

NO. 19-7691

IN THE SUPREME COURT OF THE UNITED STATES

October Term of 2019

In re WILBERT NORWOOD STARKS, Pro-se Petitioner, --Realtor

(V).

(Honorable BARNETT WALKER, Judge , -----Respondent)

ON PETITION FOR WRIT OF MANDAMUS

TO THE SUPREME COURT OF TEXAS

PETITION FOR REHEARING EN BANC ON

PETITION FOR WRIT OF MANDAMUS

Authorized by 28 U.S.C. Sec, 1651 (a)

And Rule 20, The All Writ Act of 1789

Submitted by:

Wilbert Norwood Starks

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List of all Parties and Counsel at The Court
Whose Judgment is Sought to be Reversed

Petitioner

In Re Wilbert Norwood Starks
5317 Tate Ave.
Plano, Texas 75093 Pro-se

Respondents

Robert J. Davis, Attorney
8131 LBJ Freeway Suite 700
Dallas, Texas 75251

JODY PRIVETT # 1374
Arresting Police Officer
Plano, Texas - Collin County, Texas

Hon. Dan K. Wilson, Judge
----who issued Sanction
County Court At Law #5
2300 Bloomdale Suite 2106
McKinney, Texas 75071

Hon. Barnett Walker,
Judge County Court At Law # 2
2100 Bloomdale Suite 10344
McKinney, Texas 75071

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<p>1. Intervening circumstances of a substantial or controlling effect</p> <p style="padding-left: 40px;">Or other substantial grounds not previously presented.</p> <p style="padding-left: 80px;">(a) The Record Evidence does not support the finding necessary</p> <p style="padding-left: 120px;">To impose Sanction on “Starks “ under RULE 13, Tex. R. of</p> <p style="padding-left: 120px;">Civil Proc. and Chapter 10, Tex, Civil Practice and Rem. Code.</p> <p style="padding-left: 80px;">(b) “Starks” was denied Due Process with respect to notice and</p> <p style="padding-left: 120px;">Opportunity to be heard, and sufficient express finding to justify</p> <p style="padding-left: 120px;">Imposition of Sanction and Attorney Fee</p>	
2 “Starks” Petition demonstrate the Texas Supreme Court's noncompliance	5
<p style="padding-left: 40px;">With this Court's Ruling.</p> <p>3. Compelling evidence in “Starks” Petition shows that the Texas Supreme</p> <p style="padding-left: 40px;">Court's Noncompliance with this Court's Rulings have resulted in a gross</p> <p style="padding-left: 40px;">“Fundamental Miscarriage of Justice”, where all record evidence clearly</p> <p style="padding-left: 40px;">shows that “Starks” is actually innocent and the Court's Order granting</p> <p style="padding-left: 40px;">SANCTION and ATTORNEY FEES against Him , Was Unconstitutional,</p> <p style="padding-left: 40px;">without Authority, without Jurisdiction, without Evidence, and contrary to the</p> <p style="padding-left: 40px;">Statutory provision under RULE 13, and Chapter 10 . Such usurpation of</p> <p style="padding-left: 40px;">judicial power violates due process. U. S. Const. Amends. 8 th. & 14 th.</p>	

Statutory Provisions at Issue

1. This case involves --- RULE 13, Texas Rule of Civil Procedure:
Rule 13, Authorizes the imposition of Sanction against attorney, a represented Party or both, "who files a pleading (LAWSUIT) that is ;
 - (a) Groundless and brought in bad faith; or
 - (b) Groundless and brought to harass .

2. This Case involves ---CHAPTER 10, Texas Civil Practice & Remedies Code:
Chapter 10, Sanctions frivolous pleading and motions ;
SECTION 10.001. Signing of Pleadings and motions. The signing of a Pleading
As required by the Texas Rules of Civil Procedure constitute a certificate by the
signature, that to the signatory's best knowledge , information and belief , formed
After a reasonable inquiry :
 - 1 the pleading or motion is not being presented for any improper purpose, including
To harass or to cause unnecessary delay or needless increase in costs of the
Litigation;
 2. Each claim, defense , or other legal contention in the pleading or motion is
Warranted by existing laws or by a nonfrivolous argument for the extension ,
Modification , reversal of existing laws or the establishment of new laws;
 3. Each allegation or other factual contention in pleading or motion has evidentiary
Support or a specially identified allegation or factual contention, is likely to have
Evidentiary support after a reasonable opportunity for further investigation or
Discovery, ; and

4. Each denial in the pleading or motion of a factual contention is warranted on The evidence or , for a specifically identified denial , is reasonably based on A lack of information or belief . id. Acts 1995, 74th. Leg. , Ch. 137.

