

No. 21-6724

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

CARL K. THOMPSON,

Petitioner,

V.

STATE OF ALASKA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

CARL K. THOMPSON
ID No.123496
WCC
10 Chugach Avenue
Kenai, Alaska 99611

Petitioner pro se

QUESTION PRESENTED

Can a trial court lose its jurisdiction when a defendant who has incompetent representation, that is established under prevailing Sixth Amendment standards, in the same way as a court loses its jurisdiction when there was a physical absence of counsel at trial, and if so, did the court in Mr. Thompson's case lose its jurisdiction over him by his counsel providing incompetent representation?

Case law from this Court seems to suggest that a court can lose its jurisdiction over a defendant in both scenarios, and the Alaska Court of Appeals refused to acknowledge this, in violation of the Supremacy Clause of Article VI of the United States Constitution, and in turn, violating Mr. Thompson's due process right, under the Fourteenth Amendment.

LIST OF PARTIES

The only party not listed in the caption of this case is Dean R. Williams, the Commissioner of the Alaska Department of Corrections, who had custody of Mr. Thompson when he filed his writ of habeas corpus in 2018; who is listed in the caption of the Superior Court opinion; Appendix C.

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DECISION BELOW

Mr. Thompson presents this Petition from the final decision of the Alaska Court of Appeals, entered on July 14, 2021. (App. A.)

JURISDICTION

Mr. Thompson presented the issues raised in this Petition to the superior court on August 27, 2018, and the court denied his claims on February 26, 2020. (App. C.)

Mr. Thompson timely appealed the superior court's Order to the Alaska Court of Appeals ("ACOA") on July 23, 2020, and the ACOA affirmed the superior court on July 14, 2021. Mr. Thompson timely filed a Petition for Rehearing, which was denied on August 6, 2021. (App. A-B.)

Mr. Thompson timely filed a Petition for Hearing to the Alaska Supreme Court on August 19, 2021, and the court denied the Petition on October 19, 2021. (App. D.)

Mr. Thompson did not file a petition for rehearing with the state Supreme Court, as state appellate rules do not allow for a rehearing of discretionary review proceedings.

Mr. Thompson has exhausted all available state court remedies in this case, and has no further avenue to contest the violations of his constitutional rights, except in this Court. Therefore, pursuant to Supreme Court Rule 13.1, this Petition for a writ of Certiorari, is timely filed in this matter.

This Court's jurisdiction is invoked, pursuant to 28 U.S.C. § 1257(a); in accordance with the Court's direct collateral

review powers.

CONSTITUTIONAL PROVISIONS

Amendment XIV of the United States Constitution:

"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 person of...liberty...without, due process of law[.]"

STATEMENT OF THE CASE

A. Relevant facts

In 1986, the state of Alaska indicted Mr. Thompson on one count of first-degree murder, for killing his ex-wife, Dixie Gutman, and on one count of tampering with physical evidence, for disposing of Dixie's body. At trial in 1987, Mr. Thompson argued that he was not guilty of murder, since he initially stabbed Dixie in "self-defense," after she tried to shoot him with her handgun, and he then lost control and killed Dixie in the "heat of passion," making him guilty of the lesser included offense of "manslaughter."

The jury convicted Mr. Thompson on both counts, and the court sentenced him to 99 years in prison. See Thompson v. State, 768 P.2d 127, 129, 134 (Alaska App. 1989).

B. Procedural posture of the instant litigation

In 2018, Mr. Thompson filed a timely mixed petition with the

superior court. In the first part of the petition, he raised several issues: (1) that a fraud upon the court occurred before and during his trial, when the prosecutor introduced his unlawful confession; (2) the prosecutor used a perjured affidavit from one of the state troopers, who interrogated Mr. Thompson, which the prosecutor attached to his motion opposing Mr. Thompson's motion to suppress his confession; (3) the prosecutor used the perjured testimony of Lisa Huffaker at the Grand Jury; (4) the prosecutor presented Ms. Huffaker's perjured trial testimony (different than from her grand jury testimony); and (5) ten (10) issues of incompetent counsel, which was argued showed he had no "hearing (trial)" and "voided" his murder "judgment"; causing the court to lose "jurisdiction," which was a violation of substantive due process, guaranteed by the Fourteenth Amendment to the U.S. Constitution.

