

20-7056

No. _____

Supreme Court, U.S.
FILED

JAN 25 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Faramarz Mehdipour — PETITIONER, *pro se*
(Your Name)

vs.

State of Oklahoma — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Faramarz Mehdipour

(Your Name)

DOC 121331 5-N Jacc

216 N. Murray

(Address)

Helena, OK 73741

(City, State, Zip Code)

(Phone Number)

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Feb - 3 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. The Oklahoma Supreme Court's October 26, 2020 ORDER denying his petition for writ of habeas corpus is based upon the bare allegation that Petitioner has had three or more cases dismissed for frivolous or malicious. Should the Oklahoma Supreme Court provide a list of the cases they claim to be frivolous or malicious? And should they afford Petitioner opportunity to cure whatever deficiency they claim?
2. Is the state of Oklahoma authorized to prosecute and incarcerate Petitioner for a non-existent crime for which Petitioner was not put on notice to defend against?
3. Does the fact that Oklahoma refuses to reconcile, or at least rule on the merits, two jurisdictional contradictions, or deficiencies, render Petitioner's conviction and sentence unconstitutional?

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Booth v. State, 398 P.2d 863 (Okla. Crim. 1965)	
Price v. State, 598 P.2d 668 (Okla. Crim. 1979)	
Dodd v. State, 879 P.2d 822 (Okla. Crim. 1994)	

STATUTES AND RULES

22 Okla. St. § 303 (Felony Information)

21 Okla. St. §§ 42-44 (Attempt to commit a crime—General Attempt)

OTHER

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APPENDIX E Judge Freeman's ORDER (July 2, 1996) ruling that the Information was never amended.

APPENDIX F 1996 Judgment + Sentence

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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 is unpublished.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 9 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 _____.
2

[] 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 _____.
3

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 Oct. 26, 2020.
A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
4

[] 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 _____.
5

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 14 (1) (F)

1. Oklahoma Constitution, Art. 2, § 17 ("... No person shall be prosecuted for a felony by information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination")
2. U.S. Constitution, amend ~~XIV~~, § 1 (Due Process)

STATEMENT OF THE CASE

Since his conviction in 1994, Petitioner has continuously and unrelentingly asserted in every court and forum imaginable how he was tried, convicted, and sentenced by a state court which did not, and does not, have jurisdiction to do so. Beginning with Direct Appeal, and all thereafter, no court has addressed the jurisdictional merits of Petitioner's claims; only bare statements in support of the state, with no discussion or reference to Petitioner's claims, side-steps, or procedural rulings supporting the state.

Petitioner's two, very serious jurisdictional claims must still be alive because no court has ever addressed them, choosing to ignore the merits thereof all the way back to a properly filed Direct Appeal, and continuously thereafter. Surely the courts cannot ignore a claim, and then apply procedural bars!

which is why Petitioner moves This Court to Order the Trial Court to address the two jurisdictional claims:

First, the State and the Court proceeded on a felony Information which, under existing law at the time, failed to fairly put Petitioner on notice of what would be required to defend against. Secondly, Petitioner was never afforded a Preliminary Hearing, which is Constitutionally mandated in Oklahoma. Ironically, a preliminary hearing would have, in all likelihood, cured the ambiguities in the Information.

Backdrop and Discrimination

Before turning to the two claims Petitioner has exhaustively pursued over the past years, the claim Petitioner cannot pursue (for lack of proof, only) explains why such extremes have been employed to avoid recognition and resolution of the obvious and fatal infirmities in the criminal action against Petitioner.

It is not any innate unwillingness to cure infirmities in their cases that set the Oklahoma County and state legal and judicial establishments down their long road of belligerence. No. What the establishment was having

none of was (in their view) some uppity Iranian dissident making demands regarding their Information and process.

Add the insult that Petitioner had—just weeks before the current matter was initiated—overcome another spurious prosecution with an acquittal, and it was just too much for the establishment (which in the past two decades has been proven systemically corrupt) to handle.

