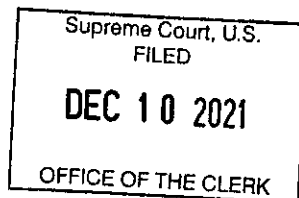


No. 21-7213

IN THE

SUPREME COURT OF THE UNITED STATES



Kwasi McKinney — PETITIONER
(Your Name)

vs.

State of Arkansas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Kwasi McKinney #137065
(Your Name)

P.O. Box 970
(Address)

Marianna, AR 72360
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. WHEN DOES THE DIRECT APPEAL OF A JURY TRIAL CONVICTION OF SIX (6) DIFFERENT CRIMINAL OFFENSES AND SENTENCE BECOME FINAL?
2. IF A STATE TRIAL COURT HOLDS ONE TRIAL PROCEEDING FOR SIX (6) DIFFERENT CRIMINAL OFFENSES AND IT IS DETERMINED ON DIRECT APPEAL THAT THE TRIAL PROCEEDING MAY HAVE BEEN TAINTED BY THE INTRODUCTION OF ARGUABLY INADMISSABLE EVIDENCE, IS THE APPELLATE COURT IN ERROR WHEN IT AFFIRMS TWO (2) OF THE OFFENSES AND REMANDS THE OTHER FOUR (4) OFFENSES TO HAVE THE TRIAL COURT DETERMINE IF THE CRIMINAL DEFENDANT'S CONSTITUTIONAL RIGHTS HAD BEEN VIOLATED OR ARE ALL SIX (6) OFFENSES POSSIBLY TAINTED?
3. IF A STATE LAW PROVIDES FOR THE FILING OF A PETITION FOR POST-CONVICTION RELIEF WITHIN SIXTY (60) DAYS OF ISSUANCE OF THE FINAL MANDATE AFTER THE DIRECT APPEAL PROCEEDING AND THE PETITIONER FILES HIS PETITION WITHIN FIFTY-SIX (56) DAYS OF THE ISSUANCE OF THE FINAL MANDATE, IS THE APPELLATE COURT IN ERROR IF IT AFFIRMS THE TRIAL COURT'S DISMISSAL OF THE PETITION AS BEING UNTIMELY?
4. DOES A COURT DENY A PETITIONER EQUAL PROTECTION OF THE LAW WHEN A COURT, IN ONE INSTANT, HEARS AND ENTERTAINS A PETITION FOR POST-CONVICTION RELIEF THAT DOES NOT CONFORM TO THE STATE'S RULES ON MARGINS, YET, IN THE NEXT INSTANT OR CASE THE SAME COURT REFUSES TO HEAR OR
(i)

ENTERTAIN A PETITION FOR POST-CONVICTION RELIEF THAT ALSO DOES NOT CONFORM TO THE STATE'S RULES AND THE COURT FAILS TO MAKE WRITTEN FINDINGS OF FACT AND CONCLUSION OF LAW?

5. DID THE ARKANSAS COURT OF APPEALS LACK JURISDICTION TO PRESIDE OVER THE APPEAL OF THE DISMISSAL OF A RULE 37 PETITION WHEN INTERPRETATION OF ARKANSAS LAW IS NECESSARY AND A TIMELY NOTICE OF APPEAL IN THE TRIAL COURT INVOKED THE JURISDICTION OF THE ARKANSAS SUPREME COURT?

LIST OF PARTIES

All parties appear in the caption on the cover page of this case.

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IN THE
UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Petitioner, Kwasi McKinney respectfully prays this Honorable court grant this petition and issue a writ of certiorari. Petitioner seeks review of the decision of the Arkansas Supreme Court of Appeals affirming the trial courts dismissal of petitioner's petition for post conviction relief as being untimely and failure to conform to the different margins, and the Arkansas Supreme Courts refusal to entertain a petition for writ of certiorari.

Petitioner asserts that he is the Petitioner/Appellant in the Courts below. The respondent is the State of Arkansas and appears as the Respondent/Appellee in the Courts below.

