

IN THE UNITED STATES SUPREME COURT

CASE NO.

20-6421

EX PART,

TIMOTHY JACKSON RICHARDS,

PETITIONER,

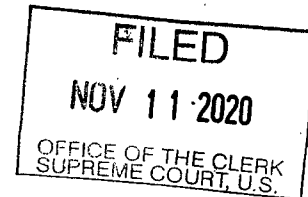
VS.

ORIGINAL

JUDGE HOYT ELLIOTT,

PRESIDING JUDGE,

RESPONDENTS.



WRIT OF HABEAS CORPUS

TIMOTHY JACKSON RICHARDS

209161

D7-3B

HAMILTON AGED & INFIRMED

223 SASSER DRIVE

HAMILTON, ALABAMA 35570

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STATE OF JURISDICTION

The United States Supreme Court, under § 1651(a), give this Honorable Court jurisdiction, in which provides: "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Rule 20, Rules of the Supreme Court of the United States.

STATEMENT OF PARTIES

PETITIONER: The petitioner Timothy Jackson Richards, who at all time will be mentioned in this petition as "Petitioner," is located at the Alabama Department of Corrections Institution of Hamilton Aged & Infirm Facility, located at 223 Sasser Drive, Hamilton, Alabama 35570.

RESPONDENT: The respondent Presiding Judge Hoyt Elliott of the Walker County Circuit Court, who will at all times be mentioned in the petition as "Judge Elliott," is located at 1803 3rd Avenue South West, 3rd Floor, Jasper, Alabama 35502-0004.

RESPONDENTS: Warden Gwendlyn Givens, who is employed with

Alabama Department of Corrections, and is Warden at Hamilton Aged & Infirm Facility, where petitioner is housed. Warden Givens has controll of petitioner.

STATEMENT OF FACTS

1. The petitioner was arrested on March 13th, 1998 at 10:00 P.M., by Investigator Joey Vick for the Walker County Sheriff's Office and placed in the County jail. Magistrate Janis F. Morgan set a \$ 75,000.00 bond, on the charge of murder, violation of Alabama Code Section 13A-6-2, Ala. Code (1975).. (Exhibit A, arrest information)

2. Investigator Joey Vick sworn out a complaint/warrant for the arrest of petitioner on March 16th, 1998 for the charge of murder, violation of Section 13A-6-2, Ala. Code (1975), in front of Circuit Clerk or Magistrate Janis F. Morgan of Walker County, Alabama. (Exhibit B, complaint/warrant)

3. Carl Stovall, formen for the Walker County Grand Jury Spring term, who signed a "TRUE BILL" indictment with thirteen (13) other grand jurors, to charge petitioner with intentional murder, under the statute of Section 13A-6-2, Ala. Code 1998. This indictment was filed in Court on March 27th, 1998, but was not signed by a circuit judge until April 7th, 1998.

Indictment had three witnesses who were at the grand jury, they were (a) Ralph Williams investigator, Walker County Sheriff's Office; (b) Joey Vick investigator, Walker County Sheriff's Office; (c) Frank Cole investigator, Walker County District Attorney's Office. (Exhibit C, indictment CC-1998-142).

4.. Petitioner was present in open court for his arraignment, accompanied by Attorney C. Umstead for appointed attorney Glenda Hudson. Petitioner and attorney was served with a copy of the indictment, nature, substance & consequences being explained to petitioner. (Exhibit D, arraignment)

5. Chief Assistant District Attorney for Walker County, Alabama, filed a "MOTION TO DISMISS" into the Circuit Court to dismiss the indictment on the basis that petitioner had been taken back to the Grand Jury and indicted on Capital Murder. This motion was dated January 9th, 1999, and signed by Bill Adair. Circuit Judge Hugh Beard (deceased), granted said motion on February 9th, 1999, as witnessed. (Exhibit E, motion to dismiss)

6. Rebecca C. Cox, foreman for the Walker County Grand Jury Fall term, who signed a "TRUE BILL" indictment with seventeen (17) other grand jurors, to charge petitioner with Capital murder, a violation of Section 13A-5-40(a)(14), Ala. Code (1975).

