

No. 20-1098

IN THE
SUPREME COURT OF THE UNITED STATES

TOD KEVIN HOUTHOOFD, *in pro per*, *in forma pauperis*,
vs. Petitioner,
LES PARISH, Warden,
Respondent.

APPLICATION PURSUANT TO RULE 22
JUSTICE CLARENCE THOMAS
AN HONORABLE JUDGE.

ON PETITION FOR REHEARING - JURISDICTION
IS CONVEYED BY 28 U.S.C. sec. 1257a.

PETITION FOR REHEARING - THE WRIT FOR CERTIORARI.

Tod Kevin Houthoofd #596112
Oaks Correctional Facility
1500 Caberfae Hwy.
Manistee, Mi. 49660
231-723-8272

Rule 44. Presentation of Certification.

Petitioner does attest that: THE PETITION FOR REHEARING
is presented in good faith and not for delay.

Dated: 4-28-21

Tod Kevin Houthoofd
Tod Kevin Houthoofd

No. 20-1098

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SUPREME COURT OF THE UNITED STATES.

TOD KEVIN HOUTHOOFD, in pro se,

Petitioner, in forma pauperis

vs.

LES PARISH, Warden,

Respondent.

ON PETITION FOR REHEARING THE WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT - DENYING REVIEW.

PETITION FOR REHEARING THE WRIT OF CERTIORARI.

Tod Kevin Houthoofd #596112
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KEY

Blue underline cites refer to the
WRIT FOR CERTIORARI previously sent on
1-22-2021 and denied on 4-19-2021

Case No. 20-1098

Example: Appendix E means see the Writ's

Appendix

Rule 44. PRECIS FOR GRANTING REHEARING.

The United States Supreme Court has the responsibility of scrutinizing the record of the State court. Spano v. New York, 360 US at 316.

In Michigan, persons accused of committing crimes are guaranteed by the 4th. and 5th. U.S. Const. Amendments, that a Probable cause Hearing of a Complainant is done under Oath and is held before a neutral and detached magistrate before an arrest or search Warrant is issued. Mich. Court Rule MCR 6.102(B)

This process was skipped-over in this Petitioner's case(s), leading to his unconstitutional convictions by a circuit Court in total want of jurisdiction.

The Saginaw 10th. Court records were searched by attorney George Mullison P. 18068 and his Affidavit K is in this Petitioner's WRIT FOR CERTIORARI's Appendix K. MCL 773.6 - Must have a record.

Secondly, in Michigan a prosecutor must prove Venue of the crime, and a person accused of a crime, has a constitutional U.S. 6th. amendment guarantee to be tried in the District and by a jury where the crime is committed.

Michigan has enshrined by Statute MCL 761.1(i)(i) that judicial District with regard to the circuit court is the County. Please see: Appendix Q.

The prosecutor never proved Venue of the Crime as occurring within the court's or his District. This is a radical jurisdictional

defect that voids this Petitioner's convictions under court rule MCR 6.112(D) and Statutory law, MCL 762.3; MCL 767.45(1)(c). The Eastern District Federal Court in Michigan ruled on this issue. See: Simpson v. Mackel, Lexis 15922 (1999), see MN/2.

Thirdly in Michigan, a person accused of a crime has the right not to be convicted on police perjury - This is true under this Court's decision in Pyle v. Kansas, 317 us at 316 (1942), "police perjury requires reversal."

Police perjury in Michigan is a felony and is punishable up to 15 years in prison. See: MCL 764.1(e)(1).

At Appendix G and H it can be readily seen that Saginaw County is listed as the venue of the crime by the same Complainant who is a police officer. This officer was never the investigating officer of the Complaint Felony in Appendix H.

This officer never went before a magistrate nor took an Oath because there is no record of it happening, saved in the record for review. This officer only provided the perjury; "that these two crimes were committed in Saginaw County." Both of these crimes were fabricated against this Plaintiff by the police and the help of the Saginaw County prosecutor's office.

This police and prosecutor misconduct has been brought before Michigan's One Court of Justice many times, but to no avail.

I guess I should just be happy not to have been executed in a hail of bullets and glad that the Michigan Courts cover-up an armed home invasion where the police stole \$15,000.00, 12 guns and two days later stole a tractor and tiller from this Petitioner's barn, and let me live in prison. see: Appendix E, S.T. Report p. 7.

on 11-27-2007, a Ginther Hearing was held approx. 1 1/2 after conviction because of new evidence coming forth of this Plaintiff's actual innocence, Found during federal deposition in case no. 05-CV-10003-BC.

