

In The
Supreme Court of the United States

ANNA VALENTINE,
Warden

Petitioner

v.

JOHNNY PHILLIPS

Respondent

On Petition for Writ of Certiorari to the
United States Court Of Appeals for the Sixth
Circuit
Case No. 18-6184

**SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

DANIEL CAMERON
Attorney General of Kentucky

Office of the Solicitor General
Criminal Appeals Unit
1024 Capital Center Drive
Frankfort, Kentucky 40601
(502) 696-5342

S. Chad Meredith
Solicitor General
Jeffrey Cross
Deputy Solicitor General
Courtney J. Hightower*
Assistant Attorney General
* *Counsel of Record*

Counsel for Petitioner

TABLE OF AUTHORITIES

Cases

Carrafas v. LaVallee, 391 U.S. 234, 238 (1968).....2

Danforth v. Minnesota, 552 U.S. 264, 278 (2008).....2

Kentucky v. King, 563 U.S. 452 (2011).....1

United States v. Villamonte–Marquez, 462 U.S. 579, 581, n. 2 (1983).....2

Statutes and Rules

28 U.S.C.A. § 22432

SUPPLEMENTAL BRIEF

This supplemental brief is offered under Rule 15.8 to bring to the Court’s attention a relevant intervening matter. On March 5, 2021, the Warden filed a petition for writ of certiorari. On March 29, 2021, this Court requested a response from respondent, due to be filed on April 28, 2021. However, on March 19, 2021, Johnny Phillips entered a guilty plea in Laurel County Circuit Court to one count of first-degree manslaughter and is scheduled for final sentencing on April 26, 2021.

The Warden brings this matter to the Court’s attention so that the Court can consider whether Phillips’s guilty plea renders the Warden’s petition moot and whether the guilty plea divests the federal courts of subject-matter jurisdiction. The Warden believes that this Court’s precedents suggest that both questions can be answered in the negative.

First, this Court’s decision in *Kentucky v. King*, 563 U.S. 452 (2011), is instructive on the issue of mootness. In *King*, the Kentucky Supreme Court reversed the denial of King’s motion to suppress and this Court granted Kentucky’s petition for writ of certiorari. *Id.* at 458–459. The respondent filed a motion to dismiss the petition for writ of certiorari as improvidently granted. *King*, 563 U.S. 452, 458, n. 2. The respondent argued the case was moot because the trial court had dismissed the charges against him after the Kentucky Supreme Court reversed his conviction. *Id.* This Court concluded respondent's argument was foreclosed because a reversal of the Kentucky Supreme Court's decision “would reinstate the judgment of conviction and the

sentence entered” by the Circuit Court and the absence of an indictment did not change matters. *Id.* (quoting *United States v. Villamonte–Marquez*, 462 U.S. 579, 581, n. 2 (1983)). If the same rule applies here, this matter is not moot either.

Second, this Court’s precedent also suggests Phillips’s guilty plea does not defeat this Court’s jurisdiction to decide the merits of this case. In *Carrafas v. LaVallee*, 391 U.S. 234, 238 (1968), this Court concluded that the statute defining the habeas corpus jurisdiction of the federal judiciary extended to the petitioner, even though he had been unconditionally released from state custody before his case could be heard. *Id.* The Court reasoned that federal jurisdiction attached when petitioner’s application was filed in Federal District Court and it was not defeated by the release of the petitioner prior to the completion of the proceedings on said application. *Id.* Applying the same rule here, jurisdiction still exists because Phillips was in custody when he filed his habeas petition in district court.

The federal habeas statute is broad with respect to the relief that may be granted. 28 U.S.C.A. § 2243 provides that the court dispose of the matter as law and justice require. This Court has interpreted this broad mandate with respect to the relief that may be granted as an authorization to adjust the scope of the writ in accordance with equitable and prudential considerations. *Danforth v. Minnesota*, 552 U.S. 264, 278 (2008).

Accordingly, the Warden respectfully requests this Court address the merits of the petition for writ of certiorari.

Respectfully Submitted,

DANIEL CAMERON
Attorney General of Kentucky

/s/ Courtney J. Hightower
COURTNEY J. HIGHTOWER
Assistant Attorney General
Office of the Solicitor General
Criminal Appeals Unit
1024 Capital Center Drive
Frankfort, Kentucky 40601
(502) 696-5342

S. Chad Meredith
Solicitor General
Jeffrey Cross
Deputy Solicitor General

Counsel-Petitioner