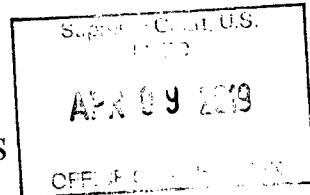


18-9278 **ORIGINAL**

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



In Re Edmond McClinton

PETITION FOR WRIT OF HABEAS CORPUS

EDMOND McCLINTON

P.O. BOX 500 ADC# 107846

GRADY, ARKANSAS 71644

870-535-8224 at my father's home, his name is Edmond McClinton Sr.

QUESTION(S) PRESENTED

1. There was no probable cause for arrest.
2. Petitioner has not been bound over for trial, therefore trial court being without jurisdiction for trial. Petitioner being convicted illegally in violation of the laws and Constitution of Arkansas and the United States of America.
3. There was no preliminary hearing, no judge grand jury, nor grand jury to bind the accused over for trial.
4. Petitioner was not given due process of plea and arraignment.
5. Ineffective Assistance of Counsel, trial counsel nor appellant counsel protected the Constitutional rights of the petitioner, and was not functioning as representative nor counsel of the accused. Which caused serious prejudice.
6. Miscarriage of Justice, a gross unfair outcome in a judicial proceeding as when the defendant is convicted despite a procedural and substantive due process, and also despite a lack of evidence on an essential element of the public offense.
7. Prosecutorial Misconduct, improper or illegal act, esp. involving an attempt to avoid required disclosure or to persuade the jury to wrongly convict a defendant or assess an unjustified punishment.
8. The evidence used for conviction was not authenticated. There was no chain of custody for the evidence, the police evidence log did not have a record of the evidence used at trial, nor did the hospital report have such records either.
9. Hospital report shows that the incident did not take place, actual innocence.

LIST OF PARTIES

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

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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 certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **United States courts**:

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

reported at 8th Circuit U.S. Court of Appeal Case # 18-2953;

But do not appear on the the Westlaw or anyother case law reporter. Filed as Motion for permission to file second or successive Habeas Corpus, and it was denied by the 8th Circuit Court of Appeal Court Clerk,

The opinion of the United States district court appears at Appendix 2

reported at McClinton v. Kelley, 2018 WL 4016439; only the Westlaw citation is currently available. And also the original U.S. Petition for Writ of Habeas Corpus which is not cited on Westlaw, but there is the Supreme Court of the United States McClinton v. Kelley, 135 S.Ct. 2920 (Mem) 2015WL2473488 and McClinton v. Kelley, 136 S.Ct. 22 (Mem) 2015 WL 5052462.

Dismissed on the grounds that state remedies had not been exhausted. Therefore petitioner filed again which was treated as a second and successive petition and dismissed, permission to file second and successive habeas corpus was denied by the U.S. Court of Appeal for the Eighth Circuit. Therefore petitioner seeks this petition for Writ of Habeas Corpus from the United States Supreme Court.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 3

reported at McClinton v. State, 2015 Ark. 245; McClinton v. State, 2015 Ark. 161 (file as a coram vobis, but dismissed as a coram nobis) (both on Direct Appeal but have two different citation numbers); McClinton v. State, 2016 Ark. 461 and McClinton v. State, 2018 Ark. 116 (both Rule 37, Post Conviction petitions, the first one was reversed and remanded); McClinton v. State, 2017 Ark. 360 (State Writ of Habeas Corpus on Actual Innocence and DNA testing).

JURISDICTION

For cases from **United States courts**:

The date on which the United States Court of Appeals (8th Circuit) decided my case was December 18, 2018.

Petition for Rehearing was not available.

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 April 12, 2018.
A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

That when a court has jurisdiction, it has a right to decide every question before it; but if the subject matter is not within it's jurisdiction, all is void, and judgment in law nullities. *Dynes v. Hoover*, 61 U.S. 65, 15 L.Ed. 838. Objection to subject matter jurisdiction may be raised at anytime. Thus after losing at trial a party may move to dismiss the case because the trial court lacked subject matter jurisdiction. *Henderson v. Shinseki*, 562 U.S. 428, 131 S.Ct. 1197, 179 L. Ed. 2d, 79 U.S.L.W. 4130. There being no jurisdiction of the subject matter or the party, the Court is bound to relieve the petitioner. *Ex Parte Milligan*, 71 U.S. 2, 18 L.Ed. 281 (at 71 U.S. 62). There is a such thing as judge grand jury (bind-over hearing), the petitioner was not giving a bind-over, and the court did not have jurisdiction to take the petitioner to trial, and is in violation of the Grand Jury clause of the State of Arkansas Constitution Article 2, Section 8, and the Grand Jury clause of the United States of America 5th Amendment. The power of a state judge-grand jury conduct a hearing to bind the petitioner over to trial, and functions as the grand jury. *In re Oliver*, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682. The term bind-over hearing refers to a hearing to obtain subject-matter jurisdiction over the defendant, in which a judge decides whether probable cause exist to require a defendant stand trial, to determine whether the prosecution can present enough evidence to justify a belief that a crime occurred and that the defendant committed it. If the judge grand jury decides that the prosecution has sufficient evidence then a defendant is "bound over", meaning that the court will retain jurisdiction over the defendant until the is either taken to trial or settled; that which is an adversarial preliminary hearing to determine probable cause to file charges. *Rothgery v. Gillespie County, Texas*, 554 U. S. 191, 128 S.Ct. 2578, 171 L.Ed 2d 366, 76 U.S.L.W. 4520 (June 23, 2008). Arkansas Code Annotated 16-85-302 provide: Whenever a defendant has been held to answer at a preliminary examination to await the action of the grand jury or has been held for the Circuit Court, the

