

20-8166

No. _____

Supreme Court, U.S.
FILED

MAY 12 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

PETITIONER

David Bernard Portee

VS.

Craig Koenig
WARDEN

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

Petitioner David Bernard Portee respectfully petitions for certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit denying petitioner's application for certificate of appealability.

PETITION FOR WRIT OF CERTIORARI

David Bernard Portee

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Soledad, CA 93960-0589

RECEIVED

MAY 11 2021

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Should each Justice or Judge of the United States take the Oath of office or affirmation before performing the duties of office?
2. Did the four Judges who presided over my case in 1981 without a oath of office lack subject-matter jurisdiction, and would there judgments be null and void?
3. If the Judge issue a arrest warrant without a oath of office would that constitute false arrest?
4. Is it true subject-matter Jurisdiction can never be waived and can be raised at anytime, even after judgment on the merits?
5. Is it true if there is no jurisdiction there is no Judge and the proceedings are as nothing?
6. Did the state court have subject matter jurisdiction, when the judge did not have a oath of office?
7. If a Judge do not have a oath of office would that be a constitutional violation?

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 proceedings in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Johnson v. Zerbst</u> , 304 U.S.	458,
58 S.Ct.	1019
<u>Austin v. Smith</u> , 312 F. Supp. 2d	337, 343
<u>U.S. v. Levin</u> , 186 F. Supp. 3d	26,
2016 U.S. Dist. LEXUS	52907
<u>Rosenstiel v. Rosenstiel</u> , 278 F. Supp.	794
<u>Twin City Fire Inc. v. Adkins</u> , 400 F. 3d	293, 299
<u>Hagins v. Levine</u> , 415 US	533
<u>U.S. v. Will</u> , 449 U.S.	200, 216

STATUTES AND RULES

Title 5 U.S.C. section 556 States as follow: When Jurisdiction is challenge the burden of proof is on the government.

FRCP Rule 12(h) 3. "Subject-Matter Jurisdiction may not be waived and courts may raise the issue sua sponte."

Lack of subject matter jurisdiction is a defense that is never waived.

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 _____; 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 B to 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 March 26, 2021.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

II. Current Constitutions, statutes, and decisional law.

A. Oaths of Office.

7.a. The Constitution for the United States, article VI, clause 3, reads: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.

United States Code Annotated, Const. (1999), art. VI, Cl. 3. 7.b.28 U.S.C.A. § 453 reads: Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____ do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

Title 5 U.S.C. section states, as follows: "When jurisdiction is challenged the burden of proof is on the government."

My Fourth, fifth, fourteenth Amendment Rights where Violated.

STANDARD OF REVIEW

DENIAL OF CERTIFICATE OF APPEALABILITY

In Miller-EI v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029, this Court clarified the standards for issuance of a certificate of Appealability "(COA)."

A prisoner seeking a COA need only demonstrate a "substantial" showing of the denial of a constitutional right." We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus.

STATEMENT OF THE CASE

The incident in question occurred on August 26, 1981, when the Judges involved with various events in petitioner's case in 1981 who issued arrest warrant, search warrant, and preliminary Hearing did not have a oath of office when they performed there judicial duties.

REASONS FOR GRANTING THE WRIT

The complaint filed by D. District Attorney John Schon and police on Aug 26, 1981, and heard by Judge Mark Thomas Jr. who issued a arrest warrant without a oath of office was null and void.

On Aug 27, 1981, officer J. Woodall arrested petitioner at his lady friends place of employment FMC corp. parking lot he advised me there was a warrant for my arrest, I asked to see the warrant and was advised he would show me when we got to the station, which constitute false imprisonment.

On Sept 1, 1981, officer J. Woodall and B. Caro responded to DA's office and picked up completed search warrants and affidavit and responded to Judge L. Edwards who signed said warrants for the address and vehicle without a oath of office. His action should be null and void.

On Oct 7, 8, 9, 1981, Judge F. Lucero, held petitioner's preliminary Hearing and bound me over for trial without a oath of office, his judgments should be null and void.

On Dec 15, 1981, Judge J. Flaherty, presided over petitioner's motions hearing 995 & 1538.5. denying both motions, without a oath of office prior to 12/15/81, judgment should be null and void illegal evidence was ordered to be used against me at trial.

On June 20, 1982, Petitioner was unlawfully convicted by a jury, and illegally sentence on July 20, 1982 to c/s life sentences in prison, when the court was in absolute lack of jurisdiction ab initio.

There is no affidavit by an affiant who sworn under oath that he/she saw petitioner commit a crime or that petitioner committed a crime, it has taken 39 years, and petitioner is honored to be here in front of this Honorable Court so this case may be examined for the gross miscarriage of Justice that continues to this day. It is petitioner's understanding that this Honorable Court is the Court to examine the power of all previous courts.

It is important for this Court's judicial discretion as to the conflict of the decision of the district and ninth cir. not to address the issue of the judges not having a oath of office before they entered upon the duties of their respective offices, and if not would their judicial decisions be null and void.

The importance of this case not only to me but to others similarly situated; and the ways the decision of the lower court in my case was erroneous. It is important for this Court's discretionary jurisdiction.

APPENDIX A