

19-6962
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 03 2019

OFFICE OF THE CLERK

TOM S. MOURNING II — PETITIONER
(Your Name)

vs.

THE HON. GAYLE L. CRANE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE MISSOURI COURT OF APPEALS SOUTHERN DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TOM S. MOURNING II
(Your Name)

600 East 5th Street .
(Address)

Fulton, Missouri 65251
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

1. May a State Judicial Circuit Court refuse to provide notice and a hearing pursuant to the Fifth Amendment to the United States Constitution when a decision before the Court could deprive a person of life, liberty, or property?
2. May a State Judicial Circuit Court order the commitment of a person to a State Department of Mental Health for a substantial duration of time instead of provision of advanced notice and a hearing as requested by petitioner to the Court?
3. May limitation of access to adequate care for a painful and bleeding wound that a person suffers and the Court is directly aware, denial of access to a public and speedy trial, and detention of said person establish cause for dismissal of charges under the Fifth and Sixth Amendments to the United States Constitution?
4. May this Court order for the dismissal of charges against the person accused, or order for the Respondent to order the same on writ of mandamus, based on the findings of the previous questions?

LIST OF PARTIES IN COURT BELOW

The names of all parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES CITED

Constitution, Statutes, Regulations, and Rules

United States Constitution Article VI Clause II

United States Constitution Amendment V

United States Constitution Amendment VI

Missouri Constitution Article I Section X

Missouri Constitution Article I Section XIV

Missouri Revised Statutes Section 552.020

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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.

CITATIONS OF OPINIONS AND ORDERS IN
CASE

The opinion of the highest state court to deny discretionary review appears at Appendix C to the petition and is unpublished.

The opinion of the Intermediate appellate court appears at Appendix A to the petition and is unpublished.

JURISDICTIONAL STATEMENT

The date on which the highest state court decided my case was November 19, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

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CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Article VI Clause II of the United States Constitution provides:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. The Fifth Amendment of the United States Constitution provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of

life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

3. The Sixth Amendment of the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

4. Article I Section X of the Missouri Constitution provides:

"That no person shall be deprived of life, liberty or property without due process of law."

5. Article I Section XIV of the Missouri Constitution provides:

"That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay."

6. Section 552.020 of Missouri Revised Statutes provides procedures involved in the case, but is lengthy, and the text of the provisions appears at Appendix E to the petition.

STATEMENT OF THE CASE

The facts necessary to place in their setting the questions now raised can be briefly stated:

I. COURSE OF PROCEEDINGS IN THE PETITION FOR WRIT OF MANDAMUS CASE NOW BEFORE THIS COURT.

On April 29, 2019, in a cause then pending in the 29th Judicial Circuit Court Jasper County Missouri, entitled State of Missouri v. Tom S. Mourning, II, Petitioner was extended commitment to Missouri

Department of Mental Health. Because of Incompetency to Proceed by order of the Respondent on three original counts charging violations of 565.050-001 Y198413.0, two original counts charging violations of 565.050-002 Y197913.0, Five original counts charging violations of 571.015-001 Y197552.0, and three original counts charging violations of 571.030-015 Y201452.0 of Missouri Revised Statutes, on or about August 13, 2016 (Appendix B pg. B4).

On May 9, 2019 the Petitioner Filed Motion to Proceed In Forma Pauperis and Notice of Appeal to Missouri Court of Appeals Southern District (Appendix B pg. B4). The 29th Judicial Circuit Court Jasper County Missouri further orders "Defendant is represented in this matter by Mr. Wallace and should direct any request to his attorney," on May 22, 2019 (Appendix B pg. B4-5). Petitioner Filed correspondence in a "Memorandum to Clerk Requesting Legal File and Transcript for Case No. 16AO-CR01022-01 For the Record on Appeal," on June 14, 2019 (Appendix B pg. B5). The 29th Judicial Circuit Court Jasper County Missouri provided a copy of the Docket Sheet and a copy of the correspondence filed; and nothing further proceeding the Notice of Appeal to Missouri Court of Appeals Southern District was entered (Appendix B pg. B1-5) and (Appendix G pg. G1-2)).

