

23-5562

No. _____

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED
AUG 03 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Paul Dubois, Petitioner

vs.

Nelson B. Alves, Superintendent, Respondent,

On Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit

Paul Dubois, Pro Se
Box 43,
Norfolk, MA 02056

August 2023

QUESTIONS PRESENTED FOR REVIEW

Question One:

WHETHER THE UNITED STATES OF APPEALS
HAS ENTERED A DECISION IN CONFLICT
WITH THE DECISION OF ANOTHER UNITED
STATES COURT OF APPEALS ON THE SAME
JUDICIAL ISSUE?

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Question Two:

WHETHER THE STATE OF MASSACHUSETTS
VIOLATED THE LAWS ON EXTRADITION?

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Question Three:

WHETHER THE BARNSTABLE SUPERIOR COURT
COULD MAINTAIN JURISDICTION FOR
CRIMINAL JUSTICE PROCEEDINGS AGAINST
THE PETITIONER?

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PARTIES

All parties appear in the caption, and the petitioner uses the Superintendent, the Commonwealth, and the First Circuit Court of Appeals as "Respondent."

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Opinions Below

Commonwealth v. Dubois, 451 Mass. 20 (2008)

Dubois v. Alves, U.S. Dist. LEXIS 175317 (D.Mass. 2022)

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Dubois v. Alves, U.S. Dist. LEXIS 70654 (D.Mass. 2023)

Dubois v. Alves, U.S. Dist. LEXIS 9171 (D.Mass. 2023)

Jurisdiction

Review for Certiorari is governed by 28 U.S.C. §2101.

The Appeals Court's opinion is unpublished and appears at the Appendix here, Exhibits A, B, denying a COA and terminating the appeal. The date of the Appeals Court's final ruling is May 26, 2023.

CONSTITUTIONAL PROVISIONS, STATUTES

*

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STATEMENT OF THE CASE

The petitioner was camping out with his girlfriend in Branson, Missouri, when a Deputy Sheriff from Taney County walked up to him, placed him under arrest for defacing a firearm in the Commonwealth of Massachusetts, a misdemeanor.

The petitioner was taken to the County Jail and, with hearing from any Court in Missouri, was questioned by State Police officers from Massachusetts about the death of a social worker, years ago.

The petitioner was not advised of any rights by the Missouri authorities, but was by the Massachusetts police, which, after the petitioner invoked his right to counsel, kept right on interrogating him.

The petitioner was convicted of murder in the Barnstable Superior Court in 2004.

After exhausting his State remedies, the petitioner wended his way to the Federal Courts where he was denied all relief which, the petitioner proves by clear and convincing evidence the Federal Courts committed Fraud On The Court to deny the petitioner his right to be returned to the State of Missouri.

ARGUMENTS

Prologue

The decision of the Respondent is partially correct and partially untrue:

1. He was not extradited from Missouri in 2003 - There was no warrant - He had not been indicted.
2. The petitioner can read - 28 U.S.C. §2244(d), which mandates a one-year statute of limitations with which the petitioner complied.

[Appendix ("App") A, B]

The petitioner was denied without a hearing on January 4, 2022, upon his Pro Se "...petition for writ of habeas corpus..." but not on the grounds that his continued imprisonment for a first degree murder conviction violates his constitutional rights. (Cypher, J.)

Hello! Nothing to do with his conviction for first degree murder. It's just a question now which Court in Massachusetts, State or Federal committed the bigger Fraud On The Court. United States v. Throckmorton, 98 U.S. 61, 64 (1878)

Question One:

WHETHER THE UNITED STATES COUR OF APPEALS
FOR MASSACHUSETTS HAS ENTERED A DECISION
IN CONFLICT WITH THE DECISION OF ANOTHER
UNITED STATES COURT OF APPEALS ON THE SAME
JUSTICIABLE ISSUE?

