

No. 20-5895

ORIGINAL

Supreme Court, U.S.
FILED

FEB 12 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

michael carlton lowe — PETITIONER
(Your Name)

vs.

MINNESOTA STATE, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Minnesota Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(Your Name)

1101 Linden Lane

(Address)

Faribault, Minnesota 55021

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. Did the lower courts infringe on relator's fundamental right of substantive due process by failing to treat relators with fundamental fairness by neglecting to apply procedural rights required by justice to preclude forfeiture of estate of a private citizen by an "executor de son tort"?
- II. Did the lower courts deny relator civilian due process while conducting a process in a pre-judicial manner under the "Administrative Procedures Act"?
- III. Does relator's claim against the HENNEPIN COUNTY ADMINISTRATIVE MUNICIPALITY for exceeding the scope of their authority create a claim against respondents Public Hazard Bonds for "criminal malpractice & barratry"?
- IV. Did the lower courts neglect to ascertain the precise nature of the government function involved, as well as the private interest that has been affected by the government action without attempting to procedurally deter relator from exercising his constitutional right of seeking his liberty interest?
- V. Did respondent's actions in the lower courts constitute an unlawful conversion of case no. 27-CR-07-022594 from equity to commercial administrative law, or vexatious litigation for the benefit of profit?
- VI. Did the State Judiciary violate the Separation of Powers Clause by adding, attaching any exceptions, procedures, or conditions to Minn. Stat. § 589.01-Habeas Corpus Remedy in order to deny relator's right to substantive due process?
- VII. Did relator's petition for writ of habeas corpus satisfy § 589.01 requirements in plain unambiguous language where his claims submitted alleged relator is illegally restraineddenied his liberty interests, and that relator seeks immediate release or reduction of his term of imprisonment?

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:

RELATED CASES

All parties appear on the title page of this petition.

Petitioner respectfully prays for review of the decision of the lower court's decision in a habeas corpus proceeding failing or refusing to release a prisoner pursuant to **Supreme Court Rule 36**.

Petitioner directs this Court's attention to the Minnesota State Appellate Court decision in **lowe v. Minnesota State**, case no. **A19-1882**; and companion case no. **27-CR-07-022594**.

The Minnesota State Appellate Court's decision to deny review in the above-cited cases failed to release prisoner, and to adhere to its obligation to protect petitioner's God-given Unalienable Rights to substantive civilian due process, which is protected by state and national constitutions as well as international law, where "A [government] defendant may be personally involved in a constitutional deprivation of constitutional rights in several ways: (1) direct participation; (2) failure to remedy a wrong after learning about it; (3) creation of a policy or custom under which unconstitutional practices occur; or (4) gross negligence in managing subordinates who caused the violations infringing upon fundamental rights of defendant. **see Willaims**, 781 F.2d at 323-24; and **Gallegos v. Haggerty**,

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APPENDIX F

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 _____ 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 _____ 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 B 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 _____.

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).

For cases from **state courts**:

The date on which the highest state court decided my case was 1/15/20.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: 1/7/20, and a copy of the order denying rehearing appears at Appendix A .

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).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The instant case relies on the provisions of Art.1, Sect.7 and Art.3, Sect.1 of the Minnesota State Constitution; and Art.1, Sect. 8, Clause 18 of the U.S. Constitution, both providing that the Minnesota State Judiciary is precluded from adding the following circumstances, claims, or reasons to deny state habeas corpus relief pursuant to **Minn. Stat. § 589.01**-legislatively created:

- A. that petitioner is attacking his conviction;
- B. that petitioner is attempting to use the habeas corpus remedy as an appeal;
- C. that petitioner is attempting to collaterally attack the judgment of the court;
- D. that petitioner is attempting to seek civil relief in a criminal case;
- E. that a petition seeking immediate relief from an otherwise void judgment does not fit within the scope of habeas corpus relief;
- F. that petitioner is attempting to seek habeas corpus relief from the criminal conviction in a competent court.

Petitioner alleges that none of the above-cited circumstances from A-F are contained in the legislative language of the **Minn. Stat.**

§ 589.01 state habeas corpus exceptions to the application, litigation, or adjudication of **§ 589.01**. Thus, they must not be recognized by law, nor used according to the legislature, to deny a properly filed petition for a state writ of habeas corpus seeking seeing immediate release from a wrongful conviction resulting from a lack of subject matter jurisdiction.

