Supreme Court, U.S.
FILED
APR 28 2023
OFFICE OF THE CLERK

No. 23-5287

CIRCUIT CRIMINAL No.: CRC 80-6221 CFASO-D

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM G. HAAKE – PETITIONER

vs.

STATE OF FLORIDA – RESPONDENT

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

William G. Haake, 108712 - E1114L
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ORIGINAL

QUESTIONS PRESENTED FOR REVIEW

WHETHER THE UNITED STATES TREATY 22 (1971) DEPRIVED FLORIDA OF JURISDICTION WHEN THEY KNOWINGLY USED PERJURED INFORMATION TO COMPEL SPAIN THROUGH TREATY OBLIGATION TO EXTRADITE PETITIONER THEN UPON HIS RETURN INVALIDATED THE TREATY, IN ORDER, TO PROSECUTE HIM FOR CHARGES NEVER ALLEGED UNDER A THEORY OF LAW NOT RECOGNIZED, BY TREATY, NOR CONSIDERED BY THE COUNTRY OF SPAIN AS CRIMINAL?

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

UNITED STATES TREATY 22 (1971)

The President of the United States of America proclaimed and made public the treaty, to the end that it shall be observed and fulfilled with good faith.

UNITED STATES CONSTITUTION, ARTICLE I:

No state shall enter into any treaty... make any law... impairing the obligation of contracts...

UNITED STATES CONSTITUTION, ARTICLE VI:

...All treaties made... under the authority of the United States, shall be the Supreme Law of the Land, and judges in every state shall be bound thereby...

UNITED STATES CONSTITUTION, ARTICLE XIV:

Nor shall any state deprive any person of life, liberty or property, without due process of law...

Florida Statute 782.04(1)(A)(1) Premeditated Murder

Florida Statute 782.04(1)(A)(2) Felony - Murder

I. BASIS FOR INVOKING JURISDICTION

UNITED STATES TREATY 22 (1971)

Article II (A): Persons shall be delivered up according to the provisions of this treaty for any of the following offenses provided that these offenses are punishable by the laws of "BOTH" Contracting Parties by a term of imprisonment exceeding one year.

The Doctrine of Dual Criminality is established here, and invalidated by Florida.

Article XIII: A person extradited under the present treaty shall not be detained, tried or punished in the territory of the requesting party for an offense other than that for which extradition has been granted...

The Doctrine of Speciality is established, here and invalidated by the Sixth Judicial Circuit in and for Pinellas County by ruling that:

"The Treaty is of no importance".

Florida Statute 79.01, 2.01

Moreover, a decision invalidating Acts of Concerns brings before the Supreme Court not merely the constitutional questions but the entire case ***United States v. Locke,*** *105 S.Ct. 1785 (1985).*

Supreme Court of Florida
Case No.: Supreme Court 22-1556 Petition for Writ of Habeas Corpus
Denied on January 6th 2023

United States Court of Appeals for the Eleventh Circuit
Case No.: 21-13417-D Petition for Writ of Habeas Corpus
Dismissed in part and denied in part, on October 21st 2022

United States District Court Middle District of Florida Tampa Division
Case No.: 8:21-cv-1802-TPB-TGW, Petition for Writ of Habeas Corpus
Dismissed on September 9th 2021

Third District Court of Appeal, State of Florida
Case No: 3D20-1637 Petition for Writ of Habeas Corpus
Per Curiam Affirmed on January 13th 2021

In The Circuit Court in and for Miami-Dade County, Florida
Case No.: F20-5347 Petition for Writ of Habeas Corpus
Dismissed on October 5th 2020

II. STATEMENT OF THE FACTS

In the summer, of 1980, Petitioner was the middle man in a drug transaction. His reluctance to participate was overcome by a combination of factors not the least of which was the dogged persistence of the buyers who represent themselves as contract killers for a crime syndicate (R. 201). However, this last item created some concern for his own safety. Thus, unbeknownst to either the supplier or buyers he sought a back-up man in Sammy Mathis. Mathis, however, had ideas of his own to rip-off the drugs and money. This fiasco came to a head when Petitioner led the buyers to a motel parking lot where Mathis waited with the key to the motel room where the drugs were. Mathis shot the victim twice then fired another round at Petitioner's car where he waited for the deal to be completed and take Mathis back home. However, Mathis fled with the money by hopping over a fence to the Interstate where his brother's car was made to look disabled. (R. 84-89-109-143-144-803-208). Petitioner, later, confronted Mathis who said the buyer went for his gun and the third shot was an accident. After a rather intense argument about the drugs and money, Mathis agreed to exchange some of the drug money for a red suitcase; he thought contained drugs (R. 328-30). A kilo of sugar was found in the motel room where there was supposed to be a kilo of pure cocaine and 10,000 tablets of Methaqualone. Mathis was arrested the next day; he was tried, convicted of premeditated murder and sentenced to life with a minimum

mandatory 25 years. It is worthy to note that the drugs were never recovered but Mathis' brother started his drug empire shortly after the crime, which ultimately culminated in his arrest and conviction. ***U.S. v. Mathis***, *10 FLW 6474 (11th Cir. 1996).*

