

No. 21-6832

ORIGINAL

Supreme Court, U.S.
FILED

DEC 16 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Douglas D. True — PETITIONER
(Your Name)

vs.

Dexter Payne, Director, — RESPONDENT(S)
Arkansas Department of Correction

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Arkansas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Douglas D. True ADC#154617
(Your Name)

2501 State Farm Road
(Address)

Tucker, AR 72168-9567
(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) Has the Supreme Court overruled Boykin v. Alabama, 395 U.S. 238 (1969), holding that there was reversible error where the record did not disclose that the defendant voluntarily and understandingly entered his pleas of guilty?
- 2) Does Boykin v. Alabama, 395 U.S. 238 (1969), impose a constitutional mandate upon the state courts, requiring them to ascertain the voluntariness of a guilty plea and create a record of the plea proceedings to ensure that criminal defendants are afforded their 5th Amendment right to due process?
- 3) Has the Supreme Court of Arkansas unconstitutionally and effectively suspended the writ of habeas corpus, without authorization, by holding that unless a petitioner alleges actual innocence and proceeds under Act 1780 of 2001, the writ will not issue unless a petitioner shows that his/her judgment and commitment order is invalid on its face, or that the trial court lacked jurisdiction over the case - and should the court be required to expand the scope of its habeas review to ensure petitioners receive the full privilege of the writ guaranteed by the federal and state constitutions?

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

- True v. State, Case No. CR-2014-684, Circuit Court of Sebastian County, Arkansas, Fort Smith District, Criminal Division I. Judgment entered August 29, 2016.
- True v. State, Case No. CR-16-983, Supreme Court of Arkansas. Judgment entered November 30, 2017.
- True v. Kelley, Case No. 5:18-cv-00189 BRW, U.S. District Court for the Eastern District of Arkansas, Pine Bluff Division. Judgment entered March 4, 2019.
- True v. Kelley, Case No. 19-1692, U.S. Court of Appeals for the Eighth Circuit. Judgment entered July 26, 2019.
- True v. Kelley, Case No. 19-6767, Supreme Court of the United States. Judgment entered January 27, 2020.

- True v. Payne, Case No. 35CV-20-585-S, Circuit Court of Jefferson County, Arkansas, Eleventh Judicial District, West-Fifth Division.

Judgment entered October 28, 2020.

- True v. Payne, Case No. CV-20-723, Supreme Court of Arkansas.

Judgment entered September 16, 2021.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	6
REASONS FOR GRANTING THE WRIT	14
CONCLUSION.....	25

INDEX TO APPENDICES

APPENDIX A- Opinion of the Supreme Court of Arkansas, Case No. CV-20-723. September 16, 2021.

APPENDIX B- Amended Order, Circuit Court of Jefferson County, Arkansas. Case No. 35CV-20-585-5. October 28, 2020.

APPENDIX C- Petition for Writ of Habeas Corpus, True v. Payne, Case No. 35CV-20-585. August 26, 2020.

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Benton v. Kelley, 2020 Ark 237	i, 8, 11, 14, 15, 17, 24
Boykin v. Alabama, 395 U.S. 238 (1969)	20, 21, 25
Clay v. Kelley, 2017 Ark 294	21
Dorsey v. State, 2012 Ark App. 183	16
Irons v. State, 267 Ark 469 (1980)	11
Jackson v. Arkansas, 567 U.S. 460 (2012)	23
Jackson v. Denno, 378 U.S. 368	15
Jackson v. Norris, 2011 Ark 49 (2011)	20, 22
Reed v. State, 276 Ark 318 (1982)	8, 11
Sawyer v. State, 327 Ark 421 (1997)	20
Stephenson v. Kelley, 2018 Ark 143	21

STATUTES AND RULES

U.S. Const, Art. 1, Sec 9, Clause 2	3, 19, 24
U.S. Const, Amend. V	i, 3, 15, 17, 18
U.S. Const, Amend. XIV	3, 15
Ark. Const, Art. 2, Sec 11	4, 19, 24
Ark. Code Ann. § 16-112-103 (a)(1)	4, 10, 19
ARCP 24.5	4, 10, 16
ARCP 24.6	5, 10, 16
ARCP 24.7	5, 8, 16

OTHER

Act 1780 of 2001	i, 18
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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,
☒ is unpublished.

