

No. 20-5150 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Ernest R. Jenkins, Y12825

Petitioner

v.

Daniel Clarke, Acting Warden, Taylorville Correctional Center

Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI

Ernest R. Jenkins, Y12825
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QUESTIONS PRESENTED FOR REVIEW

1. Was the Circuit Court's denial of the petitioner's request for a certificate of appealability (COA) erroneous?
2. Does the petitioner have a fundamental right to be prosecuted in the state where an offense is committed?
3. Is an individual's constitutional right to be prosecuted in the state where an offense was committed amendable to harmless error?

List of Proceedings in the State and Federal Courts Below

Illinois Nineteenth Judicial Circuit Court; Case No; 14CF784
People of the State of Illinois v. Ernest R. Jenkins
Judgment Entered: April 6, 2016

Illinois Appellate Court, Second Judicial District; Case No. 2-16-0278
People v. Jenkins, 2018 IL App (2d) 160278-U
Judgment Entered: June 7, 2018

Illinois Supreme Court; Case No. 123854
People v. Jenkins, 108 N.E.3d 877 (2018)
Judgment Entered: September 26, 2018

United States District Court, Northern District of Illinois,
Eastern Division; Case # 1:18-cv-06696
Ernest R. Jenkins, Y12825 v. Kimberly Smith, Warden
Judgment Entered: February 20, 2019

United States Court of Appeals for the Seventh Circuit; Case No. 19-1450
Ernest R. Jenkins v. Daniel Clarke, Warden
Judgment Entered: February 20, 2020

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Citations of Opinions and Orders in Case

The original conviction of the petitioner in the Illinois Circuit Court, Nineteenth Judicial Circuit, is not reported, but is set forth at P. A1 of the Appendix.

The original conviction of the petitioner was appealed to the Illinois Appellate Court, 2nd Judicial District, in an unreported decision at People v. Jenkins, 2018 IL App (2d) 160278-U
and is also set forth at pp. A2 through A7 of the Appendix.

The opinion of the United States District Court for the Northern District of Illinois on petitioner's Section 2254 Petition is not reported, but is set forth at pp. A8 through A10 of the Appendix.

The decision of the Circuit Court of Appeals below is not reported but is set forth at pp. A11 through A12 of the Appendix.

Jurisdictional Statement

The judgment of the United States Circuit Court of Appeals for the Seventh Circuit was entered on January 17, 2020. The petitioner subsequently filed a Petition for Rehearing. The rehearing petition was denied on February 20, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional Provisions and Statutes Involved

State Statutes and Rules

720 ILCS 5/1-5 (State Criminal Jurisdiction)	P. 8
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720 ILCS 5/16-1(a)(1)(A) (Theft)	P. 6, 18
720 ILCS 5/16-1(a)(2)(A) (Theft by deception)	P. 6
720 ILCS 5/17-50(a)(3) (Computer Fraud)	P. 6, 13
720 ILCS 5/29B-1(a)(1)(A) (Money Laundering)	P. 6, 19
725 ILCS 6/116-2) (Motion in Arrest Of Judgment)	P. 8
735 ILCS 5/10-101 et seq. (State Habeas Corpus)	P. 9
Illinois Supreme Court Rule 315 (Leave to Appeal from the Appellate Court to the Supreme Court)	P. 10
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Illinois Supreme Court Rule 612(b)(2) (Procedural Matters Which are Governed by the Circuit Appeals Rules)	P. 10
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Federal Statutes and Rules

28 U.S.C.A. § 1291	P. 11
28 U.S.C.A. § 2242	P. 17
28 U.S.C.A. § 2244(d)	P. 10
28 U.S.C.A. § 2253(c)	P. 12
28 U.S.C.A. § 2253(c)(1)	P. 12
28 U.S.C.A. § 2253(c)(2)	P. 12
28 U.S.C.A. § 2254	P. 5, 17
28 U.S.C.A. § 2254(a)	P. 10
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28 U.S.C.A. § 2254(d)	P.16
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United States Constitution

U.S. Constitution, Amendment VI <u>14,18,21,22</u>	Pp.8,9,10
U.S. Constitution, Article III	Pp.14,18,22

Constitutional Provisions and Statutes Involved

The Sixth Amendment of the U.S. Constitution provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherin the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses in his favor, and to have the assistance of counsel for his defense.

