

20-7064

IN THE
SUPREME COURT OF THE UNITED STATES
DOCKET NO: _____

Supreme Court, U.S.
FILED
JAN 15 2021
OFFICE OF THE CLERK

JUSTIN LEE PERRY
Petitioner

Vs.

STATE OF NORTH CAROLINA
Respondent

.....
Petition For A Writ Of Certiorari To The North Carolina

Supreme Court For The Twenty Sixth District
.....

PETITION FOR WRIT OF CERTIORARI

JUSTIN LEE PERRY, PRO, SE

In care of:

Justin Lee Perry
Orange Correctional Center
P.O. Box 1149
Hillsborough, N.C. 27278

QUESTION PRESENTED

1. Since the N.C. Constitution guarantees indictment by a grand jury for felony charges, does the N.C. Supreme Court decision conflict with Plyer v. Doe, Ex-Parte Bain v. U.S., U.S. v. Gaudin and the fifth, sixth, and fourteenth amendment of the U.S. Constitution by allowing the State to indict the Petitioner for a felony charge, then change the nature of the offense charge during trial without resubmission to the grand jury, resulting in the Petitioner being convicted of a charge that is not the law of the land?

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NO.

Twenty Sixth District

SUPREME COURT OF THE UNITED STATES

JUSTIN LEE PERRY)
Petitioner) From N.C. Supreme Court
)
Vs.) **NO. 250P17-3**
)
STATE OF NORTH CAROLINA)
Respondent)

PETITION FOR WRIT OF CERTIORARI

NOW COMES, the petitioner Justin Lee Perry, respectfully petitions the United States Supreme Court to issue its Writ of Certiorari to review the Judgment Order of the N.C. Supreme Court dated 5th day of November, 2020 which affirmed the denial by the Court of Appeals dated 30th day of September, 2020 Docket # P20-505, which upheld the judgment order of the Honorable Orlando F. Hudson, Jr. Senior Resident Judge presiding, Durham County Superior Court dated 18th day of August, 2020 Docket # 20CRS0001142, which denied the Petition For Writ of Habeas Corpus.

OPINIONS BELOW

The Opinions of the Durham County Superior Court, Court of Appeals and N.C. Supreme Court pursuant to (App.I Exhibits A-C)

JURISDICTION

The Judgment of the N.C. Supreme Court was entered the 5th day of November, 2020. The Jurisdiction of this Court is invoked under 28 U.S.C § 1257. This petition is timely filed pursuant to 28 U.S.C § 2101 (C).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: “No person shall be held to answer for an infamous crime, unless on a presentment or indictment of a Grand Jury, nor be deprived of life, liberty or property without due process of law.”

The Sixth Amendment to the United States Constitution provides in relevant part: “In all criminal prosecutions the accused shall enjoy the right to a public trial to be informed of the nature and cause of the accusation.”

The Fourteenth Amendment to the United States Constitution provides in relevant part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.”

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STATEMENT

The Petitioners Writ of Habeas Corpus was filed by the office of the Durham County Clerk of Superior Court on August 3, 2020 challenging Trial Court jurisdiction over the verdict rendered. The Petitioner contended he is being deprived of liberty without due process of law because of being held to answer for a crime not present on the indictment, neither was it the law of the land depriving the petitioner of a final judgment by a competent tribunal whereby his fifth, sixth and fourteenth Amendment to the U.S Constitution was violated (App. II, pg2 subsection 4, Writ of Habeas Corpus). The senior resident Judge of Durham County Superior Court denied the Writ of Habeas Corpus and the Court of Appeals and Supreme Court of NC. upheld the decision without summary of disposition. All Courts mentioned including the U.S. Supreme Court have a copy of the Writ of Habeas Corpus outlining the subject matter which gave rise to the violation of the U.S. Constitution, and is timely and properly raised in this petition as a federal question of law.

The probative facts shows the Petitioner was bound over to the Superior Court and indicted by the Mecklenburg Grand Jury on May 4, 2015 for "Felonious Speeding To Elude Arrest" pursuant to N.C.G.S 20-141.5 (B) (App. III, Exhibit B). The Petitioner was brought to his pre-trial hearing where the prosecutor changed the nature of the offense charge to "Felonious Fleeing To Elude Arrest", when asking the Court for a joinder of offenses (App. III, Exhibit B). Next during trial the prosecutor changed the nature of the offense charged by instructing the jury to find the Petitioner guilty of "Felonious Fleeing To Elude Arrest" (App. III, Exhibit D). Defense counsel then alerted trial court of the error during his closing remarks by stating "What he showed you was incorrect. Speeding to Elude arrest, that's the charge. That's the way the

law is written. It's not flee to elude arrest." (App. III Exhibit C, T.p 20-25 pg.339,340) Instead of trial court correcting the error, the Judge during jury instructions erroneously informed the jury the petitioner can be found guilty of "**Felonious Operation of a Motor Vehicle to Elude Arrest**" (App. III, Exhibit E, T.p.12,13 pg.370, T.p.16,17 pg.371) The Jury then under the directive of the State found the petitioner guilty of this questionable charge (App. III, Exhibit F, pg.393,394).