Petitioner was detained in the Country of Spain. Florida through the United States Government instituted extradition proceeding under United States Treaty 22 (1971) – Alleging premeditated murder under Florida Statute 782.04(1)(A)(1) with supporting facts that he shot and killed the victim with a firearm, charges and conduct known, by Florida, to be false. The Spanish High Court conducted an extradition hearing, on May 13th 1982, allaying Petitioner's concerns about the untruthfulness of the warrant by assuring him there were sufficient treaty safeguards to insure prosecution only for those charges requested.

Upon Petitioner's return, in 1987, Florida commenced prosecution solely for an uncharged robbery and felony-murder. Petitioner affirmatively presented the treaty as a defense but trial court ruled that "The Treaty is of no importance as long as Florida Statute is satisfied." (CR-126). Petitioner was found guilty by an "AS CHARGED" verdict form, on August 21st 1987, meaning he was found guilty of a charge never tried, and sentenced to life with a minimum mandatory 25 years.

Granted this case has been around the judicial block a few times over the years but there is no exploration date on justice.

III. THE NATURE OF RELIEF SOUGHT

The petitioner seeks to have sentence and conviction vacated and expunged from the record, in addition to whatever other sanctions and remedies this Court deems appropriate.

IV. ARGUMENT

WHETHER THE UNITED STATES TREATY 22 (1971) DEPRIVED FLORIDA OF JURISDICTION WHEN THEY KNOWINGLY USED PERJURED INFORMATION TO COMPEL SPAIN THROUGH TREATY OBLIGATION TO EXTRADITE PETITIONER THEN UPON HIS RETURN INVALIDATED THE TREATY, IN ORDER, TO PROSECUTE HIM FOR CHARGES NEVER ALLEGED UNDER A THEORY OF LAW NOT RECOGNIZED, BY TREATY, NOR CONSIDERED BY THE COUNTRY OF SPAIN AS CRIMINAL?

The primary concern of Florida Courts should have been to establish whether or not trial court had jurisdiction to try Petitioner for an uncharged robbery and felony-murder. To do that, it must be determined what the two sovereigns agreed to, and whether by the preponderance of the evidence the terms of the treaty were observed in good faith as required by the Treaty's Presidential Proclamation. The treaty "Requires that the Petitioning state live up to whatever promises it made in order to obtain extradition," ***U.S. Valencia-Trujillo***, *523 F.3d. 1171 (11th Cir. 2009)*, Florida promised to prosecute Petitioner for premeditated murder with supporting allocations that he shot and killed the victim. However, when Florida reneged Petitioner affirmatively presented the trial court with United States Treaty 22 (1971) (Exhibit – A). As a defense to the prosecution of uncharged acts, never presented to the country of Spain for their consideration and jurisdictional approval. There is no record or indication the trial court ever read the Treaty or the

Spanish High Court Order, (Exhibit – B), before ruling the "Treaty is of no importance as long as Florida Statute is satisfied" (R-126). It is evident the court never read the United States Constitution Article VI clause 2, which says in part... All treaties made under the authority of the United States, shall be the "Supreme Law of the Land," And judges in every state shall be bound thereby... This is not a suggestion to the courts of the United States, it is a command. When Florida denied the validity of the Treaty as a defense, they, in fact, invalidated a Treaty of the United States, because it did not suit their purpose, which is beyond Florida's scope of authority. The violations of the Treaty's Doctrine's of Dual Criminality and Speciality are self-executing international contractual obligations, which operate independently to prohibit Florida's jurisdiction to present, to a jury, a theory of prosecution not considered by the Treaty or Spanish Law as criminal.

