

19-6243

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court of the United States
Filing
SET 26 1972
Case No. 19-6243

JACKIE RAY PATRICK — PETITIONER
(Your Name)

VS.

STATE OF MISSISSIPPI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of State of Mississippi
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jackie Patrick, #R 1507 - SMCI
(Your Name)

P. O. Box 1419
(Address)

Leakesville, MS 39451
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

WHETHER PATRICK'S CONVICTION AND SENTENCE
DERIVED FROM A DEFECTIVE INDICTMENT
WHEREAS THERE IS NO EVIDENCE THAT THE
INDICTMENT OR CHARGE(S) WHICH PATRICK
WAS TRIED WAS EVER PRESENTED IN OPEN
COURT AND FILED ACCORDINGLY?

... PETITIONER ANSWERS YES.

WHETHER THE INDICTMENT IS VOID IN THIS
CASE DUE TO ITS FAILURE TO STATE AN
OFFENSE AGAINST THE STATE OF MISSISSIPPI
AS EXIST UNDER MISSISSIPPI LAW?

... PETITIONER ANSWERS YES.

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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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[] is unpublished.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[] is unpublished.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 A 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 is unpublished.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[] is unpublished.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 _____.

[] 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 07/29/19.
A copy of that decision appears at Appendix A.

[] 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

The Fourteenth Amendment to the United States Constitution states in pertinent part as follows:

"... nor shall any state deprive any person of life, liberty, or property, without due process of law."

U. S. CONST. AM XIV...

STATEMENT OF THE CASE

Jackie Ray PaTrick, was indicted in the CIRCUIT COURT of SCOTT COUNTY, MISSISSIPPI, for multiple offenses; To include, two (2) counts of armed robbery, at issue herein.

PaTrick entered a plea of not guilty to such charges and the case was tried to a jury, where PaTrick was convicted in the circuit court of SCOTT COUNTY, MISSISSIPPI.

Subsequently thereafter, on or about the 10th day of October, 1997, PaTrick was sentenced to life plus twenty (20) years, to be served in the custody of the MISSISSIPPI Department of Corrections.

PaTrick contends herein that his conviction and sentence derived from a defective indictment and that, the indictment should be made void for failure to state/charge an offense against the state of Mississippi.

REASONS FOR GRANTING THE PETITION

A.

PATRICK'S CONVICTION AND SENTENCE DERIVED FROM A DEFECTIVE INDICTMENT WHEREAS THERE IS NO EVIDENCE THAT THE INDICTMENT OR CHARGE(S) WHICH PATRICK WAS TRIED WAS EVER PRESENTED IN OPEN COURT AND FILED ACCORDINGLY.

The indictment in this cause of action is (was) fatally and facially defective; see Exhibit A, attached hereto. As shown herein, the absence of the endorsement in open court by the grand jury and notation of filed date - noted and signed by the clerk, is fatal to the proceedings. Even if it otherwise appeared that the grand jury had in open court presented the bill. But, the absence of anything to show that the bill had received the solemn assent of the jury in open court by the presentation according to Article 257 (as herein) renders it (indictment) so much waste paper; see, Ex-Parte Bain, 121 U.S. 1, 12 (1857). See also, King v. Cook, 287 F.Supp. 269 (N.D. Miss. 1968) and U.S. v. Cotton, 535 U.S. 625, 631 (2002).

The actual presentation of the bill in

open court, by a grand jury, in the manner prescribed, is as essential as the return into court of the verdict of the petit jury. This reviewing court cannot (should not) allow the sacrifice of a fundamental principle of the Constitution-- and, a positive provision of the statute, intended to carry out the principle-- to the ignorance of clerks or the neglect of defense counsel(s); see, Pond v. State, 47 Miss. 39 (Miss. 1872). See also, Beene v. State, 910 So.2d 1152 (Miss. Ct. App. 2005) and Cochran v. State, 969 So.2d 119 (Miss. 2007).