On May 26, 2023, the First Circuit Court Of Appeals For Massachusetts issued a "judgment" that, based on 28 U.S.C. §2244(d), because the petitioner filed his habeas corpus petition pursuant to 28 U.S.C. §2241(c)(3) he was no doubt subject to the one-year statute of limitations no matter the statute used for litigation. [App., pp. 246-247][App., A, B]

[citing] Owens v. Boyd, 235 F.3d 356, 360 (7th Cir. 2000) the Circuit Court held "...every collateral attack by a state prisoner on a final judgment of conviction necessarily depends on §2254," and "[i]t is not possible to escape its limitations by citing some other statute." [Id., App. p. 247]

The petitioner is not the "devious party" here. He was denied Habeas Corpus relief in the State Court on January 4, 2022 and filed his Federal petition

March 3, 2022, well within the statutory limit. The grounds, in compliance with Congress's intent in the statute 28 U.S.C. §2241(c)(3) was that the petitioner "...is imprisoned in violation of the Constitution, Laws, or Treaties of the United States. [App., p. 186-195]

Except the District Court recharacterized the petition as being submitted under §2254, subject to the penalty of the AEDPA. The petitioner never claimed his conviction was unconstitutional, he claimed the Barnstable County Superior Court had no jurisdiction to bring him to trial in Massachusetts.

The differences between 28 U.S.C. §2241(c)(3) and 28 U.S.C. §2254(a) have been determined by Congress.

"The writ of habeas corpus shall not extend to a prisoner unless -... He is in custody in violation of the Constitution, or Laws or Treaties of the United States..."

28 U.S.C. §2241(c)(3)

"...a person in custody pursuant to a State Court judgment may challenge the

"conviction and sentence in federal court by applying for a writ of habeas corpus."

28 U.S.C. §2254(a)

Does this Honorable Court see the difference in the congressional intent? The District Court of Massachusetts and the First Circuit Court For Massachusetts does not "see the difference."

There is the presumption that Congress says in a statute what it means and means in a statute what it says. Connecticut Nat'l Bank v. German, 503 U.S. 249 (1992)

Also, the impediment doctrine pursuant to 28 U.S.C. §2244(d)(1)(B) (2006) in the split second it takes following the State decision in the 56 days later of filing the Federal claims. The petitioner took the time to explain the Federal law to the State's Highest Court, which just ignored all comity and any finality in the case of the fake "extradition."

The Supreme Court has already spoken loudly on this issue. In Bell v. Hood, 327 U.S. 678 (1946) the

Court, Black, J., held:

"...the party who brings [a suit] is master to decide what law he will rely upon..." [Id., 681]

As for the statutes passed by Congress, if 28 U.S.C. §2241(c)(3) and 28 U.S.C. §2254(a) are capable of coexistence, it is the Court's duty to regard each as effective. Radzanower v. Touche Ross Co., 426 U.S. 148, 155 (1976)

The Respondent ignored Congressional intent, and, in fact violated the Separation Of Powers Clause by interpreting Congress's intent into its self-serving AEDPA control. Freytag v. Commissioner, 501 U.S. 868, 870 (1991)(Art II, §2, cl. 2, U.S. Const.) Texas v. Comm'r of Internal Revenue, 212 L Ed 2d 413 (2022); Nestle USA Inc., v. Doe, 201 L Ed 2d 207 (2021)(Separate Legislative and Judicial);[citing] Ziglar v. Abbasi, 198 L Ed 2d 290 (2017)

In the final analysis the Respondent failed to apply the law to the facts, from its "lofty position" in the Commonwealth of Massachusetts. When a statute

such as 28 U.S.C. §2241(c)(3) includes an explicit definition of a term, the Court must follow that definition, even on some perceived variation of the term's ordinary meaning. Van Buren v. United States, 210 L Ed 2d 26 (2021)

What it took to achieve §2241(c)(3) status is as follows:

On November 24, 2021, the petitioner filed a Verified Petition For A Writ of Habeas Corpus in the State's highest Court, the Supreme Judicial Court, as allowed by G.L. c. 248 §§1-15.[App., pp. 4-6] There were just two issues:

- 1) The Barnstable Superior Court had no jurisdiction to bring the petitioner to trial for murder;
- 2) After the petitioner presented the issues to the State's highest Court, his petition was denied without a hearing, not ruled upon the merits of the claim(s) and was an abuse of discretion.

The law, as presented to the Supreme Judicial Court, by clear and convincing evidence appears at [App., pp. 13-45] and is the subject of the Federal Habeas Corpus

claim pursuant to 28 U.S.C. §2241(c)(3).

