

21-5787 ORIGINAL
No. _____

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

In Re Randall Thomas Mearty

Petitioner

Vs

Dexter Payne, Director of the Arkansas
Division of Corrections

Respondent(s)

On Petitioner For Writ of Habeas Corpus,
Declaratory Judgment And Injunctive Relief

By: Randall Thomas Mearty

ADC # 101565

Varner Unit

P.O. Box 600

Heady, Arkansas 71644

Questions Presented

1). Whether the prima facie requirement in 28 USC § 2244(b)(3)(C) would function as a suspension of Habeas Corpus to bar declaratory judgment and injunctive relief to enjoin respondents enforcement of a sentence not allowed by law, to deprive Petitioner of release or parole.

2). Whether 28 USC 2244(b)(3)(C) would function as a suspension of Habeas Corpus to bar declaratory judgment and injunctive relief to enjoin respondents enforcement of sentence in excess to maximum statutory determinate sentence and not allowed by law, to deprive Petitioner of release or parole.

3). Whether 28 USC § 2244 would time bar declaratory judgment and injunctive relief to enjoin respondents enforcement of sentence in excess to maximum determinate sentence, not allowed by law, to deprive Petitioner of release or parole.

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:

United States Court of Appeals For The 8th Circuit
Office of The Clerk

St. Louis, Mo. 63102

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U.S. Constitutional Provisions:

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Fed. Statutes:

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I.

Opinions Below

A). Lincoln Circuit Courts Denial of State writ of Habeas Corpus.
McDarty Vs. Payne,

B). Arkansas Supreme Court Affirmed The Denial of State Habeas Corpus. McDarty Vs. Payne, 2021 ARK. B5

C). United States Court of Appeals For The Eighth Circuit Denial of Authorization to File Second or Successive Habeas Corpus
McDarty Vs. Payne, 21-1992

II.

Jurisdictional Statement

A). Review is sought of the summary denial for authorization to file a second or successive writ of Habeas Corpus, the denial functions as a suspension of the Habeas Corpus and bars injunctive and declaratory relief to enjoin the respondents enforcement of a sentence in excess of the maximum statutory range of a determinate sentence prohibiting release or parole eligibility for a non-Capitol case.

B). Jurisdiction is empowered on the Supreme Court of the United States pursuant to 28 U.S.C. § 1651, § 2241, § 2242, and § 2254(a).
Fed. R. Civ. P., Rule 65.

C). Pursuant to United Supreme Court, Rule 20, the Petitioner has shown exceptional circumstances warrant the exercise of the

Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

D. 28 U.S.C. § 2403(a) may apply since the Constitutionality of an Act of Congress affecting the public interest is being drawn into question, the Court shall certify to the Attorney General and shall permit the United States to intervene for the purpose of presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of Constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court cost to the extent necessary for proper presentation of the facts and law relating to the question of constitutionality.

III

Citations of Constitutional Provisions, Statutes And Rules At Issue

<i>United States Constitutional Provisions At Issue :</i>	<i>pg. #</i>
<i>Suspension Clause, Art. I § 9, Cl. 2</i>	<i>8, 9</i>
<i>Supremacy Clause, Art. VI, Cl. 2</i>	<i>5, 8, 9</i>
<i>5th Amendment To United States Constitution</i>	<i>5, 8, 9</i>
<i>8th Amendment To United States Constitution</i>	<i>5, 8, 9</i>
<i>14th Amendment To United States Constitution</i>	<i>5, 8, 9</i>
<i>Federal Statutes At Issue :</i>	
<i>28 U.S.C. § 1651 And 28 U.S.C. § 2244(b)(3)(C)</i>	<i>1, 8, 9</i>
<i>Federal Rules At Issue :</i>	
<i>Fed. R. Civ. Pro., Rule 65</i>	<i>1</i>
<i>State Statutes At Issue :</i>	
<i>ARK. Code Ann. § 5-4-401 (a)(1)</i>	<i>5, 6, 9</i>
<i>ARK. Code Ann. § 5-10-101</i>	<i>6</i>
<i>ARK. Code Ann. § 5-10-102(a)(c)</i>	<i>4, 5</i>

