No. 21-5113

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

* * * * * * * * *

Michael Almendarez,

Petitioner

v.

Bobby Lumpkin, Director
Texas Dept. of Criminal Justice
Correctional Institutions Division
Respondent

* * * * * * * * *

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

* * * * * * * * *

PETITION FOR WRIT OF CERTIORARI

* * * * * * * * *

By:

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QUESTION PRESENTED

Is a judge categorically in excess of jurisdiction to enter an order if said judge refuses to obey the interplay between Article VI, cl. 2 of the United States Constitution and 28 U.S.C., § 2254 (F), which requires that, before ruling on the merits, the judge must order the State to produce the actual court records (after the sufficiency of their summaries were challenged as fraudulent and specific gaps pointed to)?

INTERESTED PARTIES

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STATEMENT OF THE BASIS FOR JURISDICTION

The judgement to be reviewed was entered 3-18-21. I believe that 28 U.S.C., § 2254(1) confers on this Court jurisdiction to review on a Writ of Certiorari the judgement in question.

CONSTITUTIONAL AND STATUTORY LANGUAGE INVOLVED

Article III, United States Constitution
("the Judges... shall hold their Offices during good behaviour...")

Article VI, cl.2, United States Constitution
("this Constitution and Laws of the United States... shall be the Supreme Law of the land; and the Judges in every State shall be bound thereby...")

Fifth Amendment, United States Constitution
("Liberty" provision of Due Process Clause)

28 U.S.C., § 2254(f)
("...the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to the appropriate State Official")

STATEMENT OF THE CASE

My case involves whether the Supremacy Clause itself withdraws jurisdiction from a judge if the judge disobeys the mandatory language of a "Law of the United States" (i.e., 28 U.S.C., § 2254(F)). This part of the AEDPA required that, before the judge could rule on the merits of my habeas claims - considering that I repeatedly challenged the sufficiency of the evidence adduced in the State Court's pretrial and appellate proceedings as fraudulent (Even pointing to specific gaps) - the federal judge was required to order the State to produce the actual records in question; instead of summaries of them.

Proceedings under Fed. R. Civ. Proc., Rule 60(b)(4):

First proceeding:

In my motion I wrote,

> [The] Supremacy [] and Due Process Clauses... prevented him from ever ruling on the merits. (at 1, ¶ 1)... Under Rule 60(b)(4), '[t]here is no time limit on an attack on a judgement as void. Briley v. Hildago, 981 F.2d 246, 249 (5th Cir. 1993) (ID., @ ¶ 2)... [t]he Supremacy Clause... requires that all judges, 'shall be bound [by the] Constitution, and Laws of the United States.' (Id., @ 3, ¶ 2)
>
> Due Process of law is predicated on Articles III and VI, which either compel or prohibit a given activity. When a judge lacks a substantive source of judicial power beyond that conferred by these Articles... then the processes cannot be said to conform to the Constitution. The Supremacy Clause secures mandatory minimum requirements of due process. This is the essence of the guarantee that 'no person shall be deprived of life, liberty or property without due process of law'. (ID. @ 3, ¶ 3)

Judge O'Connor's 4-15-20 denial:

> He never said one word about the Supremacy Clause argument. He did state, "Even if Rule 60(b)(4) were applicable, Petitioner has not shown that this Court lacked jurisdiction over his habeas case or that it acted contrary to due process of law." (Order, at 2).

Second Proceeding:

In my motion I wrote,

> In my habeas application I stated that one judge committed FRAUD by entering the 5-27-09 order and another did by citing to 'purported' testimony (in his summary of the record) to justify the 5-27-09 order, as though there was testimony. Judge O'Connor never obeyed § 2254(f) and made the State produce the actual records from 5-27-09 (at 1, ¶ 1). Judge O'Connor

never saw the actual record... and § 2254(f) was designed to give me that process before the merits were decided... I believe he did lack jurisdiction not to enforce § 2254(f). (id. at 1, ¶ 3)

Judge O'Connor's 5-8-20 denial:

"Petitioner appears to argue that the original habeas proceedings in this Court were defective because the Court failed to apply 28 U.S.C., § 2254(f) to order the State to produce portions of the pretrial record in the State-Court proceedings before deciding the merits of his petition and that the Courts failure to 'give every word of 2254(f) operative effect' somehow violated due process. The Court finds that the motion is untimely... [it] 'must be filed, no later than 28 days after the entry of judgement...' Petitioner is WARNED that if he persists in filing repetitive or frivolous pleadings, sanctions may be imposed.

