

23-6360
No.

IN THE

SUPREME COURT OF THE UNITED STATES

PROVIDED TO
CROSS CITY C.I. ON

OCT 23 2023

B. L. S.
FOR MAILING

In Re Burt Leon Setts — PETITIONER
(Your Name)

FILED

SEP 06 2023

OFFICE OF THE CLERK
SUPREME COURT OF THE U.S.

ORIGINAL

ON PETITION FOR A WRIT OF HABEAS CORPUS

Burt Leon Setts v. Shone Swain, Warden
RESPONDENT (S)

PETITION FOR WRIT OF HABEAS CORPUS

Burt Leon Setts

(Your Name)

Cross City, C.I., 568 NE. 255 ST.

(Address)

Cross City, FL. 32628

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether, Holding Petitioner To Answer For A Capital Crime Without A Grand Jury's Indictment, Under The U.S.C. 5th. Amendment Violated Due Process? Rendered The Trial Court Without Jurisdiction To Convicted Petitioner?

2.

Whether, The Trial Court, Lacked Jurisdiction To Convicted Petitioner, By Depriving Petitioner of All Pretrial Proceeding Or Hearings, Violated DUE Process Under The 14th. Amendment U.S.C. "Nor Shall Any State Deprive Any person OF... Liberty... Without due Process OF LAW...."

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:

Judge, Ben C. Willes

RELATED CASES

Re Bonner, 151 U.S. 2442
Shepherd v. U.S., 2010 U.S. Dist Lexis 44292.

TABLE OF CONTENTS

| | | |
|--|----------------------|---|
| OPINIONS BELOW..... | <u>None</u> | 1 |
| JURISDICTION..... | <u>None</u> | |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | <u>7, 8, 10, 15,</u> | |
| STATEMENT OF THE CASE | <u>7,</u> | |
| REASONS FOR GRANTING THE WRIT | <u>7-15</u> | |
| CONCLUSION..... | <u>16</u> | |

INDEX TO APPENDICES

| | |
|------------|---------------------------------|
| APPENDIX A | <u>Arrest Warrant</u> |
| APPENDIX B | <u>Plea Proceeding</u> |
| APPENDIX C | <u>Information</u> |
| APPENDIX D | <u>Judgment</u> |
| APPENDIX E | <u>Progress Docket For Case</u> |
| APPENDIX F | |

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|---|-------------|
| Abernathy, Ex Parte, 320 U.S. 219 | 7. |
| Alachua Reg'l. Juv. v. T. O. 684 So. 2d 814/15. | 15. |
| Browder v. Director, D.O.C., 434 U.S. 257 | 15. |
| Calley v. Callaway 519 F.2d 184 | 7. |
| Dunser v. Aronoff, 915 F.2d 1071 | 14. |
| Ex Parte BAIN, 121 U.S. 1 | 9. |
| Ex Parte Yarbrough, 110 U.S. 651 | 11. |
| Freytag v. Commissioner | 12. |
| Kerr v. United States District, 426 U.S. 394 | 9. |
| Mabry v. BEAUMONT, U.S. Dist. Lexis 1550, | 14. |
| Re Chapman, 166 U.S. 661 | 11. |
| STATUTES AND RULES | |
| Fifth Amend. U.S.C., 7, 8, 10, second Page | |
| 28 U.S.C. (ss) 2254 (b)(ii) | 7. |
| 28 U.S.C.A. (ss) 377, 451 | 7. |
| FLA. STAT. (ss) 784.04 (1)(A) | 8. |
| FLA. R. Crim. P. 3.130 (A) | 12, |
| FLA. STAT. (s) 90.105 (3) | 13, |
| FLA. R. Crim. P. 3.133 (A) | 13. |
| FLA. R. Crim. P. 3.160 (A) | 13. |

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

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 ~~N/A~~; 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 ~~N/A~~; 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 _____.

☐ 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 _____ (date) on _____ (date) in Application No. ____ A ____.

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

☒ 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 N/A (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

| | | |
|--------------------------------|------|-----|
| 5th. and 14th. Amend's U.S.C., | Sec. | Pg. |
| 5th. Amendment U.S.C. | | 10. |
| 14th. Amend. U.S.C. | 14., | 12. |

STATEMENT OF THE CASE
& RULE 20.4(A) STATEMENT

The jurisdiction conferred on the S. Ct. OF the U.S., by 28 U.S.C. Acs) 377, 451, to issue writs of habeas corpus in aid of its appellate jurisdiction is discretionary and will not, save in exceptional circumstances, be exercised in cases where an adequate remedy may be had in a lower federal court, or if the relief sought is from the judgment of a state court, where the petitioner has not exhausted his remedies in state courts. 320 U.S. 219 Abernathy, Ex Parte, H. Nt. #1.