The opinion of the Circuit Court of Jefferson County court 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.

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 09/16/21.
A copy of that decision appears at Appendix A.

☐ 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 AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article 1, Section 9, Clause 2: "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

United States Constitution, Amendment V: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual Service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment XIV: "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 person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Arkansas Constitution, Article 2, Section 11: "The privilege of the writ of habeas corpus shall not be suspended; except by the General Assembly, in case of rebellion, insurrection or invasion, when the public safety may require it."

Arkansas Code Annotated § 16-112-103 (a)(1): "The writ of habeas corpus shall be granted forthwith by any of the officers enumerated in § 16-112-102(a) to any person who shall apply for the writ by petition showing, by affidavit or other evidence, probable cause to believe he or she is detained without lawful authority, is imprisoned when by law he or she is entitled to bail, or who has alleged actual innocence of the offense or offenses for which the person was convicted."

Arkansas Rule of Criminal Procedure 24.5.

Determining Voluntariness of Plea: "The court shall

not accept a plea of guilty or nolo contendere without first determining that the plea is voluntary. The court shall determine whether the tendered plea is the result of a plea agreement. If it is, the court shall require that the agreement be stated. The court shall also address the defendant personally and determine whether any force or threats, or any promises apart from a plea agreement, were used to induce the plea."

Arkansas Rule of Criminal Procedure 24.6. Determining Accuracy of Plea: "The court shall not enter a judgment upon a plea of guilty or nolo contendere without making such inquiry as will establish that there is a factual basis for the plea."

Arkansas Rule of Criminal Procedure 24.7. Record of Proceedings: "The court shall cause a verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere to be made and preserved."

STATEMENT OF THE CASE

On December 17, 2014, Petitioner Douglas D. True pled guilty to (2) two counts of Capital Murder in the Circuit Court of Sebastian County, Arkansas, and was subsequently sentenced to (2) two concurrent terms of life without the possibility of parole in the Arkansas Department of Corrections. (App. C; R. 18-21)

Then, on March 9, 2015, petitioner filed a timely petition for post-conviction relief in the trial court pursuant to Arkansas Rule of Criminal Procedure 37 (2014), asserting multiple instances of ineffective assistance of counsel stemming from trial counsel's investigation prior to advising a guilty plea, as well as his failure to request a pre-plea mental health evaluation and competency determination. Petitioner also stated that his guilty plea was not knowing, voluntary, or intelligent. The Circuit Court ordered a mental evaluation, and later held an evidentiary hearing on August 22, 2016. Relief was then denied on August 29, 2016, and the judgment was affirmed on appeal on November 30, 2017.

On July 18, 2018, petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Eastern District of Arkansas, Pine Bluff Division. In it, he set forth three claims of ineffective assistance of counsel, and also stated that

his guilty plea was not knowing, voluntary, or intelligent as a result.

On September 13, 2018, counsel for respondent Wendy Kelley, then Director of the Arkansas Department of Correction, filed a second motion for extension of time to file a response to the district court's order to show cause. (App. C; R. 22-24) The extension of time was requested in part in an attempt to locate a transcript of the petitioner's guilty plea proceedings that took place on December 17, 2014. *id.*

On October 5, 2018, petitioner wrote a letter to Attorney Joseph C. Self, whom his family had retained in order to gather the complete record in the case, which petitioner had for the most part been denied access to by multiple government agencies. In the letter, petitioner asked Mr. Self if a missing transcript would have any bearing on his then-pending federal habeas action. Then, on October 31, 2018, Mr. Self responded to petitioner's letter, essentially establishing that no one possessed a record of the guilty plea proceedings. He stated that the Sebastian County Circuit Court reporter had contacted him to inquire if he possessed a transcript of the plea proceedings, which he did not. The court reporter also informed him that the prosecuting attorney's office did

not have one either. (App. C; R. 25-27) So far as petitioner can tell, a record of the guilty plea proceedings has never been discovered.

