

20-6818

IN THE SUPREME COURT OF THE UNITED STATES

_____ TERM, ~~20~~ 20____.

ROY LEE RUSSELL, SR.
PETITIONER 081075

ORIGINAL

VS.

NO. _____

DEXTER PAYNE, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

ROY LEE RUSSELL SR.
(YOUR NAME)
880 E. Gaines St
(ADDRESS)
Dermott, AR. 71638
(CITY, STATE, ZIP CODE)
N/A
(PHONE NUMBER)

FILED
DEC 04 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

IF, Arkansas Supreme Court, Chief Justice failed to comply with the Arkansas Constitution and Arkansas Supreme Court's Administrative Order No. 16, Violates the Petitioner's due process right to Fundamental Fairness, by assigning a Special Retired Judge to preside over the petitioner's Jury trial, when a Circuit Judge elected by the people of that Judicial district is available?

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:

ARKANSAS ATTORNEY GENERAL LESLIE RUTLEDGE.

TABLE OF CONTENTS

Page

OPINIONS BELOW

1,

2,

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

3,

STATEMENT OF THE CASE

4,

REASONS FOR GRANTING THE WRIT

5,

CONCLUSION

6,

INDEX TO APPENDICES

APPENDIX A *Arkansas Supreme Court's Opinion*

APPENDIX B *Circuit Court of Chicot County, AR, Opinion*

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

OTHER

U.S. Const. Amnt 14.
Article 1,
Article 2,
Ark. Const amend 80

3/20/16

CASES

<u>Daniels v. Williams, 474 U.S. 327 (1986)</u>	6
<u>Ex parte Royster, 6 Ark. 28 (1845)</u>	2
<u>Ex parte Watkins, 28 U.S. (3. Pet.) (1830)</u>	3
<u>Frank v. Mangum, 237 U.S. 309 (1915)</u>	3
<u>Garrison v. Kelley, 2018 Ark. B</u>	6
<u>Jones v. Kelley, 2020 Ark. 338</u>	6
<u>Jones v. Kelley, 2020 Ark. 290</u>	6
<u>Mister v. Kelley, 2018 Ark. 187</u>	6
<u>Morgan v. Kelley, 2019 Ark. 189</u>	6
<u>Russell v. Payne, 2020 Ark. 377</u>	4, 5
<u>Babion v. Kelley, 2020 Ark. 375</u>	6
<u>Smith v. Right, 2015 Ark. 189</u>	5
<u>Stephenson v. Kelley, 2018 Ark. 143</u>	6
<u>Trammel v. Kelley, 2020 Ark. 342</u>	6
<u>West v. Belin, 314 Ark. 40</u>	6
<u>Watkins v. Kelley, 2018 Ark. 215</u>	6
<u>Washington v. Glucksberg, 512 U.S. 70 (1997)</u>	6
<u>Waddle v. Sargent, 313 Ark. 539 (1993)</u>	6
<u>STATUTES AND Rules</u>	
<u>Ark. Cod. Ann. § 16-112-103 (2) (1)</u>	3
<u>Ark. Cod. Ann. § 16-112-102 (2)</u>	3
<u>Ark. Code Ann. § 16-13-903</u>	3
<u>Ark. Code Ann. § 16-17-210</u>	4

IN THE SUPREME COURT OF THE UNITED STATES

ROY LEE RUSSELL SR.
vs. DEXTER PAYNE
Petitioner
Respondent.

_____ TERM, 20__

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 N/A ; or,
- has been designed 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 N/A ; or,
- has been designed 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 A to the petition and is

- reported at 2020 Ark. 377 ; or,
- has been designed for publication but is not yet reported; or,
- is unpublished.

The opinion of the Circuit court appears at Appendix B to the petition and is

- reported at N/A ; or,
- has been designed 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 N/A.

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 N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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 Nov. 19, 2020. A copy of that decision appears at Appendix A.

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

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A-N/A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 9, Clause 2 of the United States Constitution provides that "the privilege of the Writ of habeas Corpus shall not be Suspended, unless when in cases of rebellion or invasion the public Safety may require it". Similarly, Article 2, Section 11 of the Arkansas Constitution provides that "the privilege of the Writ of habeas Corpus shall not be Suspended; except by the General Assembly, in case of rebellion, insurrection or invasion, when the public Safety may require it".

