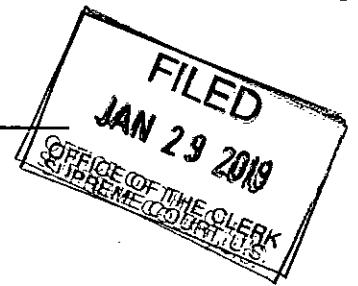


18-8541

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

In re RANDY A. JONES, Petitioner

PETITION FOR A WRIT OF HABEAS CORPUS

RANDY A. JONES APPEARING PRO SE
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QUESTIONS PRESENTED

- I. Did the government violate this petitioner's rights, creating a flaw so grave that it rendered the proceedings unreliable, when as established by the Supreme Court in LUIS v. UNITED STATES, 194 L. Ed. 2d 256 (2016) and in HONEYCUTT v. UNITED STATES, 198 L. Ed. 2d 73 (2017), that the government may not place untainted assets under a Lis Pendens order thereby denying this Petitioner the financial ability to retain the legal representation of his choice and as a result of this violation will the Supreme Court vacate based on the clear violation of Supreme Court decisions?
- II. Did the government perform an illegal warrantless cell site simulator search, fail to disclose this action to the Petitioner and strip him of his Fourth Amendment right to be free from unreasonable search and as a result of this violation will the Supreme Court vacate based on this illegal search?

PARTIES TO THE PROCEEDINGS BELOW

Pursuant to Supreme Court Rule 29.6, Petitioner makes the following disclosures:

This Petition stems from a habeas corpus proceeding in which Petitioner, Randy A. Jones, was the appellant before the United States Court of Appeals For The Eighth Circuit. Petitioner is a prisoner in federal custody at Forrest City Federal Correctional Institution, in Forrest City, Arkansas.

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Exhibit	Exhibit Number
Notice Of Lis Pendens, Document Number 102	A
Notice Of Lis Pendens, Document Number 103	B
Notice Of Lis Pendens, Document Number 104	C
Notice Of Lis Pendens, Document Number 105	D
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PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner, Randy A. Jones, respectfully petitions this Court for a writ of habeas corpus.

OPINION AND ORDER BELOW

The Eighth Circuit's Order denying Petitioner's application for authorization to file a second or successive motion under 28 USC §2255 is unreported but printed in the exhibits and appended to this petition.

STATEMENT OF JURISDICTION

The Eighth Circuit denied Petitioner's application for authorization to file a second or successive petition on June 27, 2018. This Court's jurisdiction is invoked pursuant to 28 USC §1651(a), §2241, §2255, and Article III of the United States Constitution.

STATEMENT PURSUANT TO RULE 20.4(A)

AND 28 USC §2242

Pursuant to Rule 20.4(A), Petitioner states that he has not filed this petition in "the district court of the district in which [Petitioner] is held," Supreme Court Rule 20.4(A) quoting 28 USC §2242), because Petitioner has no avenue for doing so. The Antiterrorism and Effective Death Penalty Act of 1996 Pub. L. No. 104-132, Title I, 110 Stat. 1217 ("AEDPA"), permits a prisoner in federal custody to file a petition for habeas corpus in the district in which he is held only when filing a motion in the district which sentenced him would be "inadequate or ineffective," 28 USC §2255(e). Pursuant to 28 USC §2255(h), Petitioner requested authorization to file a successive motion in the district in which he was sentenced which was denied by the Eighth Circuit Court. The Eighth Circuit (where Petitioner is in custody) -like all other circuits- has held that the denial of authorization to file a successive motion under §2255(h) does not render §2255 "inadequate or ineffective." Petitioner has no avenue for making an "application to the district court of the district in which applicant is held," Supreme Court Rule 20.4(A) (quoting 28 USC §2242).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amendments 4, 6, and 14 and 28 USC §1651, §2241, §2242, and §2255.

INTRODUCTION

Pursuant To Question One

In LUIS v. UNITED STATES, 194 L. Ed. 2d 256 (2016) and again in HONEYCUTT v. UNITED STATES, 198 L. Ed. 2d 72 (2017), this Court held that "untainted assets" of a criminal defendant could not be placed under Lis Pendens order thereby effectively denying access to defendant's own untainted assets from which he could retain legal representation of his choice. This Court explained that denying the defendant access to his own untainted assets from which he could retain representation of his choice denies the defendant of the protections afforded a criminal defendant as anticipated in the Sixth Amendment to the Constitution.

This Petitioner was indicted by a Grand Jury on June 10, 2015. Petitioner received Notice Of Lis Pendens dated July 24, 2015. The filing described the property as "(a) Estate Of Lake St. Louis, Lot 2, also known as Parcel 08F-41-0577; with all appurtenances, improvements, and fixtures thereon," and seven other properties (exhibits A through H). This action effectively eliminated this Petitioner's primary source of borrowing capacity rendering him unable to access the funds from the equity position he had in these properties.

This Petitioner contacted several attorneys he believed to be qualified to provide him with the representation he desired. Petitioner's equity position in his property the government had filed Lis Pendens action on was sufficient to retain the level of representation he desired but he was blocked access to his own untainted assets by the government's illegal action.

The Petitioner was forced by circumstance to settle for representation that was less experienced and representation that found himself unprepared for the intricacies of the complicated case. These adverse outcomes, to this Petitioner, are a direct result of the government's Lis Pendens action on untainted property.

