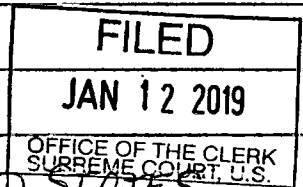


No. 18-8246

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



In re: DENNIS D. JACKSON - PETITIONER

VS.

BRIAN COOK - WARDEN - RESPONDENT

ON PETITION FOR WRIT OF HABEAS CORPUS

DENNIS D. JACKSON # 645-759

5900 B.I.S. RD.

LANCASTER, OH 43301

## QUESTIONS PRESENTED

1. MUST A PETITIONER WHO REMAINS IN CUSTODY IN VIOLATION OF HIS 5<sup>th</sup> AND 14<sup>th</sup> AMEND. U.S. CONST. RIGHTS AND U.S. FEDERAL LAW AS SET FORTH BY U.S. SUPREME COURT PRECEDENCE BE IMMEDIATELY DISCHARGED WHEN AN OHIO CREATED STATE LAW WHICH AFFORDS PETITIONER PROTECTED LIBERTY INTEREST IS VIOLATED BY THE STATE CAUSING A CONTINUING INJURY TO PETITIONER'S PROCEDURAL DUE PROCESS RIGHTS?
2. DOES A STATE COURTS VIOLATION OF U.S. SUBJECT-MATTER JURISDICTIONAL LAW IMPOSE A CONTINUING VIOLATION OF PETITIONER'S 5<sup>th</sup> AND 14<sup>th</sup> AMENDMENT, PROTECTED LIBERTY INTEREST, DUE PROCESS AND EQUAL PROTECTION OF LAW?
3. DID DEFENSE COUNSEL'S FAILURE TO INVESTIGATE, FILE, AND LITIGATE A MOTION TO DISMISS AT PETITIONER'S REQUEST DUE TO PRE-TRIAL FAST AND SPEEDY TRIAL VIOLATION PURSUANT OHIO LAW, WHICH MERITORIOUS, SHOW DEFICIENT PERFORMANCE, AND PREJUDICE HIS 5<sup>th</sup>, 6<sup>th</sup>, AND 14<sup>th</sup> AMEND. U.S. CONST. RIGHTS?

## LIST OF PARTIES

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

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## CONSTITUTIONAL AND STATUTORY RULES INVOLVED

U.S. Const. Amend. I, provides: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. V, provides: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury... 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 case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...

U.S. Const. Amend. VI, provides: 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... to have compulsory ~~process~~ process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defence.

U.S. Const. Amend. XIV, provides: 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  
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IN THE  
SUPREME COURT OF THE  
UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a Writ of Habeas Corpus issues granting him immediate discharge after review of the Subject-matter jurisdiction of the judgment below.

OPINIONS BELOW

For cases from state Courts:

The opinion from the highest state Court to review the issue of Subject matter jurisdiction appear at Appendix C to the petition and has been published at N/A.

The opinion of the Second District Appellate Court, Ohio, appears at Appendix A to the Petition and is reported at State v. Jackson, 2012-Ohio-2335, 2012 Ohio App. LEXIS 2057.

## JURISDICTION

For cases from State Courts:

The date from which the highest state court decided my case was May 25, 2012.

A copy of that decision appears at Appendix A, in pertinent part.

The judgment in which Petitioner challenges subject-matter jurisdiction is Montgomery County, Ohio Court of Common Pleas, Case No. 2010-CR-1126.

A copy of decision in respect to his 90 day fast and speedy trial, by trial court appear at Appendix R.

The highest state court was presented with this issue, and decided it, June 6, 2018.

The jurisdiction of this Court is invoked under 28 U.S.C. 2241; 28 U.S.C. 2254(a); 28 U.S.C. 1651(a)

### STATEMENT OF FACTS:

Petitioner presents a set of exceptional circumstances concerning subject matter jurisdiction, which this court having the final say has held cannot be forfeited or waived, which affects all courts power and authority to declare law in a cause, which warrant the exercise of this court's discretionary powers as adequate relief cannot be obtained by the highest Court of the State of Ohio, or by permission of the U.S. Sixth Circuit Court of Appeals to file a successive habeas Corpus Petition by a Petitioner in custody in violation of his U.S. Const. rights.

Upon finding subject-matter jurisdiction could be challenged at any time. Defendant filed a state habeas Corpus Petition in the Ohio Supreme Court, informing the highest court in the State, he was in custody in violation of Ohio Statutory law, Ohio Const., U.S. Supreme Court precedence and the 1<sup>st</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendment rights of the U.S. Const. See Appx. C; Q

The Ohio Supreme Court's C.J., Maureen O'Connor, denied Sua sponte, said Petition without an opinion, or by stating that her judgment rested on adequate independent state grounds.

