No. 20-7598

ORIGINAL

Supreme Court, U.S.
FILED
MAR 17 2021
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Marcellus Thomas — PETITIONER
(Your Name)

vs.

Sonja Nicklaus "et. Al" — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 7th Circuit
(NAME OF COURT THAT LAST RULED ON [redacted] YOUR CASE)
Never on merits of case

PETITION FOR WRIT OF CERTIORARI

Marcellus Thomas
(Your Name)

2600 N. Brinton
(Address)

Dixon Il. 61021
(City, State, Zip Code)

N/A
(Phone Number)

Questions

1.) How can Federal courts dismiss my first Federal Habeas corpus, saying I didn't exhaust my state remdies and I had to file an writ of certiorari when Illinois doesn't hear the writ Washington does?

2.) How can Judge Linda Abrahamson say in my 2-1401(f) proceedings that she never heard of an void indictment before, then two sentences later say, she rule my indictment isn't void and my judgment isn't void, then dismiss my 2-1401(f)? Isn't that abuse of decretion and wasn't I prejudiced and denied due process and equal protection of law by her ruling?

3.) How can Judge L. Abrahamson say 2-1401 doesn't fix a fraudulent indictment but a fraudulent judgement? Isn't the judgment void if the indictment is fraudulent obtain? Does this denied me my due process rights and was this highly prejudice to me?

4.) Isn't it true that timelessness doesn't apply when attacking an indictment or an judgment as Void? And can be attack at anytime?

5.) How can Appellate courts rule that the state doesn't need an valid indictment to incarcerate me when the constitution states two ways for someone to be impprison, indictment or through information, the state choose to indictment? Wasn't I prejudice by the appellate court and denied Due process and equal protection of law?

6.) Isn't it fraud on the courts, when doing trial (SA) Alex Bederka told the jury I was an felon (which I wasn't) and then showing paperwork to the jury that I was an felon? Isn't that fraud as well as Intrinsic Fraud? And wasn't I denied due process and equal Protection of law and ineffective assitanace of counsel? And By the Appellate courts ruling it was harmless err and my Direct Appeal Counsel arguing plain err, wasn't I prejudice by their actions, denied Due process & equal Protection of law and denied me Right to have effective assItance of Direct Appeal Counsel?

7.) Wasn't I Denied Due process & equal Protection of law and denied the right to effective assitance of trial counsel, when the state was allowed to dismiss an underlining

Charge of Att. Arm robbery without going back to the Grand Jury and my lawyer not objecting, which was on a Friday, Monday I went to trial not Knowing the state change their theory from robbery to an Drug deal went wrong?

8.) Isn't an dictment Void when the state changes (Amend) the underlining charge without going back to the Grand Jury?

9.) Is the Indictment void when the state (SA) Alex Bederka and witness Detective Gorcowski committs fraud and perjury to the Grand Jury to procure an indictment?

10.) Is it true that the state must have jurisdiction over the subject matter and person to find them Guilty in the court of law? And the jurisdiction over the subject matter is the charges, and if fraud and perjury is committed to the Grand Jury the indictment is void and the states lacks jurisdiction of the subject matter and person? And any Judgment after that is void?

11.) Was it Prejudice towards me when in trial I was on the stand and the state (Alex B.) was asking me question about what I told (witness) agaisnt me Detective Brian Gorcowski while Det. Brian G. was allowed to sit in the courtroom and hear everything the state was Questioning me about him and then call Det. Brian to the stand and he denies everything he heard me say, did that denie me my Due process rights and equal Protection?

12.) Was it witness tempering when Immigration allowed (Witness) Det. Brian Gorcowski take control of (witness/Alleged victim) Juan and Drive from Chicago to Elgin together? Wasn't I Prejudice by this and Denied me Due process equal Protection of law? And was it Intrinsic fraud for Alex B. to use my Indictment number 11 CF 2531, Put Juan as defendent under my Indictment number, put it on an writ (Habeas Corpus) send it to Immigration telling Immigration that they need Juan in Court because he is being charge with murder to get custody of Juan from Immigration to Det. Brian G. to testify agaisnt me, not to convict him of murder?

13.) By (SA) Alex Bederka committing fraud ~~too~~ the Grand Jury, trial Jury and Immigration does this shows an pattern of fraud to convict me and to preJudice me and Denie me my Due Process and Equal Protection of law?

