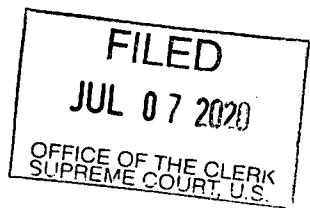


19-8280
No. 19-8280



In The Supreme Court Of The United States

JESUS JAIME JIMENEZ,

Petitioner,,

v.

LORIE DAVIS, Director, Texas Department
Of Criminal Justice - Correctional Institution Division

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR REHEARING

Jesus Jaime Jimenez
TDCJ No. 01363409
Darrington Unit
59 Darrington Rd.
Rosharon, Texas

77583

(Petitioner Pro Se)

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Petition For Rehearing And Suggestions In Support

COMES NOW Petitioner, Jesus Jaime Jimenez, TDCJ No. 01363409, appearing Pro Se, and prays this Court to 'Grant' Rehearing pursuant to Rule 44, and thereafter 'Grant' him a Writ of Certiorari, to review the opinion of the Fifth Circuit Court Of Appeals. In support of Petition, Mr. Jimenez states the following:

Statement Of Facts

In an agreement with the District Attorney (representing the State) and through the approval of the Honorable Judge Emil Karl Prohl, it was agreed, that the Defendant/Petitioner [Herein after] was to serve 75 to 90 days in bootcamp (defined as: a Special Alternative Incarceration Program or T.D.C. Rootcamp -- under the Code of Criminal Procedures, Article 42.12 Sec. 8(a))...

Based on an agreement (plea bargain deal) between the defendant and the State, after serving 75 days in bootcamp, but before the expiration of 90 days from the date the execution actually begins -- the judge of the court, that imposed the sentence may suspend further execution of the sentence imposed and place the defendant on shock probation...

In this instant case (B91-54) the defendant's 90 days were completed on November 6th, however, he was not brought before the Judge, until his 91st day -- to which, legally - the Judge had already lost jurisdiction to act on the case...

The case on which the defendant is currently serving (B91-53) was part of the plea bargain deal, along with the B91-54 case, and therefore it is still binding and currently active, whether he finished one of the sentence or not -- because they are both joined...

Reasons Meriting Rehearing

Reason 1. The Fifth Circuits decision contains glaring factual error that is clearly contrary to this Courts previous ruling, by misapplying Lachawanna Cty. Dist Attorney v. Coss., 532 U.S. 394, 401-04 (2001)

Based on the Fifth Circuit's decision (Ex. 2) and the U.S. District Court's decision (Ex. 3) they concluded, that based on the Lackawanna standard, a defendant could

not attack an expired conviction..

However, they failed to understand, that; this Court, as well as Title I of the AEDPA of 1996 and §2254 (a)(d), along with other Courts -- have applied an exception, to which 'a unique constitutional defect, rising to the level of a Jurisdictional Defect, allows the defendant grounds, to challenge his conviction, because, as I will show in Ground 2, 'without jurisdiction, the Court cannot proceed at all in any cause, quoting Ex Parte McCradle, 74 U.S. 506, 514 (1868), and other case laws..

Under §2254 State Custody; remedies in Federal Courts, it states:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court [shall] entertain an application for a writ of habeas 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 (which also include, due process of law and lack of jurisdiction... emphasis mine)..

§2254 (d) reads as follow:

An application for writ of Habeas corpus on behalf of a person in custody pursuant to the judgement of a state court [shall not] be granted with respects to any claim that was adjudicated on the merits in state court proceedings [UNLESS] the adjudication of the claim --

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal Law, as determined by the U.S. Supreme Court...

Under the AEDPA, a defendant may file a motion 'collaterally attacking' his sentence based under certain specifically listed grounds namely, 1) that the sentence was imposed in violation of the constitution or federal law, 2) that the Court was without jurisdiction to impose the sentence, 3) that the sentence exceeded the maximum authorized by law, or 4) that the sentence is otherwise subject to collateral attack quoting U.S.A. v. Ronald Peppers, 899 F.3d. 211 (3rd Cir. 2018)...

Furthermore, the Fifth Circuit and the U.S District Court, were wrong in determining that the 891-54 case is considered an 'expired conviction', when in fact it is not.. Because if you'll see in Ex. 4, both 891-54 and 891-53; they are both binding, by the plea bargain agreement - and therefore, one can not be considered expired, without the other.. And if you'll look at the Petitioner's time sheet in Ex. 5 and his judgement of conviction, in Ex. 6, it states that he is serving a 60 years sentence (10 years for the 891-53 and 50 years for the 806-146 cause.), to which it does not expire

til 11/24/64 (see: Ex 5)...