Petitioner and his brother are not very well liked by the Oklahoma legal, judicial, and political establishment, and has been the target of many unjustified attacks. They are Iranian. Successful in various business ventures. Political dissidents.¹

Other than the circumstances surrounding this case, including attacks upon Petitioner and his family, objective discrimination cannot be proven—the discriminatory actors have done a good job seeing to that. But anybody in the

1. The Mehdipour brothers' father worked for the U.S. military and intelligence prior to the 1980s' revolt that overthrew the then backed U.S. Iranian government; thus having to flee to the U.S.

subjective neighborhood cannot help but smell the stench.

Defective Information

The State, facing 1) possible fatal flaws with their felony Information (Appendix B); as well as 2) the language in the charged statute for Intimidating a state witness (21 Okla. St. § 455); 3) further complicated by the fact that the witness did not testify (under Oklahoma Law, losing his character as a "witness"); 4) therefore, under Oklahoma Law, making it a "legal" and "factual impossibility" for Petitioner to "intimidate" him as a "state witness."

The state attempted to hedge by convincing the Clerk that the charge had been "Amended" to "Attempt" to Intimidate a state witness, causing the Clerk to change the charge on the Docket. When Judge Freeman held a hearing on the matter, he determined the Amendment never occurred. (Appendix E)

- 21 O.S. 2011 § 42 attempt
- Instruction No. 4-8 OUT-CR(3d) attempt to kill
- *Booth v. State*, 398 P.2d 863 (Okla. Crim. 1965)
- *Price v. State*, 598 P.2d 668 (Okla. Crim. 1979) Aug 1, 1979
- *Dodd v. State*, 879 P.2d 822 (Okla. Crim. 1994) July 29, 1994

(1965) * *Booth*: I could not be convicted of attempt to commit an offense which would not have been an offense even if I had been successful. (stolen property recovered by police and then turned over to I by police ... property lost it's character as stolen property.)

(distinction
between a
factual and
a legal
impossibility
of consum-
mating the
intended
offense)

"If the whole is not criminal, the part cannot be." at 872

HNS "where there is a "legal impossibility" of completing the
at 870 substantive crime, the accused cannot be successfully
charged with an attempt" ...

... "whereas in those cases in which the "factual impossibility"
situation is involved, the accused may be convicted of an
attempt" at 870

76 O.T.S. § 5, A.7 In 1965, Oklahoma "statute provide[d] that I must attempt to
Receiving stolen
Goods
at 867 knowingly receive stolen property before a conviction will stand.
How could one know property to be stolen when it is not?
The statute needs to be changed so it would be less favorable
to the criminal." at 872

(1979) * *Price* impliedly acquitted --- Preliminary Hearing ---
Amended Information to Habitual Criminal on day of Trial

at 669 [4]
cannot be
retried of
...
former
jeopardy

(1994) * *Dodd* HN [10, 11] Attempt: The state must prove three elements:
(1) the intent to commit a specific crime,
(2) the performance of an overt act toward the commission
of that crime, and
(3) the failure to complete that crime.

After being briefed, and holding a May 28, 1996 hearing, Judge Freeman rejected the state's claim of having amended the Information.

In Appendix "C", and oral argument during the May 28, 1996 hearing, the state argued how she amended the charge against Petitioner from "Intimidating a state's witness" to "Attempting" to Intimidate a state's witness. She argued how she amended the charge by "interlineation" on her copy of the Information in the "prosecutor's notes." (Can't make this stuff up.) Appendix "D" is the doctored-up copy of the Information she provided as proof.

Appendix "E" is Judge Freeman's ORDER, reflecting how he was not buying Madam Prosecutor's story.

"The Information in this case was never amended on the alleged date of April 12, 1993, to the charge of attempting to [] intimidate a witness."

