5/25/19

No. 19-231

In The
SUPREME COURT OF THE UNITED STATES

WES PERKINS,
Habeas Applicant (trial) – Applicant (Ct. Crim. App.) – Applicant (W.D. Tex.) – Appellant – Petitioner,

v.

SALLY HERNANDEZ, SHERIFF, TRAVIS COUNTY, TEXAS, Custodian,
Respondent – Respondent – Respondent – Appellee – Respondent, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FIFTH CIRCUIT COURT OF APPEALS

ORIGINAL PETITION FOR A WRIT OF CERTIORARI WITH APPENDIX A

WES PERKINS
P.O. BOX 152766
AUSTIN, TEXAS 78715-2766

Questions Presented

Parties to Habeas

1. Was DAVIS improperly included? (5th.Cir.)

2. Was PAXTON improperly dismissed? (W.D.Tex.)

Electronic filing

3. Did PITMAN abuse discretion in disallowing Perkins's electronic filing?

Actual Innocence

4. Is Perkins "actually innocent?"

Certificate of Appealability

5. Did the Fifth Cir. abuse discretion denying the Certificate?

Parties to Fifth Cir. Proceeding

Habeas Applicant/Appellant

WES PERKINS (*pro se*)

Respondents

- SALLY HERNANDEZ, Sheriff, Travis County, Custodian

  By: PATRICK POPE, Asst. County Atty., ANTHONY J. NELSON, Asst. County Atty.

- KEN PAXTON, A.G.
  STATE OF TEXAS

  By: ALI NASSER, Asst. A.G.

Fed. Rs. require adding State A.G. for the U.S.D.C. Habeas proceeding.

- LORIE DAVIS, Dir., Tex. Dep't of Crim. Justice, Correctional Insts. Div.

  By: EDWARD LARRY MARSHALL, Asst. A.G.

Even though Perkins was always in the Travis County system and was never in the Texas system, Fifth Cir. *sua sponte* docketed this *and* ruled with previously unnamed DAVIS as the sole Respondent. HERNANDEZ and PAXTON *were* added to the Docket Sheet later.

Petition for a Writ of Certiorari

Perkins petitions for a writ of certiorari to the Fifth Circuit as follows:

Citations below

None.

Jurisdiction

(i) Date Cert. of Appeal. denied.
No. 18-50675.
Feb. 27, 2019. [+90: May 28, 2019]

(ii) Extension(s).
None.

(iii) Rule 12.5.
N/A

(iv) Statutes, Jurisdiction.
28 U.S.C. §§ 1254(1), 2101(c).

(v) Statutory challenges, Rule 29.4(c).
Texas's A.G. is a party.

Non-Argument Calendar preferred

Statement of the Case

State Record

Per that Appendix, Perkins included the whole of the state Record with his § 2254 petition. Key are the 3d.CoA's ruling and § 502.001(45) ("**vehicle**"). This is an "errant legal standard" matter.

Parties

The Fifth Cir., *sua sponte*, named DAVIS as the sole Respondent. However, Perkins was never in the *state* correctional system; DAVIS was never Perkins's custodian. HERNANDEZ and PAXTON are identified only in the Docket Sheet.

Habeas Rule 2(b) *requires* inclusion of the state's A.G. for petitions involving future incarceration. But, PITMAN *dismissed* PAXTON.

Electronic filing

Perkins overtly objected to non-judicial decision-making. However, W.D.Tex. gratified its/their addiction to compelling consent by "referring" "at filing." Perkins gave Notice of crimes being committed, including Sedition. PITMAN retaliated by disallowing Perkins's electronic access.

Actual Innocence

New trial(s).

The 3d.CoA's ruling should be vacated and Perkins awarded [a] new trial[s].

NO APPELLATE JURISDICTION.

On direct appeal, Perkins petitioned for review. S.Ct.Tex. dismissed for want of jurisdiction. MCCORMICK's judgment amount of $0 is below the minimum amount in controversy. Thus, the 3d.CoA

didn't have appellate jurisdiction, *either*.

NO TRIAL JURISDICTION – ACTUAL INNOCENCE.

"VEHICLE" DEFINED.

> "**Vehicle**" means a device in or by which a person or property is or may be ***transported*** or drawn [i.e., towed] on a public highway ....

TEX. TRANSP. CODE § 502.001(45) (emphasis added).

3D.COA'S "STANDARD."

