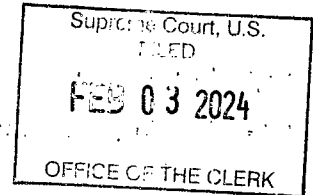


No. 23-7168

IN THE

SUPREME COURT OF THE UNITED STATES



ROBERT J. PLATO JR. -PETITIONER
(Your Name)

STATE OF INDIANA -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

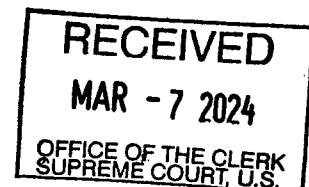
INDIANA COURT OF APPEALS
(NAME THE COURT THAT LAST RULED ON THE MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert J. Plato Jr. # 244589
(Your name)

P.O. Box "A"
New Castle, IN 47362-1041

None
(Phone Number)



QUESTION(S) PRESENTED

1.) Was appellate counsel ineffective by not challenging the illegality of the seizure of the petitioners computer?

2.) Did the Indiana Court of Appeals err in its 2-1 vote that appellate counsel was effective?

3.) Does a lawful search warrant authorizing the search and seizure of very specific items, authorize the seizure of other items that were not designated to be seized?

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:

Theodore E. Rakita
Attorney General
302 W. Washington St.
5th Floor
Indianapolis, IN 46204

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APPENDIX G	States Objections

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Morron v. U.S., 275 U.S. 192	_____
United States v. Heldt, 1668 F.2d 1238	_____
Steele v. United States, 2167 U.S. 498	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

STATUTES AND RULES

Ind Code 35-45-2-1 (a) (1)	_____
Ind Code 35-45-2-1 (b) (1) (B)	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

OTHER

Fourth Amendment / U.S. Constitution	_____
_____	_____
_____	_____

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 Courts of Appeals appears in 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 ____ to the petition and is

☒ reported at Plato v. State, 217 N.E. 3d 1279; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ 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.

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 the Court is invoked under 28 U.S.C. §1254(1).

☒ For cases from the **state courts**:

The date on which the highest state court decided my case was 25 SEPT. 2024 A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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 Appendix No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment IV, U.S. Constitution:

The right of the people to be secure in their
persons, houses, papers, and effects, against unreasonable
searches and seizures, shall not be violated, and no
warrants shall issue, but upon probable cause,
supported by oath or affirmation, and particularly
describing the place to be searched, and the
persons or things to be seized.

STATEMENT OF THE CASE

On 2 April 2018, a search warrant was obtained during an investigation of the petitioner.

The lawful search warrant particularly described the lawful items to be searched for and seized in that: "YOU ARE HEREBY AUTHORIZED, DIRECTED AND COMMANDED, in the name of the State of Indiana, to search for and seize the following property: Weapons, ammunitions, and paperwork relating to title work for vehicles."

During the execution of the lawful search warrant, a computer was seized and searched by Detective LeeAnn Dwiggins of the Madison County (Indiana) Sheriffs Department. It was this illegal seizure that resulted in the petitioners letters to the Sheriff of Madison County, Scott C. Mellinger that one letter (1) gave rise to the intimidation charge.

On 17 July 2019, Information for Count 1 Intimidation was filed by Kady N. Coulon, the Prosecuting Attorney for Madison County.

In the Information for Count 1 Intimidation, as filed by Kady N. Coulon, she claims: "Robert James Plato JR, did knowingly or intentionally communicate a threat to a law enforcement officer, to wit: LeeAnn Dwiggins, with the intent that LeeAnn Dwiggins, be placed in fear of retaliation for a prior lawful act, to wit: seizing Robert J. Plato's Computer pursuant to a lawful search warrant".

On 28 July 2021, there was a single day trial in which petitioner was found Guilty and sentenced to a term of eight (8) years.

During Post-Conviction Relief proceedings, On 27 July 2022, the Prosecutor of Madison County (Indiana), a Request For Admissions and Stipulation of Facts was mailed by Certified Mail / Restricted Delivery, pursuant to Trial Rule 36.

Pursuant to Trial Rule 36, the Prosecutor of Madison County was given a period of thirty (30) days in which to respond.

On 26 August 2022, after NOT responding within the stipulated thirty days, a "Notice of Default" was mailed to the Prosecutor.

On or about 8 September 2022, Deputy Prosecuting Attorney John J. McKay filed a "States Objection" to the Request For Admissions and Stipulation of Facts" as well as the "Notice of Default" and in doing so, ADMITTED that the Computer was seized (outside the scope of the warrant under Cause No. 48C03-1805-F5-1294).

REASONS FOR GRANTING THE PETITION

1. The seizing of the Petitioners computer (See Appendix D) was outside the scope of the lawful search warrant (See Appendix C) thus making the seizure illegal / unlawful. The Fourth Amendment to the United States Constitution requires that a search warrant describe with specificity, the place to be searched and the items to be seized. If a search and seizure exceeds the scope of the warrant, it is unconstitutional and unlawful.

The warrant must be specific enough so that officers can "with reasonable effort," ascertain the place to be searched and the items to be seized. *Steele v. United States*, 267 U.S. 498, 503, 45 S. Ct. 414, 69 L. Ed. 757 (1925). "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant". *United States v. Healy*, 668 F.2d 1238. *Marron v. United States*, 275 U.S. 142.

2. Indiana Code 35-45-2-1 Intimidation, (2): requires that there must be a [prior lawful act] to substantiate the charge of Intimidation. Without a lawful search warrant authorizing the seizure of the Petitioners computer, there was no 'prior lawful act', the prerequisite for the charge of Intimidation.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Robert J. Plato Jr. (SIGNATURE)
Petitioner, *pro se*
Robert J. Plato Jr. (PRINTED NAME)

Date: 3 February 2024