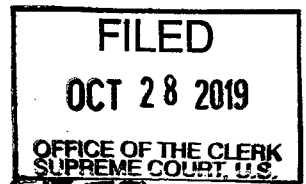


SUPREME COURT OF THE
UNITED STATES OF AMERICA

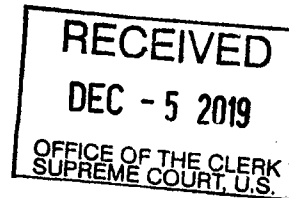


Travis LaVoy Jenkins
v.

CASE NO. 19-5759

UNITED STATES OF AMERICA

RULE 44 MOTION FOR REHEARING



Comes now, Travis L. Jenkins, on this 28th day of October, 2019. Pursuant to Rules of the Supreme Court 44 rehearing, respectfully moving for a rehearing whereas, this honorable court has overlooked substantial controlling effect that is contrary to this courts decisions in several cases, violating Travis LaVoy Jenkins (hereforth known as movant), due process rights while having violated movants 6th Amendment rights to a fair and impartial trial having jeopardized the fairness, integrity and public reputation of this judicial system that governs this country. In support movant states as follows:

This honorable court has failed to consider it's ruling in Haines v. Kerner, 404 U.S. 519, 520, 30 L. Ed 2d 652, 92 S. Ct. 594 (1972), to avoid an unnecessary dismissal and inappropriately stringent application of correspondence between the substance of a pro-se litigants motions claim and it's underlying legal basis. Movant has petitioned for his constitutional rights to a trial that vests jurisdiction in the indicting, convicting and sentencing court, and has not been afforded as required in Clisby v. Jones, 907 F. 2d 1047, 1050 (1990), a court rendering an opinion to it's denial to the party's motion. Instead in the instant case the district court and the appellate court has deferred jurisdiction to a foreign state and district, and this

honorable court has given no opinion at all, just a denial.

STATEMENT OF FACTS

On or about May 11th 2011, movant was arrested for distribution of cocaine 3 counts, conspiracy to distribute cocaine, and possession of a firearm (924(c)), during and in relation to a drug trafficking crime. Without a signed plea agreement movant pled guilty to all counts preserving his 1st Amendment right of redress, which his Public Defender (former Prosecutor) was aware of, but did not file a Notice To Appeal as instructed, and movant was sentenced to 71 months imprisonment for counts 1-4, followed by 60 months consecutive for count 5, 924(c). Movant later received a reduced sentence for counts 1-4, and in 2018 filed a 2241(d) Habeas Corpus for Relief in violation of constitutional rights having been deceived into pleading to crimes movant did not commit, specifically 924(c) and conspiracy to distribute cocaine, appealing for his 1st Amendment right for trial. The indicting, convicting and sentencing court of the Eastern District of North Carolina Western Division neglected to entertain movant's petition, transferring jurisdiction to the Southern district of Georgia, Brunswick division. Thus, movant's appeal from denial of both district and appellate court and final denial by this honorable court on October 10, 2019.

STATEMENT OF THE CASE

Because this honorable courts denial of movants certiorari was not a decision on the merits, whereas this court has overlooked the lower courts intervening jurisdiction within the scope of the judicial process to avoid the constitutional violations that allowed the district court to take advantage of the system and convict movant of crimes he did not commit. Only due to the interference of a former prosecutor who undoubtedly was aware of

specific facts and elements necessary in order to convict movant of crimes both conspiracy and 924(c), did movant agree to the plea. While this may not be the intervening circumstances specified in Supreme Court rule 44.2, this intervention cannot and should not be overlooked, as this Court's decision in both *Bousley v. U.S.*, 523 U.S. 614, 618-619, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998), *Bailey v. U.S.*, 516 U.S. 137, 145-146, 116 S. Ct. 501, 133 L. Ed. 472 (1995), considering the phrase "the defendant or the defendants in light of the structure of the statute and this Court precedent, it concluded that 1441(a) does not permit removal by any counter claim....", this is the controlling effect and substantial grounds that should maintain this case in the arresting, indicting, convicting and sentencing court.