This indictment was filed in Court on February 2nd, 1999 by the Circuit Court Clerk Vinita B. Thompson. The indictment had a new witness named Neal Cook and the investigator Joey Vick at the grand jury hearing. (Exhibit F, indictment)

7. Circuit Clerk Vinita B. Thompson issued a "writ of arrest - grand jury indictment" for the arrest of petitioner, because petitioner was out on the \$ 75,000.00 bond on the original indictment. This writ made the statement that there was "NO BOND." (Exhibit G, writ of arrest)

8. Petitioner's two attorney's Ronald Sandlin (deceased) and Robert Sanford (deceased), were in court for petitioner's arraignment on this Capital Murder indictment, which petitioner plead not guilty. This arraignment took place on April 12th, 1999. (Exhibit I, arraignment)

9. Case action summary sheet, run date of April 14th, 1998 clearly shows that the original indictment was released on March 27th, 1998 and then it was dismissed by motion of the chief assistant district attorney on February 9th, 1999, granted by Circuit Judge Hugh Beard (deceased).

10. Petitioner has filed numerous Rule 32 petition's, which the original sentencing court will not adjudicate, especially on this

issue. The Circuit Court just sits on the issue, because it was brought under "FRAUD" of the court.

STATEMENT OF ISSUES

WHETHER THE SECOND GRAND JURY MAY NOT FURTHER INVESTIGATE A CASE
ONCE AN INDICTMENT HAS BEEN ISSUED?

YES!

ARGUMENT

11. Petitioner will argue that the January, 1999 Grand Jury of Walker County, Alabama did not have jurisdiction to return a second indictment, upon the grounds that there was a pending indictment on the case. Petitioner's argument in this brief to this Honorable Court would be a Constitutional violation that, it is well established that the grand jury's role in a prosecution on a specific crime terminates upon returning a true bill of indictment for that crime. Petitioner will assert that the State presented a new witness (Neal Cook), at the second grand jury proceeding that resulted in the second indictment and used it to gather new information -- a function -- that is outside the scope of a grand jury's power. See Rule 12.3(d), Ala.R.Crim.P.

12. Rule 12.3, Ala.R.Cr.P., sets out the powers and duties of

an Alabama grand jury, including the power and duty to inquire into indictable offenses. However, the power of a grand jury has its limits, as noted by the Committee Comments to Rule 12.3, which quote with approval the following statement from Fields v. State, 121 Ala. 16, 17, 25 So. 726, 727 (1899): 'The functions and powers of the grand jury as to the indictment so returned are ended when the presentment is made and the indictment or true bill is received by the court.' (Emphasis added [in Williams].) Thus, although a district attorney may continue to investigate a crime until the very time of the trial, once an indictment has been returned by a grand jury the function of that grand jury is complete as to that crime and the grand jury cannot be used as a means for further investigation. Stated otherwise, 'it is improper to utilize a Grand Jury for the sole or dominating purpose of preparing an already pending indictment for trial.' United States v. Dardi, 330 F.2d 316, 336 (2d Cir.), cert. denied, 379 U.S. 845, 13 L. Ed. 2d 50, 85 S. Ct. 50 (1964). Ex parte Williams, 710 So.2d 1350, 1354 (Ala. 1997).

13. The exhibits to this Honorable Court, will clearly express the facts of evidence presented herein, that the State prosecution did gather new information about the case after a true bill indictment was returned in the case. The second

indictment charge a new charge of Capital Murder, that with the original indictment for intentional murder, would be considered standing alone not a capital offense. Ex parte Gentry, 689 So.2d 916 (Ala. 1996)

14. As Exhibit F will show, there is a co-defendant, a case number out of another county in Alabama, and charges a new charge for aiding and abetting another person. This evidence is enough to consider whether the grand jury had jurisdiction to return a new indictment or not.

15. The record before this Honorable Court of the United States will clearly show that the Chief Assistant District Attorney, knew or should have known that "it was improper to utilize a grand jury for the sole purpose or dominating purpose of preparing an already pending indictment for trial. United State v. Dardi, 330 F.2d 316,336 (2nd Cir. 1964).

16. It has been established for decades that the grand jury's role in the prosecution of a specific crime terminates upon returning a true bill of indictment for that crime.

