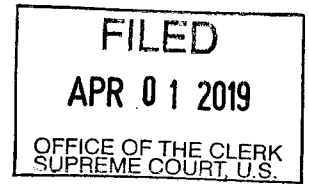


NO. 18-8877

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

2019



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REGINALD KNOX,

Petitioner,

v.

UNKNOWN PARTIES,

Respondent.

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On Petition for Writ of Certiorari to the Sixth Circuit Court of Appeals

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**PETITION FOR WRIT OF CERTIORARI**

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**BY:** Reginald Knox # 167359  
In *pro per*  
R.A. Handlon Correctional Facility  
1728 W. Bluewater Hwy  
Ionia, Michigan 48846

## QUESTION PRESENTED

### I

Should this Court grant Certiorari to determine if the District Court committed a Constitutional error by dismissing Petitioner's Writ of Mandamus as described by 28 U.S.C. § 1361. Mr. Knox now petitions this Court for a Writ of Certiorari and presents the following facts in support of the question above.

## LIST OF PARTIES

**Petitioner**, REGINALD KNOX, is an individual and has no corporate affiliations. Petitioner is proceeding in *pro per* with the aid of a Michigan Department of Corrections Legal Writer.

**Respondent**, UNKNOWN PARTIES is the Warden of the Facility where the Petitioner currently housed and is represented by the Michigan Attorney General's Office

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

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## **OPINIONS BELOW**

On January 2, 2019, the Decision/Opinion of the Sixth Circuit Court of Appeals, Affirming the decision of the district court, denying all pending motions is Reported at 2019 U.S. App. LEXIS 92. (Appendix pg.1).

On May 25, 2018, the Decision of the Western District Federal Court of Michigan is Reported at, 2018 U.S. Dist. LEXIS 87660. (Appendix pg. 2).

## **JURISDICTION**

Petitioner seeks review of the January 2, 2019, opinion of the Sixth Circuit Court of Appeals. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.



## CONSTITUTIONAL AND STATUTORY PROVISIONS

### A. Constitutional Provisions

U.S. Const., Amend. XIV: "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."

### B. Statutory Provisions

28 U.S.C. § 1361

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

28 U.S.C. § 1915

(e)

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

## STATEMENT OF THE CASE

### A. Procedural History

Petitioner Reginald Knox is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Richard A. Handlon Correctional Facility (MTU) in Ionia, Michigan. He is serving a life sentence for a bank robbery committed in 1981.

Mr. Knox filed a writ of mandamus under 28 U.S.C. §1361 brought by a state prisoner. In an Affidavit in Support of his request for leave to proceed *in forma pauperis*, he listed the following issues covered in the complaint:

1. Whether the government is to be treated as though it were a prosecutor, plaintiff or defendant.
2. Authority for legal proceedings Commission, oath and salary of a special assistant or attorney.
3. Indian country exclusive jurisdiction.
4. Equal Protection Clause of the 14th Amend.
5. Job Corps Veteran Benefits.
6. Fed Juvenile Delinquency Act.
7. Youth Corrections Act no benefit finding.
8. Mich. affirmed bank robbery life unconstitutional.
9. Court of Claims fail to provide skilled judicial oversight of mental health and life means life policy.
10. VA Hospital second opinion of psycho meds & dental.
11. Shawnee Bank Security MDOC director.
12. Improvised clerk pro se defendant proper plaintiff.

On May 25, 2018, Mr. Knox's motion was dismissal as described by 28 U.S.C. § 1915(g). Mr. Knox filed a timely sought appeal in the Sixth Circuit Court of Appeals, which Affirmed the district court's decision on January 2, 2019. Mr. Knox now petitions this Court for a Writ of Certiorari and presents the following facts in support. Any other relevant facts not included will be cited in the body of his petition as they relate to his argument.

## **REASONS FOR GRANTING THE WRIT**

The decisions of the lower courts that Mr. Knox failed to state a claim is not only erroneous because this Court's longstanding criteria regarding "facial plausibility." As it relates to the failure to state a claim. Certiorari is appropriate because the federal reviewing court failed to consider the "clear right" that an employee's failure to act on is a clear, nondiscretionary duty.

