

20-7687
No.

Supreme Court, U.S.
FILED

MAR 25 2021

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IN THE
SUPREME COURT OF THE UNITED STATES
CV-20-278

LEE CHARLES MILLSAP – PETITIONER

Vs.

DEXTER PAYNE – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

ARKANSAS SUPREME COURT

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

Lee Charles Millsap Jr.
(Name)

P.O. Box 600 - #113121
(Address)

Grady, Arkansas 71644
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- Is State Court Ruling on State Court Jurisdictional issue “conclusive establishes” Jurisdiction for federal habeas?
- Why Appellant Constitutional error should be cognizable in a petition for Habeas Corpus?
- Whether errors by courts in the state post-conviction process are cognizable in Federal Habeas Corpus?
- Whether Appellant had an opportunity for full and fair litigation of the claim had been afforded?
- Whether the petitioner was provided a fair opportunity to raise and have adjudicated the question in state courts?

LIST OF PARTIES

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

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STATUE AND RULES OTHER

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 state courts:

**The opinion of the highest state court to review the merits appears at
Appendix E**

[] Reported at 220 Ark. 401, 611 S.W. 3d 479

JURISDICTION

- (Lower Court)

25th, March 2020

- (Highest Court)

December 3, 2020

- (Rehearing)

January 14, 2021

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment IV. The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or thing to be seized.

Amendment V. No person shall be held to answer for a capital, or otherwise infamous crime, unless or presentment or indictment of a grand jury, except, in cases arising in the land or naval forces, or in the militia, when in actual service in the time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment XIV. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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 the equal protection of the laws.

Section 5. The Congress shall have power to enforce by appropriate legislation, the provisions of this Article.

STATEMENT OF THE CASE

Petitioner bring before trial-court a Petition for Writ of Habeas Corpus challenging his negotiated plea of guilty to Capital Murder, terroristic threatening in the first degree and battery in the second degree and sentenced to Life without parole six concurrent.

Upon order granting informa pauperis status, trial court had taken the very opposite approach for adjudication Appellant Millsap claim for denial of his state habeas corpus .

Whereas State Supreme Court Rule on Merit of Appellant's Millsap claim of Speedy Trial Violation, it look no further than adopting Appellant's Millsap Constitutional claim as harmless error.

REASONS FOR GRANTING THE PETITION

- The Constitution offer No Protection without Recourse to Remedy. “Why Constitutional error should be cognizable in a Petition For Habeas Corpus” 10 U. Pa. J. Const. L. 1263 (2008) [Discussing federal habeas corpus review of errors in state post-conviction proceeding]

6:7 Fourth Amendment Claims – The Road to Stone v. Powell

- These developments were necessarily to have an influence upon the availability of habeas corpus to prison relying upon exclusionary rule claims. The first indications appeared in Schneckloth v. Bustamonte, decided only four years after Kaufman. The majority addressed the state prisoner’s claim on the merits and, finding that no relief was warranted, declined the state’s invitation to reconsider the question. “Where exclusionary rule claims were cognizable in habeas corpus – even if meritorious,” Schneckloth v. Bustamonte, 412 U.S. 218, 249 N. 38, 93 S. Ct. 2041, 36 L. Ed 2d 854 (1973)

6:5 State law Violations – Exception for due process violations

- Estelle v. McGuire, 502 U.S. 62, 68, 112 S. Ct. 475, 116 L. Ed. 2d 385, 33 Fed. R. Evid. Serv. 305 (1991) (After ruling that state law violations are not cognizable, the court turn; to the question “whether the admission of the evidence violated McGuire’s federal constitutional rights); Pulley v. Harris, 465 U.S. 37, 41, 104 S. Ct. 871, 79 L. Ed 29 (1984) (suggesting that “an error of state law could be sufficiently egregious to amount to denial of equal protection”); Barclay v. Florida, 463 U.S. 939, 957-58, 103 S. Ct. 3418, 77 L. Ed. 2d 1134 (1983) (Plurality opinion) ([M]ere errors of state law are not the concern of this court unless they rise for some other reason to the level of a denial of rights protected by the United States Constitution [.])” (citation omitted); see also Wynne v. Renico, 606 F.3d 861, 871 (6th Cir. 2010) (A State-court determination is not cognizable unless it was so “fundamentally defect which inherently resulted

in a complete miscarriage of justice, or exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent); *Hughes v. Dretke*, 412 F.3d 582, 591 (5th Cir. 2005) (violations of state law are not generally cognizable on as a whole fundamentally unfair); *Bowling v. Parker*, 344 F.3d 487, 502 N.9, 2003 FED App. 033 of (6th Cir. 2003) (State law violation cognizable to the extent that the “violation of state law was so flagrant as to amount to a denial of due process”). *Lechner v. Frank*, 341 F.3d 635, 642 (7th Cir. 2003) (“violations of state laws are cognizable only if they resulted in fundamental unfairness and consequently violated a petitioner’s constitutional rights [.]”); *Ponnapula v. Spitzer*, 297 F.3d 172, 182 N.2 (2d Cir. 2002) (state law violation not cognizable unless it was “so egregious as to be fundamentally unfair and thus violate … the fair notice aspect of the Due Process Clause”); *James v. Gipson*, 21 F.3d 543, 555 (10th Cir. 2000) (“A federal court may not issue the writ of habeas corpus on the basis of a perceived error of state law, … absent a determination that the state law violation rendered the trial fundamentally unfair [.]; *Newton v. Superior Court of California, In And For Alameda County*, 803 F.2d 1051, 1055 (9th Cir. 1986) (“Habeas Corpus Relief for an asserted violation of due process is available only when the state court’s action is arbitrary or fundamentally unfair [.]” (quotation marks omitted); *Richards v. Solem*, 693 F.2d 760, 766-67 (8th Cir. 1982) (“we can grant habeas relief only if an error regarding the instructions is of constitutional magnitude”).

- The Supreme has not direct spoken to “whether errors by courts in the state post-conviction process are cognizable in Federal habeas corpus” See *Coleman v. Thompson*, 501 U.S. 722, 752, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991) (holding modified on other grounds by, *Martinez v. Ryan*, 566 U.S . 1, 132 S. Ct. 1309, 182 L. Ed 272 (2012), *Pennsylvania v. Finley*, 481 U.S. 551, 107 S. Ct. 1990, 95 L. Ed 2d 539 (1987); *Wainwright v. Torna*, 455 U.S. 586, 102

S. Ct. 1300, 71 L. Ed 2d 475 (1982). William v. State of Mo., 640 F.2d 140, 143 (8th Cir. 1981)

“Do appellant’s claim here represent an attack on a proceeding collateral to detention of appellant or on the detention itself” Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed 2d 101 (1972) “Supreme Court relaxed the rigidity of the demand rule. The Court held that a defendant who fails to demand a speedy trial does not waive his right to one.”

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully submitted,

Lee Charles Miller Jr.
Date: 03/25/2021