OPINIONS BELOW

The opinion of the Arkansas Supreme Court of Appeals, the last court to review the merits of petitioner's claims appear at Appendix A to the petition and is reported at McKinney v State, 2021 Ark. App. 235, 626 SW3d 110.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

The date on which the highest state court decided my case was May 12, 2021. A copy of this decision appears at Appendix "A".

A timely petition for rehearing was thereafter denied on September 23, 2021 and a copy of the order denying rehearing appears at Appendix "B".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The questions presented by petitioner herein implicate the following provisions of the Constitution of the United States and the laws, treaties, codes and Constitution of the State of Arkansas.

THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION:

"No person shall be held to answer for a Capital, or otherwise infamous crime ...; 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 be deprived of life, liberty, or property, without due process of law; ... "

THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION:

"... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law ... "

Arkansas Rules of Criminal Procedure Rule 37.2 (c)(ii):
"If an appeal was taken of the judgment of conviction, a petition claiming relief under this rule, must be filed in the circuit court within sixty (60) days of the date the mandate is issued by the appellate court." Id. (2019).

Arkansas Rules of Criminal Procedure Rule 37.2 (c)(iv);
"If the appellate Court affirms the conviction but reverses the sentence, the petition must be filed as provided in subsection (ii) within sixty (60) days of a mandate following an appeal taken after re-sentencing." Id. (2019).

Arkansas Rules of Criminal Procedure Rule 37.2 (a);
"If the conviction in the original case was appealed to the Supreme Court or the Court of Appeals, then no proceedings under this rule shall be entertained by the circuit court while the appeal is pending." Id. (2019).

Arkansas Supreme Court Rule 1-2(a)
The appeal was mandated to the jurisdiction of the Arkansas Supreme Court by A. Sup. Ct. Rule 1-2(a)(8) by law, it was a ~~second~~ third appeal; Arkansas Supreme Court Rule 1-2(a)(I)

STATEMENT OF THE CASE

On November 19, 2016 the Circuit Court of Columbia County, Arkansas held a jury trial in which petitioner stood accused of delivery of methamphetamine, possession of methamphetamine, maintaining a drug premises, simultaneous possession of drugs and a firearm, possession of methamphetamine with intent to deliver and possession of a firearm by certain persons. The jury subsequently found petitioner guilty of all offenses as sentenced petitioner to serve twenty-eight (28) years^①, six (6) years, eighteen (18) years, sixty (60) years and twelve (12) years imprisonment, respectively.^② The judge ordered all sentences to be run consecutively for a total of one hundred and fifty-four (154) years of imprisonment.

Petitioner appealed the conviction and sentencing of the trial court. Petitioner raised three (3) issues; 1) there was insufficient evidence to support the convictions; 2) the trial court judge abused his discretion in ordering the sentences to be run consecutively; 3) the trial court abused its discretion in denying petitioner's motion to suppress an altered and edited custodial statement and illegally seized evidence as untimely filed. McKINNEY V STATE, 2018 Ark. App. 10, 538 S.W.3d 216-223 (McKinney I).

1. McKinney was sentenced to eighteen years imprisonment for delivery of methamphetamine plus an enhancement of ten years imprisonment for commission of the crime in proximity to certain facility (a church) for a total of twenty eight years.

2. McKinney's sentences were also enhanced by the habitual offender's Act. (SC-1)

On January 10, 2018 the Arkansas Court of Appeals opined that petitioner's trial attorney failed to properly make a timely and sufficient motion for directed verdict whereby failing to preserve the argument of the sufficiency of the evidence to convict for appellate review. Petitioner's trial attorney had failed to thus waived petitioner's right to challenge the sufficiency of the evidence. Id. at 4, 538 S.W.3d 219-20.

In regard to petitioner's second ground on appeal, the Arkansas court of appeals again opined that petitioner's trial attorney had failed to timely and properly object to the trial judge's order running the sentences consecutively, thus the matter was not preserved for appellate court review. Id. at 5, 538 S.W.3d 220.