IV

Statement of The Case

Petitioner was tried and convicted of first degree murder. See Ark. Code Ann. § 5-10-102(c). First degree murder is a Class Y felony. Id. A jury sentenced Petitioner to Life Imprisonment. (Appendix C) The Arkansas Supreme Court affirmed his conviction on direct appeal. McAulley Vs. State, 871 S.W. 2d. 346, 316 ARK. 35 (ARK. 1994). Petitioner filed a timely Rule 37 petition in the Circuit Court. The Circuit Court denied relief and the Arkansas Supreme Court affirmed. McAulley Vs. State, CR-94-1010 (ARK. April 10th, 1995). Petitioner filed a Petition for Writ of Habeas Corpus prior to the enactment of the AEOPA in the United States District Court for the Eastern District of Arkansas. McAulley Vs. Norris, No. 93-3647/PB-C-96-053. The District Court denied relief and the United States Court of Appeals for the Eighth Circuit affirmed. "McAulley Vs. Norris, 96-3551 EAPB (January 20th, 1997), and the United States Supreme Court denied Certiorari. McAulley Vs. Norris, No. 96-2033 (October 10th 1997)

Petitioner filed a State Habeas Corpus in the Lincoln County Circuit Court challenging the Constitutionality of the sentencing statute (ARK. Code Ann. § 5-4-401 (a)(1) and his sentence as being illegal due to the sentence being in excess of the "mandatory sentencing range for a determinate sentence." The Circuit Court denied relief and the Arkansas Supreme Court on Appeal affirmed. McAulley Vs. Payne, 2021 ARK. 85 (Appendix B) The Arkansas Supreme Court's opinion held the sentence to be in excess of the maximum determinate sentence, however, found the Life sentence to be the ultimate sentence.

Petitioner subsequently filed a Petition for authorization to file a second or successive Habeas Corpus. Authorization was denied on or about August 06th, 2021. (Appendix A) McAulley Vs. Payne, 21-1992.

Petitioner files the instant Habeas Corpus in response to those orders, by of this Court's original jurisdiction. See Article III, sec. 2, cl. 2 the United States Constitution, and Talley Vs. Tarpin, 116 S.Ct. 2333.

V

Argument And Reasons For Granting The
Writ of Habeas Corpus

A). Introduction :

Petitioner (hereinafter referred to as Mcarty) was charged on or about the 4th day of August, 1992 with the criminal offense of first degree murder. See Ark. Code Ann. § 5-10-102(a). The criminal offense of first degree murder is a Class Y Felony. See Ark. Code Ann. § 5-10-102(c). Mcarty was tried, convicted and sentenced to life imprisonment on or about the 23rd day of June, 1993. At the time of his conviction and sentencing, Ark. Code Ann. § 5-4-401(a)(1) was in effect. Section (a) of Ark. Code Ann. § 5-4-401 provides to wit: "A defendant convicted of a felony shall be sentenced to a determinate sentence". . . Subsection (1) of Ark. Code Ann. § 5-4-401(a) provides that a defendant convicted of a Class Y Felony shall receive a sentence not less than ten (10) years and not more than forty (40) years, or life. Mcarty was mandatorily required to be sentenced to a determinate sentence, however, he was sentenced in excess to the maximum range of forty (40) years, to the discretionary term of life imprisonment. See Ark. Code Ann. § 5-4-401(a)

The discretionary sentence of life imprisonment is in excess of the mandatory maximum statutory range of a determinate sentence and denies Mcarty release or parole eligibility and is a deprivation of liberty without due process and equality of the law violative of the 5th and 14th Amendments and subjects Mcarty to cruel and unusual punishment violative of the Eighth (8th) Amendment and the Supremacy Clause, Art. VI, cl. 2 of the United States Constitution.

