

IN THE

SUPREME COURT OF THE UNITED STATES

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HACKNEY v. MICHIGAN

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PETITION FOR REHEARING

This matter is before this Court on the Petitioner's request for a Rehearing under R 39 and pursuant to R 44(1&2) which states in relevant parts: Whenever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Supreme Court Justice. As such, this Petition for Rehearing is being appropriately and timely filed in this Court by sending it as an institutional expedited legal mail within 25-days after the Court issued its ruling on May 15, 2023 to be reviewed by this Court for the reasons outlined below:

The Petitioner understands that this most extraordinary relief will not be granted unless there is a reasonable likelihood of the Court's reversing its previous position. See *Richmond v Arizona* 434 US 1323, 98 SC 8 (1977). In the instant case, the Petitioner was convicted and sentence out of **St. Joseph County** in case CC #02-11244-FC as a habitual offender to imprisonment of 40 to 75 years. The Michigan Court of Appeals affirmed his conviction by **St. Joseph County** on February 24, 2005 and on November 29, 2005 the Michigan Supreme Court denied him leave to appeal **St. Joseph County** convicted and sentence. The Petitioner filed his habeas petition on February 17, 2006 which was denied on June 20, 2008. To save from being repetitious the Petitioner avers that his procedural history in both state and federal courts



are very lengthy and easily confirmable by this court based upon: (a) a Brady violation and (b) a claim that evidence was withheld by Prosecutor who was an elected judge at my jury trial would have shown by clear and convincing evidence that the Petitioner in this case was innocent based upon on (1) prosecutorial and judicial misconduct and (2) actual innocence on the grounds that, if proven, there is a reasonable likelihood some court, state or federal will reverse his conviction.

This Petition for Rehearing is divided into four sections.

## FIRST DISCUSSION

### IMMUNITY FOR PROSECUTORS

As an initial matter, the subject of immunity is directly related to the Petitioner case because it was raised in the State of Michigan and to this United States Supreme Court, and is still relevant to this case and to the entire United States of America for this Court to settled the doctrine of immunity across the board and establish new standards for correcting Prosecutors and Judges errors that are subject to these old and outdated immunity standards we have today.

For example, in 1919, this Supreme Court addressed entitlement to absolute immunity regarding Prosecutors in *Burns v Reed* 500 US 478; 111 SC 1934 (1991) stating that a prosecutor is entitled to absolute immunity because a prosecutor's only appears as a lawyer for the state, however, this Court stated that absolute immunity for prosecutors are grounded on: (1) like witnesses, prosecutors, and other lawyers, are absolutely immune for making false and defamatory statements in judicial proceedings, so long as the statements were related to the proceedings, or for eliciting false or defamatory testimony from witnesses; (2) that this immunity extended to any hearing before a tribunal which performed a judicial function; (3) absolute immunity is justified by concerns of policy,

because (a) the prosecutor's actions in question involve the prosecutor's role as advocate for the state rather than the prosecutor's role as administrator (i.e. the executive branch of the governments) or an investigative officer, likewise, (b) appearance at a probable cause hearing is associated with the judicial phase of the criminal process and is connected with the initiation and conduct of a prosecution, particularly where the hearing occurs after arrest, and (c) absolute immunity serves the policy of protecting the judicial process, as there is a substantial likelihood of annoying litigation that might have an untoward effect on the independence of the prosecutor, with this being said, this court has disregard it role of protecting its citizens under (4) The judicial process is available as a check list on prosecutorial misconduct in any hear for both state and federal courts.

For purposes of state and federal prosecutors liability, this Court stated that a prosecutor has not met his or her burden of showing that the relevant factors justify an extension of absolute immunity to the prosecutorial function of giving legal advice to the police in the investigative phase of a criminal case, and thus the prosecutor is entitled to only qualified immunity for giving such advice, because (1) no support has been identified in either History or American Common Law for extending such absolute immunity to prosecutors; (2) advising the police at the investigative phase is not so intimately associated with the judicial phase of the criminal process as to require absolute immunity; (3) even if there is some risk of burdensome litigations, such concern justifies absolute prosecutorial immunity only for actions that are connected with the prosecutor's role in judicial proceedings; (4) this Court then stated that although the absence of absolute immunity may cause prosecutors to consider their actions more carefully, where the prosecutor could be expected to know that the prosecutor's conduct would violate statutory or constitutional rights, the prosecutor should be made to hesitate. The Petitioner in this case states that this type of

ruling, from the 1900 to the present date encourage prosecutors to do anything they wanted to do under these outdated standards of absolute immunity.