Article III, Section 2, Clause 3 of the U.S. Constitution provides: The trial of all crimes except in cases of impeachment, shall be by jury, and such trial shall be held in the state where said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

The statute under which the petitioner was prosecuted was Illinois statute 720 ILCS 5/1-5(a)(1) (State Criminal Jurisdiction) which provided: "A person is subject to prosecution in this State for an

offense which he commits, while either within or outside the State, by his own conduct or that of another for which he is legally accountable, if...[t]he offense is committed either wholly or partly within the State."

Statement of Case

Course of Proceedings Below:

The original conviction of the petitioner in the Illinois Circuit Court, Nineteenth Judicial Circuit was not reported, but is set forth at Pp. A1 through A1 of the Appendix.

On October 2, 2018, following the exhaustion of his state court remedies, the petitioner filed a petition for habeas corpus relief in the U.S. District Court, Northern District of Illinois, pursuant to 28 U.S.C. § 2254 (case No. 1:18 cv 06696, the Honorable Manish S. Shah, presiding Judge) (Appendix Pp. A15 through A27)

On February 20, 2019, the U.S. District Court denied the petitioner's habeas application and declined to issue a certificate of appealability. (Appendix Pp. A8 through A10)

The petitioner filed a timely Notice of Appeal and docketing statement in the U.S. District Court on March 11, 2019, pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure. (Case No. 19-1450) (Appendix Pp. A36 through A41)

On January 17, 2020, the U.S. Circuit Court of Appeals, Seventh Circuit, denied the petitioner's request for a certificate of appealability (COA) (Appendix Pp A11 through A11) The petitioner subsequently filed a petition for rehearing en banc and the circuit court declined the petitioner's request for rehearing on February 20, 2020. (Appendix Pp. A12 through A14)

The petitioner now appeals to the U.S. Supreme Court regarding the denial of his request for a certificate of appealability.

Factual Background

On March 27, 2014, the petitioner was formally charged via Information through the Lake County, Illinois State's Attorney of the following offenses: Theft (720 ILCS 5/16-1(a)(1)(A)(West 2014)(Count I); Theft by deception (720 ILCS 5/16-1(a)(2)(A) (West 2014) (Count II); Money Laundering (720 ILCS 5/29B-1(a)(1)(A) (West 2014) (Count III); and Computer Fraud (720 ILCS 5/17-50(a)(3)(West 2014) (Count IV). (Appendix P. A64)

On May 14, 2014, the Lake County State's Attorney sought and obtained a superceding indictment for the aforesaid criminal offenses. (Appendix Pp. 1 through 1)

The following facts are undisputed: The petitioner is a resident of the State of Georgia and during all times relevant to the commission of the alleged offenses, the petitioner was located beyond the borders of the State of Illinois. The petitioner worked as a 'Benefits Operations Manager' at "AON Hewitt. AON Hewitt is a third-party human resource outsourcing firm hired by other corporations to assist with day-to-day human resource operations.

AON Hewitt, whose name changed to 'AON' in 2012 as a result of the completion of a merger, has its main office located in Lincolnshire, Illinois, which is a subdivision of Lake County, IL. AON has operations in 120 countries and operates numerous office facilities throughout the United States. The petitioner worked exclusively at an AON office located in Atlanta, Georgia.

