22A571

IN THE SUPREME COURT
OF THE UNITED STATES

Andre Barnes

v.

United States of America

No 22 A 571

APPLICATION TO INDIVIDUAL JUSTICE for REHEARING Sup. Ct. R. 22.4 and 44.1

Dear Clerk of the Court (Mr. Harris):

A application for a Certificate of Appealability was denied by my Circuit Justice (2nd) for this court in the above captioned case. The denial was not based upon the meirts of my application and did not state any reason for the denial. I am writing to request that the application be reheard by the Honorable Amy C. Barrett.

I would like to express to you and the Court some of the particulars of this action in hope that these points might assist the court in its consideration in this matter.

Thank you for this opportunity to be heard.

It is said that "federal courts, though courts of limited jurisdiction in the main have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given" Cohens v. Virginia 6 Wheat...
In denying to issue to me a C.O.A. in this matter, the court is deciding to take jurisdiction duly given.

It is established that "on every writ of error or appeal to the Supreme Court, the first and fundamental question is that of jurisdiction first of the Supreme Court and then court from which the record "when the lower federal court lacks jurisdiction the Supreme Court has jurisdiction not of the merits but merely for the purpose of correcting the lower courts error in entertaining the suit ~~etc~~. Steel co. v. Citizens for a Better Env't 523 US 118 S.Ct. 1003." "

Before denying me a Certificate of Appealability, the court in this instance the court (must) question the jurisdiction of the United States District Court for the Western District of New York and if (when) it is found that the District court's jurisdiction is wanting then it would become a matter of correcting the lower courts error in entertaining the suit and not one of the merits.

Not to be trying to tell you how to do your job however this is a matter of law, someone needs to follow it and thus far no one has.

In my petition I challenge that the District Court was without jurisdiction over my person because the affidavit in support of the arrest warrant was not sworn to under the penalt of perjury by the Complaining Witness Officer as it is commanded by the Fourth-Amendment (nor was it supported by the Oath of any of the 3rd-party witnesses/victims) thus not based on probable cause). This raises both a jurisdictional and constitutional (federal) question 28 U.S.C. 1331.

Because the question of the legality of the arrest warrant was never determined on the record in the District court, no appeal is effectively available to the appellant in this particular instance (thereby making 28 U.S.C. 2255 an inadequate remedy) the appellant would suggest that the proper course would be to remand the case to the district court for a probable cause hearing and/or direction that the Writ of habeas corpus is to issue pursuant to Whiteley v. Warden 401 U.S. 560, 91 S.Ct 1031. 28 U.S.C. 1651.
Of course I defer to the wisdom and discretion of the court in this matter. I would ask that the Court (and clerk) Please review the copy of the Arraignment minutes and the Cross-examination trial minutes of the Complaining Officer by the Petitioner (not to omit the Oathless Complaining Instrument) I have furnished to the court appendixed to my petition. And while I am of the mind that the related arrest warrant criminal complaint #15-mj-651 and the trial minutes to be self-authenticating I am presently in the process of requesting the material records to be authenticated by the Clerk of the District Court (W.D.N.Y.) Fed. R. Civ. P. 44.

In respects to subject matter jurisdiction... While this may be a touchy subject I am doing 27 yrs here dear Clerk & Court.
In a motion to vacate under 28 U.S.C. 2255 the basis for federal jurisdiction arises under 28 U.S.C. 1346 (United States as defendant), such jurisdiction belongs to the Article III "district courts of the United States".
The United States District Court for the Western District of New York is Not a "district court of the United States" created under Article III for the purposes of this action. (not to omit it is not a distuct court for the purposes of criminal jurisdiction under 18 U.S.C. 3231 in the lower action either) the lower court's judgment is void in all respects and necessarily a nullity it cannot be supported by this court without opening committing fraud. (Worth-on pipeline)
And not to further complicate the matter but the Court of Appeals does not have jurisdiction to reviews or overturn the decision of a legislative court that does not arise under Article III: e.g. Nat Mut ins co. v. Tidewater co. 337 US 582..

Undoubtedly a tangled web hence this court must take jurisdiction of the matter. It would be one thing if I were guilty of the allegations herein and merely looking for loopholes, I AM NOT! (See Arraignment and Cross-examination) and they have not been going by the law..

All I ask for is a constitutional testing of my arrest & committment am I wrong that, or am I wrong for understanding that I havent had one?
Thank you for your time and consideration in this matter

(4)

Respectfully Yours,

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PROOF OF SERVICE

The undersigned hereby certifies that he is the appellant and is a person of such age and discretion to be competent to serve papers.

That on September __, 2023 he served the letter to the Clerk of the Supreme Court of the United States requesting rehearing by an individual justice of the court by placing such letter of request in the U.S. postal mailbox at Allenwood Pennsylvania. Dated 19th 2023

by: Andre Barnes

Andre Barnes
U.S.P Allenwood
P.O. 3000
White deer, PA 17887

It is axiomatic that the Court is under a duty to inquire *sua sponte* into the jurisdiction of all matters before it, and **{25 B.R. 505}** that the rendering of a judgment is itself tacit assertion of jurisdiction by the Court.