At Common law, both the federal and Arkansas habeas provisions were understood to mean that habeas relief would only be available when the Commitment Order is invalid on its face or when the Court from which the Commitment Order issued lacked Jurisdiction to issue such an order. Ex parte Watkins, 28 U.S (3 Pet.) 193, 7 L.Ed 650 (1830); Ex parte Royster, 6 Ark. 28 (1845).

However, in 1876, Congress passed legislative enactment prescribing the manner by which Article III Courts shall address petition for the Writ. See Acts of February 5, 1867 (14 Stat. at L. 385, Chap. 28). (Application for Writ of habeas Corpus shall be made to the Court, or Justice, or Judge authorized to issue the same, by Complaint in Writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. In 1915, the United States Supreme Court interpreted these provisions to expand the parameters under which the Writ for habeas Corpus will lie. Frank v. Mangum, 237 U.S. 309, 330-31, 35 S.Ct. 582, 59 L.Ed. 969 (1915). There, the Court stated:

The effect [of Acts 1876] is to substitute for the bare legal review that seems to have been the limit of judicial authority under the common-law practice, and under the act of 31 Car. II. Chap. 2, a more searching investigation, in which the applicant is put upon his oath to set forth the truth of the matter respecting the cause of his detention, and the Court, upon determining the actual facts, is to dispose of the party as law and justice require.

See also, Ark. Code Ann. § 16-112-103(a)(1); The Writ of habeas Corpus shall be granted forthwith by any of the officers enumerated in § 16-112-102(a) to any person who shall apply for the Writ by showing, by affidavit or other evidence, probable cause to believe he or she is detained without lawful authority, etc....

STATEMENT OF THE CASE

The factual background is stated in Russell v. Payne, 2020 Ark. 377 (Appendix - A). The question that permeates all aspects of this case is... Why a Special Judge, TED CAPEHEART, was assigned to preside over the petitioner's Jury trial, on August 7, and 8, 2013, when duly elected Circuit Judges, who had not recused, was sitting in the district.

Arkansas Const. art. 7, § 13 provides:

The State shall be divided into convenient Circuits, each Circuit to be made up of contiguous Counties, for each of which Circuits a Judge shall be elected, who during his continuance in office, shall reside in and be a Conservator of the peace within the Circuit for which he shall have been elected.

Further, Ark. Code Ann. § 16-13-903 (Repl. 1994) provides that Voters of the Tenth Judicial district (which includes Desha County Circuit Court) must elect the Judges who preside over all cases arising within the district. Finally, Ark. Code Ann. § 16-13-210 (Repl. 1994) provides in part:

Any Circuit Judge of this State, at any time while mentally and physically competent and physically present in the geographical area of the judicial district which he serves as Judge, may hear, adjudicate, or render any ... appropriate order with respect to any cause or matter pending in any Circuit Court over which he presides. Therefore, there was no basis for assigning an Special Judge (Ted Capeheart) to hear a matter which other Tenth Judicial Circuit Judges was capable of presiding over, and, in fact, elected to preside over. The Citizens of the Tenth Judicial District have elected Circuit Judges to hear cases brought forward in Desha County, Ark.

To deny these Circuit Judges their Constitutional authority over any proceeding in this unprecedented manner is to impermissibly deprive these Citizens of their voice in the election of the judicial office for their district.

Administrative Order NO. 16 (III) (A) sets forth as a basic requirement for appointing a Special Circuit Judge that "all the Judges in the Circuit have recused." The record is silent on this fundamental requirement. Because the Chief Justice failed to comply with the Arkansas Constitution and Administrative Order No. 16, appointment of a retired Judge was unlawful, and Mr. Capeheart had no authority to hear the petitioner's case.

REASONS FOR GRANTING THE PETITION

The specific reason why this petition should be granted, is for reasons pointed out in Josephine Linker Hart, Justice, dissenting opinion. See Russell v. Payne, 2020 ARK.377, (Hart, J; dissent) (Appendix). Moreover, the Arkansas Supreme Court's majority decision and opinion in Russell v. Payne, Supra, does not support the Will of the people.