On February 27, 2014, AON, through one of its regional corporate investigators, contacted the Lincolnshire Police Department (herein after referred to as "L.P.D.") to report that the petitioner had been suspected of processing various fraudulent

transactions. (Appendix P.) A criminal investigation subsequently ensued. On February 27th and 28th, 2014, respectively, L.P.D. officials subpoenaed financial records from the petitioner's bank accounts. At some point during the investigation an Illinois Information was filed by the Lake County, Illinois State's Attorney and a ~~co~~responding arrest warrant was issued. (Appendix Pp. A65 through A65)

On April 6, 2014, L.P.D. officials, with the assistance of law enforcement officials with the Orange County, Florida Sherrif's Department, arrested the petitioner in Orange County, Florida. The petitioner was subsequently extradited to Lake County, Illinois.

Between April 7, 2014 and April 9, 2014, L.P.D. officials, with the assistance of law enforcement officials with the Cobb County, Georgia Sherrif's Department, conducted searches on the petitioner's residence and place of business in Atlanta, Georgia. Evidence from the aforementioned searches was transferred into the State of Illinois and subsequently handed over to the Lake County, IL State's Attorney.

Trial Proceedings

The petitioner's state criminal trial commenced on February 23, 2016. The following testimony is pertinent to the issues raised in the petitioner's federal habeas application: State's witness George Geise testified as follows; (1) that the petitioner had access to AON's computer system via a local area network (LAN) connection and via a virtual private network (VPN). (2) that the petitioner was assigned to work out of AON's Atlanta, Georgia office and that the petitioner had the ability to work remotely (outside of the assigned facility) if needed. (Appendix Pp. through)

(3) That AON's headquarters is located in Lake County, Illinois. (Appendix P. ____); State's witness Curt Young testified as follows: (1) That AON has operations in 120 countries. (Appendix P. ~~Red District Court Works~~ through ____); State witness Detective John-Erik Anderson testified as follows: (1) That the petitioner was a resident of Georgia. (Appendix P. ____); (2) That the petitioner used a laptop computer owned by AON to access AON's networks and to process the fraudulent transactions. (Appendix Pp. ~~Red District Court Record~~ through ____)

The petitioner was ultimately found guilty of the charged offenses and was subsequently sentenced to the Illinois Department of Corrections.

Post-Trial Proceedings

Following the trial proceedings, the petitioner filed a post-trial Motion in Arrest of Judgment in the state trial court pursuant to Illinois statute 725 ILCS 5/116-2, alleging that the State failed to prove that the offenses for which he is convicted were committed even partly in Illinois. (Appendix P. ~~Red District Court Record~~ through ____)

In his post-trial motion, the petitioner cited the Sixth Amendment of the U.S. Constitution and cited relevant U.S. Supreme Court precedent. The trial court denied the petitioner's motion and the petitioner filed a timely notice of appeal.

In re [REDACTED] State Appeal Proceedings

In his opening appellate brief, the petitioner alleged that the state trial court lacked criminal jurisdiction to convict him because the alleged offenses were committed wholly beyond the borders of Illinois. In his brief, the petitioner cited the Illinois Criminal Jurisdiction Statute (720 ILCS 5/1-5), which subjects an individual to prosecution in Illinois if a crime is committed either

wholly or partly within the state. In his appellate brief the petitioner also cited the Sixth Amendment of the U.S. Constitution and cited relevant U.S. Supreme Court precedent. (Appendix Pp. _____ through _____)

The petitioner also cited relevant U.S. Supreme Court precedent in his state appellate reply brief. (Appendix _____ through _____)

While his state appeal was pending, the petitioner filed a state habeas corpus petition in the Illinois Supreme Court pursuant to Illinois statute 735 ILCS 5/10-101. In his habeas petition, the petitioner alleged violation of his Sixth Amendment right to be prosecuted in the state where the alleged offenses were committed. (Appendix Pp. _____ through _____) In his habeas application, the petitioner cited the Sixth Amendment of the U.S. Constitution and cited relevant U.S. Supreme Court precedent. Additionally, in his petition, the petitioner alleged that the jury in his case was not properly instructed regarding the jurisdictional element of the offenses. (Under Illinois law, jurisdiction is an element of an offense that must be proven beyond a reasonable doubt - see People v. Young, 312 Ill. App. 3d 428, 430 (2000))