The superior court disagreed, stating: "This court is cognizant, however, that Mr. Thompson has raised issues which have broad constitutional concerns, namely the common law right of habeas corpus in instances where original jurisdiction is void: it remains unclear whether applying AS 12.72 standards is constitutionally appropriate in those cases. Mr. Thompson's argument in this regard, however, is flawed. While Mr. Thompson is correct that both lack of jurisdiction or a fraud upon the court may (emphasis original) render a trial court's judgment 'void,' Mr. Thompson is incorrect in his conclusion that a trial court is stripped of jurisdiction when a fraud has been

committed upon the court. This court rejects Mr. Thompson's claim that the trial court's jurisdiction was void." (App. C, page 4.)

In the second part of the petition, Mr. Thompson raised several claims, which actually came under the preview of AS 12.72. However, those claims are not listed here, as they are not relevant to this Petition.

The superior court immediately converted the claims in Mr. Thompson's writ of habeas corpus, to a post-conviction relief application ("PCRA").

Mr. Thompson timely amended his writ of habeas corpus petition; reiterating that he was arguing that his criminal "judgment" was "void," due to a fraud upon the court, and as a result, the trial court had lost "subject matter jurisdiction" over his case, a position which case law from the Alaska Court of Appeals, had recognized was a legitimate claim that could be raised in a writ of habeas corpus.

The superior court, nevertheless, disagreed, and decided all of the claims in the habeas petition, under Alaska Criminal Rule 35.1, and the procedural default rules, pursuant to AS 12.72.020(a), and denied the claims.

Mr. Thompson timely appealed to the Alaska Court of Appeals, arguing the superior court committed reversible error by converted his writ of habeas corpus to a PCRA and then denying it, since case law from that court had firmly established that a prisoner could raise a claim in a writ of habeas corpus, that

his judgment was "void" due to a fraud upon the court, or that the trial court had no jurisdiction to pronounce the judgment, when Mr. Thompson had shown he had no "hearing (trial)" due to his counsel being incompetent, no differently than if he had no counsel at all representing him; which was a violation of Mr. Thompson's right to due process, guaranteed by the Fourteenth Amendment to the U.S. Constitution.

Mr. Thompson also argued that Alaska Criminal Rule 35.1 was an "inadequate and ineffective" means to raise his loss of "jurisdiction" claim with the superior court, since case law stated, a PCRA claim could only be used to litigate a claim in which the prisoner attacked the constitutional "errors" in his criminal "conviction," which Mr. Thompson was not doing, since he had argued that he was being unlawfully detained by the Commissioner of the Alaska Department of Corrections, and held under a "void" criminal "judgment."

The Alaska Court of Appeals never addressed this issue. The court instead focused exclusively upon the language contained within Alaska Civil Rule 86(m), which stated that it "supersedes habeas corpus as the procedural method for attacking a criminal conviction." (App. C, page 4, n. 4.)

On July 14, 2021, the Alaska Court of Appeals affirmed the superior court in a Summary Disposition. (App. A.)

Mr. Thompson filed a timely Petition for Rehearing of the court's Summary Disposition, however, on August 6, 2021, the court declined the invitation to rehear the case. (App. B.)

Mr. Thompson timely filed a Petition for Hearing in the Alaska Supreme Court, asking the court to grant discretionary review of the Summary Disposition from the intermediate appellate court. Mr. Thompson made the same arguments in the state Supreme Court as he made to the superior court and the court of appeals: (1) his writ of habeas corpus was improperly converted to a PCRA, when case law stated a writ of habeas corpus could be filed if the petitioner made the argument that his criminal "judgment" was "void," and the trial court had lost "jurisdiction," and (2) that he had trial counsel, who was so incompetent that it was as if he had no counsel representing him at all, which denied him a "hearing (trial)," and caused the trial court to lose "jurisdiction" over his case, violating his right to due process, under the Fourteenth Amendment to the U.S. Constitution.

REASONS FOR GRANTING THE WRIT

The Alaska Court of Appeals has decided an important question of federal Constitutional law, which this Court has never squarely addressed, and the way in which the court of appeals has decided this constitutional question, was in a way that puts the decision in conflict with parallel decisions from this Court.

ARGUMENT

- I. DOES DEFICIENT TRIAL COUNSEL CAUSE A LOSS OF THE COURTS JURISDICTION THE SAME WAY AS A TOTAL ABSENCE OF COUNSEL DOES?

When Mr. Thompson presented his arguments to the three state courts, the only court to issue a ruling on the "jurisdiction" issue, was the superior court. Mr. Thompson, therefore, will confine his argument to that court's opinion; challenging only the court of appeals affirmance of that decision.

The superior court stated in the February 26, 2020 Order Granting the State's Motion to Dismiss, that: "This court rejects Mr. Thompson's claim that the trial court's jurisdiction was void." (App. C, page 4.)