The state habeas corpus statute **§ 589.01** lists specifically the following requirements in plain language compelling that the issues claimed are: constitutional, and that the petitioner alleges that he is illegally imprisoned, detained, denied his liberty interests; and that the petitioner seeks immediate release or reduction of his term of imprisonment; as alleged currently by this petitioner.

LEGAL CONSIDERATIONS:

Since the habeas corpus statute is unambiguous and language is clear, the court in this case shall not have misconstrued or judicially imposed on such a right of "Fundamental fairness" by denying the petition based on procedural grounds that were not legislatively created within **Minn. Stat. § 589.01** provisions; and any further construction should have been in conformity with the intent and language of the statute itself. Thus, all restrictions from A-F listed on page 3, are

all applicable to petitioner's properly filed petition for writ of habeas corpus.

STATEMENT OF THE CASE

Petitioner michael carlton: lowe appealed from the district municipal's denial of his second petition for habeas corpus relief without consideration or an evidentiary hearing. Petitioner was convicted in violation of Minn. Stat. § 609.342, subd.1(e)(i); § 609.223(1); and § 609.713(1) in 2007, and the court of appeals affirmed the conviction on direct appeal. The Minnesota State Appellate Courts subsequently denied several of petitioner's petitions for post-conviction relief, and two earlier petitions for writ of habeas corpus to adjoining counties pursuant to Minn. Stat. § 589.02. The Hennepin County District Municipal denied petitioner's third petition without an evidentiary hearing finding that the claims raised were of a "civil nature" and did not fit within the scope of habeas corpus relief and therefore barred. The appellate court rejected the appeal as an appeal taken from a nonappealable order

On August 15, 2007, a jury found petitioner guilty of first-degree crim. sex. conduct, assault-3rd degree, and terroristic threats, he was subsequently sentenced to 30 years in prison. Petitioner, at the outset of the judicial proceedings, challenged that the court lacked subject matter jurisdiction over himself because his detention stemmed from an arrest that was deemed illegal and without exigent circumstances by the very same municipal during pre-trial proceedings, the court stated "I am unaware of any motions for a writ of habeas corpus after the first one. The first one I will deny, the second one apparently that you applied, I will deny..." see (T.1079)

THE DEFENDANT: On the grounds of? (T.1080)

THE COURT: that its my opinion...that I ruled your arrest was inevitable and that there was certainly a mountain of evidence against you in the case. (T.1080)

THE DEFENDANT: at the time of my arrest the police failed to produce probable cause as well as a warrant and forcibly entered my household, which you ruled was an illegal pretext arrest and a violation of my Fourth Amendment rights. You said that the arrest was a violation of my Fourth Amendment rights but inevitable...(T1080)

THE COURT: They had probable cause. They absolutely, they were told that you were the perpetrator by the victim so they had probable cause to arrest you. The only thing I ruled is they should have gotten a warrant because they had probable cause. (T.1080)

In ruling on the direct appeal of the conviction, the court did not address the issue of whether the district municipal's ruling on petitioner's motion to dismiss was unconstitutional and entitled petitioner to immediate release where two motions for writ of habeas were filed during the pre-trial proceedings that were based on the court's ruling the arrest was illegal, but denied. *see 2009 WL 437-493*. The court only addressed whether the district court: (1) abused its discretion by denying his mistrial motion after the prosecutor elicited inadmissible evidence regarding a previous imprisonment and (2) erred by imposing a double-upward departure in sentencing without the jury finding that he is a danger to public safety. The petitioner argued in his pro se brief argued that his conviction should be reversed because his arrest was illegal. The district court did not find that petitioner's arrest in his residence was supported by exigent circumstances. As a result, ~~the~~ court suppressed a gun (which did not belong to petitioner), but refused to address the fact that petitioner had been taken to HCMC upon his illegal arrest and an illegal blood draw performed without a warrant and a result of the warrantless arrest, as supported by the record. The court deemed this argument has no merit, although during Rasmussen proceedings, officers testified to taking petitioner to HCMC upon arrest and before transporting him to the Hennepin County Jail, for the blood draw procedure.

Moreover, in *2011 WL 3557877*, petitioner filed for writ of habeas corpus relief in Chisago County arguing that he is entitled to immediate release from custody because his arrest violated his substantive right to be free from unreasonable searches and seizures. The district court dismissed petitioner's petition without prejudice under Minn. Stat. § 563.02, subd.3 (2010), concluding that his claim was frivolous and has no arguable basis in law or fact, although the appellate court in *2009 WL 437493* found that the arrest was illegal,

as supported on the face of the record and is *prima facie* evidence of a constitutional violation.