## ARGUMENT I

### **MR. KNOX WAS DENIED HIS DUE PROCESS RIGHT TO HAVE HIS MANDAMUS GRANTED TO COMPELL THE FEDERAL GOVERNMENT AND THE STATE OF MICHIGAN EMPLOYEES TO PERFORM THEIR DUTY.**

#### **PURPOSE OF THE WRIT OF MANDAMUS**

28 USCS § 1361 is an action to compel an officer of the United States to perform his duty. The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

#### **Discussion**

Federal District Court may issue writ of mandamus under 28 USCS § 1361 to compel fulfillment of obligations where federal official has clear obligation to perform ministerial duty. *National Wildlife Federation v. United States*, 626 F. 2d 917 (D.C. App. 1980), (criticized in *Swan v. Clinton*, 100 F. 3d 973 (D.C. App. 1996). However, federal court's jurisdiction to compel by writ of mandamus is operative only as against officer, employee, or agency of United States and does not extend to state orphan's court. In *re Wolenski*, 324 F. 2d 309 (3rd Cir. PA 1963) cert den 377 U. S. 1005, 84 S. Ct 194, 112 L. Ed 2d 1053 (1964).

Here, the Sixth Circuit Court of Appeals opined that, "As the district court determined, Knox failed to state a claim for mandamus relief because he did not identify any federal employees in his complaint nor did he point to any duties they owed. See *Budrow v. Leffler*, 86 F. App'x 899, 900 (6th Cir. 2004) (citing 28 U.S.C. § 1361). Nor did Knox allege in his complaint any facts sufficient to support any other cognizable legal claim." As it relates to the identity of the federal employees, based on precedent from this Court in *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U. S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), Petitioner Knox is

not required to identify each employee by name in his complaint. He is only required to identify the particular governmental agency and its failure to perform the duties owed.

United States District Courts do not have any jurisdiction, pursuant to 28 USCS § 1361, to compel state or its officers to perform any duty owed to plaintiff under state law, and Federal District Court was without authority to reverse or modify Order of Oklahoma Court of Criminal Appeals denying plaintiff Writ of Mandamus, since defendants were not officers or employees of United States or of any agency thereof. *Harris v. Department of Corrections*, 426 F. Supp. 350 (W.D. OK 1977).

Therefore, Petitioner Knox will challenge the failure of the state officials to perform its duties under the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and seek relief under 28 USCS § 1361. In the district court dismissing the petitioner's complaint, portions of this argument relevant to that court's opinion that, "Nor did Knox allege in his complaint any facts sufficient to support any other cognizable legal claim." 28 USCS § 1361 applies only if "personal" rights, as opposed to "proprietary" rights, are allegedly impaired. The court relied on the decision of the Court of Appeals for the Sixth Circuit in *Budrow v. Leffler*, 86 F. App'x 899, 900 (6th Cir. 2004), which rested, in turn, on *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct 1827, 104 L. Ed. 2d 340 (1992). See also, *Lawler v. Marshall*, 898 F. 2d 1196, 1198 (6<sup>th</sup> Cir. 1990).

Presently, the Sixth Circuit Court of Appeals simply relied upon the districts court's decision that, "Knox allege in his complaint any facts sufficient to support any other cognizable legal claim. Under these circumstances, the district court properly dismissed Knox's complaint for failing to state a claim." In rendering its decision, the circuit court failed to consider or even elaborate on the facts contained in Petitioner Knox's mandamus complaint. That court itself

concluded that, “Knox cited various federal statutes and acts and noted that he was, at an unspecified time, maced, taken to a forensic center, diagnosed with paranoid schizophrenia, and put on medication.”

That court failed to delve into the various federal statutes and acts cited by the petitioner to determine if he did indeed fail to “state a claim upon which relief could be granted.” Unless claim is so frivolous that it fails the *Bell v. Hood* test, *Bell v. Hood*, 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939 (1946). A district court has the responsibility under 28 USCS § 1361 to determine whether prerequisites for mandamus relief have been satisfied: specifically, does plaintiff have clear right to relief sought; does defendant have duty to perform act in question; and is there no other adequate remedy available; conclusion that any one of those prerequisites is missing should lead district court to deny petition, not because it lacks power to consider case in first place, but because plaintiff has failed to demonstrate entitlement to this form of extraordinary relief. *Ahmed v. Dep't of Homeland Sec.*, 328 F. 3d 383 (7<sup>th</sup> Cir. 2003).