The Illinois Supreme Court denied discretionary review of the petitioner's habeas petition. (Appendix Pp. _____ through _____)

On June 7, 2018, the Illinois Appellate Court, Second Judicial District affirmed the petitioner's convictions. In affirming the convictions, the state appellate court found that even though the petitioner's conduct occurred in Georgia, the conduct had an economic effect on a corporation headquartered in Illinois. (Appendix Pp. A4 through A5)

The petitioner filed a timely petition for leave to appeal to

Illinois Supreme Court. In his petition for leave to appeal, the petitioner cited the Sixth Amendment of the U.S. Constitution and cited relevant U.S. Supreme Court precedent. (Appendix pp. 1-2)
through [redacted])

Existence of Jurisdiction Below

The facts supporting the basis of the district court's subject-matter jurisdiction are as follows: The district court acquired jurisdiction over the petitioner's habeas case pursuant to 28 U.S.C.A. § 2254(a) and (b)(1)(A). The petitioner's criminal proceeding was conducted in Lake County, Illinois, which is located within the jurisdiction of the U.S. District Court, Northern District of Illinois. The petitioner exhausted his state court remedies by filing a timely notice of appeal in the Illinois trial court pursuant to Illinois Supreme Court Rule 606. The petitioner was sentenced on April 6, 2016, and a notice of appeal was filed on April 8, 2016. The appeal was denied on June 7, 2018, and the petitioner filed a for rehearing in the Illinois appellate court pursuant to Illinois Supreme Court Rules 367 and 612(b)(14).

The rehearing petition was filed on June 18, 2018, and the appellate court denied discretionary review of the petition on July 11, 2018. The petitioner then filed a timely petition for leave to appeal to the Illinois Supreme Court pursuant to Illinois Supreme Court Rules 315 and 612(b)(2). The petition was filed on August 1, 2018, and the Illinois Supreme Court denied discretionary review of the petition on September 26, 2018.

The petition subsequently filed an application for habeas corpus review in the U.S. District Court, Northern District of Illinois on October 2, 2018, pursuant to 28 U.S.C.A. § 2244(d)

The facts supporting the basis of the U.S. Circuit Court of Appeals subject-matter jurisdiction are as follows: The U.S. District Court denied the petitioner's habeas application and declined to issue a certificate of appealability on February 20, 2019.

The U.S. Circuit Court of Appeals, Seventh Circuit obtained jurisdiction over the petitioner's appeal pursuant to Rule 22(b)(2) of the Federal Rules of Appellate Procedure (FRAP) after the petitioner filed a timely Notice of Appeal and docketing statement in the district court on March 11, 2019, pursuant to Rule 4(a) of FRAP and Rule 3(c)(1) of the circuit court rules. The judgment appealed from was final within the meaning of 28 U.S.C.A. § 1291 because it disposed of all claims of all parties to the action.

~~The Court of Appeals has decided a federal question in a way that~~

The Circuit Court of Appeals Has Decided a Federal
Question In a Way That Conflicts With the Applicable
Decisions of This Court

The decision reached by the circuit court panel related to the appeal subject to this application conflicts with decisions of the U.S. Supreme Court and with authoritative decisions set by other federal Circuit Courts of Appeal. (see Barefoot v. Estelle, 103 S. Ct. 3383, 463 U.S. 880, 77 L.ED.2d 1090; Slack v. McDaniel, 529 U.S. 473 (2000); see also Jones v. Basinger, 635 F.3d 1030 (2000); U.S. v. RodriguezMoreno, 119 S. Ct. 1239 (1999); U.S. v. Radley, 588 F.Supp.2d 865 (7th Cir. 2008); and U.S. v. Muhammad, 502 F.3d 646 (7th Cir. 2007))

This petition involves the denial of the petitioner's application for a certificate of appealability (COA). (see Hohn v. United States, 118 S. Ct. 1969)

In denying the petitioner's COA request, the Circuit Court

held that it had "reviewed the final order of the district court and the record on appeal" and found "no substantial showing of the denial of a constitutional right."