On September 04, 2019, the Petitioner Filed Motion to Proceed in Forma Pauperis and Petition for Writ of Mandamus, in the Missouri Court of Appeals Southern District, directing the Respondent to provide an order for dismissal of all charges in Case Number 16AO-CR01022-01. The Missouri Court of Appeals Southern District ordered to deny the petition on the same date, September 04, 2019 (Appendix A pg. A1). Petitioner was detained at Fulton State Hospital Nixon Forensic Center, under the commitment order of the 29th Judicial Circuit Court Jasper County Missouri, when the Petition for Writ of Mandamus pursuant to Amendments Five and Six of the United States Constitution were Filed in the Missouri Court of Appeals Southern District. The Petitioner is presently detained under the same commitment order.

On October 1, 2019, the Petitioner Filed Motion to Proceed in Forma Pauperis and Petition for Writ of Certiorari, in the Supreme Court of Missouri, to grant review of the decision of the Missouri Court of Appeals Southern District (Appendix D pg. D1). The Supreme Court of Missouri ordered Petitioner's Petition for Writ of Certiorari filed "'AS IS'", on October 1, 2019, (Appendix D pg. D1). No answers to the Petition for Writ of Certiorari were Filed. No briefs were Filed by any party. No hearings were held. On November 19,

2019, the Supreme Court of Missouri entered its order to deny Petition for Writ of Certiorari (Appendix C pg. C1).

II. RELEVANT FACTS CONCERNING THE UNDERLYING COMMITMENT TO MISSOURI DEPARTMENT OF MENTAL HEALTH.

The relevant facts are contained in Petitioner's Petition for Writ of Mandamus under Amendments Five and Six of the United States Constitution. The Forensic Examiner Report for the State of Missouri was filed in the 29th Judicial Circuit Court Jasper County Missouri (Appendix B pg. B4). Petitioner filed a Pro Se Motion for Order of Appearance of the Defendant for Competency Hearing, requesting the Court to order the Defendant to appear for the Competency Hearing, so that the Petitioner may hear and/or observe any and all findings that the Court may consider, contest the findings of the report, have an opportunity to speak in the matter before the Court, and be allowed all Rights that the Petitioner is lawfully entitled, during such hearing (Appendix F pg. F1), and, alternatively, a hearing and notice on the record on the motion, if the Court was not prepared to grant the humble request.

The 29th Judicial Circuit Court Jasper County Missouri entered a proposed order for extension of commitment (Appendix B pg. B4). No notice or hearing was provided to the Petitioner, prior to or at the time of the decision for the order on the basis of the Forensic Examiner Report that contained personal information related to damages referred to by Petitioner's Petition for Writ of Mandamus.

The Petitioner filed a Notice of Appeal to Missouri Court of Appeals Southern District challenging the extension of commitment order (Appendix B pg. B4). The 29th Judicial Circuit Court Jasper County Missouri further ordered "Defendant is represented in this matter by Mr. Wallace and should direct any request to his attorney," (Appendix B pg. B45). Petitioner submitted correspondence regarding Memorandum to Clerk Requesting Legal File and Transcript for Case No. 16AO-CR01022-01 for the Record on Appeal, wherein Petitioner requested any judgments/orders entered, proceeding the Notice of Appeal, as well as a copy of the Notice of Appeal with corresponding Motion and Affidavit in Support to be provided to the Petitioner, and also for written correspondence to be included in the most recent docket sheet and the updated docket to be included with the aforementioned copies being mailed to the Petitioner (Appendix G pg. G1). The Court provided to the

Petitioner the five page Docket Sheet dated "20-Jun-2019" time "11:20:19 AM", as well as a copy of the Petitioner's correspondence dated "June 7, 2019". Nothing further proceeding the Notice of Appeal to Missouri Court of Appeals Southern District was entered or provided to the petitioner.