SECTION 10.002, -- MOTION FOR SANCTIONS, describing the specific Conduct violating Section 10.001

- (b) the court on its own initiative may enter an order describing the specific Conduct that appears to violate Section 10. 001 and direct the alleged violator to show cause why the conduct did not violate this section.
- (c) . the court may award to a party prevailing on a motion under this section The reasonable expenses and attorney fees incurred in presenting or opposing the motion, and if no due diligence is shown the court may Award to the prevailing party all cost for inconvenience , harassment, Out-of-pocket expenses incurred or caused by the subject litigation. Id.

SECTION 10.003--- NOTICE AND OPPORTUNITY TO RESPOND : -- The Court shall provide a party who is the subject of a motion for Sanction under Section 10.002, NOTICE of the allegation and a reasonable opportunity to respond to the allegations. Id.

SECTION 10. 004--- VIOLATIONS . SANCTION;

- .(a) a court that determines that a " person has signed a pleading "or motion in violation of Section 10.001 may impose a sanction on the person, a party represented by the person or both.
- .(b) The Sanction must be limited to what is sufficient to deter repetition of the conduct or comparable conduct by another simulator situated.

. (c) A sanction may include any of the following :

-1- a directive to the violator to perform , or refrain from performing,

An act.

-2- an order to pay a penalty into court; and

-3- an order to pay to the other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, Including reasonable attorney fees.

SECTION 10.005 --- ORDER : A court shall describe in a order imposing a Sanction under this chapter the conduct the court has determined violated Section 10.001 and explain the basis for the sanction imposed Id.

Please note that there is nothing in the sanction order stating anything about STARKS filing any lawsuit in that court or anything asserting how Starks violated Section 10.001, The only way possible for that to happen, STARKS Would have had to file lawsuit in that court.; Which that never happen.

28 U.S.C. Sec. 1651 (a)

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" Petition For Rehearing en banc "

Pursuant to Rule 44.2 of the Rules of the United States Supreme Court, "Starks" hereby petitions for Rehearing en banc of the April 20, 2020 decision in , In re Wilbert Norwood Starks (V. Honorable Barnett Walker, Judge,) NO. 19 -7691 to address that portion of the Order denying his Petition , on the issue of Sanction,

" REASONS FOR GRANTING THE PETITION FOR REHEARING EN BANC "

(1). Intervening circumstance of a Substantial or controlling effect and or other Substantial grounds not previously presented warrant Rehearing of the denial of "Starks" Petition for writ of Mandamus, pursuant to U. S. C. Sec. 1651 (a), and Rule 20, which invest jurisdiction for

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This Court to entertain the Petition.

The County Court No. 5 , Hon. Dan K. Wilson, in Collin County, Mckinney, Texas, Issued his Order granting Sanction and Attorney Fees against "Starks" illegally on FEBRUARY 19, 2019. Pursuant to Rule 13, Tex. R. of Civil Proc. ; and Chapter 10, Tex. Civil Practice and Remedies Code. In Cause No. 005-03474-2018 ..illegally because:

1. There is no record evidence that "Starks" had Signed nor filed any lawsuit in the County Court at Law No. 5 , cause No. 005-03474-2018. In violation of due process under Jackson V. Virginia, 443 U.S. 307,97 S.Ct. 2781 (1979) and its cited authorities.
2. The record evidence does not support the finding necessary to impose Sanction nor Attorney fees against "Starks " under RULE 13 , nor Chapter 10. See Gomer V. Davis, 419 S.W. 3d. 470 Tex. App. Hou. [1st. Dist] 2013 , Mantri V. Bergman,153 S.W. 3d 715 (Tex. App. 2005), Martin V. Tex. Depart. Of Family & Protective Servs, 176 S.W.3d 390 (Tex. App. 2004); Braley V. Campbell, 832 F. 2d 1504 (10 Cir. 1987)
3. There is no record evidence that "Starks" was ever represented by any attorney in this instant case. The Statutory provisions under Rule 13 and Chapter 10 is very clear and so are the laws surrounding it, as both Statutes require , at the outset, before any Sanction can be issued. The Records must reflect that the party being sanctioned must first have signed and filed a lawsuit in that court, in that stated cause Number and Next it must be shown that the petition was groundless, not supported by facts and law.

