

21-7244

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IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
FEB 16 2022
OFFICE OF THE CLERK

WALTER LEE MERRITTE — PETITIONER
(Your Name)

vs.

ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ILLINOIS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

WALTER LEE MERRITTE, PRO SE
REG. No. N-72053

HILL CORRECTIONAL CENTER
P.O. BOX 1700
GALESBURG, ILLINOIS 61402

QUESTION(S) PRESENTED

Whether petitioner's due process rights were violated when the state trial court granted Respondent leave to file the criminal information?

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:

EARNEST MERRITTE
REG. NO. N-74846
P.O.BOX 1266
Centrelia Illinois 62801

RELATED CASES

People v. Merritte, No. 90-CF-256

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBERS
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APPENDIX F: Report of Grand Jury Proceedings

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 is unpublished.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 is unpublished.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 is unpublished.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 State Trial 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 is unpublished.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 11/23/2021. A copy of that decision appears at Appendix C.

[X] A timely petition for rehearing was thereafter denied on the following date: January 25, 2022, and a copy of the order denying rehearing appears at Appendix D.

[] 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

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STATEMENT OF THE CASE

On October 29, 1990, petitioner was arrested by the Streator Police Department without a warrant and taken to the LaSalle County Jail.

On October 29, 1990, petitioner was charged by criminal information with two counts of first degree murder [Ill.Rev.Stat.1989,Ch.38,§9-1(a)(1)] and one count of mob action [Ill.Rev.Stat.1989,Ch.38,§25-1(a)(1)]. Specifically, the criminal information alleged that on October 26, 1990, defendant's cause Mark Harcar's death, by beating him with a shovel without lawful justification, with intent to kill (Count I) or do great bodily harm (Count II). Further, the state trial court granted Respondent's leave to file Count III of the criminal information instanter, alleging that defendant's together with Gregory C. Ennis, disturbed the peace by striking and kicking Harcar.

C67-C69.

During the initial appearance hearing held on October 29, 1990, defendant's were not called upon to enter a plea, and the state trial court failed to find a contested factual issue. See App.E,R5-R13.

Nevertheless, the state trial court entered its October 29, 1990 order granting Respondent's leave to detain, set bail at \$750.000.00, and continued the cause for appearance with counsel on November 1, 1990. App.B.

Following a joint jury trial, and over defendant's objections, the jury were permitted to find the defendant's guilty of first degree murder under a theory of accountability. Ill.Rev.Stat.1989,Ch.38,§5-2(c). The court ultimately sentence petitioner to natural life imprisonment, and Ernest Merritte to 80 years imprisonment.

On direct appeal, the Third District Appellate Court, found that the evidence was sufficient to support defendant's conviction for first degree murder under a theory of accountability for acts committed by Gregory Ennis, and affirmed defendant's conviction and sentence. App.A.

On October 22, 2021, petitioner filed a motion for leave to file a petition for writ of Habeas Corpus pursuant to S.Ct.Rule 381, alleging that Respondent's participated in fraudulent concealment when entering evidence of Ennis conduct into the record, in violation of procedural due process, which was denied on November 23, 2021. App.C.

On November 29, 2021, petitioner filed a timely motion for rehearing, alleging that petitioner's due process rights were violated when the state trial court granted Respondent's leave to file the criminal information, which was denied on January 25, 2022. App.D.

REASON FOR GRANTING THE WRIT

This is the proper case to resolve the question presented, because the jurisdictional findings by a state supreme court that it has discretion to deny review -- even though the state trial court's resolution of a hypothetical constitutional issue affirmatively appear in the record -- is contrary to, and involved an unreasonable application of clearly established federal law as determined by a United States Supreme Court decision, *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), holding that "[t]he fundamental requisite of due process of law is the opportunity to be heard." Id. at 314.

In the present case, petitioner's due process rights were violated when the state trial court granted Respondent's leave to file the criminal information instanter, thereby denying defendant's a meaningful "opportunity to be heard." Id. See App.E,R5-R13.

During the initial appearance hearing held on October 29, 1990, the following transpired between judge Bower and prosecuting Attorney Navarro:

"MR. NAVARRO: Your Honor, this is the People of the state of Illinois versus Walter K. Merritte, M-e-r-r-i-t-t-e, 90-CF-254.

THE COURT: The pleadings show Walter L. Merritte.

MR. NAVARRO: Yes, Your Honor, I'd like to move instanter to amend. I'm going to file Count III.

THE COURT: That may be allowed. You may correct it on its face." App.E, at P. 7.

The court has no power to render advisory opinions, and absent the resolution of contested factual issues, there is no controversy appropriate for review by the court. Indeed, the constitutional issues upon which the opinion of the state trial court was sought will never progress beyond the realm of the hypothetical.

It follows that the state trial court was without jurisdiction to pass upon the constitutional issue sought to be raised. "Where jurisdiction is lacking, any resulting judgment rendered is void and may be attacked either directly or indirectly at any time." People v. Davis, 156 Ill.2d 149, 155 (1993). ~~Here,~~ there is no disputed issue of fact.

The right to procedural due process is protected by the United States and Illinois Constitutions. U.S. Const. Amend. XIV, §1; Ill. Const. 1970, art. I, §2. Due process considers the "essential fairness" of the proceedings. Halbert v. Michigan, 545 U.S. 605, 611 (2005). "The hallmarks of procedural due process are notice and the opportunity to be heard." In Re E.W., 2015 IL App (5th), 140341, §32; see also In Re D.W., 214 Ill.2d 289, 316 (2005)(Due process requires "the opportunity to be heard at a meaningful time and in a meaningful manner.").

In the present case, petitioner's due process rights were violated when the state trial court granted Respondent's leave to file the criminal information *instanter*, thereby denying defendant's a meaningful "opportunity to be heard." Id. at 316.

Petitioner submits that the Due Process Clause require that deprivation of liberty by adjudication be preceded by a meaningful opportunity to be heard. Consequently, there is no evidence in the record indicating that a dispute existed between the parties, and as a result, the state trial court's resolution of a hypothetical constitutional issue affirmatively appear in the record. See *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986); App.E, at P. R7.

In Sum, the judgment that was entered should therefore be vacated, and the cause should be remanded to the circuit court of LaSalle County with directions to release the defendant's from custody and dismiss the criminal information for want of jurisdiction. See *Davis*, 156 Ill.2d at 155; App.B.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Walter Mennite

Date: 2/10/2022