During approximately the same time period from September to October 2018, petitioner began conducting his own research via the prison law library to determine whether or not the missing record would have any effect on his pending federal habeas action. Upon the conclusion of his research, petitioner discovered that the record was in fact required by the Arkansas Rules of Criminal Procedure. Rule 24.7 states that "the court shall cause a verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere to be made and preserved." Further, the Supreme Court of Arkansas held in Reed v. State, 276 Ark. 318, 635 S.W.2d 472 (1982), that in the absence of the required record, the burden fell to the state to prove that petitioner's plea was voluntarily and intelligently made. The Reed case then led petitioner to a similar case from the Supreme Court of the United States, which held that there was reversible error where the record did not disclose that the defendant voluntarily and understandingly entered his pleas of guilty. See Boykin v. Alabama, 395 U.S. 238 (1969)

Because petitioner had already exhausted his post-conviction remedies under Arkansas Rule of Criminal Procedure 37 at the time of this discovery, and because the rules do not provide for additional petitions, petitioner elected to notify the federal district court of the lack of the required record in his November 28, 2018 reply to respondent Wendy Kelley's response to order to show cause.

On February 11, 2019, federal magistrate judge Patricia Harris issued a report and recommendation that petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied. In her report, Judge Harris did not address the issue of the missing record in relation to petitioner's contention that his plea was not voluntarily and intelligently made.

On March 4, 2019, the federal district judge accepted the magistrate's report and recommendation and denied petitioner relief as well as a certificate of appealability.

On April 9, 2019, petitioner filed a timely notice of appeal and an application for a certificate of appealability with the Eighth Circuit Court of Appeals. Both were summarily denied without opinion on July 26, 2019. Petitioner's subsequent petition for

rehearing/ rehearing en banc was denied August 23, 2019.

On November 20, 2019, petitioner filed a petition for a writ of certiorari with the Supreme Court of the United States asserting grounds of ineffective assistance of counsel and that the lower courts had bypassed the issue of the missing transcript of petitioner's guilty plea proceedings. The Court denied the petition on January 27, 2020, and a petition for rehearing was denied on April 27, 2020.

Finally, on August 26, 2020, petitioner filed a petition for writ of habeas corpus pursuant to Ark. Code Ann. § 16-112-101-123 in the Circuit Court of Jefferson County. (App. C; R. 4-28) In it, petitioner raised one ground for relief, asserting that "because the record does not demonstrate that the trial court complied with Rule 24 of the Arkansas Rules of Criminal Procedure in accepting petitioner's guilty plea, and because it does not reflect that petitioner's plea was voluntarily and intelligently made, the resulting judgment and commitment is invalid on its face."

Rules 24.5 and 24.6 of the Arkansas Rules of Criminal Procedure require that the trial judge

himself ascertain whether or not a plea of guilty is voluntary, as well as determine whether or not the plea of guilty was the result of a plea agreement, and if so, require that such agreement be stated. The trial judge must also determine whether there was a factual basis for the plea. See Irons v. State, 267 Ark. 469, 591 S.W. 2d 650 (1980); Reed v. State, 276 Ark. 318, 635 S.W. 2d 472 (1982).

It is undisputed that there is no record available of the plea proceedings, and consequently, the State cannot meet its burden of proving that petitioner's plea was voluntarily and intelligently made, nor can it show that the judge discharged his duty under applicable criminal procedure rules. And finally, the State cannot affirmatively show that petitioner waived his constitutional rights to trial by jury, the right to confront his accusers, and his privilege against self-incrimination. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274.

Nevertheless, in its amended order on October 28, 2020, the Circuit Court of Jefferson County denied relief, opining that a challenge to a plea of guilty must be filed pursuant to Arkansas Rule of Criminal Procedure 37, and that petitioner had already been

denied in this regard. The Court further stated that a writ of habeas corpus is not a substitute for post-conviction relief, nor does it provide an opportunity to retry a case. (App. B; R. 53-54) The Court was in error, however, when it said that petitioner stated that he had been unsuccessful on the same allegations in his Rule 37 petition because, as previously noted, petitioner had not learned of the missing record at the time he filed for post-conviction relief in 2015. It was not until the middle of federal habeas proceedings three years later that this was discovered.