## SECOND DISCUSSION

### IMMUNITY FOR JUDGES

Likewise, for over a century, this Supreme Court has addressed entitlement to judicial immunity regarding judges in *Forrester v White* 484 US 219; 108 SC 538 (1988) and *Philippines v Pimentel* 553 US 851; 128 SC 2180 (2008) stating that although Congress has not undertaken to cut back the judicial immunities which have been recognized in this United States Supreme Court, however, this Court did state that it should be at least as cautious in extending those immunities as the Court, has been, when dealing with officials whose peculiar problems, this Court knows less well than the problems of judges, while at the same time, this Court stated it may not ignore compelling reasons that may well justify broader protections for judges than for some other officials. This Court then stated that suits against judges for damages are not the only available means through which litigants can protect themselves from the consequences of judicial error, most judicial mistakes, or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side effects associated with exposing judges to personal liabilities. In the attempt to draw the line between true judicial acts, for which immunity from suits is appropriate, and acts that simply have happened to be done by judges, this Court stated that immunity, is justified, and defined by the functions such immunity protects and serves, not by the person to whom immunity attaches, likewise this Court then stated, there is no precise and general definition of the class of acts which are entitled to judicial immunity, there is an intelligible distinction between judicial acts and administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform. As a class, judges have long enjoyed a

comparatively sweeping form of immunity, that are not perfectly defined. Judicial immunity originated, in medieval times, as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error. This Court stated that judicial immunity was the settled doctrine of the English Courts for many centuries, and has never been denied in the courts of this country. Besides protecting the finality of judgments, this Court concluded that, judicial immunity also protected judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants.

The Petitioner in this case states that these types of rulings, for many centuries protect judges from every judicial error they do in our American Courts and the citizens of these United States under this outdated standard of judicial immunity.

## GROUNDS FOR REHEARING

The Petitioner will now address several grounds for granting this petition, if proven, there is a reasonable probability this court will reverse its previous decision denying his Petition for a Writ of Certiorari based on the State of Michigan and a Genesee County Circuit Court Judge's actions as a true violation of the Petitioner's Subject Matter Jurisdiction when Judge O'Grady transferred his case out of **St. Joseph County** Michigan and into **Branch County** Michigan for the following reasons.

This Court cannot subtract the fact that the Petitioner was convicted and sentenced in St. Joseph County, Michigan and that no judge from St. Joseph County would touch his case after the Petitioner's jury trial had concluded on December 19, 2002 where Judge Noecker passed out drunk in front of the jurors while a videotape was being shown to them. Then in January of 2003 Judge Noecker was driving drunk, ran his vehicle into a store, drove away, and when the police arrived at his house, they smelled alcohol on his breath, and when they

asked him had he been drinking he lied and stated to them that when he arrive at his house he drank ½ of pint of scotch. From 2003 thru 2023, 3-judges and 7-prosecutors were charged with alcohol related charges while carrying a weapon, no prosecutor faced any charges and only one judge was removed from the bench, and that was Judge Noecker who presided over the Petitioner's state case. See *In Re Noecker* 472 Mich 1 (2005).

With that being said, two post-sentencing hearings were held on February and March of 2003, both were presided over by judges on assignment from other Counties into St. Joseph County. At one hearing, the judge stated on record that the Prosecutor in my case, Mr. Middleton, became an elected judge following the November 05, 2002 election, that the Circuit Judge in my case, Judge Noecker, was unavailable due to an ongoing investigation, and that the arguments before this Court are compelling, however, the court ruled because the only one present at this hearing was the Defendant, the judge by assigned stated when the transcripts are transcribed this court would have me writ back from prison to St. Joseph County for hearing and decisions on those motions. That was 20 years ago and I am still waiting to be heard on those motions.

**Likewise**, the Petitioner's sentencing hearing was held on June 03, 2003 and was presided over by another judge on assignment. Noteworthy is the fact that, from 2003 thru 2023, no judge out of St. Joseph County or assigned into St. Joseph County has ruled upon any pleading filed in their court by this Petitioner.

