

No. _____

21-6162

IN THE

SUPREME COURT OF THE UNITED STATES

Request Oral Argument

Antwain Topaige Sales — PETITIONER
(Your Name)

Mike Parris, Warden and vs.
The State of Tennessee — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
United States Supreme Court

No Tennessee Court Ruled on the Merits of my case
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Antwain Topaige Sales
(Your Name)

T.T.C.C. 140 Macon Way
(Address)

Hartsville, Tenn. 37074
(City, State, Zip Code)

N/A
(Phone Number)

RECEIVED

OCT 14 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Question(s) Presented

1. Whether this Court should issue this Writ of Certiorari
2. Whether the lower Courts in Tennessee exceeded the jurisdiction conferred and acted illegally
3. Whether the Petitioner has demonstrated by the preponderance of the evidence that he is entitled to the relief sought under Tennessee Habeas Corpus statutes
4. Whether this Court has the Jurisdiction to guide the discretion of the lower courts in Tennessee and enter the appropriate judgment
5. Whether Petitioner gave a Correct interpretation of the existing laws of Tennessee

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:

RELATED CASES

- Graves v. McBrayer, 225 S.W. 2d 65, 189 Tenn. 289 (Tenn. 1949)
Mayor and Aldermen v. Pearl, 30 Tenn. 249 (1850)
Webb v. Carter, 165 S.W. 426, 129 Tenn. 182 (Tenn. 1914)
White v. State, 50 Tenn. 338 (1871)
Wiley v. Bennett, 68 Tenn. 582 (1877)
U.S. v. Bradley, 922 F.2d 1290 (C.A. 6 (Tenn.) 1991)
Harper v. Turner, 101 Tenn. 686 (1899)
McLendon v. State, 92 Tenn. 520 (1893)
- Lyle v. Longley, 65 Tenn. 286 (1873)
- State v. Scott, 32 Tenn. 332 (1852)
- Reynolds v. Lowthrop, 7 Tenn. Civ. App. 12 (1916)
- State Dept. of Revenue v. Moore, 722 S.W. 2d 367 (Tenn. 1986)

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.

(Request Oral Argument)
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☐ is unpublished.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 B 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 Tenn. Crim. App. court appears at Appendix B to the petition and is

☐ reported at 2020-01471-CCA-R3-HC; 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 May 19, 2021.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: August 4th, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

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Statement of the Case

In 2007, Petitioner Pled guilty to Second degree murder and attempted second degree murder. No direct appeal was taken, as the plea was entered under the pretense of a negotiated settlement on April 23, 2007.

On May 23, 2011, the Petitioner filed a Petition for Post-Conviction Relief. The Convicting Judge Summarily dismissed the petition as untimely. The Court of Criminal Appeals affirmed. *State v. Sales*, No. M2011-02001-CCA-R3-PC, 2012 WL 4479283, at *1 (Tenn. Crim. App. 2012), perm. App. denied (Tenn. Jan. 14, 2013). In 2012, Petitioner filed his first petition for State Habeas Relief. The petition was dismissed by the Circuit Court of Johnson County, Tennessee. In 2014, petitioner filed a petition for Federal Habeas Relief. The United States District Court for The Eastern Division dismissed the petition.

This instant Petition for State Habeas Corpus relief, which is the basis for this instant Petition for Writ of Certiorari was filed on June 4, 2020 in the Circuit Court of Morgan County, Tennessee. The trial court never gave any findings of facts nor conclusions of law on the merits of the petition or motion for appointment of Counsel, in forma pauperis, and Civil affidavit of indigency.

Petitioner appealed to the Court of Criminal appeals, which the dismissed the Appeal on Wednesday, May 19th, 2021. Holding: because the

notice of Appeal was untimely, We dismiss the appeal. Without reaching the merits of the Appeal.

Petitioner filed a Tenn. R. App. P. Rule 11 Application for permission to Appeal to the Tenn. Sup. Ct, which was also denied without any findings or conclusions.

Petitioner then filed a Tenn. R. App. P. Rule 39 petition to Rehear, which was denied as untimely.

Reasons For Granting The Petition

The petitioner Represents that this Court is the appropriate Court to guide the discretion of the lower courts in Tennessee and set precedents on this blatant disregard of a clearly mandated State Constitutional Provision governing the procedure on Style and Test of Judicial Writs and process, which provides as follows:

All writs and other process "shall" run in the name of the State of Tennessee and bear test and be signed by the respective Clerks. see T.C.A. Const. Article VI, Section 12.