Petitioner appealed on November 6, 2020, and on September 16, 2021, the Supreme Court of Arkansas affirmed the judgment. (App. A, 1-4) In its opinion, the Court stated in part:

"A writ of habeas corpus is proper when a judgment and commitment order is invalid on its face or when a trial court lacked jurisdiction over the case... A petitioner who does not allege his or her actual innocence and proceed under Act 1780 of 2001 must plead either the facial invalidity of the judgment or the lack of jurisdiction by the circuit court and make a showing, by affidavit or other evidence, of probable cause to believe that he or she is being illegally detained. ARK. Code. Ann. § 16-112-103(a)(1) (Repl. 2016). Proceedings for the writ are not intended to require an extensive review of the record of the trial proceedings, and the circuit court's inquiry into the validity of the judgment is limited to the face of the commitment order."

(citations omitted). Unless the petitioner can show that the trial court lacked jurisdiction or that the commitment order was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue."

Under these standards, the Court concluded that petitioner failed to state a basis for issuance of the writ. *Id.* The Court did not directly address the effect the missing record has on the legality of petitioner's convictions.

Petitioner now submits the instant petition for a writ of certiorari and asks this Court to grant the same, and to permit briefing and argument on the issues contained herein.

REASONS FOR GRANTING THE PETITION

This portion of the petition covers the first (2) two questions:

- 1) Has the Supreme Court overruled Boykin v. Alabama, 395 U.S. 238 (1969), holding that there was reversible error where the record did not disclose that the defendant voluntarily and understandingly entered his pleas of guilty?
- 2) Does Boykin v. Alabama, 395 U.S. 238 (1969), impose a constitutional mandate upon the state courts, requiring them to ascertain the voluntariness of a guilty plea and create a record of the plea proceedings to ensure that criminal defendants are afforded their 5th Amendment right to due process?

These questions present a critically important issue concerning the due process rights of criminal defendants in the guilty plea context.

Currently, this Court holds in Boykin v. Alabama, 395 U.S. 238 (1969), that there was reversible error where the record did not disclose that the defendant voluntarily and understandingly entered his pleas of guilty. Regarding Mr. Boykin's plea, the Court stated that "so far as the record shows, the judge asked no questions of petitioner concerning his plea, and petitioner did not address the Court," and that "it

was error, plain on the face of the record, for the trial judge to accept petitioner's guilty plea without an affirmative showing that it was intelligent and voluntary."

The Court further held that admissibility of a confession must be based on a 'reliable determination on the voluntariness issue which satisfies the constitutional rights of the defendant,' Jackson v. Denno, 378 U.S. 368, 387, 84 S. Ct. 1774, 1786, 12 L. Ed. 2d 908, and the requirement that the prosecution spread on the record the prerequisites of a valid waiver is no constitutional innovation, *id.*

More importantly, the Boykin Court stated that "several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against self-incrimination guaranteed by the Fifth Amendment and applicable to the states by reason of the Fourteenth. Second, is the right to trial by jury. Third, is the right to confront one's accusers." Regarding these rights, the Boykin court emphatically stated, "We cannot presume a waiver of these three important federal rights from a silent record."

The Boykin Court ultimately reversed the judgment of the Alabama Supreme Court.

Petitioner submits that the same conclusion must be reached in his case. Although his judgment and commitment order records a knowing, voluntary, and intelligent plea of guilty, the Supreme Court of Arkansas has ruled that a judgment and commitment order was not "sufficient to demonstrate" that, upon personal inquiry by the trial court, the defendant entered a voluntary plea of guilty, in accordance with the applicable requirements of criminal procedure rules. Dorsey v. State, 2012 Ark. App. 183; (App. C; R. 18-21)

Rules 24.5 and 24.6 of the Arkansas Rules of Criminal Procedure require that the trial judge himself ascertain whether or not a plea of guilty is voluntary, as well as determine whether the plea of guilty was the result of a plea agreement, and if so, require that such agreement be stated. The trial judge must also determine whether there was a factual basis for the plea.