§ 10. Remand where probable cause for arrest was absent

Under the facts in the following case, the Supreme Court, under the remand provisions of § 2106, reversed a lower federal court's denial of a state prisoner's petition for habeas corpus, on the ground that probable cause for the prisoner's arrest was lacking, and remanded the case with directions that the writ of habeas corpus was to be issued, unless the state made arrangements to retry the prisoner.

In Whiteley v Warden, Wyoming State Penitentiary (1971) 401 US 560, 28 L Ed 2d 306, 91 S Ct 1031, 58 Ohio Ops 2d 434, the Supreme Court, pursuant to its authority under 28 USCS § 2106 to make such disposition of the case "as may be just under the circumstances," (1) reversed a judgment of a Federal Court of Appeals affirming the denial of a state convict's petition for a writ of habeas corpus, the Supreme Court holding that the record was devoid of any information which would furnish probable cause for the convict's arrest, and (2) remanded the case with directions that the writ be issued unless the state made appropriate arrangements to retry the convict. Rejecting the state's request that the case be remanded to give the state an opportunity to develop a record which might show that the magistrate who had issued the arrest warrant had factual information additional to that presented in the complaint on which the warrant had been issued, the court said that the convict had argued the insufficiency of the arrest warrant, as well as the lack of probable cause at the time of the arrest, at every stage in the proceedings below, and that the state and the convict had stipulated that both sides would rely exclusively on the record for purposes of the federal habeas corpus proceedings.

[b] Sufficiency of probable cause allegations in application for warrant

It has been held that to the extent that the validity of an arrest depends upon the validity of a warrant for such arrest, the allegations made in applying for the warrant must have provided a sufficient basis upon which the magistrate who issued the warrant could make a finding of probable cause.[12]

Thus, in Giordenello v United States (1958) 357 US 480, 2 L Ed 2d 1503, 78 S Ct 1245, the court, reversing a conviction for unlawful purchase of narcotics, and holding that narcotics seized from the accused at the time of his arrest should not have been admitted into evidence, concluded that the arresting officer's complaint, filed in support of his request for the issuance of an arrest warrant, was defective because it did not provide a sufficient basis upon which a finding of probable cause could be made. The complaint alleged only that on or about the date of the complaint, the accused, in Houston, Texas, had violated a specified federal statute by receiving and concealing heroin hydrochloride with knowledge of unlawful importation. The court emphasized that a magistrate who issues an arrest warrant must judge for himself the persuasiveness of the facts relied on by a complaining officer to show probable cause, and that the magistrate should not accept without question the complainant's mere conclusion that the person whose arrest is sought has committed a crime. The court stated that the complaint in the instant case did not provide any basis for the magistrate's determination that probable cause existed. It was noted (1) that the complaint contained no affirmative allegation that the complainant spoke with personal knowledge of the matters contained therein; (2) that it did not indicate any sources for the complainant's belief; and (3) that it did not set forth any other sufficient basis upon which a finding of probable cause could be made. Moreover, the court said that these deficiencies could not be cured by the magistrate's reliance upon a presumption that the complaint was made on the personal knowledge of the complaining officer, the court remarking that the insubstantiality of such an argument was illustrated by the facts of the instant case, since the officer's testimony clearly showed that he had no personal knowledge of the matters on which his charge was based.

Reversing the denial of a petition for habeas corpus, and holding that the accused's arrest was unconstitutional and that evidence secured as an incident to the arrest should have been excluded from his trial, in Whiteley v Warden of Wyoming State Penitentiary (1971) 401 US 560, 28 L Ed 2d 306, 91 S Ct 1031, the court stated that the complaint on which a warrant for the accused's arrest had issued could not support a finding of probable cause by the issuing magistrate. In applying for the warrant, a sheriff submitted a complaint naming the accused and another person as those who had unlawfully broken into a building. Emphasizing that under Fourth Amendment probable cause requirements a judicial officer issuing an arrest warrant had to be supplied with sufficient information to support an independent judgment that probable cause existed for the warrant, the court stated that in the instant case, so far as the record stipulated to by the parties revealed, the sole support for the arrest warrant was the sheriff's complaint; that the complaint

§ 4. Validity of federal convictions.

The ordinary remedy for a prisoner in custody under sentence of a federal court who wants to attack the validity of his conviction is a motion under 28 USCS § 2255, which provides that such a prisoner may file a motion in the court which imposed the sentence to vacate or correct the sentence, on the grounds that the sentence was imposed in violation of the Constitution or laws of the United States, that the court was without jurisdiction to impose the sentence, that the sentence was in excess of the maximum authorized by law, or that the sentence is otherwise subject to collateral attack.[9]

The final paragraph of § 2255, which was adopted in 1948, provides that an application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief under § 2255 shall not be entertained if the prisoner has not applied for relief under § 2255, or if he has applied for such relief to the court which sentenced him and such court has denied him relief, "unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

In a number of cases antedating 28 USCS § 2255, the Supreme Court held that denial of petitions for habeas corpus to review federal criminal convictions was error where no hearing was accorded to the petitioners.