**Likewise**, on Direct Appeal in 2003, the newly elected Chief Prosecutor for St. Joseph County refused to prosecute my case on appeal and petitioned the Attorney General Office to represent St. Joseph County for him. Noteworthy is the fact that, a check of Lexis/Nexus did not produce one case, where a newly elected Chief Prosecutor or any Prosecutor from their

prospected Counties asked the Attorney General Office to present their County on Appeal in a Criminal Case after the conclusion of a bench or jury trial.

Likewise, from 2003 to the present date some thirty Circuit Court Judges by assignment out of St. Joseph County, all filed petitions for disqualification regarding my case, and the only interconnection for their requests for disqualification, regards District Court Judge Middleton's becoming an elected judge following the November 05, 2002 election, where his only obligation prior to taking the bench on January 01, 2003, was to clear out his office and reassign any pending cases to another prosecuting attorney, and the Petitioner is not just stating this fact, it is written in Michigan Case Laws, Statutes, and Court Rules that once an attorney becomes an elected judge he or she can no longer represent themselves as an attorney in a court of law. The Petitioner is not just saying this because MCL 600.8203 states: Upon taking office, a district judge shall not engage in the practice of law other than as a judge; likewise, under MCL 168.467i the term of office for a judge of the district court shall be 6 years following the judge's election and shall continue until a successor is elected and under MCR 9.201(B)(1) judges means is a person who is serving as a Judge of an Appellate or Trial Court by virtue of election, appointment, or assignment. Likewise, in 2002 there were other prosecuting attorneys available in the prosecutor's office, e.g., Assistance Chief Prosecutor Douglas K. Fisher, and Prosecutors, Jeanette Jackson, and Charles Herman who could have represented the State's interest at the Defendant's jury trial beginning on December 17, 2002. As such, Judge Middleton violated MCR 2.003(C)(1) which states: Disqualification of a Judge is warranted for reasons that include, but are not limited to, the following: (ii) the judge was acting as a lawyer in the proceeding.

#### **SUBJECT MATTER JURISDICTION**

This writ involves two questions: (1) Subject-matter jurisdiction regarding Branch County where the terms "power" and "authority" are generally used to refer to errors in the exercise of jurisdiction. The purpose of Subject-matter jurisdiction is to avoid the confusion of placing the same matter before two courts at the same time and preserve the integrity of the appeal process. In all matter regarding the Petitioner's case, Subject-matter jurisdiction derived instead from our United States Constitution, that in both State and Federal Courts in which the Defendant was convicted and sentence have original jurisdiction in all matters not prohibited by our United States Constitution.

The last judge to issue a ruling in my case was Judge William O'Grady out of Branch County who transferred my case out of St. Joseph County and into Branch County, issued his Court Orders on Branch County stationary, and had the Clerk of the Court for Branch County generate a Register of Action in Branch County with these pleadings and court orders listed on it as being judged out of Branch County by Judge William O'Grady. If that is not a clear violation of venue and subject matter jurisdiction as defined by both state and federal law, then what's the point of having it as a constitutional right to be judged in all matters from the County where the defendant was convicted and sentenced is being challenged?

The petitioner is not asking this Court to overturn his conviction, the Petitioner is asking this Court to remand his case back to St. Joseph County where the Jurisdiction of St. Joseph County is the power of that court to act and the authority of that court to hear and determine case my case, by reference to the allegations in my complaint that District Court Judge Jeffrey C. Middleton presented himself as an attorney for the State of Michigan at my jury trial on December 17, 2002 after becoming an elected District Court Judge following his election to that office on November 05, 2002 47 days before my jury trial began.

The focus is on whether the court has a legal right to hear a particular case. If it is apparent from the allegations that the matter alleged is within the class of cases with regard to which the court has the power to act, then subject-matter jurisdiction exists. But subject-matter jurisdiction does not depend on whether the claim is true or false, but instead on the allegations pleaded and not the facts.

