

19-7850

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



BOBBY DREW AUTRY (pro se) — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
CASE NO. 18-11236

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

PETITION FOR WRIT OF CERTIORARI

Bobby Drew Autry TDCJ# 1701196

(Your Name)

James V. Allred Unit

2101 FM 369 North

(Address)

Iowa Park, Texas

76367

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) Does the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996; one year statute of limitations as quoted in 28 U.S.C. § 2244(d)(1)(A) "...final judgment..." violate the suspension clause (Article 1, §9; clause 2) of the United States Constitution by barring and/or suspending a petitioners writ of habeas corpus on procedural grounds due to writ being more than one year past the limitations period - bringing and/or challenging:

- (A) the constitutionality of the "finality of the judgment;"
- (B) a claim of prior constitutional error and/or violation, which is not antecedent constitutional claims that happened prior to the plea, but rather more than three (3) years after the plea;
- (C) a claim of false imprisonment based on those prior constitutional denials;
- (D) a claim of subject-matter jurisdiction rendering said judgment void and non-enforceable;
- (E) a claim of "Breach-of-Contract based on constitutional denials, adding un-negotiated terms and conditions to the contract after the fact and without consent, increasing the punishment beyond that which was bargained for in the original contract, and modifying the agreement and the conditions of probation without a violation of same or consent given more than three (3) years after the plea of guilty in front of a different judge?

(2) Did the State trial court breach the original plea bargain agreement by increasing the punishment (Adding Jail Time) beyond that which was bargained for in the original plea, and modifying the conditions of probation without violation of same or consent given to do so?

(3) Did these constitutional denials, violations, and Statutory abuse of discretion, [i]f proven true, render the plea bargain agreement contract, along with all terms and conditions, null and/or void?

(4) Did the U.S. District Court render a judgment of inequity by an unfair denial of the petitioner's writ application due to barring him on procedural grounds as being barred by the AEDPA's one year statute of limitations?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] 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:

LORIE DAVIS, Director, Texas Department of Criminal Justice -
Criminal Institutions Division,
and is represented by the Texas Attorney Generals Office,
Assistant Attorney General, Ali M. Nasser
Assistant Attorney General
P.O. Box 12548 - Capitol Station
Austin, Texas 78711-2548

RELATED CASES

Not known to this Pro Se Petitioner.

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APPENDIX A United States Court of Appeals denial of COA.
Only one copy of this document was given to the petitioner.

APPENDIX B United States District Court denial of petition.
Only one copy of this document was given to the petitioner.

APPENDIX C United States Court of Appeals denial of rehearing, which is also
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STATUTES AND RULES

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 A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

Only one copy was provided to the petitioner thus not attached to States copy.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

Only one copy was provided to the petitioner thus not attached to States copy.

For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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 October 02, 2019.

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: Unknown, and a copy of the order denying rehearing appears at Appendix C.

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 _____. A copy of that decision appears at Appendix _____.

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

1. The question presented involves the suspension Clause of the United States Constitution, which provides:

"The Privilege of the Writ of Habeas Corpus shall not be suspended,..." Article 1, §9, clause 2 of the United States Constitution.

2. This case also challenges the constitutionality of the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 as quoted in 28 U.S.C. § 2244(d)(1)(A), which provides:

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State Court...

(A) ... the date on which the judgment became final...

3. This case should also request a review of the Statutory Language in FRCrP 11 (Pleas) and FRCrP 32.1 (Revoking or modifying probation); equivalent to Texas Code of Criminal Procedure Articles 26.13 (Pleas) and 42.12 §'s 5, 10, 21, and 22 (Now Article 42A) (Probation modification or revocation).

4. This case involves a "Bill Of Attainder" that was ordered by the 283rd Judicial District Court on January 28, 2008. That same order created several constitutional denials including but not limited to: the 4th, 5th, 6th, 8th, and the 14th Amendments of the United States Constitution.

