No. 23-7195

IN THE

SUPREME COURT OF THE UNITED STATES

In Re Dechaun Toliver – PETITIONER
Toliver Pro se

ON PETITION FOR WRIT OF HABEAS CORPUS

28 USCS 2241(C)(3)

PETITION FOR WRIT OF HABEAS CORPUS

Dechaun Toliver

CHILLIOCTHE CORR. INST

CHILLICOTHE, OH 45601

QUESTIONS PRESENTED

1. Is it mandatory for a District Court to entertain a Writ of Habeas Corpus when a petitioner is claiming to be in custody in violation of the Constitution?
2. Does a claim of being in custody in violation of the Constitution succeed through a second or successive Habeas petition?

LIST OF PARTIES

[X] All parties appear in the caption 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

Jackson v. Virginia, 443 U.S 307

Waucaush v. United States, 380 f.3d 251

Thompson v. Louisville 362 U.S 199

United States v. Stanley, 109 U.S 3

In re Winship, 397 U.S. 358

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RC. 2923.31**(C)**

ORC Ann. 2943.03

Crim.R. 11

U.S. Const. amend. XIII

U.S. Const. amend. XIV

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR HABEAS CORPUS

Petitioner respectfully prays that the writ of habeas corpus 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,

[ ] unpublished.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[ ] is unpublished.

[X] For cases from **state courts:**

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

[ ] reported at _____ ; or,

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

[X] unpublished.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[ ] is unpublished.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 in 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 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 writ of habeas corpus was

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

[X] For cases from **state courts:**

The date in which the highest state court decided my case was 2021.

A copy of that decision appears at Appendix **B**.

[ ] 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 writ of habeas corpus was granted to and including _____ (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

U.S.C.S CONST. AMEND. 14 SEC.1

U.S CONST AMEND. XIII

U.S. CONST AMEND. XIV

U.S.C.S 2241 (C)(3)

STATEMENT OF THE CASE

& RULE 20.4(A) STATEMENT

On June 27, 2018, In Athens county Ohio, petitioner was convicted of Engaging in a Pattern of Corrupt activity (Ohio RICO Act) without being associated or employed by anyone other than himself for eight years. This conviction is based upon a record wholly devoid of any relevant evidence of the crucial elements of the offense, making it constitutionally infirm. There is "no evidence" of the crime ever happening.

This devoid record can be found under Case #18CR-0273

REASONS FOR GRANTING THE PETITION

Claim:

Petitioner is in the states custody in violation of the Due Process Clause of the 14th Amendment of the U.S Constitution.

A conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm. The "no evidence" doctrine thus secures to an accused the most elemental of due process rights: freedom from a wholly arbitrary deprivation of liberty. ***Jackson v. Virginia, 443 U.S 307***

Facts underlying claim:

Petitioners conviction is based upon a record wholly devoid of any relevant evidence of the crucial element of an Enterprise. An Enterprise is defined in **2923.31(c)** as a group of people associated in fact. Petitioner is the only person on the case. No co-defendants, co-conspirators or legal entities. The state doesn't even allege there to be anyone associated to Toliver. There is "no evidence" of the crime ever happening. There isn't even a "mere modicum" of evidence on record of this crime occurring.

This entire case is reliant on the prosecutor's statement in the bill of information, which also negates the existence of a group of people associated in fact. Even still the Supreme court of Ohio has made it clear that "a statement of facts by the prosecutor does not constitute evidence" ***State v Wooldridge, 2000 Ohio App HN5***. *Case #18CR-0273*

Argument

It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process. These standards no more than reflect a broader premise that has never been doubted in our constitutional system. The Rico laws are clear in its requirements for conviction. There is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact. ***United States v. Turkette, 452 U.S. 576***

With Toliver being the only person on the case, with no evidence of or alleged association to anyone or anything other than himself, he has been convicted of a charge not made which is a sheer denial of due process. Just as a conviction upon a charge not made would be sheer denial of due process, so is it a violation of due process to convict and punish a man without evidence of his guilt. ***Thompson v. Louisville, 362 U.S 199*** This is the "exceptional & rare" circumstance because the record shows that Toliver has been convicted of a crime not made. A one person illicit Rico.

