

21-6092

ORIGINAL

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Earvin R. Davis — PETITIONER
(Your Name)

VS.

Warden Connie Horton — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Earvin R. Davis #227488 pro per
(Your Name)

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(Address)

Kincheloe, MI. 49784
(City, State, Zip Code)

(Phone Number)

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

I.

DID THE TRIAL COURT VIOLATE PETITIONER DAVIS'S 14TH AMENDMENT RIGHT TO DUE PROCESS WHEN THEY USED A CIVIL ACTION TO IMPRISON HIM AS A MINOR?

Petitioner answers: "Yes"

Respondent presumably answers: "No"

II.

DID THE TRIAL COURT & MICHIGAN COURT OF APPEALS VIOLATE PETITIONER DAVIS'S 14TH AMENDMENT RIGHT TO DUE PROCESS WHEN THEY REFUSED TO GIVE BINDING EFFECT TO THE NOTICE PETITIONER WAS GIVEN IN HIS CHARGING INSTRUMENTS PERTAINING TO THE PRINCIPAL SUBJECT-MATTER?

Petitioner answers: "Yes"

Respondent presumably answers: "No"

III.

DID THE TRIAL COURT & MICHIGAN COURT OF APPEALS VIOLATE PETITIONER'S 14TH AMENDMENT RIGHT TO DUE PROCESS WHEN THEY REFUSED TO VACATE HIS CONVICTION & SENTENCE?

Petitioner answers: "Yes"

Respondent presumably answers: "No"

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:

M.D.O.C., et al.

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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[] is unpublished.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[] is unpublished.

[] 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,
[~~X~~] is unpublished.

The opinion of the Circuit court _____ court appears at Appendix ^B _____ to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[~~X~~] 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 8-3-21.
A copy of that decision appears at Appendix _____.

[] 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 & STATUTORY PROVISIONS

MCL 600.1821	Appendix E
MCL 600.775	Appendix J
MCL 767.57	Appendix K
MCL 774.3a	Appendix L
Michigan Const. Art. 6 cl. 15	Appendix M
MCL 761.1	Appendix O
MCL 49.153	Appendix Q
United States Const. Art. 4 sec. 1	Appendix T
United States Const. 14th Amendment	Appendix U
Michigan Const. Art. 6 sec. 1	Appendix V

STATEMENT OF THE CASE

Petitioner Davis originally filed a complaint for a Writ of Habeas Corpus in the trial court arguing that by the plain language of MCL 600.1821 petitioner's conviction and sentence is void because the state used a process of which the principal subject-matter was civil, i.e., a writ of attachment to imprison him. Petitioner also argued that the substantive predicates used in MCL 600.1821 created a Due Process liberty interest under federal law for petitioner Davis to be free from imprisonment by means of a process of which the principal subject-matter is civil. And last petitioner argued that MCL 600.1821 denied the trial court jurisdiction of the principal subject-matter making all proceedings from formal arrest to conviction void. The trial court refused to answer the question pertaining to the principal subject-matter, instead focusing on personal jurisdiction, i.e., jurisdiction of the case after a bind-over. The judge's opinion focused on the criminal proceedings but not once did the judge nor respondent defend or deny petitioner's allegations pertaining to the principal subject-matter and his federal claim. The circuit court judge dismissed petitioner's complaint.

Pursuant to MCR 3.303 petitioner Davis next filed an original action in the Michigan Court of Appeals. This was not an appeal of the complaint filed in the circuit court. That decision could not be appealed. This was a new and separate action. In this action petitioner Davis modified his argument so that it would be more comprehensive and so that the judiciary wouldn't continue to avoid his argument which focused only on the principal subject-matter and not the proceedings. Petitioner argued that MCL 600.1821 and Art. 6 cl. 15 proscribe the use of a civil action to imprison petitioner Davis and created a due process liberty interest for petitioner Davis to be free from imprisonment on a civil action. When respondent failed to defend or deny Petitioner filed a motion for default judgment arguing that it would be appropriate for the Magistrate to grant the

motion because not only did respondent fail to defend or deny pursuant to the rules of civil procedure but also MCL 600.1821 and MCR 2.201 denied the trial court jurisdiction of the principal subject-matter making all proceedings used to convict petitioner Davis void. The Michigan Court of Appeals issued an order summarily denying his complaint for a writ of Habeas Corpus and his motion for a default judgment.

