No. 20-6251

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
AUG 28 2020
OFFICE OF THE CLERK

Timothy T. Byers — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Timothy T. Byers. # 41579-037
(Your Name)

U.S.P Lee/ P.O.Box 305
(Address)

Jonesville, Va 24263
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

① Whether or not the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction? Whether the burden is on the prosecution to prove they have jurisdiction 18 U.S.C. § 7 Territorial Jurisdiction of the United States.

② Whether the Article III court is authorized to extend its judicial power under the U.S. Constitution to all powers that has been delegated by enumeration.

③ Whether "United States District Court" is the same "District Court of the United States" "ordain" and "established" by Congress in title 18 U.S.C. § 3231? In 1948, the United States District Court was established in every State and the territory of Puerto Rico, so is this court an Article III court "ordain" and "established" by Congress or is the "United States District Court" a territorial (legislative) court 18 U.S.C. § 7 because it is in the territory of Puerto Rico?

④ Whether the Federal Government must also accept all cessions of jurisdiction? Whether or not Federal courts have no common law jurisdiction in criminal cases?

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

Fay v. Nola, 372 US 391, 450 (1963), Tennessee v. Davis, 100 US 257, 282 (1880), Wayne v. United States, 21 US 234, 24 (1910), Logan v. United States, 144 US 263, 283 (1892), Printz v. United States, 521 US 898, 923-924 (1997), United States v. Williams, 341 US 58, 66-67 (1951), State of Rhode Island v. State of Massachusetts, 12 Peters 657, 733, 37 US 657 (1938), Paul v. United States, 371 US 245 (1963), United States v. Morrison, 52 US 598, 618 (2000), (A) Yenkichi Ito. v. United States, 64 F2d 73 (9th cir. 1933), New Orleans v. United States, 35 US 662 (1836), Duchek v. Jacobi, 646 F2d 415 (9th cir. 1981), United States v. Butler, 297 US 1 67-69 (1936), Carroll v. United States, 178 Led 2d 799 (2011), United States v. Kebodeaux, 186 Led 2d 540 (2013), United States v. Cotton, 535 US 625, 630 (2002), Gibbons v. Ogden 9 Wheat 1, 189-190, 196 (1824), Hammer v. Dagenhart, 247 US 251, 275 (1918), United States v. Cornell, 2 Mason, 60, Fed. Case No. 14,867 citing by Surplus Trading Co. v. Cook, 281 US 647, 654 (1928), Bowen v. Johnston, 306 US 19 (1936), United States v. White, 611 F2d 531, 536 (CA5, 1980), Kansas v. Colorado, People v. Godfrey, 17 Johns 225 (1819) citing in Fort Leavenworth R.R. Co. v. Lowe, 114 US 525, 538 (1885), Van Brocklin v. Anderson, 117 US 151, 167-168 (1886)

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION ....

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ....

STATEMENT OF THE CASE ....

REASONS FOR GRANTING THE WRIT ....

CONCLUSION ....

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES | PAGE NUMBER

Parker v. Davis, 79 U.S. 457, 535, 536 (1871)
Downes v. Bidwell
State of Rhode Island v. State of Massachusetts, 12 Peter 657, 733, 37 U.S. 657 (1838)
South Carolina v. United States, 199 U.S. 437, 488, 450 (1905)
Carter v. Carter Coal Co, 298 U.S. 238, 296 (1936).
" And others.

STATUTES AND RULES

Art. I, § 8. Cl. 6
Art. I, § 8. Cl. 17
Art. III, 2, Cl. 1
Art. IV § 3 Cl. 2
18 U.S.C § 7(3)

OTHER

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 1 to the petition and is attached

[ ] reported at NO. 19-4439; 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 ______ 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 February 4, 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).