The petitioner contends that the circuit court panel's decision is erroneous.

ARGUMENTS

The Circuit Court's Denial of the Petitioner's Request for a Certificate of Probable Cause is Erroneous

"Where a habeas petitioner seeks to initiate an appeal of the dismissal of his petition for habeas corpus relief after April 24, 1996 (AEDPA's effective date), the right to appeal is governed by the requirements now found at § 2253(c)-- which provides *inter alia*, that such appeal may not be taken unless a circuit Justice or judge issues a certificate of appealability (COA), § 2253(c)(1), and that COA may issue only if the appellant has made a substantial showing of the denial of a constitutional right, § 2253(c)(2)."

"[T]he present § 2253 is a codification of the [certificate of probable cause], CPC standard announced in *Barefoot v. Estelle* 463 U.S. 880, 894, 77 K.Ed.2d 1090, 103 S. Ct. 3383. See *Williams v. Taylor*, *ante*."

"Under *Barefoot*, a substantial showing of the denial of a right includes showing that reasonable jurists could debate whether (or for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further'." [*Barefoot* at 893 n. 4, Pp 6-8]

"In requiring a 'question of some substance'. or a 'substantial showing of the denial of [a] federal right', obviously the

petitioner need not show that he should prevail on the merits. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court 'could' resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further (emphasis added)". [Barefoot citing United States ex rel. Jones v. Richmond, 245 F.2d 234 (C.A. 2)

In the case sub judice, the record shows that the petitioner is currently incarcerated on theft offenses in violation of Illinois statute 720 ILCS 5/16-1 and a money laundering offense in violation with Illinois statute 720 ILCS 5/29B-1. The aforesaid offenses are being served concurrently. The current mandatory sentence release (MSR) date is Setempber 28, 2022. (Appendix P. A63)

The record also reflects that the petitioner was convicted of a computer fraud violation pursuant to Illinois statute 720 ILCS 5/17-50, however, the sentence for the computer fraud offense ended in October of 2017.

The petitioner contends that he is currently incarcerated in Illinois for offenses that were not committed in Illinois. The petitioner's prosecution and subsequent convictions related to the theft and money laundering offenses violates the petitioner's constitutional right to be prosecuted in the state where the alleged offenses were committed as afforded under Article III and the Sixth Amendment of the U.S. Constitution.

The petitioner contends that the record in fact reflects a substantial showing of the denial of a constitutional right.

The petitioner further contends that his habeas petition could and should have been resolved in a different manner and that the issue presented is adequate to deserve encouragement to proceed further.

The petitioner's contentions are supported by the following facts:

In his petition for habeas corpus relief, the petitioner alleged that his convictions in Illinois are in violation of his Constitutional rights under Article III and the Sixth Amendment of the U.S. Constitution. (Appendix Pp. A24 through A25)

In responding to the petitioner's claim, the respondent conceded that the petitioner's conduct occurred outside of Illinois, however, according to the respondent, the conduct resulted in economic harm to a company headquartered in Illinois. Specifically, the respondent argued that the petitioner's prosecution in Illinois was proper because AON, whose headquarters is located in Illinois was ultimately "required to reimburse the client accounts and ultimately suffered the \$4.6 million loss...". (Appendix Pp. A33 through A33)

The petitioner asserts that as it relates to an individual's constitutional right to be prosecuted in the state where the alleged offenses were committed, the U.S. Supreme Court has never held that the 'effects' of criminal conduct, standing alone, warrants the prosecution of the individual in a particular state.

