

IN THE UNITED STATES SUPREME COURT

19-5548

NO. 16-15498-D

ORIGINAL

Supreme Court, U.S.
FILED

JUL 31 2019

OFFICE OF THE CLERK

ANDRE THOMAS, Jr.-PETITIONER,

V.

USP-ATLANTA-WARDEN-RESPONDENT(s)

PETITIONER'S PETITION WRIT OF CERTIORARI
SUBMITTED FOR REVIEW TO INDIVIDUAL
JUSTICE CLARANCE THOMAS,
PURSUANT TO RULE 22.1 OF THE SUPREME COURT

Petitioner Andre Thomas, acting pro-se., litigant Respectfully Submits pursuant to Rule 22.1 of the Supreme Courts that Individual Justice Clarence Thomas, Review the petitioner's petition for writ of certiorari[where]when a federal sentencing Judge Remain silent on how a federal sentence should run[then]petitioner[can]receive Double credit for Non-Concurrent Sentences for time served In a state Jail or state prison[based]on the federal detainer[a]lone.see.HEGNEY V. HOLDER.177 fed.App'x 901(11th cir.2006 U.S.App.Lexis 10148);and see.SHAW V. SMITH.680 f.2d 1104(5th cir 1982 U.S.App. Lexis 17167).and also see.PINEDO V.UNITED STATES.955 f.2d 12(5th cir 1992 U.S.App.Lexis 1825),

Precedent under former 18 U.S.C.S. §3568[Is]Applicable to the [new]statute,
18 U.S.C.3585(b).

QUESTION FOR REVIEW

- 1.) Whether Petitioner stated a Valid Constitutional Claim when he asserted that on January 22, 2008, the federal detainer deprived him of his liberty Interest In posting a set probation bail[when] the federal Government took him away from the state custody and place him In federal[detainer] custody for federal prosecution for five(5) months.
- 2.) Whether[when] a federal sentencing judge Remain silent on how a sentence should run and the petitioner Request for time served In a state jail or state prison to be credited toward his federal sentence from october 18, 2007, the date the state arrested on the state offenses through up until march 26, 2014, the date he entered B.O.P. custody[due] to the federal detainer[a] lone on january 22, 2008, prevented the petitioner release from state confinement[did] the Eleventh Circuit Violate. HEGNEY V. HOLDER 177 Fed. App'x 901 (11th Cir 2006 U.S.App. Lexis 10148) ; an SHAW V. SMITH 680 F.2d 1104 (5th Cir. 1982 U.S.App. Lexis 17167), When it failed to [grant] the Requested jail credit toward the petitioner's federal sentence.
- 3.) Whether the Eleventh Circuit Violated HEGNEY V. HOLDER 177 Fed. App'x 901 (11th Cir. 2006 U.S.App. Lexis 10148 ; an SHAW V. SMITH 680 F.2d 1104 (11th Cir. 1982 U.S.App. Lexis 17167), When it failed to Reinstate petitioner Appeal based on the federal detainer[a] lone prevented the state from releasing the petitioner on bail.

TABLE OF CONTENTS

Question Presented for Review.....	i
Table of Contents.....	ii
Table of Authorities.....	iii

Cases

Statutes

Basis for Supreme Court Jurisdiction.....	1
Date of Judgment Sought to Be Reviewed.....	1
Statutory Provision Conferring Jurisdiction on This Court.....	1
Constitutional Provision & Statute Involved in This Case.....	1
Statement of the Case.....	1
Basis For Court of Appeals' Jurisdiction.....	4
Argument.....	4

**The Eleventh Circuit Is In Conflict With Its [own]Binding precending In
Hegney V. Holder 177 fed.Appx 901(11th cir 2006 U.S.App.Lexis 10148)based
on the federal detainer deprived petitioner of his liberty Interest In
posting a [set]probation bail on January 22,2008.**

Conclusion.....	6
Appendix.....	A
Appendix.....	B
Appendix.....	C
Appendix.....	D
Appendix.....	E
Appendix.....	F

TABLE OF AUTHORITIES

CALDRON V. THOMPSON.523 US at 538(1998).

HEGNEY V. HOLDER.177 fed.App'x 901(11th cir.2006 U.S.App.Lexis 10148)

SHAW V. SMITH.680 f.2d 1104(5th cir 1982 U.S.App.Lexis17167).

UNITED STATES V. PINEDO.955 f.2d 12(5th cir 1991 U.S.App.Lexis 1825).

BLOOMGREN V. WARDEN.948 f.2d 688(10th cir.1991 U.S.App.Lexis 26371).

STATUTES

18 U.S.C. § 922(g)(1)

28 U.S.C. § 2241 Writ of Habeas Corpus

18 U.S.C. § 3585(b)

other

U.S.CONST.amend 14

BASIS FOR SUPREME COURT JURISDICTION

The United States Circuit of Appeals for the Eleventh District has so far departed from the accepted and usual Course of Judicial Proceedings as to call for an Exercise of this Court's Supervisory power.