The Treaty itself, deprived the courts of the United States of jurisdiction to prosecute Petitioner for any other offenses than what is contained within the four corners of the extradition documents that alleged Petitioner premeditatedly shot and killed the victim with a firearm. Yet the victim's dying declaration acknowledged the Petitioner neither shot him nor took the drug money (R-202, 240-41). Nevertheless, at trial, Petitioner was prosecuted for an, uncharged, robbery, which was then used to declare guilt for a murder he did not commit. If, then, the Treaty is the Supreme Law of the Land as our Constitution tells us, then

Florida's trial court never had legitimate jurisdiction. That being the case, all subsequent court rulings are based upon the misconception that Florida had jurisdiction to do what they did and are a miscarriage of justice.

So before this Court entertains any procedural issues, such as time or successive petitions, it is necessary to determine whether Florida ever achieved original jurisdiction in accordance with the Articles of the United States Treaty 22 (1971), and Spanish Law to prosecute Petitioner for robbery much less felony-murder.

Spain granted extradition, subject to, the specific charges and allegations submitted to them, to the exclusion of all others. Known as the Doctrine of Specialty, as defined in Article XIII of the Treaty, which reads as follows:

> A PERSON EXTRADITED UNDER THE PRESENT TREATY SHALL NOT BE DETAINED, TRIED OR PUNISHED IN THE TERRITORY OF THE REQUESTING PARTY FOR AN OFFENSE OTHER THAN THAT FOR WHICH EXTRADITION HAS BEEN GRANTED.

Additionally, Title 18 U.S.C. 3192 which outlines the Untied States President's responsibilities for the safe keeping and protection of the accused against lawlessness and is also a congressional recognition of Specialty Doctrine by its declaration limiting the... "Trial for the offenses specified in the warrant of extradition..."

The Specialty Doctrine establishes the rule that once there has been formal extradition proceedings in the requested nation that nation's agreement to extradite only on the specific charges must be considered as the equivalent of a formal objection to a trial on any other charges.

The test for compliance with the Treaty's Doctrine of Specialty, according to the Restatement (third) Foreign Relations Law of the United States 477 (comment 6) is to categorize the facts presented at trial and determine whether or not the facts presented to the foreign government are one and the same. Or put another way, "The extradited cannot be tried for offenses not named in the Treaty or for offenses not named in the extradition warrant." "***U.S. v. Gallo-Chamorro,*** *48 F.3d 502 (11th Cir. 1995).*

"The finding of extraditability does not leave the accused vulnerable to being charged with "ANY" crime in the receiving country." ***Malla v. U.S.,*** *667 F.2d 300 (1981).* This aspect of the doctrine was criticized by Professor Moore because it explicitly prohibits prosecution for "ANY" lesser-included offenses. Thereby affirming that the doctrine be strictly interpreted to bar prosecution for crimes other than those specially charged even if based upon the same act or presented as an "Alternate Means of Conviction." I-Moore, Extradition 241-51.

Therefore, "where the demanding government fails to adhere to its commitment to try a person only for the offenses for which he was extradited, the

treaty deprives the court of jurisdiction to try him for any other offense." ***U.S. Rauscher**, 119 U.S. 407, 434, 7 S.Ct. 234, 30 L.Ed. 425 (1886),* Article XIII United States Treaty 22 *(1971), Title 18 U.S.C. 3192.*

"The Test" according to ***U.S. v. Paroutain**, 299 F.2d 490, 491 (1961)*, "of whether trial is for a separate offense should not be some technical refinement of local law but whether the extraditing country would consider the offense actually separate," Spain would not only consider felony-murder separate but unlawful.

Florida was faced with another insurmountable jurisdictional impasse to their prosecution, of Petitioner, for felony-murder, which is the Treaty's Doctrine of Dual Criminality as defined in Article II, which reads as follows:

> Persons shall be delivered up according to the provisions of the Treaty for any of the following offenses provided that these offenses are punishable by the laws of "**BOTH**" contracting parties by a term of imprisonment exceeding one year. (Emphasis added).

The requirement to enforce Spanish Law in our courts is the reason congress declared treaties the Supreme Law of the Land; it is the Treaty, which provides Petitioner standing to bring before this Court Spanish Law, as evidenced in Article IX of the Treaty, which reads as follows:

> The determination that extradition based upon the request therefore should or should not be granted shall be made in accordance with this Treaty and with the laws of the "**REQUESTED**" party. The person whose extradition is sought shall have the right to use such remedies and recourses as are provided by such laws. (Emphasis added).