For his third point on appeal the Arkansas Court of Appeals opined that petitioner's motion to suppress the altered and edited custodial statement as well as the illegally seized evidence had in fact been timely filed and the trial court had abused its discretion in denying a hearing prior to the trial to determine the admissibility of the complained of evidence. Id. at 9, 538 S.W.3d 222.

The Court of appeals incredulously affirmed the convictions against petitioner of delivery of methamphetamine and possession of methamphetamine but reversed the other four (4) convictions to the trial court to determine if in fact the custodial statement was altered and edited by state prosecutors and improperly presented to the jury and the prejudice suffered by petitioner by its admission as well as the admissibility of the illegally seized evidence. The abuse of discretion of the trial court was "not harmless error." Id. at 9, 538 S.W.3d 222.

The Arkansas Court of Appeals then issued its first final mandate on January 30, 2018. This final mandate was issued some three (3) months prior to the trial court holding of the remand rehearing to determine the prejudice to petitioner of the admission of the altered and edited custodial statement and illegally seized evidence.

On April 16, 2018 the trial court held a hearing to determine the admissibility of the altered and edited custodial statement and illegally seized evidence. During this proceeding, state prosecutors admitted to the court in fact the custodial statement had been altered by the state prosecutors and this altered and edited custodial statement had in fact been played for the jury during the trial of petitioner. Also admitted to the court by prosecutors in the record was that this altered and edited custodial statement did have a direct impact on the jury's decision of guilt of all offenses (emphasis added throughout) and the sentences imposed.

After completion of this remand hearing, the trial court denied petitioner's motion to suppress. Petitioner asserts arguendo, the ship had already sailed and the cat was out of the bag, that petitioner had in fact suffered prejudice during the trial with the admission of the tampered with, edited and altered custodial statement and illegally seized evidence. The ship could not be dragged back and the cat could not be caught.

Petitioner, on ~~August 10~~ May 1, 2018 filed a timely notice of appeal invoking Arkansas Supreme Court jurisdiction pursuant to Sup. Ct. Rule 1-2(a). This was an appeal by law to the Arkansas Supreme Court. Petitioner appealed the trial court's order (denying motion to suppress statement; 2) (sc-3).

denial of his motion to suppress the illegally seized evidence; 3) denial of Motion to recuse. McKinney v State, 2019 Ark. App. 347, 583 S.W.3d 399-403. (McKinney II).

Petitioner filed his appeal. The Court of Appeal, in a lengthy opinion, majority of concerning the issue of recusal, affirmed the lower court's denial of the petitioner's motion to recuse; in a one sentence the court of appeals affirmed the trial court's motion to suppress the altered and edited statement and illegally seized evidence. Id at 7, 583 S.W.3d 403. This ruling was delivered on August 28, 2019 and the court of appeals issued a second final mandate even though the time for filing a petition for review had not expired. Petitioner did file a petition for review in the Arkansas Supreme Court was filed and pending. It was not until October 17, 2019 until the Arkansas Supreme Court denied review. It was October 17, 2019 that the Arkansas Court of Appeals issued a third final mandate.

Petitioner filed his petition for post-conviction relief pursuant to A.R.C.P. Rule 37.2(c)(ii) on December 12, 2019, some fifty-six (56) days after the issuance of the October 17, 2019 final mandate of the Arkansas Court of appeals. The trial court set a hearing date of March 19, 2020 to determine the merits of petitioner's petition for post-conviction relief. Much to everyone's chagrin, the COVID-19 pandemic struck and all courts in the State were shut down.

In July 2020 the shut down of the state courts was lifted and the trial court found itself in a tremendous backlog. In an effort to relieve the docket jam, the trial court began dismiss petitions for any reason.
(SC-4)

The trial court dismissed petitioner's petition for post-conviction relief, petitioner asserts *arguendo*, as untimely and that the petition failed to conform to Arkansas Rules of Criminal procedure 37.1(b).

On August 10, 2020 petitioner filed a timely notice of appeal to the Arkansas Supreme Court (emphasis added) appealing the dismissal of his petition for post-conviction relief. Petitioner invoked Supreme Court jurisdiction Supreme Court 1-2(a). The appeal by law was directed to the Arkansas Supreme Court.