In determining where a crime was committed, the U.S. Supreme Court has consistently held that "[u]nder the locus delicti test, a court 'must' initially identify the conduct constituting the offense, (the nature of the offense) and then discern where the crime

criminal 'acts' occurred." [U.S. v. Rodriguez-Moreno, 119 S. Ct. 1239, 1241 (1999); citing United States v. Cabrales, 118 S. Ct. 1772]

There Is a Conflict Between This Court's Decision in Strassheim v. Daily (1911) 221 U.S. 280 and United States v. Anderson, 328 U.S. 699 (1998) and Its Progeny

In concluding that there was no fundamental unfairness related to the petitioner's constitutional claim, the district court relies on Strassheim v. Daily, 221 U.S. 280, 285 (1911). According to the district court, there was "no fundamental unfairness [] because it has long been understood that acts done outside a jurisdiction but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if he had been present in the effect. Strassheim v. Daily, 221 U.S. 280, 285 (1911)." Accordingly, the district court found that since there was no fundamental unfairness, the petitioner claim does not contain a substantial showing of the denial of a constitutional right.

The petitioner contends that the federal district court's reliance on Strassheim v. Daily is misplaced and conflicts with decisions made by this Court.

The district court appears to cite Strassheim as support for the proposition that the federal Constitution does not prohibit a state from exercising jurisdiction over criminal acts that take place outside of the state if the results of the crimes are intended to, and do cause harm within the state.

The petitioner contends that the district court's decision conflicts with this Court's decision in United States v. Anderson and its progeny.

The petitioner further contends that the district court's reliance on the passage referred to in Strassheim is in contravention with 28 U.S.C.A. § 2254fd. in that the passage is dictum and as such should not be applied to the petitioner's habeas case.

"Dicta are parts of an opinion that are not binding on a subsequent court, whether as a matter of stare decisis or as a matter of law of the case. [Wilder v. Apfoel, 153 F.3d 799]

"Holding of case includes the facts, outcome, and reasoning essential to that outcome." [In re Repository Technologies, Inc. 381 B.R. 852]

"Dictum is any statement made by court for use in argument, illustration, analogy or suggestion, concerning some rule of law or legal proposition that is not necessarily essential to the decision and lacks authority of adjudication." [In re Heft, 564 B.R. 389]

The petitioner contends that the passage relied on by the district court is dictum and does not constitute a holding issued by this Court.

The Circuit Court's Conclusion That The Petitioner's Claim Contains "No Showing of the Denial of a Constitutional Right" is Erroneous

Generally speaking, federal habeas relief is unavailable to retry state-law issues. [Estelle v. McGuire, 502 U.S. 62, 67-68 112 S. Ct. 475, 116 L. Ed. 385 (1991)] Only if the error rises to the level of a federal constitutional violation is the claim cognizable in federal collateral review proceedings. [id] "In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." [id] "The remedial power of a federal court is limited to violations of the petitioner's rights, so only if a state court's power has deprived the petitioner of a right under federal law can the federal court intervene.: [Perruget v. Briley, 390 F.3d 505, 511 (7th Cir. 2004) "To say that a petitioner's claim is not cognizable on habeas review is thus another way of saying that a petitioner's claim presents no federal issue at all." [ID; citing Bates v. McCaughtry, 934 F.2d 99, 101 (7th Cir 1991)]

A petition for writ of habeas corpus filed by a state prisoner must (1) specify all the grounds for relief available to the petitioner; (2) state the facts supporting each ground; and (3) state the relief under penalty of perjury by the petitioner or by a person authorized to sign for it for the petitioner under 28 U.S.C.A. § 2242. (Rule 2(c) of the Rules Governing Section 2254 Cases in the United States District Court) "There is no requirement that a habeas petitioner enumerate in his petition, every fact which supports a ground for relief" or plead his claim with particularity. [Loyd v. Van Natta, 296 F.3d 630, 633 (7th Cir. 2002)]

[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards

to less stringent standards than formal pleadings drafted by lawyers. [Erikson v. Pardus, 551 U.S. 90, 127 S. Ct. 2197, 2200 (2002)] (Pleadings must be construed so as to do justice - Rule 8(e) of the Rules of Civil Procedure, Effective December 1, 2010)

The petitioner contends that, pursuant to Article III and the Sixth Amendment of the United States Constitution, he has a fundamental right to be prosecuted in the state where the alleged offenses were committed and that the State of Illinois does not have the power to arbitrarily deprive the petitioner of that right.

