

No. 20-5472

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Henry Dailey (Pro Se) — PETITIONER
(Your Name)

FILED
JUN 18 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Henry Dailey (Pro Se)
(Your Name)

U.S.P. ATLANTA, P.O. Box 150160
(Address)

ATLANTA, GA 30315
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

The State of Missouri has a statute that criminalizes the transfer of the custody or ~~a~~ control of any confinee to another, or to another place; when the statute is violated by law enforcement prior to judicial involvement.

THE Eighth Circuit has deemed a violation of Mo. Rev. Stat. 544.170, a unconstitutional procedure.

Petitioner asks This Court, whether the district court had legal and constitutional authority to invoke jurisdiction, in light of The Clause in 18 U.S.C. 3231, and Mo. Rev. Stat. 544.170

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☒ is unpublished.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 2019 U.S. DIST. LEXIS 138613; 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☐ is unpublished.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 _____ 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☐ is unpublished.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 _____ court appears at Appendix _____ 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 January 22, 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: March 23, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Clause in 18 U.S.C. 3231, "Nothing in this ~~the~~ title shall be held to take away or impair jurisdiction of courts of several States under Laws thereof."

Mo. Rev. Stat. 544.170: "Any person who violates the provisions of this section, by refusing to release any person who is entitled to release pursuant to this section... or who transfers any such confinee to the custody or control of another, or to another place,... is guilty of a class A misdemeanor."

STATEMENT

Petitioner was arrested without warrant by the Local Police in Independence, Missouri on the suspicion of a state offense, and transported to the Local police department for 24-hour investigative hold, On October 15th, 2016 at 2:50 am.

Petitioner was never charged by the state for any criminal offense pertaining to his arrest; no state warrant was issued.

On October 16, 2016, between the hours of 2 and 5 am, petitioner was interrogated by Homeland Security Agents at Independence Police Department. At 2:50 am on October 16, 2016 the 24-hour investigative hold expired. And according to Mo. Rev. Stat. 544.170, Law enforcement agents were required to release petitioner from custody.

Petitioner was not released, and was continuously interrogated for a couple more hours. At the conclusion of the interrogation by the federal agents, petitioner was not placed under arrest for a federal offense, or taken into the custody of federal agents. Petitioner was left in the custody of the local state police.

For over 48 hours petitioner was continuously detained illegally and unconstitutionally without a warrant, or criminal charge. (See Timeline at App.D. 8a)

There was no federal hold, warrant, or order to detain issued by the district court, prior to October 18th, 2016.

On October 18th, 2016, petitioner was transferred to the custody and control of the district court, by Independence Police, without a court order to do so.

A federal complaint was filed against petitioner on October 18th, 2016, Petitioner was indicted by the Grand Jury on November 2, 2016, Petitioner plead guilty to count 2 of the indictment June 26, 2017, and was sentenced to 84 months April 11, 2018.

On November 29, 2018, petitioner filed a pro se motion under 28 U.S.C. 2255, Asserting seven grounds for relief; (1.) Challenging the district court's jurisdiction... Petitioner was granted an evidentiary hearing on August 7, 2019. In the Government's response to Petitioner's 2255 motion, the Government states "... 544.170 is a state statute, this Court need not consider whether that statute was violated..." See Document 13, page 27, footnote 5.

August 16, 2019, the district court denied petitioner 2255 motion. The district court stated in its decision, the violation of Mo. Rev. Stat. 544.170 may be relevant to a motion to suppress, but it is relevant to the court's subject-matter jurisdiction. And denied petitioner a Certificate of Appealability.

Petitioner filed a notice of appeal, September 13, 2019, in U.S. Court of Appeal for the Eighth Circuit, which was denied January 22, 2020; Petitioner filed a petition for a rehearing February 18, 2020, which was denied March 23, 2020. No opinion was filed.