DATE OF JUDGMENT SOUGHT TO BE REVIEWED
MAY 09, 2019

STATUTORY PROVISION CONFERRING JURISDICTION ON THIS COURT
28 U.S.C. §1245

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

U.S.CONST.amend 14
18 U.S.C. §922(g)(1)
18 U.S.C. §3585(b)

STATEMENT OF THE CASE

- 1.) On July 28, 2007, petitioner Andre Thomas, was arrested by the state of Alabama, state Authorities in Birmingham Alabama, for Violation of the state firearm Act, and was Released on bail the same day.
- 2.) and on October 18, 2007, petitioner Andre Thomas, was Re-arrested by the state Authorities In Jefferson County Alabama, for the state offense of [Robbery and Attempt-Murder with bail set] see Appendix....A).

- 3.) and on November 30, 2007, a [probationer bail was set by the state Judge] see Appendix...B).
- 4.) and on or about December 28, 2007, the arrest for the state firearm Act resulted into a federal offense of felon in possession of a firearm in violation of 18 U.S.C. § 922(g) which a federal indictment and a federal detainer warrant was issued.
- 5.) and on January 15, 2008, the state [Robbery] Charge was [Dismissed] by the state Judge. see Appendix....C). and the Attempt-Murder and the probation Charges [Remained pending with bail set] see Appendix....D).
- 6.) and on January 22, 2008, petitioner Andre Thomas, was transferred from the County Jail into federal custody on the federal detainer warrant for prosecution.
- 7.) and the Above [bailable] state charge's was the only Charge's pending against Andre Thomas, on January 22, 2008, when he was transferred into federal custody on the federal detainer warrant. [No other state charges existed]. id.
- 8.) and on August 28, 2008, petitioner Andre Thomas, was sentenced in the United States District Court for the Northern District of Alabama to a 120-Months term of Imprisonment for felon in possession of a firearm and the Judgment [Is] silent as to whether the term should be served concurrently or consecutively with any other sentence.
- 9.) and on March 6, 2009, and on June 10, 2010, petitioner Andre Thomas, was sentenced by the state to serve five (5) years on all state charges and all state charges were ordered to run concurrently with each other and concurrent with the current federal sentence.
- 10.) and on March 26, 2014, petitioner Andre Thomas, was released from the state prison and federal Authorities took Exclusive custody of him.
- 11.) and on or about April 15, 2015, petitioner Andre Thomas, exhausted all his administrative remedies through the Bureau of Prisons requesting for all time served in the state custody from October 18, 2007, through up until March 26, 2014, when he entered B.O.P. custody [due] to the federal detainer prevented the petitioner from posting state [set probation bail on January 22, 2008, and all requests was denied by B.O.P.

12 .) then on or about May 25, 2015, petitioner Andre Thomas, petition the United States district Court with his § 2241 writ of habeas Corpus In the Northern district of Atlanta Georgia, Requesting for all time served In state Custody from October 18, 2007, the date state arrested on the Robbery and Attempt-Murder charges, through up until March 26, 2014, the date petitioner entered exclusive federal custody to be credited toward his federal sentence[due] to on January 22, 2008, the federal detainer prevented the state from releasing him on set probation bail [that] was set by the state Judge and the district court denied the § 2241 writ of habeas corpus pursuant to 18 U.S.C. § 3585(b)(2) because the time was credited toward the state sentence.

13 .) and on or about August 20, 2016, the petitioner Submitted to the district court a application to proceed In "IFP" on Appeal and the district court found him "INDIGENT" [Doc.No.17.] and denied the application as "Frivolous".

14 .) and on September 2017, the Eleventh Circuit Court of Appeals also denied petitioner, "IFP" on Appeal and order for petitioner to pay \$ 505.00 filing and docketing fees In full to the district Court.

15 .) and on October 24, 2017, the Appeal was [Dismissed] by the Eleventh Circuit Court of Appeals for failure to pay the filing and docketing fees on time to the district court.

16 .) then on March 4, 2019, petitioner [paid] the filing and docketing fees to the district court In full and on April 5, 2019, petitioner filed a Motion In the Eleventh Circuit Court of Appeals [to] Recall its Mandate Issued on October 24, 2017, bases on a miscarriage of Justice In Light of HEGNEY V. HOLDER. 177 Fed.App'x 901 (11th Cir 2006 U.S. App. Lexis 10148); an SHAW V. SMITH 680 F.2d 1104 (5th Cir 1982 U.S. App. 17167), and on May 9, 2019, the Motion to Recall Mandate/Reinstate Appeal was denied by the Eleventh Circuit Court of Appeals. See Appendix....E).

17.) On Appeal to the U.S Circuit court of Appeals for the Eleventh Circuit,petitioner's Motion to Recall Mandate/Reinstate Appeal was denied and affirmed.

from the order and Judgment of the Eleventh Circuit denying and affirming said motion to Recall Mandate/Reinstate Appeal,petitioner brings to this Court.