[ ] 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

Article I § 8 clause 1, Article I § 8 clause 6, Article I § 8 clause 17, Article III § 3 clause 2, Article IV § 3 clause 2, and Article I § 1 clause 1

18 U.S.C. § 5, 18 U.S.C. § 7, 18 U.S.C. § 3231, 40 U.S.C. § 3112 (c)

Tenth Amendment

STATEMENT OF THE CASE

TIMothy T. Byers, Jr., pled guilty pursuant to plea agreement to bank robbery, in violation of 18 U.S.C.§ 2113(a) (2018), and was sentence to 240 Months in prison.

REASONS FOR GRANTING THE PETITION

The Conviction exceeded the Act of Congress
in Violation of Art. III, § 2, cl. 1, and Art. IV, § 3, cl. 2.

"Please See argument attached"

Summary Review

Now comes defendant, Timothy Tyrone Byers, Case No. 3:18cr62, filing Pro Se, moves this court to dismiss the following charge for lack of or no jurisdiction.

Defendant Byers, has been challenging Jurisdiction since his Arraignment in court on 1/7/2019 in Magistrate Judge Robert W. Trumble courtroom. Defendant Knows and believes that the court does not have jurisdiction and has no jurisdiction pertaining to count one of the indictment with the perspective geographical location.

Even though the Government is sovereign, they have no sovereignty i.e. dominion over the land (territory) within the several 50 union States except where legislative (territorial) jurisdiction has been obtained through the consent of purchase or by cession. The Supreme Court stated that it is true that the criminal jurisdiction of the United States [Federal Government] is in general based on the territorial principle cf 18 U.S.C. §7 Territorial Jurisdiction of the United States.

According to the United States Constitution that is not "frivolous" or "with-out merit." The wise men who framed the United States Constitution and the patriotic people who adopted it where unwilling to depend for their safety upon what is the opinion referred to is described as certain principles of natural justice inherent is Angle-Saxon character which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests. Congress is expressly authorized to provide for the punishment of three crimes, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and treason.

Defendant Byers, has not been charged with any of these three crimes which are in the U.S. Constitution. Article I §8 clause 1, Article I §8 clause 6, Article I §8 clause 17, Article III §3 clause 2, Article IV §3 clause 2. Many judges in the past has ruled that the jurisdiction clause are frivolous and with-out merit. Is the United States Constitution frivolous and with-out merit? (No) Do judges take an oath of office to uphold the United States Constitution? (Yes) So why are they violating their oath of office? Knox v. Lee and Parker v. Davis, 79 US 457, 535-536 (1871)

In order for the federal court to exercise jurisdiction over a criminal action the offense must have occurred within [L]ands reserved or acquired for the use of the United States (federal government) under the exclusive or concurrent jurisdiction thereof by consent of legislature of the state where the alleged offense[s] to have occurred. Mr. Justice Harlon, Supreme Court dissenting in the case of Downes v. Bidwell, supra (1901)... Even though the federal Government is a sovereign, they have no sovereignty i.e. dominion over the land (territory). The limitations imposed by the Constitution on Congress ability to carry out their delegated powers within the several 50 union states and their ability to exercise undelegated powers (exclusive legislation) within ceded lands and their own territories not yet Union States has been usurped, under the guise of regulating interstate commerce. This is where the law has been obfuscated. All powers which properly appertain to sovereignty, which have not been delegated to the federal government, belong to the states and the people. United States v. Illinois Central R. Co. and that [T]itle, jurisdiction, and sovereignty, are inseparable incidents and remain so till the state makes some cession. A cession of territory is essentially a cession of jurisdiction. The State of Rhode Island v. The State of Massachusetts, 12 Peters 657, 733, 37 US 657 (1838) "The government of the United States, can claim no power which are not granted to it by the U.S. Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication." "The government of the United States is one of delegated, limited, and enumerated powers." Implication of the power to "punish" under the commerce clause, by and through the necessary and proper clause, is not favored nor appropriate. Congress cannot grant themselves jurisdiction or an undelegated power to "punish felonies", pursuant to their delegated power to regulate interstate commerce, whenever they deem it.