THUS, absent such essential and fundamental facts, such is totally in violation of both -Rule 13 and Chapter 10 . and causing the County Court not to have authority nor jurisdiction under GOMER V. DAVIS, 419 S.W. 3d 470 Tex App. Hou. [1st. Dist] 2013 to award any sanction nor attorney fees against "Starks Causing the resulting Sanction to

be an abuse and overreach of authority, and a usurpation of judicial power, and such facts causes the said Sanction and attorney fees to be void. As it violates the Texas And the United States Constitution, STATUTES and Laws. Especially where Petitioner clearly showed in his Petition for Writ of Mandamus filed in this instant case that the County Court violated every Section stated under RULE 13 and Chapter 10 .Therefore, in light of such material fact, the Supreme Court has held that where the Court violated the actual reading and wording of the Statute, Mandamus is a proper vehicle to use to void the issue complained of. UNITED STATES V. DENSON, 603 F. 2d 1143 (1979) and Mandamus should be granted almost as a matter of right .

The Court in DENSON, supra stated that : The imposition of a sentence that is illegal is a manifest transgression . That an appellate court has the duty , with minimal Margin for judgment , to correct an illegal sentence, as in this instant case, to correct an illegal sentence or order has been evident since the decision in Ex parte United States , 1916, 242 U.S. 27, 37 S.Ct. 72, 61 LEd. 129; There mandamus issued to set aside an Unauthorized order designed to suspend permanent execution of a sentence . This use of mandamus was expressly approved in Will V. United States , supra, as an example of a situation where the court overreached its judicial power to deny the Government the rightful fruit of a valid conviction, 389 U.S. at 97, -98, 88 S. Ct. at 275.

These cases indicate that if a district court exceeds the scope of its judicial authority, the aggrieved party should be granted the writ almost as a matter of right.

Consequently Petitions to correct illegal sentences by mandamus have routinely been granted. United States V. Jackson, 2 Cir. 1977, 550 F.2d 830; United States V. Norton, 5Cir. 1976, 539 F.2d 1082, Cert. denied, 1977, 429 U.S. 1103, 97 S. Ct. 1129, 51 L

Ed. 2d 553; United States V. United States District Court, 9 Cir. 1975, 509 F.2d 1352
 Cert. denied 1; United States V. Gibbs, 9 Cir. 1960, 285 F.2d 2256; United States V.
 Lane, 9 Cir 1960, 284 F.2d 935 421 U.S. 962, 95 S.Ct. 1949 44 L.Ed. 2d 448; United
 States V. Regan, 8 Cir. 1974, 503 F.2d 234, Cert. Denied, 1975, 420 U.S. 1006, 95 S.Ct.
 1449, 434 L.Ed. 2d 764; United States V. Mehrtens, 5 Cir. 1974, 494 F.2d 1172, Cert.
 Denied 419 U.S. 900, 95 S.Ct. 182, 42 L.Ed.2d 145; United States V. McGarr, 7 Cir.
 1972, 461 F.2d 1; United States V. Pregerson, 9 Cir. 1971, 448 F.2d 404, 406, The 9
 Cir. explicitly stated that it had no alternative but to issue the writ of mandamus where
 A district court had rendered a sentence that was beyond the scope of its authority. As
 in each of these cases presenting a similar petition, we here find no compelling
 Justification for exercising such discretion. The DENSON court further stated that
 Correction of an illegal Sentence, judgment or order is an extraordinary cause for
 which Mandamus is available. See also In re Volkswagen of Am, 545 F.2d 304, 311
 (5 Cir 2008).

The Supreme Court has stated repeatedly in general terms that issuance of the writ
 of mandamus lies in large part within the discretion of the court. However, the scope of
 that discretion is however circumscribed by the purpose for which the writ is sought.
 The imposition of a sentence, order or judgment that is illegal is a manifest
 transgression that appellate courts have a duty with minimal margin of judgment, to
 correct since the decision in Ex Parte United States, 1916, 242 U.S. 27,

- a. The County Court was without subject matter jurisdiction, without jurisdiction of the
 person, and capacity to act as a court, Causing its Order awarding Sanction to be void.

Keeping in mind that this is a civil case , where the County Court At Law , No. 5, in Collin County Texas, located in McKinney, Texas , where the Honorable DAN K. WILSON erroneously allowed ATTORNEY ROBERT J. DAVIS to illegally file several motions in his court. As a SHAM to try to obtain Jurisdiction where he had none . Such illegal and usurpation of judicial power was in violation of Gentry V. Bowser, 21 S.W. 569, 2 Tex. Civ. App. 388 (Fort Worth 1893), Tex. Dept. of Park & Wildlife V. Maranda, 133 S. W. 3d 21 (2014). Mantri V. Bergman, 153 S.W. 23d 715 Tex. App. 2005) And Martin V. Tex. Dept. of Family & Protective Servs. , 176 S.W. 3d 390- Tex.App. 2004). Schlayenhaus V. Holder, 379 U.S. 104 (1964). Gomer V. Davis, Supra. Thus, it is self - evident that where any court violates every section in Rule 13 id. And Chapter 10. Id. see Section 10.001; 10.002; 10.003; 10.004 and 10.005 it would have to know that this action was illegal. And this Court has a duty to notify the County Court that such action must be stopped. Such is designed to circumvent Statutes set by the Legislature and Congress, and the State and Federal Constitutions and laws.