BASIS FOR COURT OF APPEAL' JURISDICTION

The appeal to the Court of Appeals was brought from the final Judgment of the District Court for the Northern District of Atlanta Georgia pursuant to 28 U.S.C.§1291.

ARGUMENT

PROPSIITION ONE

The Eleventh Circuit Is In Conflict with its own Binding precending

SEE.CALDRON V. THOMPSON.532 US at 538(1998),Which Clearly States : A Court of Appeals May Recall its Mandate to avoid a miscarriage of Justice.See PINEDO V. UNITED STATES.955 f.2d 12(5th cir 1992),Precendent under 18 U.S.C.§3568[Is] applicable to the new Statute,18 U.S.C. § 3585(b).See SHAW V. SMITH.680 f.2d 1104(5th Cir 1982),time spent In state custody Even If for unrelated offense,[must] be credit toward time served on a federal sentence If the continued state confinement was Exclusively the product of such action by federal law-enforcement officials as to justify treating the state jail as the practical equivalent of a federal one.

[If],for example,a state defendent Is denied bail solely because of the federal detainer [Issued]against him,the time spent In state custody a waiting trial must be credited to the federal sentence.

also see. HEGNEY V. HOLDER. 177 Fed.App'x 901(11th Cir 2006 U.S.App.10148), In Interpreting that statute, the former United States Court of Appeals for the Fifth Circuit had explained that time spent in state custody must be credit toward time served on a federal sentence if the continued state confinement was exclusively the product of such action by federal law-enforcement officials as to justify treating the state jail as the practical equivalent of a federal one.

In other words, if the federal detainer alone prevent the prisoner's release from state confinement, credit must be given.

Where a convicted federal prisoner claims credit for time served in a state jail or prison, the burden is on the prisoner to establish that the state confinement was exclusively the product of a detainer action by federal law-enforcement officials. Moreover, prisoners should not be given double credit for Non-Concurrent Sentences.

Therefore the law is well established in HEGNEY V. HOLDER. and in the Eleventh Circuit that petitioner Andre Thomas, [can] Receive the time [he] served in the state custody from October 18, 2007, through up until March 26, 2014. the date federal authorities took exclusive custody of him [based] on the federal detainer on January 22, 2008, prevented the state from releasing him on [bailable] state probation charge's. see BLOOMGREN V. WARDEN. 948 F.2d 688(10th Cir.1991 U.S.App.Lexis 26371), when federal authorities elect to file a detainer against a prisoner taken into custody under an otherwise [bailable] state offense, those authorities should have the burden of establishing that the filing of the detainer was irrelevant under the circumstances to the state prisoner's continued pretrial custody for the state offense.

A federal prisoner is presumptively entitled to full credit for his imprisonment in state prisons for an otherwise bailable offense while subject to a federal detainer. id. which mean that when petitioner Andre Thomas, was transferred from the county Jail custody [into] federal custody on January 22, 2008, for federal prosecution on the federal offense Andre Thomas, state probation charges was [bailable] offense while subject to the federal detainer.

and the Government did not prove that[on]January 22,2008,that the filing of the detainer was Irrelevant under the circumstances to petitioner Andre Thomas,state prison continued pretrial custody for the state offense.please see Appendix....D,again state and probation bail[set]and also see ¶ 26 and the state Judge[verified] Thomas, was In the custody of the united states Marshal on the federal detainer hold[on]January 25,2008. see.Bloomgren v. United States 948 f.2d 688(1991 U.S. App.Lexis 26371),A federal prisoner Is presumptively entitled to full credit for his Imprisonment In state prisons for an otherwise bailable offense [while]subject to a federal detainer. and petitioner Andre Thomas, Is being deprived of his Life,Liberty,In Violation of due process of the fourteenth Amendmant of the united states constitution which provides :

NO STATE SHALL DEPRIVED ANY PERSON
OF LIFE,LIBERTY,OR PROPERTY WITHOUT DUE PROCESS
OF LAW.

and at this time petitioner Andre Thomas should have been Released from the Bureau of prisons custody three(3)years ago with the jail credit In question applied to his federal sentence.

Therefore on April 5,2019,when petitioner Andre Thomas,Submitted his Motion to Recall the Eleventh Circuit Mandate Issued on October 24,2017,based on a miscarriage of Justice [In] Light of the Eleventh Circuit[own]binding precendent In Hegney V. Holder 177 fed.App. 901(11th cir 2006 U.S.App.Lixis 10148),based on the federal detainer prevented Thomas, from posting state probation bail.and the Eleventh Circuit Should[have]granted the Motion to Recall the Mandate/Reinstate Under Hegney V. Holder 177 fed.Appx.901(11th cir 2006 U.S. App.Lexis 10148).id.

CONCLUSION

Having presented his argument and citation of authorities,petitioner Respectfully Request that this court Issue an order Directing the Bureau of prisons to a ward petitioner all pre-sentence jail credit toward his federal sentence from october 18,2007,through up until march 26,2014,the date he entered the Bureau of prisons custody.

ReSpectfully Submitted

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Date July 31, 2019