Petitioner's current petition for writ of habeas corpus relief makes substantive claims that: (1) the trial court improperly ruled on his motion to dismiss the complaint because his arrest was deemed to have been made in violation of his Fourth Amendment rights and without exigent circumstances or an arrest warrant; (2) that the court lacked jurisdiction over him; (3) that his sentence was illegal and unauthorized by law; and (4) that even though petitioner missed the deadline to file for review of the court of appeals decision by 4 days, and without consideration of the 3 day mailing grace period or that two holidays had elapsed within the time to file petition for review, fairness required substantive review of the issues.

Moreover, because the only questions open to review on habeas corpus after conviction of a crime are whether the court had jurisdiction of the crime and the defendant (of the subject matter and the person); whether the sentence was authorized by law; and whether the defendant was denied fundamental constitutional rights.

The habeas corpus scope has been enlarged in a sense that "****conventional notions of finality of litigation may not stand in the way of review where an infringement of constitutional rights is alleged and **** the principle [****8] of *res judicata* is no longer applicable to habeas corpus proceedings." *see Dinneen v. Tahash*, 272 Minn. 7, 13 136 N.W. 2d 847, 851. "The office of the writ of habeas corpus is to afford the citizen a speedy and effective method of securing his release when illegally restrained of his liberty." *State ex rel. Bales v. Bailey*, 106 Minn. 138, 139, 118 N.W. 676, 19 L.R.A. (N.S.) 775; *see also Wojahn v. Halter*, 229 Minn. 374, 379, 39 N.W. (2d) 545, 548; and *State ex rel. Bassett v. Tahash*, 263 Minn. 447, 448, 116 N.W. (2d) 564, 565.

REASONS FOR GRANTING THE PETITION

The legislature has established in petitioner's favor that: "Present statutes relating to the pleadings, procedure, and the forms thereof in civil actions shall be effective until modified or superseded by court rule. If a rule is promulgated pursuant to this section which is conflict with a statute, the statute shall thereafter be of no force or effect." Additionally, Minn. Stat. § 589.01, subd. (4) is not named as a statute that would not remain in full force and effect, notwithstanding matters of immediate release and matters of sentencing procedure not authorized by law; or some fundamental right has been violated.

The Minnesota State Court's decision to read into Minn. Stat. § 589.01 limitations, procedural bars, guidelines restrictions the state legislature itself has not placed in the statute, or included in the statute during enactment violates the Separation of Powers doctrine. see **Phelps v. Commonwealth Land Title Co.**, 537 N.W. 2d 271, 274 (Minn. 1995)

The Minnesota Judiciary State Courts do not have judicial discretion to construe or interpret mandatory unambiguous penal statutes, or the Minnesota Constitutions' version of State Habeas Corpus, nor the Legislature's version of State Habeas Corpus. see Minn. Stat. § 589.01; also Minn. Const. Art.1, Sect.7

The plain, clear, and unambiguous language and legislative intent of the above-cited statutes leave no ambiguities to be cured; but if any had existed, the legislature itself would be charged with modifying, adding to, or changing the statutes in question, and the State and Federal Constitutions would prohibit the state courts from construing, modifying, or changing a statute internally, externally, directly or indirectly by utilization and enforcement of the Separation of Powers Clause of the State and Federal Constitutions under Minn. Const. Art.3, Sect.1, and U.S. Const. Art.1, Sect.8, Clause 18.

LEGAL NOTE: Even the state court's inherent judicial authority cannot authorize it to modify, change, add to, or construe the above law, statute, or State Constitution, despite the court's apparent desire to do so. see Minn. Stat. §§ 645.16, 645.17(2); also **State v. Koenig**, 666 N.W. 2d 366, 373 (Minn. 2003); **Beardsley v. Garcia**, 753 N.W. 2d 735, 740 (Minn. 2008); **Haghighi v. Russian AM Broad Co.**, 577 N.W. 2d 927,

929 (Minn. 1998)

Finally, because the state court has committed the act of construing the statutes improperly to be applicable to petitioner, such conduct constitutes the most extreme violation of the Separation of Powers Clause due to the application being a total transmutation of the statute's application intended by the legislature. This case presents the question whether the Minnesota Supreme Court owes deference to the lower court's interpretation of a statute that unambiguously contemplates both criminal and civil enforcement?

