

ORIGINAL

No.

20-5551

IN THE SUPREME COURT OF THE UNITED STATES

FILED
APR 22 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Jeremy Kerr - PETITIONER

VS

State of Ohio - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Jeremy Kerr 686-150

North Central Correctional

PO Box 1812

Marion, OH 43301

QUESTIONS PRESENTED FOR REVIEW

Does a state court's judgment of conviction violate the 14th Amendment to the United States Constitution when the record of the case is wholly devoid of any evidence that could prove that the defendant committed an element of the charges within the borders of that state?

Does a state court's judgment of conviction violate the 14th Amendment to the United States Constitution when the record of the case is wholly devoid of sufficient evidence to prove that the defendant committed an element of the charges as defined by state law, within the borders of that state?

In a challenge to a state court's subject matter jurisdiction, does a state court violate the 14th Amendment to the United States Constitution when it fails to demonstrate how it attained subject matter jurisdiction?

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LIST OF ALL PARTIES

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 judgments are the subject of this proceeding are as follows:

Governor Mike DeWine
Vern Riffe Center
77 S. High St., 30th Floor
Columbus, OH 43215

Attorney General Dave Yost
James A. Rhodes State Office Tower
30 E. Broad St., 14th Floor
Columbus, OH 43215

Sixth Appellate District
1 Constitution Ave
Toledo, OH 43604-6104

Judge Robert Pollex (retired)
Judge Mathew Reger ¹⁰
One Courthouse Square
Bowling Green, OH 43402

Supreme Court of Ohio
65 S. Front St
Columbus, OH 43215

LIST OF ALL PROCEEDINGS

In the Common Pleas Court of Wood County, Ohio
Case NO. 2012-CR-0389
State v Kerr
Date of Judgment,

In the Ohio Court of Appeals, Sixth Appellate District
Case No. 2019-WD-005
State ex rel Jeremy Kerr -vs- Judge Robert Pollex
Date of Judgment, May 3, 2019

In the Supreme Court of Ohio
Case No. 2019-00752
State ex rel Jeremy Kerr -vs- Judge Robert Pollex
Date of Judgment, February 11, 2020

STATEMENT OF THE BASIS OF JURISDICTION

Petitioner respectfully prays that a writ of certiorari issue to review the merits of the following Opinions of the Ohio Supreme Court, which appears at Appendix A to this Petition for Writ of Certiorari:

State ex Rel Jeremy Kerr -vs- Judge Pollex and Judge Reger
Decided on February 11, 2020
Ohio Supreme Court Case No: 2019-0752
2020-Ohio-411

Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1257(a). Further, Supreme Court Rule 10(c) provides that review on a writ of certiorari will be granted only for compelling reasons, such as, when a state court has decided an important federal question in a way that conflicts with relevant decisions of this Court. The facts of the case satisfies Supreme Court Rule 10(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment Fourteen

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive a person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE FACTS

Nature of the CHarges

In 2012, an eight-count Indictment was filed against Jeremy Kerr ("Kerr") in the Court of Common pleas of Wood County, Ohio [case no. 2012-CR-0389] charging Kerr with four counts of violating O.R.C. 2913.31(A)(3) [Uttering a Forgery], and four counts of violating O.R.C. 2921.12(A)(2) [Tampering with Evidence]. Judge Robert Pollex ("Judge Pollex") presided over the case.

O.R.C. 2913.31(A)(3) provides in relevant part, that no person, with the purpose to defraud, or knowing that the person is facilitating a fraud, shall utter or posses with purpose to utter, any writing that the person knows to have been forged. [Black's Law Dictionary defines "Utter" as a physical exchange of possession].

O.R.C. 2921.12(A)(2) provides in relevant part, that no person, knowing that an official proceeding or investigation is in progress, or is likely to be initiated, shall make, present, or use any record or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation.

Upon Kerr's request, the State provided a Bill of Particulars that stated it will prove at trial that Jeremy Kerr emailed forged Release of Lien documents from 1480 E. Wooster St, Bowling Green, Ohio, to Wells Bowen Realty for filing with the Wood County Clerk of Court. The Bill was never amended.

[None of the allegations in the bill were proven. Further,

an email containing forged documents is a violation of Ohio Revised Code 2913.05, not O.R.C. 2913.31(A)(3)],

Facts at Trial

Kerr owned real property in Wood County, Ohio, in which, he placed on the market. Kerr accepted an offer on the property. The potential buyer hired Wells Bowen Title Agency, LLC in Toledo Ohio. [Lucas County, Ohio].

Pat Kost ("Kost") of Wells Bowen Title Agency, LLC discovered that the property was encumbered with several liens.

Kost then received two emails from kerrdesignbuild@gmail.com [the email address was never authenticated] containing four Release of Lien documents. After inspecting the documents, Kost became concerned whether the original documents would be accepted by the Wood County Clerk after the Closing because the "form and font size didn't seem right".

Kost then emailed the documents to the Clerk asking whether the original documents would be accepted for recordation. The Clerk responded that the form and font size are acceptable. [Kost never attempted to file the copies, and no "original" documents exists].

The State presented Kost with State's Exhibits 1-E and 1-G which Kost identified as copies of the emails. The exhibits were entered into the record as business records of Wells Bowen Title Agency, LLC under Ohio Evidence Rule 803(6), Business Records Hearsay Exemption.

Because the record is wholly devoid of any evidence that Kerr had possession of, or uttered the forged documents, the State in

it's Closing Argument solely relied on the Business Records Hearsay evidence as proof that Kerr sent the two emails containin the forged Release of Lien documents.. [Business Records Hearsay Evidence cannot prove material facts, Crawford v Washington, 541 US 36; Melendez-Diaz v Mass., 557 US 305].