So it is not how Florida defines the law but upon how Spain defines it because there must be evidence that would justify committing Petitioner for trial under the law of the nation from whom extradition is requested if the offense had been committed within the territory of that nation. ***Quinn v. Robinson,*** *783 F.2d 776 cert. denied 107 S.Ct. 271, 479 US 882, 93 L.Ed. 2d 247 (1986).*

It cannot be reasonably open to question whether or not the offense of murder, under Article II of the Treaty, encompasses Florida's concept of felony-murder since not only Spain but "All European and Commonwealth Countries have either abolished or never employed a Felony-Murder Doctrine." ***Edmund v. Florida,*** *102 S.Ct. at 3376-77, 458 US at 796-97, 73 L.Ed. 2d 1140 (1982).*

Florida had ample time, according to Article XII of the Treaty to have "Submitted another request in respect of the same or any other offense" at anytime in the intervening five years, before the extradition was executed, to correct the perjured warrant to reflect Florida's true intentions. Yet Florida chose to let stand a lie.

Therefore, it is indisputable that Florida was aware of the problematic jurisdictional issues associated with petitioning Spain for jurisdiction to prosecute Petitioner for felony-murder. For this reason, Florida sought through perfidious misrepresentation of the facts to circumvent a treaty of the United States of America.

"A right of a person or property secured or recognized by Treaty may be set up as a defense to the prosecution in disregard of either with the same force and effect as if such a right was secured by an Act of Congress, ***Rauscher***, *Supra 431*, "And when such rights are of a nature to be enforced, in a court of justice, the court resorts to the Treaty for a rule of decision for the case before it as it would a statute" ***Rauscher***, *Supra 429*. Accordingly, the only rules and laws relevant to this case are the United States Treaty 22 (1971), The Spanish High Court Order and the warrant submitted, to Spain, to secure Petitioner's extradition. The supremacy of these documents is well-established law, both according to the United States Constitution and the Treaty. Consequently, any reliance upon Florida statutes and procedures is not only unavailing but also unlawful.

The two Governments painstakingly negotiated the language and terms of these Treaty Laws and Rules, so that, the clear and unambiguous language requires no interpretation as to their intentions or meaning and can be easily comprehended via open book.

Granted Florida has two divergent pathways to first-degree murder. However, this analysis is not contingent upon how Florida categories First Degree Murder. In fact, it is beside the point. According to the commands of the Treaty's, Article II, Dual Criminality obligation, Florida does not have the authority to designate their theory of felony-murder as a crime much less murder.

The Petitioner affirmatively motioned the court asserting the Treaty as a defense against Florida's intended prosecution for an uncharged robbery and felony-murder, along with a motion for an order prohibiting the State Prosecutor from introducing evidence or in any way trying to prove and/or argue any violation of the law except first degree premeditated murder (R-35). These motions were renewed at the close of Florida's case in chief and again at the close of the trial.

Trial court never read the Treaty or the Spanish High Court Order before ruling "the Treaty is of no importance," is evidenced by the official translation of the Spanish High Court Order by the Department of State which was accomplished on May 10th 1989, (Exhibit C). Which was after the conviction for felony-murder on August 21st 1987 and Florida's affirmance on November 30th 1988. Apparently neither court gave any credence to The United States Constitution, United States Treaty 22 (1971) or the Spanish High Court Order.

This right of transfer, the right to demand it, the obligation to grant it, the proceedings under which it takes place, all show that it is for a limited and defined purpose that the transfer is made, it is impossible to conceive of the exercise of jurisdiction in such a case for any other purpose than that mentioned in the treaty and ascertained by the proceedings under which the party extradited without an implication of fraud upon the rights of the party extradited and bad faith to the county which permitted his extradition. ***Rauscher***, *Supra*. Otherwise, the Treaty,

as in this case, could always be evaded by requesting a crime, which is defined within the Treaty then prosecuting for a crime, which is not.

Most significantly, Florida's Felony-Murder theory and its prosecution are in direct conflict with Articles II, IX and XIII of United States Treaty 22 (1971). It is well established law, according to Ray v. Atlantic Richfield Co., 435 US 151, 156, 98 S.Ct. 988, 994, 55 L.Ed. 2d 178 (1978); Floyd v. Eastern Airlines Inc., 872 F.2d 1472, 1480 (11th Cir. 1989) and Article I of the United States Constitution, that "ANY" state law in conflict with a treaty of the United States is "INVALID"

Furthermore, Florida's denial of the Treaty, as a defense, is factually a denial of the validity of the Treaty. It is apparent Florida's rulings were based upon the assumption that a treaty of the United States, in the face of local practice, is invalid. The self-evident prejudice stemming from Florida's intentional or erroneous misinterpretation of the Supreme Law of the Land did, substantially disadvantaged the Petitioner's defense and is evidence of the fundamental unfairness of the entire proceedings. ***Murray v. Carrier***, *477 U.S. 478, 485, 91 L.Ed. 2d 2639 (1986)*. Moreover, Florida intentionally invalidated the Supreme Law of the Land and the Spanish High Court Order to achieve an unlawful conviction. It is, therefore reasonable to conclude trial court likewise sanctioned the prosecutor's deceitful tactics.

