

IN THE SUPREME COURT OF THE UNITED STATES

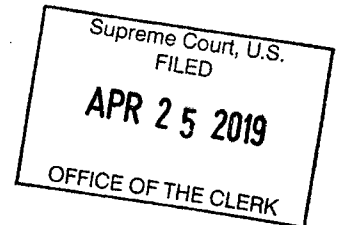
GARVESTER BRACKEN
Petitioner,

V

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
THE HONORABLE JUDGE
SHEPHERD, JUDGE
WOLLMAN, JUDGE
GRASZ, JUDGE
Respondents.

Case No.

ORIGINAL



ON PETITION FOR WRIT OF MANDAMUS TO THE
SUPREME COURT OF THE UNITED STATES
FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

GARVESTER BRACKEN
MISSOURI EASTERN CORRECTIONAL CENTER
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QUESTIONS PRESENTED

THE QUESTION IS WHETHER AFTER THE UNITED STATES COURT OF APPEALS THE DISTRICT COURT AND THE STATE SUPREME COURT REFUSES TO EXERCISE JURISDICTION WHICH THEY HAD TO HEAR AND DECIDE A PETITION FOR WRIT OF HABEAS CORPUS REGARDING A JURISDICTIONAL CHALLENGE AND LEGALITY OF A COMMITMENT IS IT APPROPRIATE FOR THIS COURT TO ISSUE MANDAMUS UPON AN APPLICATION FILED TO THE SUPREME COURT AS A MATTER OF LAW.

EX PARTE NEWMAN
81 U.S. 152 (1871)

PARTIES

GARVESTER BRACKEN
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UNITED STATES COURT OF
APPEALS FOR THE EIGHTH
CIRCUIT THE HONORABLE
JUDGES SHEPHERD, WOLLMAN,
AND GRASZ, THOMAS F.
EAGLETON, US COURTHOUSE,
111 S. 10TH ST., ST. LOUIS
MISSOURI, 63102

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISION

FIRST AMENDMENT

Congress shall make no law...abridging the freedom of speech...and to petition the government for a redress of grievances.

STATUTORY PROVISIONS

28 U.S.C. 1651

The Supreme Court and all courts establish by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. 2241

Writs of habeas corpus may be granted by the Supreme Court any Justice thereof, the district courts, and any circuit court judge within their respective jurisdiction....

28 U.S.C. 2243

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted.....

28 U.S.C. 2254

The Supreme Court, a judge thereof a circuit judge or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

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JURISDICTIONAL STATEMENT

THIS COURT HAS JURIDICITION TO ISSUE WRITS OF MANDAMUS PURSUANT TO ARTICLE III OF THE CONSTITUTION OF THE UNITED STATES AND TITLE 28 UNITED STATES CODE SECTION 1651.

THIS COURT MAY EXERCISE EITHER ITS ORIGINAL OR APPELLATE JURISDICTION TO ISSUE MANDAMUS TO COMPEL DEFENDANTS TO COMPLY WITH ESTABLISHED FEDERAL LAW.

AS ANNOUNCED IN EX PARTE CRANE, 30 U. S. 190, 193 (1831), "A MANDAMUS TO AN OFFICER IS HELD TO BE EXERCISE OF ORIGINAL JURISDICTION, BUT A MANDAMUS TO AN INFERIOR COURT OF THE UNITED STATES, IS IN THE NATURE OF APPELLATE JURISDICTION."

OPINION BELOW

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT ENTERED A JUDGMENT AGAINST PETITIONER TO REVIEW A PETITION FOR WRIT OF HABEAS CORPUS WHICH HE IS ENTITLED TO AS A MATTER OF LAW. THE COURT RECHARACTERIZED HIS ORIGINAL HABEAS CORPUS APPLICATION AS A CERTIFICATE OF APPEALABILITY WHICH WAS DENIED ON JANUARY 2, 2019, UNDER NO. 18-2571. (SEE APP. 1)

STATEMENT OF FACTS

1. On May 21, 2018, a petition for writ of habeas corpus was filed in the United States Court of Appeals for the Eighth Circuit. The docket sheet indicates that the habeas corpus application was docketed on July 25, 2018, and assigned to case number 18-2571 on the court of appeals docket. (See General Docket Eighth Circuit Court of Appeals - App. 1).

2. The indisputable fact pursuant to 28 U.S.C. 2243, directs the Court to either "award the writ or issue an order directing the respondent to show cause why the writ should not be granted" it also required that "the writ or order to show cause...shall be returned within three days, unless for good cause additional time not exceeding twenty days. (See Copy of Statute 28 U.S.C. 2243- App. 2)

3. It is made plain by the statutory requirement the hearing judge or judges are required to grant the application in the alternative order respondent to show cause, if the latter, respondent's return on the merits was due by July 28, 2018 or no later than August 13, 2018, if an extension of time was granted.

4. By refusing to comply with and satisfy the statutory requirement under 28 U.S.C. 2243, issuance of mandamus is appropriate and warranted in accordance with 28 U.S.C. 1651 as a matter of law because petitioner has no other legal remedy to avail himself.

STATEMENT OF CASE

Before this Court is a case where the courts below refused to exercise jurisdiction which they had to hear and decide a petition for writ of habeas corpus which petitioner is entitled to as a matter of law. Petitioner is being held in custody in violation of the United States Constitution and the laws of the United States and there is no other legal remedy to redress his grievance other than by a writ of mandamus issued by this Supreme Court or a Justice thereof.

Ex Parte Newman
81 U.S. 152 (1871)

ARGUMENT

As a matter of law the United States Supreme Court is fully authorized to issue writs of mandamus by the Judiciary Act of 1789, as well as Title 28 United States Code Section 1651. As announced by the Supreme Court in *Ex Parte Newman* the court declared, "Power to issue mandamus to any court appointed under the authority of the United States was given to the Supreme Court by the thirteenth section of the Judiciary Act, in cases warranted by the principles and usages of law." See *Ex Parte Newman*, 81 US 152, 165 (1871).

