

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

21-7339

IN THE
SUPREME COURT OF THE UNITED STATES

Robert Donald Gordon — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the 6th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Donald Gordon

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ORIGINAL

QUESTION(S) PRESENTED

1. Did the United States and lower courts act outside of their Constitutionally limited subject matter and/or territorial jurisdictions by adjudicating this case?
2. Did law enforcement officers and court officials act in violation of the 4th and 5th Amendments to the Constitution when initial reports and observations showed no evidence to probable cause to initiate any investigation, denying the petitioner of his right to due process of law?
3. Do these statutes act beyond the Constitutional limits of the United States' power to punish as stated in Article I, Section 8, clauses 6 and 10, as well as Article III, Section 3, clause 2, and thus should be adjudicated by the several states, whose authority is protected by the 10th Amendment, rather than federal courts?
4. Did the courts below commit reversible error denying petitioner's § 2255 motion without conducting an evidentiary hearing to resolve the factual disputes?
5. When counsel failed to argue violations of the petitioner's Constitutionally protected rights, such as the freedoms to travel, peaceably assemble, speak, and freely associate, was counsel Constitutionally ineffective because he misadvised the petitioner to waive his rights as protected by the 5th Amendment?
6. Was counsel Constitutionally ineffective by failing to inform the petitioner of the procedural defaults attached to his guilty plea denying petitioner his right of collateral remedy?
7. Did law enforcement officers act in violation of the 5th Amendment to the Constitution when officers singled out the petitioner for federal prosecution, bypassing State prosecutors and courts?

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

None.

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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 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 United States district 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.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 14, 2021.

☐ 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: August 31, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

Article I, Section 8, clause 3, To regulate Commerce..., and among the several States,...

Article I, Section 8, clause 17, To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other meaningful Buildings;...

Article IV, Section 3, clause 2, The Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States,...

Article VI, clause 2, This Constitution, and the Laws of the United States which shall be made in Pursuance thereof,... shall be the Supreme Law of the Land, and the judges in every State shall be bound thereby,...

Amendment I, Congress shall make no law... abridging the freedom of speech,... or the right of the people to peaceably assemble,...

Amendment IV, The right of the people to be secure in their person,..., shall not be violated...

Amendment V, No person shall be held... without Due process of law...

Amendment VI, In all prosecutions, the accused shall enjoy the right..., and to have the Assistance of counsel for his defense.

Amendment IX, The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X, The powers not delegated to the United States ... are reserved to the States respectively, or to the people.

Statutory Provisions

18 U.S.C. 2422(b) - Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not less than 10 years, or both.

18 U.S.C. 2423(b) - Travel with intent to engage in illicit sexual conduct. A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, with a motivating purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

Statutory Provisions continued...

28 U.S.C. § 2255 - Federal custody; remedies on motion attacking sentence.

(a) A person in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside, or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

40 U.S.C. § 3112(c) - It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.

18 U.S.C. § 3231 - "...Nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof."

STATEMENT OF THE CASE

August 27, 2017: During the a.m. hours, Gregory Fraley called the Southfield, Michigan police department to report that his 16 year old daughter was believed to be in a hotel with a man that he and his wife did not know.

The reported actions are legal in Michigan and twenty-nine other states, including Indiana, the state of residence of the Petitioner, Robert D. Gordon.

Southfield Police Department investigated, entering Gordon's hotel room in violation of his rights as protected under the Fourth and Fifth Amendments to the Constitution of the United States of America.

Two Southfield Police officers would later testify to those facts in a Motion to Suppress Hearing on February 20, 2018.

August 31, 2017: Petitioner Robert D. Gordon was arrested in Logansport, Indiana under a warrant alleging seven counts.

September 26, 2017: An indictment alleging seven counts was filed in federal court in the Eastern District of Michigan, Southern Division.

February 20, 2018: In a Motion to Suppress Evidence Hearing, Southfield Police officer Specialist Christopher Clark and Sgt. Peter Simmerly testified that the events did not rise to the level of probable cause of criminal activity. These same officers also testified that the events that they observed did not rise to the level of probable cause for a welfare check, thus giving them no legal reason for further investigation at that time, and rendering their actions to be in violation of Gordon's rights as protected by the Fourth and Fifth Amendments of the Constitution of the United States. Counsel failed to argue the Fifth Amendment violation.

April 23, 2018: The Motion to Suppress Evidence was Granted. This would later result in dismissing five counts of the seven count indictment.

June 1, 2018: A second Motion to Suppress Evidence was filed.

