

NO. 22-7214

IN THE
SUPREME COURT OF THE UNITED STATES

— o o o —

MIGUEL ANGEL BACILIO

Petitioner,

v.

TEXAS

Respondent.

— o o o —

PETITION FOR REHEARING PURSUANT TO SUPREME COURT RULE 44

MIGUEL ANGEL BACILIO

TDCJ-ID NO. 1912589

PETITIONER, PRO-SE

STEVENSON UNIT

1525 FM 766

CUERO, TEXAS 77954

(361) 275-2075, EXT. 1230

QUESTIONS PRESENTED

In *Scott v. Sandford*, 60 US 393(1857) this Honorable Court held: "... Under the Constitution and Laws of the United States, the rules which govern the pleadings in its courts, in questions of jurisdiction, stand on different principles and are regulated by different laws..." Id. at 401.

Subsequently, In *re McDonald*, 1861 U.S. Dist. Lexis 69, the Federal District Court held: "A question of jurisdiction is always *lien in limine*, and thus it is right and proper that it should be first considered. As a preliminary step, then, it must be determined whether a court has jurisdiction-whether it can proceed any further in the matter before it; for, most certainly, when asked to pass upon the authority of others, official or otherwise, it should be scrupulously careful not to exceed its own legal powers." Id. at HN1.

Resting on the foundation of the above principles of American Law, the questions in controversy are of the highest importance and contain the averment necessary to give the court jurisdiction and it will be the Court's duty to dispose of the jurisdictional questions in a Findings of Fact and Conclusions of Law.

(a) When a State Court loses "All Jurisdiction" in the course of a jury trial proceedings by creating a fundamental error. Are the preceding courts allowed to divest themselves of their authority to correct the fundamental error by denying without written order the proper remedy under the law?

- (b) What happens when the U.S. Supreme Court fails or refuses to follow its own mandatory precedents or use its Constitutional and Statutory Power to adjudicate a jurisdictional claim?
- (c) The Honorable Justices of this Court are bound by solemn obligation of an oath, to support the Constitution and their own Laws. If this principle be true. Is there anything in this case to impair its force? And, what might be the reason that Petitioner is being denied the Equal Protection Under The Law?
- (d) When the want of jurisdiction of the lower courts is known to the reviewing court, and the court fails or refuses to exercise its judicial authority to correct the fundamental error, what court is responsible to correct it? And, what other avenues of relief can Petitioner pursue in protection of his Constitutional Due Process Rights?
- (e) Can the U.S. Supreme Court allow itself to pass on sub-silence on Petitioner's jurisdictional claim, without committing treason to the U.S. Constitution? And, what are the Checks and Balances for, if no court uses its judicial authority to rule on, or adjudicate a jurisdictional claim?

LIST OF PARTIES

PETITIONER:

Miguel Angel Bacilio
TDCJ-ID No. 01912589
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RESPONDENT:

The State Of Texas

ATTORNEY
FOR THE STATE:

Ken Paxton
Attorney General of Texas
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Austin, Texas 78711-2548

RELATED CASES

NO. 22-7214

Miguel Angel Bacilio

v.

Texas

iii.

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v.

TEXAS

PETITION FOR REHEARING PURSUANT TO SUP. CT. R. 44

On June 12, 2023 Miguel Angel Bacilio, TDCJ# 1912589 (hereinafter referred as "Petitioner") in the above-entitled and numbered cause was notified via postal service, that his Petition for Writ of Certiorari was denied on June 5, 2023. Therefore, Petitioner seeks this Court's permission to leave to file this Petition For Rehearing pursuant to Sup. Ct. R. 44.

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Petitioner humbly invokes *Haines v. Kerner*, 404 U.S. 519(1972):

"Pro-Se Pleadings held to less stringent standards than formal pleadings draft[ed] by lawyers."

— o o o —

Petitioner respectfully request that this Honorable Court Take Judicial Notice of: (1) U.S. Supreme Court controlling precedents in this case; (2) U.S. Constitutional Law applicable to this case; and (3) The true facts reflected on the face of the record of this case.

