

In The Supreme Court of the United States

In Re John Harry Steele,
Petitioner,

v.

Case No. : 19-6484

Jimmy Thomas, Warden,
Respondant.

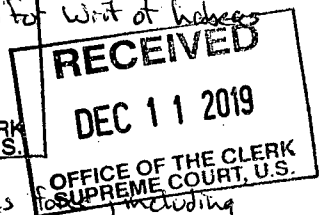
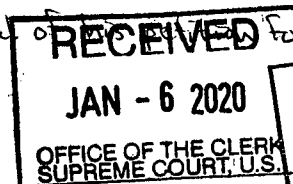
Petition For Rehearing

Comes now Petitioner, John Harry Steele, pro-se, in the above styled cause to respectfully request that this Honorable Court grant a petition for rehearing and offers the following in support.

Supporting Argument.

Petitioner filed a writ of habeas corpus to challenge the legality of his detention. Petitioner is being held in violation of Alabama law due to fundamentally unfair procedure which consequently violated his 14th Amendment right to due process under the Constitution of the United States.

Petitioner respectfully requests this court to review the many illegal actions of the State in prayers that the denial of his writ of habeas corpus was done in error.



1) Under Alabama law §13A-3-23(d) a person who uses

deadly physical force as justified and permitted in this section is immune from criminal prosecution and civil action for the use of such force, unless the force was determined to be unlawful.

Alabama Code § 13A-3-23(c) A law enforcement agency may use standard procedures for investigating the use of force described in subsection (a), but the agency may not arrest the person for using such force unless it determines that there is probable cause that the force used was unlawful.

Under Alabama law, Petitioner was immune from prosecution unless the law enforcement agency, in this case was the Sheriff Department of Choctaw County, found the force used was unlawful.

Petitioner showed this honorable court that the Sheriff, Tom Abate, had filed a false report and committed perjury in order to obtain an arrest warrant through fraudulent means.

42 U.S.C. § 1983 : Civil action for deprivation of rights : Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the D.C., subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding (proper) for redress

An arrest warrant protects an individual from an unreasonable seizure and must be issued upon a showing of probable cause to believe a suspect is committing or has committed an offense.

Petitioner's arrest violated his 4th Amendment constitutional right "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be

searched and the persons or things to be seized."

Therefore, not only was Petitioner's right to immunity under Alabama law deprived of him the petitioner was unlawfully arrested through fraudulent means.

Furthermore, the District Attorney obtained the indictment through fraudulent means. In the indictment the District Attorney detracted from the official and customary language of the Statute and changed the legislative intent of the law.

The indictment did not charge the specific intent to cause the death. It failed to charge a necessary element of the offense. In *Ex parte Lewis*, 811 So 2d 485 (Ala. 2001) "The Alabama Supreme court held that the indictment was void 'for its failure to charge an essential element of that offense' and 'that Lewis could not waive the defect.'"

Petitioner was convicted with a void indictment on a charge not made, nor was the specific intent tried in court.

"It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process." *Cole v. Arkansas* 333 U.S. 196 (1948)

Also ruled in *Cole v. Arkansas* this court ruled "To conform to due process of law, petitioners were entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as issues were determined in the trial court."

Furthermore, the trial court did not have complete jurisdiction due to the void indictment.

"Even if a court has jurisdiction of the person and of the crime, an accusation made in the manner prescribed by law is a prerequisite to the court's power to exercise its jurisdiction" *State v. Thomas* 550 So 2d 1067, 1070 (Ala. 1989)

This violated Petitioner's 5th Amendment constitutional right that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

Petitioners appointed counsel did file a timely motion to dismiss the indictment for that said indictment failed to state an offense. (see Writ of Certiorari No: 17-8032) Yet no pre-trial hearing was held denying Petitioner due process guaranteed by the 14th amendment of the constitution.

The 14th Amendment of the United States constitution says, in part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States: Nor shall any state deprive any person of life, liberty, or property, without due process of law: Nor can they deny to any person within its jurisdiction the equal protections of the laws."

Therefore, the petitioner respectfully requests as a citizen of the United States of America equal protection of the laws and constitution of Alabama and of the constitution of the United States of America.

It is clear in Petitioners Writ of Habeas corpus that under Alabama law he was entitled to immunity. Petitioner was unlawfully arrested by fraudulent means. Petitioner was tried under a void indictment which failed to charge an offense. Petitioner was denied due process in that no pre-trial hearing was held to determine immunity which the Alabama Supreme Court clearly ruled that a defendant has "a clear legal right" to prove self-defense at a pre-trial hearing "before she is required to stand trial" *Ex parte Walters*, 2016 WL 6135232, at *5 (Ala. Oct. 21, 2016) The Alabama Supreme Court also ruled, "Right to immunity is effectively lost if a case is erroneously permitted to go to trial, and since Alabama law has always allowed a defendant to argue self-defense at trial, treating the right to immunity under subsection (d) as an affirmative defense would make that subsection redundant, the courts must presume that the legislature did not enact a meaningless provision." *Harrison v. State*, Ala. Crim. App. Lexis 97 (Ala. Crim. App. Dec. 18, 2015)

Petitioners 14th Amendment right to due process is further violated by being convicted of a charge not made nor a charge not tried.

