

No. 20-5459

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Sean Sallace Earl - PETITIONER
(Your Name)

FILED
JUN 22 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.
Commonwealth of Virginia RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sean Sallace Earl
(Your Name)

Red Onion State Prison P.O. Box 970
(Address)

Pound, VA 24279-0000
(City, State, Zip Code)

276-796-7510
(Phone Number)

QUESTION(S) PRESENTED

Judicial notice Subject matter jurisdiction must affirmatively appear on the face of the record? That is the record must show affirmatively that the case is one of a class? Which the court rendering the judgment was given cognizance?

LIST OF PARTIES

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

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:

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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 is unpublished.

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 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix C 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 is unpublished.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 Portsmouth Circuit court appears at Appendix D 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 is unpublished.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 April 7, 2020

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: _____, 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. § 1254(1).

28 U.S.C. 2403b may apply and Shall be Served On the attorney general of Virginia. The United States Court of appeals was not pursuant to 28 U.S.C. 2403b.

For cases from state courts:

The date on which the highest state court decided my case was June 27, 2019. A copy of that decision appears at Appendix C.

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).

28 U.S.C. 2403b may apply and Shall be Served On the attorney general of Virginia. The Supreme Court of Virginia was not pursuant to 28 U.S.C. 2403b.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The general district court is a court of record and its judgment can be challenged at any time to determine if it had jurisdiction to try the allegations before it to certify the charges to the grand jury.

This court has held :Air Power, Inc. v. U.S., 1984, 741 F.2d 53. (1984) Internal Revenue K 4784 (1984)

At the bottom of the judicial ladder are Virginia general district courts. Despite their label as "courts not of record" and their limited jurisdiction in civil and criminal matters, these courts have many of the attributes of Virginia's circuit courts. General district courts keep and preserve a written record of their proceedings, VA.CODE § 16.1-91 and are presided over by individuals trained in the law, VA.CODE § 16.1-69.15. These courts also possess virtually all the same powers of their circuit court counterparts. They may punish contemnors, VA.CODE § 16.1-69.24, issue subpoenas, VA. CODE § 16.1-69.25, administer oaths, VA.CODE § 16.1-69.27, permit discovery in certain cases, VA.CODE § 16.1-82 to -89, and take affidavits, VA. CODE § 16.1-69.27. Procedurally, it is likewise difficult to distinguish the general district court from a "court of record" as that institution was known at common law. Cf. 20 Am.Jr.2d Courts § 26. Suits in general district court must be initiated by a warrant or motion for judgment served on the opposing party. A.CODE § 16.1-81. The defendant in any action has the right to assert counterclaims against the plaintiff and to have them determined in the same proceeding. VA.CODE § 16.1-88.01. A losing party concededly may appeal an adverse decision to the circuit court and receive a de novo trial, but he is precluded from expanding either his claim or request for remedies beyond those presented to the general district court. > VA. CODE § 16.1-106. See also > Stacy v. Mullins, 185 Va. 837, 40 S.E.2d 265 (1946); > Addison v. Salyer, 185 Va. 644, 40 S.E.2d 260 (1946).Finally, and perhaps most significantly, the substantive effect of a final decision from the general district court is the same as that of a final decision from a circuit court. Its decision not only can be enforced by the same mechanisms as the judgment of a circuit court, >

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

VA. CODE 16.1-116, but it is entitled to the same preclusive effect from other State Courts. > Petrus V. Robbins, 195 Va. 861, 80 S.E.2d 543 1954. SEE also Boyd, Graves Middleditch, Virginia Procedure 12.11 1982. Because federal Courts are bound to honor State Court judgments to the same extent as the issuing State itself, a Virginia general district court decision presumably would be entitled to full faith and credit if interposed as a defense in a federal Suit between the same parties See > 28 U.S.C. 1738. See also > Kremer V. Chemical Corp 456 U.S. 461, 466, 102 S.Ct. 1883, 1889, 72 L.Fd 262 1982 > Allen V. McCurry, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed 2d 308 1980.