The Tennessee Legislature has also established as follows:

It is the duty of the "Clerk" of each of the courts to sign "all" Summons, Writs, Subpoenas, executions and process issued out of the Clerks Court and endorse on the back the date of issuance. see T.C.A. 18-1-105 (a)(1).

And the Tenn. Sup. Ct. has also explained as follows:

The Style, the test, and the signature of the Clerk are essential parts of the process, if those or anyone of them be absent, the defect cannot be cured by Amendment. see *Graves v.*

McBrayer, 225 S.W.2d 65, 189 Tenn. 289 (Tenn. 1949).

In addition to the State Supreme Court's findings dealing with this issue. The United States Court of Appeals, Sixth Circuit has also stated:

[FN2]: In addition to the Warrant requirement, "all" process issued by the Courts in Tennessee "must" bear

test and be signed by the respective Clerks. see U.S. v. Bradley, 922 F.2d 1240 (C.A.6 (Tenn.) 1991). Therefore, the petitioner avers his indictments as being the Original process were not signed nor stamped by the Clerk of the issuing court in any form, which renders that process null and void under Tennessee law. Reinforced by the United States Court of Appeals (6th Cir.). Which is a clear "Due Process of Law violation." see U.S.C.A. Const. Amend 14, and a Clear Prejudice within the Judicial process. see Tenn. R. App. P., Rule 36(b). And furthermore, Petitioner also avers his Judgment Orders as being the final process are also not signed nor stamped by the Clerk of the issuing court. The law reads: Signed and entered. A judgment of conviction "shall" be signed by the judge and entered by the Clerk. see Tenn. R. Crim. P. Rule 32(e)(1). see also Tenn. R. Civ. P. Rule 58. Petitioner also avers his Judgment Orders do not run in the name of the State of Tennessee as mandate by the State Constitution. see T.C.A. Const. Art. 6, Sec. 12. It is well established, The Constitution of this State, requires that all Writs and other process shall run in the name of the State of Tennessee, this requirement applies to "all" process civil or criminal, issued by "any" court or tribunal established by law, having authority to issue process. see Mayor and Alderman v. Pearl, 30 Tenn. 249 (1850); see also McLendon v. State, 92 Tenn. 520 (1893), Harper v. Turner, 101 Tenn. 686 (1899); and Webb v. Carter, 129 Tenn. 182 (Tenn. 1914).

And the Record will demonstrate "NO" court in Tennessee. Trial or Appellate would even Rule or address the Merits of my State Habeas petition, and give petitioner a correct interpretation of the existing laws of this State, which is not only illegal, but also a total Miscarriage of Justice. see Tenn. R. Civ. P. Rule 52.01; Tenn. R. Crim. P. Rule 33(c)(3); and Tenn. R. App. P. Rule 13(d). The Tenn. Ct. of Appeals has already stated: Requiring trial courts to make findings of fact and conclusions

of law is generally viewed by courts as serving three purposes: (1) findings and conclusions of law is to facilitate appellate review by affording a reviewing court a clear understanding of the basis of a trial court's decision; (2) findings and conclusions serve to make definite precisely what is being decided by the case in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making; (3) findings and conclusions evoke care on the part of the trial judge in ascertaining and applying the facts. See *Cain-Swope v. Swope*, 523 S.W. 3d 79 (Tenn. Ct. App. 2016). And it is well established in Tennessee "any" relief to which a petitioner is entitled through exercise of writ of habeas corpus is likewise attainable through the appellate process. see *Thurmond v. Carlton*, 202 S.W. 3d 131 (Tenn. Crim. App. 2006). Tenn. R. App. P. Rule 36(a).

CONCLUSION

Based on the law, facts, and record in this case. The Petitioner is entitled to relief, because it is well established in Tennessee, habeas Corpus relief is available only when it appears on the face of the judgment, or record upon which the judgment was rendered, that a convicting court was without jurisdiction or authority to sentence a defendant, or his term of imprisonment or other restraint has expired. see *Archer v. State*, 851 S.W. 2d 157, 164 (Tenn. 1993).

Writ of Certiorari in Tennessee may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when in the judgment of the court, there is no other plain, speedy, or adequate remedy.

see T.C.A. 27-8-101; T.C.A. Const. Article VI, Section 10; see also State v. Hartwell, 124 S.W. 3d 629 (Tenn. 2003); and State v. Johnson, 569 S.W. 2d 808 (Tenn. 1978).