The Constitution is a Written Instrument. As such it's meaning does not alter. That which is meant when it was adopted, it means now. Any other rule of construction would abrogate the judicial character of this court. South Carolina v. United States, 199 US 437, 488-450 (1905) Supremacy of the Constitution as law is absolute; the supremacy of a statue enacted by Congress is not absolute. Carter v. Carter Coal Co., 298 US 238, 296 (1936). This is why the Federal Government can claim no powers which are not granted to it by the U.S. Constitution. Kansas v. Colorado. Therefore, because the power to punish is not granted under the commerce clause the Federal Government cannot claim this power.

③

The Supreme Court stated; the Constitution contains no grant, general or specific, to Congress of the power to provide for the punishment of crimes, except piracies and felonies committed on the high seas, offenses against the law of Nations, Treason, and counterfeiting the securities and current coin of the United States. The No grant general or specific, axiomatically excludes the commerce clause and the necessary and proper clause wherein the power to "punish" is not delegated to Congress.

The "exclusive legislation clause", Article I § 8, clause 17, and the Tenth Amendment, both operate as limitations, or restrictions, on the exercise of the "commerce clause" power granted. This is because the power to "punish" is not enumerated under the commerce clause which proves it is not delegated there. This also means Congress cannot provide for the prosecution of felonies within the territorial (legislative) jurisdiction of the several Union States under the guise of regulating interstate commerce. Any legislation enacted by Congress which assumes to prosecute felonies under the guise of regulating interstate commerce is exclusive legislation (because the power to "punish" is not delegated under the commerce clause) and therefore can only be lawfully executed if the alleged criminal conduct occurs within ceded land under the concurrent or exclusive legislative (territorial) jurisdiction of the "United States" (Federal Government) and there own territories.

"Exclusive legislation" is consistent only with exclusive jurisdiction. For if exclusive jurisdiction and exclusive legislation do not import the same thing, the states could not cede or the United States accept, for the purposes enumerate-enumerated in this clause, any exclusive jurisdiction. Surplus Trading Co. v. Cook, 281 US 647, 654 (1928), citing United States v. Cornell, 2 Mason, 60, Fed. Case No. 14,867. The Supreme Court explained that; crimes are thus cognizable "when committed within or on lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction, thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the state." Bowen v. Johnston, 306 US 19 (1936)

The Supreme Court in People v. Godfrey, 17 Johns 225 (1819), stated in Fort Leavenworth R.R. Co. v. Lowe, 114 US 525, 538 (1885) that, "If there has been no cession by the State of the place... the state jurisdiction still remains complete and perfect." NOTE! "It is not the offense committed, but the place in which it is committed," which must be out of the jurisdiction of the State. Chief Justice Marshall Upon admission of a state into the Union, the state doubtless acquires general jurisdiction, civil and criminal... except where it has ceded exclusive jurisdiction to the United States. The Rights of local sovereignty... vest in the state, and not in the United States. Van Brocklin v. Anderson, 117 US 151, 167-168 (1886).

Our Federal Government is one of enumerated powers. The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. In interpreting the Constitution it must never be forgotten that the Nation is made up of States to which are entrusted to the powers of local government. To them and to the people the powers not expressly delegated to the National government are reserved. Hammer v. Dagenhart, 247 US 251, 275 (1918)

Federal Government must also accept all cessions of jurisdiction. Supreme Court quoted: An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity; and it is not a nullity if the court has general jurisdiction of the subject. Fay v. Noia, 372 US 391, 450 (1963) Federal courts have no common law jurisdiction in criminal cases. Tennessee v. Davis, 100 US 257, 282 (1880) Wayne v. United States, 21 US 234, 24 (1910) See Federal Rules of Criminal Procedure 7(a)(1)(B) Logan v. United States, 144 US 263, 283 (1892)