Now, with this conviction being based upon a record wholly devoid of any relevant evidence of the crucial element of an enterprise, Toliver is in the states custody in violation of the Due Process Clause of 14th amendment of the Constitution & should be immediately released. The 2241 petition is the correct remedy for this custody claim, pursuant to ***28 u.s.c.s 2241(c)(3)***. The writ of habeas corpus shall not extend to a prisoner unless— (3) He is in custody in violation of the Constitution or laws or treaties of the United States.

On April 28, 2023 the honorable sixth circuit held in ***United States v. Lovelace US APP 10451*** To reverse under the proper manifest-injustice standard, the record must be devoid of evidence pointing to guilt. "we only reverse a conviction if the record in the case is devoid of evidence pointing to guilt. Again, with the record here in the case at hand being devoid of any evidence pointing to guilt, this case should be vacated & petitioner should be released. This conviction is not only constitutionally infirm but there has been a huge & obvious miscarriage of justice.

Petitioner has exhausted all state court remedies. In each appeal petitioner has held that there is no evidence of an enterprise, licit nor illicit. Petitioner has argued this claim by way of his plea being unintelligently made, a miscarriage of justice & that he is actually innocent of the crime charged. But each state & federal court except this honorable Supreme Court has completely avoided petitioners claim or has made decisions that are unreasonable. *See* ***Toliver v. Forshey, 2022 U.S. Dist. LEXIS 4585***

Now in ***Waucaush v. United States, 380 F.3d 251 HN5*** the federal court held that In rebutting a claim of actual innocence in a defendant's challenge to the voluntariness and intelligence of a guilty plea, the government is permitted to present any admissible evidence of a defendant's guilt. Not only has the government never presenting any evidence of Tolivers guilt but they have never even alleged or said petitioner was in fact associated with an enterprise. The government has completely evaded this standard in all of Toliver's state & federal appeals/petitions. *See* ***Toliver v. Forshey, 2022 U.S. Dist. LEXIS 4585***

A plea is constitutionally unintelligent if the record reveals that neither a defendant, nor his counsel, nor the court correctly understood the essential elements of the crime with which he was charged. The record in ***18CRr-0273*** does exactly that with their actually being "no evidence" of the crime ever occurring.

Just like Waucaush, Toliver did in fact enter a plea of guilt. But The court in ***State v. Bibler, 2014-Ohio-3375*** held that the trial court cannot sentence a defendant upon the acceptance of a guilty plea to fewer than all of the elements of the offense. Thus, ***Crim.R. 11*** does not permit a guilty plea to fewer than all of the elements of an offense and is not in conflict with R.C. 2943.03. The Judge in this case did exactly that. There is no evidence of the most essential element of an Enterprise. This is a one man illicit Rico conviction. The first in U.S History. Athens, Ohio has essentially created their one version of the Rico Act. This is a crime not made.

The ends of justice allow a court to excuse state procedural defaults, abuses of the writ, and successive claims when consideration is necessary to prevent a fundamental miscarriage of justice, and when the petitioner has made a colorable showing of factual innocence. ***Burger v. Zant, 984 F.2d 1129*** Here lies both. A miscarriage of justice which was explained above & factual innocence. With the record being devoid of evidence pointing to guilt, where there is "no evidence" of the crime ever occurring, petitioner has made of colorable showing of factual innocence.

The Federal court held in ***Waucaush v. United States, 380 f.3d 251*** "waucaush was actually innocent & entitled to bring the otherwise defaulted challenge to his plea, only if the

entire record before us fails to demonstrate that he violated the RICO" , Waucaush is actually innocent of violating RICO. His actual innocence excuses his failure to challenge his plea on direct appeal, such that we may consider the challenge now.

