No. 22-7166

ORIGINAL

Supreme Court, U.S.
FILED
MAR 14 2023
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Anthony H. Warnick – Petitioner

vs.

Steven Harpe – Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

TENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Presented to Justice Gorsuch

Anthony H. Warnick #175234

James Crabtree Correctional Center – Unit 2

216 N. Murray St.

Helena, OK 73741

QUESTION(S) PRESENTED

I. Can subject matter jurisdiction be raised at any time?

II. Is an issue of subject-matter jurisdiction subject to the one-year limitation proscribed by the Antiterrorism and Effective Death Penalty Act (AEDPA) as held by the Tenth Circuit?

III. Do unpublished opinions supersede decades of published Supreme Court precedent as recently used by the Tenth Circuit?

IV. Is due-process circumvented by the AEDPA?

V. Is a judgment entered by a court which is void of subject-matter jurisdiction a valid and lawful judgment as recently held by the Tenth Circuit?

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTE AND RULES PAGE NUMBER

QUESTION(S) PRESENTED

I. Can subject matter jurisdiction be raised at any time?

II. Is an issue of subject-matter jurisdiction subject to the one-year limitation proscribed by the Antiterrorism and Effective Death Penalty Act (AEDPA) as held by the Tenth Circuit?

III. Do unpublished opinions supersede decades of published Supreme Court precedent as recently used by the Tenth Circuit?

IV. Is due-process circumvented by the AEDPA?

V. Is a judgment entered by a court which is void of subject-matter jurisdiction a valid and lawful judgment as recently held by the Tenth Circuit?

LIST OF PARTIES

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

RELATED CASES

- *Warnick v. State,* No. PC-2020-656, Oklahoma Court of Criminal Appeals. Judgment entered Sept. 29, 2021.
- *Warnick v. Crow,* No. 21-cv-0478-GKF-SH, U.S. District Court for the Northern District of Oklahoma. Judgment entered May 23, 2022.
- *Warnick v. Harpe,* No. 22-5042, U.S. Court of Appeals for the Tenth Circuit, Judgment entered Nov. 3, 2022

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

An extension on time to file the petition for writ of certiorari was granted to and including April 2, 2023, on January 31, 2023 in Application No. 22A688.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C.§ 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1153 – The Major Crimes Act (MCA), provides in relevant part:

> "Any Indian who commits" certain enumerated offenses "against the person or property of another Indian or any other person" shall be subject ... within the exclusive jurisdiction of the United States."

28 U.S.C. § 2244(d)(1): A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.

28 U.S.C. § 2254(a): The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

Const.Amend. 14 – States in relevant part: No state ... shall ... deprive any person of life, liberty, or property, without due process of law ... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

U.S. Ct. of App. 10th Cir.Rule 32.1, 28 U.S.C.A. provides in relevant part:

Unpublished opinions are not precedential, but may be cited for their persuasive value.

STATEMENT OF THE CASE

Decades of Supreme Court precedent has recently been brought into question by the Tenth Circuit Court of Appeals. Ostensibly, according to the Tenth Circuit, issues of subject-matter jurisdiction *cannot* be raised at any time. Subject-matter jurisdiction, the Tenth Circuit says, is subject to the Antiterrorism and Death Penalty Act (AEDPA), one-year limitation period. *28 U.S.C. § 2244.*

Second, the Tenth Circuit has applied its own unpublished opinions to supersede, not only its own published precedent, but this Court's published opinion(s), thereby abrogating this Court's judicial decisions. What this Court should find most unconscionable though, is the Tenth Circuit's recent conclusion that a judgment entered by a court which lacks subject-matter jurisdiction is a valid and lawful judgment.

The Tenth Circuit's recent departure from this Court's decisions, which champion and defend an individuals rights, resent important questions. Being an inmate untrained and unschooled in law, I will be most concise, yet being most vigilant to articulate the relevant facts material to the consideration of the questions presented.

