

Docket NO:

23-5601

IN THE

ORIGINAL

SUPREME COURT OF THE

UNITED STATES

FILED

SEP 08 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN RE: Michael Kenny Carter

ON Petition for a writ of Prohibition to The
United States Court of Appeals Fourth Circuit
23-6603

PETITION FOR WRIT OF PROHIBITION

Submitted by and for:

Michael Kenny Carter

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QUESTION(S) PRESENTED

This case presents an important Nationwide issue concerning "Subject matter jurisdiction." there is a circuit split between the 11th v.s 1st, 8th and 10th, while the rest of the Circuits remain undecided in the wake of *United States v. Cotton* 122 S.Ct 1781 (2002).

Regarding, Criminal conduct being beyond the scope of the charging statute, whether it's a jurisdictional defect or merely plain error, see 11th Circuit *United States v. Peter*, 310 F.3d (2002). see 10th circuit *United States v. De Vaughn* and *U.S. v. Scruggs*, 714 F.3d 258, 262 (5th Cir. 2013).

- 1) Is it not a jurisdictional defect if the alleged Criminal conduct falls outside the scope of the cited statute?
- 2) Did Congress expand the scope of 18 U.S.C 2422 B, to encompass "personal vehicles transporting victims across state lines"?
- 3) Is there not a time limit to resolve a challenge to subject matter jurisdiction?
- 4) Whether the Residual Clause in 18 USC 2422 B is unconstitutionally void-for-vagueness, "Sexual Activity"?

LIST OF PARTIES

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

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- District Court, Matthew Perry, 901 Richland St, Columbia SC 29201
- 4th Cir Appeals, 1100 East main St, Suite 501, Richmond, VA 23219

Disclosure of Corporate Affiliations and Financial Interest

Pursuant to Supreme Court Rule 29.6, Michael K Carter, makes the following Disclosure: 1) Mr Carter is not a subsidiary or affiliate of a publicly owned corporation. 2) There is no publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome of this case.

RELATED CASES

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Petition for A writ of Prohibition

Mr Carter respectfully petitions the Supreme Court to issue a writ of prohibition to the Fourth Circuit of Appeals. he asks this Court to order the 4th Circuit to Dismiss the Charging information in the instant case for lack of subject matter jurisdiction since they refuse to fulfill their duties.

Jurisdictional Statement

The Supreme Court of the United States has the original and exclusive jurisdiction in any case where the constitutional validity of an act of Congress is questioned. In Mr Carters case he questions the Authority of Federal District Courts, given by Congress regarding the interpretation of lack of Subject matter jurisdiction.

moreover, the Supreme Court has exclusive jurisdiction because Mr. Carter seeks a writ of prohibition to the 4th Cir. Court of Appeals asking that the Court of Appeals be ordered to execute its duties, under 28 USC 1651, the remedy of prohibition against a lower Federal Court is a drastic and extraordinary remedy reserved for really extraordinary causes. there are 2 prerequisites to the issuance of a writ: 1) that the petitioner have

Petition for A writ of Prohibition

no other adequate means to attain the desired relief, and, 2) that the petitioner meet its burden of showing that its right to the writ is clear and indisputable. once these 2 prerequisites are met, a court's decision of whether to issue the writ is largely one of discretion.

Mr. Carter presented his challenge to subject matter jurisdiction first to the District Court and point to the record the jurisdictional defect and the absence of jurisdiction. The Court ignored the challenge and denied the motion. Mr. Carter Appealed and presented the challenge, in a more detailed fashion to the 4th Cir. Appeals under 28. U.S.C 1291. he then gave the Gov. 21 days to respond, in which the Gov. did not respond so that led Mr. Carter to file a default motion against the Gov. For failure to satisfy its burden to prove the Court did have jurisdiction. the Court has since left Mr. Carters case at a stand still, Carter explained to the Court that each passing day he receives irreparable harm because their inaction he remains incarcerated and continueingly endures this injustice. the Supreme Court has the power under Rule 20 to correct this injustice by issuance of the writ.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C 1651 which states:

"(A) The Supreme Court and all courts established by an act of Congress may issue all writs necessary or appropriate in aid of these respective and agreeable to the usage and principle of law.

18 U.S.C 2422B

"(B) whoever, using the mail or any facility or means of interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attain the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life."

STATEMENT OF THE CASE

- 1) on or about may 31 2017, Mr Carter was charged by way of information which stated "Defendant, Michael Carter and others known as principles, Co-participants, Aiders and Abettors jointly undertaken criminal Activity, Using a cell phone connected to a computer that is a facility and Means of interstate Communication to persuade, entice individuals who had not attain the age of 18 to engage in sexual Activity".
- 2) also on or about may 31 2017, Mr Carters 1st plea colloquy was held, during the factual basis the A.U.S.A put forth facts under oath to establish subject matter jurisdiction and A Basis for the plea. Quote "on or about Nov 12 2016 defendant facilitated the travel of 2 runaways From Augusta G.A to Columbia S.C for the purposes of prostitution".
- 3) on or about March 08 2018, while at sentencing a 2nd plea colloquy was held and while under oath the A.U.S.A gave a more specific factual basis, quote "Mr Carter sent his Bottom girl to Augusta G.A to pick up 2 minors and bring them across statelines to Columbia S.C for the purposes of prostitution."
- 4) on or about March 20 2023, Mr Carter filed a motion denying and challenging subject matter jurisdiction in the District Court, which eventually and incorrectly denied the motion. Mr Carter immediately Appealed the decision.
- 5) on or about July 18 2023 Mr Carter filed the informal brief to the 4th Cir Appeals (Appeal #23-6603) regarding the following claims: Fraud in the procurement of jurisdiction, failure to state an offense, failure of guilty plea to confer jurisdiction, charging information did not provide notice or pass constitutional muster, allegations contained in the information did not exist and alleged conduct fell outside the Scope of the charging statute. Lack of subject matter jurisdiction.