This case raises disturbing question about the nature and extent of the Constitution right that protect State citizens from the arbitrary and arguably lawless acts of the Arkansas Supreme Court's Chief Justice. Russell v. Payne, Supra; holding, stands for the proposition that the Arkansas Supreme Court, through the office of the Chief Justice, can make an assignment of a judge foreign to a district upon the most casual and offhanded of request, or even in the absence of any request at all, without regard to the status of the duly elected judges serving in the County and district, and such assignment will be a valid exercise of the authority under Arkansas Const. amend. 810, 4, and standing administrative order.

Certainly, the Arkansas Supreme Court's Chief Justice, ought not contemplate wielding its considerable power in this fashion in the future, and just as certainly it should not do so in this instance. The citizens of the Tenth Judicial District have elected circuit judges to hear cases brought forward in Desha County, ARK. To deny duly elected judges this Constitutional authority over any proceeding in this unprecedented manner it to impermissibly deprive these citizens of their voice in the election of the judicial office for their district. See e.g., Smith v. Wright, 2015 Ark. 189, 461 S.W. 3d 687 (holding: "When a circuit judge elected by the people of that judicial district is available, he or she must serve before another judge may be appointed").

Thus, in Russell v. Payne, Supra, the Arkansas Supreme Court's Chief Justice lacked authority to appoint a special judge unless and until all the judges in the district have articulated their inability to serve. A special judge appointed by the Chief Justice before that point in time is without proper jurisdiction to act, see Russell v. Payne Supra, Hart, J (dissent).

Because the Arkansas Supreme Court's Chief Justice did not have the authority to assign Judge Ted Capenart he did not have jurisdiction to hear the matter, or any matter in Desha County, ARK. see Waddle v. Sargent, 313 Ark. 539, 855 S.W. 2d 919 (1993). The general rule is that a judgment entered without jurisdiction of the person or the subject matter or in excess of the Court power is Void. West v. Belin, 314 Ark. 40, 858 S.W. 2d 97 (1993).

The United States Supreme Court, have held the provision that "[n]o State shall... deprive any person of life, liberty, or property, without due process of law. U.S. Const., Amdt. 14, § 1, to guarantee more than fair process. Washington v. Glucksberg, 521 U.S. 702, 719 (1997); and to cover a substantive sphere as well, barring certain government action regardless of the fairness of the procedures used to implement them. Daniels v. Williams, 474 U.S. 327 (1986).

Generally speaking, the petitioner is an incarcerated citizen and thus have a constitutional right to be fairly tried and found guilty in a court of competent jurisdiction. The substantive component of the Due process clause specially protects these fundamental rights and liberties which are objectively, deeply rooted in the Nations history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. Id. at 521 U.S. 702, 719 (1997).

Governmental action which inflicts upon the citizen any grievous wrong is unconstitutional under the Due Process Clause of the Fourteenth Amendment if it is utterly lacking in rational basis or fundamentally unfair for some other reason. All cases cited below illustrate various of problems with Arkansas Supreme Court's "majority opinion, ignoring similarly situated petitioner's Due process rights, Hart, J., filed dissenting opinion. Stephenson v. Kelley, 2018 Ark. 143; Watkins v. Kelley, 2018 Ark. 215; Mister v. Kelley, 2018 Ark. 187; Garrison v. Kelley, 2018 Ark. 8; Morgan v. Kelley, 2019 Ark. 189; Jones v. Kelley, 2020 Ark. 338; Jones v. Kelley, 2020 Ark. 290; Babion v. Kelley, 2020 Ark. 375; and Trammel v. Kelley, 2020 Ark. 342.

There being no doubt (Hart, J.), dissenting opinion, cited herein finding the Arkansas Supreme Court's majority opinion in Writ of habeas Corpus proceeding troubling and failing to safeguard the liberty of all person within the jurisdiction of the United States against infringement through any violation of the Constitution or a law or treaty established within.

CONCLUSION

At every stage of these proceedings, the petitioner has protested the violation of the petitioner's Constitutional right of due process. A person ought not be put to considerable trouble and expense in claiming what the United States Constitution already guarantees him. The petition for a Writ of Certiorari should be granted.

Respectfully submitted

By DR

Date: 12-3-2020