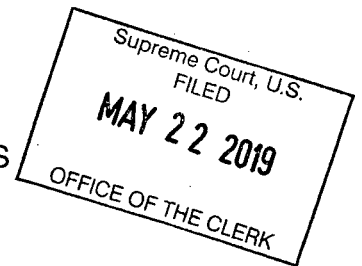


No. 18-9720

ORIGINAL

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)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

Whether the District Court erred in committing Petitioner to FMC Butner for restoration under 18 USC 4241(d)?

Whether the Appeals Court erred in failing to find that the Courts lacked subject matter jurisdiction based on petitioner's pro se informal brief of Appellant which "briefed the right appeal"? because the commitment exceeded 45 days in violation of the District Courts Statutory authority.

Whether the Appeals Court decision in Pierce v. Blaine, which dismissed an interlocutory Appeal under 18 USC 4241(d) for lack of jurisdiction, and conflicts with all other sister Circuits that found that a commitment order is appealable immediately under the collateral order doctrine, is wrong?

Whether the Courts Lack subject matter jurisdiction to proceed because once petitioner was committed for the evaluation and then for restoration his transport time to FCI Butner and FMC Butner exceeded 10 days in violation of the Speedy Trial Act?

And the Appeals Court erred in failing to address his motion for Bond which he listed right in his pro se Notice of Appeal?

Whether the Appeals Court & District Court lack subject matter Jurisdiction?

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REASONS FOR GRANTING THE PETITION

The District Court erred in committing Petitioner to FMC Butner for restoration under 18 USC 4241(c) and the custody of the Attorney General.

The Appeals Court erred in failing to find that the Courts lacked subject matter jurisdiction based on petitioner's pro se informal brief of Appellant which "briefed the right Appeal" because the commitment to FCI Butner for the evaluation exceeded 45 days in violation of the District Courts Statutory Authority and the commitment to FMC Butner exceeded 4 months in further violation of the Courts Statutory Authority in 18 USC 4241 and United States v. Baker, 807 F.2d 1315 (6th Cir. 1986) and Due Process.

The Appeals Court decision in Pierce v. Blaine, 467 F.3d 362 (3d Cir. 2006) in which the Third Circuit declined to extend the collateral order doctrine to a 18 USC 4241(c) commitment appeal directly conflicts with all other sister circuits to address this issue as well as conflicts with the instant Appeal. United States v. Banks, 16-3794 (3d Cir. 2019). Banks' appeal despite the fact that the Appeals court did not consider his rational and reasoned and unimpaired pro se Informal Brief of Appellant see at 16-3794 (3d Cir.) fell squarely in line with other circuits finding commitment orders appealable under the collateral order doctrine. See United States v. Friedman, 366 F.3d 975 (9th Cir. 2004) Gold, Rinaldi (2d Cir. + 7th Cir.); Mahoney (1st Cir. 2013); Song (4th Cir.) & Peters (10th Cir.)

The Courts lacked subject matter jurisdiction to proceed with the commitment and the criminal case because once petitioner was committed for the evaluation and then for restoration his transport time to FCI Butner and FMC Butner exceed 10 days each in violation of the Speedy Trial Act. See United States v. Hernandez - Amparan 600 F.Supp 2d 839 (W.D. Tex. 2009) (delay of more than 10 days in transporting defendant for mental examination under 4241 violated Speedy Trial Act). The indictment was submitted with prejudice. Also, the video conferencing kept disrupting which caused Banks' testimony in the transcript to be severely altered and appear nonsensical which effected the commitment. Petitioner was not afforded due process when his witnesses did not testify and were not subpoenaed. See 4247 under Title 18, United States v. Davis 672 Fed Appx 5299 (4th Cir. 2016). Petitioner wanted to call Meredith Boni who would have testified that the FBI agent who petitioner is accused of cyberbullying did indeed threaten & brandish his firearm at her in the physical presence of her then Attorney Cynthia Reed Eddy (now U.S. Magistrate Judge Eddy) before she testified in front of a Grand Jury & Eddy and punishing the FBI agent he'd about it to the FBI. A courthouse surveillance video which petitioner seeks by motion to subpoena shows the incident on video. Ross alleged that this incident was a delusion which it was not.

The Appeals court erred when it stated in its opinion USA v. Banks, 16-3794 (3d Cir. March 11, 2016) that "Dr. Wettstein reached no firm conclusion as to whether Banks was competent to waive his Sixth Amendment right to counsel and represent himself." See opinion at page 2 Appendix A. In not one but 2 reports including the 2015 report Dr. Wettstein stated "though the defendant is suffering from a mental disease in the form of a psychosis it does not render him unable to waive his right to counsel and proceed pro se in this matter." See Wettstein evaluation of December 5, 2015 at page 10 and Wettstein evaluation of November 17, 2013 at page 8. And Wettstein testified exactly the same. See transcripts of Competency Hearing December 30, 2015 USA v. Banks, 15-cr-168 CWP/PAJ ECF 11 at page 42.