— o o o —

This Petition For Rehearing pursuant to U.S. Sup. Ct. R. 44, is presented in good-faith and not to delay the disposition of this

case or to impose needless hardship on the respondent. Rather, it intends to establish by a substantial showing of Record Evidence that the "Article III Courts" are refusing to adjudicate a jurisdictional claim in violation of the U.S. Constitution and U.S. Supreme Court Black-Letter Law —

"Because, under the Constitution and the Laws of the United States, the Rules which govern the pleadings in its Courts, [In Questions Of Jurisdiction,] stand on different—principles and are regulated by different Laws." See *Scott v. Sandford*, *supra*, at 401.

Additionally, in *Williamson v. Berry*, 49 US 495(1850) at 543, this Honorable Court established that: "The operation of every judgment depends upon the jurisdiction of the Court to render it." It further held: "The [Rule] is, that where a limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it. Its [Decisions] amount to [Nothing]." *Id.*

This Honorable Court must take judicial notice that by its own Mandatory precedents, this "Article III Court of limited Jurisdiction," cannot exercise a power which is prohibited by the Constitution. The provisions of the Constitution as this Court has continuously held, should be equal and of common benefit— And if open to "Any," it must be open to "All" upon equal and the same terms. This reference to contemporaneous history is always legitimate where there is any obscurity in the terms employed; and so is the other rule, that the use of a technical term in the Constitution is supposed to carry with it its technical meaning and application. (Emphasis throughout).

STATEMENT OF FACTS

On March 31, 2023 Petitioner filed a "Petition for Writ of Certiorari" raising several jurisdictional questions that the lower State Courts had refused to adjudicate in violation of Federal Law.

- (a) On December 12, 1997 Petitioner was abandoned by his retained trial counsel at the most critical stage of his jury trial; Petitioner alleged that the trial court "lost all jurisdiction in the course of the jury trial proceedings for failure to complete the court as required by U.S. Const., Amend. VI. Citing *Johnson v. Zerbst*, 304 US 458(1938).
- (b) *Tex. Code crim. Proc., Art. 42.12, § 5(c)* states: "On expiration of a community supervision period imposed under subsection (a) of this section, if the judge has not proceeded to adjudication of guilt. The judge **Shall Dismiss** the proceedings against the Defendant and discharge him." Petitioner has shown by record evidence that the trial court was divested of all jurisdiction under *Art. 42.12, § 5(c)* [a second time] for its failure to adjudicate guilt before the probationary period had expired as required by said statute.
- (c) *Tex. Code Crim. Proc., Art. 51.13 § 21* states: "... each warrant issued by the governor [**Shall Expire**] and be of no force and effect when not executed within one year from the day thereof." Petitioner was illegally detained in the State of Utah for two years under the guise of a Texas detainer, and

Texas failed to execute the Capias Warrant within the one year as required by Art. 51.13, § 21, divesting the trial court [a third time] of "all jurisdiction" over Petitioner's case.

(d) In *Williams v. Pensilvania*, 579 US 1(2016) this Court stated:

"... No man can be judge in his own case and no man is permitted to try cases where he has an interest in the outcome." In this case, Sharen Wilson, the presiding judge over Petitioner's jury trial was the Chief Defense Attorney for the State (i.e. Chief District Attorney) in Petitioner's habeas proceedings; Petitioner has alleged that the Habeas Court was not an "Article III Court," and therefore not invested with jurisdiction over Petitioner's Habeas proceedings, because one of its members was forbidden by law to sit as a member of such court; thereby rendering the whole Habeas proceeding "Coram Non-Judice," and therefore, a complete "Nullity."

Additionally, Petitioner directs the attention of this Court to take judicial notice of the following:

On 2015 Civil action No. 4:15-CV-417-Y, *Bacilio v. Burns*, and civil action No. 2:15-CV-233-CW, *Bacilio v. Utah Dep't of Corrs*, were filed in the Western District of Texas within one week apart. Both civil actions raised the jurisdictional issues that were presented to the Court. Civil action No. 4:15-CV-417-Y, was transferred to the Northern District of Texas, Fort Worth Division; Civil action No. 2:15-CV-233-CW, was transferred to the Central District of Utah.

