

No. 23-6095

IN THE

SUPREME COURT OF THE UNITED STATES

Eighth Circuit Court of Appeals

Jerome McGoy — PETITIONER
(Your Name)

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(8th Cir) Court of Appeals MO
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

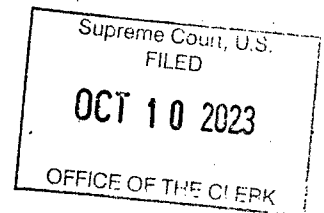
Jerome McGoy
(Your Name)

O.P. Box 3000
(Address)

Forrest City, AR, 72336-3000
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL



PETITION FOR A WRIT OF CERTIORARI (Questions)

Is it not true that Arkansas state was not authorized to use the Confidential Informant (CI) Robert Sullivan a.k.a. Smokey G. in an undercover operation to make controlled buys? (Ground 11 of pg. 3 of Appendix C) (filed 11-03-2021). That this action was not inline with ACC. Act. 378. Rule 5.7). Is it not true that if the CI was not authorized by that Statute / Rule nor a court, that his consent can neither be used to authorize State D.T.F. to Audio / Video or Wiretap? Is it not true that this State D.T.F. would have to submit an application for an order of surveillance to be consistent with the 4th Amendment to the U.S. Constitution and Title 111? As defined on pg. 9 of Appendix C, would it be true that according to the A.C.A. 16-21-113 and Arkansas Constitution Amendment No.:21(I), the state prosecutor Mr. Baxter Sharp, being a deputy prosecutor, would need to get authorization from the head prosecutor to be able to file the information in this case? As defined on pg. 3, Ground 12, without Mr. Sharp getting authorized, would this give the State Subject-matter of jurisdiction to pursue these charges? By the State not getting a valid warrant, being not supported by a notarized affidavit, nor a jurat to show proof of lawful process, nor bearing a Judge's signature, would this not violate the 4th, 5th and 14th Amendments of the U.S. Constitution as violations of the Due Process of Law? And violate the exclusionary rule? Would this not also amount to false imprisonment? Should Mr. McGoy's lawyer have raised these issues before advising Mr. McGoy to enter a Guilty Plea? Would this not cause all of the evidence to have been gained illegally? Would this violate the Silver Platter Doctrine? Would this entire process then be the fruit of the poisonous tree? Should the lawyer, Mr. David Cannon, have alerted

the Court of these issues and actions and filed a motion to suppress? Should the District Court judge not allow Mr. McGoy to fire this attorney? Should the Defective process of Appendix C, Memorandum of Law in support of 2255, pg. 1, Ground 1, not have been more respected, for dismissal and with the supporting cases, People of New York v. Macfarlane 130Mse 2d,70 494 N.Y.S. 2.D 826 (1985) have been great for subject-matter-of Jurisdiction and Hall v. State 326 Ark. 823, 318, 933, S.W.2.d 363 (1996)? Is it not true that in this case, before the court accepted the Plea of Guilty, that it had to pass the constitutional muster? With all of the corrupt processes at the State level and the Illegally gained evidence, the CI being used without proper authorization, the Deputy prosecutor not being authorized to file the information, the Audio / Video not meeting the requirements of Title 111 and the 4th Amendment of the U.S. Constitution, how could this case pass constitutional muster? As defined in Appendix C, pg. 7 and 8, is it not true that the Courts are supposed to protect individuals from prosecutorial decisions that are based on unconstitutional motives or executed in bad faith?

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 judgement is the subject of this petition is as follows:

RELATED CASES

Elkins v. United States, 364 U.S. 206, 223, 80 S.Ct. 1437, 4 L.Ed. 2d. (1960); Weeks v. United States, 232 U.S. 393 34 S.Ct. 342, 58 L.Ed. 652, T.D. 1964 (1914); United States, 364 U.S. 206, 223, 80 S.Ct. 1437, 4 L.Ed. 2d 1669(1960); U.S. " 1175 (6th Cir. 1987; See 18 USC 2510(9), 2518(1), and U.S. v. Bowers, 528 F.2d. 1169 (6th Cir. 1987); See U.S. v. Rice, 478 F.3d. 704, 706 (6th Cir. 2007); Quigley v. Rosenthal, 327 F.3d. 1044, 1067 1068 (10th Cir. 2003); C.F. Wolf v. Colorado, 338 U.S. 25, 93 L.Ed. 1782, 695 Ct. 1359; See Harris v. United States, 331 U.S. 145, 155, 183, 195 91 L.Ed. 1399, 1408, 1424, 1430 675 Ct. (1098); Lee v. State 2000, 11 SW. 3d. 553, 340 Ark 340; U.S. v. Leon, 468 U.S. 897 104 Ct. 3430 82 L.Ed. 2d 677; Stewart v. State, 289 Ark, 272 711 S.W. 2d. 787; Platt v. Platt, 951, F.2d 159, 160 (8th Cir. 1989); U.S. Campbell, 410 F.3d 458, 461 472 (8th Cir. 2005); Strickland v. Washington, 466 U.S. 668, 80 L.Ed. 2d 674, 104 S.Ct. 2052; Mantejo v. Louisiana, 556 U.S. 778 (2009) and Hill v. Lockhart, 474 U.S. 52 (1985).