REASON FOR GRANTING THE PETITION

I. The N.C. Supreme Court ruling is flawed because it conflicts with Plyer v. Doe, Ex-Parte Bain v. U.S., U.S. v. Gaudin and the fifth, sixth and fourteenth Amendment of the U.S. Constitution.

"The fourteenth Amendment's equal protection clause extends to anyone, citizen or alien who is subject to the laws of a State" (*Plyer v. Doe*, 457 U.S. 202,72 L.Ed.2d 786, 102 S.Ct 2382 (1982)). It is well established that U.S. citizens are subject to the laws of the state in which they reside in. In this case, at chief, the State of N.C. guarantees indictment by a grand jury for felony charges pursuant to Article 1 section 22 of the N.C. Constitution and is enforced through N.C.G.S. 15A-627 (A) where it states in part, "When a defendant has been bound over for trial in the Superior Court, upon any charge in the original jurisdiction of such court, must submit a bill of indictment charging the offense to the grand jury for its consideration". Even though the Fifth Amendment right to indict by a grand jury was not incorporated by the due process clause of the Fourteenth Amendment, if a state adopts the practice through their laws, the equal protection clause of the Fourteenth Amendment protects me from being discriminated against. In this case, at chief, the Petitioner was discriminated against,

because the state invoked jurisdiction over the felony charge by indictment, then changed the nature of the offense charged without resubmission to the grand jury. However, "The instant that the court amends the indictment the court loses jurisdiction. At that point in time, there is nothing that can cure that defect. It is a jurisdictional defect. Upon an indictment so changed, the court cannot proceed no further. There is nothing for which the prisoner can be held to answer. A trial on such indictment is void" (Ex-Parte Bain, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed. 849 (1887). In this case at chief, the state lost subject matter jurisdiction when the motion to order for a joinder excluded the substantive felony on the indictment then replaced it with a charge unknown to law. "The Constitution gives a criminal defendant the right to have a jury to determine beyond a reasonable doubt his guilt of every element of the crime with which he is charged" (U.S. v. Gaudin, 515 U.S. 506, 132 L.Ed.2d 444, 115 S.Ct 2310 (1995). In this case at chief, the due process clause of the sixth and fourteenth Amendment of the U.S. Constitution was violated, because the petitioner was held for trial for a crime with which he was not charged. This constitutes a fatal variance because the verdict rendered was not the law of the land and had no elements for the State to plead. The State cannot misrepresent the elements on the indictment for another charge, because due process requires the State to present the specific crime for which the petitioner was charged, then prove every element pursuant to that charge. Even though the trial court did not permit a formal amendment of the indictment, the effect of what it did was the same, thus the court had no jurisdiction of the cause and was manifestly without power to enter judgment.

CONCLUSION

Wherefore the Petitioner prays that the court liberally construe his petition, for a Writ of Certiorari due to the Petitioner being a layman at law, and that this Court issue its Writ of Certiorari and grant the Petitioner a summary judgement as a matter of law or other relief as to the court may seem proper.

Respectfully submitted this 29 day of DEC. month, 2020.

Justin Lee Penny
Petitioner Signature

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VERIFICATION

I, Justin Lee Perry being duly sworn declare that I am the Petitioner, that I have read the foregoing petition for Writ of Certiorari, and that it is accurate to the best of my knowledge, information and belief this

29th day of December, 2020.

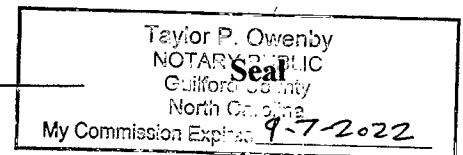
Signature: Justin Lee Perry

Subscribing Witness: Vanessa L. Perry

I, The undersigned certify that Vanessa L. Perry personally appeared before me and affirmed he or she is not a party to the foregoing instrument, but bears witness to Justin Lee Perry signature already autographed on the petition for Writ of Certiorari and Certificate of Service, and that the foregoing petition is true, genuine and complete signed above as a subscribing witness this 15 day of January, ²⁰²¹ ₂₀₂₀.

Notary Public

My Commission Expires: 9-7-2022



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CERTIFICATE OF SERVICE

I, Justin Lee Perry certify that one copy of the Writ of Certiorari has been duly served on the Attorney General of N.C. by placing a copy in the United States Mail, postage Prepaid and properly addressed as follows:

**Josh Stein (Attorney General)
9001 Mail Service Center
Raleigh NC, 27699**

This 29th day of December, 2020

Signature: Justin Lee Perry