Subsequently, Petitioner filed a Motion For Transfer of Actions

For Coordinated or Consolidated pretrial proceedings pursuant to 28 USC § 1407 in an effort to stand on equal grounds with the Defendants. See exhibit (A) in Appendix. The MDL pleading was filed 12/1/15 in the Judicial Panel in Washington. On 12/9/15 (only 8 days after the filing of the MDL pleading) judge Means having no jurisdiction to do so, dismissed Petitioner's Motion For Transfer and also his civil action under **Heck v. Humphrey**, 512 US 477(1994), which is inapplicable to void judgment causes of action. The illegal action of judge Means made Petitioner's Motion For Transfer Moot. See exhibit (B) in Appendix.

In civil action 2:15-CV-233-CW, after several months of litigation, judge Waddoups granted Summary Judgment in favor of Petitioner and also issued an order for the Defendants. See **Bacilio v. Garner**, 2018 US Dist. Lexis 171036; The Defendants ignored the Court's Order and filed an Interlocutory Appeal alleging qualified and absolute immunity. The 10th Cir. Court of Appeals contrary to controlling law reversed judge Waddoups' judgment applying three inapplicable trial cases. See **Bacilio v. Garner**, 781 Fed. Appx. 685(2019). The void judgment issue was brought up to the attention of the 10th Cir. Court as a pure question of Law, and the Court refused to address the void judgment issue, even though it was critical for their judgment.

Clearly, this court as well as the lower courts, either misapplied the law to the facts of this case, or presumed stoppels of law that legally have no application in the cause at bar where the cause of action is a void judgment rendered by a court without jurisdiction.

The "Record" in this case, by speaking for itself reflects a pattern of jurisdictional defects throughout the whole criminal proceedings. Yet, this Court, contrary to its own precedents and in a clear violation of the U.S. Constitution is refusing to exercise its Constitutional Authority to adjudicate these jurisdictional challenges. Thereby violating Petitioner's Constitutional Due Process, and his Equal Protection Under The Law Rights.

OPINIONS BELOW

There is no written opinion, this Court has failed to issue a written opinion in the jurisdictional issue before the Court, in violation of Constitutional principles and U.S. Supreme Court Black-Letter Law.

JURISDICTION

This Honorable Court has jurisdiction over this jurisdictional matter pursuant to the ongoing proceedings in Cause No. 22-7214.

FOOTNOTE:

For this Court's consideration and for a broader inside view of this case, please take judicial notice of exhibit (C) that was filed in the Federal Court for the central district of Utah. "Plaintiff's Objection To Defendant's Motion To Dismiss And Integral Plaintiff's Summary Judgment Motion."

REASONS FOR GRANTING THE PETITION FOR REHEARING

In *Cohens v. Virginia*, 19 US 264(1821), Mr. Chief Justice Marshall held—

"The U.S. Supreme Court will not take 'Jurisdiction' if it should not; but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. The Supreme Court cannot pass it by because it is 'doubtful'. with whatever doubts, with whatever difficulties, a case may be attended, the Supreme Court must decide it, if it be brought before the 'Court'. The Supreme Court has no more right to decline the exercise of jurisdiction which is given,—than to usurp that which is not given. The one or the other would be '**Treason to the Constitution**'. Questions may occur which the Court would gladly avoid, but the Court cannot avoid them. All the Court can do is to exercise its best judgment, and conscientiously perform its duty." See also, *Ex parte Young*, 209 US 123(1908), at HN1.

The above authoritative language is a well-established principle of the Constitution and precedent of this Court. And if there be any who deny its necessity, none can deny its authority. If it does. Its form it is without substance. "Let it be remembered that the Judiciaries are bound by solemn obligation of an oath, to uphold the Federal Constitution.

I.

Thus, Petitioner's "Petition for Writ of Certiorari" have thus clearly stated the material facts supported by record evidence out of which the important questions and exceptional circumstances involved in Petitioner's case arise; and Petitioner have done

so for the sole purpose to show the court that the history of the precedents upon which Petitioner rests his legal argument; stand upon the foundation of well-established principles of American Law, and Constitutional Mandates." (Emphasis added).