Lack of subject-matter jurisdiction may be raised as a defense by a party. But subject-matter jurisdiction is so critical to a court's authority that a court has an independent obligation to take notice when it lacks such jurisdiction, even when the parties do not raise the issue and if a court erroneously exercises subject-matter jurisdiction, the court's acts and proceedings are of no force and validity, and any order entered without subject-matter jurisdiction may be challenged collaterally and directly because a claim of lack of subject-matter jurisdiction may be raised at any time, even if for the first time on appeal to a state or federal court. Whether a court has subject-matter jurisdiction is a question of law subject to review de novo. Subject-matter jurisdiction is also distinguished from venue. Although the terms are sometimes erroneously used interchangeably, jurisdiction and venue are not the same thing. A court is not deprived of its authority to hear a case if venue is improper, but if a court lacks subject-matter jurisdiction, the court has no authority to hear the case. This authority is not dependent on the particular facts of the case, but instead, is dependent on the character or class of the case pending. The courts do not have inherent subject-matter jurisdiction, it is derived instead from the United States Constitution and provisions which is adopted under Michigan's Constitution, that circuit courts have original jurisdiction in all matters not prohibited by law. See Michigan Const. Art-VI §13. Likewise, MCR 6.008(B) provides that Michigan's Circuit Courts has jurisdiction over all felonies from the bind-over from the district court unless otherwise provided by law. As such, with the United States Constitution and Michigan

provisions in place, Branch County actions taken in the Petitioner's case was without subject-matter jurisdiction, therefore, is void as though it did not exist. Cf. *People v. Washington* 2021 Mich Lexis 1314 decided July 29, 2021 stating that subject-matter jurisdiction is a legal term of art that concerns a court's authority to hear and determine a case. Therefore, Branch County lacked subject-matter jurisdiction when Chief Circuit Court Judge O'Grady transferred the Petitioner's case out of **St. Joseph County** Michigan and into **Branch County** Michigan. The Petitioner is not asking this Court to overturn his conviction and sentence, because that is not the type of justice he is seeking, but Constitutional Justice does decree that this Court should, at the very least, remand the Petitioner's case back to St. Joseph, Michigan to hear and determine his case regarding Judge Jeffrey C. Middleton's actions representing himself as an attorney for the State of Michigan following him be elected to that office at his jury trial.

#### **RELIEF SOUGHT**

In closing, the Petitioner states that in lieu of granting him a Writ of Certiorari, this Court should as a prerequisite consider all documents entered out of Branch County without Subject Matter Jurisdiction to do so, or in the alternative, decide whether or not to overturn Branch County Court Orders regarding the Petitioner's conviction and sentence, by remanding his case back to St. Joseph County Michigan for any reason this Court this court deems just and fair under the circumstances of this case.

#### **DECLARATION OF SERVICE**

The petitioner certify under 28 USC 1746 that a copy of this document was served to all parties by U.S. Mail.

**SUBMITTED BY:**

Robert Earl Hackney

ROBERT EARL HACKNEY #319385

**DATED:** 8-28, 2023

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CERTIFICATE OF GOOD FAITH

Now comes the Petitioner, **Robert Earl Hackney**, who states that he is not Represented by an Attorney in this matter and is presenting this Petition for Rehearing in *Pro Per* in Good Faith and not as a means to delay this Court's ruling denying his Petition for Certiorari. The Petitioner further certifies that his Petition for a Rehearing is based on (1) Grounds available to this Court that were raised in his Petition for Certiorari; (2) That this Petition for Rehearing address substantial circumstances or substantial grounds regarding Judicial Misconduct by a judge who knowingly represented himself as a Prosecutor at my jury trial and ask this Supreme Court to addressed whether or not this Judge is entitlement to absolute immunity; and (3) If a court lacks subject-matter jurisdiction all courts of these United States has an independent obligation to take notice when it lacks such jurisdiction where a court has no authority to hear the case, in the Petitioner's case, Judge William O'Grady out of Branch County transferred my case out of St. Joseph County and into Branch County, then issued Court Orders on Branch County stationary, and had the Clerk of the Court for Branch County generate a Register of Action in Branch County. These three claims has never been previously presented to this Court by the Petitioner, and that if proven, there is a reasonable likelihood this Court could reverse its previous decision denying his Petition for Certiorari. In closing, the Petitioner certify that his Petition for Rehearing is being presented to this Court in Good Faith who is only seeking a remand back to the state court having subject-matter jurisdiction over his case.

## CERTIFICATION OF SERVICE

The petitioner certifies that he served the within Certificate of Good Faith on the counsel for the respondent by enclosing a copy thereof in an envelope with postage prepaid by depositing it in the Michigan Department of Corrections Institutional Mailing system on 8-2Y, 2023 and further certifies that all parties required to be served have been served.

**SUBMITTED BY:**

Robert Earl Hackney

ROBERT EARL HACKNEY #319385

**DATED:** 8-2Y, 2023