Petitioner prepared and filed an Original Remedial Writ, entitled "Petition for Writ of Mandamus", in the Missouri Court of Appeals Southern District (Appendix A pg. A1). The Petition for Writ of Mandamus sought for the direction of the Respondent to provide an order for dismissal of all charges on the grounds that the 29th Judicial Circuit Court Jasper County Missouri began a process on the Forensic Examiner Report for the State of Missouri, but the Respondent refused to provide notice and a hearing for the motion filed by the petitioner, and as a result the Petitioner sustained: the limitation of access to adequate care for a painful and bleeding wound that the petitioner suffers and the court was directly aware, the denial of access to a speedy and public trial, as enumerated in Amendment Six of the United States Constitution, and the detention of the Petitioner, to date, all of which entitles the Petitioner to a remedy as established by the prohibition of the aforementioned damages according to the Laws of the United States Constitution and the State of Missouri explicitly and respectively. The Petitioner claimed that he was in defense of life and

limb, which, having been damaged in such as previously mentioned, entitled Petitioner to not be twice jeopardized as the Fifth Amendment of the United States Constitution explicitly prohibits, and would certainly occur without the redress being sought. The Missouri Court of Appeals Southern District denied the Petition for Writ of Mandamus (Appendix A pg. A1).

Petitioner prepared and filed an Original Remedial Writ, entitled "Petition for Writ of Certiorari," in the Supreme Court of Missouri (Appendix D pg. D1). The Petition for Writ of Certiorari sought for the Supreme Court of Missouri to grant review of the decision of the Missouri Court of Appeals Southern District to deny the Petition for Writ of Mandamus, on the grounds that the Petitioner sought remedy in the Missouri Court of Appeals Southern District and was denied such petition, but the Petitioner is entitled to certain remedy for personal damages sustained and which were caused by the Respondent without due process of law, under Article I Section XIV of the Missouri Constitution, and the Respondent is bound to provide the remedy as requested by the Petitioner under the ministerial function established in Article VI Clause II of the United States Constitution. The Petitioner argued that Amendment Five and Amendment Six of the United States Constitution, Article I Section X of the Missouri Constitution, Article I Section XIV

of the Missouri Constitution, and Section 552.020 of Missouri Revised Statutes are bound for consideration and provision, and actions of the Respondent and Missouri Court of Appeals Southern District do not comport with provision of the laws, as evident by the Petitioner's cause in Appellate Court Case Number SD36284.

Although, the Supreme Court of Missouri filed the Petition for Writ of Certiorari ordered "AS IS", the Court denied the Petition (Appendix C pg.C1).

III. EXISTENCE OF JURISDICTION BELOW.

Petitioner was extended commitment in the 29th Judicial Circuit Court Jasper County Missouri under 552.020 MO. R.S. A Motion to Proceed In Forma Pauperis and Notice of Appeal was appropriately made in that Court, but was not afforded. A Petition for Writ of Mandamus under the Fifth Amendment and Sixth Amendment of the United States Constitution and Article I Section X of the Missouri Constitution was appropriately made in the Missouri Court of Appeals Southern District, and duly petitioned to the Supreme Court of Missouri on Petition For Writ of Certiorari.

IV. THE SUPREME COURT OF MISSOURI HAS DENIED THE SETTLEMENT OF AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

This is a deprivation of life, liberty, or property without due process of law case. At the time of the Petitioner's State Judicial Circuit Court felony proceedings, the Forensic Examiner Report for the State of Missouri was filed pursuant to Section 552.020 Subsection 11 Subdivision 1 of Missouri Revised Statutes. The Petitioner was not provided notice or a hearing consistent with the Fifth Amendment of the United States Constitution, after the Petitioner's submission of "Motion for Order of Appearance of the Defendant for Competency Hearing." The Petitioner was denied: liberty to hear and/or observe findings that the Court may consider, liberty to contest the findings of the report, liberty to have an opportunity to speak in the matter before the Court, and liberty to be allowed all Rights that the Petitioner is lawfully entitled, during such hearing (Appendix F pg.F1). Instead, the Court extended commitment of the Petitioner to Missouri Department of Mental Health under Section 552.020 Subsection 11 Subdivision 3, as though the Petitioner were not protected by