Defendant filed a timely motion in United States Sixth Circuit Court of Appeals, requesting permission to file a

Second-successive habeas corpus Petition to bring forth Subject jurisdiction matters, with as well as other matters See Appx. D Which the Sixth Circuit Court denied on December 10, 2018. See Appx. D

On 4/5/2010, Petitioner was arrested and charged in Mont. Co. Court of Common Pleas Case No. 2010-CR-11216, See Appx. E and held in custody indefinitely. On 4/28/2010 defense counsel requested a continuance of the 5/5/2010 scheduling conference until 5/19/2010, as previously set by the state. See Appx. F

On 5/19/2010 defense counsel motioned for a motion to suppress, in which was had on 7/7/2010, in which the trial Court sua sponte continued such until 7/28/2010, by placing matters in respect to a decision back on the Court's docket, without request or consent from defense counsel. See Appx. H And without filing an order of continuance, as required by the Ohio Supreme Court mandate. See Appx. O Showing as to what party such continuance was chargeable, and for what reasons, and length of time of said continuance. An order the Montgomery County, Court of Common Pleas failed to file at all in the present case. See Appx. I

Before defendant/Petitioner's September 20, 2010 trial date, he requested several times that counsel file a motion to dismiss on

Speedy trial violation, Counsel refused. On the first day of trial on September 20, 2010, Petitioner again requested Counsel to place on the record before the start of trial, a oral motion to dismiss, which he again refused.

After State's witness mentioning of the taking of a polygraph test, without stating the results of such, as the state still could not locate what the State called it's material witness the Court granted defense counsel's motion for a mistrial on September 23, 2010. See Appx. J

Petitioner in custody at all times, finally being able to locate an Ohio Revised Code, through a handwritten motion requested the Court to dismiss due to a violation of his 90 day fast and speedy trial rights, see Appx. K after being provided a copy of trial Counsel's motion titled "Motion to Dismiss Following Mistrial", which argued all issues in a after mistrial pretext. Which according to Ohio's law concerning mistrial's, that such is only a continuance of the previous trial. Petitioner's November 4, 2010 Motion to Dismiss was timely. See Appx. L

During a hearing provided by the trial Court, in respect to Counsel's Motion to Dismiss in respect to double jeopardy, and Petitioner's Motion to Dismiss in respect to pre-trial fast and speedy trial violation, the trial Court in it's

In its misstep and overlooking did not calculate days as a whole tolled against either party, did not toll the days from its sua sponte continuance against the State of Ohio, nor did the trial Court take notice that it failed to, as required by Ohio law, promulgated by the Ohio Supreme Court, see Appx. R, to file an order of continuance for its July 7, 2010 sua sponte continuance during Petitioner's Motion to Suppress hearing. The Court also failed to apply Ohio law at all, or even acknowledge the requirements of the law it presumably considered in its denial without facts or conclusion, or a showing it strictly construed such law against the state of Ohio as mandated in such situation.

On Direct Appeal, appellate counsel, as trial counsel had done, arguing Petitioner's speedy trial claim in a after mistrial pretext, failing also as trial counsel to investigate review, and litigate fact as presented by Mont. Co., Clerk of Court docket in Case No. 2010-CR-11216, that the trial Court failed to file any order of continuance, in respect to Petitioner's Motion to Suppress hearing continued from 7/7/10 until 7/28/10, without regard of requesting party.

Appellate Court during review failing to conduct as required by law a de novo review of trial court record, its exercise of reasonable application of ORC 2945.71-73, and Mont. Co., Clerk of Court docket in Case No. 2010-CR-11216

Second District Courts acts of not calculating all days and continuances leading up to his September 20, 2010 trial date, Circumvents and exchanges a Courts mandatory duty to strictly construe Ohio's speedy trial rights against the state of Ohio with that of a presumption, Violating the process due by requirement of a de novo review in respect to Ohio's 90 day fast and speedy affording Petitioner protected liberty interest pursuant U.S. Const.

Petitioner asserts 102 days passed between his arrest, all motions, and continuances made in Case No. 2010-CR-1126 which could be tolled against the state, up until September 20, 2010. Which the state during habeas Corpus action in Appx. C, and Appx. Q has failed to rebut.