Exhaustion of state court remedies not required where trial court lacked jurisdiction.

Court acted without jurisdiction or exceptional circumstances have been presented which are so fundamentally defective result in a miscarriage of justice. Calley v. Callaway 519 F.2d 184.

This is brought pursuant to 28 U.S.C. 22-54 (b)(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Petitioner present, court lack jurisdiction to convicted as exceptional circumstances.

REASONS FOR GRANTING THE PETITION

Petitioner were held to answer
for a capital crime of First de-
gree murder under 784.04(1)
(a) Fla. Stat.

Upon no indictment of a grand
jury violating Amend 5, U.S.C.,
Capital crime clause,

On 12-6-1982, petitioner was held
to answer for a capital crime upon
no indictment of a grand jury.
Violating Amend. 5, U.S.C.

"No Person Shall be held to Ans-
wer For A Capital... crime, unless
On A... Indictment OF A Grand
Jury."

3. In so doing deprived the court of jurisdiction of proceeding to try the Petitioner and sentence him to imprisonment provide for in the statute.

App. (c), (d)

4. A case in point is Ex parte Bain, 121 U.S., 1 where the Petitioner had been convicted on an indictment which, because it had been amended after it was returned by the grand jury, was thought to be "no indictment of a grand jury. Kerr v. United States District court, 426 U.S. 394, N. #7 . . . "The declaration of article V of the Amendments to the Constitution, that "no person shall be held to answer a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury," is jurisdictional; and no court of the United States has Authority to try a prisoner without indictment or presentment in such cases.

Upon an indictment so changed the court can proceed no further. There is nothing (in the language of the Constitution) which the prisoner can be held to answer. A trial on such indictment is void. There is nothing to try.

According to principles long settled in this court the prisoner, who stands sentenced to the penitentiary on such trial, is entitled to his discharge by Writ of Habeas Corpus.

The jurisdiction of the that court is denied in this case upon two principal grounds: The First of these relates to matters connected with the impaneling of the grand jury and its competency to find the indictment under which the petitioner was convicted. . . Id. n. #5.

We have no difficulty in holding that the indictment on which he was tried was no indictment of a grand jury. . . the jurisdiction of the offense is gone, and the court has no right to proceed any further in the progress of the case for want of an indictment.

If there is nothing before the court which the prisoner, in the language of the Constitution, can be "held to answer: he is then entitled to be discharged so far as the offense originally presented to the court by the indictment is concerned.

As the Petitioner were held to answer for a capital crime upon no indictment of a grand jury. Violating Amend. 5. U.S.C., capital crime clause. He is entitled to be discharged of the offenses of conviction App. (c) and #4.

5. In the instant case the had no personal jurisdiction or no jurisdiction of the charge. Petitioner is held under sentence of a court in regard to a matter wholly beyond or without the jurisdiction of that court.

209 U.S. 123 Ex parte Young (1909)
The question of jurisdiction, whether
of the circuit court or of this court,
... It is a question, however, which
we are called upon, and which it
is our duty, to decide. Id. At 142

282 F. 138: Ex parte Craig (1922)
The Supreme Court consistently ad-
here to the principle announced in
these early cases. Thus in Matter
of Gregory 219 U.S. 210, where
the person applying for the writ
had been convicted of a crime in the
Police Court of the District of Col-
umbia. In hearing this application
this court does not sit to review
the correctness of the conclusion of
the Police Court as to the violation
of the statute by the petitioner, or of
the decision of the sufficiency of
the information filed against him. The
question here is not one of guilt
or innocence, but simply whether
the court below had jurisdiction to
try the issues; and as we find
that the statute conferred that juris-
diction the application for a writ
of habeas corpus must be denied.
Id. At 147

6. It is not only within the authority, but it is the duty of this court to inquire into the cause of commitment and to discharge Petitioner from confinement.

7. A case in appoint is Ex Parte Yarbrough, 110 U.S. 651 N. 2.

When a prisoner is held under sentence of any court of the United States in regard to a matter wholly beyond or without the jurisdiction of that court, it is not only within the authority, but it the duty of this court to inquire into the cause of commitment and discharge him from confinement.

Re Chapman, 166 U.S. 661 at Appearance of Counsel, citing People, McDonald v. Keeler . . . "An imprisonment by orders, judgments or decrees made in absence of jurisdiction are absolutely void in law and constitute False imprisonment not involving mere error, but being void owing to be the absence of power or jurisdiction, and being relievable on habeas corpus.