I. Can subject-matter jurisdiction be raised at any time?

The Tenth Circuit in an unreported order, Appendix A, rejected my claim of subject-matter jurisdiction determining that it is subject to the AEDPA one-year limitations period, *28 U.S.C. § 2244(d)(1).*

It was determined that my subject-matter claim was "untimely". This conclusion is a far departure from this Court's unambiguous decisions that subject-matter jurisdiction can be raised at any time and cannot be forfeited or waived. The "concept of subject-matter jurisdiction, because it involves a court's power to hear a case, and never be forfeited or waived." *U.S. v. Cotton,* 535 U.S.

625, 630 (2002). The Tenth Circuit implies that the AEDPA somehow forfeits my right to raise this issue.

As the United States court of appeals decided an important question of federal law that has not been, but should be, settled by this Court, and that the decision conflicts with relevant decisions of this Court, I urge this Court to grant certiorari on this question.

II. Can issues of subject-matter jurisdiction subject to the one-year limitation proscribed by the AEDPA as held by the Tenth Circuit?

Title *28 U.S.C. 2244(d)(1)* came into effect in 1996 wherein a one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. Since the enactment of §2244, this Court has been unwavering that subject-matter jurisdiction can be raised at any time.

While addressing subject-matter jurisdiction, without addressing the AEDPA's limitation period, this Court held in *Henderson ex. rel. Henderson v. Shinseki,* 562 U.S. 428 at 434 (2011), "[f]or purposes of efficiency and fairness, our legal system is replete with rules requiring that certain matters be raised at particular times. Objections to subject-matter jurisdiction, however, may be raised at any time." (internal citation omitted).

In contrast, the Opinion and Order of the United States District Court for the Northern District of Oklahoma, unreported, Appendix B, the court cites another unreported case explaining that the plain language of § 2244(d)(1)'s one-year statute of limitations makes no exception for claims challenging subject-matter jurisdiction. Id., at 7. The Tenth Circuit upheld this explanation. Arguably, the plain language of § 2244(d)(1) does *not* include claims of subject-matter jurisdiction.

This brings into question whether §2244(d)(1), in fact, includes subject-matter jurisdiction by omission.

This Court addressed § 2244 in *Magwood v. Patterson,* 561 U.S. 320 (2010), albeit addressing § 2244(b), as to the AEDPA's bar on second and successive habeas corpus applications. *Magwood* involved a situation much like this one, as to the plain language of the statute. This Court emphatically announced, "[w]e cannot replace the actual text with speculation as to Congress' intent." Id., 561 U.S. at 334. *Hohn v. State,* 524 U.S. 236 (1998)(same). Speculation is once again at issue. The lower court(s) have purportedly included subject-matter jurisdiction into § 2244 and therefore, circumvented this Court's precedent as to subject-matter jurisdiction can never be forfeited or waived, and can be raised at any time – even though the Tenth Circuit previously held in *Murphy v Royal,* 875 F.3d 896 (10th Cir. 2017), aff'd 140 S.Ct. 2412 (2020), citing *Magnan v Trammell,* 719 F.3d 1159, 1160-61 (10th Cir. 2013), "[w]e ordered Mr. Magwood released from state custody without resolving the "difficult question" of whether AEDPA constrains federal court review of a state court's jurisdictional ruling regarding Indian country." *Murphy,* received the same conclusion.

This specific important question of law has not been, but should be, settled by this Court as the lower court's decisions conflicts with relevant decisions of this Court. I urge this Court to grant certiorari on this question.

III. Do unpublished opinions supersede decades of published Supreme Court precedent as recently used by the Tenth Circuit?

I diligently sought Supreme Court precedent regarding this issue. This Court has said that stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. *Payne v. Tennessee,* 501 U.S. 808, 827 (1991),

quoting *Vasquez v Hillery,* 474 U.S. 254, 265-266 (1986). At question is, can a lower court use unpublished opinions to supersede decades of Supreme Court precedent? The *U.S. Ct. of App.* 10th Cir. Rule 32.1 provides in relevant part; unpublished decisions are not precedential, but may be cited for their persuasive value. If unpublished decisions have no precedential value, how could it effectively supersede decades of long-held, well-established case law as pronounced by this Court, i.e., subject-matter jurisdiction cannot be forfeited or waived, and can be raised at any time.