Petitioner calculates and includes time, as if tolled against the state of Ohio for the trial Courts sua sponte Continuance, and failure to file the mandated order of Continuance at all in this case, before expiration of his 90 days fast and speedy and computes the time as now set forth.

1. April 6-31, 2010 (25 days)
2. May 1-4, 2010 (4 days)
3. May 5, 2010 (Scheduling Conference continued until May 19, 2010) (0 days)
4. May 19, 2010 (Filing of Motion to Suppress, set for July 7, 2010) (0 days)
5. July 7, 2010 (Oral Motion to Suppress hearing, and sua sponte Continuance of trial Court's placement of Motion to Suppress, back on docket for decision until July 28, 2010) (0 days)
6. July 8-27, 2010 (20 days charged against the state for trial Court's continuance / failure to file order of Continuance) (20 days)
7. July 29-31, 2010 (3 days)
8. August 1-31, 2010 (31 days)
9. September 1-19, 2010 (19 days)

In respect to defense counsel's April 28, 2010 continuance of the state's 5/5/10 Scheduling Conference, dates 4/28/10 - 5/5/10 respectively are not tolled against Petitioner as it did not affect the state's set date of 5/5/10 until the date of 5/5/10.

## REASONS FOR GRANTING THE WRIT

### CLAIM I.

MUST A PETITIONER WHO REMAINS IN CUSTODY IN VIOLATION OF HIS 5<sup>th</sup> AND 14<sup>th</sup> AMEND. U.S. CONST. RIGHTS AND U.S. FEDERAL LAW AS SET FORTH BY U.S. SUPREME COURT PRECEDENCE BE IMMEDIATELY DISCHARGED WHEN AN OHIO CREATED STATE LAW WHICH AFFORDS PETITIONER PROTECTED LIBERTY INTEREST IS VIOLATED BY THE STATE CAUSING A CONTINUING INJURY TO PETITIONERS PROCEDURAL DUE PROCESS RIGHTS?

The Sixth Circuit, U.S. Court of Appeals, has held that "Ohio legislature granted Petitioner a liberty interest when it required he be tried within 90 days of his arrest pursuant ORC 2945.71-73" and that "This liberty interest cannot be denied without due process of law". See *Johnson v. Overberg*, 639 F.2d 326 (6<sup>th</sup> Cir.) at [x\*4]. See Appx. also see Appx.

This Court in respect to procedural due process has held that procedural due process rights are only violated when a protected liberty interest is denied without adequate hearing. Thus in order to succeed on this claim, Defendant's must show (1) that it was deprived of a protected liberty or property interest, and (2) that such deprivation

occurred without the requisite due process of law". See Bd. of Regents v. Roth, 408 U.S. 564, 570, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1971) (quoting Bell v. Burson, 402 U.S. 535, 542, 91 S. Ct. 1586, 29 L. Ed. 90 (1971)). The 5<sup>th</sup> and 14<sup>th</sup> Amend. of the U.S. Const., in respect to procedural due process requires a "full and fair" hearing appropriate to the nature of the case. See Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

Here Petitioner was not provided a full and fair hearing, as required by the 5<sup>th</sup> and 14<sup>th</sup> Amend. of the U.S. Const. While such was conducted in a meaningful time, it was not conducted in a meaningful manner. Either at trial or Appellate level.

Petitioner further asserts Montgomery County, Ohio, Court of Common Pleas, like U.S. Federal District Courts, is a Court of limited jurisdiction. See e.g. Loudermill v. Cleveland Bd. of Education, (6<sup>th</sup> Cir.), 721 F.2d 550, noting "The Court of Common Pleas in Ohio, although a trial Court, is a Court of limited jurisdiction. Ohio Const. art. IV., Section 1". As such there is no presumption in favor of jurisdiction, which furthers the basis that jurisdiction must be affirmatively shown. See Hanford v. Davies, 163 U.S. 273, 16 S. Ct. 1051, 41 L. Ed. 157; Smith v. McCullough, 270 U.S. 456, 46 S. Ct. 338, 70 L. Ed. 682.

Under Ohio law, where the state fails to rebut a prima facie showing of a violation of ORC 2945.71-73, the burden shifts to the state to produce evidence showing jurisdiction exists. See *State v. Butcher*, 27 Ohio St. 3d 28, 500 N.E. 2d 1368. Federal law as clearly established by this Court requires nothing less. See e.g. *McNutt v. G.M.A.E.*, 298 U.S. 178, 56 S. Ct. 780, 80 L. Ed. 1135, holding if facts challenging jurisdiction are set forth, the burden rests upon the party claiming jurisdiction to demonstrate that jurisdiction over a cause and subject exist. Ohio Appellate Courts recognize a trial Court loses jurisdiction over a cause when it violates ORC 2945.71-73. See e.g. *City of Cincinnati v. Rogers*, 1976 Ohio App. LEXIS 7221 at [\*4], and reprosecution of said cause is barred. See ORC 2945.73 (D).