Therefore, having concluded that the Petitioner may not collaterally challenge his burglary convictions, **is** frivolous and not supported by law.

Reason 2. There is an important question of Federal and State Law, that needs this Courts attention, when dealing with 'Lack of Jurisdiction', as to denying American Citizen's, the Due Process Rights and other Constitutional Rights under the U.S. Amendments, by allowing trial courts to act on a case, when he has lost Jurisdiction..

The Texas Supreme Court, has previously held in Dubia Petroleum Co. v. Kazi, 12 S.W.3d 71 (Tex. 2000), that 'Subject-Matter Jurisdiction is a power that exists by operation of law only, and cannot be conferred upon any Court by consent or waiver, and thus, a judgement will never be considered final, if the Court lacked subject-matter jurisdiction.

In Texas, under the Texas Code of Criminal Procedure, article 42.12 Sec. 8(a) it clearly states, that:

(a) For the purpose of this section, the jurisdiction of a Court in which a sentence requiring confinement in the Texas Department of Corrections is imposed for a conviction of a Felony [shall] continue for 90 days from the date the execution of the sentence actually begins. After the expiration of 75 days but prior to the expiration of 90 days from the date the execution of the sentence actually begins, the judge of the court that imposed the sentence may suspend further execution of the sentence imposed and place the defendant on probation

Being that the trial judge acted outside of the statutory window, then, he no longer had jurisdiction to hear such case, much less, place the petitioner on shock probation.. (See: Ex. 7)

This Court has previously held, that, 'the judgement of conviction pronounced by a Court without jurisdiction is void, and one imprisoned thereunder, may obtain release by habeas corpus.. Johnson v. Zerbst, 58 S.Ct. at 1024-1025.. In USA v. Pepers, the same results were held (899 F.3d. 211 (3rd Cir. 2018)) ... ' ... 2) that the Court was without jurisdiction to impose the sentence)... This Court and Habeas Statutes, have long held, allowing collateral attacks on final judgements of conviction, only where the rendering court lacked 'jurisdiction'... Moore v. Dempsey, 261 U.S. 86; 43 S.Ct. 265 (1923)..

In Ex parte Sledge, 391 S.W. 3d 104 (Tex. Crim. App. 2013) the Courts held, that 'Lack of Jurisdiction' cannot be waived or forfeiture, and can be attacked at any time' Nix v. State, 65 S.W.3d 664, 667 (Tex. Crim. App. 2001)... As 'Judicial Action' without jurisdiction, is Void!! Where the Court is without jurisdiction, it has no authority to render judgement other than one, of dismissal.. 15 Tex. Jur. 2d. §50 pp. 475-77.. Any Order entered by a Court, having 'No' Jurisdiction is void. Ex Parte Armstrong, 8 S.W. 2d 674-767(1928)..

In State ex. rel, Bryan v. McDonald, 642 S.W.2d 492 (Tex. Crim. App. 1982) the Courts held, that, 'when a trial court orders shock probation [AFTER] it loses jurisdiction, the Order is void!!! Therefore, because the trial court ORDERED shock probation in this instant case, that Order should also be void, because the Court lacked jurisdiction/authority, to act in such case...

Suggestions In Support Of Rehearing

The Fifth Circuit-Court Of Appeals' decision, as well as, the U.S. District Court decision, that Petitioner cannot attack his burglary conviction, because it is deemed 'an expired conviction', has no legitimate legal holding, nor is it supported by Law. On the contrary, this Court, as well as, other Courts, and Laws of these United States, have held differently. Because, when a trial judge, acts on a case, without having jurisdiction or authority, that order is considered void, and it can be argued/raised at any time.. For it is not subject to waiver!!!

Furthermore, when a decision that was contrary to, or involved an unreasonable application of a clearly established Federal Law, as determined by the U.S. Supreme Court the proper method of resolving the issues, is through a writ of habeas corpus... 2254(d).. and as this Court has held, as well as the 3rd Circuit and the Texas Supreme Court -- in Zerbst; Peppers, and Kazi.. ... 'the judgement of conviction pronounced by a Court without jurisdiction, is Void, and one imprisoned thereunder, may obtain release by habeas corpus... making this (B91-54 and B91-53 case), null..