The jury, who are not attorneys, relied upon the State's claim that the Business Record Evidence proves Kerr's guilt, and found him guilty on all eight counts. Kerr was then sentenced to a prison term of seven years, eight months.

Writ of Prohibition

On January 14, 2019, Kerr filed a Complaint for Writ of Prohibition against Judge Pollex in the Sixth Appellate District of Ohio [case no. 2019-WD-005].in which he claimed that Judge Pollex lacked subject matter jurisdiction under O.R.C. 2901.11(A) because the record is wholly devoid of any evidence that Kerr committed an element of the charges within the borders of the state of Ohio.

O.R.C. 2901.11(A) states that a person is subject to criminal prosecution and punishment in this state if the person commits an offense under the laws of this state, any element of which takes place in this state.

In State v Yarbrough, 104 Ohio St 3d 1, the Ohio Supreme Court explained that when the record of the case is absent of any evidence that the defendant committed an element of the charges within this state, the trial court lacks subject matter jurisdiction of the case under O.R.C. 2901.11(A). [In Yarbrough, the Ohio Supreme Court vacated a murder conviction because the record

demonstrated that all the elements of the murder were committed in Pennsylvania, thus the Ohio court lacked subject matter jurisdiction of the criminal case].

In the Prohibition proceeding, Kerr established that the State failed to present any evidence that could prove, in the state of Ohio, that Kerr has possession or had uttered the forged documents; or, that Kerr had presented the forged documents to the Clerk. Kerr argued that the absence of such evidence violates the "No Evidence Rule" established by this Court in Thompson v Louisville, 362 US 199, "a conviction based upon a record that is wholly devoid of any evidence of an element of the charges violates Due Process under the 14th Amendment to the United States Constitution".

Kerr also established that the State's failure to present sufficient evidence to establish that Kerr had committed an element of charges in Ohio under O.R.C. 2901.11(A) violates this Court's decision in Jackson v Virginia, 443 US 307, which mandates the state to provide sufficient evidence to prove the elements as defined by state law.

Kerr further established that this Court declared in Crawford v Washington, 541 US 36 and Melendex-Diaz v Mass., 557 US 305, that Business Records Hearsay Evidence is not testimonial and cannot prove material facts. These decisions were echoed by the Ohio Supreme Court in State v Craig, 110 Ohio St 3d 306 and State v Hood, 135 Ohio St 3d 147.

Moreover, Kerr established that because he is challenging

subject matter jurisdiction, Judge Pollex has a mandatory duty to prove subject matter jurisdiction under this Court's decision in Hagens v Levin, 415 US 528. Further, the Ohio Supreme Court had declared that "when subject matter jurisdiction is challenged, the party claiming jurisdiction bears the burden of demonstrating that the court had jurisdiction of subject matter." Marysville Exempt School District v Union Bd of Rev, 136 Ohio St 146 relying on Ohio Nat'l Life Ins Co v US, 922 F 3d 320.

On May 3, 2019, the Appellate Court sua sponte dismissed Kerr's Complaint because (1) it erroneously found that Kerr failed to challenge subject matter jurisdiction; and, (2) it found that Kerr had an adequate remedy of law by way of direct appeal.

[Kerr's complaint solely focuses on subject matter jurisdiction, and the claim of an adequate remedy at law is an application of res judicata to a challenge to subject matter jurisdiction].

Direct Appeal

On JUNE 4, 2019, Kerr filed a direct appeal to the Ohio Supreme Court [case no 2019-0752] in whcih he argued that the appellate court erred in sua sponte dismissing his complaint.

Kerr also re-raised his entire argument that he presented to the appellate court such as the "No evidence Rule" and sufficient evidence violation held by this Court in Thompson v Louisville, 362 US 199 and Jackson v Virginia, 443 US 307.

Ker further presented this Court's findings in Crawford v Washington, 541 US 36 and Melendez-Diaz v Mass., 557 US 305.

In the proceeding, Kerr also re-established that because he is challenging subject matter jurisdiction, Judge Pollex has a mandatory duty to demonstrate how he achieved subject matter jurisdiction under O.R.C. 2901.11(A). Hagens v Levin, 415 US 528.

In the proceeding, Judge Pollex filed a Merit Brief in which he argued that Kerr's claims are moot because he has original subject matter jurisdiction under O.R.C. 2931.03, which grants the common pleas courts with original jurisdiction over crimes and offenses, except in cases of minor offenses that exclusive jurisdiction of which is vested in courts inferior to the courts of common pleas.

Kerr filed a Reply Brief in which he argued that even though O.R.C. 2931.03 grants Judge Pollex original jurisdiction, Ohio Law is very clear, that both, ORC 2931.03 and ORC 2901.11(A), must be satisfied for Judge Pollex to have subject matter jurisdiction of the case.

On February 11, 2020, the Ohio Supreme Court ignored the requirements of O.R.C. 2901.11(A), and affirmed the appellate court's judgment by finding that Judge Pollex had original subject matter jurisdiction under O.R.C. 2931.03. [See Appendix A].

Interestingly, the Yarbrough trial court also had original subject matter jurisdiction under O.R.C. 2931.03, yet, the Ohio Supreme Court conveniently forgot that fact when deciding this case.

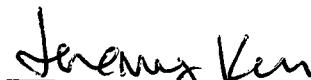
REQUEST FOR GRANTING THE WRIT

Supreme Court Rule 10 prescribes that a petition for writ of certiorari will not be granted only for compelling reasons, such as, when a state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The facts of this case, and the documents attached in the Appendix, on it's face, demonstrates a clear violation of Kerr's right to due process of law, and when presented this question of federal law, each level of the Ohio Courts settled the issue in a way that conflicts with this Court's decisions.

WHEREFORE, Petitioner requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,



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