Statement of the Case

- 6) On or about August 20 2023, Mr Carter filed a default motion against the Government for failing to satisfy their burden by presenting a preponderance of evidence establishing jurisdiction. he explained how the record is absent of jurisdiction and each passing day Mr Carter receives irreparable harm cause by incarceration. the fourth Circuit Court of Appeals refuse to dismiss the instant case knowing there's a lack of subject matter jurisdiction.
- 7) Jurisdiction can be determined by the face of the indictment, or the plea colloquy proceeding.
- 8) Facts: The record shows the facts alleged in the charging information are false! and do not exist, especially not on record.
- 9) Facts: The record demonstrates the Government committed perjury to obtain the bill of information. They lied again under oath at both plea colloquy's in the instant case, when presenting an alternative different set of allegations as the factual Basis.
- 10) Facts: During both plea colloquy's Mr Carter never swore to the allegations contained in the information.
- 11) Facts: The alleged conduct the Government presented at both plea colloquy's, "Carter's Bottom girl transporting 2 minors across state lines for the purposes of prostitution in violation of 2422 B." falls outside the scope of 18 USC 2422 B, and was never charged in the indictment, or placed Carter on notice.

REASONS FOR GRANTING THE PETITION

12) Mr Carter would like to first present the legislative history of 18 USC 2422B to demonstrate that the conduct the Government is accusing him of does not fall within the parameters of the charging statute.

Legislative History of 2422(B)

The limited purpose of Congress in enacting 2422(B) was to "protect minors from sexual exploitation by online predators." The House Conference Report of the telecommunications Act of 1996, which included 2422B notes that:

"The Senate Judiciary Committee held an hearing on online indecency, obscenity and child endangerment. the context and history of the statute, see Bailey, 516 U.S. at 146-47, supports this interpretation of 2422B. H.R. Rep. NO. 104-458, at 193 (1996) (Conf. Rep). The Committee Report on the child protection and sexual predator punishment act of 1998, which increased the penalty for violation of 2422B, emphasizes that the bill was a "Comprehensive response to the horrifying menace of sex crimes against children, particularly assaults facilitated by computers... that seeks to provide law enforcement with the tools it needs to investigate and bring to justice those individuals who prey on our nations' children." H.R. Rep. NO. 105-557, at 10 (1998). As a sister circuit concluded "the primary evil that Congress meant to avert by enacting 2422B was the psychological sexualization of children." U.S. v. Fugit, 703 F.3d 248, 255 (4th Cir 2012).

Facts

The facts on record in this case does not state an offense within the plain meaning of 2422B. the Factual Basis Mr. Carter pled to, ... sending his bottom girl ... is not within the literal language of 2422B.

Reasons For Granting the petition

The legislative history of the Act indicated that practices "not accompanied by computer related crimes were outside the scope of the Act."

Accordingly, although an activity may be within the literal language of 2422B, it must constitute using a cell phone or computer to entice or persuade a minor under the age of 18 to be within the perimeters of the Act.

LAW

Thus, Federal Courts are vested with limited subject matter jurisdiction. The Federal courts, however, have power to hear only those cases 1) that are within the judicial power of the United States - as set forth in the Constitution, or 2) that Congress has granted to the Courts, *Kontrick v. Ryan*, 540 U.S. 443, 454 S.Ct (2004).

"The requirement that jurisdiction be established as a threshold matter 'springs from the nature and limits of judicial power of the United States' and is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 93. 118 S.Ct 1003 (1998), Quoting *Marsfield, C. v. L.M.R. Co. v. Swan*, 111 U.S. 379 4 S.Ct.

in the face of a challenge to the facts supporting subject matter jurisdiction, the burden of proof falls on the party claiming jurisdiction, and the showing must be made by a preponderance of the evidence, *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178 56 S.Ct 780, 80 L.Ed. 1135 (1936). Courts must examine 2 facets of subject matter jurisdiction: 1) whether the allegations are sufficient to support a finding of subject matter jurisdiction (facial validity), and 2) whether the facts supporting subject matter jurisdiction are accurate (factual validity). When faced with a factual challenge to jurisdiction over the subject matter, the court may move beyond the allegations of the complaint and consider relevant evidence - including Affidavits.

Reasons For Granting the petition

In a criminal case, the government can initially establish subject matter jurisdiction in the indictment or information by merely tracking the language of the criminal statute. Similarly, an indictment or information does not establish criminal subject matter jurisdiction if it fails to comply with a statutory jurisdictional requirement. (Citing *United States v. Sealed Juvenile*, 1,225 F.3d 507, 508 509 (5th Cir 2000)). Thus, a federal court does not have subject matter jurisdiction if the government presents an indictment or information that fails to allege and, if challenged, prove the element of a crime that actually establishes federal jurisdiction.

Mr. Carter has made the challenge to subject matter jurisdiction, has gave the Governments 3 weeks to satisfy their burden, thats one week longer than what the local 4th Cir. Rules allow. he has also filed a default motion against the Government, but the fourth circuit refuse to Dismiss the charging information knowing jurisdiction is absent from the record. Each passing day Mr Carters recieves irreparable harm by remaining incarcerated.

Conclusion

Mr Carter moves this Supreme Court of the United States to grant the writ of prohibition because the lower courts lack of subject matter jurisdiction and also provide a Bright line regarding lack of subject matter jurisdiction. *U.S v Cotton* (2002) needs to be clarified.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael K Carter

Date: 09-07-23