Additionally, petitioner's argument is not lost on the claim of whether the court had jurisdiction over him in regards to the statute and its legislatively created intent. There is also the issue as to whether the court's oral pronouncement of petitioner's sentence to 120 months probation caused the court to lose jurisdiction to impose a longer sentence, or execute the sentence with imposition of a 360 month sentence of imprisonment by warrant of commit, and in the absence of the required probation violation and revocation hearings?

Thus, this court should determine whether the rule of lenity required the Minnesota Appellate Court to resolve the issue of ambiguity in favor of the petitioner here?

see **State v. Clayton Bellanger**, 2005 Minn. App. Unpub. LEXIS 42005 LEXIS 4, Case No. A04-1790; also **Lowe v. Roy**, WL 3779342

In regards to the above sentencing dispute, in that case, the court used the exact unauthorized reasons to deny habeas relief addressed here on page 3, holding that petitioner's claim that the court illegally imposed an executed sentence after it stayed a stayed sentence and had lost jurisdiction to declare imposition of an executed sentence without adhering to the requirements of a revocation hearing.

see **State v. Austin**, 295 N.W. 2d 246, 249-50 (Minn.1980); the court held the claim was without "substantive merit" and that petitioner's habeas claims constituted an improper collateral attack on the underlying conviction, that could not be remedied in a habeas corpus proceeding. Alternatively, the court held that the "judge simply misspoke" when he used the word 'probation' instead of supervised release.

Again, the judiciary has read into Minn.Stat. § 609.135-describing probation as something that may or may not be imposed as a condition

of a stayed sentence-suggesting that probation is not a part of the sentence, meaning that if the judge stated that petitioner would be placed on 120 months probation, the judiciary did not have the judicial discretion to interpret the judicial or legislative intent in regards to the statute. Also, the clear language in Minn. Stat. § 609.135, subd.1(a) states "when a district court stays imposition or execution of a sentence, the court may order intermediate sanctions 'without' placing the defendant on probation. the unambiguity of the language in the statute discerns that the court acted in violation of the Separation of Powers Clause by construing, modifying, adding to, or changing the statutes interpretation to circumvent the fact that, if the judge had misspoke, there was no need to specify the defendant shall be placed on probation for a specified number of months; and therefore changing the applications of the statute in question.

Nevertheless, the appellate courts rendered a decision, which did not adhere to the legislative interpretation of the statute, and instead gave its own judicial interpretation reasoning that "the judge simply misspoke" when he used the word probation instead of 'supervised release' see Lowe, 2013 WL 3779342, at *2 (exclaiming that Lowe's warrant reflected an executed sentence of 360 months, and thus creating a material variance between the oral sentence to 120 months probation and executed sentence by warrant of commitment to 360 months imprisonment.)

Therefore, because petitioner was not challenging the validity of his sentence, rather that the court had lost jurisdiction to impose an executed sentence by warrant of commitment, after the term in which the orally pronounced sentence had expired, and the court had, according to the record, sentenced petitioner to a 120 month probated sentence in accordance to Minn. Stat. §§ 609.135, and 609.135, subd.1(a) (1) (2007). Petitioner is in fact entitled to immediate release under the state habeas corpus statute § 589.01.

CONCLUSION

The court in **Dinneen v. Tahash**, (see pg.6), has declared that **res judicata** is no longer applicable to habeas corpus proceeding, and that the state habeas corpus can be used as a collateral remedy pursuant to **Minn. Stat. § 589.01** for Constitutional and Federal issues. The Minnesota Legislature has created and preserved a mechanism to ensure protections against finalization of litigation and adjudication of constitutional and federal law rights, immunities, privileges & liberties in situations where **Minn. Stat. § 589.01 et seq.** has become unavailable, ineffective, or inadequate as a collateral review—the **Minn. Stat. § 589.01** may be used in its highly expanded form. see **Minnesota Sessions Law Chpter 336-H.F. no. 628 (coded for 1967)**, post-conviction remedy availability, conditions, subd.2. see **Kelsy v. State, 283 N.W. 2d 892, 894; Johnson v. State, 801 N.W. 2d 173, 801 N.W. 2d at 176 (2011)**

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

michael carlson: lowe
ml
Date: 9/23/20; 10/6/20