Last, Petitioner Davis appealed the decision of the Michigan Court of Appeals arguing that the Michigan court of Appeals violated petitioner's right to due process when they failed to give binding effect to the judicial admission made in petitioner's charging instruments and order of arrest and that the Michigan Court of Appeals committed an abuse of discretion when they failed to grant petitioner's request for a writ of habeas corpus. Petitioner argued that his conviction and sentence violated his right to Due Process under Federal and state law. The Michigan Supreme Court issued a order declining to review the questions presented.

REASONS FOR GRANTING PETITION

There are only two ways a person that is a defendant in a suit/prosecution can defend himself, i.e., by presenting a defense in the regular course of the proceedings and/or by contesting the subject-matter jurisdiction of the court. In Michigan a felony complaint and information is an indictment and is used to give notice to the defendant about the nature and character of the crime and to show jurisdiction. [See 11 MLP 2d Criminal Law & Procedure 195 & MCL 761.1].

Petitioner Davis was given notice in his charging instruments at the beginning of his prosecution about the nature and character of the charge he would be required to defend against and what the principal subject-matter of the proceedings were. In short, petitioner was informed that he would be called to defend against the charge of 1st degree felony murder but that the principal subject-matter was an attachment action, i.e., a civil action of which the rules of civil procedure apply. The state of Michigan mixes criminal procedure with civil procedure. People v Cor, 2014 Mich. App. LEXIS 1417 [See MCR 6.001 (D)]

After obtaining a conviction against petitioner, the state, defending against petitioner's collateral attack violated petitioner's right to Due Process of the law guaranteed by the 14th amendment of the United States Constitution by claiming the notice they provided petitioner Davis at the beginning of his prosecution pertaining to the principal subject-matter of the criminal proceedings used to imprison petitioner isn't binding. This court held in Rendall v Brigham, 74 U.S. 523 that, due process requires due notice and the right to be tried in a legal and regular course of judicial proceedings by an impartial judge in all cases civil or criminal, whether by exercise of a court's ordinary jurisdiction, with trial by jury, or by the exercise of the discretionary or summary jurisdiction.

In the year 1991, Petitioner Davis was proceeded against in the District and

Recorder's court, court's of limited jurisdiction who's jurisdiction was determined by legislation and the Michigan Court Rules. [See Michigan Const. Art. 6 cl. 1.01, & MCL's 600.775] The Recorder's court did not and do not have inherent subject-matter jurisdiction. [See People v. Washington in appendix] While both the United States Supreme Court and Congress allows the states to determine the jurisdiction of their court's and how their court's are structured, this court has held that the state court's must operate in a jurisdictional manner. Haywood v. Brown, 556 U.S. 729

In Michigan there is a distinction between the principal subject-matter and the nature of the proceedings. [See Michigan Court Rules 8.117 (A), that were in effect in the year 1991]. Any pleading/complaint being filed must be assigned a case classification code indicating the principal subject-matter. The term "must" indicates that the use of the code is mandatory.

In the year 1991 petitioner Davis was a fifteen year old juvenile who was protected from being proceeded against outside of probate court's jurisdiction, "except as otherwise provided by law." [See Michigan Constitution Art. VI cl. 15] The prosecutor for Wayne County filed a civil action. i.e., an attachment action, against plaintiff Davis under case number #91121371PA and used this civil action to implement the ancillary criminal proceedings under case number #36-91-66419 in the District court and under case number #91-01-0838-01 in the former Recorder's court. The nature of the proceedings were criminal but the principal subject-matter was a civil action, i.e., the writ of attachment. [See petitioner Davis's felony complaint, warrant and amended information. They each have the case classification code [PA] symbolic for Attachment]. Petitioner's case is a financial conversion case. [See petitioner's register of actions stating that petitioner's case is a financial conversion case]

When the prosecutor for Wayne County assigned the classification code to Petitioner Davis's felony complaint, warrant and amended information and he and the Magistrate signed those documents they made a judicial admission that was and is binding

on the court pursuant to this court's ruling in Oscanyan v. Arms Co., 103 U.S. 261. Pursuant to the Michigan Rules of court, i.e., MCR 1.109 (E) (5) the prosecutor and the Magistrate's signature on the charging instruments is certification that they have read the documents, the documents are well grounded in fact and is warranted by existing law.