Proceedings in the Fifth Circuit:

My C.O.A. Motion and Brief:

I wrote,

[Judge O'Connor] disobeyed Art. VI, cl. 2 of the United States Constitution by not enforcing 28 U.S.C., § 2254(f) and ordering the State to produce the pretrial record summarized, relied upon, and cited to in E.C.F. 12, #9, at 8-10. In the second ruling, [he] ruled that I only had 28 days to ever challenge a judgement as void. This Court has repeatedly ruled that there is no time limit if the judgement is being challenged as a legal nullity (Motion @ 1, ¶ 1)

Reasonable jurists could debate whether Judge O'Connor... was permitted by the Supremacy Clause to disobey § 2254(f) and not order the State to produce the challenged pretrial record before reaching the merits. (Id., @ 2)

Due Process of law is predicated on federal statutes, Supreme Laws, that either compel or prohibit a given activity... He does not have the constitutional or statutory authority to bypass these rights that are secured through Art. VI, cl. 2 (Brief @ 2, ¶ 3)... The Court 'loses jurisdiction if its actions defeat the Constitution or laws of the United States.' Steel Co. v. Citizens for a Better Enviroment, 523 U.S. 83, 89 (1998) (Id. @ 8)

Circuit Judge Haynes' 2-5-21 denial:

He argues that the district court failed to enforce § 2254(f) by not requiring the State to produce pretrial records [and] two State Court documents were fraudulent (Order @ 1) To obtain a C.O.A. in relation to the denial of his Rule 60(b)(6) motions, Almendarez must show that ' a jurist of reason could conclude that the district court's denial of [the Rule 60(b)] motion[s] was an abuse of discretion. (Id. @ 2)

My Petition for Panel Rehearing:

I stated:

> The judge in my C.O.A. proceeding defeated the Supremacy Clause Mandates by way of not resolving the section 2254(f) dispute in a manner consistent with Article VI, cl. 2. In this light, the only legitimate criterion for validity of a judgement is whether the proceedings leading to its entry comported with what every judge is "bound" by... When this Court reviews requests for a C.O.A., the Supreme Court has outlined [] procedures that did not happen in my case:
>
> 1. We look to the district court's application of AEDPA to Petitioner's constitutional claims. Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). In my case, § 2254(f) is part of AEDPA and its language is clear. The cold record proves that the district judge disobeyed it and that Judge Haynes did not make the lower judge enforce it. (Id., at 3)

The 3-18-21 Panel denial:

> The underlying judgement was not void.

ARGUMENTS AND AUTHORITIES

The Fifth Circuit has so far departed from the accepted and usual course for claims under the Supremacy Clause by failing to enforce an Act of Congress according to its terms. I am alleging that there is a systematic problem among many of Texas' highest judges, federal, and circuit judges within the Fifth Circuit which calls for an exercise of this Court's supervisory power.

For example, former Justice Elsa Alcala exposed several currently sitting Court of Criminal Appeals judges with her 21 page concurring opinion in Ex Parte Dawson, 509 s.w. 3d 293 (11-23-16). She stood up against the unconstitutional "long-term institutional practices" whereby "a single judge [can] act alone to decide habeas applications" and explained that she witnessed this happen to "hundreds, if not thousands, of applicants." In the 2-4-21 USA Today newspaper, on pages 1A and 6A, journalist Jessica Priest wrote about a District Attorney in Texas (Ralph Petty). The district attorney was allowed to moonlight as an aide to judges, helping write the judges' orders on his own cases. In that article Elsa Alcala mentioned that oversight groups in Texas routinely look the other way on allegations against judges and district attorneys.

