

No.

20-7166 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

CHARLES JORDAN - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

District of Columbia Court of Appeals
Docket No. (19-CO-952)

Petition for Writ of Certiorari

Submitted by:

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QUESTIONS PRESENTED

- 1.) Whether the D.C. Court of Appeals is interpreting D.C. Code § 11-946 right when its allowing the D.C. Superior Court to modify Federal Rules, and its refusing to conduct its business according to the Federal Rules of Criminal Procedure
- 2.) Whether the accused have a right to attend the selection of the grand jury, so he could utilize his right to challenge individual grand jurors legal qualifications prior to grand jurors being administrated the oath? if not,
- 3.) How is it that the accused is to be at every proceeding(s) against him, except the one proceeding the government needs to prosecute the accused..?
- 4.) Whether a violation of due process of law, (concerning the indictment phase) destroys a court's subject-matter jurisdiction?
- 5.) Whether the court can ignore an allegation raised in a motion to challenge the court's subject-matter jurisdiction?

6.) Whether every citizen of the United States of America have the rights to equal treatment and to equal protection of law?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Related Cases:

District of Columbia Superior Court Docket No.
(2005 FEL 3698)

District of Columbia Court of Appeals Docket
No. (07-CF-420)

The Supreme Court of the United States Docket
No. (11-7968)

District of Columbia Court of Appeals Docket No.
(17-CO-1038)

District of Columbia Court of Appeals Docket No.
(19-CO-952)

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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

The opinion of the highest court in the District of Columbia --- the District of Columbia Court of Appeals --- appears at Appendix A to the petition and is unpublished.

JURISDICTION

The District of Columbia Court of Appeals decided the instant case on the 15th day of June, 2020. A copy of that decision appears at Appendix A.

A timely petition for Rehearing/Rehearing En Banc was denied on the 25th day of September, 2020, and a copy of the Order denying Rehearing/Rehearing En Banc appears at Appendix ~~B~~ C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions:

The instant petition involves violations of due process, which is protected by the 5th and 14th amendments of the United States Constitution, which destroyed the court's jurisdiction over the subject matter.

Statutory Provisions:

1.) D.C. Code § 11-946 states:

Rule of court.

The Superior Court shall conduct its business according to the Federal Rules of Civil Procedures and the Federal Rules of Criminal Procedures unless it prescribes or adopts rules which modify those rules. Rules that modify the Federal Rules shall be submitted for the approval of the District of Columbia Court of Appeals, and they shall not take effect until approved

by that court. The Superior Court may adopt and enforce other rules as it may deem necessary without the approval of the District of Columbia Court of Appeals if such rules do not modify the Federal Rules.

2.) Federal Rules of Criminal Procedures 6(b)(1) states:

(b) Objection to the Grand Jury or to a Grand Juror.

(1) Challenges. Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

Note to Subdivision (b)(1). Challenges to the array and to individual jurors, although rarely invoked in connection with the selection of grand juries, are nevertheless permitted in the Federal courts and are continued by this rule, *United States v. Gale*, 109 U.S. 65; *Clawson v. United*

States, 114 U.S. 477; Agnew v. United States, 165 U.S. 36. It is not contemplated, however, that defendants held for action of the grand jury shall receive notice of the time and place of the impaneling of a grand jury, or that defendants in custody shall be brought to court to attend at the selection of the grand jury. Failure to challenge is not a waiver of any objection. The objection may still be interposed by motion under 6(b)(2).

The instant matter requires analysis of these codes and rules.

STATEMENT OF THE CASE

On June 6, 2019, petitioner filed, pro se, a motion to Challenge the District of Columbia Superior Court's jurisdiction over the subject matter, concerning case no. 2065 FEL 003698.

On September 24, 2019, the District of Columbia Superior Court denied petitioner's motion.

On October 15, 2019, petitioner filed a timely notice of appeal.

On June 15, 2020, petitioner's appeal was denied by the District of Columbia Court of Appeals.

A timely petition for Rehearing/Rehearing En Banc was denied on the 25th day of September, 2020.

The instant petition for certiorari now follows.

REASONS FOR GRANTING THE PETITION

The District of Columbia Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and has sanctioned such a departure by the District of Columbia Superior Court, and has decided an important Federal question in a way that conflicts with several relevant decisions of this honorable court, as to call for an exercise of this honorable Supreme Court's supervisory power.

Petitioner petitions to this honorable Supreme Court to get a clear interpretation on D.C. Code § 11-946, where it states, "D.C. Superior Court shall conduct its business according to the Federal Rules of Civil Procedures and the Federal Rules of Criminal Procedures, which are enacted by Congress."

D.C. Code § 11-946, goes on to state, "the Superior court may adopt and enforce other rules as it may deem necessary without the approval of the District of Columbia Court of Appeals if such rule do not modify the Federal Rules."

The reason for this interpretation of D.C. Code § 11-946 is because the D.C. Court of Appeals keep inverting back to the Superior Court Criminal Rules 6(b)(1), when Super. Ct. Crim. R. 6 is a modified version of Fed. R. Crim. P. 6.

