

No. 21-6624

IN THE SUPREME COURT OF THE UNITED STATES

ARTHUR JONES, JR.,

Petitioner

VS.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

Arthur Jones, Jr. Reg. NO. 95635-071

Pro se

FCI Berlin

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PETITION FOR REHEARING

(Sup. Ct. R. 44 _____ [])

Appellant presents its petition for a rehearing of the above-entitled cause, and, in support of it, respectfully shows:

Grounds for Rehearing

A rehearing of the decision in the matter is in the interests of justice because:

1. On January 24, 2022, the Court entered an order in the above-entitled case denying petitioner's petition for a Writ of Certiorari.
2. The Court did not cite any principal ground in its order or noted that it, indeed, adhered to its independent special obligation to not only satisfy this Court of its own jurisdiction in this cause of action sub judice, but also that of the lower courts in this same cause under review.
3. The Court's order came as a surprise to petitioner. Petitioner had briefed the crucial lack of prior exclusive jurisdiction of this cause under review extensively and carefully, and was aware that this Court, in light of the record disclosing that the lower court was without prior exclusive jurisdiction should correct the error of the lower court in entertaining this cause sub judice. See United States v. Corrick, 298 U.S. 435, 440 (1936). In fact, petitioner is aware that, "It is of course settled that this Court must consider, whenever the question is raised... , the jurisdiction of the lower federal courts as well as the jurisdiction of this Court." See Oklahoma v. United States Civil Serv. Com., 330 U.S.

127, 146 (1947) (Brackets, alteration, Omission and emphasis added). Surprisingly, to the petitioner, to say the least, the United States Supreme Court, a stout defender of both the jurisdictions of the States and Federal tribunals has chosen to ignore the prior exclusive jurisdictional defect. For whatever reason, this Court has deviated from its prior ruling that is binding on this Court that, "[n]o court can ignore the defect; rather a court, noticing the defect, must raise the matter on its own." See Wis. Dept. of Corrections v. Schacht, 524 U.S. 381, 389 (1998) (Brackets, alteration and emphasis added). Petitioner weep and groan within his soul as a flesh and blood living and breathing man, not so much for himself, but for the people of the criminal justice system that may know no limits to its deterioration. So help us God!

4. Petitioner was denied the opportunity to submit a Special plea as to the lack of prior exclusive jurisdiction, because the Clerk of Court rejected petitioner's Fed. R. Civ. Pro. 12(b)(1) Motion to Dismiss. Prior to the Court issuing its order denying Writ of Certiorari, petitioner submitted a motion to the Clerk and the Court for Reconsideration as to the rejection of petitioner's Fed. R. Civ. Pro. 12(b)(1). As of the filing date of this legal instrument, petitioner awaits the disposition of his Motion for Reconsideration. The basis of the Clerk's rejection of petitioner's Fed. R. Civ. Pro. 12(b)(1) Motion to Dismiss was that the motion to dismiss was not properly brought before the lower Courts. However, in petitioner's Motion for Reconsideration, he demonstrated that he submitted the same motion to dismiss in the Appellant Court who misconstrued said motion for a motion to dismiss the indictment for the purposes of avoiding petitioner's jurisdictional Challenge. Moreover, petitioner also demonstrated in his Motion for Reconsideration that, "[t]he objection that a federal court lacks subject-matter jurisdiction, see Fed. Rule Civ. Proc. 12(b)(1), may be raised at any stage in the litigation..." See Arbaugh v. Y & H Corp., 546 U.S. 500 (2006) (Brackets, alteration and Omission

added). However, petitioner was not allowed to raise his Objection to the Federal Court's lack of subject matter at the final stage of the litigation in the Supreme Court of the United States, because the Clerk rejected his Motion to Dismiss.

5. This case contains crucial facts pertaining to a lack of prior exclusive jurisdiction that directly appear from the record which demonstrates that the lower courts lack adjudicative authority to entertain any part of this Case.

a. In February of 1997, petitioner was first arrest, indicted and retained by the Sheriff's Department on process issued by the State Court of South Carolina for the alleged offenses of armed robbery and felony murder.