The petitioner, as a pro-se litigant is at a loss. The laws are clear. The constitution is clear. Yet The state can violate its own laws, its own constitution and the constitution of the United States of America and is justified by This Honorable court for some unknown reason to the petitioner.

1) 28 U.S.C. §2254 (a) The supreme court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgement of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

Petitioner is in custody in violation of the 14th amendment of the Constitution of the United States, that is, under *Cole v. Arkansas*, 333 U.S. 196 (1948) "It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process"

The 14th amendment in part says, "Nor can they deny to any person within its jurisdiction the equal protections of the laws," "Nor shall any state deprive any person life, liberty, or property without due process of law."

2) 28 U.S.C. §2254 (b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a state court shall not be granted unless it appears that - (B)(i) There is an absence of available state corrective process,

Petitioner cannot file to any state court without it being denied as "time barred" Ala. R. Crim. Proc. Rule 32.2 (c), and "successive" Ala. R. Crim. Proc. 32.2 (b)(d).

3) 28 U.S.C. §2254 (e)(2) If the applicant has failed to develop the factual basis of a claim in state court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that - (A) the claim relies on - (ii) a factual predicate that could not have been previously discovered through

The exercise of due diligence; and (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

The Petitioner has tried to be due diligent. As an incarcerated pro-se litigant Petitioner is at a great disadvantage. As example, this courts denial was issued on Nov. 25, 2019 and petitioner did not receive said notice until Dec. 3, 2019 and had to gather this instant Petition for Rehearing overnight not even knowing if said petition is allowed. Also, some documents provided were not in Petitioners possession until recently. Furthermore Petitioner has been diligent in trying to present his unlawful detention claim unsuccessfully.

Any reasonable fact finder can see that if presented with the evidence of the false report and perjury they would question the arrest, a constitutional error. A reasonable FactFinder can see that if presented with the correct charge and if the charge was tried they would not have found the applicant guilty of the underlying offense of murder since the specific intent was not charged nor tried. A 14th Amendment Constitutional error and violation.

4) 28 U.S.C. § 2241 (b) The Supreme Court, any Justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it:

The petitioner respectfully requests that this Honorable court give the claims De Novo consideration and transfer the application if necessary for hearing to allow the Petitioner subpoena power to call then Sheriff Tom Abate, C.O. Brealand, The Magistrate Judge, the District Attorney Spencer Walker to establish the facts with their own testimony.

This Honorable Court has not ruled on the merits of the petition. IF possible the Petitioner requests a transfer.

5) 28 U.S.C. § 2241 (c) The writ of habeas corpus shall not be extended to a prisoner unless - (3) He is in custody in violation of the Constitution or laws or treaties of the United States. See answer to 28 U.S.C. § 2254 (a)

Conclusion

The petition for rehearing should issue.

Specific Relief

Petitioner requests that as specific relief, the petition for rehearing is granted and if this court deems it just under the constitution to transfer for hearing.

Petitioner requests as specific relief an order on the merits or explanation as to why petitioner is continuously denied his right to protection of the Constitution of the United States.

Certificate

I, John Harry Steele, certify that this petition is submitted in Good faith.

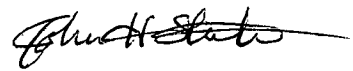
I, John Harry Steele, certify that the grounds are limited to intervening circumstances of substantial or controlling effect.

I, John Harry Steele, certify the petition has other substantial grounds not previously presented

Prayer for relief

Petitioner prays this court will grant petition for rehearing.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "John H. Steele".

John H. Steele, 284155

Bibb County Corr. Facility

565 Bibb Lane

Brent, AL 35634

Certificate of Service

I, John Harry Steele, do hereby certify, pursuant to Rule 29, Have served a copy of the foregoing corrected petition for rehearing to the Clerk of the Supreme Court of the United States and upon all parties by placing the same in an envelope, postage pre-paid, and put in the U.S. mail drop box at the Bibb County Correctional Facility this 24th day of December, 2019, and addressed as follows:

1) Office of the Clerk

Supreme Court of the United States

1 First Street, N.E.

Washington, D.C. 20543

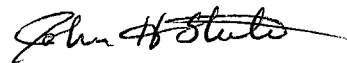
2) Office of the Attorney General

State of Alabama

501 Washington Ave.

Montgomery, AL. 36104

Respectfully Submitted,



John H. Steele, 284155

Bibb Co. Corr. Facility

565 Bibb Ln

Brent, AL. 35034