It is requested that the discretionary life sentence is in

excess of the mandatory maximum statutory range of a determinate sentence. McAulley Vs. Payne, 2021 ARK. B5 (Appendix B), and makes McAulley ineligible for release or parole absent executive action. See ARK. Code Ann. § 16-93-607 (c)(1); and Logan Vs. Lockhart, 994 S.W.2d 1324 (Bth Cr. 1993). It's also true life without parole is only available to a defendant convicted of Capital Murder. See ARK. Code Ann. § 5-10-101. Id.

B). Preservation of Grounds For Habeas Corpus.

McAulley filed a State Habeas Corpus challenging the jurisdiction of the Court to sentence McAulley in excess to a determinate sentence, to life imprisonment. McAulley also challenged the constitutionality of ARK. Code Ann. § 5-4-401 (a)(1). The life sentence provided for in subsection (1) of ARK. Code Ann. § 5-4-401 (a) is in excess of the mandatory sentencing range for a determinate sentence in section (a) of ARK. Code Ann. § 5-4-401. The mandatory language used in ARK. Code Ann. § 5-4-401 (a) mandates a determinate sentence for a defendant convicted of a felony. The life sentence subjects McAulley to cruel and unusual punishment violative of the Eighth (Bth) Amendment and is a deprivation of liberty without due process or equality of the law violative of the 5th and 14th Amendments and the Supremacy Clause, Article VI, Cl. 2 of the United States Constitution. See McAulley Vs. Payne, 2021 ARK. B5. (Appendix B).

C). Clear Instance of Life Sentence being in Excess of the maximum Statutory Range of a Determinate Sentence and not allowed by law

The Petitioner is ineligible for release or parole absent Executive action. See ARK. Code Ann. § 16-93-607 (c)(1). The Executive Branch of Government must commute the life sentence to a determinate number of years so McAulley can become eligible for release or

Parole. Logan vs. Lockhart, 994 F.2d 1324. (8th Cir 1993) McAnty would be eligible for discharge in this case because he only had to serve one half minimum good time credits before he would have been eligible for parole. See Ark. Code Ann. § 16-93-607(c)(1). McAnty would be minimum flat after serving twenty (20) years on the determinate sentence of forty (40) years imprisonment. The life sentence is not allowed by law.

D). Clear Instance of Suspension of Habeas Corpus.

Some have called this most celebrated writ in the English law, the most important human right in the Constitution. See Post-Conviction Remedies § 1.4. The writ was established in England law centuries ago and became a fixed part of our Country's common law heritage by the time the colonies achieved independence. In the 16th century, one for that existed in England was Habeas Corpus ad subjiciendum, which was used to inquire "into illegal detention with a view to an order releasing the petitioner. Habeas Corpus at that time was limited strictly to Federal prisoners in 1789. The statute did not define the substantive scope of the writ of Habeas Corpus, but merely stated that the Courts of the United States "shall" have power to issue writs of... Habeas Corpus... without further guidance from Congress, the early decisions steered a conservative course, roughly following the English Habeas practice. The writ issued on behalf of prisoners attacking executive detention, but generally was not available to challenge detention by Court order after conviction. It was decided that a judgment of conviction that was rendered by a Court of general criminal jurisdiction was conclusive proof that confinement was legal... [and] prevented the issuance of the writ. The only exception was in the case of conviction by a Court that lacked jurisdiction. See Post-Conviction Remedies § 4.2. The trial Court exceeded its authority in this case, to sentence Petitioner in excess of the statutory range of determinate sentence.

In 1867, the Habeas Corpus statute was amended to include state prisoners within its scope, the first significant enlargement of the Habeas jurisdiction by Congress. However, federal courts continued to limit habeas review to whether the sentencing court had jurisdiction. While the courts continued to hold in most cases that only jurisdictional questions could be presented in Habeas Corpus, it permitted collateral attacks on "sentences not allowed by law" and convicts under invalid criminal statutes."