Case Law

Printz v. United States, 521 US 898, 923-924 (1997); United States v. Williams, 341 US 58, 66-67 (1951); State of Rhode Island v. State of Massachusetts, 12 Peters 657, 733; 37 US 657 (1938); Paul v. United States, 371 US 245 (1963); Duchek v. Jacobi, 646 F2d 415 (9th Cir. 1981); United States v. Morrison, 52 US 598, 618 (2000), (A) Yenkichi Ito. v. United States, 64 F2d 73 (9th Cir. 1933), New Orleans v. United States, 35 US 662 (1836), Gibbons v. Ogden 9 Wheat 1, 189-190, 196 (1824); United States v. Butler, 297 US 1 67-69 (1936); Carroll v. United States, 178 Led 2d 799 (2011), United States v. Kebodeaux, 186 Led 2d 540 (2013); United States v. Cotton, 535 US 625, 630 (2002).

Statute

(1) 40 U.S.C. § 3112(c); (2) 18 U.S.C. § 7; (3) 18 U.S.C. § 5; (4) 18 U.S.C. § 3231; (5) Federalist Papers XXXIX

Conclusion

The Government has failed to submit into the record evidence any documentation showing ownership by the United States Federal Government over the place where the criminal activity is alleged in the complaint or indictment to have occurred which is (Bank of Charles Town, 111 E. Washington Street, Charles Town, WV 25414) and any cessions and acceptance of jurisdiction as required under Article I § 8 clause 17 and Title 40 U.S.C. § 3112(c). The Federal Government has failed to show that they have subject-matter jurisdiction in this case, which the defendant has challenge in court on record at his arraignment. Defendant Byers also challenge subject-matter jurisdiction at his Pro Se Hearing when he filed for a new attorney because his attorney Aaron Moss refused to challenge jurisdiction. Mr. Byers advised Mr. Moss that in his PSR report on page 15 and page 18 of the amended PSR, the federal prosecutor asked the state court after the preliminary hearing to dismiss the case in favor. This is a violation of prosecutor defendant Byers rights. Defendant Byers also let his attorney know that the same federal prosecutor was his attorney when the case was in State court. The federal prosecutor, Mrs. Kimberley D. Crockett, was defendant Byers state Public Defender, before the case was sent to federal court. Another violation of defendant Byers rights.

Also, the United States District Court Judge Gina Groh denied defendant Byers a new attorney, violating his sixth Amendment, because he challenge jurisdiction. We know that the federal courts have no common law jurisdiction in criminal cases but a federal court has general jurisdiction over the subject-matter in the following types of crimes. Felonies within federal Territories, ceded lands, unceded lands pursuant to the power to "punish" (Article III courts only) and the high seas.

Chief Judge Gina Groh also said on page 9 of the Pro Se Hearing after defendant Byers asked, "Is this an Article III court "ordain" and "establish" by Congress", Chief Judge Groh said "Yes it is an Article III court and that she is an Article III Judge appointed by President Obama himself." Title 28 U.S.C. § 132 says "there shall be in each judicial district a district court..." and "the judicial power of a district court ... may be exercised by a single judge..." this last provision should be noticed; it is fundamental that a district judge has no judicial power individually; his/her power is exercised as the representative of a court. "Jurisdiction is lodged in a court, not in a person. The judge, exercising the jurisdiction acts for the court." United States v. Roberts, 618 F.2d 530, 546 (9th Cir. 1979) "Trial judges are to Know the law and to apply it in making their decisions." Walton v. Arizona, 497 US 639, 653 (1990). Yes, the Supreme Court stated: when the lower Federal court lacks jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit. Steal Co., v. Citizens for Better Env., 523 US 83, 89-101 (1998)

According to Judge Gina Groh this is an Article III court and it is authorized to extend its judicial power under the U.S. Constitution to all powers that has been delegated by enumeration. The Supreme Court stated in Myers v. United States, it should never be lost sight of, that the government of the United States is one of limited and enumerated powers. Those powers that are delegated by enumeration are for crimes of treason, counterfeiting, and piracies/felonies committed on the high seas. The Defendant Byers indictment is for Bank Robbery which is not a delegated power under the U.S. Constitution, but the government is claiming that they can punish (prosecute) an undelegated power which is the commerce clause for the crime of Bank Robbery. The Federal government nor Congress cannot grant themselves jurisdiction or an undelegated power to punish felonies, pursuant to their delegated power to regulate interstate commerce.