According to the extradition documents and warrant submitted to the Spanish Government, Petitioner was to be extradited and prosecuted for:

> Unlawfully and from a premeditated design to effect the death of Herbert Ray Sullivan, a human being, did shoot the said Herbert Ray Sullivan with a firearm, thereby inflicting upon the said Herbert Ray Sullivan mortal wounds, of which said, mortal wounds, and by means aforesaid and as a direct result thereof, the said Herbert Ray Sullivan died; (Exhibit D)

The only truth to this warrant is that Herbert Ray Sullivan died, Florida has never offered any evidence from the negotiating record or latter communication, with Spain, to support the suggestion that an understanding different from what appears on the face of this warrant was reached with Spain.

Spain also granted jurisdiction to prosecute Petitioner for a drug felony. However, the drug felony was severed and dropped at the outset of the trial (R-113). Nevertheless, Florida's Chief Prosecutor testified to the validity of the drug transaction and that the drugs tested positive (R-156-59). There was no evidence to support the validity of these claims. The drugs were not introduced into evidence nor was a lab report offered to validate Florida's assertions. In this manner, evidence of more than one felony was presented to the jury. It is, therefore, reasonable to conclude that some, if not all rested their principal conclusion on the drug felony. ***Zant v. Stevens***, *462 US 862, 103 S.Ct. 2723, 77 L.Ed. 2d 235 (1983)*. The only inference that can be drawn from this and other felonies presented, without corroborating evidence, is to show bad character. No

person can get a fair trial when Florida's representation, in the courtroom, based upon no evidence, accuses Petitioner before the jury of crimes for which he is not on trial. Accordingly, the verdict should not be allowed to stand. ***Glassman v. State**, 372 So.2d 208 (Fla. 3rd DCA 1979).*

There can be no more clearly defined example of actual innocents where, as here, before Florida could proceed with their bait and switch strategy, they had to first prove all the allegations used to obtain Petitioner's extradition were a lie and he was actually innocent of those charges. The prosecutor summarized it nicely when he told the jury evidence will show "The victim was shot by another who took the money and fled by his own means" (R-160-61). This statement exonerated Petitioner of both premeditated murder and felony-murder, in that Florida admits Petitioner did not shoot and kill the victim nor participate in the robbery, the only felony Florida could hang their felony-murder theory upon.

Spain only granted jurisdiction to prosecute Petitioner for premeditated murder. Yet Florida made no attempt to prosecute Petitioner for premeditated murder. There was incontrovertible evidence presented, at trial, which established his innocence of the charge. Nonetheless, neither robbery or felony-murder was ever charged. However, the jury instructions, submitted, by Florida, intentionally omitted the last numbers from the statutes 782.04(1)(A)(1), defining premeditated murder (1) and removed the (2) from felony-murder (782.04(1)(A)(2)) to preclude

any jury concerns about the "AS CHARGED" verdict form, creating the illusion that they were one and the same. (Exhibit E). In this manner, the jury was constrained to find Petitioner guilty of a charge never tried. The Supreme Court ruled in, ***Cole v. Arkansas***, *33 U.S. 196, 69 S.Ct. 514, 92 L.Ed. 2d 644 (1948)*, that the due process clause prohibits conviction for an offense not charged even though they may be of the same felony degree, closely related by statutory elements, of the same general character and punishable by the same grade of punishment. The court further concluded, "It is as much a violation of due process to send an accused to prison following a conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made."

CONCLUSION

In summation, the Petitioner would ask this Honorable Court to consider six succinct questions:

1) Other than the victim died, does the extradition warrant portray any semblance of truth?

2) Does Spain, recognize felony-murder as a valid crime?

3) Does the Treaty list felony-murder as an extraditable offense?

4) Did the Spanish Government grant jurisdiction to prosecute Petitioner for robbery and/or felony murder?

5) Is the Petitioner guilty of premeditated murder?

6) Based upon the facts established herein, could the Petitioner, under Spanish Law, be convicted for any degree of murder?

If the answer to any of these questions is no, then the Petition for Writ of Habeas Corpus must be granted.

Date: 5-31-23

Respectfully submitted,

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