PURSUANT TO QUESTION 2

The government, on July 5, 2013, exhibit I, began their warrantless search of this Petitioner. This is a factual matter supported by the government's own activity log, exhibit I, which shows the government began it's cell site simulator search on July 5, 2013. The Order signed by the Magistrate Judge authorizing the pen register, exhibit J, is dated July 15, 2013. None of this information was revealed by the government. Instead it was discovered post-plea. This newly discovered evidence provides clear support for this Petitioners claim of his right to to free from unreasonable searches and seizures, a Fourth Amendment right..

In March of 2018 this Petitioner submitted to the Eighth Circuit Court Of Appeals his request for leave to submit a second or successive 28 USC §2255. Contained in that submission was the basis for both questions now presented in this Petition For A Writ Of Habeas Corpus. Thus both issues were preserved for review by a higher Court.

ACTION REQUESTED

Due to the clear Fourth Amendment and Sixth Amendment violations, this Court should grant the petition and vacate the proceedings and it's outcome which was based upon the deprivation of rights inherent to a fair and honest finding.

STATEMENT OF THE CASE

On July 10, 2015, Petitioner, Randy A. Jones, was charged with one count of conspiracy to distribute and possess with intent to distribute 1,000 kilograms or more of marijuana and money laundering.

On January 7, 2016, this Petitioner entered into an 11(c)(1)(c) plea agreement at the urging of his counsel. The agreement included lesser charges including conspiracy to distribute in excess of 100 kilograms of marijuana, possession with intent to distribute

50 kilograms or more of marijuana, and money laundering. The plea agreement produced a sentence of 96 months and the Court accepted the agreement. This Petitioner was advised by counsel to not appeal the sentence.

REASONS FOR GRANTING THE WRIT

The denial of relief by the Eighth Circuit was based solely on the application of AEDPA and fails to provide a ruling based on the merits of the fully supported claims of this Petitioner.

This case provides this Court the circumstances required to exercise it's original habeas jurisdiction.

This Court's Rule 20.4(a) "delinates the standards under which" the Court will grant an original writ of habeas corpus, FELKER v. TURPIN, 518 U.S. at 665. First, "the petitioner must show... that adequate relief cannot be obtained in any other form or from any other court," Supreme Court Rule 20.4(a). Second, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers," *Id.* (quoting 28 USC §2242.

This Petitioner claims;

- 1) A Sixth Amendment violation resulting from the government's

Lis Pendens action on untainted assets which restricted this Petitioner from retaining counsel of his choice.

2) A Fourth Amendment violation resulting from the defense not being made aware of a warrantless cell site simulator search till after the defendant entered into a plea.

Petitioner filed his Motion Seeking A Certificate Of Appealability For A Second Or Successive 28 USC §2255 on March 12, 2018 in the Eighth Circuit Court Of Appeals.

Petitioner asked the Court to issue the COA for permission to file a second or successive §2255 based on two prime issues.

1) That the government filed Lis Pendens on untainted assets in 2013 and that LUIS and HONEYCUTT which were decided in 2016 and 2017 respectively, by the Supreme Court, make that action illegal. The Lis Pendens action taken on 8 properties owned by the Petitioner forced the Petitioner to retain substandard counsel who performed poorly and at the expense of the then defendant..

2) That the government's search log showed that the government had instituted a cell site simulator search on July 5, 2013 and the Order authorizing a pen register was not issued by the Court until July 15, 2013, exhibit J. That the defense would have acted differently had it known of the illegal search. That the tainted

search also tainted all that issued from it and that this Petitioner would not have pled to an act that he now knows the government could not support. This Petitioner would have required the government to prove it's charges at trial.

The Court Of Appeals did not produce a ruling on the merits, instead, the Court hid behind language in AEDPA that shields the Court from providing a COA and thereby never addressed the merits of the Petitioner's claims.

This Petitioner cannot obtain adequate relief in any other form or from any other Court. AEDPA requires a petitioner seeking to file a successive petition for a writ of habeas corpus to first request authorization in the appropriate Court Of Appeals, 28 USC §2244(b)(3), §2255(h) (incorporating the gatekeeping procedures of §2244). Under §2244(b)(3)(E), the denial of such authorization "shall not be the subject of a petition for rehearing, or for a writ of certiorari." Thus there is no path for this Petitioner to use to ask the Eighth Circuit to reconsider it's error, nor is there any way for this Court to review the Eighth Circuit's Order by writ of certiorari.

As this Court has recognized, however, §2244(b)'s gatekeeping mechanism does not deprive this Court of it's authority to entertain original habeas petitions, FELKER, 518 U.S. at 660, 661. The exercise of that authority provides the appropriate -and the only- avenue for resolving the violations of Amendment number 4 and number 6.

This Court's habeas jurisdiction becomes the only path the Court may use to correct these Constitutional violations. Thus this avenue of relief becomes based upon exceptional circumstances that warrants this Court's habeas jurisdiction.

CONCLUSION

The petition for a writ of habeas corpus should be granted.

AFFIRMATION

I affirm that the petition above is true and correct to the best of my knowledge and understanding pursuant to 28 USC §1746.

Respectfully submitted,

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Date

Attachments

**Additional material
from this filing is
available in the
Clerk's Office.**