On May 12, 2021 the Arkansas Court of Appeals issued an opinion affirming the trial court's dismissal of petitioner's petition for post-conviction relief. Petitioner filed a timely petition for review to the Arkansas Supreme Court yet the Arkansas Supreme Court denied review on September 23, 2021. A final mandate was issued by the court of Appeals on September 23, 2021.

REASON FOR GRANTING THE PETITION

This case presents a question of first blush. There is no more important date for a criminal defendant who is no longer being represented by an attorney or who is proceeding pro-se, than the date the direct appeal becomes final and a final mandate is issued. This date has a direct impact on petitioner's compliance with state post-conviction filings dates for relief, as well as federal proceedings should the criminal defendant choose to pursue such proceedings.

Furthermore, it is of the greatest public interest that the Arkansas Court of Appeals and the Arkansas Supreme Court provide the citizens of this state due process of law as well as equal protection of the law. It is imperative that the laws, statutes and treaties of the State of Arkansas as well as the U.S. Constitution of the United States be consistently applied.

In this instant case, the trial court and appellate court had no clue as to the appropriate date to utilize as the date the final mandate issued and the time for filing of and for post-conviction relief pursuant to A. R. Cr. P. Rule 37, nor did the trial court properly follow the mandates of the Arkansas Supreme Court. The Arkansas Court of Appeals decide this case contrary to the Arkansas Supreme Court.

The trial court analyzed three (3) different dates as the date to begin counting the sixty-(60) days to file the petition for post conviction. The Arkansas Supreme Court must calculate the proper filing date and demonstrate to the trial court and Court of Appeals

(R-1)

the certain date the post-conviction date for filing was and also which and when the conviction and appeal from the trial court became final.

Petitioner asserts the trial court was uncertain on the date a final mandate was issued after the direct appeals (Appeal Brief; A21-39). The order demonstrates the trial courts uncertainty. The Arkansas Court of Appeals was also uncertain because it was the issuer of three (3) different final mandates during the direct appeal by petitioner.

The first final mandate issued by the Court of Appeals came on January 30, 2017. On January 10, 2017 the court of appeals issued its opinion and reversed and remanded 4 of the convictions because the trial court had abused its discretion and failed to hold a hearing prior to trial on petitioner's motion to suppress from the jury trial the altered and edited custodial statement as well as illegally seized evidence. McKinney v State, 2018 Ark. App. 10, 538 S.W.3d 216-223. (McKinney I). Petitioner asserts arguendo, all convictions should have been reversed, yet the court of appeals affirmed two (2) convictions. Id at 8-9, 538 S.W.3d 222. The court of appeals declared the actions of the trial court was not harmless error. Id at 10, 538 S.W.3d 222.^① Petitioner contends that if the trial was tainted, the all (emphasis

1. It was revealed during the remand hearing that State Prosecutor's Ryan Phillips and David Butler had in fact altered and edited petitioner's custodial statement and this altered and edited custodial statement was played to the jury during petitioner's trial. (Remand Hearing Transcript-26).

added through) offenses were tainted. Thus January 30, 2018 final mandate was issued by the Court of Appeals some three (3) months before the remand hearing was held in the trial court.

On remand, the circuit court held a suppression hearing on April 16, 2018. Thereafter, on April 25, 2018, the trial court entered three orders; 1) order denying petitioner's motion to suppress custodial statement that had been altered and edited by State Prosecutors; 2) order denying petitioner's motion to suppress the illegally seized evidence; and 3) order denying petitioner's oral pro se motion to recuse. Petitioner appealed the trial court's three denials and in an August 28, 2019 opinion, in which the Court of Appeals failed to address denial of motion to suppress the edited and altered custodial statement nor the denial of the motion to suppress the illegally seized evidence, but spent the entire opinion on the denial to recuse affirmed the lower courts denial. McKinney v State, 2019 Ark. App 347, 583 S.W.3d 399-403. Again the Court of Appeals issued a final mandate on August 28, 2019 prior to the expiration time allotted for filing a petition for review to the Arkansas Supreme Court. (see Sup. Ct. Rule 2-3(a)). During the prescribed eighteen (18) calendar day period to file the petition for review, Petitioner did file a petition for review to the Ark. Sup. Ct. (Appeal Brief at Add 56-57). The petition for review was issued denied by the Ark. Sup. Ct. on October 17, 2019. The Court of Appeals issued a third final mandate. Again the Court of Appeals failed to wait the eighteen (18) days as required by law before issuing the mandate. It is apparent in accordance with Ark. Sup. Ct. Rule 5-3(a) the mandate should have issued on November 4, 2019,