At this deposition it was discovered that the Complainant in Appendix H was not the investigating officer, see: p. 264 L 5-8.

A totally different officer testified, that this Plaintiff did not commit this crime and closed his case as, "unfounded", G.H. p. 42.

This investigating officer closed his case in April 2002, and 3 years later this Plaintiff was charged in Saginaw County because the "dirty cop" lied about the venue of the crime and forum-shopped this closed case into a Court that could not acquire jurisdiction, except by perjury, and Fraud.

This Petitioner's conviction has been upheld by Michigan knowing of the police perjury and the suppression of a favorable witness.

Fourthly in Michigan, a person accused of a crime has the right to the protection of the State's laws and this was not done in this Petitioner's cases. This has split case law decisions as shown at p.p. 7-11 in Petitioner's WRIT FOR CERTIORARI.

In the decision of 7-31-2010 by the Michigan Supreme Court in P.v. Houthoofd, 487 Mich. 568 (2016), this panel reinstated his conviction after it was vacated by the Michigan Court of Appeals in February 2009.

The Michigan Supreme Court did this Ex Post Facto, in a 3 step Process which is prohibited by Mich. Const. 1963, art. 1 sec. 10 and the U.S. Const. Art. 1. sec. 10. and the decision of Calder v. Bull, 3 Dall. 386, 390 (1798).

In Calder, this Court prohibited:

" 4th. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender."

First this 2010 panel obliterated this Petitioner's defense of Pr. Hall, 375 Mich. 187, 192 (1965) and Pr. Sutton, 36 M.A. 604 (1971).

These cases and many other decisional cases have granted relief when a defendant preserved a venue objection pursuant to MCL 767.45(1)(c), which is the venue statute for criminal Criminal trials; which was done by Motion To Quash.

See: page IV For a list of dates this was raised in this Plaintiff's Submitted WRIT FOR CERTIORARI.

Second this panel substituted a civil venue statute in a Criminal trial which is MCL 600.1645, then never again recognized that this Petitioner did save his Venue objection prior to trial.

Third this panel violated their own Court Rule MCR 6.001(D)(2)(3). Stating:

" The provisions of the rules of civil procedure apply to cases governed by this chapter, EXCEPT.

(2). when it clearly appears that they apply to civil actions ONLY, or

(3). when a statute or court rule provides a like or different procedure."

The 1989 Staff Comment clearly explains this rule of Criminal Procedure explaining for clarification stated:

" Since the rules in this Chapter (mcr 6.001) govern criminal Procedure, it follows that civil rules providing "like" procedures

should no longer be applicable. Likewise, it follows that statutes prescribing criminal procedures take precedence over and should render inapplicable, civil rules providing like procedures."

The civil venue procedure is MCL 600.1645 and the criminal venue is MCL 767.45(1)(c) and this was a criminal trial and the Court Rule directs the court to use criminal statutes in criminal trials and civil statutes in civil trials; so how can this be harmless error under MCL 769.26?

This was judge made law that violates *Ex Post Facto* and a radical jurisdictional defect and not harmless error, and this Petitioner did not receive the protection of his State's laws. Please see: Appendix O.

Lastly the citizens of Arenac, Bay, and Ogemaw counties votes for their elected officials were nullified by a "bad cop", to thwart a civil law suit in Federal Court brought by this Plaintiff, to forum-shop a criminal case to his friend the prosecutor in Saginaw County when the proper charging county prosecutors told him No!

An excerpt of the Federal deposition is at page 4 of this Rule 44 Rehearing Motion.

Because of Michigan Courts efforts not to acknowledge this Petitioner's radical jurisdictional conviction, Petitioner prayerfully requests that the REHEARING be granted on the April 19, 2021 denial for WRIT FOR CERTIORARI or any other available relief. (28 USC 2241).

Thank You. All documents referring to the Federal deposition will be sent when the REHEARING is Granted.

Rehearing should be granted because this is a case arising under the Constitution and the very essence of a civil liberty would certainly consist in the right to claim the protection of the laws. This is one of the first duties of Government to afford that protection. Marbury v. Madison, 5 US 137, 163-78 (1803).

On 1-22-2021, Petitioner mailed his copy of WRIT FOR CERTIORARI which was docketed on 2-10-2021. The Mich. Att. General waived her right to answer on 3-19-2021. The WRIT FOR CERTIORARI was denied on 4-19-2021.

