

19-5804

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Michael P. Puzey — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael P. Puzey 23940-016
(Your Name)

USP McCreary P.O. Box 3000
(Address)

Pine Knot, KY 42635
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Appellate Court committed a manifest of Constitutional error by failing to adhere to its obligations and duty under Article III subsection 2. and 28 U.S.C. 453 to satisfy itself that Article III subsection 2. subject-matter jurisdiction was proven and existed in Petitioner case ab initio?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 9, 2019.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Petitioner is seeking joint review under Rule 12.4 in USCA4 Nos. 18-7324 and 18-7326, that were decided April 9, 2019.

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Article III subsection 2.

United States Constitution Fourth Amendment

United States Constitution Fifth Amendment

United States Constitution Sixth Amendment

United States Constitution Eighth Amendment

United States Constitution Tenth Amendment

United States Constitution Fourteenth Amendment

5 U.S.C. 3374

28 U.S.C. 453

28 U.S.C. 2255

STATEMENT OF THE CASE

On July 27, 2000. Petitioner was at Joey Breeden's residence when West Virginia State Police Officers Executed a search warrant on Mr. Breeden's residence; Officer Brian Bean at gunpoint handcuffed Petitioner and took him outside in the backyard of Mr. Breeden's residence and conducted a search of his Person and upon completion of search found Petitioner's Identification, upon finding the I.D. Officer Brian Bean then escorted Petitioner to a waiting State Police cruiser and Placed him inside and took him to the West Virginia State Police Station off of route 9. Where he was fingerprinted and Photographed, and was driven back to the residence without being charged with anything at all.

The West virginia State Police Eastern Panhandle Drug and Violent Crime taskforce conducted a State investigation from June 1999 to the return of Petitioner's indictment Dec 5, 2000; and Dec 7, 2000. Without the appropriate aid, participation, or supervision of any federal law enforcement agent or agency, neither was there a Joint Federal and State taskforce with a (SAC) Speical agent

in charge in petitioner's case. There is no Federal Complaint (criminal), nor State Complaint (criminal) filed in petitioner's case by neither State nor Federal law enforcement, see Appendix I. Scott Dillion of the West Virginia State Police opted to sought a Federal indictment before a Federal Grand Jury Dec 5, 2000 without the aid, Participation, or Supervision of Federal law enforcement interaction. Scott Dillion before the Federal grand jury; by way of Omission where he failed to disclose that he was not indeed a Federal law enforcement agent; furthermore Mr. Dillion before the Federal grand Jury admitted that he, officers, and "Agents" of that taskforce conducted an investigation for the last several years. see Appendix E. Pg 3 (Scott Dillion's Grand Jury Testimony Dec 5, 2000). Where On Page 55. of Mr. Dillion grand Jury testimony, he is asked a question of how many years was his investigation? Mr. Dillion stated that we actually started the "investigation" last June of 1999, as opposed to the last several years on page 3. of the grand jury testimony he gave. see E Appendix. Petitioner was indicted from 1990 to Dec 5, 2000 With no superceding indictment of significance. Petitioner is not mention in Alleged conspiracy until 1997-1998,

Trooper Dillion was never cross-deputized pursuant to 5 U.S.C. 3374 or any other statute alike. At Petitioner trial April 23, -26, 2001. Trooper Dillion was established as a "Case agent" of this case, see F, Dillion's Trial Testimony.

Trooper Dillion's Supervisor Fred Wagoner trial testimony where he stated that he is responsible for the Eastern Panhandle Drug and Violent Crime taskforce drug investigations in the seven eastern most counties in the Panhandle of West Virginia, see Appendix G. Fred Wagoner's trial testimony. Thus, showing that the Eastern Panhandle drug and Violent Crime taskforce operated and investigated without the aid, participation, or assistance of Federal law enforcement and their agencies directly involved in Petitioner's case in violation of the "Silver Platter Doctrine" where all state gained evidence is inadmissible at Petitioner's trial where no Federal law enforcement are involved. Due to Mr. Dillion and the State taskforce failing to charge petitioner in the state of West Virginia on State level, but bypass State requirements and Procedures as required by the State of West Virginia in violation of the Separation of Powers doctrine under the 10th amendment see Bond v. United States. where this state actor sought
see ELKINS v. United States, 364, U.S. 206 (1960).
Silver Platter Doctrine, overruled by this Court.
6.