The record before these courts does just that. It completely fails to demonstrate Toliver or anybody else violated the RICO laws where there is not even a "mere modicum" of evidence in the record. The United States Supreme court vacated waucaushs sentence where his conduct did not constitute the enterprise element in which he was charged. Now with Toliver being in the same situation, but far worse, dealing with a wholly devoid record, he is entitled to relief as well. For ***Waucaush v. United States, 380 f.3d 251*** is precedent of the Supreme court.

With there being "no evidence" of this crime ever occurring prosecution was malicious, the judge abused his discretion & private counsel was completely ineffective. All three conspired to violate the Tolivers 14th amendment right to due process. This wrongdoing by the state not only violates the constitution but it rises to the level of slavery.

The province and scope of U.S. Const. amend. XIII and XIV are different; the former simply abolished slavery, while the latter prohibited states from abridging the privileges or immunities of citizens of the United States, from depriving them of life, liberty, or property without due process of law, and from denying to any the equal protection of the laws. The amendments are different, and the powers of Congress under them are different. Under U.S. Const. amend. XIII, the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by state legislation or not; under U.S. Const. amend.

XIV, Congress' legislation must necessarily be corrective in its character, addressed to counteract and afford relief against state regulations or proceedings. ***United States v. Stanley, 109 U.S. 3.*** This is a Historical situation because the State of Ohio & the City of Athens have decided they are above Congress & the U.S constitution & have brought back slavery.

REASON APPLICATION IS NOT IN THE DISTRICT COURT:

Petitioner is bringing this 28 USCS §2241 petition to this court because the District court & the Sixth Circuit have both declined to entertain petitioners 2241 petition, even with petitioner proving to be in Custody in Violation of the 14th Amendment of the Constitution.

"A district court (shall) entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States" ***Magwood v. Patterson, 561 U.S. 320, Huber v. Green, 2023 U.S. Dist. 28. U.S.C.S.*** § 2241 permits district courts to grant habeas relief for petitioners held in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C.S. § 2241(c)(3). Sills v. FCI Talladega Warden, 2023 U.S. App.

Instead of entertaining the claim as the law requires for a claim of being "In custody in violation of the constitution", the district court avoided the claim & transferred the petition to the sixth circuit as a 2254 successive petition. According to the Black's Law dictionary 11th Edition "Shall" means has a duty to; more broadly, is required to. So with this, the District Judge had a duty to & was required to entertain petitioners 2241 petition where he claimed to be "in custody in violation of the constitution".

Not only did the District court decline to entertain petitioners 2241 petition, it was not filed as a 2241 petition but was changed & transferred as a 2254 Second or successive petition. The district judge states "it may seem a useless exercise to make transfer when the circuit court has recently denied permission to proceed" See *Case# 23-3922*

Now, without adjudicating or reaching the merits of petitioners claim, It was made clear by the Sixth Circuit that petitioners claim of being "in custody in violation of the constitution" due to a "wholly devoid record" does not fit the requirements for 2254 second or successive petition. ***See In re Toliver, 2023 U.S. App. LEXIS 27483*** *case# 23-3514*. Attempting to evade petitioners claim of being "in custody in violation of the constitution", the Sixth circuit actually changed the claim into the facts underlying the claim stating that a wholly devoid record does not govern the petition.

But a claim of being in "custody in violation of the constitution" in fact does govern a second or successive petition under 2254(a). The U.S supreme court held in ***Abdur'Rahman v. Bell, 537 U.S. 88*** "In sum, a 'second or successive' habeas corpus petition, like all habeas corpus petitions, is meant to remedy constitutional violations"

With the District & the Sixth Circuit declining to entertain or adjudicate the claim, they are essentially foreclosing a claim of being in custody In violation of the constitution. With this, adequate relief cannot be obtained in any other form or from any other court except the United States Supreme court. This is in its entirety an "exceptional circumstance". On one end you have a U.S citizen proving to be in custody in violation of the constitution & on the other you have State & federal courts who have a duty to uphold the law avoiding the 14th

Amendment of the constitution, with a wholly devoid record in front of them. Blatantly justifying slavery at its core. A transfer back to the District court will only allow the District court to continue to avoid a claim of being "in custody in violation the U.S Constitution" & justify a blatant miscarriage of justice.