The only way in which the superior court could possibly have reached that conclusion, was if the court had first determined, (1) that Mr. Thompson had not received representation that was so deficient that it was no different than if he was physically denied counsel; or (2) that deficient trial counsel, as judged by Sixth Amendment standards, does not divest the trial court of jurisdiction, the same way in which a physical absence of counsel does.

In either circumstance, the result is the same: the court reached the merits of Mr. Thompson's claim; the court did not lose jurisdiction over Mr. Thompson case, due to him having deficient representation at his trial.

It seems clear that the superior court ruled that jurisdiction is not lost when a defendant has deficient representation, in the same way that a defendant's trial judgment is void, when he was denied counsel.

In Alaska, the court ruled that, "Compliance with the right

of counsel is such a fundamental requirement of due process that it is an essential prerequisite to jurisdiction[,]" where the court cited: Johnson v. Zerbst, 304 U.S. 458, 467 (1938). See Flanigan v. State, 3 P.3d 372, 376, n. 26 (Alaska App. 2000). The following year, the court announced a ruling, in which the court, "strictly construe[d]" the denial of counsel to those cases in which the defendant was physically deprived of counsel. See Brockway v. State, 37 P.3d 427, 430 (Alaska App. 2001).

However, the Brockway decision would seem to be in conflict with this Court's decision in, Evitts v. Lucey, 469 U.S. 387 (1985), where the Court stated that a defendant with only, "nominal representation at trial--does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all." Id. at 395-96. Mr. Thompson argued this very point in all three state courts, to no avail.

Mr. Thompson also argued in all three courts that, under Powell v. Alabama, 287 U.S. 45, 68 (1932), a case in which the defendants' had physical counsel present in the courtroom, like Mr. Thompson, but failed to meet the adversarial test, the Court found that: "Notice and hearing are preliminary steps essential to the passing of an enforceable judgement[.]"

Moreover, a court's "jurisdiction at the beginning of trial may be lost in the course of the proceedings due to failure to complete the court--as the Sixth Amendment requires[,]" and "if

the requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus."(Emphasis original.) Citing: Johnson, 304 U.S. at 467-68. Cf. Frank v. Magnum, 237 U.S. 309, 327 (1915), where the Court ruled that "jurisdiction" could be absent in the beginning of a trial, or as in Mr. Thompson's case, "lost in the course of the proceedings." Id.

B. The trial court lost its jurisdiction over Mr. Thompson

If the superior court did, in fact, find that Mr. Thompson received adequate representation, and thus, his criminal judgment was not void, as the basis for not allowing him to bring his claim in a writ of habeas corpus, as aftermentioned, then Mr. Thompson asks this Court to review one claim, out of the ten claims that Mr. Thompson presented to the state courts, where he clearly showed that the ruling by the superior court was in direct conflict with precedent from this Court on what the Fourteenth Amendment requires of trial counsel, under prevailing Sixth Amendment standards. (App. C, page 4.)

In Mr. Thompson's writ of habeas corpus, he argued that his attorney was incompetent for not making the argument in the 1986 motion to suppress his confession, on the grounds that it was made "involuntarily," due to the police coercing the confession, based on assurances Mr. Thompson would be given "protection" by

police, from Dixie's brother, who the police knew was the president of the notorious Hells Angeles motorcycle gang in Alaska, in exchange for his confession.

Mr. Thompson first presented this claim in his second PCRA to the superior court in 2004, in which he argued that his PCRA counsel had provided ineffective assistance to him in 1996, for not raising the issue then, and the court ruled that, Mr. Thompson had, in fact, stated a claim of "incompetence for a claim of ineffectiveness of counsel." (App. E, page 14.)

However, the court then found that counsel was ineffective only regarding the first-prong in the test, and only on the issue of whether Mr. Thompson's counsel had been ineffective for waiving his "voluntariness hearing," surrounding the confession.

However, one of the issues Mr. Thompson had consistently argued, in all three state courts, was that had his counsel not waived his voluntariness hearing, he would have been able to present the evidence of the confession transcript, showing the police offered him "protection" from Dixie's brother, the Hells Angel, who Mr. Thompson was terrified of, and which produced Mr. Thompson's confession, almost immediately following the assurance of protection, by the police, telling Mr. Thompson that, they could do "things" to protect him from Dixie's "brother," but only if he gave them a statement, so they could present it to Dixie's brother, to show him Mr. Thompson was cooperating with the investigation, and that there was a good reason for why Mr. Thompson killed Dixie.