In this matter, the district court failed to determine whether the prerequisites for mandamus relief has been satisfied by the standards set forth in *Bell v. Hood, supra*. In doing so, that court failed establish if a distinction exists between personal liberties and propriety rights based on Mr. Knox's mandamus complaint. This Court has never expressly reject that distinction between personal liberties and proprietary rights as a guide to the contours of § 1361 failed to state a cognizable legal claim. Neither the words of § 1361 nor the legislative history of that provision distinguishes between those rights. In fact, the Congress that enacted the predecessor of § 1361 seems clearly to have intended to provide a federal judicial forum for the redress of wrongful deprivations of an agency failing to perform its duties by persons acting under color of federal and state law.

This Court has traced the origin of § 1361 and its jurisdictional counterpart to the Civil Rights Act of 1866, *Adickes v. Kress & Co.*, 398 U. S. 144, 162-163, 90 S. Ct. 1598, 26 L. Ed. 2d (1970); *Monroe v. Pape*, 365 U. S. 167, 171, 183-185, 81 S. Ct. 473, 5 L. Ed 2d 492 (1961). That Act guaranteed "broad and sweeping . . . protection" to basic civil rights. *Sullivan v. Little Hunting Park*, 396 U. S. 229, 237, 90 S. Ct. 400, 24 L. Ed 2d 386 (1969). Acquisition, enjoyment, and alienation of property and professional duties were among those rights. *Jones v. Mayer Co.*, 392 U. S. 409, 432, 88 S. Ct. 2186, 20 L. Ed. 2d 1189 (1968).

The Fourteenth Amendment vindicated for all persons the rights established by the Act of 1866. *Monroe, supra*, at 171; *Hague v. Committee for Indus. Org*, 307 U. S. 496, 509-510 59 S. Ct. 954, 83 L. Ed. 1423 (1939). "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of personal liberties and propriety rights based on a mandamus complaint was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee." *Shelley v. Kraemer*, 334 U. S. 1, 10, 68 S. Ct. 836, 92 L. Ed. 1161 (1948). See also, *Buchanan v. Warley*, 245 U. S. 60, 74, 38 S. Ct. 16, L. Ed. 149 (1917).

The District Court in this situation opined that, "Plaintiff's complaint is not a model of clarity and it is a far cry from being a 'short and plain statement of the claim showing that the pleader is entitled to relief' as required by Federal Rule of Civil Procedure 8(a)(2). Plaintiff's allegations simply ramble from topic to topic without ever identifying what relief he is seeking or from whom he is seeking it. Plaintiff's affidavit (ECF No. 7), filed in support of his request for leave to proceed in forma pauperis, contains the following list of issues covered in the complaint: (1) Whether the government is to be treated as though it were a prosecutor, plaintiff or defendant.



(2) Authority for legal proceedings Commission, oath and salary of a special assistant or attorney. (3) Indian country exclusive jurisdiction. (4) Equal Protection Clause of the 14th Amend. (5) Job Corps Veteran Benefits. (6) Fed Juvenile Delinquency Act. (7) Youth Corrections Act no benefit finding. (8). Mich. affirmed bank robbery life unconstitutional. (9) Court of Claims fail to provide skilled judicial oversight of mental health and life means life policy. (10) VA Hospital second opinion of psycho meds & dental. (11) Shawnee Bank Security MDOC director. (12) Improvised clerk pro se defendant proper plaintiff.”

As it relates to the required tests set forth *Bell v. Hood*, 327 U. S. 678, the district court failed to determine whether Petitioner Knox had a clear right to relief sought, did the defendants have duty to perform act in question, and was there any other adequate remedy available. 28 USCS § 1361 does not confer jurisdiction of action in nature of mandamus (1) to compel state officer to perform duty, or (2) to compel federal officer to perform where there is no contractual duty to plaintiffs, but only contract between state and federal agencies on which plaintiffs base claim. *Boston v. United States*, 424 F. Supp. 259 (E.D. MO 1976).

Remedy in nature of mandamus pursuant to 28 USCS § 1361 allows Federal District Courts to issue appropriate corrective orders where federal officials are not acting within zone of their permissible discretion but are abusing their discretion or otherwise acting contrary to law, and such remedy would be available where (1) duty of officer to act has been clearly established and plainly defined, and (2) plaintiff has exhausted all administrative remedies before seeking relief in nature of mandamus. *McNutt v. Hills*, 426 F Supp. 990 (D.C. Dist. 1977)

Congress has explicitly given District Courts power to consider cases in nature of mandamus against federal officials; when it is claimed that federal officials are acting contrary to law, abusing their discretion in acting outside limits of fair permissible discretion, and when

official conduct extends beyond any rational exercise of discretion, even though it is within letter of authority granted, mandamus affords appropriate judicial relief. *NAACP v. Levi*, 418 F. Supp. 1109 (D.C. Dist. 1976)