So instead of filing "second" second or successive petition, petitioner is seeking the relief he is entitled to by this court. 28 U.S.C.S 2241 (a) Writs of habeas corpus may be granted by the Supreme Court.

This case supports the "exceptional circumstance" that warrants the exercise of the United States Supreme Court's discretionary powers because Toliver has proven to be " in the states custody in violation of the Due Process Clause of the 14th amendment of the Constitution where his conviction is based upon a record wholly devoid of any evidence of the offense charged. A crime not made.

This case is in desperate need of the Supreme Courts voice where the state & the federal courts have never adjudicated any of petitioners claims. This case has never been disposed of as "law & Fact" require. Without the Supreme Courts voice, the courts are able & will continue to avoid petitioners' proven claim of being in custody in violation of the constitution, keeping him restrained of his freedom & liberty in violation of our great Constitution. Petitioner has exhausted all state court remedies & all the rulings have resulted in decisions that are contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

Standard for Review

A federal court, under 28 USCS 2241, is limited to deciding whether a state conviction violated the Constitution, laws, or treaties of the United States. *Estelle v. McGuire, 502 U.S. 62* In waucaush the Supreme court held, "we must look at all the evidence in the record, and determine whether--as a matter of law--the Government could establish that Waucaush violated the RICO [**6] statute". ***Waucaush v. United States, 380 f.3d 251***

With petitioner claiming to be in custody in violation of the U.S constitution due to a record that is devoid of any relevant evidence of a crucial element of the offense charged, this court must look to the record & determine if the record is in fact devoid or not. Habeas petitioners are entitled to relief if they can show that no rational trier of fact could have found proof of guilt beyond a reasonable doubt. The U.S. Court of Appeals for the Sixth Circuit has applied the *Jackson v. Virginia* standard to preserved insufficient-evidence challenges.

Conclusion

Toliver is in the states custody in violation of the Due Process Clause of the 14th amendment of the United States Constitution, where this conviction is In fact based on upon a record devoid of any relevant evidence of the offense charged. 28 U.S.C.S. § 2241 power to grant (a) specifies that the Supreme Court may grant writs of habeas corpus. This 2241 is a sufficient vehicle to bring this custody claim. Petitioner is entitled to relief under the provisions given in 2241(c)(3) & 2254(a). Petitioner is asking this honorable Supreme court to vacate this unconstitutional conviction & that he be immediately released from the states custody.

Accordingly, we held in the Thompson case that a conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm. See also *Vachon v. New Hampshire, 414 U.S. 478; Adderley v. Florida, 385 U.S. 39; Gregory v. Chicago, 394 U.S. 111; Douglas v. Buder, 412 U.S. 430.* The "no evidence" doctrine of ***Thompson v. Louisville*** thus secures to an accused the most elemental of due process rights: freedom from a wholly arbitrary deprivation of liberty. The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt.

Toliver has demonstrated "exceptional circumstances" justifying issuance of writ of Habeas Corpus & has satisfied the Prerequisites for granting relief. Habeas is at its core a remedy for unlawful executive detention. No rational trier of fact could have found proof of guilt beyond a reasonable doubt where there is "no evidence" of the crime charged ever occurring in the record. The typical remedy for such detention is, of course, release. The traditional function of the writ is to secure release from illegal custody. Petitioner has been illegally restrained and of his freedom & liberty by the State of Ohio for Six years to date & will continue to do so without the voice of this honorable Supreme Court. A transfer back to the District court will only allow the District court & the State of Ohio to continue to avoid a claim of being "in custody in violation the U.S Constitution" & justify a blatant miscarriage of justice.

This petition for Writ of habeas corpus should be granted

Respectfully Submitted,

_____ Date : MARCH, 10, 2024