17. In the administration of the criminal law the powers and duties of the grand jury are prescribed by the statutes. It is that branch of the court, when organized under the statute, in

which all criminal prosecutions by indictment must originate. It puts in motion the organized machinery for the trial of persons charged with crime by presenting in open court in the name of the State a complaint, which must be endorsed a true bill. **By this means the court acquires jurisdiction of the particular case.** The functions and powers of the grand jury as to the indictment so returned are ended when the presentment is made and the indictment or true bill is received by the court. Fields v. State, 121 Ala. 16, 17, 25 So. 726, 727 (1899).

REASON FOR NOT MAKING APPLICATION TO DISTRICT COURT

18. Petitioner will show his previous filing in the Federal Courts, that will show that he has been trying to be heard and no court will hear his claims.

19. Richards has filed three previous federal habeas petitions. On November 7, 2007, Richards filed his first federal petition for a writ of habeas corpus. See Richards v. Rowell, Case No. 6:07-cv-02210-WMA-PWG, doc. 1. On July 10, 2008, the magistrate judge entered a report recommending the petition be denied as untimely. Id., doc.11. On July 29, 2008, the district judge adopted and accepted the report and recommendation, denying the petition, id., docs. 13 & 14. Richards did not appeal.

20. On March 3, 2010, Richards filed his second § 2254 habeas petition. See Richards v. Cummins, Case No. 6:10-cv-00899-IPJ-HGD, doc. 1-3. On May 5, 2010, the magistrate judge entered a report recommending the petition be denied as time-barred. Id., doc. 2. On May 17, 2010, the district judge adopted and accepted the report and recommendation, denying the petition. Id., doc. 4. On November 10, 2010, the Eleventh Circuit denied Richards' motion for a certificate of appealability. Id., doc. 10. On February 16, 2017, Richards filed his third § 2254 habeas petition. See Richards v. Gordy, Case No. 5:17-cv-00253-LSC-HGD, doc. 1. On March 15, 2017, the magistrate judge recommended that the petition be summarily dismissed for failure to make a requisite showing for consideration of claims presented in a successive petition that were not raised in a prior petition, failure to obtain authorization to file a successive petition from the Eleventh Circuit, and as time-barred. Id., doc. 5. (citing 28 U.S.C. §§ 2244(b)(2), 2244(b)(3)(A), and 2244(d)). On April 14, 2017, the district court adopted and accepted the magistrate judge's recommendation and dismissed the petition. Id., docs. 9 & 10. Richards did not appeal.

21. On April 22, 2016, Richards filed an application for leave to file a successive habeas corpus petition pursuant to 28 U.S.C.

§ 2244(b). (Doc. 12-1). On May 12, 2016, the Eleventh Circuit denied the application. (Doc. 12-2). On May 1, 2017, Richards filed a second § 2244(b) application for leave to file a successive habeas corpus petition. (Doc. 12-3). On May 16, 2017, the Eleventh Circuit denied the application. (Doc. 12-4). On February 7, 2019, Richards filed a third application for leave to file a successive habeas corpus. (Doc. 12-5). On February 28, 2019, the Eleventh Circuit denied the application. (Doc. 12-6). July, 2020 Richards filed fourth application for leave to file a successive habeas corpus. (Doc. 12-5). On August 6, 2020 the Eleventh Circuit denied the application. (Doc. 20-12807).

22. The above is the reason why petitioner has not returned to the District Court, because the Eleventh Circuit of Appeals will not grant me a second chance to proceed in another Habeas Corpus.

CONCLUSION

23. WHEREFORE, the facts presented herein this habeas corpus, that asserts that the second grand jury would not have had jurisdiction to return a second indictment for higher charge, on the ground that a grand jury had returned a intentional murder indictment earlier on March 27th, 1998.

24. Seeing that the State prosecution did in fact, use the

second grand jury to investigate a pending indictment to gather new witnesses, evidence, ect. The dismissing of the first indictment for intentional murder should have never took place. Bring a second indictment for capital murder would not be viable because the Chief Assistant District Attorney knew he could not investigate a pending indictment.

25. Petitioner, requests that this Honorable United States Supreme Court, please accept this petition, and rule on the merits thereof and execute a dissent that would be complacent with the "LAW OF THE LAND." Petitioner, requests in way of relief that this sentence for life and conviction be terminated and petitioner released accordingly to the adjudication of this habeas corpus.