Article VI to the U.S. Const., clearly sets the basis upon which the duties and responsibilities of the U.S. Judiciary stand: "This Constitution, and the laws of the United States...; shall be the Supreme law of the land; and [All Judges]... shall be bound thereby, anything in the Constitution or laws... to the contrary notwithstanding."

Hence, courts which are created by written law, and whose jurisdiction is defined by written law under the limited powers of our Constitution; cannot transcend that jurisdiction. This difference arises, as this Court has said, from the peculiar character of the government of the United States. For although it is sovereign and supreme in its appropriate sphere of action, yet it does not possess all the powers which usually belong to the sovereignty of a nation. And, neither the legislative, executive, nor judicial departments of the government can lawfully exercise any authority beyond the limits marked out by the Constitution.

In other words, the United States Supreme Court, under our present Constitution, cannot govern at its own will and pleasure, but it must govern pursuant to the written law of the Constitution. It must not disregard over two centuries of its own mandatory precedents. This Court, as the highest U.S. Court, and as a leader of all Courts; "It must lead by example."

II.

Where, the result and decision of this Court to deny Petitioner's Petition for Writ of Certiorari was done without the proper mode of procedure as required by jurisdictional law, and therefore the reasons of the denial are unknown. Thus, Petitioner is being denied an opportunity to see a written opinion of any Court in this jurisdictional subject, and is therefore at loss to imagine what train of reasoning conducted the learned Jurists of this court to the conclusion announced in the order. Furthermore, Petitioner is constrained to examine the subject without reference to the particular views which controlled the Court's decision.

In addition, the decision to deny Petitioner's Petition for Writ of Certiorari, when it was declared by this Court without Findings of Fact and Conclusions of Law. It was simply the escertainmet of a **Fact Hitherto In Doubt, Or Unsettled**, until a proper mode of determination is in compliance with the provisions of the Constitution and the well-established principles of jurisdictional law of this Court. Hence, the order denying Petitioner's Writ of Certiorari is **utterly and wholly void. "A Complete Nullity."**

III.

Certainly, the high power has been conferred on the U.S. Supreme Court of passing judgment upon the acts of the State sovereignties, and of the legislative and executive branches of the federal government, and of determining whether they are beyond the limits of power marked out for them respectively by the U.S. Constitution. "This tribunal, therefore, should be the last to overstep

the boundaries which limit its own jurisdiction. And, while it should always be ready to meet any question confided to it by the Constitution. It is equally its duty not to pass beyond its appropriate sphere of action..." *Taylor v. Beckham*, 178 US 548 (1900), at HN9.

The Maxim articulated by Mr. Justice Louis D. Brandeis in his famous concurrence in the case of *Ashwander v. Tennessee Valley Authority*, 297 US 288(1936) states: "The Court will not 'anticipate a question of Constitutional Law in advance of the necessity of deciding it'... The Court will not 'formulate a rule of Constitutional Law broader than it is required by the precise facts to which it is to be applied'... The Court will not pass upon a Constitutional question..."

These concerns that we find in the technical meanings of judicial self-restraint are paralleled in its more extended communal usage. Echoing Montesquieu's Dictum that judges are to be "Only the mouth that pronounces the words of the law, inanimate beings who can moderate neither its force nor its rigor." Perhaps the most widely used sense of judicial self-restraint stresses that justices are not to confuse their own ideas of right with the Law; to enact new ideas is a legislative, not a judicial function.

By the above reasonings, it is obviously essential, according to universal understanding, that this Court's Special Obligation of the proper disposition of the "Jurisdictional Matter" in Petitioner's Petition for Writ of Certiorari shall have been abrogated as even detrimental to the well-being and in the best interest of the public. Because, "A mere naked power, unexercised and

dormant raises a presumption that the U.S. Constitution, being an organic instrument created for the protection of our rights, criminal, civil and otherwise, is being exercised at particular periods and "Only" for particular people. Presumably, because some particular people seems to have poor prospects."

IV.

U.S. Const., Art. VI, declares that the Constitution and the laws of the United States, which shall be made in pursuance thereof shall be the supreme law of the land. The grant of the judicial power contains no such qualification. It is declared to extend to all cases arising under the Constitution and Laws of the United States, without distinction or discrimination as to the latter; nor is there any distinction as to the tribunals, State or Federal, in which they may arise. Wherever found, they are within the reach of its authority, and subject for its exercise.