14.) Is it fraud to the Grand Jury when Alex B. tells Grand Jury that I robb Juan for the Phone, but Juan says I sold him the Phone?

15.) Was it fraud & Perjury when G. Jury asks Alex that they thought it was over the Sell of the cell Phone but Alex says, no it was robbery and I can prove it?

16.) Was it fraud and perjury to the Grand Jury when Alex B. asks Det. Brian through your investigation the injuries that you saw was it an single Knife stabb wound to the chest of Juan and Det. Brian said yes? They Both Knew Juan was stab in the left shoulder not in chest so, did this also prejudice me an Denie ~~me~~ my Due process equal Protection of law?

17.) Was it premeditated robbery by Juan (AV) telling the jury trial that he sold me the phone but didn't have plans on letting me Keep the Phone? When Juan said this shouldin the Judge stop my trial and Juan been charge with robbery?

18.) Is it Fraud and Perjury to the Grand Jury when Alex B. told the G. Jury that my witness said I held the Knife on Juan and then Stabb Juan in the chest, which my witness never said?

19.) Juan told the Jury that he fell back and I fell on top of him and that was when the wound was created, but Alex and Det. Brian told the G. Jury that I deliberately Stabb Juan in the Chest, Isn't this Fraud and Perjury to the Grand Jury?

20.) Alex told G. Jury that Juan never admitted to sell of phone but in trial he does, Isn't this Fraud and perjury to the Grand Jury?

21.) Isn't Fraud on the courts stripes the court of jurisdiction of the subject matter?

22) Is fraud an automatic reversal?

23) Is it true states Attorney in his official capacity is the representative of all the people, including the defendant and it is his duty to safeguard the constitutional rights of the Defendant, as those of any other citizen?

24) Is it true federal courts may invoke miscarriage of justice exception to justify consideration of claims default in state court under state timeliness rules and may consider an untimely § 2254 Petition if by refusing to consider the court would endorse a fundamental miscarriage of justice because it would require that an individual who is actually innocent remain imprisoned and may grant writ even in absence of a showing of cause for the procedural default?

25.) Is it true that constitution gives courts original jurisdiction to all justicable matters, but should not read as conferring subject matter jurisdiction, subject matter and personal jurisdiction is still required, which is truly is the indictment?

26) Can this courts rule on the merits of my case?

LIST OF PARTIES

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

[X] 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:

Judge Linda Abrahamson (Circuit court)

Justices Zenoff, Burke and Schostok (Appellate Court Second District)

Supreme Court of Illinois - Supreme Court Building
(No Judge name appeared on ruling) 200 East Capitol Avenue
Springfield, Illinois 62701

John Z. Lee - United States District Court for the Northern District of Illinois Eastern Division

Frank H. EasterBrook & Diane P. Wood - Circuit Judges
United States Court of Appeals 7th Circuit

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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 A to the petition and is

[ ] reported at N/A; or,
[X] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[ ] reported at 124 NE 3d 464 (2019); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Appellate court of Illinois 2nd District court appears at Appendix D to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 22, 2021.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 1, 2021, and a copy of the order denying rehearing appears at Appendix E.

[ ] 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. N/A A N/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 May 22, 2019. A copy of that decision appears at Appendix C.

[X] A timely petition for rehearing was thereafter denied on the following date: Returned unfiled on 6-27-19, and a copy of the order denying rehearing appears at Appendix F.

[ ] 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. N/A A N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fraud was committed to Grand Jury to procure Indictment which denied Defendant Due process & equal protection of law.

Fraud stripes court of subject matter Jurisdiction. Adeyiga 29 NE 60, 390
Fraud is an automatic reversal. Willowbrook 185 NE 2d 696 (1992)

Judgements procured through Fraud is void. Dils v. Chicago 378 NE 2d 1130.

Timeliness does not apply to an void Judgment or when being challenged as void. Sarkissian v. Chiago Board of Education 776 NE 2d 195.

Perjured testimony to obtain criminal conviction violates due process and conviction must be set aside. Supreme court of Illinois Olinger 680 NE 2d 321; United States v. Hogan 712 F.2d 757

Courts obligation to safeguard enfore and Protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them. Supreme court of United States Ex parte Royall 117 U.S 241.