Petitioner is an American Indian and therefore statutes such as 18 USC 4241(c) are liberally construed in favor of him the Indian and the rule of finality in criminal cases is liberally construed rather than strictly applied. United States v. Burt 188 US 432 (1903) (general acts of Congress do not apply to Indians) 1 Elk v. Wilkins, 112 US 94 (1884) (same).

Finally, the Appeals Court erred in failing to address Petitioner's motion for Bond which he listed right in his pro se notice of Appeal in violation of Due Process and the Bail Reform Act. This Court should order Banks released since his pre-trial detention of 45 months exceeds his maximum possible Guidelines sentence.

Dr. Ross offered no evidence to conflict with Banks' evidence that the CIA employed a "Telepathic Behavior Modification" program. See "Telepathic", "Telepathy Research" and Project Stargate at www.foia.cia.gov and KMR News Report at <http://www.jrn.com/kmir6/news/179955911.html>; A 1998 Department of the Army Report "Bioeffects of Selected Non Lethal Weapons" declassified in 2006 "microwave hearing... I could be psychologically devastating if one suddenly heard voices within one's head" as a result the DSM-5 definition of delusion was not met.

Also, the District Court and Appeals Court Lack Subject matter jurisdiction over the criminal case because;

a) Banks who was arrested after the Indictments were returned never had the opportunity to challenge the Grand Jury Venue and Individual Grand Jurors which in turn violated Fed. R. Crim. Proc 6(b)(1) and Due Process because Banks had already served more time than the case carries yet it is unconvinced the Court should dismiss the Superseding Indictment & Indictment.

b) Banks corresponded about the charges with an ACLU Intake Coordinator who did not disclose that they were the Grand Jury Foreman sitting on the Grand Jury which subsequently returned the Superseding Indictment against Banks using information in Banks correspondence in violation of his 5th Amendment Right against Self Incrimination and Due Process. The Superseding Indictment should be dismissed.

c) No Return of the cell phone Search warrants, the Arrest warrants and the other Search warrants was made as ordered by the Magistrate Judge in violation of Fed. R. Crim. Proc. 4(c)(4)(A), 41 and Due Process of the 5th Amendment.

d) The Magistrate Judge usurped the power of the Article III Judge by asking for and entering a plea in this felony case over Banks objections and in violation of Fed. R. Crim. Proc. 5(d), Due Process and United States v. Osbourne, 345 F.3d 281 (4th Cir 2002).

e) The U.S. Attorney and FBI issued and served Grand Jury Subpoena to Craigslist, Facebook, Forex.com/Gam Capital and others without authorization and approval of the Grand Jury in violation of Separation of Powers doctrine, Due Process and Rule 17(c) because the US Attorney was a party to the action and not a deputy marshal.

f) Banks never received a preliminary examination in violation of Due Process and Rule 5 and 5.1.

g) The Grand Jurors who voted to return the Indictments were not legally qualified and African and American Indians were excluded unlawfully as were the poor, Hispanic, women and college students in violation of Due Process, Equal protection, Rule 6, 28 USC §1867 & the District Jury plan.

CONCLUSION h) The Superseding Indictment was not brought in the name of the Real Party in Interest because it was brought in the name "United States of America" which refers to the 13 former British Colonies under the 1774 Articles of Confederation rather than "United States" which refers to the 50 States under the 1789 U.S. Constitution see Ballentine at "United States" in violation of 18 USC 3231, 28 USC 547(c), Rule 7 and Due Process. i) 18 USC 1001(b) specifically exempts Banks from the Count 7 charge see USA v. Banks ECF 96 ii) The Grand Jury Clause only allows felony prosecutions by "Indictment or Presentment" not "Superseding Indictments" in violation of Due Process & the Grand Jury Clause. k) The only clause in the Constitution that allows for punishment of felonies is the offences Clause & Banks is not charged with piracy.

The petition for a writ of certiorari should be granted.

or International Law violations in violation of Art I, Sect 8, Clause 10 & Due Process. Prejudice - The prejudice is the violations of Due Process, 4th & 5th Amendments, Equal protection, Separation of Powers and the oppressive incarceration and sheer length of incarceration. Banks has not had a shower in 11 months or outside recreation, the ventilation is poor and his cell is filled with musty & mites, his toilet smells bad and he doesn't receive cleaning supplies he has temporary bedding (2 thin blankets that haven't been washed in). Respectfully submitted, over 5 months & a Staph infection on his face, chest & neck is not being treated in violation of Federal punishment prescriptions in Bell v. Wolfish, 441 US 520, 535 n. 16 (1979).



Date: 4/14/2019

Also, 136 days have run off the Speedy Trial Clock in violation of the 6th Amendment and 18 USC 3161(h)(1)(F) and Due Process. See USA v. Banks, 2:15CR168 (WDPA) at ECF 900, 901