Super. Ct. Crim. R. 6 and Fed. R. Crim. P. 6, both run parallel with one another; the only difference is Super. Ct. Crim. R. 6 has modified the Fed. R. Crim. P. 6, when it eliminated the 'note to subdivision (b)(1)', where it states,
"....It is not contemplated, however, that defendants held for action of the grand jury shall receive notice of the time and place of the impaneling of the grand jury, or that defendants in custody shall be brought to court to attend at the selection of the grand jury..."

This note to subdivision (b)(1) is found in the section of Fed. R. Crim. P. 6, that reads,
"HISTORY; ANCILLARY LAWS AND DIRECTIVES and other provisions:".

Petitioner contends that Super. Ct. Crim. R. 6 run parallel with Fed. R. Crim. P. 6 except for the modification of the Federal rule,

which is a violation of D.C. Code § 11-946. Therefore, it is petitioner's belief that these rules are to be construed in light of the meaning given to the latter. see *Sellars v. United States*, 401 A.2d 974, 978 (D.C. 1979).

It is petitioner's belief, according to 28 U.S.C. 2072(b) that Federal rules of procedure may not deprive anyone of substantive rights. In a manner of speaking, rights secured by the 5th and 14th amendments are carved in stone, and they are cumulative, they are not independent or elective unless someone knowingly chooses to forfeit one of the specified rights.

It is petitioner's belief that if one of the constitutionally secured rights is bypassed, administrative office, including the Department of Justice and the U.S. Attorney, and courts of the United States, lack or lose subject-matter jurisdiction. This is the essence of the 5th and 14th amendments guarantee that no person shall be deprived of life, liberty or property without "due process of law".

According to the Fed. B. Crim. P. 6(b)(1) The attorney for the government or a defendant who has been held to answer in court may

challenge an individual juror on the ground that the juror is not legally qualified. These challenges shall be made before the administration of the oath to the jurors and shall be tried by the court. The right to challenge individual jurors is antecedent to individuals jurors being administered the oath required prior to a grand jury being formally seated.

There is no distinction in the voir dire examination and other jury qualification process for grand juries or petit trial juries. see 28 U.S.C. 1867(a).

Accordingly, Rule 6(b)(1) also states, "... that defendants in custody shall be brought to court to attend at the selection of grand jurors.

Petitioner contends that he, whom was in custody, was not brought to court to attend at the selection of the grand jurors, therefore, he was denied his constitutionally secured due process of law rights.

Petitioner also contends that on the day he was not brought to court to enjoy his right to challenge the legality of each individual grand juror, the court's subject-matter jurisdiction

was destroyed, therefore, all of the grand jurors whom sat in on petitioner's case are all legally disqualified as the qualification process is among petitioner's constitutionally secured due process of law rights.

Petitioner contends that he has been deprived of substantive due process, which is expressly prohibited by 28 U.S.C. 2072 (b).

It is petitioner's belief that we have an adversarial judicial system, all parties to any given action, the government included, stand on equal ground.

The system is not set up for convenience of the government. The government always has the burden of proof, whether in civil or criminal matters.

Petitioner believe that he has the right to challenge the qualifications and competency of everyone involved in the prosecution process, inclusive of grand and petit jurors selected from "peers" who ultimately have responsibility for determining indictable offenses and/or final liability.

When petitioner was deprived of this right,

constitutionally secured due process of law was abridged. In this event, the court lost subject-matter jurisdiction. see Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938).

Thus, petitioner has been held for 15 years plus, on a defective indictment. It is petitioner's belief that indictment defects are jurisdictional. see United States v. Cotton, 535 U.S. 625, 630, 122 S. Ct. 1781, 152, 860 (2002).

It is petitioner's belief that a defective indictment deprives a court of jurisdiction. see Cotton, supra.

It is petitioner's belief that he has shown the lower courts and this honorable Supreme Court that the lower court had no jurisdiction over the subject matter, therefore, the courts could not prosecute petitioner ~~constitutionally~~ constitutionally.

Petitioner was suppose to had attended the selection of the grand jury. It is well settled that the impaneling of the grand jury has nothing to do with the secrecy of the proceedings and it should be made in public. see In re IMPANELING OF GRAND JURY TO EXAMINE INTO CONDITIONS AT CAMP SHANKS UNITED STATES DISTRICT

COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK 4 F.R.D. 382; 1945 U.S. Dist. LEXIS
1394 (May 8, 1945).

It is petitioner's belief that the lower courts
lacked subject-matter jurisdiction when the court
deprived petitioner of substantive due process
rights, and where the court lacked subject-
matter jurisdiction, the judgment is void, it has
no lawful effect, so it should be vacated.

Petitioner contends that the above stated address
the first allegation raised in his motion to challenge
the court's jurisdiction. The second allegation
raised in his motion to challenge the court's
jurisdiction is a violation of the Gaither laws.
see Gaither v. United States, 413 F.2d 1061,
1079, 134 U.S. App. D.C. 154 (D.C. Cir. 1969).

Gaither, supra, which is cited in the United
States Constitution provides a format on how
to indict persons in the United States of
America.