August 7, 2018: In a second Motion to Suppress Evidence Hearing, counsel Michael Carter failed to argue that the Southfield Police Department violated Gordon's rights to due process of law under the Fifth Amendment when the SPD continued to investigate without cause and by presenting illegally obtained evidence to federal investigators instead of a local prosecutor or court.

September 12, 2018: The District Court issued a ruling upholding the April 23, 2018 Motion to Suppress, but denying suppression of additional evidence.

November 15, 2018: Gordon enters into a plea agreement. Gordon will later argue that the plea, by definition was coerced.

March 28, 2019: The District Court sentenced Gordon to 204 months imprisonment and 8 years of supervised release, and a \$10,000 fine.

April 4, 2019: The District Court Judgment is filed.

February 27, 2020: Petitioner Robert D. Gordon filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255.

December 1, 2020: Gordon's § 2255 Motion to Vacate was denied by the District Court.

December 20, 2020: Gordon file a Notice of Appeal with the District Court.

January 11, 2021: A Notice of Appeal was filed with the 6th Circuit Court of Appeals and given the docket #21-1018.

March 16, 2021: The case was remanded to the District Court for issuance of a Certificate of Appealability.

March 19, 2021: The District Court denied a Certificate of Appealability.

June 14, 2021: The 6th Circuit Court of Appeals denied a Certificate of Appealability.

June 24, 2021: Gordon files for reconsideration and rehearing en banc.

August 16, 2021: The 6th Circuit Court of Appeals denied reconsideration.

August 31, 2021: The 6th Circuit Court of Appeals denied an en banc rehearing.

REASONS FOR GRANTING THE PETITION

The Court of Appeals has decided a Federal Question in direct conflict with the applicable decisions of this Court.

1. The 6th Circuit Court Panel Opinion erred in affirming the district court's denial of Pētitioner's § 2255 motion claims that the United States and the district court were without jurisdiction over the land (territorial) where the alleged activity occurred which rendered them without Subject-Matter jurisdiction as well, thus rendering the Petitioner actually and factually innocent of committing an offense against the United States.
2. The 6th Circuit Court Panel Opinion erred in affirming the district court's denial of Petitioner's § 2255 motion claims that counsel was ineffective and citing that elements of Pētitioner's claims were procedurally defaulted, though Petitioner claims a miscarriage of justice of Constitutional magnitude. Petitioner asserts that he would not have pleaded guilty, absent counsel's erroneous and faulty legal advice concerning established legal precedent that counsel failed to present to Pētitioner.
3. The 6th Circuit Court Panel Opinion erred in affirming the district court's denial of Pētitioner's § 2255 motion claims that statutes 18 U.S.C. § 2422(b) and 18 U.S.C. § 2423(b) are unconstitutional, as it has long been established that Article I, Section 8, clause 3 does not grant the United States a plenary police power or the power to punish, as the power to punish is enumerated and delegated in Article I, Section 8, clauses 6 and 10, as well as Article III, Section 3, clause 2.
4. The 6th Circuit Court Panel Opinion erred in affirming the denial of Petitioner's § 2255 motion where the district court failed to conduct an evidentiary hearing to resolve the factual disputes, which if true, warrant habeas relief and the

record did not "conclusively show" that he could not establish facts warranting relief under § 2255, which entitled Petitioner to a hearing.

Petitioner respectfully urges that all aspects of the Circuit Court decision are erroneous and at a variance with this Court's decisions as explained in the arguments below.

*

ARGUMENTS AMPLIFYING REASONS FOR GRANTING WRIT

1. Article I, Section 8 of the Constitution of the United States of America enumerates and delegates the powers of the federal government and Congress, as well as what land the United States owns and how to acquire additional lands for specific purposes.

The district courts claim to have jurisdiction by citing, "the district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." 18 U.S.C. § 3231.

But, the district courts fail to cite the second clause of that statute, "Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof." 18 U.S.C. § 3231.

The district courts choose to ignore that, "it is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefore, and thus territorial jurisdiction and venue are 'essential elements' of any offense in the sense that the burden is on the prosecution to prove their existence." United States v. White, 611 F.2d 531, 536 (CA5, 1980).