> **The definition of "transportation" is irrelevant to the offense for which Perkins was charged.** A person commits the offense of fleeing or attempting to elude a police officer if:
>
> > the person **operates** a **motor vehicle** and fails or refuses to bring the **vehicle** to a stop or flees, or attempts to elude, a pursuing police vehicle when given a visual or audible signal to bring the **vehicle** to a stop.
>
> *See* Tex. Transp. Code § 545.421(a). **The word "transportation" is not used in the statute. Nor is being engaged in some activity deemed to be "transportation" an element of the offense.**

3d.CoA on direct appeal (all **emphasis** added).

THE RULING'S CONSEQUENCE(S).

By insanely ***un-defining*** "transportation," which term § 545.421(a) uses ***four times***, the 3d.CoA guts the TRANSP. CODE. (A) What commercial activity is regulated? (B) What *non*-commercial activity may be regulated by consent? *Cf. Lozman* (2013). (C) "**Vehicle**" is *instantly* vague, i.e., *impossible* to prove as a matter of law, meaning (D) STATE has no "case

or controversy." Thus, (E) no trial court has jurisdiction. With "transportation" *un-defined*, ***all*** TRANSP. CODE matters are non-cases; ***everyone***, e.g., even Marzett, 2015 WL 3451960, is "actually innocent."

Moreover, since the term "transportation" isn't found in *any* TRANSP. CODE "offence" provision used to date against Perkins, this is **the** "standard" applied to *all* his trials.

Complete exoneration.

This is the *second* case in County Court No. 3. During direct appeal of the *first* one, Perkins terminated any remaining vestiges of consent.

Since MCCORMICK conducted this trial under the 3d.CoA's very corrupted "standard," correcting that standard necessitates a new trial. And, since STATE can't prove "consent," thus "**vehicle**," any viable commercial nexus, fiduciary capacity, *or* standing ("injury in fact," "actual grievance," *or* "case or controversy"), Perkins is actually innocent. This one should end now via complete exoneration.

At the very least, establish a standard per this "final judgment" Record that S.Ct.Tex. may apply pre-trial, even by mandamus.

Certificate of Appealability

This Habeas appears short shrifted. *Ab initio*, wrong parties *sua sponte*, despite overtly stating "Travis County;" non-subtle suggestion of mootness; completely unmoved by unconsented-to magistrate participation ("referral" "at filing"); and key, the wrong ruling.

Given the FBI/SPLC political indoctrination programme, these Habeas courts loathe "consent" all the more. The result? They've advanced a lawless, even insane, "standard" that guts the TRANSP. CODE.

Argument

Parties

1. Was DAVIS improperly included? (5th.Cir.)

DAVIS was never Perkins's custodian.

2. Was PAXTON improperly dismissed? (W.D.Tex.)

Habeas Rule 2(b). Petition filed Mar. 6. "Report" date Mar. 9.

Electronic filing

3. Did PITMAN abuse discretion in disallowing Perkins's electronic filing?

Habeas proceedings are "civil cases" *not* "administrative appeals."

Compelled consent to non-judicial decision-making is rampant in W.D.Tex. Perkins's objection was bulldozed, ***again***. Here, not only "at filing" but also without an order by the assigned § 451 judge. Those preserving the objection are frozen out from addressing the merits further.

Then, the unconsented-to magistrate "ordered" responses. While this intentionally stalled out the physical "in custody" time, it also activated the "grave constitutional questions" that arise from compelling consent to arbitration.

The procedure, § 636(c), sets forth two stages of "solicitation" of consent/objection: one *after* original filing; one ***after*** the respondents respond. *"At filing"* "referrals" aren't justified per "consent by silence," for *any* party, there being no meaningful opportunity, yet, to *be* silent. Key, Perkins's "at filing" *non-*

consent eliminated referral jurisdiction, "at filing." Moreover, since only the assigned judge may refer, this "anonymous," as in "unsigned," i.e., "per Standing Order," "referral" is *facially* void.

Responsive to W.D.Tex.'s addiction to compelling arbitration, even to ***Habeas***, Perkins gave Notice, of Record, of the crimes, including Sedition, being committed per the compelled consent policy.

PITMAN retaliated by denying Perkins's request for electronic access.

PITMAN abused discretion.

Actual Innocence

4. Is Perkins "actually innocent?"

Two ways to read the 3d.CoA's insane ruling.

OPTION 1.

Originally, Perkins associated "consent" with the term "transportation." Thus, it's possible, due to their (1) not having a clue about the matter, generally, and (2) finding it abhorrent to recognize "consent" ("I don't consent" being the new moniker of "terr*rism," by definition, per FBI/SPLC political indoctrination regarding "who" challenges jurisdiction in "transportation" matters), that the 3d.CoA intended to convey that **"consent"** was/is irrelevant.