This format consist of presenting the case to
a legally qualified grand jury of 16 to 23
jurors. Once the 12 jurors agree that the
defendant can be presented with the charges,

the prosecutor then draft up an indictment, resubmits it to the full body of grand jurors to be considered again. Then, in open court, the 12 grand jurors, as a full body, must choose whether to indict or not.

Petitioner contended, to the lower courts that there is no evidence that the indictment in his case was voted in open court, nor, is there evidence that after presentment, the indictment was drafted and resubmitted to the grand jury for approval.

The only evidence in petitioner's case of the indictment procedures is the review of the indictment by, and the signature of the foreman. According to Gaither, *supra*, this requires dismissal of the indictment. The foreman basically signed the indictment vouching for the other grand jurors.

Instead of answering this allegation, the lower courts just ignored it. It is petitioner's belief that courts has an "independent obligation" to investigate the limits of its subject-matter jurisdiction. see *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 (2008).

It is petitioner's belief that the courts obligation to examine their subject-matter jurisdiction is triggered whenever that jurisdiction is "fairly in doubt". *Ashcroft v. Iqbal*, 556 U.S. 662, 671, 129 S. Ct. 1937, 1945, 173 L. Ed. 2d 868 (2009).

It is petitioner's belief that an allegation is admitted if a responsive pleading is required and the allegation is not denied. see Rule 8(b)(6) of the Fed. R. Civ. P..

It is petitioner's belief that the lower court did not reply to petitioner's second allegation because the courts would have been forced to agree to the violation of due process, which destroyed the court's jurisdiction over the subject matter, or commit fraud on the court. Instead, the courts choose to ignore the lack of subject-matter jurisdiction.

Petitioner respectfully ask this honorable Supreme Court to look at the response Attorney Jessie K. Lui gave in the *Michael Mason v. United States* case that's pending in front of judge Hon. Josey-Herring in the District of Columbia Superior Court, case No. F-10484-95, Id at page 3 Footnote, of government's response.

The government's response follows;

³ Defendant cites (at 5) Gaither v. United States, 413 F.2d 1061 (D.C. Cir. 1969), in an apparent attempt to support his claim that there was an unspecified problem with the indictment. Gaither lends no support to the defendants claim; the grand jury practices at issue in that case have been revamped for some time. Moreover, the D.C. Circuit found there was no prejudice to the defendant in the case. Id. at 1065. Id page 3 of response in Mason's case.

This reply came in 2019. Michael Mason's case stems from 1995. The District of Columbia Superior Court's argument here only is an agreement that the court's been violating person's constitutional rights since 1995. Gaither, supra, is cited in the United States Constitution as a guide on how to indict persons, and amend indictments, in the United States of America.

To revamp from Gaither is to deny a person his substantive rights protected by the 5th and 14th amendments of the United States Constitution.

This is a clear admission of a violation of due process of law which destroyed the subject-matter jurisdiction.

Petitioner contends that he raised the same challenge to the court's jurisdiction as Michael Mason and, United States Attorney Jessie K. Lui was the lead prosecutor and worked both

petitioner's and Mason's case.

It is petitioner's belief that the court's subject-matter jurisdiction was destroyed in two instances of violations of due process of law.

Petitioner contends that he has been deprived of substantive due process, which is expressly prohibited by 28 U.S.C. 2072 (b).

It is petitioner's belief that all Americans are suppose to have a right to equal protection of laws.

Petitioner contends that if we American citizens are all accustom to equal protection of the laws, then why was Bill Cosby and the police officers involved in the death of Breonna Taylor at the attendance of the selection of the grand jury? Why did R. Kelly receive notice of the time and place of the impaneling of the grand jury? Why did Byron get to present evidence to the grand jury? see United States v. Byron, 994 F. 2d 747 (May 25, 1993).

It is petitioner's belief that he has shown this honorable Supreme Court that he has been deprived of his liberty all against the 5th and 14th amendments of the United States Constitution and

against articles 1, 5, 7, 9, and 10 of the Universal Declaration of Human Rights.

Petitioner contends that this case not only affects him, but, every person that's been indicted in the United States of America.

The United States District Court Eastern District of Michigan, Southern Division has admitted to departure from the Gaither laws, *supra*, in its opinion and order. ~~see~~ see United States v. Vincent Theodore Forney, case No. 16-CR-20655-01.

The government's response follows;

jury is deliberating or voting." Defendant's statement that "there [is no] evidence that after presentment, the indictment was drafted and resubmitted to the grand jury for approval" is nonsensical, as in this case there was no presentment (i.e., a charge brought by the grand jury on its own initiative), but rather an indictment drafted by an assistant United States Attorney and signed by the foreperson, signifying a vote by at least twelve grand jurors in favor of indicting.

Petitioner also contends that the reason why the lower court's decision can not stand is because they are mis-characterizing petitioner's motion to challenge the courts jurisdiction as a motion to challenge the indictment.

Petitioner contends that he only pointed out the

violations of due process of law to show the courts when, ~~and~~ where and how it destroyed its jurisdiction over the subject matter.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
~~Charles Jordan~~
Charles Jordan

dated: 10-26-20