



NO. 2-0000

In The

Supreme Court of The United States

Antwoyn Terrell Spencer - Petitioner

vs.

Eighth Circuit Court of Appeals,

and United States District Court

for The District of Minnesota -

Respondents

On Petition For An Extraordinary
Writ of Mandamus

Antwoyn Terrell Spencer # 14781-041

FPC Duluth

P.O. Box 1000

Duluth Minnesota 55814

Question Presented

The District Court Persistently
And Without Reason Refuse To
Properly Adjudicate Petitioner's
'Motion To Dismiss Indictment'
Pending Before It.

List of Parties

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

Related Cases

Eighth Circuit Court of Appeals
Nos. 22-3103 and 22-3296

United States District Court for the
District of Minnesota No. 07-cr-174
(JRT)(1)

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28 U.S.C. 1651(a), The All Writs Act

In The
Supreme Court of The United States
Petition For Writ of Mandamus

Opinions Below

For cases from federal court:

The opinion of the United States Court of appeals appears at Appendix A to the petition.

The opinion of the United States district court appears at Appendix B to the petition.

Jurisdiction

For cases from federal court:

The date on which the United States Court of Appeals decided my case was November 07, 2022.

No petition for rehearing was timely filed in my case

The jurisdiction of this court is invoked under 28 U.S.C.S. 1651(a) and 1254(1)

Constitutional and Statutory Provisions Involved

Grand Jury Clause

Due Process Clause

Statement of the Case

On June 14, 2022, petitioner filed a motion to dismiss indictment in the United States district court for the district of Minnesota. Doc. No. 539

The district court on October 24, 2022, the exact same day petitioner petitioned for a writ of mandamus to the Eighth Circuit Court of Appeals (appeal no. 22-3103), issued an unappealable order denying the motion. Doc. No. 543

On November 2, 2022, petitioner again petitioned the Eighth Circuit for a writ of mandamus to issue on the grounds that the district court had refused to issue a final decision within the meaning of its appellate jurisdiction. Appeal No. 22-3296

The appellate court without reason, on November 7, 2022, issued a judgment denying the request. The court's mandate issued as well.

Reasons For Granting The Petition

Title 28, Section 1291, welcomes only final decisions of district courts. 28 U.S.C. 1291.

This court has defined "final decisions" as those that end the litigation on the merits of the parties, and leaves nothing for the court to do but execute the judgment. See *Catlin v. United States*, 324 U.S. 229, 233, 65 (1945) (citing *St. Louis, I.M. & S. Ry. Co. v. S. Express Co.*, 108 U.S. 24 (1883)).

Here, petitioner moved the district court pursuant to Fed. R. Crim. P. 48(b)(1), to dismiss the indictment against him because 15 years has passed and the charged allegations has not been presented to a grand jury.

The indictment of record is not a true bill returned by a grand jury See Doc. no. 1

Petitioner further contended, citing *Ex parte Burn*, 121 US 1, 7 (1883), in absence of a grand jury indictment the court lacked jurisdiction over him and the case, therefore the indictment must be dismissed for lack of authority.

The district court was alerted that it had tried, convicted, and punished petitioner without the power to do so, in excess of its jurisdiction and in violation of the constitution and laws in support thereof.

Nevertheless, the district court in its discussion of its order denying relief, to circumvent dismissal refused to address

the merits of petitioner's motion under Rule 48(b)(1). Instead the court alluded to the federal rule in its background of the case, by design.

Because petitioner moved the district court under Fed. R. Crim. P. 48(b)(1), to dismiss for lack of jurisdiction, the district court failing to address petitioner's merits in light of 48(b)(1) renders its order unappealable, because it is not a final decision in light of this court's precedent.

Traditionally, the writ of mandamus has been used in aid of appellate jurisdiction to compel an inferior court to exercise its authority when it is its duty to do so. See *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26, 63 (1943). Also see *McClellan v. Carland*, 217 U.S. 268 (1910).

Where a "district court persistently and without reason refuses to adjudicate a case properly before it, the court of appeals may issue a writ of mandamus" in order that it may exercise the jurisdiction of review given by law. *Will v. Calvert Fire Insurance Company*, 437 U.S. at 662, 98 S. Ct. at 2557 (quoting from *Insurance Company v. Comstock*, 83 U.S. (16 Wall) 258, 270 (1873)).

The Eighth Circuit has power under 28 U.S.C.S. 1651(a) and 1291, to issue the writ of mandamus requested in appeal no. 22-3296. Likewise this court has the authority to issue the writ to the circuit court. *Insurance Company*, *supra*, at 83 US 270.

Issuance of the writ to the district court is vital to the Eighth Circuit's judicial power under 28 U.S.C.S. 1291,

and in turn, to this court's appellate jurisdiction as well. A final decision of the district court is a necessity for appellate review.

Conclusion

This court having jurisdiction under 28 U.S.C.S. 1251(a) and 1254(1), Petitioner humbly request a order directing the Eighth Circuit to set aside its judgment and mandate (no. 22-3296) denying mandamus relief, and direct court to set aside its order (crim no. 07-174 (JRT)(1)) denying Petitioner's 'Motion to Dismiss Indictment', and proceed to 'Final Judgment', so that the appellate court may exercise its jurisdiction under 28 U.S.C.S. 1291, in turn, so that this court may do so under 28 U.S.C.S. 1254(1).

To the extent possible, it is
prayed that this Court construe
this mandamus petition as a request for
habeas relief, review the proceedings
below, and dismiss the indictment
against petitioner.

Immediate action is requested.
Harassment, torture, and corruption
is ongoing at FPC Duluth. Petitioner's
mental and physical health is
at risk daily.

Respectfully submitted,

Anthony Spencer

2/22/23