Reasons For Granting The Petition

1. The Language of Mo. Rev. Stat. 544.170 Does not Limit the scope of who can be held accountable for the violation of the statute, or the effect upon the jurisdictional grant. The statute provides: "Any Person who violates the provisions of this section... or who transfers any such confinee to the custody or control of another, or to another place... is guilty of a class A misdemeanor."

The Eighth Circuit courts in Missouri, have determined A violation of the Missouri state, is an unconstitutional procedure. See: UNITED STATES v. Oropesa, 316 F.3d 762, 769 (8th Cir. 2003); ~~Johnson~~ Johnson, 370 F. Supp. 2d 893, 903 (E.D. Mo. 2005); UNITED STATES v. Roberts, 428 F. Supp. 910, 932-933 (W.D. Mo. 1996) "This statute (Mo. Rev. Stat. 544.170) is not a sword in the hands of the police, but rather a shield for the citizen."

In UNITED STATES v. NYGARD, 324 F. Supp. 863 (W.D. Mo 1971) the district court stated; "The Government does not suggest how courts can maintain long established principles of judicial integrity, reiterated in Elkins and at the same time overlook the ~~that~~ fact that a violation of section 544.170 is a criminal offense under the law of Missouri."

2. The Clause in 18 U.S.C. 3231 provides, "nothing in this title shall be held to take away or impair jurisdiction of ~~the~~ courts of several States

under laws thereof, " following provision that Federal District Courts shall have original jurisdiction, exclusive of state courts, of all offense against Laws of United States, merely limits effect of jurisdictional grant... Pennsylvania v. Nelson, 350 U.S. 497, 76 S.Ct. 477, 100 L.Ed 640, reh'g denied, 351 U.S. 934, 76 S.Ct. 785, 100 L.Ed. 1462 (1956).

The safeguards of the Missouri Law takes effect prior to the district court invoking jurisdiction, or asserting a claim for petitioner, or acts committed.

There is no question of who had primary jurisdiction of Petitioner. Petitioner was arrested by local state Police first, detained for over 72 hours then transferred to Federal custody.

The state arrest established the State's jurisdiction, the violation of state law invoked the Clause in 18 U.S.C 3231.

3. When read in conjunction 18 U.S.C. 3231 and Mo. Rev. Stat. 544.170, deprives the district court of jurisdiction.

If, "jurisdiction is wanting, the right to try and convict does not exist...", Ex Parte Lanee, 18 wall. (85 U.S.) 163; Ex Parte Parks, 93 U.S. 18

4. Had either the State of Missouri, or the United States elected to proceed with a timely prosecution, conducted in accordance with law and applicable procedural requirements, there be no valid objection of jurisdiction. But neither jurisdiction elected to do so. Citing: United States v. Nygard, 324 F.Supp 863 (W.D.Mo.1971).

The district courts of Missouri, have ruled the violation of Mo. Rev. Stat. 544.170 is an unconstitutional procedure; And the district court acknowledges the violation of the statute is a criminal offense under law of Missouri.

By the violation occurring prior to any involvement of the district court; makes the district court proceedings illegal and unconstitutional.

5. The district court relied on 18 U.S.C. 3231 for jurisdiction, Petitioner relies on the Clause in 18 U.S.C. 3231 to show the district court Lacked jurisdiction. The Law of the state does not allow ~~any~~ transfer of the custody or control of Petitioner. And the district court must adhere to the clause of 18 U.S.C 3231.

Petitioner is requesting for This Court to intervene, due to the district court decision is in opposition of State Law, 18 U.S.C. 3231(clause), and many of its previous rulings in regards to Mo. Rev. Stat. 544.170. The district court proceedings essentially negates the State Law and The Constitution.

Conclusion

For the foregoing reasons, The Court should grant the Petition for a writ of Certiorari, vacate the judgment, and remand for reconsideration in Light of the Clause in 18 U.S.C. 3231 and Mo. Rev. Stat. 544.170.

Respectfully Submitted,

Henry Dailey
Pro Se

Date: June 18th, 2020