STATEMENT OF THE CASE

The Petitioner pled guilty in a negotiated plea deal on April 13, 2004 in Cause Nos. F03-25657-T, for five (5) years TDCJ; and F03-25713-U, F03-25714-U for ten (10) years deferred adjudication community supervision. His arrest date was January 17, 2003. He received backtime to January 18, 2003 for No. F03-25657-T.

Upon release from TDCJ-CID on January 18, 2008 the petitioner reported to the 283rd Judicial District Court on January 22, 2008 to begin his probation outside of prison. His original sentencing judge had retired, (The Honorable Vickers Cunningham). The Petitioner was arrested from the courtroom for a failed "quick test" urinalysis with a test result for methamphetamine. He demanded a blood test. His attorney of record, Janet Snell Cook, secured one and a "lab test" result was returned on January 25, 2008 with a negative test result for methamphetamine. It was stated as being one of his prescriptions (Ranitadine).

Although the court, and the judge, were notified and informed of the negative test results for methamphetamine the court ordered the petitioner to remain in custody indefinitely without a showing of probable cause.

On January 28, 2008 the court found in open court, [The Court finds that you did not violate your probation conditions but I am ordering you to remain in custody indefinitely] no probation condition violations to be true. Written and Oral Objections were made on January 28, 2008 to mark these errors and denials in the record. On January 28, 2008 the court also ordered a modification of the petitioner's original conditions of probation. Written

Objection was made to this modification, and as the document states, it was illegal, arbitrary and capricious. However, the court overruled counsel's objection and modified the conditions and adopted them without there being any violation of the conditions or consent given.

On page one (1) of the "MODIFIED CONDITIONS OF PROBATION" the COURT'S TERM is noted as JANUARY 2008. But on page two (2) of the same document the signature line is dated April 13, 2004; the day the petitioner actually received the deferred adjudicated community supervision from the Honorable Vickers Cunningham. Also seen on page two (2) of this document is that the petitioner refused to sign on the advice of counsel.

Upon adopting the new [Illegally Modified] "MODIFIED CONDITIONS OF PROBATION" and the court overruling counsel's objections, counsel for the petitioner simply got up and walked out of the courtroom and the petitioner was returned to his jail cell.

On July 02, 2008 the petitioner was released to the custody of Mark Brandon, Case Worker for the WayBack House Inc. Thus the petitioner is now residing at a halfway house that he never agreed to enter. On December 30, 2008 the petitioner was discharged from the WayBack in full compliance. He then went to reside at a local homeless shelter that the court approved. The Union Gospel Mission.

In December of 2009 the petitioner was authorized to move in with Charles and Lynn Goodwin at 1911 Peavy Rd., Dallas, Texas 75228. He did not know that he was moving into the Honorable Rick Magnis' neighborhood. On December 28, 2009 he received a call

from his then probation officer Angela Spiewak. He was informed to report to the probation office at the 283rd Judicial District Court. Upon arrival he was arrested from the courtroom for alleged violations of the "modified conditions of probation" for failure to take a polygraph test. Probation records show that the Honorable Rick Magnis wanted the petitioner put on a GPS monitor.

The Petitioner secured a polygraph test in the jail on December 29, 2009. He passed the polygraph test. However, upon the judges return from vacation he demanded that the petitioner take a second polygraph; which he failed. On April 21, 2010 the State filed its motion to withdraw its motion to revoke and to continue the petitioner on probation. The Honorable Rick Magnis X'd through this document (As seen in the evidence) and recused himself on April 23, 2010.

The Petitioner was transferred to the 291st Judicial District Court where no probation violations were found to be true yet his conditions of probation are being modified again to add a GPS monitor, a 5000' child safety zone, and an additional ten (10) years on probation.

The Petitioner was returned to the WayBack House under the custody of Mark Brandon. On November 17, 2010 he was allowed to return to his previous residence at 1911 Peavy Rd., while wearing the GPS monitor.