STATEMENT OF THE CASE.

Judicial review of the claims. The Court denied the motion on May 21, 2018 the petitioner filed a notice of appeal to the circuit court, and this appeal followed. This court must now take judicial review of the claims and apply the rules of law. In Supreme Court of the United States.

STATEMENT OF THE FACTS OF THE MATERIAL PROCEEDINGS IN THE GENERAL DISTRICT COURT

The facts material to this process is on the face of the record from the transcript of the general district court.

On October 26, 2006 the Plaintiff Sean S. Earl was heard for a probable cause hearing in the General District court to determine if he committed the offences of murder, use of a firearm in the commission of a felony and malicious wounding. The Commonwealth presented its case and put on its first witness Terrance Wilson. The Commonwealth asked the witness about the location of the offences, and gave only a street address as 3305 Downes street and Portsmouth. (Tr. Pg. 4 10/26/2006) The Commonwealth never said that the crimes were committed in the Commonwealth of Virginia thus never acquired subject matter jurisdiction over the Plaintiff person or power to certify the charges. The court never took judicial notice that the location of the alleged crimes were located in the jurisdiction of the Commonwealth. The Plaintiff could not build a defense strategy for an

alibi witness because he didn't know where this alleged crimes were to have taken place and plead guilty thus was prejudiced. The Supreme Court has held that subject matter jurisdiction and judicial notice must appear on the face of the record. (transcript) A warrant or an indictment cannot prove subject matter jurisdiction. The mere fact that police of a certain jurisdiction investigate a crime cannot supply proof of subject matter jurisdiction. The general district court never had power to render a judgment to certify the charges to the grand jury for a probable cause hearing or to determine for a trial if it could not prove the crimes were committed in its jurisdiction. The location of the offence is an

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essential element to prove that the Plaintiff committed an offence in the Commonwealth of Virginia.

The Circuit court was never given cognizance (**power**) to hear the accusation before it in an indictment or render a judgement because there was a defect in the beginning of the process of the general district court which its judgment is **void ab initio**. The Plaintiff pleading guilty is not a waiver of the right to challenge the jurisdiction of the court. This court or the circuit court has no power to render a judgment if the mode of the procedure used was one that the court could not lawfully adopt. The Plaintiff is accused of serious offences, but the nature of the alleged offences should not allow the court or the Commonwealth to usurp or circumvent the process with which they are bound to follow. The Commonwealth rested its case (see attached preliminary hearing transcript) and did not perform its duty to acquire jurisdiction over the Plaintiff or the matter. The Plaintiff is praying that the court review

the well-recognized rules of law in support of this action, a vacate its judgment.

In Supreme Court

of the United States.

ASSIGNMENT OF ERROR

#1 The circuit court erred when it assumed jurisdiction of the case conferred from the inferior court general district court.

#2 The Circuit court erred when it determined that the Petitioner didn't establish grounds for a motion to vacate .

#3 The circuit court erred when it determined that it doesn't have jurisdiction to vacate its own order BY THE 21 DAY RULE that's void ab initio.

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REASONS FOR GRANTING THE PETITION.

PRINCIPLES OF LAW AND ARGUMENT IN SUPPORT OF VOID JUDGMENT

ERROR #1 The circuit court erred when it assumed jurisdiction of the case conferred from the inferior court general district court.

Richardson v. Seavers' Adm'r 4 S.E. 712, 84 Va. 259 (1888)

CLAIMS ATTACKING JURISDICTION ARE NOT WAIVED BY PLEA OF GUILTY MUSE V SLAYTON 333 SUPP 1007 (1971)

