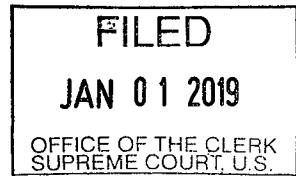


IN THE  
SUPREME COURT OF THE UNITED STATES

NO. 19-5587

IN RE: "LEVAR LEE SPENCE", & PETITIONER

PETITION FOR WRIT OF HABEAS CORPUS



This Court is respectfully requested to grant this petition for writ of habeas corpus.

QUESTIONS PRESENTED

- 1.) Whether the courts can refuse and/or feign review of habeas corpus claims asserting constitutional violations, *would warrant habeas corpus relief?*
- 2.) Whether a habeas corpus petitioner can appeal to the Supreme Court of the United States as of right, where there is no adjudication on the merits by any court or judge whatsoever, *would warrant habeas corpus relief?*
- 3.) Whether the federal courts' misapplication of the federal habeas statute denied your Petitioner procedural and substantive due process and equal protection of the law, *would warrant habeas corpus relief?*

## JURISDICTION

Having already traversed the state courts and lower federal courts, and there being *no adjudication on the merits* of valid constitutional claims, this Court is one of last resort.

The jurisdiction of this Court by habeas corpus, when not restrained by some special law, extends, generally, to imprisonment by inferior courts which have had no jurisdiction of the cause, or whose proceedings are otherwise void and not [merely] erroneous \*\*\*. Personal liberty is of so great moment in the eye of the law that the judgment of an inferior court affecting it is not deemed so conclusive but that, as have been seen, the question of the court's authority to try

and imprison the party may be reviewed on habeas corpus by a superior court or judge having authority to award the writ.

Pursuant also to the United States Supreme Court Rule [20.4(a)], to "justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court".

## OPINIONS BELOW

The prerequisite are thus satisfied for this Court to exercise its “discretionary” powers hereto, to wit:

1. The United States court of appeals refused your petitioner its plenary powers and de novo review, where there is no adjudication on the merits, nor any answer thereto, and no facts are in dispute. See U.S.C.A. 3<sup>rd</sup> Cir. Docket No. 19-1069.
2. The United States district court for the Middle District of Pennsylvania refused your petitioner procedural and substantive due process, denied habeas corpus, and COA, on procedural grounds, where there is no adjudication on the merits, nor any answer thereto, and no facts are in dispute. See U.S.D.C. Docket No. 17-CV-0881.
3. The United States district court for the Eastern District of Pennsylvania refused to provide your petitioner with mandatory de novo review and determination of timely filed objections made to portions of the magistrate’s report. See U.S.D.C. docket No. 16-CV-5710.
4. The Supreme Court for the Middle District of Pennsylvania refused your petitioner certiorari, habeas corpus review, and lawful judgment in a *per curiam* denial without any opinion of record. The court then, subsequently, refused to clarify its reasons or authority to deny an uncontested habeas petition, *per curiam*, without any opinion of record. See Supreme Court Docket Nos. 202 MT 2015, 538 MT 2016, 487 MT 2017, 160 MM 2017.

5. The Superior Court for the Middle District of Pennsylvania refused to issue the writ and transferred your petitioner to the Commonwealth Court. See Docket No. 43 MDM 2018.
6. The Commonwealth Court for the Middle District of Pennsylvania also refused to issue the writ on jurisdictional false imprisonment and cruel and unusual punishment claims; and, deprivation of sacred liberty rights. See Docket No. 612 MD 2018.
7. The York County Court of Common Pleas denied your petitioner fundamental fairness of process; and, subsequently, corrective processes (i.e. the right of appeal).

Accordingly, the jurisdiction of this Court of last resort is invoked under your petitioner's right to the Privilege of the Writ of Habeas Corpus and pursuant to 28 U.S.C. § 2241(a).

## STATEMENT OF THE CASE

In this case, your petitioner was restrained of liberty, without the authority of law, on April 15, 2015, and has been subjected to cruel torture daily without relief. Against your petitioner's will, the Superintendent, Thomas L. McGinley, etc. of the State Correction Institution-COAL TOWNSHIP at 1 Kelley Drive, Coal Township, Pennsylvania [17866] restrains the said liberty.

All respondent parties have failed or refused to answer on the merits of the claims instituted against them, thus all averments of fact are accepted as true; and, there is no adjudication on the merits by any court, or judge in the previous judicial proceedings.