The superior court ultimately denied Mr. Thompson's second PCRA, finding he could not establish the "prejudice" prong of an ineffective claim.

The Court based this conclusion on faulty legal logic, finding that since Mr. Thompson had the involuntariness of his confession reviewed by many courts, including the federal courts, all of which had denied the issue, that this showed there was no prejudice from ineffective counsel. (App. E, page 18-19.)

But this analysis was extremely flawed: Mr. Thompson was arguing a claim that he had incompetent counsel, who deprived him of a hearing, in which he had a constitutional right to testify at, to present evidence and call witnesses at, strong, irrefutable evidence, showing he only made the confession, out of fear, and not of his own free will.

In the 2005 superior court opinion, it omitted any mention of the argument where Mr. Thompson laid out that the police had coerced his confession with assurances of protection from the Hells Angels, regarding retaliation that they would take against him, if he failed to give the police the confession they wanted, in exchange for his confession, which insulated this particular issue from proper review in the appellate court in 2006.

In 2007, the appellate court ruled that issue surrounding the Hells Angels and "protection" offered by the police, were all defaulted, due to "res judicata," which the court concluded

Mr. Thompson could have raised earlier. (App. F, page 7.)

But this was not the case. Mr. Thompson was only attempting to show the appellate court, that had his counsel not waived his hearing in 1986, what he would have testified to at the hearing, which he was required to show, in order to establish his counsel was ineffective for waiving the hearing.

When Mr. Thompson filed his writ of habeas corpus in 2018, he once again made the argument that his counsel had been incompetent for not arguing in the 1986 suppression motion that his confession was involuntary, due to the police coercing it with assurances of "protection" from the Hells Angel. It was Mr. Thompson's argument that when his involuntarily made confession was introduced at his trial, it voided his criminal judgment, under the rationale of, Lisenba v. California, 314 U.S. 219, 236-37 n. 17 (1941); and that since the superior court had already found in 2005, that Mr. Thompson had received ineffective assistance of counsel, surrounding the voluntariness of his confession; that counsel made errors so significant that he was not functioning as the Sixth Amendment intended, under, United States v. Cronic, 466 U.S. 648, 658-660 n. 24 (1984).

The Cronic Court held that a criminal trial is "unfair if the accused is denied counsel at critical stage of his trial. Similarly, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversarial process itself presumptively unreliable." Id. at

659. This Court went on further to illustrate some examples of when prejudice was not required, to include instances where the prosecution used an involuntary confession, of the type found in Payne v. Arkansas, 356 U.S. 560, 567-568 (1958); and Jackson v. Denno, 378 U.S. 389-391 (1964). Cronic, Id. at n. 24.

These two cases perfectly illustrate precisely why Mr. Thompson's confession should not be subject to any "prejudice" finding, and like Lisenba, supra, that the introduction of it by the prosecution, "voided" his criminal judgment. See e.g.: Johnson, 304 U.S. at 467-68, where this Court held that a judgment pronounced by a court without "jurisdiction is void," and one "imprisoned thereunder may obtain release by habeas corpus." Id.

In the courts of Alaska, "res judicata" does not apply as a bar to raising claims in a state writ of habeas corpus. See MaCracken v. Corey, 612 P.2d 990, 992 n. 6 (Alaska 1980); Taggard v. State, 500 P.2d 238, 242 (Alaska 1972); and Perry v. State, 429 P.2d 249, 251-52 (Alaska 1967). Also, this Court has held that "res judicata" does not apply as a bar in a common law writ of habeas corpus. Darr v. Burford, 339 U.S. 200, 214-15 (1950). Therefore, the above claim, even though Mr. Thompson has raised it in 2005, it cannot be defaulted in his writ of habeas corpus. Also, it is not subject to any bar, under the common law doctrine of law of the case, since Mr. Thompson has never had a ruling on the "merits." See State v. Carlson, 65 P.3d 851, 859 n. 55 (Alaska 2003); and United States v. Hatter, 532 U.S. 557,

566 (2001).

C. When the superior court converted the writ of habeas to a PCRA, Mr. Thompson was denied due process

The state courts of Alaska have refused to allow Mr. Thompson to challenge his void criminal judgment; due to the court's loss of jurisdiction, by way of habeas corpus, when case law from the Alaska appellate court clearly states that a writ of habeas corpus can only be used to challenge the trial court's "jurisdiction," which was exactly what Mr. Thompson challenged. See: Flanigan v. State, 3 P.3d 372, 374-75 (Alaska App. 2000); Hertz v. State, 8 P.3d 1144, 1148 (Alaska App. 2000); and Grinols v. State, 10 P.3d 600, 609-10 (Alaska App. 2000).