Therefore, by the talents, the virtues, and integrity, which adorn and illustrate this Court, this Court has an unflagging obligation to revise and correct the errors of the lower courts. It cannot, and must not dismiss this case without the issuance of Findings of Fact and Conclusions of Law; for that action would constitute "Treason to the U.S. Constitution."

V.

The duty of this Court to examine the alleged loss of jurisdiction of the lower courts, and correct it if it is found to exist, has been uniformly done by this court when questions of jurisdic-

tion has been presented to the Court. This Court cannot fail in its unflagging obligation in this jurisdictional issue; for that would leave the erroneous judgment (void judgment of conviction) of the court below in full force, and Petitioner without remedy.

It is a fact that, for over two centuries this Honorable Court has held that the provisions of the Constitution are equally obligatory, and are to be equally respected. Thus, let us bear witness that the Honorable Justices of this Court are not so blind to the "Sacred Dictates of Conscience and Duty."

VI.

In closing, let us remember that: "The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself, from which it derives its own existence, and by virtue of which alone continues to exist and act as a government and sovereignty. It has no power of any kind beyond it; and it cannot assume discretionary or despotic powers which the Constitution has denied to it. It cannot create for itself characters separated from the duties it owes to its citizens under the authority of the Constitution, with their respective rights defined and marked out; and the federal government can exercise no powers over his person beyond what the instrument confers, nor lawfully deny any rights which it has reserved." See *Scott v. Sandford*, 60 US 393(1857), at 449.

As a determinative factor, this court must bear in mind, that this court has made it absolutely clear that, the provisions and benefits of the Constitution and Supreme Court Law, must be open and applied to "All" upon equal and the same terms.

The silence and inaction of the Courts in this jurisdictional matter is creating doubts; Petitioner is being lead to believe that the provisions and benefits of the Constitution and Supreme Court Law is not open to "All" upon equal and the same terms. Which is leading Petitioner into further and useless litigation.

Accordingly, resting upon the "Original Foundation" of Constitutional principles and more than two centuries of Supreme Court Black-Letter Law, Petitioner's Petition For Rehearing should be granted.

PRAYER

WHEREFORE, ALL PREMISES CONSIDERED, in fulfillment of Constitutional principles and this Court's Black-Letter Law, Petitioner prays this Court take judicial notice of the controlling law applicable to this jurisdictional matter; and also take judicial notice of the exceptional circumstances and miscarriage of justice reflected on the face of the record of this case.

Hence, in protection of Petitioner's Due Process rights and his Equal protection under the Law, Petitioner respectfully asks the Court to correctly apply the law to the facts of this case. Where, "The Words Of The Written Law And The Internal Sense Of It, [Is The Law]."

Thus, in the interest of Justice, Petitioner prays this Honorable Court grant the relief requested herein, and any other relief that this Court may deem Proper.

So Moved And Prayed.

RESPECTFULLY SUBMITTED,

Miguel A. Bacilio

Miguel Angel Bacilio, TDCJ# 1912589
Petitioner Pro-se
Stevenson Prison
1525 FM 766
Cuero, Tx. 77954

CERTIFICATE OF COMPLIANCE

I, Miguel Angel Bacilio, TDCJ# 1912589 declare under penalty of perjury that the foregoing is true and correct. I also certify that the grounds on the Petition For Rehearing are limited to intervening circumstances of substantial or controlling effect, and are presented in good-faith and not for delay. Executed June 23, 2023.

Miguel A. Bacilio

Miguel Angel Bacilio, TDCJ# 1912589

CERTIFICATE OF SERVICE

I, Miguel Angel Bacilio, TDCJ# 1912589, do swear or declare that as required by Supreme Court Rule 29, I have served the enclosed Petition For Rehearing, on Ken Paxton, Attorney General of Texas, P.O. Box 12548, Austin, Tx. 78711-2548, by depositing an envelope containing a true and correct copy of the above documents in the U.S. Mail, postage prepaid, on this the 23rd day of June, 2023.

Miguel A. Bacilio

Miguel Angel Bacilio, TDCJ# 1912589