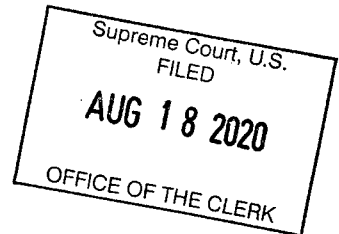


No. **20-6062**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



MONTGOMERY CARL AKERS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS, FOR THE TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MONTGOMERY CARL AKERS

(Your Name)

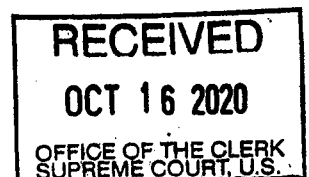
#02866-081, P.O. BOX 1000

(Address)

MARION, IL 62959

(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

THE APPELLATE COURT MUST FIRST CONSIDER WHETHER THE DISTRICT COURT HAS SUBJECT-MATTER JURISDICTION; and,

SUBJECT-MATTER JURISDICTION MAY BE RAISED AT ANY TIME; and,

OBJECTIONS TO SUBJECT-MATTER JURISDICTION ARE THE CHIEF COMPONENT OF THE SUPREME COURT IN DETERMINING THE SUBJECT-MATTER JURISDICTION OF THE APPELLATE AND DISTRICT COURTS;

THE PETITIONER HAS A RIGHT TO HIRE COUNSEL AT HIS OWN EXPENSE ON POST-CONVICTION PROCEEDINGS OR AT ANY TIME IN THE CRIMINAL PROCESS.

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

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 807 FED. APPX. 861; 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☐ is unpublished.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 1911828; 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☐ is unpublished.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.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Arbaugh v. Y&H Corporation, 546 500-514(2006)
United States v. Griffin, 928 F.3d 855,865(10th Cir. 2019)
Plaza Speedway, Inc. v. United States, 311 F.3d 1262, 1266(10th Cir. 2002)
Henderson ex Rel. Henderson v. Shinseki, 562 U.S. 428, 434(2011)
United States v. Cotton, 535 U.S. 625, 630(2002)
Niemi v. Lasshofer, 770 F.3d 1331, 1334(10th Cir. 2014)
Class v. United States, 583 US ___ 138 S.Ct. ___, 200 L Ed 2d 37, 2018 LEXIS 1378
Steel Company v. Citizens For A Better Environment, 523 U.S. 83(1997)
Coronado v. Ward, 517 F.3d 1212, 1218(10th Cir. 2008)
Powell v. Alabama, 287 U.S. 45, 53(1932)
United States v. Read-Forbes, 2016 U.S. DIST LEXIS 49861
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APPENDIX C LETTER FROM THE OFFICE OF THE CLERK/SUPREME COURT OF THE
UNITED STATES DATED: AUGUST 27, 2020

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JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 03, 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: April 20, 2020, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

The United States Court of Appeals is vested with the constitutional authority to determine both the subject-matter jurisdiction of the appellate court but also that of the district court. See Fed.R.Civ.P. 12(h)(3)("if the Court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

The Supreme Court must ensure the subject-matter matter jurisdiction of the lower courts;including the appellate and district courts.

The Petitioner has a constitutional right to hire counsel at any stage of the proceedings of a criminal case; which includes post-conviction appeals or redress otherwise.

STATEMENT OF THE CASE

The Petitioner challenged the judgment in his initial 28 U.S.C. S.2255 motion in September, 2009, was void as the court lacked subject-matter jurisdiction to enter any orders, accept his guilty plea, or sentence him in any fashion as the court was notified at his "change of plea" hearing in 2005 that it was factually impossible for the charges to be brought against the petitioner of wire fraud. The court was put on notice that the Petitioner was not domiciled in the State and District of Kansas as alleged in the indictment and superseding indictment. The Court was put on notice at the time that it did not have subject-matter jurisdiction over the Petitioner as no crime was committed by the Petitioner in the District of Kansas as specified in the superseding indictment. The Superseding indictment charged that at all times MATERIALLY RELEVANT to the facts of the indictment the Petitioner was an inmate confined at the United States Penitentiary, Leavenworth, Kansas. The indictment further charged that a financial institution in Kansas was aggrieved by the Petitioner beginning in February, 2000. At the change-of-plea hearing on September 21, 2005, the Petitioner informed the United States District Judge presiding, Kathryn H. Vratil, that he was not present in the District of Kansas as alleged in the superseding indictment. This was done in open court with the prosecutor, Kim M. Berger, present. Nonetheless, Judge Vratil continued with the hearing without addressing her subject-matter.