In Petitioner's WRIT FOR CERTIORARI, he raised his 4th Amend. right that a police officer's Complaint must be supported by probable cause in a Hearing before a neutral magistrate of the complainant under Oath. A US Const. 4th. Amend. requirement.

Under Michigan law of Criminal Procedures in Chapter 9:12 it states MCL 761.1(g); MCL 766.4 and MCL 775.6 that the probable cause hearing comes before and is not to be confused with a prelim. exam. in offenses carrying of more than a year in prison.

This did not happen in Petitioner's cases; therefore at no time did any court in Michigan acquire jurisdiction when this process of Probable cause determination was skipped-over. MCR 6.102(A)- probable cause violated.

This lack of due process was settled in Frank v. Magnum, 237 US 309, 327 (1915) of violating the US 6th. Amend., "failure to complete the court, either because jurisdiction was absent at the beginning or because it was lost in the course of the proceedings." See: WRIT FOR CERTIORARI p. 2-6, on this issue. Also Appendix K located in WRIT FOR CERTIORARI, submitted on 1-22-2021.

In Petitioner's second issue raised in his WRIT FOR CERTIORARI was that the prosecutor failed to prove Venue of the Crime. Certiorari was granted in the case of Jones v. Russell, 299 F. Supp. 970, 975 (6th Cir. 1968); 390 US 199 (1968). This court clearly stated that a court's jurisdiction comes from proof of Venue.

This is true under Michigan law that a prosecutor must prove Venue of the crime. Statutory law MCL 767.45(1)(c); MCL 762.3 and Court Rule MCR 6.112(D). See: Simpson v. Mackel, Lexis 15922 (ED Mich. 1999), citing to Pr. Plautz, 28 Mich. App. 621, 623 (1970).

Clearly Petitioner was not afforded the protection of the law and his convictions are based on insufficient evidence when the prosecutor did not prove venue of the crime. See Appendix J, W. of Cert. and Appendix O. Submitted 1-22-2021.

In Petitioner's third issue raised in his WRIT FOR CERTIORARI was Police perjury on the Complaints attesting that the Venue of the crime(s) were at least in part, occurring in Saginaw County. This was a lie, perpetrated by the prosecutor and police to convey a false jurisdiction to the trial court. See: Appendix G, H, and O at p 12 - Conclusion which have been provided in the WRIT FOR CERTIORARI.

The prosecutor also hid from defense counsel a "Favorable witness" from trial who later testified, "Houthoofd did not commit a crime" at a Ginther Hearing held 11-21-2007. See P.P. 25, 26, 42, 45 and 48.

The prosecutor's misconduct was textbook Brady-Bagley violations because he knew about Det. William Eberhardt. See: Fed depo. p. 264 L 5-8. This act prevented Petitioner from presenting a defense and allowing

Petitioner to proceed to trial with unprepared trial counsel. This court in Chambers v. Mississippi, 410 US 284, 302 (1973) stated that it was a 6th. Amend. right to call a favorable witness and to present a defense, and this was denied this Petitioner. This malfeasance was presented at p. 7 in the WRIT OF CERTIORARI.

In Petitioner's fourth issue he cited the authority that guaranteed him the protection of the laws which are afforded under State constitution, statutes and decisional case law.

This court has ruled that if the State has protection for defendant's; then this is a defendant's right, and the State must follow what its legislature has intended.

In Michigan, all of the case law decided previously before this Plaintiff's case in 2010 on appeal was if "a prosecutor fails to prove venue, then his conviction must be vacated."

Pr. Hall, 375 Mich. 187, 192 (1965) was controlling. This panel overruled this decision when it was a defense back in 2005, a defense WHICH prevented forum-shopping. Overruling a defense 5 years later on an Appeal to upholding a conviction is an Ex Post Facto law violation, Please see: Appendix O pp. 1-13 provided with the WRIT FOR CERTIORARI.

This panel of judges even used a civil venue statute instead of the criminal venue statute when the Michigan Court Rule prohibits this intermingling of statutes. See Editors Notes on MCR 6.001 (D)(2) (3), stating in criminal trials, use criminal statutes, not civil statutes.

Explained supra. at pages iii-v.

This Plaintiff has raised this radical jurisdictional defect many times. See: WRIT FOR CERTIORARI at p. IV.

The 5th. issue raised was the voters' rights to the decisions made by those people they elected. Voters elect prosecutors.

The Arenac, Bay and Ogemaw County prosecutors refused to issue arrest Warrants on this Plaintiff. When the police were rebuffed at the front door, they proceeded to the back door by taking their case to Saginaw County, three years later after the proper charging counties found the evidence insufficient.