There is no presumption of the jurisdiction of limited and inferior tribunals in favor of their judgments, but such jurisdiction must be affirmatively shown, and when the facts necessary to confer such jurisdiction do not appear on the face of the proceedings, and are not proved *aliunde*, proceedings will not be considered valid, but will be treated as a nullity on collateral attack. *Richardson v. Seavers' Adm'r 4 S.E. 712, 84 Va. 259 (1888)* *Ransom v. Williams*, 2 Wall. 313, the supreme court of the United States applied the principle that a limited authority must appear to have been strictly pursued even when the acts of a superior tribunal are in question. To render a judicial decision binding on the parties, the court must have jurisdiction of them as well as of the cause. *The > Mary*, 9 Cranch, 126, 144. When the record shows in any court, whether superior or inferior, that the court has proceeded without notice, and without any sufficient excuse or reason for the want of notice, any presumption in its favor is at an end, and it may not only be reversed as erroneous, but be impeached and set aside collaterally as void. *Foster v. Glazener*, 27 Ala. 391; *> Moore v. Starks*, 1 Ohio St. 369; *> Hollingsworth v. Barbour*, 4 Pet. 475. The rendition of a judgment against a party not before the court in any way will be as utterly void as though the court had undertaken to act when the subject-matter was not within its cognizance. *Borden v. Fitch*, 15 Johns. 121. This is the rule with reference to all courts, with only this difference: that the

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jurisdiction of a superior court will be presumed until the contrary appears; whereas an inferior court, and those claiming under its authority, must show that it had jurisdiction. *Propst v. Meadows*, 13 Ill. 157. In any court, a judgment rendered in a case in which the subject-matter was not within the jurisdiction of the court, is void, and the whole proceeding is *coram non judice*. *Case of The Marchelsea*, 10 Coke, 369; *Cox v. Thomas*, 9 Grat. 326. It appears affirmatively in this case that the district court sitting in bankruptcy upon the application of T. P. Pendleton had no jurisdiction over the lands of J. D. Richardson not surrendered in that court, and against which the said bankrupt had no claim. It was therefore wanting in jurisdiction of the subject-matter, and its decree fixing and attaching liens upon the same was a void judgment, and may be set aside and disregarded as a nullity, wherever and whenever it may be called in question subject-matter jurisdiction may be raised by motion." Accord > *Nolde Bros. v. Chalkley*, 184 Va. 553, 561, 35 S.E.2d 827, 830 (1945)

ERROR #2 The Circuit court erred when it determined that the Petitioner didn't establish grounds for a motion to vacate.

The Petitioners evidence clearly shows that the Commonwealth never acquired jurisdiction to try the case for probable cause to certify the charges to the circuit court because the jurisdiction of the Commonwealth wasn't established to show the crime was committed in the Commonwealth (Tr. Pg. 4 10/26/2006) a court cannot as previously stated cant confer jurisdiction on another court by assuming that the other court had jurisdiction. The Supreme Court has held that subject matter jurisdiction and judicial notice must appear on the face of the record the record must affirmatively show jurisdiction see *Owusu v. The Commonwealth* 401 SE, 2d. 431 (1991)

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The general district court is a court of record and its judgment can be challenged at any time to determine if it had jurisdiction to try the allegations before it to certify the charges to the grand jury.

This court has held :*Air Power, Inc. v. U.S.*, 1984, 741 F.2d 53. (1984) Internal Revenue K 4784 (1984)

At the bottom of the judicial ladder are Virginia general district courts. Despite their label as "courts not of record" and their limited jurisdiction in civil and criminal matters, these courts have many of the attributes of Virginia's circuit courts. General district courts keep and preserve a written record of their proceedings, VA.CODE § 16.1-91 and are presided over by individuals trained in the law, VA.CODE § 16.1-69.15. These courts also possess virtually all the same powers of their circuit court counterparts. They may punish contemnors, VA.CODE § 16.1-69.24, issue subpoenas, VA. CODE § 16.1-69.25, administer oaths, VA.CODE § 16.1-69.27, permit discovery in certain cases, VA.CODE § 16.1-82 to -89, and take affidavits, VA. CODE § 16.1-69.27. Procedurally, it is likewise difficult to distinguish the general district court from a "court of record" as that institution was known at common law. Cf. 20 Am.Jr.2d Courts § 26. Suits in general district court must be initiated by a warrant or motion for judgment served on the opposing party. A.CODE § 16.1-81. The defendant in any action has the right to assert counterclaims against the plaintiff and to have them determined in the same proceeding. VA.CODE § 16.1-88.01. A losing party concededly may appeal an adverse decision to the circuit court and receive a de novo trial, but he is precluded from expanding either his claim or request for remedies beyond those presented to the general district court. > VA. CODE § 16.1-106. See also > *Stacy v. Mullins*, 185 Va. 837, 40 S.E.2d 265 (1946); > *Addison v. Salyer*, 185 Va. 644, 40 S.E.2d 260 (1946).Finally, and perhaps most significantly, the substantive effect of a final decision from the general district court is the same as that of a final decision from a circuit court. Its decision not only can be enforced by the same mechanisms as the judgment of a circuit court, >