It is self-evident that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefor, and thus territorial jurisdiction and venue are essential elements of any offense in the sense that the burden is on the prosecution to prove their existence. United States v. White, 611 F2d 531, 536 (CA5, 1980).

The prosecution is claiming jurisdiction using an undelegated power under the U.S. Constitution and claiming that the bank was federally insured. This is frivolous and without merit. Because Congress cannot punish felonies using an undelegated power. The commerce clause is regulated by prescribing rules and the Constitution does not delegate the power to "punish" felonies under the commerce clause.

The "United States District Court" proceed under the assumption that a crime has been committed on Federal land under the concurrent or exclusive jurisdiction of Congress. The law is written that way because those are the places where they have jurisdiction over crimes. Of course, if brought up they will refuse to admit it and they will continue to put forth that they really have power to punish felonies under the commerce clause and that they really are the Constitutional "district court of the United States" ordained and established under Article III.

It is also a maxim of law. The Courts, therefore, have a duty not to read words or phrases into the legislation of Congress that are not there. The obvious reason is because in doing so the courts would be legislating for Congress which they have no power to do. This stems from Article I § I clause 1 of the U.S. Constitution which vests Congress with All legislative powers. Again, judges have ruled in the past that the jurisdiction clause is frivolous and with-out merit, but they will use the same clauses to punish you for regulating commerce. This is truly usurp!

Even if we wanted to we cannot waive our right to be tried in a court with jurisdiction over the subject-matter and instead be tried by a court with zero jurisdiction over the subject-matter to adjudicate the case. That is the Supreme Law!

Remember the "United States District Court" tries to convince that they are the same "District Court of the United States" in title 18 U.S.C. § 3231. "District Court of the United States" was "ordain" and "establish" way before the year 1948 when the "United States District Court" was set up to be in every Union state or State in that year. "United States District Court" and the "District Court of the United States" are not the same courts that is why the have different titles. "United States District Court" is the territorial (legislative) court, this is why they have a "United States District Court" in Puerto Rico and not a "District Court of the United States" because Puerto Rico is a territory and not a Union State or State.

Therefore, since the "United States District Court" is a territorial legislative court the prosecution must prove territorial jurisdiction over a crime in order to sustain a conviction, United States v. White, 611 F2d 531, 536 (CA5, 1980) The government has failed to provide record evidence of any documentation showing ownership by the United States Federal Government over the place where the criminal activity is alleged to have occurred. Territorial jurisdiction and venue are essential elements of any offense and the burden is on the prosecution to prove their existence.

Also, Chief Judge Gina Groh denied my Pro Se Hearing motion so my due process Rights and my sixth Amendment was violated. Chief Judge denial put Defendant Byers under duress and Defendant Byers was forced to take a plea because he couldn't get the legal help that he needed. Chief Judge decision to deny Defendant Byers was not based on the factors of competence. The Supreme court in the case Faretta v. California, U.S. Sup. Ct. 1975. The case established that defendants have a Right to represent themselves, "a judge must allow self-representation if a defendant is competent to understand and participate in the court proceedings. To determine competence, the judge often weighs factors such as: The defendant's age, the defendant's level of education, the defendant's familiarity with English, and the seriousness of the crime with which the defendant is charged.

Defendant Byers is now asking this court to correct the lower court decision and vacate his sentence or re-sentence Defendant to the state of West Virginia.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Timothy T. Byers

Date: 10-22-2020