See Exhibits A-1 and A-2.

b. On April 14, 1999, petitioner was indicted in the federal district court for substantially the same offenses of armed robbery and felony murder that was then pending prosecution in the state court. See Exhibit C-1.

c. On April 14, 1999, the federal magistrate judge issued a Writ of Habeas Corpus Ad Prosequendum (WHCAP), so that the U.S. Marshal could take petitioner from the custody of the Sheriff to stand trial in federal court on substantially the same offenses pending in state court. See Exhibits D-1 and E-1.

d. On June 1, 1999, after having this cause of action sub judice, taking away from the state court by the federal court, the state court surrendered its prior exclusive jurisdiction to the federal court prior to exhausting its remedy and jurisdiction over petitioner and this cause of action under review. See Exhibit F-1 and F-2.

e. The record demonstrates that District Judge David C. Norton, Mr. Kittrell (AUSA) and Mr. Cobb and Mr. Haley, Defense Attorneys, debated whether Jones' Criminal Case sub judice could go back to the state court from whence it came. See Exhibit H-1.

f. The record demonstrates that Ms. Wilson, AUSA, on direct examination of her star witness Kevin Lamont Johnson acknowledged that petitioner's cause of action sub judice was initially the State Court's criminal prosecution that could result in the death penalty if this case was to go back to the State Court from Federal Court. See Exhibit, meaning, Supporting Papers, TR. Vol. II, pg. 114.

g. The record demonstrates that District Judge Honorable Margret B. Seymour in regards to this Criminal action sub judice stated, "... These were the same charges for which Petitioner had been arrested and detained in state Court. Petitioner's State charges were dismissed on June 1, 1999." See Exhibit J-1, (omission and bold emphasis added).

6. In earlier decisions, Kline v. Burke Construction Co., 260 U.S. 226, 229-231 (1922), this Court held that, "[t]he converse of the rule is equally true, — that where the jurisdiction of the state court has first attached, the federal Court is precluded from exercising its jurisdiction over the same res to defeat or impair the state Court's jurisdiction. This Court, in Covell v. Heyman, 111 U.S. 176, 182, 28 L. ed. 390, 392, 4 Sup. Ct. Rep. 355, said: "...; and when one takes into its jurisdiction a specific thing, that res is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by foreign process is futile and void. . . ." It is settled that when a state court and a Court of the United States may each take jurisdiction of a matter, the tribunal whose jurisdiction first attaches holds it to the exclusion of the other, until its duty is fully performed, and the jurisdiction involved is exhausted. . . . The rule is not only one of comity, to prevent unseemly conflicts between courts whose jurisdiction embraces the same subject and persons, but between state courts and those of the United States it is something more. 'It is a principle of right and law, and therefore of necessity. It leaves nothing to discretion or mere

convenience. ' Covell v. Heyman, 111 U.S. 176, 28 L.ed. 390, 4 Sup. Ct. Rep. 355. ''
(Brackets, alteration and omissions added).

Thus, as established by the crucial facts which demonstrates the lack of prior exclusive jurisdiction in paragraph 5, it is binding on this Court as a principle of "right and law, and therefore of necessity" that it correct the error of the lower courts in entertaining this cause of action.

7. A rehearing tightly and squarely focused on the lack of prior exclusive jurisdiction, and the Court's independant special obligation to not only satisfy itself of its own jurisdiction in this cause of action sub Judge, but also that of the lower courts in this same cause under review. It is unconscionable to accept that the Supreme Court of the United States can in good conscious sit so idly by while the lower federal courts, through its unlawful seizure of petitioner and the unlawful assumption of sovereign power by force or illegality over this cause of action taken from the state tribunal; because it is in derogation of the Constitution and of the rights of the state tribunal and petitioner.

Conclusion

For the reasons just stated, Arthur Jones, Jr., urges that this petition for rehearing be granted, and that, on further consideration of the lower courts lack of prior exclusive jurisdiction and the settled law that this Court must consider, when the question is raised, the jurisdiction of the lower federal courts, the petition for Certiorari and Fed. R. Civ. Pro. 12(b)(1) Motion to Dismiss for lack of jurisdiction be granted or the judgment of the lower court be reversed or as appropriate.

February 11, 2022.

Respectfully Submitted,

Arthur Jones, Jr.

(pro se)

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Certificate of Good Faith by Counsel

I, Arthur Jones, Jr., pro se, Certify that this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44 of the Rules of this Court.

By: *Arthur Jones, Jr.*