Mandamus is extraordinary remedy which is available only when 3 elements are present: (1) clear right in plaintiff to relief sought; (2) plainly defined and peremptory duty on part of defendant to do act in question; and (3) no other available adequate remedy *Cook v. Arentzen*, 582 F. 2d. 870 (4<sup>th</sup> Cir. VA 1978). Action in mandamus lies only where defendant owes clear, ministerial and nondiscretionary duty, and act is ministerial only when its performance is positively commanded and so plainly prescribed as to be free from doubt. *Centra, Inc. v. Hirsch*, 630 F. Supp. 42 (E.D. PA 1985)

District Court had jurisdiction under 28 USCS § 1361 to require Attorney General of United States, Director of Federal Bureau of Prisons, and warden of federal penitentiary to perform ministerial duty of complying with their own regulations; District Court also had jurisdiction under § 1361 to order compliance with due process requirements in administration of federal prison disciplinary proceedings, and thus had jurisdiction to declare due process requirements applicable to such proceedings, despite contention that mandamus jurisdiction is available only if precise elements of duties required by Constitution have previously been prescribed.” *Workman v. Mitchell*, 502 F2d 1201 (9<sup>th</sup> Cir. WA 1974).

District Court had jurisdiction pursuant to 28 USCS § 1361 to consider federal prisoner's claim that parole board had disobeyed nondiscretionary command that it provide reason for its determination after exercising its discretion to deny parole. *King v. United States*, 492 F2d 1337 (7<sup>th</sup> Cir. IN 1974).

Allegations in complaint that parole board failed to comply with its own regulations, that hearing procedures of parole board denied petitioner right to due process and that parole board's conclusions were arbitrary, capricious and unlawful, are, if supported by evidence, sufficient to warrant consideration of issuance of writ of mandamus under 28 USCS § 1361; however, mere fact that court disagrees with parole board's exercise of discretion does not furnish acceptable or appropriate basis for issuance of writ of mandamus; and, to extent that petitioner seeks to reach, by mandamus, use by parole board of Bureau of Prisons' classification of petitioner as "special offender," petitioner must attack Regional Director's decision to refer case, which decision is pure matter of discretion, and mandamus, therefore, would necessarily fail. *Billiteri v. United States Bd. of Parole*, 541 F2d 938 (2<sup>nd</sup> Cir. NY1976)

Mandamus is appropriate remedy to challenge conditions of confinement; thus, mandamus will lie in action brought by petitioner claiming due process violation that he has been classified as "special offender" without being afforded opportunity to learn of and contest evidence against him; due process attaches to special offender classification and one must be given hearing, with right to confront and cross-examine witnesses in sound discretion of prison officials, prior to determination of special offender classification, and mandamus will lie to correct lack of due process. *Holmes v. United States Bd. of Parole*, 541 F2d 1243 (7<sup>th</sup> Cir IL 1976)

The Sixth Circuit Court of Appeal's approach is in conflict with Second, Fourth, Seventh, and Ninth Circuit federal law, even though in light of applicable state law. *Harris v. Allen Park*, 193 Mich. App. 103, 483 N.W.2d 434 (1992). If that condition is met, then the Federal District Court's denial of relief when the error complained of was "significant and obvious." Thus, according to the *Harris*, *Cook*, *Workman*, *King*, *Billiteri*, and *Holmes* decisions, any failure to

consider the facts of the claims in the mandamus presented serves as a due process rights basis to compel the complained of agency to perform its obligated duties.

The District and Circuit Court's dismissal of his petition for writ of Mandamus and the Sixth Circuit Court of Appeals denied Mr. Knox of his due process right to compel the administrative agencies to perform their duties, and will no doubt affect cases of other similarly situated plaintiffs. For those reasons, allowance of the writ of certiorari would be appropriate.

### CONCLUSION

**WHEREFORE**, for the foregoing reasons, Petitioner prays that his petition for certiorari be read and granted.

*Robert Woldhuis 3-28-19*  
ROBERT WOLDHUIS  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF IONIA  
MY COMMISSION EXPIRES Apr 5, 2021  
ACTING IN COUNTY OF

Respectfully submitted,

*Reginald Knox*  
Reginald Knox #167359

In *pro per*

R.A. Handlon Correctional Facility  
1728 W. Bluewater Hwy.  
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Dated: March 28, 2019