Writ of Habeas Corpus is the sole remedy for McArty to attack his sentence since it's not allowed by law. Congress has determined that Habeas Corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement. Heck vs. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994); and Preiser v. Rodriguez, 411 U.S. 475, 93 S.Ct. 1827 (1973)

Yet, 28 U.S.C. § 2244(b)(3)(C) requires a state prisoner to make a prima facie requirement to satisfy § 2244(b) in its entirety before a United States Court of Appeals may grant authorization to file a second or successive Habeas Corpus. Congress' amendment to § 2244 does not permit someone like McArty to make a collateral attack on a sentence not allowed by law. McArty's life sentence is not allowed by law because it is in excess of a determinate sentencing range. See ARK Code Ann. § 5-4-401(a) which provides that a defendant convicted of a felony "shall" receive only a determinate sentence. Ex parte Siebold, 100 U.S. 371 (1879)

The prima facie requirement in 28 U.S.C. § 2244(b)(3)(C) is a suspension of the writ of Habeas Corpus for a state prisoner's attempt to attack a sentence not allowed by law as in this case violative of Article I § 9, Cl. 2, and the Supremacy Clause of the United States Constitution, Article VI, Cl. 3 which subjects McArty to cruel and unusual punishments, a deprivation of liberty without due process and equality of the law violative of the 5th, 8th, and 14th

Amendments to the United States Constitution.

E). Declaratory Judgment And Injunctive Relief Barred Not Time Barred

The Eighth Circuit Court of Appeals has held that an attack on a sentence seeking injunctive relief can only be done in a Petition for Writ of Habeas Corpus - 28 U.S.C. § 2254. Smith vs. Hobbs, 490 Fed. Appx. 833 (8th Cir. 2015). The prima facie requirement in 28 U.S.C. § 2244(b)(3)(C) is a suspension of the Writ of Habeas Corpus but also bars injunctive relief and declaratory judgment actions since 42 U.S.C. § 1983 civil actions are not an appropriate remedy to collaterally attack a sentence not allowed by law because it invalidates McDuffy's sentence entitling him to release. Heck vs. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994); and Preiser vs. Rodriguez, 411 U.S. 425, 93 S.Ct. 1027 (1973).

The prima facie requirement in 28 U.S.C. § 2244(b)(3)(C), to have a state prisoner to satisfy § 2244(b) is a suspension of the Writ of Habeas Corpus barring McDuffy from seeking declaratory judgment and injunctive relief to enjoin the respondents enforcement of ARK Code Ann. § 5-4-401(a)(1) because the life sentence is in excess of a determinate sentencing range and not allowed by law. See ARK Code Ann. § 5-4-401(a). The suspension of the Writ of Habeas Corpus via § 2244(b)(3)(C) is a violation of Article I § 9, Cl. 2 and the Supremacy Clause Article VI, Cl. 2 of the United States Constitution and is a deprivation of liberty without due process or equality of the law violative of the 5th and 14th Amendments and subjects McDuffy to cruel and unusual punishment violative of the 8th Amendment to the United States Constitution.

Conclusion

Petitioner prays this Court will determine 28 USC § 2244(b)(3)(C) to be an unconstitutional suspension of the writ of Habeas Corpus and the Supremacy Clause to grant declaratory judgment and injunctive relief to enjoin the Court of Appeals enforcement of 28 USC § 2244(b)(3)(C). It also prayed for this Court to utilize its discretionary powers to transfer this case to the United States District Court for the Eastern District of Arkansas for a hearing and determination of the merits of the grounds presented herein that deprive me of release or parole. See 28 USC § 2241(b). Or, in the alternative grant the Habeas Corpus and injunctive relief, to enjoin respondents enforcement of Ark. Code ANN. § 5-4-401(a)(1), and order me to be discharged from custody.

Respectfully Submitted,
Randall Thomas McAuliffe
Randall Thomas McAuliffe #1015205

Date: 9-1-2021