The petition, Paul Dubois v. Nelson B. Alves, Supt., was filed March 3, 2022, [App., pp. 186-195] unrestricted by the Antiterrorism and Effective Death Penalty 1996 amended statutes, because the petitioner does not challenge his "conviction and sentence" and that is not connected to the §2241(c)(3) petition.

"You should not try to teach a pig to sing;
He will not like it, and it won't work."

The Massachusetts Courts, from the Superior Court in Barnstable, Massachusetts, to the Supreme Judicial Court of Massachusetts, including the Single Justice of the County Court, committed Fraud On The Court, United States v. Throckmorton, 98 U.S. 61, 64 (1878), in a deliberate manner, with the sole intention of violating the petitioner's constitutional rights in a "wing and a prayer" that the Federal Court would answer that prayer, which both the District Court and the Circuit Court continued with the Fraud On The Court.

The petitioner submitted a Memorandum Of Law In Support of Petition For Writ of Habeas Corpus. [App., pp. 7-45]

The petitioner did not challenge his conviction or sentence. [App. p. 7] That ship has sailed. See, Commonwealth v. Dubois, 451 Mass. 20 (2008)

The petitioner's intent, as delineated, was to present the relevant Federal law to the State's highest Court, that under Federal law, his fake "extradition" from Missouri needed to be adjudicated, [citing] 28 U.S.C. §1738, the Full Faith & Credit Act. [App., pp.8-9]

The Supreme Judicial Court, according to itself, Commonwealth v. Masskow, 362 Mass. 662 (1972), will be "...bound by decisions of the Supreme Court on questions of Federal law..." (except when it doesn't want to be) [App., p. 9]

The relevant facts for petitioner's claims appear at [App., pp. 10-13]

So far, we have "no jurisdiction" and "Fraud On the Court." (Fraud vitiates judgment, Throckmorton, 98 U.S. at 64)

The Assistant Attorney General claimed that the AEDPA automatically converts the petitioner's 28 U.S.C. §2241(c)(3) into a 28 U.S.C. §2254. [App., p. 200] [App., p. 202] [App., p. 205]

The petitioner submitted an Affidavit and Appendix under 28 U.S.C. §§2246 and 2247 to supplement the Habeas Corpus, to show the Court the harm caused by the fake extradition. [App., p. 208]

The petitioner, sensing hostility from the District Court, Talwani, D.J., asked to be informed of any separate Docket number. [App., p. 209]

The District Court, Talwani, D.J., issued a Memorandum And Order on January 19, 2023. Everything the Court lists prior to November 30, 2021 is irrelevant and misleading. [App., pp. 213-214]

In [App., pp. 216-220] the Court correctly states the facts, deviates, then puts forth fraudulent law to the facts. [App., pp. 220-224]

The petitioner's claims, presented in [App., pp.

23-45], incorporated by reference to the District Court, Talwani, D.J., show by clear and convincing evidence, the petitioner's Constitutional rights were violated.

"[A] party seeking to invoke the aid of equity should not be encouraged to call the other party's attention to his left hand, while surreptitiously pocketing the family jewels with the right hand."

K-Mart Corp. v. Oriental Plaza, Inc., 875 F.2d 907, 909 (1989)

The Exhibits attached to the State Habeas Corpus show he was arrested in Missouri for defacing of a firearm, a non-extraditable offense. [App., p. 47]

There is no warrant in evidence either from Missouri or Massachusetts. [App., p. 48]

On September 4, 2019, Sergeant John Kotfila, 16 years after the petitioner's arrest in Taney County, Missouri, filed an "Affidavit" in which he "recalls" certain information, all of which is uncorroborated with any documents. [App., p. 56] This, of course, perpetrated and continued Fraud On The Court.

United States v. Throckmorton, 98 U.S. 61, 64 (1878) (Fraud vitiates judgment...)

So far we have "no jurisdiction" and "Fraud On The Court" by the State and the Federal Courts.