Re Bonner, 151 U.S. 2442, where a judgment is unauthorized, and therefore void, the prisoner will be discharged on habeas corpus without a reversal of judgment.

8. Since such a jurisdictional defect deprives not only the initial court but also the Appellate Court of its power over the case.

9. Therefore, no court, but the United States Supreme Court has proper authority to inquire into the jurisdiction court of commitment.

10. Since such a jurisdiction defect deprives not only the initial court but also the Appellate Court of its power over the case or controversy . . .

Freytag v. Commissioner 501 U.S. 868; 896.

ISSUE #2.

11. The Court lacked subject matter jurisdiction because it deprived Petitioner of all pretrial proceedings. Violating the Equal Protection Clause of the 14th Amend., U.S.C., and Due Process Clause.

12. On 12/6/82, Petitioner was arrested and charged with First degree murder. App.(a)

13. Petitioner did not enter a court until 1/18/83, approximately three (3) months after the arrest. App.(b)

14. Petitioner were afforded no first appearance hereing under Fla. R. Crim. P. 3.130(A) Prompt First Appearance: Every arrested person must be taken before a judge, either in person or by audio-video communication technology in the discretion of the court, within 24 hours of arrest. An official record of the proceeding must be maintained.

15. The progress Docket for Case 82000-412 CF|MA show no such hearing, thus, deprived court of jurisdiction. App.(e)

Case involves an alleged confession, Petitioner were afforded no Hearing on the admissibility of confession.

Fla. Stat.(s) 90.105 (3). Preliminary Questions: provides: Hearings on the Admissibility of Confessions shall be conducted out of the hearing of the jury.

16. Petitioner were afforded no pretrial probable cause determination and adversary preliminary Hearing under Fla. R. Crim. P. 3.133 (A) None Adversary-probable cause determination.(1) Defendant in custody.

In all cases in which the defendant is in custody, a non-adversary probable cause determination shall be held before a judge within 48 hours from the time of the defendant's arrest . . . App(e) show no such hearing occurred.

17. Petitioner were afforded no Arraignment hearing under Fla. R. Crim. P. 3.160 (a) Nature of Arraignment must be conducted in open court or by audio-video communication technology in the discretion of the court and of the judge or clerk or prosecutor reading, the indictment or information on which the defendant will be tried to the defendant or stating orally to the defendant the substance of the charge or charges and calling on the defendant to plead thereto. The reading or statement as to the charge or charges may be waived by the defendant.

18. In failing to afford Petitioner the above mentioned hearing deprived Petitioner of his right to the Equal Protection and Due Process Clauses of

the 14th Amend. U.S.C., nor shall any State deprived any person of . . . liberty . . . without Due Process of Law; Nor Deny to any person within its Jurisdiction the Equal Protection of the Laws.

19. When a defendant facially attacks subject matter jurisdiction, the Court must accept the Plaintiff material allegations in the complaint as true.

Because lack of subject matter jurisdiction is a non-waive able, fatal defect, it, may be raised by party at anytime. 2010 U.S. Dist LEXIS 44292, Shepherd v. U.S., at standard of review. Id. The Supreme Court, as well as more recent decision from other circuit, has taken the position that challenges to jurisdiction must be addressed by the court. Citing, Dunser v. Aronoff, 915 F. 2d 1071, 1074.

The Functions of the writ where a party who has applied for its aid in custody, do not extend beyond an inquiry into the jurisdiction of the court by which it was issued and the validity of the process upon its face. 1922 U.S. Dist Lexis 1550 Mabry v. Beaumont.

... its duty under 28 U.S.C. 2243 to
summarily hear and determine the facts
in regard to an application for writ
of habeas corpus. Rowder v. Di-
rector, Department of Corrections
of Illinois, 434 U.S. 257, N#7.

"It shall be returned within (3)
days unless for good cause addit-
ional time, not exceeding twenty
days is allowed (4) the person to
whom the writ or order is directed
shall make a return certifying the
true cause of the detention. (5) When
the writ or order is returned a day
shall be set for hearing, not more than
five days after the return, unless for
good cause additional time is allowed."

The proper respondent in a habeas
corpus petition is the party that has
actual custody and is in a position
to physically produce the petitioner.
Alachua Reg'l. Div. v. Det. Cr. 814
v. 10. (Fla 1996) 684 So. 2d 814

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Burt Leon Sells

Date: 12/12/2023