

19-5815

No.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

FEB 11 2019

OFFICE OF THE CLERK

Apostle Antonio D. Parker — PETITIONER
(Your Name)

VS.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Virginia

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Apostle Antonio Demetrius Parker
(Your Name)

Marion Correctional Treatment Center
(Address) 110 Wright Street Marion

Virginia 24354
(City, State, Zip Code)

(Phone Number)

RECEIVED

JUL 30 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

#1 Did the Supreme court of Virginia err when it determined that the circuit court didn't have the jurisdiction to give the petitioner the relief sought by vacating its void conviction order?

#2 Did the Supreme court of Virginia err when it determined that the circuit courts evidence was sufficient to enter a conviction order by the Commonwealth where there is no probable cause for arrest on the Petitioner?

#3 Did the Supreme court of Virginia err when it determined that the circuit court didn't falsely imprisoned the petitioner and its citizens by allowing its officers to enforce an unlawful custom to arrest without a warrant, and not take the citizen at anytime to see a magistrate that is required by statute(Tr 165,202-03 2/27/2013) §Va code 19.2-82 McNabb-Mallory rule ?

#4 Did the Supreme Court of Virginia err when it determined that the circuit court didnt violate the petitioner constitutional rights when exculpatory evidence was lost with the public intoxication allegation and the camera from the officers patrol car as not seeing the magistrate was the link to this deprivation of a fair trial

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:

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OTHER

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 N/A; 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 N/A; 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 A to the petition and is

☒ reported at VA SUPREME COURT AT RICHMOND; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the JUSTICE KELSEY court appears at Appendix A to the petition and is

☒ reported at RICHMOND VIRGINIA; 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 Still pending.

☐ 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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was ^{N/A} NOV 20, 2018.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (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

1# The States violation of the 4th Amendment of the U.S.
Constitution of an illegal seizure of my person not being
brought before a magistrate for a probable cause determination

#2 The states violation of virginia statute §19.2-82 and
federal rules of criminal procedure rule 5

3# violation of the 14th amendment of equal protection
by not seeing the magistrate upon arrest without a warrant

STATEMENT OF THE CASE

On July 20, 2017 the Petitioner Apostle Antonio Demetrius Parker submitted a motion to vacate void abinitio Order of conviction to the Fredericksburg Circuit Court and exhibits for the courts Wrongful conviction as a nexus to no subjectmatter jurisdiction and extrinsic fraud by the Commonwealth, its agents, and appointed counsel. The Commonwealth refused to respond to the motion. Subsequently the Petitioner submitted a writ of mandamus to compel compliance with the Commonwealth for refusing to respond to the motion. The Sup. Ct. of Virginia wrote the Petitioner on August 28, 2017 stating that it contacted the Commonwealth and the circuit and they stated that the Commonwealth said it will respond to the court about the motion. On September 7, 2017 The Commonwealth wrote the court by letter stating that it is not required to respond to civil matters and it nor the court has jurisdiction in the matter to vacate void abinitio orders. The Commonwealth also stated that the Petitioners evidence along with his exhibits dont show extrinsic fraud. The court sent the Petitioner a final order by dismissing the motion on September 19, 2017 stating that the pleadings and evidence in support are not well founded and the circuit court does not have jurisdiction to give the relief sought. The Petitioner submitted a notice of appeal to the circuit court on September 27, 2017 of this motion and attached a motion to rehear case pursuant to Va. Sup Ct. rule 1:1 in hopes that it might reconsider its decision. The court dismissed this motion on October 4, 2017 The Virginia Supreme Court dismissed the Petition for appeal on November 20, 2018 and this appeal follows.

continue of statement of the case

The Petitioner is convicted of 2 counts of assault and battery on law enforcement, attempt to obstruct justice, attempt to disarm law officer, and attempt to possess the firearm as a felon

Facts material to this is on the face of the record from the trial date (2/27/2013) and the conviction order dated 1-14-2014

The petitioner put before the circuit court and the state court Supreme evidence that the Fredericksburg Police were arresting its citizens including the Petitioner without a warrant and not taken them before a magistrate at anytime by custom. This is a violation of Va Code Ann§19.2-82 the 4th amendment of the U.S. Constitution federal rules of criminal procedure rule 5 McNabb-Mallory rule. The police brought an allegation by fraud to the court on the day of trial that the magistrate has a rule that if a citizen is intoxicated upon arrest keep them in the patrol car while he determines probable cause.