MCL 600.1821 states that no child under the age of sixteen can be arrested or imprisoned on "any process" (civil or criminal) in a civil action. This statute goes on to state that if a person under the age of sixteen is arrested or imprisoned on a civil action their arrest or imprisonment is "void" and a contempt of court. Finally it concludes by stating that any judge of the circuit or Supreme court can release petitioner and if this language was not enough to convince a judge that their duty to release petitioner wasn't discretionary, this statute stipulated in sub-section (9) that once they were made aware that petitioner was exempt from arrest or imprisonment by means of a civil action and they refused to release petitioner they were in contempt of court and liable to petitioner for double the amount a jury awards. This statute uses substantive predicates, i.e., mandatory language that made the executive and judiciary's job ministerial. It left no room for discretion. This statute mandated a specific outcome if a person under the age of sixteen was imprisoned on a civil action. It mandated that the proceedings be determined void and that the child be released from imprisonment. It was the Michigan Judiciary's absolute duty to vacate petitioner's conviction and order his release once petitioner asked them to take judicial notice of this statute. Furthermore, under Michigan law statutes that confer a right or privilege are mandatory. [See MCL 767.57] Smith v Grand Rapids city Comm'n, 281 Mich. 235.

Petitioner simply states that under Michigan law the states use of the attachment action on petitioner as a juvenile class member was illegal and according to the clear language of the statute, made all proceedings void from formal arrest to conviction and that the court's use of the attachment action to imprison petitioner Davis violated his right to due process of the law guaranteed by the 14th amendment of the United States

Constitution. The Michigan Constitution Art. VI cl. 15 & MCL 600.1821 created a liberty interest for petitioner Davis as a member of a class of protected individuals to be exempt from arrest or imprisonment on "any process" in a civil action.

Despite petitioner Davis offering as evidence records of the court, i.e., his charging instruments, a court order, i.e., his arrest warrant and his register of actions, the state refused to give full faith and credit to their own records in violation of the United States Constitution Art. IV sec. 1. In Michigan court records determined to be entirely regular are suppose to be accorded absolute verity. Floyd v Roberts, 331 Mich. 687 [See 10 MLP 2d COURTS 118] Also a register of actions is considered evidence under Michigan law. [See MCL 774.3a]. Pursuant to MCR 2.112 (f) petitioner needed only to reference the documents in his pleadings and the Michigan court's were suppose to treat the documents as if they were filed with the pleadings. However petitioner did provide the court copies of the documents as a cautionary measure.

When petitioner Davis filed his initial complaint with the 50TH Circuit court he alleged that his conviction was void because the state of Michigan used a process of which the principal subject-matter was civil which was proscribed by MCL 600.1821. The judge for the 50TH Circuit trial court argued that the proceedings were not civil because, [Quote] "There would be no need for a prosecutor in a civil case." This statement is misleading because pursuant to MCL 49.153 the prosecutor represents the state in civil and criminal actions. When the Magistrate commits fraud on the court to support the respondent's position can the Magistrate still be said to be impartial? But more importantly petitioner Davis argument pertained only to the principal subject-matter, i.e., the attachment action but the trial court's response was focused on the proceedings, making the magistrates opinion dispositive.

Neither the respondent nor the court denied petitioner's allegation that on the face of the record, the principal subject-matter of the criminal proceedings used to

convict him was the attachment action, i.e., a civil action. Nor did either party deny that the clear language of MCL 600.1821 makes petitioner's conviction and sentence void. Habeas Corpus is a civil action and the rules of civil procedure apply. People v McCager, 367 Mich. 116

Pursuant to the rules of civil procedure [See MCR 2.111 (E)] "Allegations in a pleading that require a responsive pleading, other than allegations of the amount of damage or the nature of the relief demanded, are admitted if not denied in the responsive pleading. [See the assistant Attorney General's response and the Magistrate's order from the circuit court] Both the respondent and the judge refer to the case classification code [FC], designated on the Supreme Court's order denying petitioner's criminal appeal as proof that he was convicted through criminal proceedings. However, petitioner doesn't dispute that he was appealing a criminal conviction, i.e., a capital felony, nor that the subject-matter of the criminal appeal was a capital felony [See MCR 8.117 (B)(7)]. Petitioner did not argue that the subject-matter of his criminal appeal was civil, i.e., the attachment action. His allegations and evidence in support only pertains to the proceedings that occurred before the conversion, i.e., before the guilty judgment was obtained. The state seems to be operating on the premise that the rules of evidence only apply when they are being cited by them. They refer to the case classification code designation [FC] to prove that the subject-matter of petitioner's criminal appeal was a capital felony but deny petitioner's evidence from the same source, i.e., the case classification code, relating to the principal subject-matter of the proceedings used to obtain a judgment against petitioner.

