

22-6978

ORIGINAL

IN THE UNITED STATES SUPREME COURT

Supreme Court, U.S.  
FILED

FEB 24 2023

OFFICE OF THE CLERK

DECHAUN TOLIVER

Case No.

Lebanon Correctional

3791 Ohio 63 Lebanon Ohio 45036

Pro, se

---

On Petition For A Writ of Certiorari in the United States Supreme Court

---

6<sup>th</sup> Circuit Court of Appeals

RECEIVED

MAR - 8 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**Questions Presented:**

1. Under the RICO Laws, can a conviction stand without the existence of a "Enterprise", a group of people associated in fact? Or without corrupt acts that meet the monetary threshold amount?
2. Is Due Process violated if the record reveals that there is "no evidence" of the crime ever happening?
  - I. Does this support or show innocence?
3. Is private counsel Ineffective if he negotiates plea deals for a crime that never occurred?
4. Is a Defendants Plea Intelligently made to a RICO if it is in fact just him on the case?
5. Is the plea colloquy disturbed if the judge accepts a plea to less than all the essential elements of a crime?

**List of Parties:** Dechaun Toliver, pro se

**Table of Contents**

	<u>Page</u>
Questions Presented...	1
List of Parties...	2
List of Proceedings...	3
Statement for basis of Jurisdiction...	4
Statutory Provisions ...	4
Constitutional Provisions...	4
Facts of the Case...	5
Amplified reason for writ...	6
Method of raising Questions...	6

**INDEX OF APPENDICES**

**Page. 7**

**APPENDIX A**

**APPENDIX B**

**APPENDIX C**

**APPENDIX D**

**(iii) List of all Proceedings:**

Memorandum in support of jurisdiction: Supreme court of Ohio, Case#20ca6

DOC#3 PAGE ID#216

Judgement Entry: July 21,2021 PAGEID#237

Case#2021-0784

32.1 Withdraw of guilty plea: Fourth Appellate District, Case #20ca06

DOC#3 Case 2:21-cv-04703 PAGEID#167

Judgment Entry: May 18, 2021 Page ID#231

Post-Conviction Relief: Court of Common Pleas, Athens Ohio

Judgement Entry: 11-1-18

Delayed Appeal: Fourth Appellant District, Case# 19ca15

DOC#3 Case 2:21-cv-04703 PAIGEID#53

Certificate of Appealability : 6<sup>th</sup> Circuit court of Appeals , Case #22-3627

Judgement Entry: Jan. 6, 2023

**Statement of basis of jurisdiction in this court:** Compliant with Rule. 10

The 6<sup>th</sup> circuit court of appeals entered a Judgment on January 6, 2023 on a Federal Habeas petition that conflicts with the decision of another United states court of appeals:

A state court has entered a judgment in conflict with another state court:

In *Waucaush v. United states 380 f.3d 251*, he argued that his plea was unintelligent do to the misunderstanding of the reach of the Enterprise element. With the fact that the Enterprise element does not exist at all here, Petitioner raised the same claim, using the same case, but was denied for res judicata. The Supreme court reversed *Waucaush v. United states*.

The appeals courts have all made decisions pertaining to the Enterprise claim that are in conflict with the holding & analysis given in *United States v. Turkette 452 U.S. 576*, *Boyle v. United states, 556 U.S 938*, *State v Stevens 139 Ohio St 3d*. & many others. The decisions by the appeals courts are inconsistent with Supreme Court precedents.

**Statutory Provisions:**

See: 28 USCS 1254 (1) By writ of certiorari granted upon any party to a civil or a criminal case, before or after rendition of judgement or decree;

28 USCS 1257 The Supreme court has jurisdiction to review certain final judgements or decree rendered by the "highest court of state in which a decision can be had".

**The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case:**

6<sup>th</sup> Amendment Article III Section 2, declares that the court is to review questions of "Law & Fact"

6<sup>th</sup> Amendment Right to Effective Counsel

5<sup>th</sup> & 14<sup>th</sup> Amendment Rights to Due process

### **FACTS OF THE CASE:**

Petitioner was convicted of Engaging in a Pattern of corrupt activity (Ohio RICO Act) without being associated or employed by anyone other than himself for Eight years. There are no co-conspirators, co-defendants or other participants linked to the Petitioner. Through the series of responses, no court has yet to address or dispute this fact.

The State consolidated two fifth degree felony drug charges with the Pattern of Corrupt Activity to satisfy the "Corrupt acts" element of the crime. These sales fall well below the threshold amount of \$2,000 only totaling in \$180 combined.

The record is totally devoid of any evidence of the crime ever happening . Reason being, Petitioner was never being investigated for the crime. After refusing to plea to findings in a home, the RICO was bought up as if it were a lesser offense.

Instead of applying law to Fact, the trial court ignored the facts without dispute ("moot"). Contending that my 32.1 motion to withdraw was not the proper motion to bring my claims.

The 6<sup>th</sup> circuit stated that "even if my claims could be construed as a fair presentation, Toliver never appealed motion to withdraw & thus failed to exhaust claims". The 32.1 motion to withdraw is how petitioner has made it thus far. The 32.1 was argued & ruled on in the highest state court. Claims were in fact exhausted.

Each court has reviewed the record & has yet to say that the petitioner was in fact associated or employed by another entity. These courts are simply avoiding making a decision on Law & Fact, relying on inaccurate procedural defaults & res judicata.

**Amplified reasons for writ.**

The lower courts are not applying the Law to the facts of the case. This is a matter of innocence. One person cannot constitute an entire “enterprise” under the Rico standard. The state has Judicially enlarged the RICO statue to fit the facts of this case. This area of Law is badly in need of the Supreme Courts authoritative voice.

**When the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts:**

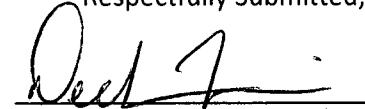
My methods of raising my claims were a Post-conviction relief & a 32.1 motion to withdrawal, asserting that the facts of the case do not support the conviction. I've made claims of Ineffective assistance, Miscarriage of Justice, Unintelligent made plea & Judicial enlargement of the statue. The appeals courts have all passed on my claims in the same manner without adjudication, relying on res judicata, procedural default & A lack of jurisdiction. The 6<sup>th</sup> circuit did the same but made a conclusion on the matter of there being “no evidence”.

After reviewing the record, instead of alleging that there is evidence of group activity, the Court relies on the plea of guilty to the prosecutors “statement of the facts” in the Bill of Information. The Bill is the face of the entire case. The statement alleges an Illegal enterprise but doesn't allege a group of people associated to the defendant or that defendant was employed by some other entity. The Prosecutor is simply just restating the term “Enterprise” & not the conduct that constitutes an illegal Enterprise. With no paper work showing the crime actually “occurring”, the statement is without support.

**CONCLUSION**

For the reasons stated above & for good Policy, the petition for certiorari should be granted.

Respectfully Submitted,



DECHAUN TOLIVER A745-714

Lebanon Correctional Institution

3691 Ohio 63

Lebanon, Ohio 45036

Petitioner pro se,

**CERTIFICATE OF SERVICE**

I CERTIFY THAT A COPY OF PETITIONERS MOTION FOR WRIT OF CERTIORARI WAS SUBMITTED TO A PRISON OFFICIAL, U.S MAIL POSTAGE PREPAID, THIS 27 DAY OF FEBUARY 2023, AND SENT TO:

SUPREME COURT OF U.S.

CLERK OF COURTS

1<sup>ST</sup> STREET, N.E WASHINGTON D.D 20543