The Petition For Writ Of Certiorari Should Be Granted

Because the laws of this State are Plain and Unambiguous and reads as follows:

When a court or judge has knowledge in any judicial proceeding that any person within the jurisdiction of said court or judge or its officer is being illegally detained or restrained of his liberty. It is the duty of the aforementioned to issue this writ or cause for this writ to be issued, even though no application be made therefore. see T.C.A. 29-21-104.

If there is no sufficient cause shown for detention, then the plaintiff shall be discharged. see T.C.A. 29-21-122(a).

The attorney general and reporter has and shall exercise all duties vested in the office by the Constitution of Tennessee and all duties and authority pertaining to the office of the attorney general and reporter under the Statutory law. The attorney general and reporter is authorized to utilize and refer to the Common law in cases in which the state is a party. see T.C.A. 8-6-109(a); and In addition to the duties described in section (a), the attorney General and reporter, or assistants acting at the attorney general and reporter's discretion, has the following duties: To defend the Constitutionality and Validity of all

legislation of statewide applicability except as provided in subdivision (b)(10). See T.C.A. 8-6-109(b)(9).

And the record as a whole in this instant case will reflect that honorable Herbert H. Slatery III, Attorney General and Reporter, and his Assistant, honorable Edwin Alan Groves, JR., Assistant Attorney General, failed to uphold and maintain their Statutory duties and take mandatory Judicial Notice of Law pursuant to Tenn. R. Evid. Rule 202(a) and the Rule is, Relief will not be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error. Tenn. R. App. P. Rule 36(a); see also State v. Huguley, 185 S.W.3d 356 (Tenn. 2006).

Therefore, Petitioner, Antwain Tapaige Sales respectfully Request that this honorable Supreme Court GRANT the following Relief:

1. That the Petitioner may proceed in forma pauperis. (See attached motion).
2. That the Petitioner be able to properly argue matters of fact or law upon which the parties have not been heard and that are open to reasonable dispute.
3. That this honorable Supreme Court VACATE the judgment and conviction, and guide the discretion of the lower courts in Tennessee and give Petitioner a correct interpretation of the existing laws of this State and enter the appropriate Order pursuant to Rule 16 of this Court. United States Sup. Ct. Rule 16. and Release Petitioner from this illegal Restraint of his liberty. T.C.A. 29-21-101.

Because Construction of Statutes and application of law to facts are questions of law, which Supreme Court reviews under a purely de novo standard, according no deference to the conclusions of law made by the lower Courts. And it is well established in Tennessee, In construing Statutes, Courts' role is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. see *In re D.L.B.*, 118 S.W. 3d 360 (Tenn. 2003); see also *Hickman v. State*, 153 S.W. 3d 16 (Tenn. 2004); and *State v. Jones*, 589 S.W. 3d 747 (Tenn. 2019).

Respectfully Submitted,

Antwain Yapaige Sales

Date: September 22, 2021

Constitutional And Statutory Provisions Involved

The Judges or Justices of the Inferior Courts of law and Equity, shall have power in all civil cases, to issue Writs of Certiorari to remove any cause or transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, support by oath or affirmation. T.C.A. Const. Art. 6, Sec. 12.

All Writs and other process shall run in the name of the State of Tennessee and bear test and be signed by the respective clerks. T.C.A. Const. Art. 6, Sec. 12.

All persons born or naturalized in the United States, and Subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any persons of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. U.S.C.A. Const. Amend 14.

It is the duty of the Clerk of each of the Courts to sign all Summons, Writs, Subpoenas, executions and process issued from the Clerk's Court, and endorse on the back thereof the date of issuance. T.C.A. 18-1-105(c)(1).

Writ of Certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the

jurisdiction conferred, or is acting illegally, when in the judgment of the Court, there is no other plain, speedy, or adequate remedy. T.C.A. 27-8-101.

Whenever a court or judge has knowledge in any judicial proceeding that any person within the jurisdiction of said court or judge or its officer is being illegally detained. It is their duty to issue this writ, or cause for this writ to be issued, even though no application be made therefore. T.C.A. 29-21-104.

T.C.A. 8-6-109 (a), and (b)(9)

28 U.S.C. § 1257(a)

T.C.A. 29-21-101

T.C.A. 29-21-104

T.C.A. 29-21-122(a)