Fundamental miscarriage of Justice exception is grounded in the equitable discretion of Habeas courts to see that Federal constitutional errors do not result in the incarceration of Innocent person. Herrea 506 U.S. at 404 113 S.Ct. 853; Mcneil 633 F.3d 1257; Jungwirth 426 F.3d 868; Supreme court of United States Perkins 133 S.Ct. 1924.

Constitution gives courts original Jurisdiction, but shouldn't read as conferring subject matter Jurisdiction, subject matter and Personal Jurisdiction is still required, which is truly the indictment. Pankey 445 NE 2d. 284; Reed 213 NE. ~~2d~~ 278; Buffo 149 N.E 2d. 271; Wallace 146 NE 2d 486; Stith 244 NE 2d. 834 3

STATEMENT OF THE CASE

State went to Grand Jury with five Court Indictment Attempt Arm Robbery, Agg. Battery w/Deadly weapon, Agg. Battery Great Bodily harm, Arm Violence and Attempt First Degree Murder.

Indictment was returned as true bill. ON an Friday Two days before trial which was on Monday the State asks the Courts to Amend the Attempt arm robbery without going back to the Grand Jury. The Courts allowed the State to Amend the Att. Arm Robbery! It is no longer the Indictment the Grand Jury returned. The State was Allowed to Amend an underling Charge without going back to Grand Jury. Monday Defendant Found out he was going to trial for an Drug deal went wrong! This was an whole different theory that wasn't said to Grand Jury. Doing trial the State told jury Defendant was an felon which Defendant wasn't and Showed paperwork which was intrinsic Fraud. The State committed fraud & perjury to the Grand Jury, Jury trial and Immigration. Defendant was

Convicted of Arm Violence, Agg. Batt. w/Deadly weapon and Agg. Batt. Great Bodily harm. Defendant received 11 years at 85%. Allged Victim Juan Carlos Prado Sold Phone to defendant and came back to Defendant Apartment to robb defendant for the Phone Back.

REASONS FOR GRANTING THE PETITION

Alex Bederka and Detective Brian Gorcowski went to the Grand Jury And committed Fraud and Perjury to procure an Indictment, which makes the Indictment void. The State also lacks Jurisdiction over the subject matter and person. The State went to the Grand Jury saying I Attempted to robb Juan P. For his cell phone and Attempting of robbing him I committed Att. First Degree murder, Arm Violence, Agg. Batt. Great bodily harm and Agg. Battery w/Deadly weapon. Two days before trial on an Friday the State Amended the underling charge (Att. Arm Robbery) without going back to the Grand Jury, which makes it no longer the Indictment the Grand Jury returned. This also makes the Indictment void. My Attorney didn't object to this which makes him ineffective. The State Also changed their theory from robbery to an Drug deal went wrong which drugs was never spoken to Grand Jury. I didn't Know what I was going to trial for. During trial the state once again committs fraud to the jury, by telling them I was an felon which I was and showing paperwork which is intrinsic fraud. This alone should of 1.) Givin me an new trial or 2.) reversed the decision of the courts. My Attorney was ineffective once again and not proving I wasn't an felon. The Appellate courts ruled this as harmless err, which fraud committed to sway or find someone guilty can never be harmless err. My Appellate Attorney was ineffective as well, he argued the State err when impreaching me with an misdermeaner charge. He never argued the State committed fraud, Appellate Court ruled that the State doesn't have to have an vaild Indictment to incarcarate me, which isn't true. They went for an Indictment so the Indictment got to be valid. I'm being held against my Constitutional Rights I've been denied my Due process & equal protection of law. Fraud stripes the Court of Subject matter Jurisdiction. Fraud is an automatic reversal.

FRAUD AND PERJURY TESTIMONY TO GRAND JURY

1) The State told the Grand Jury, Dfendant attempted to robb Juan P. (A-6, (11-24), A-7 (1-11)). Juan says on the Stand, he traded Phone (A-10(20-24) A-11(1-5))

2) States Pro. asked Det. G. throuhg your investigation the injuries that you saw on Juan P., was it a single knife stab wound to the chest and Det G. says "Yes". (A-4(12-16) ! Juan P. received a wound to his left shoulder, not his chest !, (A-12 (10-12)).

3) The State told G. Jury thatRomero said Defendant grabbed the knife out of Juan P., hands and **HELD** the knife on JP and then stabb Juan P. in the chest. A Grand Jury said " I didn't hear that in the beginning (A-5(11-20)) ! Romero, statement was " it look like he was going to stabb wayne (defendant). He panick and then pokes him, (A-20 (366-380).