The voter's rights to be governed by their elected officials were compromised by the police officer who robbed this Petitioner on 11-26-2001 in an armed home invasion when he forum-shopped this case to his friend the Saginaw County Prosecutor. See Fed. depo. at p.p. 252 L23; 322 L25; 323 Line 1.

"Pat Duggan and I are friends."

This court has spoken in Wesberry v. Sanders, 376 US 1, 6-7 (1964).

"The right to vote is too important, in our free society, to be stripped of judicial protection."

This has occurred to this Plaintiff, and the people living in the three counties where the prosecutors told the police No!

In conclusion this Plaintiff's rehearing request should be reconsidered and the WRIT FOR CERTIORARI should be granted on any 1 of his issues and he has raised 5.

The Michigan judges have not responded nor has any prosecutor responded in the 17 years that this Plaintiff has been wrongfully imprisoned to protect bad cops and bad prosecutors, the issues brought forth in this Writ FOR CERTIORARI have simply been ignored.

One brazen judge even went on the record at a 6-23-2014 resentencing stating:

At p. 49 L 12-13.

"I have read everything in the file and the have become familiar with them."

This judge then sentenced this Plaintiff 300% above the guidelines when he knew that he did not have jurisdiction because of:

1. There was no probable cause Hearing of any complainant under oath.
2. The prosecutor never proved venue of the crime.
3. Police perjury on the Complaint for issuance of the Warrant.
4. Suppression of a favorable witness, which the prosecutor knew about and hid from defense counsel during trial; Where the witness testified, "Houthcofd committed no crime." later at a Ginther Hearing held on 11-21-07.
5. Not receiving the protection of the law in violation of MCL 600. 8312 (1).

To date the Michigan courts have deprived this Plaintiff of Federal Intervention by constantly resentencing him. The State Court's ineptude has been charged to me.

This Plaintiff filed his state habeas corpus for these

radical jurisdictional defects in the Manistee circuit court, the Court of Appeals and the Mich. Sup. Ct. and was denied without an Opinion. See: Appendix C-1.

Under the F.R.C. Proc. 8(d) a non-response should be considered an admission of the complaint as true.

I has taken many years for this Plaintiff to "figure-out" that the United States Supreme Court pursuant to 28 USC. sec. 1257a has jurisdiction over a Final State Court decision, and this was finalized on 10-27-2020 in Case No. 160965 (23).

IF the WRIT FOR CERTIORARI is not Granted, this Plaintiff will be in resentencings for the indefinite future to keep the Federal District Court from attaining jurisdiction in a Federal Habeas Corpus case; Knowing that this Plaintiff is intitled to pursuant to 28 USC sec. 2241, sec. 2254.

Prayer for Relief.

Issue the WRIT FOR CERTIORARI, or declaratory or summary judgments, or any other ORDER Plaintiff may be entitled too.

Dated: 4-28-21

Respectfully submitted.

Tod Kevin Hawthorne

Tod Kevin Hawthorne #596112
Oaks Correctional Facility
1500 Caberfae Hwy.
Manistee, Mi. 49660

Rule 44 CERTIFICATE STATEMENT

Petitioner does state that the grounds presented here at pages i-v are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Petitioner's convictions was proven to be the result of a Conspiracy to frame him by the police and asst. prosecutor's misconduct in order to protect an officer who arrested Petitioner without a Warrant or probable cause only to rob him at gunpoint in an armed home invasion.

This statement can be proven by depositions taken after trial in Federal Deposition in Case No. 05-CV-10003-BC, of 3 police officers.

The Michigan Supreme Court will not grant an evidentiary Hearing when faced with the facts garnered after trial by the fed. depo. .

The Michigan Supreme Court's ruling of implementing the harmless error statute MCL 769.26 to venue errors because of police perjury on the situs of the crime(s) was a change in the law and applied retrospectively in violation of *EX POST FACTO*.

MCL 769.26 by its terms, literally refers to errors in "pleading or Procedure", and not to radical jurisdictional defects leaving the trial Court want of jurisdiction.

Under the law; refusal to acknowledge this claim can now be treated as an admission by the State of Michigan that Petitioner's claims are true, that he is actually innocent.

Date: May 12, 2021

Tod Kevin Houthoofd
Tod Kevin Houthoofd
Oaks Correctional Facility
1500 Caberfae Hwy,
Manistee, Mi. 49660