(emphasis added)

On Direct Appeal, the Oklahoma Court of Criminal Appeal's (OCCA) held as a matter of first impression that "Attempt" is included in the statutory language of 21 Okla. St. § 455 (Intimidating a State's Witness). (Appendix "I", OCCA opinion)

Be what may: At the time of Petitioner's trial, it was widely and properly (up to that point) that any "attempt" to committ a crime must be co-charged with Oklahoma's General Attempt statute. (21 O.S. §§ 42-44), as panned-out by Oklahoma's statutory and case law at the time. This never happened in Petitioner's case.

And the OCCA did not remand with opportunity to defend against their *ex post facto* new law.

To date, Petitioner's diligent and exhaustive efforts notwithstanding, nothing has been done to cure this injustice. Likewise, nothing has been done to cure the fact that, despite Petitioner's efforts, he has never been afforded a preliminary as required by the Oklahoma Constitution.

Preliminary Hearing

Article 2, Section 17 of the Oklahoma Constitution mandates:

No person shall be prosecuted for a felony by Information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination.

Oklahoma Law is clearly established that waiver of preliminary hearing must be "knowing and voluntary." Frazier v. State, Okla. Crim. App. 654 P.2d 639 (1982)

There has been no Preliminary Hearing in Petitioner's case, nor has he ever waived his right to a preliminary hearing. No Hearing, no waiver.

Falsely claiming the Information had been amended was the State's second fraud upon the Court. Her first fraud upon the Court was a fraudulent "Bind Over / Waiver Form." (Appendix "D")

Again, Madam Prosecutor submitted a fraudulent form and assertion to the Clerk, who took her word for it's legitimacy, and entered it on the Docket and into the Record. Petitioner was not in court on the day the form was entered, so there was no "knowing and voluntary" assessment. Petitioner's then attorney, Irvin Box, disavows the form, stating how the semblance of his initials on the form, though well done, are not his.

Additionally, Judge Parr, whose name appears on the form as the "Preliminary Court" disavows the form. (Appendix C, sworn statement of Judge Jack R. Parr, notarized 10th day of June, 2003).

Throughout the progress of the case, Petitioner was so adamately demanding a Preliminary Hearing that he was removed from the courtroom on several occasions, and once even had his bond revoked! That's right: Petitioner's bond was revoked because he was demanding a preliminary hearing.

A little irony:

1. Madam Prosecutor's Bind Over / Waiver Form lists the "charge" as "Intimidating state's witness." No mention of "Attempt."
2. A preliminary hearing would have precluded the conflict over the charges.

On Direct Appeal, the OCCA simply made the bare assertion that Petitioner waived Preliminary Hearing.

(Appendix G) The OCCA made no mention of Petitioner's claim otherwise, though they were well aware of the conflict. The OCCA went far out of the way to side-step and white-wash Petitioner's claims, but much discussion about their new ruling of law.

One OCCA Judge (Lane, concurring in Results) did criticize the Prosecutor's handling of the matter.

REASONS FOR GRANTING THE PETITION

(b) (1) (A)

Petitioner, equity, and justice all deserve their day in court, which is certain to reveal how the Trial Court was, and is, fatally devoid of jurisdiction.

Therefore, this Court must order the Trial Court to - in the first instance - address the merits of Petitioner's two jurisdictional claims; and to do so without ignoring facts and argument, side-stepping, evasion, or other tactics to avoid full consideration of the merits of the claims.

Additionally, the Oklahoma Supreme Court's October 26, 2020 ORDER is based upon the bare allegation that Petitioner has had three (3) or more cases dismissed as frivolous or malicious. What cases? Petitioner has never seen a list of three such cases, and the Oklahoma Supreme Court provides none. (Appendix "A")

Despite exhaustive efforts, the two jurisdictional shortcomings, herein, have never been remedied. The state ignores or side-steps every effort to cure the constitutional (Okla. and U.S. due process) violations.

This honorable Court is Petitioner's only hope for equity and justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Faraz M. Hossi

Date: 1, 20, 21