Federal Prosecution, to be used as a Weapon against Petitioner that violated his 4th, 5th, 6th, 8th, 14th Amendments rights, Thus, the district court lacked subject-matter jurisdiction pursuant to Article III

Subsection 2. Where the federal courts subject-matter jurisdiction is created -- and limited -- by Article III and Federal statutes, no action of the parties can confer subject-matter jurisdiction upon a federal as Mr. Dillion has done, ordinary principles of Consent, waiver, and estoppel do not apply. A federal court has a independent obligation to assess its subject-matter jurisdiction and it will "raise a lack of subject-matter jurisdiction on its own motion" because subject-matter limitations "serve institutional interests" they "must be policed by the courts on thier own initiative even at the highest level".

See Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702, 72 LEd 2d 492, 102 S.Ct 2099 (1982), Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583, 143 L.Ed 2d 760, 119 S.Ct. 1563 (1990).

Thus, On Oct 23, 2017. Petitioner filed with exhibits of the record a 28 U.S.C. 2255 in the United States district court in Martinsburg, West Virginia, (case number given) 3:17-cv-128, 3:17-cv-129

along with case number original 3:00-CR-57-16, GmG 3:00-CR-64-GmG. see Appendix D.

Petitioner raised four(4) grounds in his 2255 as follows: Ground 1, the district court lacked subject-matter jurisdiction due to the fact that, there was a Fatal defect, where the indictment was secured by fraud, and Perjured testimony.

Ground 2. Petitioner is actually, factually, and Procedurally innocent. due to the fact that "No United States Federal law enforcement agent nor agency accused him of a federal crime against the United States by way of federal criminal complaint, nor seeking an Federal indictment before an federal grand jury Dec 5, 2000/ Dec 7, 2000, where the district court Lacked subject-matter jurisdiction over indictment no. 3:00-CR-57/3:00-CR-64.

Ground 3. Petitioner is severely suffering from a fundamental miscarriage of Justice for the last 17 years where he is illegally and unjustly indicted, tried, convicted, and sentenced to an egregious "Life Sentence", where he is actually, Factually, and procedurally innocent, for the last 17 years of his cruel and unusual incarceration.

Ground 4. Petitioner 14th amendment rights have been egregiously violated by the actions of a Undeputized West Virginia State policemen Scott Dillion whom sought an Federal indictment before an Federal Grand Jury December 5, 2000. against petitioner, where he opted to by pass the state of West Virginia Judicial proceedings without authorization from "any" United States Federal law enforcement agencies, where Dillion impersonated an United States federal agent and gave perjured testimony before a Federal Grand Jury.

On Aug 23 and 28, 2018. Magistrate Judge Trumble issued his report and recommendation that petitioner's 2255 be denied and dismissed without prejudice due to lack of authorization from the Fourth circuit, ignoring and failing to address petitioner's Article III subject-matter jurisdiction challenge to the district court. see Appendix C.

On Oct 7, 2018. Petitioner filed his response to the Magistrate's R and R pointing out that the court refused to satisfy itself that article III subject-matter jurisdiction was proven and existed in petitioner's case ab initio, but instead moved to pass on the merits, thus, invoking hypothetical jurisdiction, Judicially decreeing jurisdiction, and Relying upon Statutory permission approach or theory, which all have been condemned by this court. see district court doc no. 1456 in case no. 3:00-cr-57-GMG.