Under the United States Supreme Court rule 10, a writ of certiorari will be granted for the compelling reasons:

- a) a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter, in this case -- the 3rd Circuit in the Peppers' decision...

c) has decided on an important Federal question, in a way that conflicts with a previous decision of Federal Law or has decided an important Federal question in a way that conflicts with relevant decisions of this Court.

First, the Fifth Circuit and the U.S. District Court, held, that petitioner could not attack his burglary conviction, because it was considered an expired conviction. relying on Lackawanna Cty Dist. Attorney v. Coss, 532 U.S. 394, 401-04 (2001)..

However, they missapplied and misinterpreted the actual reading of Lackawanna, because this Court (the U.S Supreme Court) held, that there was an exception which existed, on which a unique constitutional defect, rises to the level of a jurisdictional defect... In this case, the trial court has lost jurisdiction to hear and act in such way, because it was acting outside of the statutory window, to which, it no longer held jurisdiction.. And as previously stated, when the Court Order a defendant to shock probation, after, it loses jurisdiction (as stated in State ex. rel. Bryan v. McDonald, 642 S.W.2d 492 (Tex. Crim. App. 1982)) then that ORDER is void.. Which makes this sentence/conviction, null/void..

And as the Texas Supreme Court previously stated in Dubia Petroleum Co. v. Kazi, 12 S.W.3d 71 (Tex. 2000) 'Subject-Matter Jurisdiction is a power that exists by operation of law only, and [cannot] be conferred upon any Court by consent or waiver, and thus a judgement will NEVER be considered final, if the Court lacked subject-matter jurisdiction... .

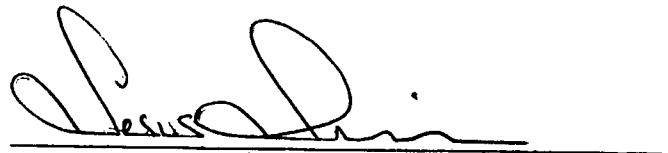
Conclusion

For the reasons stated above, this Court must Grant Rehearing of its judgement entered on June 22, 2020, and issue a Writ of Certiorari, to hold the Fifth Circuit and U.S District Court for the Western District of Texas, San Antonio Division -- accountable for failing to abide by this Courts previous decisions, for violating the rights of U.S. Citizens, to Due Process, as well as, the 14th Amendment, the 8th Amendment, the 5th Amendment and the 1st Amendment of the U.S. Constitution.. to (1st amendment -- Congress shall make no law .. abriging... the rights of the people. 5th Amendment -- without due process of law, 8th Amendment -- nor cruel and unusual punishment inflicted, 14th Amendment -- No State shall deprive any person of life, liberty, or property, without due process of law..) and Grant Petitioner the relief due to him. Should Mr Jimenez's cry for justice not be heard, and relief denied -- may this Court's cry not be heard 'For whoever shall

shut their ears to the cry of the poor, will also cry themselves, and not be heard.'
Proverbs 21:13...

Respectfully submitted,

Dated: July 3, 2020..



Jesus Jaime Jimenez, Petitioner, Pro Se
TDCJ No. 01363409
Darrington Unit
59 Darrington Rd.
Rosharon, Texas
77583

Inmate Declaration

I, Jesus Jaime Jimenez, TDCJ No. 01363409, being presently incarcerated in the Darrington Unit, in Brazoria County, Texas -- verify and declare under the penalty of perjury, that the foregoing 'Petition For Rehearing', and the facts stated therein, are true and correct, to the best of my knowledge..

Dated: July 3, 2020.


/s/

Signature of Petitioner

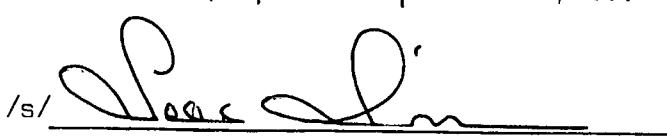
Certificate Of Service

I certify, that I have sent a copy to the Office of:

Mr. Edward Larry Marshall
Assistant Attorney General
209 W. 14th Street
Austin, Texas
78701

The attorney representing Ms Lorie Davis, by a prepaid stamped envelope...

Dated: July 3, 2020..


/s/

Signature Of Petitioner