Because movant has satisfied the test in *Hill v. Masters*, 836 F. 3d 591 (6th Cir. 2016), the saving clause of 28 U.S.C. 2255 (e) and 2241 could be pursued. (see also *McCarthan v. Suncoast* 851 F. 3d. 1076 (11th Cir. 2017). North Carolina District Court to make that determination. (see *U.S. v. Ruiz* 536 U.S. 622, 628 (2002) (noting court "always has jurisdiction to determine its own jurisdiction."); *Wooten v. Cauley*, 677 F. 3d 303, 306 (referencing savings clause as jurisdictional); see also, e.g., *Williams v. Warden, Fed. Bureau of Prisons*, 713 F. 3d. 1332, 1337-40 (11th Cir. 2013) (holding saving clause "impose(s) a subject-matter jurisdictional limit on 2241 petitions"). While invoking the savings clause by passes any time limitation restrictions the North Carolina District Court had/has jurisdiction of movant's petition/appeal and this honorable court can/must consider the intervening circumstances of substantial and controlling effect along with the substantial grounds that may not have been previously presented, now clearly presented herein.

It is pertinent this honorable court realize it is in good faith that movant files this petition for rehearing the denial of the certiorari clearly denying movant of constitutional rights guaranteed, whereas movant has made a claim of "Actual Innocence", that only an indicting,

convicting, and sentencing court can satisfy a citizen's 14th Amendment Right. The only delay that exists is not freeing a man for a crime[s] he did not commit. Movant reminds this honorable court 2241(d) was enacted to permit within the state which a person was sentenced and nothing in 2241(d) history shows allowance for giving jurisdiction to a foreign state/district, especially in a case as the instant one of "Actual Innocence". A deprivation of movant's remedy in Georgia is relegated to an inadequate one and Congress thought originally the sentencing court should be answerable for its judgment as likewise in this case North Carolina's state attorney and district court should as well and not Georgia. (Gaithin v. LaVallee (1967 E.D.N.Y.) 270 F. Supp. 531).

Transfer order pursuant to 28 USC § 2241(d) is not final, appealable under 2253. Van Drman v. Parkett (1994, GAS Mo) 43 F.3d 1201, 31 FR serv 3d 325. To continue to decide otherwise would be contrary to this honorable court's decision in Word v. North Carolina 406 F.2d 352, and a complete miscarriage of justice.

District court erred when it dismissed state inmate's 28 USC § 2241 petition upon finding that it should have been filed in the Eastern District of North Carolina because, under § 2241(d) inmate's action was properly filed in Middle District of North Carolina because inmate was incarcerated in Middle District of North Carolina; district court could have transferred petition to Eastern District of North Carolina, under § 2241(d), because inmate was convicted and sentenced in Eastern District of North Carolina. Rogers v. Wood (2007, GA 4 NC) 2007 US App Lexis 16551.

Although 28 USC § 2241(d) primarily governs jurisdiction, it has implications as to venue between divisions in the same district, and militates in favor of filing the petition in the division where the witnesses are located, rather than that in which the applicant is confined. Mitchell v. Henderson (1970, GAS La) 432 F.2d 435.

28 USCS § 2241(d) should be read as provision fixing venue and aimed at problems of judicial administration, with solution being dictated by balance of convenience among various courts. United States ex rel. Servo v. Preiser (1974, 42 NY 506 F.2d 1115, 19 FR Serv 2d 1439, cert den (1975) 421 US 921, 43 L Ed 2d 789, 95 S.Ct. 1587.

28 U.S.C.S. § 2241(A) was adopted in 1966 to permit District Court for district within which state court had sentenced petitioner to also issue writ of habeas corpus, where evidence is more conveniently available. United States ex rel. Griffin v. Lavallee (1967, ED NY, 270 F. Supp 531.

Therefore, to deny a citizen guaranteed constitutional rights is a manifest injustice that clearly jeopardizes the fairness, integrity and public reputation that this honorable court cannot and must not allow to continue to happen.

Wherefore, movant prays this honorable court grant said rehearing, issuing an order forgoing transfer of jurisdiction to a foreign court, granting writ of Habeas Corpus pursuant to § 2241(d) for a trial to count 5, 924(c)(1)(A) possession of a firearm during a drug trafficking crime, and count 1, conspiracy to distribute cocaine.

Respectfully submitted
/s/ Travis L. Jenkins

Travis L. Jenkins - D3527-104