4) They also said to the Grand Jury that the defendant **deliberately** stabb Juan P. in the chest. (A-3(5-9)) ! But in trial Juan P. says he fell back and defendant fell on top of him and that was when the wound was created. (A-12(4-12)).

Grand Jury says, they haven't heard anything about a robbery and state's Pro. and Det. G. tells G. Jury Juan P. never admits to a sell of phone and defendant tried to rob him at knife point. (A-6(5-24) A-7(1-19)) Juan P. lied about trading the phone for drugs which defendant paid ten dollars for it, but Juan said he traded the phone for drugs, (A-10(20-24), A-11(1-5) ! Juan P. says he never had plans on letting defendant keep the phone.(A-13(10-11)). Which shows Juan had Plans to Rob defendant!

Alex B. and Det. Gorcowski actions was Prejudice agaisnt Petitioner and Denied Petitioner his Due process and equal Protection of law. If the truth was told to the Grand Jury, they wouldnt never received an Indictment agaisnt petitioner. This indictment was fraudulent obtain. This is Alex B. and Det. Gorcowski First act of fraud.

Fraud on Jury trial (courts)

Alex Bederka told the Judge David Akemann that Defendant was an felon and has an felony charge of controlled substance. Defendant told the Judge that he wasn't an felon and never had an felony charge. The Judge told Alex B. if Petitioner doesn't have an felony charge, then you can't impeach Defendant with an misdermeanor charge. Doing trial Alex B. Showed paperwork of an cannibas charge (misdermeanor) to the Jury telling them that it was an felony charge controlled substance, making it look like an crack or cocaine charge. See Ex. A-1 (misdermeanor charge).

This is important because Alex B. told the Jury that this was an drug deal gone wrong and telling the Jury that Petitioner is an felon and an drug dealer. That was fraud on the courts. Defendant was not an felon and didn't have an felony charge of any sort. This highly denied Petitioner his due process and Equal Protection of law. Petitioner was Prejudiced by Alex B. actions. This also weighted heavyly against Petitioner's creditabilty. Davis v. Alaska 415 U.S. 308 States: one way to discrediting an witness is to introduce evidence of a prior Criminal conviction of a witness to the Jury, Which is always relevant as discrediting the witness and effecting the weight of his testimony. There's no doubt this played an major role in Petitioner's Conviction. This was Alex B. Second Act of fraud.

Fraud to U.S. ImmiGration & Costomes Enforcement

State's Attorney Alex Bederka wrote an writ of Habeas Corpus to immigrations using Petitioner's indictment number 11 CF 2531 on the writ as General No. Putting (Alleged victim) also witness Juan Carlos Prado-Mendoza as defendant telling Immigration that they need him in court because Juan has been charged with murder in Honorable Judge Akemann courtroom 305, 9:00 am on 3.12.12 Kane County. See: Ex. A 25-27

1.) 11 CF 2531 is Petitioner's Indictment/case number.
2.) Under 11 CF2531 Petitioner is Defendant not Juan.
3.) Juan wasn't being charged with murder, Petitioner was being charged with Att. F/D/murder.
4.) The courts needed Juan as an witness agaisnt Petitioner, not to charge him with murder.

So, when Immigration release Juan thinking Kane County was Charging him with murder they turned him over to witness Det. Brian Gorcowski who perjured himself and committed fraud to the Grand Jury to fraudulent obtain an indictment agaisnt Petitioner. This is Intrinsic Fraud! This is the THIRD ACT of Fraud that Alex B. committed showing an Pattern of fraud to fraudulent obtain Petitioner's conviction unlawfully and agaisnt Petitioner's Constitutionals rights.

Fraud

Deceit; Misrepsentation intended to induce another to Part with something of value or to surrender a legal right; an act of deceiving or misrepresenting; Trick; Cheat; Deception.

Fraud in Equity

Fraud for which a court of Equity grants a remedy.

Fraud representation

A representation that a past or present material fact is true which is made in any manner of form with the intentions of inducing someone to act; By one who Knows it's false.