Prosecuting Attorney may proceed to file information in the Circuit Court and to trial of the case; See Arkansas Rule of Criminal Procedure Rule 8.3, Which is the Bind-over hearing in the State of Arkansas. That the petitioner was never been taken to, for purpose of bind-over for trial. Petitioner has not been bound over according to this law, therefore the Circuit Court did not have jurisdiction to try the case. Therefore in violation of U.S. Constitution Art. III, Sect. 1. Also in violation of U.S. Constitution Amendment 5, and Ark. Constitution Art. II, Sect. 8, Grand Jury Clause. In violation of U.S. Constitution Amendment 5 and 14. U.S. Constitution Amendment 5 and 14; Ark. Constitution Art. II, Section 8, Due Process Clause. There was no plea and arraignment.

In violation of U.S. Const. Amend. 4, Probable Cause clause. There was no evidence of offense at the time of arrest.

And in violation of the U.S. Const. Amend. 6. right to effective assistance of counsel.

STATEMENT OF THE CASE

There was a miscarriage of justice, the petitioner was arrested for a public offense that did not take place. There is hospital reports that show that the incident did not take place, five minutes after the hospital announced that they found no harm done, the Detective charged the petitioner with the offense anyway. A unfair outcome in a judicial proceeding as when the petitioner is convicted despite a procedural and substantive due process, and also despite a lack of evidence on a essential element of the public offense. This has happened in this pending case. There was a chain of custody violation with the alleged evidence used to convict the petitioner. The evidence was not recorded on the Police evidence log, nor found in the hospital report. But used at trial to reach a conviction. This evidence is hearsay, but was allowed into the court to get a conviction. There was prosecutorial misconduct, improper or illegal act, esp. involving an attempt to avoid required disclosure or to persuade the jury to wrongly convict a defendant. That without this evidence there would not have been a conviction. This evidence was falsified. The evidence was not authenticated. There was no chain of custody and a violation of due process.

The trial counsel nor appellate counsel of the defendant protected the rights of the petitioner, was deficient, made errors prejudice to the petitioner's constitutional rights not being protected, not acting as his counsel guaranteed by the U.S. Constitution Amendment 6. Disregarded the facts and law of the case therefore prejudice the defense. Which deprived the petitioner of a fair trial and appeal.

Petitioner was convicted illegally and in violation of the laws of the United States of America and State of Arkansas. Given a life sentence for an offense that was not committed. The trial court did not have subject-matter jurisdiction of the case, there was no bind-over for trial of the offense. Therefore the conviction is null, and should be reversed.

REASONS FOR GRANTING THE PETITION

The State of Arkansas at Jefferson County Circuit Court did not have jurisdiction for trial, there was no bind-over for trial in violation of the U.S. Constitution and Arkansas Constitution Grand Jury (judge grand jury, one man grand jury) clause. This Court has ruled in many cases that subject-matter jurisdiction will reverse conviction, and grant Writ of Habeas Corpus. Therefore the petitioner for the above reason seek this the Honorable Court by the Supreme law of the land grant him relief.

As which Petitioner filed a U.S. Writ of Habeas Corpus, to the United States District Court Eastern District of Arkansas, Pine Bluff Division at Little Rock, Arkansas. McClinton v. Kelley, (Case # 5:15cv00374), dismissed with prejudice, and has no citation within any law search data base. The Arkansas Attorney General wrote reply, accepted by the U.S. District Court, that petitioner had not exhausted his state remedies, and that the time to file Arkansas Rules of Criminal Procedure Rule 37 Post Conviction Petition had expired. Which was a falsehood and fraud on the court. Petitioner had filed the Petition. The Arkansas Supreme Court dismissed the appeal of the Post Conviction Petition on April 12, 2018. But also had filed the U.S. Writ of Habeas Corpus after the denial of his Direct Appeal. The Writ of Coram Vobis that was filed in the Petitioner's direct appeal adjudicated the claims so they were lodged in the U.S. Habeas Corpus Petition. The Writ of Coram Vobis filed in the Arkansas Supreme Court was dismissed as a Writ of Coram Nobis which was not lodged by the Petitioner, therefore was a judicial error by the Arkansas Supreme Court. The merit of the U.S. Habeas Corpus was not adjudicated, but the U.S. District Court, Eastern District of Arkansas, Pine Bluff Division rejected the next Writ of Habeas Corpus lodged, that it was a second and successive petition. Therefore a judicial error due to the fraud on the court that the expired post conviction had not been filed, the U.S.

District Court denied the first petition with Prejudice. The next petition was rejected that it was a second or successive petition. The United States Court of Appeals (8th Circuit) rejected the petitioner Motion for Permission to file a Second or Successive Petition.

Therefore due to judicial error, the Petitioner seek the Petition for Writ of Habeas Corpus from the U.S. Supreme Court, that there is no other Court to give the Petitioner the relief which he petition for. Petitioner seek the Writ of Habeas Corpus that he is being held illegal by the State of Arkansas. That this illegal incarceration is in violation of the Constitution and laws of the United States of America and State of Arkansas. The conviction is null and should be reversed and dismissed.

CONCLUSION

The petition for a writ of habeas corpus, the petitioner pray and ask to be granted.

Respectfully Submitted,



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Date: March 28, 2019