On January 07, 2011 the petitioner was arrested from his probation officer's office.

On February 8 and 11, 2011 the petitioner was adjudicated guilty and sentenced to life in prison in both cases.

In 2014 the Petitioner filed his first 11.07 writ and it was denied without written order. With the record the petitioner could give dates and opinions but he does not have access.

Sometime later the Petitioner discovered that his judgment was void due to the court's (291st) lack of subject-matter jurisdiction. Therefore he tried filing another 11.07 and was once again shot down, but this time he filed his Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, and § 2254 in the Federal District Court. His writ was denied. He filed notice of appeal and was granted leave to proceed without payment in the United States Court of Appeals for the Fifth Circuit. He was denied COA and his motion for panel rehearing.

Thus he has reached his current epoch.

REASONS FOR GRANTING THE PETITION

This case just might be a case of first impression.

This Court should grant certiorari to address the important question of whether 28,U.S.C. § 2244(d)(1)(A) violates the suspension clause of the U.S. Constitution when a petitioner's writ of habeas corpus is attacking the legality of his custody due to a void judgment and/or an illegal sentence.

This Court should grant certiorari to clarify for this petitioner in his particular case whether or not a void judgment and/or an illegal sentence can be attacked at any time and overcome the procedural bar of the AEDPA.

Since at least this Court's decision in Morrissey v. Brewer, 408 U.S. 471, 484, 32 L.Ed.2d 484, 92 S.Ct. 2593, 2600(1972) which states: "... the parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions of probation..." the petitioner should have the opportunity to be heard and he has not. Also as stated in Morrissey "Basically, we think of procedural due process in terms of 'notice,' and the opportunity for a 'full and fair hearing.' Procedural due process also means the opportunity to be heard by an unbiased judicial platform. In the area of criminal law, when the Government seeks to deprive the person of his liberty, we afford the greatest procedural safeguards to ensure a fair trial."

The Petitioner's attempts at his writs of habeas corpus should fall under the category of ordinary and original writs as that seen in Harris v. Nelson, 349 U.S. 286, 22 L.Ed.2d 281, 89 S.Ct. 1082(1969) and Preiser v. Rodriguez, 411 U.S. 475, 484(1973) because he has been attacking his custody for being illegal due to a void judgment based upon the court's lack of subject-matter jurisdiction to render said judgment.

The State trial court's sua sponte order to keep the petitioner confined indefinitely after ruling in open court that he did not violate his conditions of probation became a "Bill of Attainder;" and an ex post facto violation because he was being punished for his past crimes. He had committed no new offenses or crimes so this can be the only outlook. Therefore, this action falls under the scope of Lynce v. Mathis, 519 U.S. 433, 441, 137 L.Ed.2d 63, 117 S.Ct. 891(1997). See Timms v. Johns, 700 F.Supp.2d 764 (E.D.N.C. 2010) at 773:

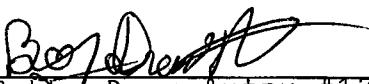
If the State trial court implies that this was a sexoffender civil commitment then the court still denied the petitioner his due process rights because there was no hearing held to determine sexual dangerousness. See Bailey v. Pataki, 708 F.3d 391, 402 (2d Cir. 2013). "Cognizable § 1983 claim under due process clause when an inmate is committed as sexually dangerous beyond their sentence without a hearing." "In sum, procedural due process requires at least a judicial determination that the Government has demonstrated probable cause to show that an individual is sexually dangerous to justify continued detention and a speedy determination of sexual dangerousness." Timms, at 774: (Writ Granted).

Therefore, since the Petitioner's punishment had already been assessed at ten (10) years deferred adjudication community supervision to add jail time for any reason other than a violation of his conditions of probation is a "breach of contract." See Puckett v. U.S., 556 U.S. 129, 133-34(2009). "... the Government failed to meet its obligations under a plea agreement..."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Bobby Drew Autry #1701196

Date: 2-24-2020