Rule 24.7 requires that "the court shall cause a verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere to be made and preserved." Here, it is absolutely undisputed that there is no known record available

of petitioner's guilty plea proceedings which took place on December 17, 2014. Therefore, there is no conclusive proof that petitioner was afforded due process during his plea proceedings, or that he waived his constitutional rights to trial by jury, to confront his accusers, as well as his privilege against self-incrimination in open court. And, as this Court stated clearly in Boykin, "we cannot presume a waiver of these three important federal rights from a silent record." *id.*

Under Boykin, petitioner's case clearly merits relief.

But the question remains - does Boykin impose a broader constitutional mandate on the state courts as a whole, requiring them to ascertain the voluntariness of a plea and create a record of the plea proceedings to ensure that criminal defendants are afforded their 5th Amendment right to due process?

Petitioner submits that it should. In the words of the Boykin court:

"What is at stake for an accused facing death or life imprisonment demands that utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence. when the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."

This Court should intervene now to ensure that all state criminal defendants nationwide are afforded their 5th Amendment rights to due process, and additionally, to further the conservation of judicial resources by reducing the number of collateral proceedings inquiring into guilty plea proceedings years after the fact.

This portion of the petition covers the final question to be addressed:

3) Has the Supreme Court of Arkansas unconstitutionally and effectively suspended the writ of habeas, without authorization, by holding that unless a petitioner alleges actual innocence and proceeds under Act 1780 of 2001, the writ will not issue unless a petitioner shows that his/her judgment and commitment order is invalid on its face, or that the trial court lacked jurisdiction over the case - and should the court be required to expand the scope of its habeas review to ensure petitioners receive the full privilege of the writ guaranteed by the federal and state constitutions?

Suggested Answer - Yes. The Supreme Court of Arkansas' paring of the writ of habeas corpus is effectively an unconstitutional suspension of the writ, and the Court

should be required to expand the scope of the state's habeas review to ensure petitioners receive the full privilege of the writ under the constitutions of the United States and the State of Arkansas.

To begin, the writ of habeas corpus is guaranteed by both the federal and state constitutions. Article I, section 9, clause 2 of the United States Constitution provides that "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Likewise, Article 2, section 11 of the Arkansas Constitution provides that "the privilege of the writ of habeas corpus shall not be suspended; except by the General Assembly, in case of rebellion, insurrection, or invasion, when the public safety may require it."

And finally, the writ is also provided for by Ark. Code Ann. § 16-112-103(a)(1), which states in pertinent part: "The writ of habeas corpus shall be granted forthwith... to any person who shall apply for the writ by petition showing, by affidavit or other evidence, probable cause to believe he or she is detained without lawful authority, is imprisoned when by law he or she is entitled to bail, or who who has alleged actual innocence of the offense or

offenses for which the person was convicted."

When following the plain and unequivocal language of the statute, one could conceivably prosecute due process violations involving a violation of criminal procedure rules, violations of state and federal constitutional law, as well as the holdings of this Court and the Supreme Court of Arkansas.

However, for years the Supreme Court of Arkansas has interpreted this statute to mean that habeas corpus only lies when the judgment of conviction is invalid on its face, or when the trial court lacks jurisdiction over the cause. See Sawyer v. State, 327 Ark 421, 438 S.W. 2d 843 (1997); Jackson v. Norris, 2011 Ark 49, 378 S.W. 3d 103 (2011); Benton v. Kelley, 2020 Ark 237, 602 S.W. 3d 96 (2020). The court further holds that a petitioner for the writ who does not allege his or her actual innocence and proceed under Act 1780 of 2001 must plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial court and make a showing, by affidavit or other evidence, of probable cause to believe that he or she is being illegally detained. Further, the court holds that unless petitioner can show that the trial court lacked jurisdiction or that the commitment was

invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. Benton, citing Clay v. Kelley, 2017 Ark. 294, 528 S.W.3d 836.

This interpretation, however, does not comport with the plain meaning of the statute. The text of the statute, which "specifically contemplates the petitioner filing an 'affidavit or other evidence,' necessarily rejects any intimation that a court's review of a habeas petition is limited to the facial validity of a confinement order." See dissenting opinion of Justice Josephine Linker Hart in Stephenson v. Kelley, 2018 Ark 143, 544 S.W.3d 44.

The phrase "detained without lawful authority," which, while it could conceivably include grounds based on a facially invalid commitment order or a lack of jurisdiction by the trial court, seems to lend itself to a broader array of issues than the narrow and restricted view contemplated by the Supreme Court of Arkansas.