(R-3)

Petitioner that all appellate proceedings of direct appeal were concluded on November 4, 2019 therefore the end of appellate jurisdiction.

The clock would now begin ticking for filing of a post-conviction petition pursuant to A. R. Cr. P. Rule 37.2(c)(ii).

Petitioner filed his Rule 37 petition in the trial court on December 12, 2019. This filing was well within the sixty (60) days mandated by A. R. Cr. P. Rule 37.2(c)(iv) as well as 37.2(c)(ii). The trial court set a hearing date of March 19, 2020 to determine the merits of petitioner's petition for post-conviction relief. Unfortunately, the Covid-19 pandemic set in and all state courts were shut down.

In July 2020 the shutdown was lifted and the courts found their dockets jammed and backlogged. In an effort to relieve the backlog, the court choose to dismiss pending litigation. The court did dismiss as untimely filed petitioner's petition for post conviction relief. (Appeal Brief, Add 39-42). The court also denied all other motions by petitioner.

Petitioner filed a timely notice of appeal of the trial courts order deny or dismissing the petitioners petition for post-conviction relief. (Appeal Brief, Add 48-49). Petitioner invoked Supreme Court jurisdiction pursuant to Sup. Ct. Rule 1-2(a). The notice of appeal is mandatory and jurisdictional. U.S. v Austin, 2000, 217 F.3d 595. The petitioner clearly set out in his informational statement in the appeal brief that the jurisdiction of the Arkansas Supreme Court was by law. Petitioner further asserted the appeal concerned public interest
(R-4)

and interpretation of Arkansas law. Petitioner also maintained the appeal involved significant issues concerning construction of statutes, ordinances rules and/or regulations. The interpretation of Arkansas law was at issue (see Appeal Brief, Ins 1-3).

There was no notification by the Arkansas Supreme Court to petitioner, who was proceeding pro-se, that his case was being transferred to the Arkansas Court of Appeals. (see Sup. Ct. Rule 1-2(c)). The jurisdiction over the appeal remained therefore with the Arkansas Supreme Court.

CONCLUSION

Kwasi McKinney asserts that every criminal defendant is entitled to due process of law (see Fifth and Fourteenth Amendment of the U.S. Constitution) as well as equal protection of the law (see US Constitution Amendment Fourteen).

The trial court of Columbia County, Arkansas as well as the Arkansas Court of Appeals is in need of oversight and direction regarding the matters contained here in. There is no other court to overview the lower courts except this Arkansas Supreme Court. The Arkansas Court of Appeals and the trial court are at odds with this Court and the laws treaties and Constitution of the United States and this State.

RELIEF

WHEREFORE, Kwasi McKinney prays this Court issue a writ of certiorari to review the proceedings below
(R-5)

and any other relief this Honorable Court deems appropriate and just.

Respectfully submitted

Kwasi McKinney #137065

P.O. Box 970

Marianna, AR 72360-0970

STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public this 6 day of Dec 2021.

4-23-2029
My Commission Expires:

Matthew Lyles
NOTARY

VERIFICATION

I, Kwasi McKinney, the petitioner herein, and in support of my Petition for writ of certiorari, after first being duly sworn, do hereby swear that the statements, matters and things contained in my petition for writ of certiorari are true and correct and are to the best of my knowledge, information and belief and for the purpose herein stated, set forth and contained.



Kwasi McKinney #137065

(C-1)