On Oct 16, 2018. the district court adopted the magistrate's Report and recommendation denying and dismissing petitioner's 2255 without prejudice, Thus, reaching the merits of his 2255 first and invoking "hypothetical jurisdiction,"² judicially decreeing jurisdiction, and³ Relying upon statutory permission approach or theory, all which have been condemned by this court. see ¹Steel co. v. Citizens for a better Env't, 523 U.S. 83, 94-95, 140 LEd 2d 210, 118 S.Ct. 1003 (1998),
²KoKkonen v. Guardian Life Ins. Co. of AM, 511 U.S. 375, 377 (1994), ³Raines v. Byrd, 521 U.S. 811 (1997).

The district court refused to adhere to its obligations and duty under Article III subsection 2. and 28 U.S.C. 453 and satisfy itself that Article III subject-matter jurisdiction was proven and existed in petitioner's case ab initio. see Lujan v. Defenders of Wildlife, 504 U.S. 555-550-61 S.Ct. (1992), Steel co., Insurance Corp., Ruhrgas, supra.

On Oct 26, 2018. petitioner filed notice of Appeal.

On Nov 21, 2018. in a separate motion to the Appellate court prior to filing his informal brief, he filed an emergency motion challenging the Appellate's court subject-matter jurisdiction pursuant to Article III in his case ab initio 3:00-CR-57/3:00-CR-64 before it ruled on his informal brief in appellate case no. 18-7324/18-7326, since the district court failed to do so. see, Appellate court docket no. 6.

On Dec 14, 2018. petitioner filed his informal brief in the Fourth circuit court of Appeals.

On April 9, 2019. the Fourth circuit in a unpublished opinion dismissed petitioner's appeals without finding that the district court committed manifest Constitutional error when it failed to satisfy itself that subject-matter jurisdiction was proven and existed in his case ab initio pursuant to Article III section 2. The Appellate court in its unpublished opinion as well refused and failed to satisfy itself both on petitioner's challenge to the court on the separate emergency motion and in the informal brief itself, as well as on its own initiative, where both district and appellate courts failed in Policing themselves on their own initiative, thus, invoking ¹. hypothetical jurisdiction, ². Judicially decreeing jurisdiction, and ³. Relying upon the Statutory permission approach or theory in violation of several of this court's decisions all relevant and controlling to and in Petitioner's Certiorari. The actions by both district and Fourth Circuit courts in this case constitutes an "Act Ultra Vires" because the courts had no power to hear Petitioner case without satisfying themselves of Article III subject-matter jurisdiction first before passing on the merits of his case. therefore the indictment in 3:00-cr-57/64 are void.

REASONS FOR GRANTING THE PETITION

In accordance with rule 10.(a) and (c) and any other this courts deems appropriate to grant Writ of Certiorari, Petitioner states that both the district and appellate Courts in this case has egregiously departed from the accepted and usual course of Judicial proceedings in that the courts refused, ignored, evaded and failed to address and satisfied itself of Petitioner's Clear challenges to the courts subject-matter jurisdiction under Article III subsection 2. Thus, invoking hypothetical jurisdiction, Judicially decreeing Jurisdiction, and Relying on Statutory Permission approach or theory which all are in violation and "direct conflict" with this courts relevant decisions concerning this exact issue. Where it is clear that the Fourth circuit has sanction such departure by evading its obligations and duty under 28 U.S.C. 453 and satisfy itself that subject-matter jurisdiction was proven and existed in Petitioner case ab initio. Where the Appellate court Actions or decision constituted an "act ultra vires" when it pass on the merits of Petitioner case without satisfy itself on its own initiative that jurisdiction was proved and existed ab initio. The Appellate court's decision denying Petitioner's Appeal and holding him to a Statutory COA requirement under the AEDPA was in clear error, Where Appellate court's requirements were ignored, that pursuant to Article III subject-matter jurisdiction requirements and 28 U.S.C. 453 Which mandates the court to satisfy itself of subject-matter jurisdiction

first before the court can pass on the merits, because if not, then Article III requirements are sham and a illusion.

This court reaffirmed the principle that subject-matter is a necessary prerequisite to any merits decision by a federal court; "The statutory and (especially) constitutional elements of jurisdiction are an essential ingredient of Separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects" Id. at 101 see Steel Co.