The petitioner in this case has been charged with and convicted of theft, money laundering, and computer fraud. Under Illinois law, none of the offenses are defined in terms of their effects and the State provided no evidence demonstrating that the petitioner's conduct outside of the state resulted in a crime being committed in Illinois.

The Theft Offense

As it relates to the theft offense, the State's indictment charged the petitioner with obtaining unauthorized control over property of another with intent to permanently deprive the owner of the use of the property, in violation of Illinois criminal code 720 ILCS 5/16-1(a)(1)(A). (Appendix P. A64) The theft offense is defined in terms of a conduct element without regard to any result.

Under Illinois law, a crime is committed partly within the state "if either the conduct, which is an element of the offense, or the result, which is such an element, occurs within the state." (see Illinois statute 720 ILCS 5/1-5(b))

The conduct element of the theft offense is 'obtaining control over property'. The evidence presented in the state court demonstrates that the petitioner obtained control over U.S. Currency via bank accounts that he controlled. The evidence further shows that the bank accounts were established, controlled and maintained by the petitioner in the State of Georgia. The State provided no evidence demonstrating that the currency was obtained in or passed through the State of Illinois. Furthermore, neither the State or the respondent in this cause has disputed the fact that the conduct related to the theft offense occurred entirely in another state.

The Money Laundering Offense

As it relates to the money laundering offense, the State's indictment charged the petitioner with knowingly engaging in a financial transaction, with intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained, in violation with Illinois criminal code 720 ILCS 5/29B-1(a)(1)(A). (Appendix P. A64)

The evidence presented in the state court demonstrates that the petitioner transferred illegally derived currency into business entities that he controlled. The evidence shows that the business entities were established and controlled in the State of Georgia. The evidence shows that the business entities were registered in the State of Georgia and the evidence shows that the money laundering transactions were processed in the State of Georgia.

As with the theft offense, the money laundering offense is defined solely in terms of a conduct element without regard to a result. Here again, neither the State or the respondent in this

cause has disputed the fact that the conduct related to the money laundering offense occurred entirely in the State of Georgia.

The Illinois appellate court found jurisdiction/venue over the money laundering offenses proper because the petitioner's conduct resulted in economic harm to a corporation headquartered in Illinois. (Appendix P. A3; Appendix Pp. A4 through A5)

The petitioner would like to note that the state appellate court never passed judgment on the petitioner's federal claim even though the petitioner sufficiently raised a federal claim in his various state court pleadings. (Appendix Pp. A2 through A7) The state court's ruling was based solely on state law and contained no hint of constitutional analysis. The respondent has not disputed the petitioner's assertion that he fully and fairly presented his constitutional claim at every level of the State court system.

In any case, the petitioner contends that the court's conclusion that his claim presents no substantial showing of the denial of a constitutional right is erroneous because the facts as outlined in the petitioner's petition and as demonstrated in the pleadings filed in the district court clearly show that the petitioner's conviction is in violation with his constitutional right to be prosecuted in the state where the alleged offenses were committed. The petitioner contends that the claim is debatable among jurists of reason and that the questions presented deserve encouragement to proceed further.

The petitioner emphasizes that he has a fundamental right to be prosecuted in the state where the offenses were committed. "The determination of proper venue in a criminal case requires determination of where the crime was committed; the provision for trial in the vicinity of the crime is a safeguard against the unfairness and hardship when the accused is prosecuted in a remote place." [Platt v. Minnesota. Min. Mfg. Co. 84 S. Ct. 769, 376 U.S. 240 11 L. Ed. 2d 674]

Just as an individual has a right to counsel and a right to trial by jury, the Sixth Amendment of the U.S. Constitution also affords an individual the right to be prosecuted in the state where the alleged crime was committed; And while this right can be waived by the accused, the petitioner in this case did not waive that right and the State nor the respondent has ever asserted that the petitioner forfeited his right. Moreover, the state should not be allowed to arbitrarily violate an individual's constitutional right.