Consequently, your petitioner remains :taken" from the enjoyments of life, liberty, and property, and suffers cruel and unusual punishments inflicted daily encroaching religious belief, health and safety, deprived of "meaningful" remedial processes to extricate your petitioner from the said false imprisonment after four (4+) years.

## REASONS FOR GRANTING THE PETITION

The Writ of Habeas Corpus provides intended means to establish the factual base for the unveiling of any and/or all forms of violations created by a denial of fundamental rights, to test such legality.

“Justice is neither denied nor delayed. Justice is a steady and unceasing disposition to render to every man his due. A neglect of duty often works as much as against the interest as a duty wrongfully performed.” -Kein v U.S., 177 U.S. 290, 295

Federal law, stare decisis, established that whenever there is no adjudication on the merits by the State courts, the federal courts have neither recourse nor discretion; but, rather, must apply pre-AEDPA de novo review of the pure questions of law and mixed questions of law and fact. 28 U.S.C. § 2254(d).

Admittedly, the Judiciary and court officials function within/under statutory law, and “jurists of reason” have already agreed that every act done by court or judge, is done in-accord with some established rule or statute. In the present case, the federal courts have failed and/or refused your petitioner the said pre-AEDPA standard of review-de novo-prescribed by the federal habeas statute and the Rules governing it.

HERE, the state and federal courts have applied the habeas corpus statute(s) to work injustice upon your petitioner-here of fundamental fairness of the proceedings. The federal habeas statute do not authorize the federal courts, or any other court for that matter, the latitude-

Freedom of Action-to use extra-judicial methods to withhold, interfere with, deny, or deprive your petitioner's rights.

Therefore, the statute or rule that would permit and/or give authorization to deny your petitioner substantive and procedural due process and, ultimately, liberty, is not only absent, but do not exist.

Such positive misprision is the coaster of the cup of the wine of injustice deriving from the void judgment(s) entered where lack of statutory authority disables final decree.

As a matter of law, there being no answer on the merits by respondent parties; there also being no adjudication on the merits by any court or judge, justice, etc., jurists of reason need only infer based upon there being no trial transcripts produced to investigate the validity of the constitutional claims, the State and Federal courts could not have provided the procedural and substantive due process required in fundamentally fair proceedings, constituting misprision because the said court officials and judiciary have dissembled review of your petitioner's habeas corpus claims. Thus, they have withheld, interfered with, deprived, and denied protected-enforceable-actionable liberty rights, upon mere conjecture (guess), or usurpation, pronouncing its judgments in **pretended** certainty with circumlocution.

Furthermore, the universal rule applies here, that defect of jurisdiction is not cured by the presentation of a defense and/or judgment(s) on other grounds, because consent cannot give jurisdiction, and want of jurisdiction may always be set up to avoid the operation of a judgment, as in this case.

In circumspection, that wholesome maxim, that fraud vitiates whatever it touches, makes no exception of judgments at law. No court or justice will set aside or even be led to look into a

solemn judgment on light or trivial grounds, but when it is alleged upon adequate proofs and inferences that a judgment, in whole or in part, has been obtained by a suppression of truth which it is, accordingly, the duty of your petitioner to disclose or by the suggestion of a falsehood or by any of the infinite and therefore undefinable means by which misprision (fraud) may be practiced, no court will allow itself, its records, and the process of law to be used as instruments of misprision when proper application is made, and proper evidence is submitted to support it.

“The courts of the United States, upon an application for a writ of habeas corpus in behalf of a person held in custody under the final judgment of a State court of criminal jurisdiction, may

look beyond forms, and to inquire into the very truth and substance of the cause, although this may necessitate an inquiry into the judicial facts outside of the record of the conviction.”

-Frank v. Magnum, 237 U.S. 309, \_\_\_\_

The accounts of the previous courts have demonstrated the product of the above-stated *noumena by phenomena*, which impose a mandatory legal duty (multiplier) via Oath(s) of Office(s) (multiplicand) to protect the rights of the people, the public, and the integrity of the courts (product); hence, in order to fully pierce the colorable veil and approach the sanctity of the sacred sanctuary of your petitioner’s life, liberty, and property rights, this Court could order the courts to “forthwith” produce the entire record, in and out of court, or grant the petition without causing your petitioner any further unnecessary delay(s).

## CONCLUSION

For all the reasons above, this Court should grant the petition.

*The foregoing statements are here by my hand verified as true and correct; and, may be subject under the laws of the United States. 28 U.S.C. § 1746.*

“LEVAR LEE SPENCE”

BY: Levar Lee Spence  
Date: July 26, 2019