The Appellate Court decision to adhere to its obligations and duty to satisfy itself of subject-matter Jurisdiction amounted to an act ultra vires and greatly conflicts with the following cases of this courts decisions just to name a few as follows : Raines v. Byrd (1977);

Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites ded Guinee, (1982); Lujan v. Defenders of Wildlife, (1992); KoKkonen v. Guardian Life Ins. Co. of Am. (1994); Arbaugh v. Y&H Corp. (1996); Steel Co. v. Citizens for a Better Env't (1998); Ruhrgas AG v. Marthon Oil co., (1999); United States v. Cotton (2002).

All of these cases are relevant to Petitioner issues and where the Appellate Court decisions was "Ultra Vires"

and in conflict with this court's decisions is of national importance, because when courts are faced with Article III subject-matter jurisdiction challenges like Petitioner's case and refuse and failed to announce the fact that the court lack subject-matter jurisdiction under Article III, subsection 2., this court's supervisory power will guide and correct them when they depart from the accepted and usual course of judicial proceedings and sanctions that departure by a lower court. Petitioner states that this case stems from a Silver Platter doctrine violation which lead to a Separation and equilibration of Powers violation as well as several constitutional violations, Petitioner's rights too. Ultimately ending with the district court and Appellate court lacking Article III subject-matter jurisdiction, and if this court allow these violations to go unchecked it would open up an opportunity for DOJ Attorneys to promote unlawful Police Misconduct in using the Federal Sovereignty as a weapon against citizens it chooses to violate, which would erode the

Public's confidence in the Federal Judicial System and at the same time destroy lawful rights under the Constitution, and Article III requirements challenges to a Federal Court of subject-matter jurisdiction which must remain a safeguard for circumstances as herein case.

Petitioner urges this court to grant Certiorari as well due to the district court, Appellate court, and other various district and Appellate courts whom petitioner has filed appeals and these as well lack subject-matter jurisdiction as well to. where petitioner will, show, because he is unable to get or receive relief at all no matter the change in Law, or Congressional enactment of Law.¹ Petitioner has a valid Watson v. United States, 552 U.S. 74 (2007). where he filed to the Fourth Circuit for authorization for second 2255 and was denied Aug 10, 2016. see Appendix J. his denial and his 3:00-CR-64 924(C)(1)(A) indictment, where he has filed a 2241 in 2016 in U.S. district Court for Beaumont, TX Docket no. 1:16-CV-300 RC-KFG. where this 2241 is still sitting till this day. 2. Petitioner Points this court attention to the "First Step Act" of 2018 that Congress has signed/enacted into Law, where Section 404 of this

applies to Petitioner where he is eligible because he is indicted for a "covered offense" and 841(b)(1)(A) involving 50 or grams of cocaine base. and found guilty 50 or more grams, where the court has "manipulate" his Motions to the district court by choosing to review and consider his 924(c)(1)(A) Case no. 3:00-CR-64, instead of his cocaine base Case no. 3:00-CR-57-16 for relief.

3. Petitioner has also filed a 2241(c)(3) in the district Court in California, case no. 2:18-cv-05919-JFW-DFM, where he was denied without a report and recommendation, and appealed to the Ninth Circuit Court of Appeals, Doc # 18-56476, where the clerk of the Ninth Circuit refused to issue him a briefing Schedule, this has been since Nov 2018.

Petitioner has no way of relief and will Die in prison if this court does not intervene and use its supervisory powers. Thus, leaving Petitioner in a "Federal Judicial System Conundrum" because no Court has subject-matter Jurisdiction under Article III to hear his case, thus, his above examples, wherefore he prays that this court would Grant Certiorari in his case to be heard finally after 19 yrs and get to the bottom of this Conundrum dilemma. there 25 other people in this indictment.

Michael Puzey

CONCLUSION

Petitioner asks that this court grant him Certiorari to be heard, because he has never had his day in court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Paul Pzyey

Date: July 1, 2019.