the provision of a hearing under the statute, or under the Fifth Amendment and Sixth Amendment of the United States Constitution, to exercise the aforementioned liberties as compelled by the Forensic Examiner Report Filed that may result in deprivation of life, liberty, or property.

The Petitioner suffered significant injuries as a result of the aforementioned violations of liberty:

1. The Court limited access to adequate care for and was directly aware of the painful and bleeding wound that the Petitioner suffers, due to the existence of the wound and the direct references to said wound in the Forensic Examiner Report (the report is marked Privileged and Confidential, and Section 552.020 Subsection 13 states that "The result of any examinations made pursuant to this section shall not be a public record or open to the public," thus the Petitioner has not included the report in Appendix to the petition without permission from the appropriate Court);
2. The Petitioner was denied access to a speedy and public trial, as enumerated in the Sixth Amendment of the United States Constitution, for the accused to enjoy, in all criminal prosecutions;
3. The Petitioner was detained by Fulton State Hospital **Biggs** Forensic Center, 600 East 5th Street, Fulton, MO 65251, a Vendor of Missouri

Department of Mental Health, under the order extending commitment of the Petitioner.

Therefore, life and limb has been damaged without due process of law, and a remedy is an explicit privilege of the Petitioner under the Fifth Amendment of the United States Constitution.

ARGUMENT FOR ALLOWANCE OF WRIT

I. RELIEF SOUGHT IN PETITION FOR WRIT OF CERTIORARI IS NECESSARY TO SUPPORT THE ESTABLISHMENT OF JUSTICE AND THE PERFECTION OF THE UNION

The Petitioner's cause in the Supreme Court of Missouri, now before this Court, offers compelling information in support of the necessity for the highest Court of the State to grant review of the decision of the intermediate appellate Court. Although, the Writ of Certiorari is not in its own title a right, the matters before the Court are of the most personal and integral of rights entitled to persons in the United States of America, including the rights to: the freedom of speech; the free exercise of an establishment of religion; petition the Government for a redress of grievances; a well regulated militia, being necessary to the security of a free

State; keep and bear arms; be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures; not be subject for the same offence to be twice put in jeopardy of life or limb; not be compelled in any criminal case to be a witness against himself; not be deprived of life, liberty, or property, without due process of law; not have property taken for public use, without just compensation; enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; to be informed of the nature and cause of the accusation; confronted with witnesses against him; have compulsory process for obtaining witnesses in his favor; and, have Assistance of Counsel for his defence.

The aforementioned have been damaged as examination, of testimony heretofore offered proceeding sworn statements entered and sustained, and attachments hitherto supporting the claim of the Petitioner, proves. Damages to life, liberty, property, and limb found in the limitation of access to adequate care for a painful and bleeding wound, denial of access to a speedy and public trial, and detention of the petitioner, all of which caused by a failure to perform a ministerial function of the provision of notice and a hearing as requested to the Respondent beforehand by Petitioner.

These are not only Federal Rights, but also Human Rights, endowed to the Petitioner by the discretion of the Creator of all Life, and no less compelling for redress in the lack of provision by Government thereof, regardless of the condition of the State a person may reside, whether being found to be more free or more policing. The Judicial Power of the United States should exhibit the same discretion for the Rights of all persons as the Creator of the Land would have permissible to each, under the supreme Law of the Land, and as all public officers are equally bound to support. This Petition for Writ of Certiorari offers an opportunity to uphold one's oath, in support of forming a more perfect Union and establishing Justice, to settle the entitlement to not suffer the injuries that the Petitioner hereby seeks remedy.