In 2009 Judge-Vratil ruled that she did have subject-matter jurisdiction based upon the use of inaccurate information in doing so. Judge-Vratil Mischaracterized the record claiming that Petitioner had admitted. . . in open court. . . that he made a phone call in interstate commerce. This finding was blatantly false and belied by the record of the case which included a manifest of exactly where the plaintiff was housed within the Federal Bureau of Prisons in Oxford, Wisconsin, at the time that the superseding indictment charges that the Petitioner was located in Leavenworth, Kansas(date/time). The Petitioner has made a plethora of motions to both the district court and the appellate court in the Tenth Circuit concerning the subject-matter defects in this case for years. Each time these courts find a way to dismiss his action based on some procedural mechanism and the use of what's known as a "plea waiver" in this case.

In 2019 the Petitioner filed his Motion pursuant to Fed.R.Civ.P. 60(B)(H) based upon newly discovered evidence that the financial institutions in question that were/are alleged in the superseding indictment of this case do not exist. The original S.2255 hearing is a civil matter, therefore the Federal Rules of Civil Procedure are applicable. On April 03, 2020 the panel hearing this matter in the Tenth Circuit affirmed the district court based upon inaccurate information and without entertaining the subject-matter of the Appellate Court as well as the district court. The Appellate court also found that the Appellant(Petitioner)was not entitled to retain counsel for his assistance on appeal of this case. In so doing the Appellate court erred in finding and using case law inapplicable to the issues on appeal; but what's more did not satisfy the jurisdictional requirements of finding subject-matter jurisdiction of the appellate and district court. The Appellate court affirmed the imposition of sanctions in the amount of \$77,000 when the district court did not have jurisdiction to impose sanctions in the first place. The district court as well as the appellate court used Tenth Circuit case law that is inapplicable to denying the Petitioner access to representation during his post-conviction process. . . and. . . most importantly : . . representation by licensed counsel based upon lack of subject-matter jurisdiction.

No.

IN THE

SUPREME COURT OF THE UNITED STATES

MONTGOMERY CARL AKERS, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

On Petition For Writ of Certiorari
From the United States Court of Appeals for the Tenth Circuit
CASE NO. 19-3254

PETITION FOR WRIT OF CERTIORARI

MONTGOMERY CARL AKERS
ADDRESS: #02866-081, P.O. BOX 1000
MARION, IL 62959

REASONS FOR GRANTING THE PETITION FOR CERTIORARI

On June 17, 2020, the U.S. Court of Appeals for the Tenth Circuit denied my motion for rehearing. Since that time I have sent two motions to this court for extension of time. Staff of the Federal Bureau of Prisons by the name of: KATHY HILL, KATHERINE SIEREVELD, have failed to mail my motions to the Court. I have asked for a "prisoner petition packet" to properly file my petition for certiorari in this Court. Kathy Hill handles my mail here at the prison which is United States Penitentiary, Marion, Illinois. Hill takes her orders from Siereveld who instructs her not to send my mail in situations like this. Siereveld is taking direct ~~adv~~ from the prosecutor on my case, Kim I. Flannigan, an assistant United States attorney in Kansas.

The Tenth Circuit never had subject-matter jurisdiction to hear my case. The district court in Kansas was also without subject-matter jurisdiction to entertain this case. In September, 2005, during my plea colloquy with the judge Katherine H. Vratil I told judge-Vratil that I was not in Kansas in February, 2000, as the indictment charged. Instead of handling the jurisdictional defect in this case judge-Vratil moved forward as if I never said anything. The Tenth Circuit Court of Appeals judges who have heard my many cases have never assessed their subject-matter jurisdiction in this way.

