

20-8069

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

MAY 14 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WALTER LEE MERRITTE — PETITIONER
(Your Name)

vs.

CHRISTINE BRANNON-DORTCH — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ILLINOIS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

WALTER LEE MERRITTE, PRO SE
REG. No. N-72053

HILL CORRECTIONAL CENTER

P.O. BOX 1700

GALESBURG, ILLINOIS 61402

QUESTION(S) PRESENTED

**Whether The Illinois Supreme Court Order Denying
Review Is Null And Void For Want Of Authority?**

LIST OF PARTIES

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

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:

EARNEST MERRITTE
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RELATED CASES

People v. Merritte, No. 90-CF-256, State Trial Court. Judgment entered September 5, 1991

People v. Ennis, No. 90-CF-257, State trial Court. Judgment entered October 1, 1991

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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 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 is unpublished.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 is unpublished.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A 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 is unpublished.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 Illinois Supreme court appears at Appendix C 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 is unpublished.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 _____.

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 .

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 3/23/2021. A copy of that decision appears at Appendix C.

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

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 .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

On October 28, 1990, Petitioner was arrested without a warrant by the LaSalle County Police Department.

On October 29, 1990, Petitioner was charged by criminal information with two counts of first degree murder [Ill.Rev.Stat.1989,Ch.38,¶9-1(a)(1)] and one count of mob action [Ill.Rev.Stat.1989,Ch.38,¶25-1(a)(1)]. Specifically, the criminal information alleged that on October 26, 1990, the defendant's caused Mark Harcar's death, by beating him with a shovel without lawful justification, with the intent to kill (Count I) or do great bodily harm (Count II). The information further alleged that the defendant, together with Ernest Merritte and Gregory Ennis, disturbed the peace by striking and kicking Harcar. (Count III).

At the initial appearance hearing held on October 29, 1990, the state trial court granted Respondent's leave to file the criminal information instanter, set bail at \$750,000.00 and continued the cause for appearance with counsel on November 1, 1990. app.¶,R1-R9.

The order issued by the court at the time of the initial appearance hearing failed to comply with the procedure set forth at 725 ILCS 5/109-1(a)(West.2020), and with the rule of *County of Riverside v. McLaughlin*, 500 U.S. 44, 52-54 (1991), requiring that persons arrested without a warrant receive a prompt determination of probable cause. app.B.

In the present case, there is no evidence to support probable cause to believe that petitioner committed an offense, and the State Trial Court failed to find a disputed factual issue, both of which is required under Section §9-1(a)(1) and §25-1(a)(1) to confer jurisdiction upon the State Trial Court. app.D,R3.

REASON FOR GRANTING THE PETITION

This is the proper case to resolve the question presented, because the jurisdictional findings by a state court of appeals that it could consider the merits of this case -- even though there is no evidence to support probable cause, and the state trial court failed to find a disputed factual issue under Section §9-1(a)(1) and §25-1(a)(1) to confer jurisdiction upon the court -- has been totally overruled and invalidated by a subsequent Illinois Supreme Court decision, *People v. Davis*, 156 Ill.2d 149 (1993), holding that "where jurisdiction is lacking, any resulting judgment rendered is void and may be attacked either directly or collaterally at any time." *Davis*, 156 Ill.2d at 155. app.A,B, and C.

Pursuant to Article VI, Section 9, of the Illinois Constitution, the state trial court have jurisdiction over all justiciable matter. Ill. Const. 1970, art. VI, §9. "Subject matter jurisdiction" is the power of the court to hear and determine the particular matter presented to it. *Davis*, 156 Ill.2d at 156. Jurisdiction to hear and determine first degree murder and mob action matters is expressly conferred upon the state trial court by Section §9-1(a)(1) and §25-1(a)(1). See Id. at 156.

Petitioner submits that the State Supreme Court order is null and void, because there is no evidence to support probable cause to believe that defendant committed an offense and the State Trial court failed to find a disputed factual issue, both of which is required under Section §9-1(a)(1) and §25-1(a)(1) to confer jurisdiction upon the State Trial Court. app.D,R3.

Given the above, when the lower State Trial Court lacks jurisdiction, This Court "have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit." Bender v. Williamsport Area School Dist, 475 U.S. 534, 541, 541 (1986); U.S.Const.Art.III.

It is undisputed that "[a] judgment, order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, is void, and may be attacked at any time or in any court, either directly or collaterally." Sarkissian v. Chicago Bd Of EDUC, 201 Ill.2d 95, 776 N.E.2d 195, 201 (2002).

Further, a petition brought on voidness grounds need not be brought within the two year time limitation. "The allegation that the judgment is void substitute for and negate the need to allege a meritorious defense and due diligence." Id. at 202

Petitioner submits that the State Trial Court has no power to render advisory opinions, and until a prompt determination of probable cause has been concluded, there is no controversy that is ripe for a declaratory judgment. Indeed, the constitutional issues upon which the opinion of the State Trial Court was sought will never progress beyond the realm of the hypothetical. It follows that the State Trial Court was without jurisdiction to pass upon the constitutional issues sought to be raised. See Davis, 156 Ill.2d at 155. app.D,R3.

Hence, under decisional law of the State Supreme Court, as it now exists, absent jurisdiction, an order directed at the void judgment would itself be void and of no force and effect. Id. app.A and C.

Thus, the State Supreme Court's order is void under Illinois law; accordingly, it is void under 28 U.S.C. §2244 (d)(1)(A) & 2244(d)(2), for federal tolling purposes. See Bender v. Williamsport Area School Dist, 475 U.S. 534, 541 (1986).

In Sum, This Court should vacate the State Trial Court's resolution of a hypothetical constitutional issue; issue an order to the LaSalle County state trial court with directions to release petitioner from custody and dismiss the case for want of authority. 725 ILCS 5/109-1(a)(West.2020); County of Riverside v. McLaughlin, 500 U.S. 44, 52-54 (1991).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Walter D. Merritt

Date: MAY 11, 2021