The U.S. Supreme Court has repeatedly made clear that the constitutional limitations on venue are extraordinarily important. "[Q]uestions of venue are more than matters of mere procedure. They raise deep issues of public policy in the light of which legislation must be construed." [Travis v. United States, 364 U.S. 631, 634, 81 S. Ct. 358, 5 L. Ed 2d 340 (1961)] "The provision for trial in the vicinity of the crime is a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place. (emphasis added) [United States v. Cores, 356 U.S. 405, 407, 78 S. Ct. 875, 2 L. Ed. 873 (1958)]

"A defendant who has been convicted "in a distant, remote, or

unfriendly forum solely at the prosecutor's whim", has had his substantial rights compromised. [United States v. Salinas, 373 F.3d 161, 164 (1st Cir. 2004)]

Certainly if the petitioner in this case had directed his criminal activity towards Illinois to the extent that he committed acts in Illinois in furtherance of a conspiracy or attempt to commit a crime in the State or if the petitioner performed one of the essential elements of the charged offenses within the state, he would have no grounds to complain about his uprooting. But that is clearly not what happened in this case.

Here, the petitioner was extradited hundreds of miles against his will to face prosecution in a distant state where none of the essential elements of the charged offenses were committed. And each time the petitioner raised the issue regarding his prosecution in Illinois, the State has asserted that it is because the victim corporation's headquarters is located in Illinois.

The petitioner contends that the venue provisions contained under Article III and the Sixth Amendment of the U.S. Constitution are meant to protect the accused, not as a convenience for a particular party.

Moreover, the fact that the State violated the petitioner's right is not amendable to harmless error. The U.S. Supreme Court has never held that improper venue is subject to harmless error.

The Supreme Court has divided constitutional errors into two classes: "trial" and "structural". [Arizona v. Fulminante, 499 U.S. 279, 307-10, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991)]

Trial errors occur "during the presentation of the case to the jury" and can be quantitatively assessed in the context of other evidence presented in order to determine whether they are "harmless beyond a reasonable doubt." [ID at 307-308] These include "most constitutional errors." [Id at 306] Structural errors 'defy' harmless error analysis because they "affect [] the framework within which the trial proceeds." [Id at 309-310 "or indeed [] whether it proceeds at all." [United States v. Gonzales-Lopez, 548 U.S. 140, 150, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006)]

These include a limited class of fundamental constitutional errors;" [Nedar v. United States, 527, 1, 7, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1980)], such as the denial of the rights to counsel, self-representation, or a public trial. [see Gonzales-Lopez, 548 at 149 (listing examples and authority)]

An error regarding venue exhibits many of the characteristics of structural error. "If venue is improper, no constitutionally valid verdict could be reached regardless of the overwhelming evidence against the defendant." [United States v. Miller, 111 F.3d 747, 757 (10th Cir. 1997)] The error thus defies analysis by harmless error standards by affecting the entire adjudicatory frame work." [Puckett v. United States, 556 U.S. 129, 141, 129 S. Ct. 1423, 173 L. Ed. 2d 266 (2009)]

"Holding that defective venue could ever be harmless would arguably reduce this constitutional protection to a nullity because the error would be harmless as long as the evidence against the accused was overwhelming. It is doubtful that this is the way the venue protections in the constitution were meant to

operate." [United States v. Auernheimer, 748 F.3d 525, 532 (3rd Cir. 2014)]

CONCLUSION

Based on the facts and legal contentions raised in this petition, the Petitioner contends that the judgment of the court below is in contravention with 28 U.S.C. § 2253(c)(2) and is a unique departure from the decisions of this Court that requires that all prosecutions be conducted in the state wherein an alleged crime is committed. It is well established that Article III and the Sixth Amendment of the United States Constitution provides citizens a fundamental and substantial right to be prosecuted by a jury of their peers in the state where a crime is committed.

WHEREFORE, the Petitioner requests that this Honorable Court grant his petition for writ of certiorari.

Respectfully submitted,



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