RECEIVED

AUG 26 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

REASONS FOR GRANTING THE PETITION

The Supreme Court of the United States is charged with finding its own jurisdiction and that of the lower courts. See *Steel Company v. Citizens For A Better Environment*, 523 U.S. 83(1997)(holding: without jurisdiction, a court cannot proceed at all in any cause, as jurisdiction is the power to declare the law; when jurisdiction ceases to exist, the only function remaining to the court is that of announcing the fact and dismiss the cause).

Subject-matter jurisdiction may be raised at any time. See *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434(2011); See also Fed.R. Civ.P. 12(h) (3)("if the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the case/action.")

Likewise, the appellate court must first consider whether the district court has jurisdiction. The existence of subject-matter jurisdiction "is a question of law which the circuit court reviews de novo." *Plaza Speedway Inc. v. United States*, 311 F.3d 1262, 1266(10th Cir. 2002). The challenge to subject-matter jurisdiction is de novo. See *Niemi v. Lasshofer*, 770 F.3d 1331, 1334(10th Cir. 2014). The district court always has jurisdiction to entertain its own jurisdiction. See *United States v. Griffin*, 928 F.3d 855, 865(10th Cir. 2019). 18 U.S.C. S.3231 states that federal courts have original jurisdiction over the laws of the United States. In this case no laws were broken by the Petitioner of the United States in Kansas or anywhere.

The bottom line is that the Petitioner raised his subject-matter jurisdictional claims based upon the fact that fraud and inaccurate information were used to determine his original S.2255 motion coupled with the fact that the court used said information to manufacture jurisdiction of the Court. Once again the Petitioner raised his subject-matter jurisdiction claims that the district court and appellate court should have entertained independently. No amount of waivers or otherwise can/should prevent the district court and appellate court from entertaining its subject-matter jurisdiction. In this case the appellant/petitioner pointed to the record and provided irrefutable evidence that Judge Vratil had lied and manufactured jurisdiction in deciding his initial S.2255 motion. Once the Petitioner raised the issue of subject-matter jurisdiction the court(s) were obligated to inquire into the evidence that was presented by the Petitioner to determine the jurisdiction of the courts. Such an action by the district court and the appellate court amounts to not having any hearing on the court's subject-matter which the courts know to be deficient.

The Supreme Court must grant certiorari in order to decide the subject-matter of the Appellate court and the district court in the first instance. Second it must decide if the Petitioner is guaranteed by the constitution the ability to retain counsel, at his own expense, for his post-conviction matters and appeals. The Petitioner has been denied representation by licensed legal counsel in order to railroad him through the collateral attack proceedings as well as the post-conviction process afterward. The case law that has been relied upon by the district court and appellate court is found in Coronado v. Ward, 517 F.3d 1212, 1218(10th Cir. 2008). The Ward case says absolutely nothing about the fact that the Petitioner is not entitled to retain counsel at his own expense and retain licensed legal counsel for representation on post-conviction appeals. The Ward case only states that an appellate is not entitled to counsel at government expense in the post-conviction process. The appellate court mischaracterized the language of this case to ensure that the Petitioner would not be represented by counsel to further the cover-up with regard to the lack of subject-matter jurisdiction of this case.

The Petitioner has been the victim of governmental misconduct since day-1 of this case. Every court to have heard the appeals of the Plaintiff has side-stepped the fact that subject-matter jurisdiction is lacking in this case. In September, 2009, the district court manufactured subject-matter jurisdiction with inaccurate information as the basis for its holdings and findings. The record on-its-face corroborates the fact that Plaintiff WAS NOT in the District of Kansas in February, 2000, as the superseding indictment of this case charges. The Petitioner put the Court on notice of this fact during the plea colloquy with Judge-Vratil on September 21, 2005. None of the panels hearing the appeals of the Petitioner have read his (61) page "change of plea" transcript at anytime. This was done to turn a blind eye to the lack of jurisdiction in this matter and to forward the wrongful conviction, sentence, and imprisonment of the Petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: _____