Fraud on the courts stripes the court of subject matter Jurisdiction. see: Adeyiga 29 NE 60 390 Ill. Dec 431 (2014)

Fraud is an automatic reversal. see: Willowbrook 185 NE2d 696 (1992). Petitioner has clearly shown Alex B. has committed Three acts of Fraud. This is an Pattern to deceive the Grand Jury, Jury trial and Immigration which was prejudice to petitioner and denied petitioner due process and equal protection of the law, Petitioner's indictment and conviction/Judgment was fraudulent obtain and is an miscarriage of justice.

The State is arguing Timeliness; saying Petitioner didn't file his Petition in time. Timeliness is the **only** thing the state is arguing. The state choose not to answer Petitioner's Federal Habeas Corpus on the merits. The State Should not have another Chance to argue nothing else once petitioner's Federal Habeas is not dismiss on timeliness. To let the state give another responds would be delaying an innocent man's relief. Petitioner asks the court not to dismiss Petitioner's Federal Habeas, Not let the State give another responds and rule on Petitioner's Federal Habeas Corpus on the merits.

Petitioner will now show why Timeliness doesn't apply to an conviction obtain fraudulent and being an fundamental miscarriage of Justice. Petitioner can never be held under an void Indictment, conviction or Judgment. That would be unconstitutional.

Fundamental miscarriage of Justice exception

The court has Applied this fundamental miscarriage of Justice exception to overcome various procedural defaults including; as most relevant here, failure to observe state procedural rules, such as filing deadlines. See Supreme court of the United States Perkins 133 S.Ct. 1924; also See: Coleman v Thompson 501 U.S. 722.

Timeliness does not apply to an void Judgment or when being challenged as void. See: Sarkissian v. Chicago Board of Education 776 NE 2d 195.

It is well settled in Illinois that Judgments procured through Fraud is void. See: Dils v Chiago 378 NE 2d 1130

Federal Habeas courts may invoke miscarriage of Justice exception to Justify consideration of claims default in state court under state timeliness rules. A court may consider an untimely § 2254 Petition if by refusing to consider the Petition for untimeliness the court thereby would endorse a fundamental miscarriage of Justice because it would require that an individual who is actually innocent remain imprisoned. Federal Habeas courts may grant writ even in absence of a showing of cause for the Procedural default.

[redacted]

fundamental miscarriage of Justice exception is grounded in the equitable discretion of Habeas courts to see that federal constitutional errors do not result in the incarceration of Innocent persons. See Herrea 506 U.S. at 404 113 S.Ct. 853; See: Mcneil 633 F.3d 1257; See: Jungwirth 426 F.3d 868; see: Supreme Court of United States Perkins 133 S.Ct. 1924

Known use of perjured testimony to obtain criminal conviction violates due process and conviction must be set aside. See: - Supreme Court of Illinois Olinger 680 NE2d 321.

Principles of fundamental fairness required relaxation of strict rule to allow Petitioner to assert due process violation. See: United States v. Bagley 473 U.S. 667

Known Perjury is an due Process violation. See: United States v Hogan 712 F.2d 757.

Courts obligation to guard enfore and Protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them. See: Supreme Court of United States Ex parte Royall 117 U.S. 241.

Courts may properly dismiss indictment based upon perjured testimony. Court must proceed with restraint in ascertaining due process violations in indictment procedures and should dismiss indictment when violation is clear and has been found. U.S.C.A. Const. Amends. 5, 14. See: Shaw 478 NE 2d 1142

A state prisoner Federal Habeas review of a procedurally defaulted by showing prejudice from a violation of federal law. An Attorneys errors during an direct review may provide cause to excuse a procedural default for if the attorney appointed by the State is ineffective the Prisoner has been denied fair process and the opportunity to comply with the states procedures and obtain an adjudication on the merits of his claim. Providing assistance of counsel that falls below the Strickland Standard, would constitute cause for excusing procedural default. See: Supreme Court of United States Ryan 132 S.Ct. 1309.

Petitioner told his Direct Appeal Appellate Defender Steven E. Wiltgen about his indictment being void and that fraud was committed to the Grand Jury and what claims Petitioner wanted him to raise and he didn't. See: Wiltgen responds letters. Ex. A-2 (2 letters/Pages) This was clearly an deniel of fair process and Petitioner was prejudice by Steven E. Wiltgen. Petitioner is arguing more things (claims) in his Federal Habeas These are just a few.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marcellus T.

Date: March 16, 2021