The Assistant Attorney General claimed that the AEDPA automatically converts the petitioner's 28 U.S.C. §2241(c)(3) into a 28 U.S.C. §2254. [App., p. 200] [App., p. 202][App., p. 205]

To show the harm caused by the States of Missouri and Massachusetts the petitioner submitted an Affidavit and Appendix under 28 U.S.C. §§2246 and 2247. [App., p. 208]

The petitioner, sensing hostility from the District Court, Talwani, D.J., asked to be informed of any separate Docket Number(s). [App., p. 209]

The District Court, Talwani, D.J., issued a Memorandum & Order on January 19, 2023. Everything

the Court lists prior to November 30, 2021 is irrelevant and misleading. [App., pp. 213-214]

In [App., pp. 216-220] the Court correctly states the facts.

Question Two:

WHETHER THE STATE OF MASSACHUSETTS VIOLATED
THE LAWS ON EXTRADITION?

Under Federal law, 18 U.S.C. §3182, Art. IV, §2, cl. 2, requires the petitioner to have been under indictment, or an Affidavit before a Magistrate presented to obtain a Governor's Warrant of Extradition.

The documents must show probable cause, the documents have to be in order, i.e., duly signed, with an explanation of the alleged felony committed, the date of the indictment or Affidavit issued by a Magistrate, the demanding state must show a factual basis for the charge on the Warrant, supported by probable cause at the time of the arrest in the Asylum State. Michigan v. Doran, 439 U.S. 282 (1978)

The petitioner was arrested June 5, 2003 in Taney County, Missouri. [App., p. 46] He was indicted by the Barnstable County Grand Jury on July 7, 2003. [App., p. 80]

The (State) Verified Petition For A Writ Of Habeas Corpus is a stand-alone exhaustion of State remedies on questions of Federal law, [App., pp. 5-45] and is a Structural Defect in the criminal justice process. United States v. Gonzalez-Lopez, 548 U.S. 140, 144-150 (2006)

The violation of 18 U.S.C. §3182 by the Commonwealth of Massachusetts, with the complicity of the State of Missouri, should be the sole focal point of this Petition For Certiorari:

"[A] rule stating that entities should not be multiplied needlessly, meaning that the simplest of two or more competing theories is preferable...."

Occam's Razor (translation: the simplest explanation is usually the right one)

In his Federal Petition For A Writ of Habeas Corpus [App., pp. 186-195] he delineates the simple failed

solving of the equation by the Courts. [App., p. 190]

It would appear Sergeant Kotfila committed perjury.
[App., p. 192] [App., p. 56]

What do the two Federal Courts in Massachusetts see in the petitioner's claims? Why were those Courts afraid to apply the law to the facts?

Certiorari must be granted in this case. If the Supreme Court does not correct this miscarriage of justice, the miscreant Federal Courts of Massachusetts will feel free to continue applying their own ideas rather than the law to the facts, as delineated by the Supreme Court.

Question Three:

WHETHER THE BARNSTABLE SUPERIOR COURT COULD MAINTAIN JURISDICTION FOR CRIMINAL JUSTICE PROCEEDINGS AGAINST THE PETITIONER?

Under State law, lack of jurisdiction claim(s) may be raised at any time, ruled the Supreme Judicial Court.
Commonwealth v. DeJesus, 440 Mass. 147, 151 (1996)

Under Federal law, lack of jurisdiction may be raised at any time. United States v. Cotton, 535 U.S. 625, 630 (2002)(The Supreme Court ruled jurisdiction can never be forfeited, and must be decided regardless of the point at which it is first raised); United States v. Gatewood, 173 F.3d 983, 986 (6th Cir. 1999)(The jurisdictional challenge to the indictment may be raised at any time); United States v. Vreeken, 803 F.2d 1085, 1088 (10th Cir. 1980)(Same)

The petitioner was illegally arrested in Missouri June 5, 2003. He was indicted for murder July 7, 2003, in Massachusetts, after the Extradition violation.

The Federal law on Extradition has already been violated. The government of Taney County, Missouri, did not advise the petitioner of his Constitutional rights under the Fifth Amendment. Miranda v. Arizona, 384 U.S. 436, 448-450 (1966), all of which would have been revealed at an evidentiary hearing in the District Court, should that Court decide to follow the law.