Given *ample* recurring opportunities to analyze the matter, Perkins applies *Lozman* (2013) more accurately by associating "consent" with the second of the two verb clauses in the definition of "**vehicle**."

OPTION 2.

Within the four corners, they've literally excised "transportation" from the TRANSP. CODE.

They assert boldly that § 545.421(a) doesn't use "transportation" *at all.* However, "**vehicle**" is *defined*

with the verb form, "transported," and "**motor vehicle**," "**drive**," *and* "**operate**" are ***all*** *defined* with "**vehicle**." Thus, § 545.421(a) uses ("**vehicle,**" thus) "transportation" ***four times*** – "**operating**" ["**vehicle**"], "**motor vehicle**" ["**vehicle**"], "**vehicle**," "**vehicle**" – technically, five ("police vehicle").

Either way, they've gutted the TRANSP. CODE.

By un-defining the *sole* subject of the TRANSP. CODE, the 3d.CoA left no scope of activity *to* regulate, whether commercial or *non*-commercial. Because "*transportation*" is **un-defined**, the TRANSP. CODE regulates **nothing**, *ab initio*, as a matter of law.

No trial court jurisdiction – "actual innocence."

While "transportation" doesn't *have* to be defined to be agreed to, *cf.* "dollar," it *does* have to be defined if "criminal" sanctions are sought. *Cf. Cheek* ("tax" case; qualitatively an "actual innocence" defense arising from alleged vagueness; Cheek's defense fully recognized; duties eternally clarified; new trial).

By un-defining "*transportation,*" the 3d.CoA un-defined "**vehicle.**" It's unprovable, as a matter of law, whether Perkins *ever* (A) engaged in regulated commercial activity *or* (B) consented to being regulated in non-commercial activity. *Cf. Lozman* (2013). With "**vehicle**" un-defined, "**motor vehicle**," "**drive**," *and* "**operate**" are also un-defined. Since "**vehicle**" is vague and unprovable, STATE ***never*** had standing, ***never*** had a viable commercial nexus, ***never*** had a "case or controversy." Un-defining "transportation" left (A) MCCORMICK completely stripped of jurisdiction, (B) jury participation wholly illegal, and (C) MCCORMICK's judgment void, thus, ultimately, (D) Perkins "actually innocent," all as a matter of law.

Because the 3d.CoA gutted the TRANSP. CODE by ***un-defining*** *"transportation,"* MCCORMICK's very politically-motivated, precipitous jailing of Perkins was illegal.

Certificate of Appealability

5. Did the Fifth Cir. abuse discretion denying the Certificate?

W.D.Tex.'s illegal "at filing" referral policy, by itself, warrants not only the Certificate but also vacating PITMAN's judgment and setting a new § 2254 hearing, maybe even Disqualification.

The Fifth Cir. should have granted not only the Certificate but also Habeas. Under the 3d.CoA's "standard," ***everyone***, including Perkins, is "actually innocent." The 3d.CoA's *un-defining* of "transportation" stripped MCCORMICK of ***all*** trial jurisdiction, meaning that jailing Perkins was very much illegal.

Since MCCORMICK conducted the trial under a corrupt standard ("transportation" is *un-defined*), Perkins should be granted a new trial under a new standard ("transportation" means ___). *Cf. Lozman.*

Given the necessity of a new trial, and given that Perkins has terminated all sources of "consent," i.e., since STATE cannot prove "**vehicle**," Habeas should be granted to exonerate Perkins *completely.*

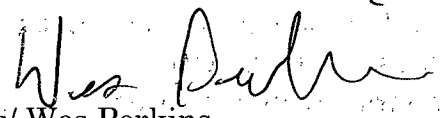
Regarding granting this Petition, the Fifth Cir.'s habit of making DAVIS a party to § 2254 Habeas arising in Texas is errant. It may be warranted statistically, but it's not warranted factually here. Given the W.D.Tex. Record, especially the case style, since the Fifth Cir. started by confirming, *sua sponte*, that they don't even know who the right parties are, Perkins questions their whole analysis.

Relief Requested

Perkins requests as follows:

1. Grant this petition.
2. Vacate the denial of Certification of Appealability.
3. Vacate W.D.Tex.'s denial of Habeas.
4. Vacate the 3d.CoA's ruling on direct appeal.
5. Vacate MCCORMICK's judgment.
6. Grant Habeas and Remand to County Court At Law No. 3, Travis County, Texas,
   a. for a new trial on the merits, or, better,
   b. with instructions to dismiss No. C-1-CR-14-212016.
7. Award costs; and
8. Grant all other relief applicable.

Respectfully submitted,



/s/ Wes Perkins
WES PERKINS