The Flanigan Court clearly sets forth the history of Alaska's writ of habeas corpus, which it modeled after the federal writ of habeas corpus, prior to it being amended in 1867. Prior to 1867, one of the only issues that a federal court would hear, was that the trial court had lost jurisdiction and the judgment was void. Flanigan, supra.

When the superior court ignored Mr. Thompson's claim that his criminal judgment was void, and the court had lost jurisdiction over his case in 1986, as a result of his trial counsel failing to argue that his confession was made involuntarily, due to the police coercing it with assurances of protection from a notorious Hells Angel, in exchange for the confession, Mr. Thompson was denied a "fair" procedure in which to have his substantive due process claim reviewed.

For instance, in Zinermon v. Burch, 494 U.S. 113 (1990),

this Court held that the "Due Process Clause" provides a third rail of protection: a guarantee of "fair procedure." Id. at 125-26.

Mr. Thompson had no other remedy at law to raise his claim, showing he was held under a void criminal judgment, except in a writ of habeas corpus, which was statutorily mandated by the Alaska Constitutional Convention in 1956, ratified into law in 1959. See Flanigan, supra. See AS 12.75.010.

When the superior court stated that, under Alaska's Criminal Rule 35.1, a defendant's "rights provided under Alaska's post-conviction regime are more extensive than--and in fact have superseded -- those [rights] provided by traditional habeas corpus actions[,]" citing: Grinols, 10 P.3d at 623. (App. C, page 3-4 & n. 4.); the court was being disengenuous.

This statement by the superior court simply is not correct: a writ of habeas corpus has no filing deadlines, and the petitioner cannot have his claims defaulted on "res judicata" grounds, which Rule 35.1 subjects a petitioner to. (App. A, page 3, n. 4-6.)

Moreover, the state supreme court illegally created Alaska Civil Rule 86(m), which the court has the rule making powers to do, vested to it under Article IV, section 15 of Alaska's Constitution, and Administrative Rule 23(a).

However, the state constitution and Administrative Rule 23(a), do not allow the supreme court to suspend the writ of habeas corpus, which was exactly what the court did when the

court created Alaska Civil Rule 86(m). (App. C, page 4, n. 4.)

This clearly shows that the writ of habeas corpus was suspended in Alaska, in violation of Article I, § 13 of the state Constitution (suspension clause), which would also violate the separation of powers doctrine, under Art. II, § 14 (passage of Bills) of the state constitution; since the Judicial Branch of state government cannot make law, only interpret the law.

Therefore, the courts in Alaska have illegally enacted a post-conviction scheme which is constitutionally inadequate to protect Mr. Thompson's due process right to have "fair" procedure, guaranteed to him under the Fourteenth Amendment. Anders v. California, 386 U.S. 238, 240-41 (1967); finding "fair" procedure not complied with by the state of California, in habeas proceedings.

Also, under Walker v. Martin, 131 S.Ct. 1120, 1131 (2011), this Court cautioned the lower federal courts to carefully examine "State procedural requirements to ensure that they do not operate to discriminate against claims of federal rights." Id. While the Court was cautioning the lower federal courts to examine State "procedural requirements[,]" the import of the Court's concern should not be any less demanding when, as here, the State of Alaska has arbitrarily denied Mr. Thompson habeas relief, when the case law clearly states he has such a right to pursue just that type of relief.

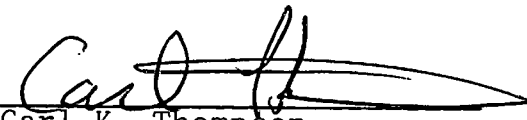
Courts in Alaska should not be permitted to bait and switch like has been done in Mr. Thompson's case at bar: on the one

hand, claiming a writ of habeas corpus is permitted; when attacking the "jurisdiction" of the trial court then, when that was precisely the attack made, claim that such an attack was not permitted; that relief must be pursued through the channels of Alaska's "post-conviction" relief process; which provides someone, like Mr. Thompson, with no relief to actually remedy his "void" criminal judgment, showing the trial court had no "jurisdiction" to pronounce his sentence.

CONCLUSION

WHEREFORE, Mr. Thompson, respectfully, asks this honorable Court to grant this Writ of Certiorari, in the interest of justice.

Dated this 10th day of December, 2021, at Kenai, Alaska.

/s/ 
Carl K. Thompson
Petitioner pro se