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VA.CODE § 16.1-116, but it is entitled to the same preclusive effect from other state courts. > Petrus v. Robbins, 195 Va. 861, 80 S.E.2d 543 (1954). See also Boyd, Graves & Middleditch, Virginia Civil Procedure § 12.11 (1982). Because federal courts are bound to honor state court judgments to the same extent as the issuing state itself, a Virginia general district court decision presumably would be entitled to full faith and credit if interposed as a defense in a federal suit between the same parties. See > 28 U.S.C. § 1738. See also > Kremer v. Chemical Construction Corp., 456 U.S. 461, 466, 102 S.Ct. 1883, 1889, 72 L.Ed.2d 262 (1982); > Allen v. McCurry, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980).

ERROR #3 The Circuit court erred when it determined that the Petitioner didn't establish grounds for a motion to vacate by 21 day rule.

This court has jurisdiction to vacate a void judgment and a motion to vacate can be raised at any time if the judgement was procured by extrinsic fraud or if the court lacked subject matter jurisdiction. Judgment entered by a court that does not have jurisdiction over subject matter is void. A Court should dismiss an action on its own motion where it has no jurisdiction of subject-matter. Moore v. Norfolk & W. Ry. Co., 1919, 98 S.E. 635, 124 Va. 628. Courts K 39 oid. Church v. Church, 1997, 483 S.E.2d 498, 24 Va.App. 502. Courts K 40 Subject matter jurisdiction , and judicial notice must affirmatively appear on the face of the record, that is, the record must show affirmatively that the case is one of a class in which the court rendering the judgment was given cognizance. Thomas v. Com., 2001, 549 S.E.2d 648, 36 Va.App. 326. Criminal Law K 1086.2 > Owusu, 11 Va.App. at 673, 401 S.E.2d at 432 subject matter jurisdiction cannot be waived and any judgment rendered without it is void ab initio. Moreover, lack of subject matter jurisdiction "may be raised at any time, in any manner, before any court, or by the court itself." Id., 43 S.E.2d at 893. See 21 day rule Singh v Mooney 261 Va48 (2001) A defect in the subject

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matter jurisdiction cannot be reissued and any subsequent action (circuit court) on this issue is void.

Linda K Avery v. Virginia Retirement system 532 SE. 2d 348 (2000) claims attacking the jurisdiction are not waived by plea of guilty Muse v. Slayton 333 F.supp 1007 (1971) Jurisdiction of subject matter of and parties to suit is essential to conclusiveness of judgment or decree therein. Drewry v. Doyle, 20 S.E.2d 548, 179 Va. 715 (1942)

CONCLUSION

WHERE FOR THE PETITIONER PRAYS THAT THIS COURT VACATE THE JUDGMENT OF THE CIRCUIT COURT FOR THIS MAJOR DEFECT AND UPHOLD THE LAWS OF THE COMMONWEALTH OF VIRGINIA AND THE UNITED STATES OF AMERICA, VACATE THE CHARGES AGAINST HIM, AND RELEASE HIM FROM HIS PLACE OF CONFINEMENT.

~~DR. 11~~

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sean Wallace East

Date: July 28 2020

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