.) On the 1st day of June 2018 the petitioner filed a Writ of Certiorari With the Supreme Court of North Carolina to review the order issued by the North Carolina Court of appeals. On the 5th day of June J. Morgan entered a order denying said Writ of Certiorari. See: Appendix C

REASONS FOR GRANTING THE PETITION

On the 20th day of November 2017 the petitioner properly commenced a civil action with the Superior Court Clerks office Wilson County this filing is in direct accordance with the Constitution for the State of North Carolina Article 4 Judicial, Section 13(1); the United States Constitution Article 3 (1) and (2). It was also done in direct accordance with N.C.G.S. § 1A-1 Rule 4 by filing a summons and complaint with the clerk in which there was also attached a "Show Cause Order" for a "preliminary injunction" and "Temporary restraining order" which was filed in accordance with N.C.G.S. § 1A-1 Rule 65; on the 15th day of December 2017 the presiding Judge MILTON F. FITCH, JR. entering a judgement ordering that the petitioners Motion in which he clearly states is a writ of habeas corpus be summarily denied, this is clearly an "abuse of discretion" by Judge FITCH because it denied the petitioner the afforded right to an hearing and denied him the "opportunity to be heard" which is in violation of "Due process of law" which violates the 5th amendment of the United States Constitution by way of the 14th amendments "equal protection of the laws clause". It's also a clearly known fact that a SHOW CAUSE ORDER calls for an answer and appearance See: BLACK'S LAW DICTIONARY 6th edition quoting from BLACK'S LAW DICTIONARY abridged 7th edition, Show-Cause order. An order directing a party to appear in court and explain why the party took (or failed to take) some action or why the court should or should not grant some relief.

It is also a known fact that the preliminary injunction calls for a hearing in direct accordance with N.C.G.S. § 1A-1 Rule 65, even if the court was to issue an ex parte temporary restraining order the purpose of the temporary restraining order, issued ex parte is to preserve the status quo pending a full hearing. *Huff v. Huff*, 69 N.C. App. 447, 317 S.E. 2d 65 (1984). An ex parte restraining order is subject to definite time limitations, and is intended to preserve the status quo until the motion for an preliminary injunction can, after notice be brought on for hearing and decision. *Lambe v. Smith*, 11 N.C. App. 580, 181 S.E. 2d 763 (1971). Furthermore judge FITCH made it clear that his judgement is upon a writ of habeas corpus. See: Appendix A. It is a known fact that the habeas Corpus is a valid statute stating "you have the body" and in its self is an order for a prisoner to be brought back before a court or judge to challenge the legality of his imprisonment or detention, see: BLACK'S LAW DICTIONARY 6th edition quoting BLACK'S LAW DICTIONARY abridged 7th edition, Habeas Corpus. [Law Latin "that you have the body"] A writ employed to bring a person before the court, most frequently to ensure that the party's imprisonment or detention is not illegal (habeas Corpus ad subjiciendum). Also quoting BLACK'S LAW DICTIONARY abridged 7th edition, Habeas Corpus ad subjiciendum [Law Latin "that you have the body to submit to"] A writ directed to someone detaining another person and commanding that the detainee be brought to court. USU. Shortened to habeas corpus. Further quoting BLACK'S LAW DICTIONARY abridged 7th edition, Habeas Corpus Act. (2) A statute deriving ultimately from the english statute and enacted in the United States as a Constitutional guaranteed of personal liberty; Therefore Article 1 section 9 Clause 2 of the United States Constitution, and Article 1 section 21 of the North Carolina Constitution are in direct accordance

With the habeas corpus act and shows an "abuse of discretion" by judge FITCH who has clearly entered a judgement upon a writ of habeas corpus while denying the petitioner the afforded right to a hearing and clearly denying him the "opportunity to be heard" this is a direct violation of "due process of law" and violates the 5th amendment of the United States Constitution in accordance with the "equal protection of the law" clause in the 14th amendment of the United States Constitution. It is also another known fact that the judgement entered by judge FITCH is in a direct "conflict of interest" with the "SUMMONS" issued by the Clerk which is in direct accordance with N.C.G.S. § 1A-1 Rule 4. PROCESS and clearly violates "due process of the law" and the "equal protection of the laws" protected by the 5th and 14th amendments of the United States Constitution; because it denied the petitioner the afforded right to apply to the Court for the relief "DEMANDED" in the Complaint after proper "Service of process" has been served upon the defendants and they failed to answer; When the petitioner has clearly given notice to the defendants in accordance with N.C.G.S. § 1A-1 Rule 4 and affords the petitioner the right to apply to the Court for the relief "DEMANDED" in the Complaint which is also in accordance with N.C.G.S. § 1A-1 Rule 4 by way of a "MOTION FOR DEFAULT JUDGEMENT." It is well known that the limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgement may not be rendered in violation of those Constitutional limitations and guarantees. *Hanson v. Denckla*, 357 U.S. 235, 2 L. Ed. 2d 1283, 78 S. Ct. 1228. A judgement may not be rendered in violation of Constitutional protections. The validity of a judgement may be affected by failure to give the Constitutionally required due process notice and opportunity to be heard. *Earle v. Mc Veigh*, 91 U.S. 503, 23 L. Ed. 398. See also *Restatements, Judgements* 4 (b).

Prather v. Loyd, 86 Idaho 45, 382 P. 2d. 910. It is a fundamental doctrine of law that a party to be affected by a personal judgement must have his day in court, and an opportunity to be heard. Renaud v. Abbott, 116 U.S. 277, 29 L. Ed. 629, 6 S. Ct. 1194. Every person is entitled to an opportunity to be heard in a court of law upon every question involving his right or interest, before he is affected by any judicial decision on the question. Earle v. Mc Veigh, 91 U.S. 503, 23 L. Ed. 398. A judgement of a court without hearing the party or giving him the opportunity to be heard is not a judicial determination of his rights. Sabariego v. Maverick, 124 U.S. 261, 31 L. Ed. 430, 8 S. Ct. 461, and is not entitled to respect in any other tribunal. A void judgement does not create any binding obligation. Federal decisions addressing void state court judgements include Kalb v. Feuerstein (1940) 308 U.S. 433, 60 S. Ct. 343, 84 L. Ed. 370; Ex parte Rowland (1882) 104 U.S. 604, 26 L. Ed. 861.

CONCLUSION

The petition for a writ of Certiorari should be granted for the above stated reasons as follows: That the petitioner was denied the afforded right to a hearing and the opportunity to be heard which violates due process of the law and equal protection of the laws; and also denied the petitioner the right to apply to the court for the relief demanded in his Complaint.

Respectfully Submitted,

Anthony J. R. R. R. R.

10-11-2018