The Massachusetts government officials who traveled to Missouri, advised the petitioner of his Miranda rights, but when he invoked his right to counsel, they ignored the invocation and kept right on questioning the petitioner. There was no "exception" to be applied here. Bram v. United States, 168 U.S. 532, 548 (1897); Accord, Blackburn v. Alabama, 361 U.S. 199, 205 (1960)

In light of the deliberate and egregious violations of Constitutional law and Federal statutes, the Massachusetts government had no standing to 1) transport him to Massachusetts; 2) indict him for trial in the Barnstable Superior Court.

The Prosecutor's duty in a criminal prosecution is to seek justice. Berger v. United States, 295 U.S. 78, 88 (1935)

The government may not use "improper methods calculated to produce a wrongful..." result. Id.,

This claim is not about the petitioner's trial,

which is not the subject matter for this Court's jurisdiction for Certiorari.

The government may not knowingly present false testimony and has the duty to correct testimony which the government knows to be false. Napue v. Illinois, 360 U.S. 264, 269 (1959)

The Commonwealth of Massachusetts, in cheek, submitted Sergeant John Kotfila's Affidavit, stating the petitioner waived extradition [App., p. 56], with no other evidence in support of that perjurious statement. Mastracchio v. Vose, 274 F.3d 590, 602 (1st Cir. 2000)

Apparently, the Massachusetts Federal Courts, including the District Court, Talwani, D.J., and the First Circuit Court of Appeals, Gelpi, Lynch, and Montecalvo, C.J.'s helped with the Fraud on the Court:

"The District Court disagreed, holding that 'regardless of whether Dubois's petition was filed under §2254 or §2241, the time limits set forth in §2244 apply.'"

The petitioner, contrary to the fraudulent ruling

by Gelpi, Lynch, and Montecalvo, C.J.'s, the petitioner did believe he was subject to §2244(d) and gave the "trigger date" of January 4, 2022, with a filing date of March 3, 2022. Calculators notwithstanding, that's only 58 days.

If it truly was a §2254, the purpose of the recharacterization was to keep it within the AEDPA (control) because otherwise §2253 would not have applied, simply because the detention complained of did not "... arise out of a process issued by a State Court. See, §2253(c)(1)(A)

A Certificate of Appealability was not required, as the Court did not reach the merits of the claim, or apply the law to the facts for the fraudulent Extra-dition procedure. Miller v. Schiebner, U.S. App. LEXIS 8134 (6th Cir. 2023)

Fraud On The Court is especially egregious here. In re Grand Jury Proceedings, 835 F.2d 237, 238 (10th Cir. 1987); United States v. Wright, 913 F.3d 364, 374

n.11, (3rd Cir. 2018)

The merits of the claim require the Federal Court to apply the law to the facts as they relate to the violation of the Federal Uniform Extradition Act, 18 U.S.C. §3184.

There also was the Circuit Court's abrogation of the Supreme Court's decision in Castro v. United States, 540 U.S. 375, 382 (2003) that the Federal Court must warn the petitioner it intended to recharacterize the §2241(c)(3) into §2254(a), which would have given the petitioner the opportunity to contest the changeup.

Adams v. United States, 155 F.3d 582, 583 (2d Cir. 1998)
(Per Curiam)

Epilogue

The United States Court of Appeals For the First Circuit (Respondent) has entered a decision in conflict with all the petitioner's cited cases from the Supreme Court, and various other Circuit Courts in and around the United States of America, on the question of using

a fake Extradition procedure to seize the petitioner to then claim that Massachusetts had subject matter jurisdiction over him.

The First Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, sanctioning this departure by the District Court as well, which begs for an exercise of this Court's supervisory powers, and is one of those rare cases which the Supreme Court has been known to intervene, using its fully applied oversight.

Conclusion

For the reasons stated above, in fact and law, this Honorable Court should grant the petitioner the privilege of Certiorari.

August 23, 2023

Respectfully submitted,



Paul Dubois, Pro Se
Box 43,
Norfolk, MA 02056

Certificate of Service:

I hereby certify that I mailed a true copy of the Petition for Certiorari to Attorney General, One Ashburton Place, Boston, MA 02108 on August 4, 2023., August 23, 2023 and September 7, 2023.