More importantly when petitioner Davis filed his original action in the Michigan Court of Appeals he modified his argument so that it was more comprehensive and so that the Michigan judiciary couldn't pretend to misconstrue it again. The original action filed in the Michigan Court of Appeals was not an appeal of the complaint for a writ of Habeas Corpus filed in the trial court. It is a entirely separate action. Neither the

respondent nor the judiciary attempted to defend or deny.

In Miller v. Alabama, 567 U.S. 465, this court recognized that children like petitioner Davis who were fifteen years of age when they were proceeded against are ill prepared to deal with the complexities of the law and often cannot even help their attorney prepare their defense. This court stressed the need to take into account the transient immaturity of youth and their disadvantages in dealing with the complexities of the judicial system. Petitioner Davis did not and could not waive his constitutional right to be free from imprisonment through use of a civil action. He could no more waive that right than could a three year old waive his right to be free from imprisonment on criminal proceedings in the state of Michigan. Petitioner comes to this court to right a wrong committed against him as a child by the state of Michigan who refuses to adhere to their own substantive laws and rules of evidence.

Justice is not based on the feelings and opinions of the trier of fact. Justice must be pursued according to law and by the rules of the court. The United States Constitution is suppose to be the law of the land. Petitioner is an American citizen who has been judicially kidnapped. He has been denied a legal and regular course of judicial proceedings and due process of the law.

When the Michigan judiciary refuses to accept the evidence of their own records and ignore exemption laws that confer a right/privilege on a fifteen year old child to be free from arrest or imprisonment on a civil action, should not this court make clear to the states that state sovereignty does not provide the state a license to imprison children in violation of their own laws and the United States Constitution? The constitution guarantees more than just process. Process without fundamental fairness should offend this court as much as it offends the Constitution. Petitioner provided the state court's a copy of the records, i.e., indictments and arrest orders used to charge and arrest him but the state laughed and pretended that petitioner Davis had not met his burden. Petitioner asked the state court to take judicial notice of their own

substantive law and their response was to ignore his arguments. They refused to find the facts, nor cite the authorities that allow them to trample petitioner's constitutional guarantees.

Deeply rooted in this nations history and essential to America's scheme of ordered liberty is that no citizen of our Government can be arrested nor imprisoned in defiance of the laws enacted by the states legislators and the United States Constitution. The judiciary's role in the government is to enforce the law, not suborn the law by issuing orders in direct contravention of the law.

Blue laws, kangaroo courts and the Dred Scott decision.... these are suppose to be relics of the past, no fit place for this modern progressive society. Petitioner implores this court, as a citizen of the United States to review this case with an impartial eye towards the evidence and in consideration of his exemption as a member of a class of protected individuals, i.e., juveniles.

Maybe the judiciary in Michigan felt petitioner Davis is guilty of murder and despite the laws enacted by their government, should be kept in prison for life. But passion should never be a determining factor in whether a child should be imprisoned nor whether a man should be liberated when it becomes clear that he was unconstitutionally imprisoned in violation of state and federal law.

This matter is important to American jurisprudence because at a time when both scientist and the court's are taking into consideration the disadvantages and immaturity of youth, it's imperative that this court makes it clear to the state and federal court's that juveniles should be afforded fair consideration, especially when you take into consideration that most juveniles charged as adults as petitioner Davis was receive inadequate representation and as a consequence many of their issues and right's are forfeited before they are of age to make a mature and intelligent decision about their defense. Why didn't petitioner's attorney's ever use this exemption law to have petitioner Davis's charges vacated? Petitioner had three attorney's and not one of them

knew that he had been illegally imprisoned? The question then becomes were they incompetent or were they complicit? Clearly they were ineffective. Petitioner posits that Due Process also requires the court to have due regard for the whole process, i.e., the incompetency of the officer of the court who was appointed to represent petitioner Davis's interest without his consent, the age petitioner was when these decisions were made for him and the injury he received as a consequence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marvin G. Glass".

Date: 9-27-21