- 1- There is "no Record evidence " that Petitioner signed and filed a lawsuit in Cause No. 005-03474-2018 , in the County Court at law No. 5.
- 2- There is "No EVIDENCE of any case authority to support the County Courts Action.
- 3- Moreover, there is "NO EVIDENCE" that the County Court issued any notice To Petitioner to respond to any allegations prior to filing the Sanction as is Required by Chapter 10, under Sec. 10.002- 10.003 Id.

Thus, "Starks" asserts that he was denied due process with respect to notice and Opportunity to be heard , and sufficient express findings to justify imposition of

SANCTION, see *Braley V. Campbell*, 832 F.2d 1504, (10 Cir 1987), *Western Pacific Roadway Co.* 345 U.S. 247, 262, 73 S.Ct 656, (1953), *Johnson V. Allyn Bacon, Inc.* 731 Fed. 2d 64 (1 St. Cir.) awarding fees ,when claim was frivolous, unreasonable or without foundation , quoting *Christiansburg Garment Co. V. EEOC*, 434 U.S. 412. , cert. Denied. (1984) The County Court was required as a matter of law to dismiss the Motion for Sanction And Attorney fees for the lack of Subject matter jurisdiction .

Mantri V Bergman Id. And *Martin V . Tex. Dept. of Family & Protective Service*, id.

Moreover, under *Bradley V. Fisher*, 80 U.S. (13 wall) 335 , 354-55 , 20 Led. 646 (1871) and *Roadway*, Supreme Court stated that , like other sanctions, attorney fees certainly should not be assessed lightly or without fair notice and a opportunity for a Hearing, 447 U.S.at 767. Such is required by due process is notice and subsequent opportunity to respond , see *Glass V. Pfeffer* , 657 F. 2d ar 257-258. And *Morrissey V. Brewer*, 408 U. S. 471, 481, 92 S Ct . 2593, 2600 (1972). Mandamus Orders are limited to ministerial duties . *Decatur V. Paulding*, 39 U.S. (1 Pet) 469,514-17 (1840). *Wilbur V. UNited State*, 281 U.S. 206 , 218 (1930), an official action is not ministerial Unless the duty in a particular situation is so plainly prescribed as to be free from Doubt and equivalent to a positive command.

It is well settled that the Supreme Court of the United States has a discretion of whether it grants a Petition for Writ of Mandamus filed pursuant to 28 U.S.C. Sec. 1651 (a), the all Writ Act of 1789, pursuant to Rule 20 the Extraordinary Writ, that gives this Court Jurisdiction to entertain this type of Petition .Surely CONGRESS made the Law designed for Extraordinary causes, as stated herein, where:

-a- All Record evidence clearly shows that the ORDER granting SANCTION

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and Attorney fees are VOID, by Statutory provisions Constitution and law.
-b- All Record Evidence shows that "STARKS" is actually INNOCENCE by Law.

Therefore, under United States V. Denson, 603 F. 2d 1143, supra, it is well Established that upon a clear showing that the Sentence, Order or Judgment is Void, that is an extraordinary cause where the Petition for Writ of Mandamus should be Granted almost as a matter of right especially where the Record evidence clearly establishes that "STARKS" is "ACTUAL INNOCENCE " and such awarding of sanction and attorney fees is in violation of due process and the Equal protection clauses of the Eighth and Fourteenth Amendment to the United States Constitution .

CONCLUSION AND PRAYER

Wherefore, Premises Considered , "STARKS" forever prays that this Honorable Supreme Court will grant this Petition For Rehearing En banc and issue its Order Voiding the Illegal County Court's February 19, 2019 Order awarding Sanction and Attorney fees against "STARKS". In alternative, issue and Order to Supreme Court of Texas with directions for it to Void the Sanction and Attorney Fees . And issue whatever other Order that the court finds that is just and proper.

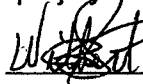
Respectfully Submitted,



Wilbert Norwood Starks

SUBSCRIBED AND SWORN TO THIS THE 03 DAY OF June, 2020

That all is true and correct against the charge of perjury.



Wilbert Norwood Starks