The Tenth Circuit, itself, has reiterated time and time again that "subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *Hobby Lobby Stores, Inc., v. Sevelius,* 723 F.3d 1114, 1126-1127 (10th Cir. 2013), quoting *Arbaugh v. Y&H Corp.,* 546 U.S. 500, 514 (2006). That is, but for the instant case apparently.

How can a court of appeals turn on its own published opinions to deny me the same protection of law, as well as turn on decades of this Court's unwavering and unambiguous decisions. The Tenth Circuit has even said of itself, "[w]e cannot overrule the judgment of another panel of this court. We are bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court." *In re Smith,* 10 F.3d 723, 724 (10th Cir. 1993)(citations omitted); *U.S. v Nichols,* 169 F.3d 1255,1261 (10th Cir. 1999)(same). Should precedent not have been followed in this case?

Such a departure here presents an important question of the evenhanded, predictable and consistent reliance on judicial decisions. I urge this Court to grant certiorari on this question.

IV. Is Due Process circumvented by the AEDPA?

Const.Amend. 14 provides in relevant part: No state ... shall ... deprive any person of life, liberty, or property, without due process of law. Nor shall any state abridge the privileges or immunities of citizens of the United States. The prohibitions of the Fourteenth Amendment extend to

all actions of the state denying equal protection of the laws whether it be action by one of the agencies of the state or by another. *Commonwealth of Virginia v. Rives,* 100 U.S. 313 (1879). The state courts are as much bound as the Federal courts to see that no man is punished in violation of the Constitution or laws of the United States. *Davis v. Burke,* 179 U.S. 399 (1900).

It is unimaginable that the Tenth Circuit said that due to § 2244, my right to due process is limited to one-year. Is this not an abridgment thereby placing a restriction on the Fourteenth Amendment? Is this not the very thing the Framers of the Constitution championed against?

The Tenth Circuit's decision is an assault on the text of the Fourteenth Amendment. The decision is an abridgment to the Fourteenth Amendment which should be settled by this Court. I urge this Court to grant certiorari on this question.

V. Is a judgment entered by a court which is void of jurisdiction valid and lawful as recently held by the Tenth Circuit?

I am incarcerated pursuant to a state court judgment, a judgment rendered by a court devoid of subject-matter jurisdiction. Title *18 U.S.C.A. § 1153(a),* the Major Crimes Act (MCA), is the jurisdictional statute at the heart of this case. This Court's case law makes clear, "[a]s the text of § 1153 and our prior cases make clear, federal jurisdiction over the offenses covered by the Indian Major Crimes Act is "exclusive" of state jurisdiction." *Negonsott v. Samuels,* 507 U.S. 99, 102-103 (1993)(quotation in original).

In my Application for Certificate of Appealability to the Tenth Circuit, I plead that the state judgment could not be "final" because it was "void" where the state court lacked jurisdiction to issue the judgment. The Tenth Circuit disagreed. They said "[w]hether or not the staste court had subject matter jurisdiction, its judgment became final[.]" Appendix A at 6.

This Court has been unwavering and crystal-clear that conviction by a court that lacks jurisdiction are, "by definition, unlawful" and "void". *Montgomery v. Louisiana,* 577 U.S> 190, 201 (2016).

The Tenth Circuit's decision in this case is a far cry from its past decisions. Most notably, the Tenth Circuit's decision in *Murphy v Royal,* 875 F.3d 896 (10th Cir. 2017), aff'd 140 S.Ct. 2412 (2020), where the court flatly concluded the petitioner "is an Indian and because the crime occurred in Indian county, the federal court has exclusive jurisdiction. Oklahoma lacked jurisdiction." 875 F.3d at 966. The issue of jurisdiction which was decided in *Murphy* is the exact same issue of this case. How is it that the court does not apply the same formidable standard of review? This raises the question of whether a Federal court of appeals can "pick-and-choose" between two parallel cases of the same issue, which one it will apply well established precedent to, and which it will not. In this case, the circuit court chose to depart from decades-old precedent and let stand a judgment from a court which statutorily lacks the jurisdiction to pass judgment.