RELATED CASES Cont.

- United States Court of Appeals for the Eighth Circuit 1976
- 548 F.2d:: Holmberg v. Parratt :: November 12, 1976 Dissent.
- United States v. Duch :: June 12, 1991 Opinion
- 700 F.2d 1164 :: Williams v. Nix :: January 10, 1983
- 809 F.2d Hamilton v. Nix, May 15, 1986
- 619 F.2d 1254 United States v. Allison, March 12, 1980
- 956 F.2d 843 United States v. Moore, February 12, 1991
- 36 F.3d 758 United States v. Nelson, May 12, 1994

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

United States v. Cronin (emphasis added, citation omitted); Owens v. United States 587 F.3d. 607 (4th Cir. 2004); Fontaine v. United States, (citation omitted); Haines v. Kerner (citation omitted); Hall v. Bellam, 935 (10th Cir. 1991); Appendix E, Document 84 filed 04-26-2023, pg. 23; U.S. -1175 (6th Cir. 1987); See 18 USC 2510(9), 2518(I), and U.S. v. Bowers, 528 F.2d 1169 (6th Cir. 1987); U.S. v. Rice, 478 F.3d. 704, 706 (6th Cir. 2007); Quigley v. Rosenthal, 327 F.3d. 1044, 1067 (10th Cir. 2003); Appendix E Document 84 filed 04-26-2023 pg. 6 of 7.

STATUTES AND RULES

A.C.A. 16-21-113 and Ark. Constitutional Amendment 21(1).
5.7 of Act 378
F.R.C.P. 41
7.1 B and 7.2 A(iii)
F.R.C.P. Rule 9
Title 111 Order of Surveillance
Silver Platter Doctrine
Exclusionary Rule
Brandy Violation

OTHER

N/A

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 21, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including 0 (date) on 0 (date) in Application No. 0-A-0.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

N/A

☐ For cases from state courts:

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix N/A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including 0 (date) on 0 (date) in Application No. 0-A-0.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

N/A

Appendix A - Judgement of the Eighth Circuit Court of Appeals, August 21, 2023.

Appendix B - Judgment on Certificate of Appealability Motion, Eastern District of Central Arkansas, May 22, 2023.

Appendix C - Judgement on Motion for Reconsideration, Eastern District of Central Arkansas, April 28, 2023.

Appendix D - Judgement on 2255 Motion, Eastern District of Central Arkansas, April 03, 2023.

Appendix E - Judgement on Motion to Dismiss, Circuit Court of Monroe County, Arkansas, February 01, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4th Amendment to the U.S. Constitution, 5th Amendment to the U.S. Constitution, 6th Amendment to the U.S. Constitution, 8th Amendment to the U.S. Constitution, 14 th Amendment to the U.S. Constitution. Violation of State Rule 5.7 of Act 378 should not have allowed the State D.T.F. to use the prohibited person Robert Sullivan, a.k.a Smokey G. from making the controlled buys or the Audio / Video recording. Therefore, with state not getting or submitting an application for an order of surveillance placed the state in conflict with, and in violation of. Title 111 and the 4th Amendment to the U.S. Constitution. Furthermore, the State Deputy Prosecutor never got authorization to file the information, violating State A.C.A. 16-21-113 and Arkansas Constitution, Amendment 21(I). The State never submitted an affidavit which was duly notarized to apply for an arrest warrant and not having a Jurat to show proof of lawful process which places it conflict with the 4th and 5th Amendments of the U.S. Constitution and also a violation of the wire taps statutes.