In accords with Mississippi Criminal Law, statute-- indictment-- record must show presentation, receipt, and filing of indictment... Unless the record of a conviction on a criminal charge, preferred by indictment, shows that the indictment was presented to the court by the grand jury, and received by the court and filed by the court clerk, it is though there never was an indictment found, and such conviction and sentence cannot stand; see, U.S. v. Vreeken, 803 F.2d 1085, 1088 (10th Cir. 1986) (jurisdictional challenge to indictment may be raised at any time). See also, U.S. v. Gatewood, 173 F.3d 983, 986 (6th Cir. 1999) and U.S. v. Rosario-Ortiz, 348 F.3d 33, 36 (1st Cir. 2003).

In the case sub judice, the indictment

failed to meet Constitutional muster. The caption of the minutes (absent herein) showing the organization of the grand jury, and the entry, according to Article 257, Code 614, are indispensable facts of every record in a criminal cause. There is no statute of jeopardy so broad as to cure the want of a finding by the grand jury, and the record must show it, and the 57 Article has prescribed what that evidence shall be... The coming into open court of at least twelve (12) of the grand jurors, and presenting by their foreman the bill; the receiving by the clerk (date of which); and the clerk's signature on the entry. The indictment in question failed in this regard, and therefore must be made void; see U.S. v. Strouse, 286 F.3d 767, 771 (5th Cir. 2002). See also, U.S. v. Childs, 447 F.3d 541, 544 (7th Cir. 2006) and U.S. v. Hoffecker, 530 F.3d 137, 153 (3d Cir. 2008).

As necessary, Constitutional and statutory preliminaries; there must be an indictment found by a legal grand jury of the County, and it must be presented in open court by the foreman of such grand jury; in the presence of at least twelve (12) of such grand jurors. The indictment must be received by the court and marked filed by the clerk; see, Smith v. State, 155 So.2d 494 (Miss. 1963). See also, U.S. v. Simpson, 927 F.2d 1088, 1091 (9th Cir. 1991) and

U.S. v. Fuller, 531 F.3d 1020, 1024 (9th Cir. 2008).

In this regard, so long as the constitution and laws remain unchanged in the respect indicated, they must be substantially observed in all criminal prosecutions (proceedings), and a record failing to show --as herein-- the presentation in court by the grand jury of an indictment found by them, will be fatally defective, and cannot be sustained.

B.

THE INDICTMENT IS VOID IN THIS CASE DUE
TO ITS FAILURE TO STATE AN OFFENSE
AGAINST THE STATE OF MISSISSIPPI -- AS
EXIST UNDER MISSISSIPPI LAW.

Petitioner Patrick herein, was indicted inter alia, for the offense of armed robbery x's two (2), by a Scott County, Mississippi Grand Jury... an offense that does not exist under Mississippi jurisprudence; neither the Constitution, nor under the legislative powers of enactment, or any otherwise.

Petitioner Patrick submits that, he has been illegally and unlawfully denied his right to substantive due process of law -- whereas he has been denied his basic fundamental right to be

legally/lawfully indicted, tried, convicted, and sentenced.

To be clear from the outset, there is no offense of such title under Mississippi law; it is non-existent; no statutory offense of 'armed robbery' as enacted by the legislature of the state of Mississippi. Mississippi has six (6) primary robbery statutes [i.e., Miss. Code Ann. § 97-3-73, § 97-3-75; § 97-3-77; § 97-3-79 (specifically titled - "Robbery, use of Deadly Weapon"); § 97-3-81; and § 97-3-83]. Just as Mississippi does not have a statutory offense of "Simple Robbery" See, Wallace v. State, 184 So.3d 993 (Miss. 2016). There is no 'armed robbery' statute enacted by the legislature, denoting any such crime entitled thereof-- nor, any punishment prescribed for such an offense. Petitioner Patrick submits that, under established law, the indictment in this cause must be squashed, the conviction vacated, and the sentence set aside.

Petitioner has clearly been denied his basic fundamental constitutional right to substantive due process of law-- to be legally and lawfully indicted and convicted, as guaranteed under Article 3, section 27, of the Mississippi Constitution of 1890; which specifically holds as follows:

"A person shall not be punished for a felony unless legally convicted in a court

having jurisdiction of the charge and the person; without an indictment, the court has no jurisdiction to proceed."