A trial Court which violates Ohio laws, which offend and violate U.S. Federal laws that are Constitutional in nature i.e., Subject-matter jurisdiction, and protected liberty interest, and procedural due process pursuant U.S. Const., without a full and fair hearing giving Petitioner opportunity to be heard, and reasonable application of law to facts. Petitioner is in custody in violation of U.S. Federal law and U.S. Const. rights, and must be immediately discharged.

## CLAIM II.

DOES A STATE COURTS VIOLATION OF U.S. SUBJECT-MATTER JURISDICTIONAL LAW IMPOSE A CONTINUING VIOLATION OF PETITIONER'S 5<sup>th</sup> AND 14<sup>th</sup> AMENDMENT, PROTECTED LIBERTY INTEREST, DUE PROCESS, AND EQUAL PROTECTION OF LAW?

This Court has held the term "jurisdiction means, i.e., the Court's statutory or constitutional power to adjudicate the case" that "Concept of subject-matter jurisdiction, because it involves a Court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district Court". See e.g. *U.S. v. Cotton*, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed. 2d 860.

This Court held in *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 118 S.Ct. 1003, 140 L.Ed. 2d 210, "without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is power to declare law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause", that "... if the record discloses that the lower court was without jurisdiction this Court will notice the defect..."

Finally, this Court has held a party who has invoked the jurisdiction of the Federal Court and is unhappy with its decision may indeed challenge its jurisdiction even after verdict. See e.g. *American Fire & Cas. Co. v. Fin* (1951), 341 U.S. 6, 71 S. Ct. 534, 95 L. Ed. 702, 19 A.L.R. 2d 738.

Petitioner asserts the Ohio trial and Court of Appeals obligation to notice want of jurisdiction, see e.g. *Mansfield etc. v. Swan*, 111 U.S. 379, 4 S. Ct. 510, 28 L. Ed. 462, should have prevented any further power and authority to make any determination of law in this case, which such acts of the Montgomery County, Ohio, Court of Common Pleas and Ohio Appellate Courts deprived and continue to deprive Petitioner of his 5<sup>th</sup> and 14<sup>th</sup> Amend. Const. right to liberty, due process of law, and equal protection of law.

Petitioner asserts as a indigent defendant without money to retain counsel, both trial and appellate, that such being appointed by the Montgomery County, trial court, petitioner was treated ~~disparately~~ as compared to similarly situated persons, whose paid counsel protects fundamental fairness of proceedings, and their 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendment rights of the U.S. Const., in overseeing trial court's application of, and adherence to Ohio law in matters concerning especially subject-matter jurisdiction. See e.g. *Kimmelman, et al. v.*

Morrison, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305, Id. at [\*\*\*322] holding "The Sixth Amendment mandates that the State bear the risk of Constitutionally deficient assistance of Counsel" (Citing Murray v. Carrier, post, at 488); see also Powell v. Alabama, 287 U.S. 45, Id. at 69.

Equal protection of law also provides Petitioner right to a de novo review on direct appeal, in Mont. Appeal CA 24430, by the Second District Appellate Court, Ohio, as that of similarly situated persons who by accurate calculations of days tolled against both parties and review of reasonable application of Ohio law do not have their 5<sup>th</sup> and 14<sup>th</sup> Amendment U.S. Const. rights violated. See e.g. (Ohio law in support) State v. Riley, 162 Ohio App. 3d 730, 2005-Ohio-4337 (12<sup>th</sup> Dist.); State v. Santini, 144 Ohio App. 3d 396, 402, 2001-Ohio-3313 (7<sup>th</sup> Dist.); State v. Watkins, 2014-Ohio-177; State v. Bailey, 2015-Ohio-5483 (collective cases in different appellate districts trial court's decision must be reviewed de novo, and days calculated, by appellate courts).