STATEMENT OF CASE

Mr. McGoy has previously presented to the District Court and the 3 Judge Panel Appeals Court, Statutes, cases and constitutional violations. First of all, he received Ineffective Assistance of Counsel by allowing him to enter or rather coercing him to signing a Plea Agreement unknowingly. All of these violations of the U.S. Constitution arrived long before the plea agreement therefore it his counsel's duty, as a person knowledgeable in the law and procedure, to advise him against signing the Plea Agreement. As this Honorable Court reviews the record, all of hsi claims are clearly presented and he intends to stand firm on them. Mr. McGoy believes that he is being prejudiced by the use of the illegally obtained video in violation of the 4th Amendment and Title 111 order of surveillance and wire taps. This video would violate the 5th, 6th, 4th Amendments of the U.S. Constitution and the Exclusionary Rule. Mr. McGoy prays that this Honorable Court will carefully view all of his claims being the Law of the Land. Mr. McGoy feels that it would be worthless to have them to rehear it with them not even issuing an opinion. So, by the Grace of God, This court will find merit in Mr. McGoy's claims of violations of statutes and the U.S. Constitution. Mr. McGoy respectfully asks for a Certificate of Appealability and also asks this court to direct the lower court to release Mr. McGoy. Mr. McGoy has also briefed the courts on how this CI was not authorized to be used to make this video recording and how his consent cannot be used. Furthermore, the Statute that it violated as well as the U.S. Constitution as to the 4th, 5th and 14th Amendments with respect to the Due Process of Law. This should be a form of prejudice for these lower courts to over-shadow all of these constitutional violations. The Judge in the District Court would not allow Mr. McGoy to fire his

Ineffective Counsel Mr. David Cannon, and he coerced him into this plea agreement. Just to not make the record so long, Mr. McGoy believes that there is enough in the record to clearly demonstrate the Constitutional violations. There is not enough evidence to show that Mr. McGoy's claims are False. For the Court to deny the brief and not even address the issues raised therein is concerning. The strongest evidence against Mr. McGoy is the video which was obtained illegally and used an individual as a CI who could not be used as one. These are facts and should not have been disregarded and needed to be addressed. Attached are copies of the last two motions that the 3 Judge Panel had in front of them and they clearly explain the constitutional violations. Additionally there is Mr. McGoy's 28 USC 2255 motion with the accompanying briefs. Also please take into consideration the State Court Judge's order on 07-10-2017 ordering everyone charged with these tainted charges to be released, but the state prosecutor, Mr. Baxter Sharp, violated the Judge's standing order for the second time, leaving Mr. McGoy to find a defense for these tainted charges. Mr. McGoy requests this Court to review the motions filed on 07/31/2018, 04/26/2023 and 11/03/2021, apply the general exception and Matthews v. Eldridge test. This case alleged the wrong offense date, had multiple procedural violations and this case was to never leave the state prosecutor's office by law and was ordered not to by the Judge of the State Court on 07/10/2017. There are clear issues of subject-matter-of Jurisdiction with the acceptance of the Guilty Plea. The entire prosecution is based on illegally obtained evidence and arises from the fruits of the poisonous tree. This is supported by the Leon Case. Also attached is a copy of the State Court Judge's order that the Counsel told Mr. McGoy was denied to coerce him into accepting the plea agreement and that he had no defense.

REASONS FOR GRANTING THE PETITION

Mr. McGoy has been falsely imprisoned since the day of his arrest. The stale and void arrest warrants violated the 4th Amendment, Federal Rule 41. They were in conflict with the 5th Amendment and therefore he was deprived of his Liberty without due process of law. The warrants bore no signature from a Judge, without a notarized affidavit nor a Jurat to show proof of lawful process. The arrest warrants were dated 1 month before any crime was alleged and they were 11 months old with no return dates. The CI was illegally used and did not comply with section 5.7 of Act 378 which prohibits parolees from working for law enforcement in under cover operations. Therefore, the D.T.F. could not use him or his consent to make controlled buys or make audio / video recordings. This illegally obtained evidence violated the Exclusionary Rule, the 4th, the 5th, the 6th and the 14th Amendments of the U.S. Constitution and the Silver Platter Doctrine. All of these issues existed before any plea agreement and should not have given either court subject-matter⁴ of Jurisdiction. On top of that the State Prosecutor was never authorized to file the information on the case and by doing so he is in conflict with A.C.A 16⁴21⁴113 and Arkansas Constitution Amendment 21(1), which requires him to get authorization from the head prosecutor and that was never done. Due to the fact that Mr. McGoy received ineffective assistance of counsel, when he alerted the court he was not allowed to fire this hired counsel. The only defense the government raised was that Mr. McGoy had plead guilty, in which the Court should not have accepted this plea. Afterall, it was involuntary, coerced and unknowing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jerome M. Soy

Date: 9/26/2023