"The eighth section of the first article of the constitution of the United States, in the seventeenth clause, gives the right of exclusive legislation to the United States, to

exercise authority over all places purchased by the consent of the legislature of the State in which the same shall be for the erection of forts, arsenals, dock-yards, and other needful buildings. The purchase of lands for the United States, for public purposes, does not of itself oust the jurisdiction of such state over the land purchased. The constitution prescribes the only mode by which they can acquire land as a sovereign power; and therefore they hold only as an individual when they obtain it in any other manner. If there be no cession by a State, the State jurisdiction still remains. It seems too plain for doubt, much as we may regret the fact in this particular case, that this court has no jurisdiction in the premises." United States v. Penn, 48 F. 669 (Circuit Court, E.D. Va. 1880)

This is actually reinforced by 40 U.S.C. § 3112 (formerly 40 U.S.C. § 255) which states that unless and until notice and acceptance of jurisdiction has been given, Federal Courts are without jurisdiction to punish under criminal laws of the United States an act committed on lands acquired by the United States.

"Unless and until the United States has so filed and published acceptance of jurisdiction, it is to be conclusively presumed that no such jurisdiction has been accepted." Adams v. United States, 319 U.S. 312 (1943).

In Pollard v. Hagan, this Court explained that:

"The United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama, or any of the new States were formed. The United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of the State or elsewhere, except in cases in which it is expressly granted. The provision of the Constitution above referred to show that no such power can be exercised by the United States within a State. Such a power is not only repugnant to the Constitution, but it is inconsistent with the spirit and intention of the deeds of cession." Pollard v. Hagan, 3 How (U.S.) 212, 221-224, 11 2ed 565 (1845)

This Court has explained that:

"Upon admission of the state into the Union, the state doubtless acquires general jurisdiction, civil and criminal... except where it has ceded exclusive jurisdiction to the United States. The rights of local sovereignty... vest in the State, and not in the United States." VanBrocklin v. Anderson, 117 U.S. 151, 167-68 (1886)

Moreover:

"Each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them."

United States v. Lopez, 514 U.S. 549, 584 (1995)

The court records and files reflect, as the Petitioner contends, that the United States did not have territorial jurisdiction over the land in which the alleged offenses occurred. Without territorial jurisdiction, the United States thus lacked Subject-Matter jurisdiction.

The court records and files in this case reflect that the United States and the U.S. Attorney failed to provide evidence or documentation proving the United States jurisdiction in this case.

Thus, the alleged offenses were not, in fact, offenses against the United States, but were lawful activities occurring within one of the Several States.

2. A conviction on a guilty plea tendered solely as a result of faulty advice is a miscarriage of justice. United States v. Scott, 625 F.2d 623, 625 (5th Cir. 1980).

A miscarriage of justice excuses "cause" for procedural default. See Murray v. Carrier, 477 U.S. 478, 496, 106 S.Ct. 2639, 2649-50, 91 L.Ed. 2d 397 (1985) (habeas available to avoid miscarriage of justice); Swayer v. Collins, 494 U.S. 108, 108 L.Ed. 2d 93, 110 S.Ct. 974 (1990), where defendant did not claim a mere technical violation of formal provision of Rule of Criminal Procedure, but, rather error committed was of a Constitutional magnitude.

The records and files in this case reflect, as the Petitioner contends, that counsel's failure to properly inform Petitioner of "Procedural Defaults" attached to a guilty plea as well as counsel's failure to argue for and protect Petitioner's Constitutional rights is an error of Constitutional magnitude.

3. This Court has repeatedly upheld that the United States is a government of enumerated (limited) powers.

"The police power of the States was not surrendered when the people of the United States conferred upon Congress the general power to regulate commerce with foreign nations and between the several States."
Patterson v. Kentucky, 97 U.S. 501, 505 (1879)

This Court also said that Congress "may not regulate noneconomic activity, such as sex crimes, based upon the effect it might have on ... commerce." See, United States v. Kebodeaux, 186 L.Ed 2d 2013). Moreover:

"Until this Court replaces its existing Commerce Clause jurisprudence with a standing more consistent with the original understanding, we will continue to see Congress appropriating state police powers under the guise of regulating commerce."
United States v. Morrison, 529 U.S. 598, 618 (2000)

In 2012, in National Federation of Independent Business Owners v. Sebelius, Chief Justice Roberts, speaking for this Court, opined concerning the "police power" reserved to the several Union States as follows:

"In our federal system, the National Government possesses only limited powers; the State and the people retain the remainder.

The Federal Government 'is acknowledged by all to be one of enumerated powers' Ibid. That is, rather than granting general authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal Government's powers. Congress may for example, 'coin money,' 'establish Post Offices,' and 'raise and support Armies.' Article I, Section 8, clauses 5, 7 and 12. The enumeration of powers is also a limitation of powers, because '[t]he enumeration presupposes something not enumerated.' Gibbons v. Ogden, 22 U.S. 1, 9 Wheat 1, 195, 6 L.Ed 23 (1824). The Constitution's express conferral of some powers makes clear that it does not grant others. And the Federal Government 'can exercise only the powers granted to it.' McCulloch, supra, at 405, 4 Wheat 316, 4 L.Ed. 579.