The current restriction of habeas litigation in the state of Arkansas is a matter of great concern to many past, present, and future petitioners in the state. Under the Supreme Court of Arkansas' current holdings, the courts are free to, and continue to neglect and pass

over considerable meritorious claims, ultimately not denying petitioners relief because their claims do not have merit, but rather because they do not fall under the court's narrow view under which they hold habeas corpus may issue. Refusing to grant relief in meritorious cases for this reason alone violates an underlying principle in habeas corpus, which is to ensure fundamental fairness and to further protect citizens' rights under the constitution - even those accused and convicted of crimes. The court's refusal to look past jurisdictional issues and the face of a petitioner's judgment and commitment order effectively suspends the writ for numerous petitioners who in fact have meritorious claims, and unconstitutionally deprives them of the full privilege of the writ of habeas corpus.

A prime example of this injustice is the case of Kuntrell Jackson. See Jackson v. Norris, 2011 Ark 49, 378 S.W. 3d 103. In January 2008, Jackson filed a petition for writ of habeas corpus in the Circuit Court of Jefferson County, Arkansas. The court dismissed his petition, finding that Jackson failed to demonstrate that his commitment was facially invalid, or that the Mississippi County County Circuit Court lacked jurisdiction to sentence him to life imprisonment

without parole. Jackson appealed. On appeal he argued that the circuit court erred in denying his petition because it lacked lawful authority to impose the sentence of life without the possibility of parole for an offense committed when Jackson was 14 years old. He specifically argued that the 8th and 14th Amendments to the United States Constitution and article 2, Sections 8 and 9 of the Arkansas Constitution prohibit the mandatory sentencing of children 14 years of age and younger to life without the possibility of parole. The Supreme Court of Arkansas affirmed, holding that the sentence did not violate the 8th Amendment and was not illegal on its face, stating "Jackson has failed to allege or show that the original commitment was invalid on its face or that the original sentencing court lacked jurisdiction to enter the sentence." *Id.*

In 2012, however, this Court granted certiorari, and granted Jackson relief, holding that mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the 8th Amendment's prohibition on cruel and unusual punishments. Jackson v. Arkansas, 567 U.S. 460 (2012)

The case of Mr. Jackson shows how easy it is to

have legitimate claims passed over by the Arkansas courts employing their narrow and dated view of habeas corpus.

Likewise, petitioner True's claim under Boykin v. Alabama, 395 U.S. 238 (1969), which involves implications of due process, was ultimately passed over by the Supreme Court of Arkansas, not because his claim is without merit, but because the trial court in his case had jurisdiction and his judgment and commitment order was not invalid on its face. Petitioner's Boykin claim, given a fair chance, would likely be successful, given that the record in his case does not disclose that he voluntarily and understandingly entered his pleas of guilty, nor does it show that he waived his constitutional rights to trial by jury, his right to confront his accusers, and his privilege against self-incrimination.

The Supreme Court of Arkansas' decision is not driven by rebellion, invasion, or insurrection, and the Court is also not the General Assembly; therefore, their denial of the full privilege of the writ of habeas corpus in this case, as in many others, is unconstitutional. See Article 2, Section 11, of the Arkansas Constitution; Article 1, Section 9, clause 2

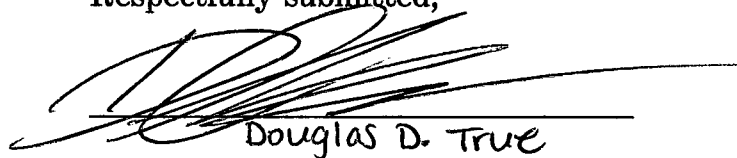
of the United States Constitution; Benton v. Kelley, 2020 Ark 237, 602 S.W.3d 96 - dissent of Josephine Linker Hart, Justice.

Petitioner submits that the Supreme Court of Arkansas should be required to expand the parameters under which the writ of habeas corpus will lie to ensure that petitioners are afforded their full privilege of the writ guaranteed under the constitutions of the United States and the State of Arkansas.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Douglas D. True

Date: December 16, 2021