I am asking you to use this as an opportunity to possibly help address why Texas leads the entire nation in prison population, executions, and exonerations. Somebody needs to help.

MY C.O.A. PROCEEDINGS

My analysis equates jurisdiction with judicial power and relies on three premises: 1) The Supremacy Clause itself withdraws jurisdiction from any judge if the judge disobeys the Constitution and/or Laws of the United States; 2) Article III judicial power can only subsist as long as the judge upholds his/her "good behavior" - in the context of preserving, protecting, and defending the Supremacy Clause; and 3) a judgement is void if the judge is made powerless by the language of the Supremacy Clause.

In Ex Parte Virginia, 100 U.S. 339, 348 (1879), this Court decided that, just because a judge performs acts in his or her courtroom, this does not automatically mean that all acts fall under the umbrella of "judicial acts." This Court held:

> [W]hether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent... he acted outside of his authority and in direct violation of the spirit of the State Statute... such an [act] was not left within the limits of his discretion.

My voidness claims specifically outlined the district judge's refusal to obey Article VI, cl. 2 and 28 U.S.C., § 2254(f). Article VI, cl. 2 states that "[t]his Constitution, and Laws of the United States [are the] Supreme Law of the Land," and all judges "shall be bound thereby." Section 2254(f) is therefore a Supreme Law and the act of disobeying § 2254(f) was not left within the limits of the Judge's discretion, in my case. The judge's violations of the Supremacy Clause were likewise not "judicial acts" and he was therefore 'deprived of jurisdiction to reach the merits of my claims without first obeying § 2254(f).

In Planned Parenthood v. Sanchez, 403 F.3d 324, 334 n.47 (5th Cir. 2005), the Court traced the history of using the Supremacy Clause as the authority to justify why injunctive relief is available for an individual's refusal to obey its commands. "[T]he best explination for Ex Parte Young [209 U.S. 123 (1908)] and its progeny is that the Supremacy Clause creates an implied right of action for injunctive relief against State Officers who are threatening to violate the Federal Constitution or Laws." Id. (citations omitted)

Article III, § 1, clearly states that a judge will not be allowed to perform judicial acts under certain circumstances. The judicial power is necessarily tied to the commands of the Supremacy Clause. Thus, if a judge

disobeys the Supremacy Clause then, in the context of Article III, § 1, the judge cannot be said to be practicing "good behavior." Article III clearly strips a malfeasant judge of judicial power/jurisdiction over cases and controversies for his or her office. The interplay between the Articles III, § 1, and VI, cl.2, provide the index of any judge's power.

When any judge deliberately ignores these constitional and congressional mandates and usurps power to impose his or her own will then this requires that the decision would be void. "Subject-matter jurisdiction is the judge's constitutional and statutory power to adjudicate the case. The Court loses jurisdiction if its actions defeat the Constitution or Laws of the United States." Steel Co., supra, 523 U.S., at 89.

Again, in my case, the cold record proves that the district judge never ordered the State to produce the actual court records that were summarized. The judge in my case did not obey § 2254(f), which requires:

> If the applicant challenges the sufficiency of the evidence adduced in such State court proceedings to support the State court's determination of factual issues made therein... the State shall produce such part of the record and the federal court shall direct the State to do so by order directed to the appropriate State official.

When I challenged the State's summary of events as fraudulent and pointed to specific gaps, the federal judge was required to order the State to produce those purported documents. The judge refused to obey § 2254(f) and instead made a decision on the merits. The record proves that his decision was void. This Court's judges have stated: "We look to the district court's application of AEDPA to petitioner's constitutional claims." Miller-El, supra, 537 U.S., at 336. Section 2254(f) is part of the AEDPA and I am simply asking that someone look at the record.

For the reasons stated, I am asking for whatever relief and supervisory control, as may be deemed necessary and proper. "I, Michael Almendarez, certify under penalty of perjury that all of the foregoing is true and correct to the best of my knowledge."

Signed this 7th day of April, 2021

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