Today, the restrictions on government power foremost in many Americans' minds are likely to be affirmative prohibitions, such as contained in the Bill of Rights. These affirmative prohibitions come into play, however, only where the Government possesses

authority to act in the first place. If no enumerated power authorizes Congress to pass a certain law, that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution.

Indeed, the Constitution did not initially include the Bill of Rights at least partly because the Framers felt the enumeration of powers sufficed to restrain the Government. As Alexander Hamilton put it, 'the Constitution is itself, in every rational sense, and to every useful purpose, A Bill Of Rights.' The Federalist, No. 84, p. 515 (C. Rossiter ed. 1961). And when the Bill of Rights was ratified, it made express what the enumeration of powers necessarily implied: 'The powers not delegated to the United States by the Constitution ... are reserved to the States respectively or to the people.' U.S. Constitution, Amendment 10. The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions. See, e.g., United States v. Comstock, 130 S. Ct. 1949 (2010).

The same does not apply to the States, because the Constitution is not the source of their power. The Constitution may restrict state governments - as it does today, for example, by forbidding them to deny any person the equal protections of the laws. But where such prohibitions do not apply, state governments do not need constitutional authorization to act. The States thus can and do perform many of the vital functions of modern government - punishing street crime, running public schools, and zoning property for development, to name but a few - even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not the Federal Government, as the 'police power.' See, e.g., United States v. Morrison, 529 U.S. 598, 618-19 (2000).

'State sovereignty is not just an end in itself: Rather, federalism secures to the citizens the liberties that derive from the diffusion of sovereign power.' New York v. United States, 505 U.S. 144, 181 (1992). Because the police power is controlled by 50 different States instead of one national sovereign, the facets of governing that touch on citizens' daily lives are normally administered by smaller governments closer to the governed. The Framers thus insured that powers which 'in the ordinary course of affairs, concern the lives, liberties, and properties of the people' were held by governments more local and more accountable than a distant federal bureaucracy. The Federalist, No. 45, at 293 (James Madison). The independent power of the States also serves as a check on the power of the Federal Government: 'By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.' Bond v. United States, 131 S. Ct. 2355 (2011). National Federation of Indep. Bus. v. Sebelius, 131 S. Ct. 2675, 450, 465-66 (2012).

The court records and files reflect, as the Petitioner contends, that the power to punish the alleged offenses in this case were not within the United States' enumerated powers as granted by the Constitution, but were within the Constitutionally protected "police power" of the State in which the alleged offense occurred.

The statutes in this case were unlawfully enacted by Congress and therefore unenforceable.

4. Section 2255 provides that "[u]nless the motion and the files and records of the case conclusively show that the petitioner is entitled to no relief, the court shall... grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." 28 U.S.C. § 2255 (200). See, e.g., Fontaine v. United States, 411 U.S. 213, 215 (1973) (reversing summary dismissal and remanding for hearing because "motion and the files and records of the case [did not] conclusively show that the petitioner is entitled to no relief"); Sanders v. United States, 373 U.S. 1, 12-1 (1963).

Petitioner's § 2255 petition alleged facts that, if proved, entitled the Petitioner to relief. See, Hill v. Lockhart, 474 U.S. 52, 60 (1985); and Blackledge v. Allison, 431 U.S. 63, 82-83 (1977).

Petitioner asserts he would not have pleaded guilty had he been correctly advised of Constitutional and statutory limits of the United States' Subject-Matter and Territorial jurisdiction. Thus, Petitioner was entitled to an evidentiary hearing. See, United States v. Scott, 625 F.2d 623, 625 (5th Cir. 1980); Pitts v. United States, 763 F.2d at 201; United States v. Birdwell, 887 F.2d 643, 645 (5th Cir. 1989) (evidentiary hearing warranted if petition contains "specific factual allegations not directly contradicted in the record").

CONCLUSION

Petitioner, Robert D. Gordon, has been deprived of basic fundamental rights guaranteed by the Fifth and Sixth Amendments of the United States Constitution and seeks relief in this Court to restore those rights. Based on the arguments and authorities presented herein, Petitioner's guilty plea was sustained in violation of due process and not voluntarily or intelligently entered because he did not understand the consequences of his plea. Petitioner was deprived of his right to effective assistance of counsel in the district court and appellate court. Petitioner prays this Court will issue a writ of certiorari and reverse the judgment of the 6th Circuit Court of Appeals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert D. Gordon

Date: November 11, 2021