II. RELIEF ON THE BASIS OF INJURIES WITHOUT DUE PROCESS OF LAW REQUIRES A VENUE FOR THE CONSIDERATION OF THE CASE, WHEN A STATE COURT OF LAST RESORT DENIES REQUESTS FOR AN ADEQUATE STATE REMEDY

The Petitioner continues to suffer from injuries brought upon him by the Respondent. Each subsequent

subjection for the same offense to put the Petitioner in jeopardy of life or limb, thereafter, in the 29th Judicial Circuit Court Jasper County Missouri, is a continuance of said pains and suffering caused by the initial refusal of the Respondent to provide due process of notice and hearing as requested. Just as evidence born of corruption renders all matters that stem from such corruption in evidence equally corrupt, so does an aggregious violation of the liberties that the Constitution's Law of Rights prohibits from deprivation render further proceedings for the same offense equally aggregious violations.

Discretion was available to the Supreme Court of Missouri on Petition for Writ of Certiorari, but denied on the prayer of the Petitioner, all after the Petitioner sought rightful appeal in the 29th Judicial Circuit Court Jasper County Missouri. The Petitioner's painful injuries do not subsist as a result of due process, but, instead, for a lack of provision of due process and of rightful State remedy, necessitating the request of the Petitioner on Petition for Writ of Mandamus in the intermediate appellate Court.

III. AN APPROPRIATE MINISTERIAL FUNCTION OF THE RESPONDENT IS FOUND IN THE SUPREME LAW OF THE LAND TO BE PROVIDED ON PETITION FOR WRIT OF MANDAMUS

The ministerial function of the Judges in every State is binding under Article VI Clause II of the United States Constitution. Accordingly, the supreme Law of the Land, where the Petitioner has been put in jeopardy of life and limb, and damaged of life and limb, is not only those Rights enumerated, but also the entire text of the United States Constitution inscribed on parchment. No venue or public officer within the United States may exclude from due provision, or find a State Law to the contrary more supreme than, the only supreme Law of the Land.

IV. THE QUESTIONS RAISED IN THIS CASE ARE IMPORTANT AND UNRESOLVED

The Supreme Court of Missouri has denied the settlement of important questions of Federal Law that have not been, but should be, settled by this Court and are a firm basis for granting certiorari in this case:

1. The Supreme Court of Missouri denied Petition for Writ of Habeas Corpus that offered the Fifth and Sixth Amendments of the United States Constitution, Article I Sections ~~X~~ and ~~XIV~~ of the Missouri Constitution, and Section 552.020 of Missouri Revised Statutes as being bound for consideration and provision. The question of application of Constitutional protections, for a person detained in a behavioral health forensic center through the denial of lawful provision of notice and a hearing that petitioner duly requested and the denial of an adequate remedy, has yet to be answered directly by the Supreme Court of the United States.

2. This petition presents to this Court another, and more, fundamental question as to the adequacy of the remedy sought by the Petitioner in the intermediate appellate Court - may the damages to life and limb through the limitation of access to adequate care for a painful and bleeding wound that a person suffers and the Court was aware, denial of access to a speedy and public trial, and detention of the person constitute explicit entitlement to the dismissal of charges against the person under the Fifth and Sixth Amendments of the United States Constitution? The decision of the Supreme Court of Missouri to deny discretionary review leaves this important question to be settled by this Court, to affirm the lawful adequate

remedy sought by the Petitioner in this Case.

CONCLUSION

The provision of notice and a hearing is fundamental to the provision of due process of law, prior to deprivation of life, liberty, or property. Damages to life and limb, sustained as a result of the failure to provide the former, constitute injuries that surpass the threshold of jeopardy of life and limb, and each subsequent proceeding injures such person further until a remedy is provided, and such remedy may not put any person in jeopardy once more for the same offence.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Don S. M

December 2, 2019