(Tr.165, 202-03 2/27/2013) The police at trial sprung forth ambush an allegation that the Petitioner was intoxicated and this is the reason they initiated the arrest when they saw no charges to support the alledged assaults or latter charges.

(Tr.154 2/27/2013) The Petitioner if given the chance to prepare would have shown that he was at his girlfriends home and was not intoxicated. The officer even said she presumed the Petitioner was intoxicated (Tr.152-53 2/27/2013) The was no warrant or indictment secured for this alledged offence and without it the conviction order becomes void abinitio

(see conviction order) There are no former charges supporting the latter in the conviction order because the petitioner never

continue statement of case

saw the magistrate required by statute for a probable cause determination. The Petitioner presented cases from Virginia law showing that not being brought before a magistrate can void a judgment when the Petitioner was deprived his right to prepare for trial. see *Winston v. Commonwealth* 188 Va 386 49 SE 2d 116 (1948) Also considered false imprisonment see *Mullins v. Sanders* 189 Va 642 54 SE 2d 116 (1949)

The Petitioner was denied his right to call for evidence upon arrest that he was not in public or intoxicated.

A main key issue is that the conviction order on its face is void ab initio. The order only shows charges against the administration of justice. There are no former charges of conviction to give a basis for the charges in the order.

The petitioner was never charged with committing a crime in society as demonstrated by the record. The Petitioner explained to both courts below that the statute Va code §19.2-82 reads that the petitioner must be brought before an officer having jurisdiction upon arrest without a warrant. This procedure wasn't followed so the courts below had no jurisdiction to hear the case. The Police brought fraud charges by assault and battery to cover up unlawful excessive force torts against the Petitioner. The Petitioner had his hands up and was shot with a taser for no reason by Police. The Police was scared that the Petitioner was going to bring charges against them.

This is why the petitioner was not brought before a magistrate. The law has held that procedural

continue statement of case

prerequisites that are mandatory as seeing the magistrate §19.2-82 of the Va. code will prevent the a court from acquiring subject matter jurisdiction if the party can show he was harmed for failure to follow the procedure.see Marrison v.Dept Of Family services 717 SE 2d 146(2011) The petitioner didn't have a chance to defend him self about the drinking in public allegation which he was never charge or to identify the officers who were bringing charges against him. If this court goes futher and review the trial transcript it will see that the sufficiency of the Commonwealths makes this a void judgment. The reason is that the states case shows no criminal intent to comitt the offences because the police never had probable cause to make an arrest.(Tr 146-168 2/27/13) Tr 192-203 2/27/13) The petitioner made this objection twice in his motion to strike the commonwealths evidence that it was void for lack of criminal intent the court disregarded the arguement.Tr 218-22, 289 2/27/2013) Ajudgment is void abinitio if the conduct does not show any criminal intent. see Jimenez v.Commonwealth 241 va 244 251(1991) The petitioner prays that this court looks into the facts.

¶ If the court holds the lower court to the ruling of Gerstein v Pugh 95 S Ct 854 (1975) by not taking the petitioner to see the magistrate or finding probable cause it warrants reversal of this case. probable cause is essential to the latter charges of the judgment.

REASONS TO GRANT THE WRIT

1. The conviction order is void ab initio on its face as the charges convicted of had no basis to support order.
2. The General District Court, nor the Circuit Court had subject matter jurisdiction to place the case before grand jury as there is no basis for probable cause for police arrest.
3. The police misconduct violated the Petitioners constitutional rights by withholding exculpatory as well as destroying exculpatory evidence.
4. Prosecutorial misconduct as the state never had all the essential elements to formulate a legitimate process. There is no intent to commit the alleged offence.
5. The state refusing to give a fair trial by the 6th amendment by not striking the indictments as the Petitioner stated at trial as a motion to strike the evidence shows no intent.
6. Police falsely imprisoned the Petitioner by not taking him before the MAGISTRATE AT ANYTIME. This is a violation of the 4th amendment of an illegal seizure, and affected the formation of the probable cause determination.
7. The Petitioner humbly, respectfully, patiently, and prayerfully request the courts protection from tyrannical rule of the state courts further damage to his person.
8. The petitioner is falsely imprisoned under a illegal judgement I leave it in this courts and the Lords hands

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Antonio D. Parker

Date: July 18, 2019