Where there is no statutory offense, the trial court has no jurisdiction to prosecute. Thus, it is plain, clear, and obvious error herein that, petitioner has been convicted and sentenced illegally, and is presently being punished for an alleged criminal offense for which he has never been indicted for by a legal grand jury; see, Jefferson v. State, 556 So.2d 1016 (Miss. 1989). See also, U.S. v. Olano, 507 U.S. 725, 731 (1993) and Pace v. State, 242 So.3d 107 (Miss. 2018).

Petitioner, at no time has ever waived his right to be legally/lawfully indicted. The court(s) holds that, it will find plain error where the trial court has deviated from a legal rule [U.S. v. Wolfe, 245 F.3d 257, 261 (3d Cir. 2001)]. Herein, in this cause now before the court, the error(s) is plain, clear, and obvious, and, as well, as distinctly identified. In this regard, the indictment must be made null and void; see, M.R.A.P. Rule 28(A)(3). See also, Grayer v. State, 120 So.3d 964, 969 (Miss. 2013) and Foster v. State, 148 So.3d 1012, 1018 (Miss. 2014).

There is no statutory offense of armed robbery. The Legislature, to date, has not found it necessary to title a crime as 'armed robbery'. See, Enactment Clause, Section 56. Thus, Petitioner invokes the "Plain Error Doctrine" and thus this court must discern: (1) if the trial court has deviated from a legal rule of law; (2) whether the error is plain, clear, and obvious; and (3) whether the error has prejudiced the outcome of the trial; See, Cox v. State, 793 So.2d 591, 597 (Miss. 2001) and McGee v. State, 953 So.2d 211, 215 (Miss. 2007). This doctrine is utilized for correcting obvious instances of injustice or misapplied law; See, Smith v. State, 986 So.2d 290, 295 (Miss. 2008). See also, Lafayette v. State, 90 So.3d 1215 (Miss. 2012) and Armsstead v. State, 196 So.3d 913 (Miss. 2016).

The Legislature has sole authority in this state (Mississippi) to define, title, and decree what crimes are called/styled, and further, what punishment are to be meted out for those crimes. At no time has the legislature coined a crime entitled armed robbery... its six (6) styled robbery statutes enacted are as follows: (1) § 97-3-73 (robbery defined); (2) § 97-3-75 (robbery punishment); (3) § 97-3-77 (robbery, threatening injury at different times); (4) § 97-3-79 (robbery, use of deadly weapon); (5) § 97-3-81 (robbery,

Threatening letter, demanding money or property); and (6) § 97-3-83 (robbery, bonds, bills, notes, COTTON receipts, and railroad TICKETS; See, Allen v. State, 440 So.2d 544 (MISS. 1983) and Windham v. State, 602 So.2d 798, 807 (MISS. 1987).

PETITIONER SUBMITS THAT, alTHough THE COURT overruled THE holding in Box v. State, 241 So.2d 158 (MISS. 1970); under Jefferson v. State, supra.; TWO (2) main core facts of law remain CONSTANT and inviolate: (1) one retains a CONSTITUTIONAL right under THE mandate of Article 3, Section 27, of THE MISSISSIPPI CONSTITUTION to be legally convicted. PETITIONER was NOT indicted for THE STATUTORY offense under § 97-3-79 (robbery, use of a deadly weapon; but instead, was indicted for "armed robbery" which is NOT a STATUTORY offense in MISSISSIPPI; and (2) THE charge is a separate and distinct offense, and is NOT a CONSTITUENT or lesser included offense of robbery, use of a deadly weapon.

PETITIONER PATRICK SUBMITS THAT THE COURT in rejecting THE STATE'S argument in Box, supra., would be adhering to THE CONSTITUTIONAL MANDATE in rejecting THIS SAME argument by THE STATE in THIS INSTANT CASE now before THE COURT. . . . THE MAIN CORE FACTOR HEREIN BEING PLAIN, CLEAR, and

obvious that, 'armed robbery' per se, is not a legislative statutory criminal offense in the state of Mississippi.

This court should reverse and remand this case with corrected instructions... the indictment should be dismissed with prejudice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


JACKIE RAY PATRICK

SWORN TO AND SUBSCRIBED BEFORE ME,
This the 26 day of September, 2019.


GIA NICOLE MCLEOD

"NOTARY PUBLIC"

MY COMMISSION EXPIRES:

