No. 22-5653

IN THE
SUPREME COURT OF THE UNITED STATES

DERYL DUDE NELSON, Pro Se

Petitioner,

vs.

STATE OF MICHIGAN,

Respondents

On Petition For A Writ of Certiorari
To The Supreme Court for The State of Michigan

PETITION FOR WRIT OF CERTIORARI

Deryl Dude Nelson #348736
4533 West Industrial Park Drive
Kincheloe, Michigan 49788-1638

QUESTION PRESENTED

A prosecutor and magistrate falsified a criminal complaint and warrant in the name of "The People of the State of Michigan" and "Keely Cochran" including forging Sgt. Cochran's signature on the jurat as the complaining witness for the purpose of issuing an arrest warrant against Petitioner. This fraudulent act violate public trust and State and Federal laws including the Fourth Amendment that requires a magistrate to issue an arrest warrant based on probable cause supported by an oath or affirmation. The question present are:

I. Did The State Court Err When It Did Not Conduct An Evidentiary Hearing For Petitioner's Fraud Upon The Court And Fourth Amendment Issue Even Though Petitioner Allegations Were With Evidence In Support Of The Facts Necessary To Have An Evidentiary Hearing And Relief From Judgment?

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RELATED CASES

People v. Deryl Dude Nelson, No. 14-003572-01-FC, Third Judicial Circuit Court in the State of Michigan. Judgment entered March 30, 2021.

People v. Deryl Dude Nelson, No. 357351, Michigan Court of Appeals first district. Judgment entered September 8, 2021.

People v. Deryl Dude Nelson, No. 163809, Michigan Supreme Court. Judgment entered May 31, 2022. Rehearing. Judgment entered July 28, 2022.

PETITION FOR A WRIT OF CERTIORARI

Deryl Dude Nelson, on the behalf of himself, Pro Se, respectfully petitions for a writ of certiorari to review the judgment of the Michigan Supreme Court in People v. Deryl Dude Nelson, No. 163809.

OPINIONS BELOW

The opinion of the Michigan Supreme Court denying Petitioner's Application to Appeal, is not reported (but is available at 2022 Mich. LEXIS 1016). The order of the Michigan Supreme Court denying Petitioner's rehearing is not reported.

JURISDICTION

The Michigan Supreme Court denying Petitioner's application to appeal on May 31, 2022. (Appendix C). The Michigan Supreme Court denied a petition for rehearing on July 28, 2022. (Appendix D). This court's jurisdiction is invoked under Article III of the Constitution of the United States. 28 USC § 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT I

Congress shall make no law respecting on establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or thing to be seized.

AMENDMENT XIV Section 1

All person 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 laws.

STATEMENT OF THE CASE

Petitioner, Deryl Dude Nelson, was involved in a car accident that resulted in death June 24, 2013.

March 5, 2014, an arrest warrant was entered into the LEIN system. Petitiner Nelson was subsequently arrested for 2nd Degree Murder and Reckless Driving Causing Death and held in Wayne County jail.

While Petitioner Nelson sat in the county jail his attorney (Jeffrey Edison) gave him discovery material. Petitioner Nelson reviewed the charges in the complaint and warrant and saw that Sgt. Keely Cochran was listed as the complaining witness, but noticed that the signature certifying probable cause under oath was not Sgt. Cochran's signature and noticed that the charging document were not filed with the clerk's office.

On April 28, 2014, at preliminary examination Petitioner Nelson met with his attorney Mr. Edison and pointed out the issue with purported complaining witness signature. Sgt. Keely Cochran nor any one in his stead appear at the preliminary examination to be crossed examined on this complaint. Mr. Edison did not raise the issue about the signature on the complaint to the court, nor raise a violation of confrontation clause. However, the judge stated that based on the allegations in the complaint was enough probable cause to bound Petitioner Nelson to circuit court for trial. (Preliminary Examination 4-28-2014, p. 81). Petitioner Nelson was released on bail [Case No. D14-056781-01] $150.000 ten percent.

While Petitioner Nelson was out on bail he retained another attorney (Arnold L. Weiner) to challenge what, if any provision law was complied with to bring the case against him. On July 18, 2014, at motion hearing the following statements were made. [See

Appendix E Motion hearing 7-18-14.

MR. WEINER: Judge one of the -- primary motion here is the one, where has been a failure to have the proper 'swear - to.' And, there has been a failure of a return, pursuant to -- but, before I get into my argument. The court has to now, and I am sure that the court knows, that in order to have anybody before the court before the charges, the court has to have jurisdiction over the person. That jurisdiction has to -- and sort of proper service, proper process upon the parties. And jurisdiction can never be presumed. No sanctions can be imposed absent proof of jurisdiction. I have a plethora of case law.

THE COURT: I am aware of all of that.

MR. WEINER: But, the court realizes this, the main issue here is of the return. As I indicated last time we were here --

THE COURT: Return of what?

MR. WEINER: In going through the -- I am sorry, on the 'swear - to'.

THE COURT: Mr. Weiner, I don't now what you are talking about.

MR. WEINER: Okay.

THE COURT: I am asking you; swear - to what; and, return of what?

MR. WEINER: I am talking about the swear - to for the complaint.

THE COURT: Okay.

MR. WEINER: A magistrate will issue a warrant on presentation of proper complaint, alleging the offense, and the complaint must be sworn - to. We all now that the Officer has to raise his hand and be sworn before the magistrate and can give probable cause, or some facts to substantiate the basis as under MCLA 764.1[a] and also MCR 6.102.12(B). Now it goes on to --

THE COURT: Let's stop there. How am I going to know what happened with the Magistrate?

MR. WEINER: Exactly let me go on for ten seconds more. Judge.

THE COURT: Okay.

MR. WEINER: Under the court rule, the statute for finding probable cause when it issues a warrant is incorporated by the court rule, yes MCR 6.102 which also adds the requirements that when oral testimony is relied upon by the Court -- the officer came before the magistrate and raised their right hand swear as required by court [and] law, it must be adequately preserved in some fashion so as to permit a review of its sufficiency. Judge, that is what the court rule says that in order to have the jurisdiction.

There is on this register of actions or any other document, it only says on March 5th, the complaint was authorized. I went, because Mr. Nelson really persisted in this, and I wanted to show him because these procedural matters, and I wanted to make sure to show him that this was properly done.

I went and as I note on one of my Motions, I found out on the day that this motion was filed, I went to the district court clerk, and ordered a transcript of the "swear-to." She says, "there is no transcript." We don't keep a transcript of what happened on that day. I left her name and telephone number. For the record, her name is Ms. Triplett, T-r-i-p-l-e-t-t (313) 965-5944.

Judge what I am saying to this court, you can't assume anything in the court of law. I can't assume because someone put something down it is correct and accurate. We know that people make mistakes on work every day.

A motion for an evidentiary hearing based on fraud on the court regard to the complaint and warrant was before the court scheduled to be heard that day was willfully disregarded and withdrawn. (Appendix E)(Motion Hearing 7-18-14, pp. 7, 14) (Appendix F) Precipe and motion for evidentiary hearing). The Court and Mr. Weiner made the following statements:

THE COURT: I don't know if a mistake has been made. Did you ask for an Evidentiary hearing with the magistrate, to get the magistrate, the Officer, all of the people, because without that, there is nothing that this court can do.

MR. WEINER: I am saying, Judge, I am telling you, I came at the last moment.

THE COURT: The question is: Did you ask for an evidentiary hearing to bring all of those people here so that we can have an evidentiary hearing.

MR. WEINER: No, I did not. I just --

THE COURT: It sound as if that is what we need.

MR. WEINER: No. Judge. I just found this out within the last four days.

THE COURT: Okay.

MR. WEINER: And, therefore, if there is no "swear - to" recorded transcript or something, as the court will sense, to adequately preserve. Then there was no never a warrant issue. If there was never a warrant issued, it was a nullity from day one So, ten there can't be charges. I am not saving that it can't be corrected by dismissing --

The trial court allowed the assistant prosecutor to rebut the defense contention. The prosecutor failed to prove that the complaint was sworn to by the officer who is identified in the complaint as the complaining witness. The following statements were made:

THE COURT: Mr. Weiner. I have heard enough. Let me hear from the prosecutor.

MR. HAYWOOD: I guess there would be no charges every filed, Your Honor. I think that in your court file it does record that the complaint was sworn out to by the complainant, I believe it was Derrick Ragsdale from the Michigan State Police.

THE COURT: I don't have anything to say that it was. I don't have anything to say that it wasn't.

MR. HAYWOOD: I did look in the court file, Your Honor, and the Complaint is in the Court file. And, it states that the Officer came before the magistrate, magistrate Charles Anderson and that he swore to the complaint, and the complaint was signed off on. I believe that that is the recorded document that Mr. Weiner is referring to. This is the way we start all of our complaints, in Wayne County and all of the other counties as well. That the officer comes in and swears before the magistrate, and the magistrate signs off on the complaint. (Appendix E, page 8).

During Petitioner Nelson's jury trial held on July 31, 2014. Sgt. Keely Cochran who the complaint purport as the complaining witness appeared as a witness instead for the defense. (Appendix G transcript 7-31-14, p. 2, p. 107 complaint and warrant). In relevant part, the following statements were made during Direct Examination:

Q. Okay. And were you -- I'm going to show you a copy of a formal complaint in this matter. I want to ask you if you can identify this and is that your signature seeking, asking for the prosecutor's office to authorize the warrant for second-degree murder and reckless driving causing death on Mr. Nelson?

A. No, it's not my signature. It's the court officers signature he signed on my behalf.

Q. Okay. But you recognize and that was on your behalf?

A. Correct.

Q. And what was the date that they had requested the authorization of this case?

A. This was warrant authorized on 3-5 of '14.

Q. Thank you. I have nothing else. Have a good day, sir.

THE COURT: Any cross of this witness?

MR. HAYWOOD: No, your Honor.

In light of Sgt. Cochran's testimony establishing that the case against Petitioner Nelson never came within the provision of law he was then still allowed to be prosecuted and convicted for 2nd degree murder and reckless driving causing death. Petitioner Nelson exercised his right to appeal to the Michigan Court of Appeals. The heading of Petitioner Nelson's primary argument on appeal was:

> THE TRIAL COURT LACKED JURISDICTION/AUTHORITY TO TRY AND TO CONVICT DEFENDANT BECAUSE (1) THE WARRANT WAS INVALID; (2) THE RETURN WAS NOT PROPERLY FILE; AND (3) PROBABLE CAUSE WAS NOT ESTABLISHED, THEREBY RENDERING ALL PROCEEDINGS NULL AND VOID.

Petitioner requested a evidentiary hearing the court ignored that request. However, the appeal court only went as far as to formally state that Petitioner raises issues about the complaint was not sworn to, warrant was not properly issued, and lack of jurisdiction. (Appedix H Michigan Court of Appeals 2016, Opinion page 6). The appeal court never decided this fourth amendment issue. The Appeals Court stated:

> Next defendant argues that the complaint was not properly "sworn-to" and thus, a warrant was not properly issued and the cirucit court never obtained jurisdiction over him. In the alternative it seems that defendant argues that he did not have a probable cause hearing and as a result. All proceedings subsequent to the none existent probable cause hearing are null and void.

The Michigan Supreme Court denied to review Petitioner's application for leave. May 2, 2016, docket 153217.

Petitioner then filed his habeas petition to the U.S. District Court. The court denied to review Petitioner's Fourth Amendment issue even when Petitiner presented the issue of fraud and requested an evidentiary hearing. The court ignored Petitioner claim that the complaining witness signature was forged and ignored Sgt. Cochran's testimony in support and denied Petitioner's request for evidentiary hearing and stated that

Fourth Amendment claim is not cognizable on habeas review. Case No.2:16-cv-12260.

Petitioner appealed to the U.S. Sixth Circuit Court of Appeals. The court acknowledged that Petitioner argue that his Fourth Amendment issue was premised on the undisputed fact that member of the prosecution signed the criminal complaint as being the complaining witness, in light of this court holding in Kalina v. Flectcher, 522 U.S. 118 (1997), that prohibits a prosecutor to function as a complaining witness does not satisfy the four amendment the Sixth Circuit stated that Petitioner four amendment issue could not be reviewed via Habeas Corpus. Docket No. 16-2623.

Petitioner sought certiorari review to this court. This court denied certiorari without comment. Nelson v. Jackson, 138 S.Ct. 478 (2017).

Petitioner filed his 60(b) motion for fraud upon the court in the U.S. District Court. (Appendix I) United States District Court's 2020 opinion and order denying 60(b) Motion for Relief from Judgment). The court stated that the assistant prosecutor signed documents to initiate the prosecution against Petitioner. Petitioner use this opinion in his state post-conviction Motion for Relief from Judgment, as evidence in support of his claim of fraud on the court and Kalina violation.

Because no court has ever decided Petitioner's fourth amendment issue Petitioner re-raised this issue along with fraud on the court in his Post-Conviction review under 6.500. (Appendix J, 6.500 Motion for Relief from Judgment). In support as new evidence Petitioner submitted a copy of assistance prosecutor Ron L. Haywoods answer that further established fraud on the court and a Kalina violation. (Appendix K attorney grievance commission filed no. 18-0038 Ron L. Haywood's answer).

Petitioner's questions to the trial court was:

> WHEN THE ASSISTANT PROSECUTOR FUNCTIONED AS THE COMPLAINING WITNESS AGAINST DEFENDANT CONTRARY TO Kalina v. Fletcher, 522 U.S. 118 (1997); Malcolmson v. Scott, 56 Mich. 459 (1885); MCL 764.1a AND THE UNITED STATES CONSTITUTION DEPRIVED THE 36TH DISTRICT COURT OF JURISDICTION?
>
> UPON THE UNITED STATES DISTRICT COURT DETERMINATION THAT THE ASSISTANT PROSECUTOR COMMITTED FRAUD ON THE COURT (A) DID THE FRAUDULENT ACT CONSIST OF FORGING A SIGNATURE ON A CRIMINAL COMPLAINT THAT DEPRIVED THE COURT OF JURISDICTION AND (B) DID THE FRAUDULENT ACT CAUSE DEFENDANT TO BE INCARCERATED THROUGH AN ILLEGAL PROCESS?
>
> WHETHER OR NOT DEFENDANT'S INCARCERATION IS ILLEGAL AND SUSTAINED IN VIOLATION OF FEDERAL'S DUE PROCESS CLAUSE?

The trial court denied Petitioner's Nelson's motion for relief from judgment for the reason it stated below:

ANALYSIS

> Once a defendant is convicted and has exhausted the appellate procedures, MCR 6.500 et seq., provides one last attempt at appealing a defendant's conviction. MCR 6.501 indicates that "a judgment of conviction and sentence entered by the circuit court not subject to appellate review" is governed only by a motion for relief from judgment. MCR 6.502(G)(1) provides that a defendant may file "one and only one motion for relief from judgment ... with record to a conviction." A defendant is prohibited from filing a successive motion for relief from judgment unless the motion is "based on a retroactive change in law . . . or a claim of new evidence."
>
> This Court's review Defendant's Motion for Relief from Judgment is governed, in part by MCR 6.508. Under that rule, a defendant has the burden of establishing that he is entitled to the relief requested. MCR 6.508(D). Moreover, a court not grant relief based on grounds "which could have been raised on appeal from the conviction and sentence . . . unless the defendant demonstrates good cause [for failing to raise the issues on appeal or in a prior motion] . . . and actual prejudice." MCR 6.508(D)(3)(a-(b). MCR 6.508 provides that the court has discretion to determine whether an evidentiary hearing is necessary. MCR 6.508(B). Based on the nature of Defendant's allegations and this Court's review of

the record, this court determines that an evidentiary hearing is not necessary.

The practice of multiple or "successive" motions for relief from judgment has been abolished. Only one motion for relief from judgment may be filed, unless the successive motion raises a claim of newly discovered evidence, or a retroactive change in the law. The rule went into effect August 1, 1995, and does not preclude a defendant who had filed a motion for relief from judgment before the time from filing another one.

Once the trial judge determines that the defendant has not raised one of the exceptions, the motion must be dismissed. People v. Swain, 288 Mich. App. 609, 794 N.W.2d 92 (2010).

This court finds that Defendant has not raised any issues pertaining to newly discovered evidence nor does Defendant cite any retroactive changes in law by which the court would have the authority to review his successive Motion for Relief from Judgment.

Furthermore, Defendant raises issues with the complaint in addition to arguing that jurisdiction was never properly obtained over him. Both of these issues were addressed by the Michigan Court of Appeals in a written opinion dated January 12, 2016, docket 323685. As such, even if Defendant had not filed a successive motion for relief from judgment, Defendant's claim would still be barred under MCR 6.508(D)(2).

ORDER

For the reasons stated above Defendant's Motion for Relief from Judgment is DENIED.

Petitioner appealed the trial court decision denying him relief from judgment to the Michigan Court of Appeals. The court considered Petitioner's application and denied it September 8, 2021. Docket No. 357351.

Petitioner filed his application to leave to appeal to the Michigan Supreme Court. The court considered Petitioner's application and denied it May 31, 2022, docket no. 163809. Petitioner filed his timely Motion for Reconsideration. The court denied the motion July 28, 2022.

REASONS FOR GRANTING THE CERTIORARI

I. THERE HAS BEEN A DEPARTURE OF LAW AMONG STATE COURTS IN TE QUESTION PRESENTED

A. The State Courts Has Reached A Decisin Not To Conduct An Evidentiary Hearing, When It Was Presented Evidence Of Fraud Upon The Court Was A Departure From Well Established Principle Of State And Federal Law.

As the allegation of fraud upon the court goes undisputed Sgt. Keely Cochran's testimony goes undisputed that establishes Sgt. Cochran's name and signature was falsified and forged on the criminal complaint as the complaining witness for the issuance of an arrest against Petitioner. (See Appendix G Transcript 7-31-14, p. 107, Complaint and Warrant). The complaint show the assistant prosecutor's and magistrate's signatures along side a falsified signature. The complaint capture the two member of the bar in a criminal act framing Petitioner, an innocent U.S. Citizen for murder.

Michigan case law requires that when a party makes a motion alleging that fraud has been committed on the court an evidentiary hearing is required. Williams v. Williams, 214 Mich. App. 391, 394 (1995), Valentino v. Oakland County Sheriff, 134 Mich. App. 197, 207 (1984), and Parlove v. Klein, 37 Mich. App. 537, 545 (1972), the court stated "whether there was "fraud upon the court', the trial court must conduct an evidentiary hearing to determine whether such fraud existed. Only upon a full evidentiary hearing could the contested question of "fraud upon the Court" be meaningfully determined."

Petitioner made allegations of fraud on the court in his Motion for Relief from Judgment (MRJ) under MCR 6.502(G). (See Appendix Petitioner's MRJ pp. 4-7). Petitioner presented proof in

support Appendix however, the trial court stated:

> Based on the nature of Defendant's allegations and this Court's review of the record, this Court determines that an evidentiary hearing is not necessary. (Appendix B page 2.)

This is not the In Williams v. Wayne County Sheriff, 395 Mich. 204, 243 (1975), the Michigan Supreme court ruled that the trial court erred by refusing to allow plaintiff to present proof to show that the indictments supporting the Governor of North Carolina's requisition request are forgeries. The plaintiff was granted a hearing instant. This puts Petitioner in a position to fight against two corrupt practices which he will surely would lose w a fra In Williams, case, he merely had prima facie evidence to show that the indictments against him were forgeries. Unlike here in Petitioner's case the complaint positively show a signature forged. Hartford Empire Co, 322 U.S. 238 (1944), at 352 stated:

The Fifth Circuit U.S. Court of Appeals granted a remand hearing to the state trial court after Hamilton alleged that the Forman's signature was forged on the indictment against him. Hamilton v. McCotter, 772 F. 2d 171, 189, 185 (5th Cir. 1985).

In Demianjuk v. Petrovsky, 10 F. 3d 338, 339 (6th Cir. 1993). After if was alleged that the failure of government attorneys to disclose exculpatory information in their possession a special Master was appointed to take testimony and prepare a report on the whether such failure constituted prosecutorial misconduct or fraud upon the court that mislead the court into allowing Demianjuk to be extradited. There the Special Master conducted extensive hearings over a sixth month span.

II. THIS MATTER PRESENT AN IMPORTANT PUBLIC ISSUE

Here in the MATTER, case in the above cases Petitioner must be afforded this right to challenge these fraudulent practices otherwise this due process and this first Amendment right to REDRESS is denied. Therefore, Petitioner should be entitled to

interfered with the administration of justice. In Hazel - Atlas Glass, supra at 246 this court stated, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be the preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that the must always be mute and helpless victims of deception and fraud.

Petitioner assert that he has a first Amendment right to petition the court for redress of grievance via motion for an evidentiary hearing and has been denied that right. Where there is an injury there is a remedy. Not conducting an evidentiary hearing permits the wrongdoers in this matter to illegally arrest, illegally prosecute and illegally incarcerated innocent U.S. Citizens for an indefinite amount of time without no legal consequences with the use of tax payers dollars. Something that this Court does not allow is let wrongdoers (esp. members of the bar) get away with committing fraud on the court explained in Hazel - Atlas, supra,

> But even if Hazel did not exercise the highest degree of diligence. Hartford's fraud cannot be condoned for that reason alone. at 1257.
>
> Dissent by Justice Roberts:
>
> No fraud is more odious than an attempt to subvert the administration of justice. The court is unanimous in condemning the transaction disclosed by this record. Our problem is how best the wrong should be righted and the wrongdoers pursued.

III. REQUEST FOR JUDICIAL NOTICE

Petitioner request that this Court take judicial notice of one report: Attorney Grievance Commission AGC File No. 18-0038.

Ron L. Haywood, in pertinent part, stated:

> In many large jurisdiction a court officer will take the complaint after charging and go before a magistrate and swear to the facts.

This answer is in contradiction with Kalina v. Fletcher, this Court, in pertinent part, stated:

> Although the law required that document to be sworn or certified under penalty of perjury, neither federal nor state law made it necessary for the prosecutor to make that certification. In doing so, petitioner performed an act that any competent witness might have performed. Even if she may have been following a practice that was routinely employed by her colleagues and predecessors in King County, Washington, that practice is surely not prevalent in other parts of country and is not even mandated by law in King County. Neither petitioner nor amici argue that prosecutors routinely follow the King County practice. Indeed, ethics of our profession, generally instruct counsel to avoid the risks associated with participating as both advocate and witness in the same proceeding. at 29; 130 (Emphasis added).

Petitioner asserts that the truth need no disguise. Haywood has changed his story from "believing" that it was a "State Trooper" to "believing" it was a "Court Officer" who sworn and signed the complaint. It does not matter what is believed when the evidence prove that the Fourth Amendment was not complied with.

Haywood attached an investigator's report in support of his contention that Sgt. Keely Cochran name appeared on the complaint, because he made the warrant request. However, Sgt. Cochran's signature certifying the warrant request does not

appear on the warrant request as it does not appear on the complaint. See Appendix K.

Petitioner request that this Court take judicial notice that Haywood know / comprehend that the complaint has Sgt. Cochran's name on it and still state that it was sworn to and signed by some one else.

IV. THIS MATTER INVOLVES FOURTH AND FOURTEENTH AMENDMENT VIOLATIONS THAT WARRANT THIS COURTS IMMEDIATE RESOLUTION.

In Whitely v. Warden, 401 U.S. 560, 564 (1971), this Court stated:

> The decisions of this Court concerning Fourth Amendment probable - cause requirements before a warrant for either arrest or search can issue require that the judicial officer issuing such a warrant be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant. Spinell v. United States, 393 US 410 (1969); United States v. Ventresca, 380 US 102 (1965); Aguilar v. Texas, 378 US 108 (1964); Ruyendorf v. United States, 376 US 328 (1964); Jone v. United States, 357 US 480 (1958).

Here in this matter, the issuing magistrate was not supplied with any information prior to him issuing the arrest warrant for Petitioner's arrest. Sgt. Keely Cochran testified to this fact during Direct-Examination. Keely Cochran name is on the complaint and warrant as the complaining witness. See Appendix G. Sgt. Cochran had not appeared before the magistrate on March 5, 2014, and requested an arrest warrant to charge Petitioner, for the offenses he stand convicted for.

This issue has been unresolved in the courts for over a long period of 8 years. Petitioner suffer injuries that follow from a conviction without having the prerequisite determination of probable cause by a natural detached magistrate prior to bringing and detaining Petitioner to have any adverse hearing, including

trial by jury.

Resolving this issue is more critical to the Fourteenth Amendment where liberty is the issue at hand considering before the U.S. Constitution thought of, a person automacially had this natural born right to maintain liberty from unreasonable seizure. A person, by any means necessary, even until death, has the right to be free from unreasonable seizure. See Elk v. United States, 177 U.S. 529 (1900).

Petitioner should not have contemplate to free himself by the way it may brng danger to himself from an unjust seizure as this one. The Respondents has put Petitioner iliterally between a rock and a hard place in violation of 28 U.S.C.A. § 242. Self preservation is setting in and the will to live in an enviornment such as prison will force Petitioner to enforce his liberty rights because the court thus far has failed to protect this natural born right.

In Ker v. Illinois, 119 U.S. 436, 440; 7 S.Ct. 225; 30 L.Ed 421 (1886); this Court stated:

> XIV of the Amendments of the Constitutin of the United States which declares that no State shall deprive any person of life, liberty, or property "without due process of law." The "due process of law" here guaranteed is complied with when the party is regularly indicted by the proper grant jury in the State court, has a trial according to the forms and modes prescribed for such trials, and when, in that trial and proceedings, he is deprived of no rights to which he is lawfully entitled. We do not intend to say that there may not be proceedings previous to the trial, in regard to which the prisoner could invoke in some manner the provision of this clause of the Constitution, but, for mere irregularities in the manner in which he may be brought into the custody of law, we do not think he is entitled to say that he should not be tried at all for the crime, which he is charged in a regular indictment.

Contrary to Ker Illinois, the complaint in this MATTER was not regular on its face, but even if it was regular on its face the testimony from Sgt. Cochran proved the contrary. The constitution declared that no warrant of arrest shall issue but upon probable cause, and the complaint in this matter was not supported by oath

or affirmation. Therefore, the warrant was not authorized. There was no proof of probable cause, supported by oath or affirmation to justify it, the state judge who issued the arrest warrant did so in violation of Petitioners fourth and fourteenth Amendment due process rights. However, the proceedings anterior to the issuance of the warrant laid no foundation for the arrest. And all proceeding based upon the unlawful arrest failed. Therefore, the arrest and holding to bail were unauthorized.

In Giordenello v. United States, 357 U.S. 480, 485-486; 73 S.Ct. 1245; 2 L.Ed.2d 1503 (1958), this Court stated:

> Criminal Rules 3 and 4 provide that an arrest warrant shall be issued only upon a written and sworn complaint (1) setting forth "the essential facts constituting the offense charged," and (2) showing "that there is probable cause to believe that [such] an offense has been committed and that the defendant has committed it . . .." The language of the Fourth Amendment, that no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . . the persons or things to be seized," of course applies to arrest as well as search warrants. See Ex parte Burford, 3 Cranch 448; McGrain v. Daugherty, 273 U.S. 135, 154-157. The protection afforded by these Rules, when they are viewed against their constitutional background, is that the inferences from the facts which lead to the complaint ". . . be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."

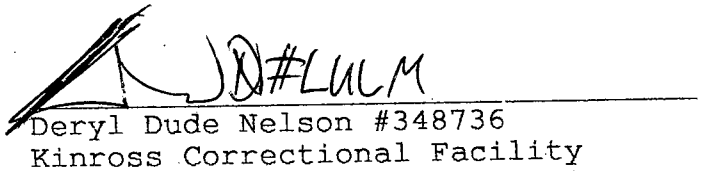
The highest State court considered these issues Petitioner presented to state trial court and state court of appeals and all three courts left these issues unresolved.

V. CONCLUSION

The petitioner for a Writ of Certiorari should be granted.

Respectfully submitted,

Dated:
September 14, 2022



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