Finally, Petitioner asserts all courts both trial and appellate in Ohio are aware of strict law in respect to "continuances" as promulgated by Ohio Supreme Court, required to be strictly construed against the State. See e.g. State v. Mincy, 2 Ohio St. 3d 6, holding "When sua sponte granting a continuance under R.C. 2945.72 (H), the trial

Court must enter the order of continuance and the reasons therefor by journal entry prior to expiration of the Statutory time limits; Where trial Court failed to do so, Conviction, was reversed. R.C. 2945.71, 2945.72 (H). See e.g. (Ohio Appellate decisions in support of State v. Mincy, supra) State v. Ball, 66 Ohio App. 3d 224, 583 N.E. 2d 1094 (8<sup>th</sup> Dist.) (Even if continuance requested by defendant a trial Court may not wait til after expiration of speedy trial date to file journal entry); State v. Clements, 1990 Ohio App. LEXIS 5786 (12<sup>th</sup> Dist.); State v. Orril, 66 Ohio App. 3d 259, 583 N.E. 2d 1116; State v. Geraldo, 13 Ohio App. 3d 27, 13 Ohio B. 29, 468 N.E. 2d 328; State v. Silver, 57 Ohio St. 2d 1, 11 Ohio op. 3d 1, 384 N.E. 2d 710; State v. Stamper, 102, Ohio App. 3d 431, 657 N.E. 2d 365.

Both trial and appellate Courts failure to reasonably apply Ohio law, has violated and continues to injure Petitioner's U.S. Const. rights as asserted herein.

### CLAIM III.

DID DEFENSE COUNSEL'S FAILURE TO INVESTIGATE, FILE, AND LITIGATE A MOTION TO DISMISS AT PETITIONER'S REQUEST DUE TO PRE-TRIAL FAST AND SPEEDY TRIAL VIOLATION PURSUANT OHIO LAW, WHICH MERITORIOUS, SHOW DEFICIENT PERFORMANCE, AND PREJUDICE HIS 5<sup>th</sup>, 6<sup>th</sup>, AND 14<sup>th</sup> AMEND. U.S. CONST. RIGHTS?

Petitioner asserts defense counsel exerted deficient performance when he failed at petitioner's request to investigate, file, and litigate a speedy trial violation pursuant ORC 2945.71-2945.73 by written motion, and assert such orally during his September 20, 2010 trial date. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674.

Defense Counsel being requested again after mistrial and before start of new trial, during an attorney visit, prepared and filed on October 8, 2010 a motion titled "Motion to Dismiss Double Jeopardy Following Mistrial" which he presented to petitioner at that time, which argued issues in a after mistrial pretext. Petitioner soon after, in order to preserve his rights as required

by ORC 2945.71 - 73 for argument on appeal, which remain timely due to a mistrial under Ohio law, being a continuance of the previous trial. See ¶ 30 (decision, Direct Appeal CA 24430) (Citing State v. Fanning, 1 Ohio St. 3d 19, 21, 437 N.E. 2d 583.). APPX. A

During oral hearing on defense counsel's and Petitioner's motions to dismiss, trial Court and appellate Court, both failed to make findings, calculate days and apply Ohio Statutory law at all. See Townsend v. Sain, 372 U.S. 293, 320, 83 S. Ct. 745, 9 L. Ed. 2d 770 ("where state court neglects to make a factual finding, there is nothing to which the presumption can attach"); Wiggins v. Smith, 539 U.S. 510, 528, 123 S. Ct. 2527, 156 L. Ed. 2d 471.

Here Counsel failed to investigate or state on record why investigation was unnecessary in respect to petitioner's speedy trial rights, and why the only acts to preserve his rights on appeal, was by a hand written motion filed by petitioner pro se.

As such defense counsel's deficient performance has prejudiced his 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amend. U.S. Const. rights which such injury continues due to petitioner's incarceration by way of a void judgment, requiring his immediate discharge.

## CONCLUSION

This Court alone is the final arbiter of a claim of deprivation of U.S. Constitutional rights, and in extraordinary circumstances, at its discretion may accept jurisdiction to address a lack of jurisdiction in lower Courts, dismiss the cause, and discharge Petitioner. See *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (holding "Jurisdiction of any Court exercising authority over a subject may be inquired into, in every other Court when the proceeding in the former are relied upon and brought before the latter by a party claiming the benefit of such proceeding and the rule prevails whether the decree or judgment has been given, in a Court of admiralty, chancery, ecclesiastical Court, or Court of common law," or whether the point ruled has arisen under the laws of the nation, the practice of chancery, or the municipal laws of the state").

This Court may at its discretion also remand to lower Courts and require a hearing in compliance with petitioner's procedural due process, and equal protection of law.

Respectfully submitted,

December 28, 2018

Denn D. Jackson