As the United States court of appeals decided an important question of federal law which conflicts with relevant decisions of this Court, I urge this Court to grant certiorari on this question.

REASONS FOR GRANTING THE WRIT

To be clear, I am incarcerated pursuant to a state court judgment. Title 18 U.S.C.A. § 1153, the Major Crimes Act (MCA), is the jurisdictional statute at the heart of this case. This Court made clear in *Nogonsott,* supra, that the text of § 1153 and "our prior cases make clear, federal jurisdiction over the offenses covered by the Major Crimes Act is "exclusive" of state jurisdiction." In *Murphy,* supra, the Tenth Circuit defended this by determining that Oklahoma lacked jurisdiction" and

remanded the case with instructions to grant the application for writ of habeas corpus. 875 F.3d at 966.

This has been true in Oklahoma since, at least, 1926 when this Court said that the authority of the United States to punish crimes within the state of Oklahoma in respect of crimes committed by or against Indians continued after the admission of the state, in virtue of the long-settled rule that such Indians are wards of the nation. *United States v. Ramsey,* 46 S.Ct. 559 (1926).

The Tenth Circuit's departure from the well-settled history of this issue not only directly harms myself, but the many other Indians currently incarcerated in Oklahoma by virtue of state court judgment, as cited in the instant Tenth Circuit Order. This departure not only conflicts with this Court's holdings, but conflicts with other circuit courts. The Seventh Circuit has said "[i]t seems to be well settled that in the absence of legislation by Congress conferring jurisdiction upon the Wisconsin state courts, they have no jurisdiction of crimes committed by tribal Indians, on reservations." *Application of Konaha,* 131 F.2d 737, 738 (7th Cir. 1942). The Eighth Circuit said the MCA "is to be strictly construed." *Kills Crow v. U.S.* 451 F.2d 323 (8th Cir. 1971). The Ninth Circuit said § 1153 grants exclusive jurisdiction to federal courts for federal or state crimes committed by Indians in Indian country. *U.S. v. Bear,* 932 F.2d 1279, 1281 (9th Cir. 1990).

Even the Oklahoma Court of Criminal Appeal (OCCA) acknowledges "[t]o date, the State of Oklahoma had made no attempt to repeal Art. 1, Sec. 3, of the Constitution of the State of Oklahoma, which prohibits state jurisdiction over Indian country, so the federal government still has exclusive jurisdiction over Indian county within Oklahoma boundries." *C.M.G. v. State,* 594 P.2d 798, 799 (1979 OK CR 39); "[t]he State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian country." *State v. Klindt,* 782 P.2d 401, 403 (1989 OK CR 75).

Furthermore, the appellate court stated that my judgment became "final" pursuant to the AEDPA, *28 U.S.C. § 2244(d)(1)(A).* This is erroneous because the AEDPA presupposes the state court had jurisdiction in the first place.

The lower court's decision in this case carry serious consequences. Not only does it deprive me of equal protection and the evenhanded rule-of-law, it places future, similarly situated people at risk. Not only does myself beg this Court's review, so too does the Constitution.

The United States court of appeals decision question federal law and conflicts with relevant decisions of this Court. I urge the Court to grant certiorari so these issues may be fully presented and addressed by the Supreme Court of the United States. Without question, present and future liberty interests are in jeopardy within the Tenth Circuit.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: March 13, 2023

No. _____

_____

IN THE

SUPREME COURT FO THE UNITED STATES

_____

Anthony H. Warnick – Petitioner

vs

Steven Harpe – Respndent

PROOF OF SERVICE

I, Anthony H. Warnick, do swear or declare that on this date, March 13, 2023, as required by Supreme Court rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEE IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addressed of those served are as follows:

Office of Attorney General

State of Oklahoma

313 N.E. 21

Oklahoma City, OK 73105

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 13, 2023.

Anthony H. Warnick