

18-8519

Supreme Court, U.S.
FILED

MAR 19 2019

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FREDERICK BANKS — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Frederick Banks
(Your Name)

ORIGINAL

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

Did the Appeals Court and/or District Court err in denying the Petition for A writ of Error Coram nobis and Audita Querela and Affirming that denial?

Did the District Court err in denying a request during a revocation hearing in 2014 for evidence gathered against Petitioner under the Foreign Intelligence Surveillance Act?

Did the District Court and Appeals Court lack subject matter jurisdiction over the underlying criminal case when the case was not brought in the name of the Real party in Interest because it was brought under the name "United States of America" rather than "United States"?

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☒ is unpublished.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 C 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☒ is unpublished.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☐ is unpublished.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 1/9/2019.

☐ 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: 2/8/2019, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

U.S. Const. Amend V Due Process Clause
U.S. Const. Amend VI Right to Effective Counsel
28 USC § 1651 All Writs Act
50 USC § 1801, et seq
50 USC § 1806(f)

Fed. R. Crim. Proc. 12(b)

STATEMENT OF THE CASE

"In October 2004, following a jury trial in the United States District Court for the Western District of Pennsylvania, Banks was convicted of mail fraud, copyright infringement, and additional related offenses. We affirmed. See United States v. Vampire Nation, 451 F.3d 189, 192 (3d Cir. 2006). The District Court later denied Banks' motion under 28 USC § 2255, and we denied him a certificate of appealability. United States v. Banks, C.A. No. 06-3677 (order entered Dec. 17, 2007)."
United States v. Banks, 18-3091 (3d Cir. 2019) at 2.

Banks' counsel told Banks that he ^{would} raise these issues on Appeal but did not. Counsel never provided Banks with a copy of the Appeals Court decision so Banks assuming that the issues raised in the Petition for Coram Nobis and Audita Querela were raised and denied on direct Appeal could not re-raise them in his 2255 Motion.

Banks did not find out that Counsel failed to raise these issues he put in the petition until after the 2255 Motion was decided. During this time Banks was continually incarcerated and then on supervised Release in USA v. Banks, 03CR245 (WDPA) and USA v. Banks, 04CR176 (WDPA). Banks did not get down with supervised release until 2015 but then was rearrested in August 2015 and remain continually incarcerated through 2019 and still is incarcerated. Banks was put upon multiple mental evaluations from 2015 through 2018 and hearings and a District Judge ruled Banks was Incompetent to represent himself. See USA v. Banks, 15CR168 (WDPA) at ECF 501. This entire time Banks was shuttled from jail to jail and he did not have ongoing access to his legal papers. On 9/24/18 the ^{3rd circuit} ~~court~~ granted Banks' petition for Rehearing in a case challenging his competency to represent himself, which was the first time in history since 1776 that a pro se litigant prevailed on a petition for Rehearing in any U.S. Court of Appeals. See IN RE: Frederick H. Banks, No. 18-1014 (3d Cir. 9/24/18). Also, in letters sent to Ivanka Trump on 11/7/16 & 5/3/17 Banks exposed that there was illegal FISA "electronic surveillance" on the Trump campaign and that Steve Bannon was "The White House Leaker" see USA v. Banks, 15CR168 (WDPA) at ECF 259, & 593. Banks was on mental evaluations and committed to a mental hospital when he wrote and mailed these letters to Ivanka Trump.

Since Banks was still incarcerated or on supervised release he could not file his petition until 2018. The petition was filed in August 2018 and denied. Banks appealed and it was affirmed and Rehearing was denied. The District Court found that Banks "had not shown that there was no remedy available at the time of trial or that sound reasons existed for failing to seek relief earlier." See Appendix C order of Court. The District Court also erred in failing to order FISA evidence disclosed.

REASONS FOR GRANTING THE PETITION

There was no remedy available at the time of trial for all of the issues Banks raised because of the Ineffective Assistance of Counsel in failing to raise the issues Banks raised in his petition. "In the petition Banks claimed that: (1) the District Court erred in denying a request he made during his 2014 revocation hearing for evidence allegedly gathered against him under the Foreign Intelligence Surveillance Act (FISA); (2) the District Court lacked jurisdiction over his criminal case for numerous reasons, including: (a) the government obtained evidence against him without the grand jury's authorization; (b) the government failed to prove the interstate commerce element of the charges against him; (c) the Court lacked jurisdiction to prosecute him because he is a Native American; (d) the magistrate judge was not authorized to accept his guilty plea; (e) he was not provided an opportunity to challenge the individuals selected for the grand jury; (f) the arrest warrants were invalid because they did not contain the magistrate judge's official seal; and (g) the grand jury did not properly record its vote." Appendix A at 3.

Also, under Fed. R. Crim. Proc. 12 these issues which go to the jurisdiction of the trial Court may be raised and noted at any time. See PON v. United States (2nd Cir.); Fed. R. Crim. Proc. 12(b). So it's easy to conclude that because counsel failed to raise these issues at trial and appeal counsel failed to raise them on appeal though he stated he would do so this Ineffective Assistance of Counsel in violation of the 6th Amendment rendered the unavailability of the remedies at trial.

Clearly sound reasons exist for Banks failing to seek relief earlier. A writ of *Coram Vobis* may only be brought when a petitioner is "out of custody" and off of supervised release. Here, Banks was continuously in custody from the time he was convicted in October 2004 through 2015 and then re-arrested and civilly committed on mental evaluations all the way from 2015 through 2018. Therefore the earliest Banks could have filed his petition is 2018 and that's just what he did. Banks filed the petition in August 2018. This was an extraordinary situation warranting *Coram Vobis* and *Audita* thereby relief. Also, the All Writs Act is liberally construed favoring Banks because of his status as a Native American. See Choate v. Trapp - US - (). Finally, under Rule 12 issues challenging the jurisdiction of the Court may be brought at any time. Both the District Court and Appeal Court erred in denying the petition and affirming the denial.

The revocation District Court in October 2014 erred by telling Banks in open court that his motion to disclose Foreign Intelligence Surveillance Act evidence under 50 USC 1806(b) had to be brought in the D.C. FISA Court rather than the District Court so this Court should order the FISA prior convictions should be vacated as he requested. Because there were factual issues in dispute Banks was entitled to a hearing.

Under Fed. R. Crim. Proc. 12 as stated issues challenging subject matter jurisdiction may be raised and noted at any time. Banks challenges the subject matter jurisdiction of the District Court to adjudicate the criminal case and the Appeal Court the direct Appeal because the prosecutor did not bring the

Charges in the name of the Real Party in Interest. The charges & Indictments (second superseding) were brought in the name "United States of America" rather than "United States". "United States of America" is a term that refers to the 13 Colonies under the Articles of Confederation while the term "United States" refers to the 50 States, D.C. & the territories under the 1789 U.S. Constitution. See "United States" at Ballentine's Law Dict. Under 18 USC § 3237 the District Court has jurisdiction ~~over~~ offenses committed against the "United States" not "United States of America" and under 28 USC 5417 the U.S. Attorney has authority to prosecute offenses against "United States" not "United States of America". As a result both the District Court and the U.S. Attorney lacked jurisdiction over the criminal offenses because it was alleged that "United States of America" was the injured party and brought in that name rather than "United States".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Frederick Banks

Date: 2/26/19