Moreover, Section 28 U.S.C. 1651 (a) provides, "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate, in aid of their respective jurisdiction agreeable to the usages and principle of law." As a matter of law writs of mandamus is appropriate because, the writ compels the performance of a duty required by law within specificity. "A writ of mandamus is appropriate where the right claimed is just and established by positive law and the duty required to be performed is clear and specific, and there is no other adequate remedy." See *Kendall v. United States*, 37 US 524, 614 (1838). Furthermore, as announced in *Ex Parte Rowland*, 104 US 604, 612 (1888), "More, cannot be required of a public officer by mandamus than the law has made it his duty to do. The object of the writ is to enforce the performance of an existing duty. "Where the proper construction of a statute is clear, the duty of an officer called upon to act under it...may be compelled by mandamus." See *Miguel v McCarl*, 291 US 442, 452 (1934).

Nothing less is required as to satisfy the statutory written expressed language otherwise. "Where the statute's language is plain the sole function of the court is to enforce it, according to its term. See *Caminetti v. United States*, 242 U.S. 470, 485 (1917).

SUPREME COURT TO ISSUE MANDAMUS

To a further extent mandamus is appropriate where a court having jurisdiction over a controversy or case brought in proper form and substance it must exercise its jurisdiction and judicial powers as prescribed by law. It is settled law and has been long recognized by the Supreme Court that "Applications for a mandamus are warranted where the subordinate court having jurisdiction, refuses to hear and decide the controversy or where such a court refuse to enter judgment or decree in a case. See *Ex Parte Newman*, 81 US 152, 156 (1871); and "The writ of mandamus has traditionally been used in the federal court only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is, its duty to do so." See *Allied Chemical Corps v Daiflon*, 449 US 33, 35 (1980).

The Supreme Court decision handed down in *Chisholm v Georgia*, 2 US 419 (1793), the court held that if the respondent 'either fails to appear or answer an order to show cause when directed would result in a default judgment for failing to comply with established law. In *Johnson v Rodgers* 917 F2d 1283, the Court of Appeals for the Tenth Circuit by mandamus directed the respondent a judge to hear and decide a petition for writ of habeas corpus which remained dormant for an unreasonable amount of time 'fourteen months without any actions taken. This court held that "petitioner had established a clear and indisputable right was shown and petitioner was without any alternative remedy.

FEDERAL COURT'S AUTHORITY TO GRANT HABEAS CORPUS

In this respect Section 28 U.S.C. 2241 and 28 U.S.C. 2254, authorizes federal courts to grant writs of habeas corpus which is controlled by statutes. "If the law confers the power to render a judgment or decree than the court has jurisdiction." See *Rhode Island v. Massachusetts*, 37 US 557, 718 (1838).

In *Preiser v. Rodriguez*, 411 US 475, 484 (1973), the court made clear that, " It is clear, not only for the language of 2241 and 2254, but also from the common-law history of the writ, that essence of habeas corpus is an attack by a person in custody upon the legality of that custody and that the traditional function of the writ is to secure release from illegal custody." Under federal law the writ of habeas corpus shall be disposed of as set forth pursuant to 28 U.S.C. 2243 as a matter of law. " Federal courts are authorized under 28 U.S.C. 2243, to dispose of the matter as law and justice require." See *Hilton v. Brunskill*, 481 US 770, 775 (1987).

Section 28 U.S.C. 2243 provides, "A court, justice or judge entertaining an application for a writ of habeas corpus shall set forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted...The writ or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days... The person to whom the writ of order is directed shall make a return certifying the true cause of the detention.

It is clear and understood that section 28 U.S.C. 2243, instructs the court to treat the writ in one of two ways, that is, either it may grant the writ or direct the respondent to show cause for not granting it.

Courts of the United States are mandated to hear and decide controversies and cases as a matter of law. It is settled law that "It is emphatically the province and duty of the judicial department to say what the law is." See *Marbury v. Madison*, 5 US 137 (1803). Petitioner is entitled to have redress in Courts of the United States as it is his guaranteed constitutional right by the First Amendment to the United States Constitution.

Prior history reveal the petitioner filed an application for a writ of habeas corpus in the United States Court of Appeals for the Eighth Circuit, *Bracken v. State of Missouri*, 18-2571, (2018), after the State highest court declined to exercise its jurisdiction that it had to decide a federal question of law which involved a court's jurisdiction and the constitutionality of his commitment. *Bracken v. State of Missouri*, SC93689, (2013), all of which refused to exercise their jurisdiction which they had to determine a constitutional question of law, by passing upon a question concerning of a court and to inquire into the validity of the commitment. There is no question that petitioner has been deprived and denied of his constitutional right to have the opportunity to redress as well as deprived and denied adequate remedy under the usage of law warranting this Court to issue mandamus in the interest of justice.

As the Supreme Court has declared that "Applications for a mandamus are warranted where the subordinate court having jurisdiction refuses to hear and decide a controversy or where such a court, refuses to enter judgment or decree in a case." See *Ex Parte Newman*, 81 US 152, 156 (1871).

CONCLUSION

For the reasons stated and by the Court's refusal to perform its lawful duty as prescribed by law in accordance with Section 28 U.S.C. 2243 and relevant statutes in the disposition of petitioner's habeas corpus application and predisposing of his application without complying with its governing statutes and without reaching the merits is inconsistent with as well as contrary to established law and the Constitution of the United States. Mandamus should be granted.

Respectfully Submitted


Garvester Bracken
Petitioner