

No. 23-7767

ORIGINAL

FILED
JUN 11 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

In Re: Jogaak Jogaak — PETITIONER
(Your Name)

vs.

— RESPONDENT(S)

Habeas Corpus
ON PETITION FOR A WRIT OF CERTIORARI TO

The South Dakota Supreme Court

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

Habeas Corpus
PETITION FOR WRIT OF CERTIORARI

Jogaak Deny Jogaak
(Your Name)

1600 North Drive
(Address)

Sioux Falls, SD, 57117
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Is a hairline fracture of the tibia a
serious bodily injury as defined in
South Dakota Codified Law
22-1-2 (44A)?

Does 18 U.S.C. § 1365 govern
what is a serious or simple bodily
injury?

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:

RELATED CASES

4:21-cv-04023

Appellate Case: 22-2751

4:22-cv-04100

Appellate Case: 21-3698

Appellate Case: 23-1129

Supreme Court of South Dakota # 30293

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CASES

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STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
Habeas Corpus
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[] is unpublished.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[] is unpublished.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 A to the petition and is

[] reported at #30293; 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[] is unpublished.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[] is unpublished.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 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 04/03/2023.
A copy of that decision appears at Appendix A.

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 Application No. ____ A _____.

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

2254(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

8th Amendment of the U.S. Constitution

6th Amendment of the U.S. Constitution

SDCL 22-1-2 (44A)

18 U.S.C. § 1365

STATEMENT OF THE CASE

My right to be free from cruel and unusual punishment found in the Eighth Amendment of the U.S. Constitution, applied to the States via the Fourteenth Amendment Due Process Clause was violated.

My right to be free from cruel and unusual punishment was violated because the conviction and sentence imposed by the Judge was unconstitutional and excessive in light of circumstances of my case.

I accidentally caused a tibial plateau fracture (hairline fracture). According to the Criminal Defense Techniques which is a secondary source of the Lexis Nexis legal application, a tibial plateau fracture is defined as a simple injury.

In chapter 67C "Forensic Evidence in Death, Rape and Assault Cases", § 67C.07

"Blunt Force Injuries" [z] [d], A fracture is defined as a traumatic break in the continuity of a bone.

Fractures showing a single break are called simple. If the bone shows multiple fragmentation, the fracture is comminuted. Simple fractures may be very thin "linear", incomplete, or complete "transecting". Closed fractures are completely covered by the skin, while fractures communicating with the outside are classified as being open or compound.

My indication is based on the foregoing technicalities, the fracture caused by the victim being accidentally pushed to the floor by the door is not a minor injury, or a grave injury but is instead ordinary. Therefore the injury suffered is not a grave injury "Significantly serious", but is trivial "ordinary" or of "Common degree". There was no communication with the

My right to effective assistance of counsel found in the Sixth Amendment of the U.S. Constitution, applied to the States via the Fourteenth Amendment Due Process Clause was violated.

The uncalled witness would of testified in my defense, the testimony would of been favorable, and the testimony would of changed the outcome of the trial.

My right to effective assistance of counsel was violated because my attorney "Mr. Ryan Duffy" failed to call an expert witness "Orthopedist", and failed to thoroughly investigate my case by failing to review exculpatory evidence. "Police reports" and "medical reports".

I respectfully request the court to Subpoena a Orthopedist to be examined at an evidentiary hearing. A orthopedist is a specialist who deals with Orthopedics. Orthopedics is the branch of medicine that deals with injuries or disorders of the Skeletal System.

An Orthopedist testimony is admissible under Rule 702 of the Federal Rules of Evidence due to the following; the scientific knowledge will help to determine the fact in issue, the testimony will be based on sufficient facts "Orthopedics", the testimony will be the product of reliable principles and methods." being the science and art of medicine, and an Orthopedist will have reliably applied the principles and methods to the facts of the case due to the injury suffered being of the skeletal System.

My attorney's representation fell below an objective standard of reasonableness by not calling an expert orthopedist. My attorney's unreasonable deficiency prejudice the defense and caused the judgment to be guilty. If it wasn't for the error of not calling an Orthopedist to testify, the judge would have had a reasonable doubt respecting guilt.

REASONS FOR GRANTING THE PETITION

My case is in aid of the courts appellate jurisdiction because the court has the power to hear and determine this case, and to correct and revise the judgment of the district court.

The reason for not making an application to the district court is I already have applied for habeas in the U.S. District Court.

The writ is authorized under 28 U.S.C. § 2254 due to me being in custody in violation of the U.S. Constitution, and sentenced in violation of the U.S. Constitution.

Exceptional circumstances exist; exceptional circumstances warrant the exercise of the Courts discretionary Powers, these circumstances are actual innocence and coerced confession, I was coerced into confession, I pled no contest due to the pressure by fear and threat of a long term sentence with promise of benefit from cap of 5 year offer.

I've been pursuing my rights diligently and the interest of justice will be better served. My petition demonstrates that denial of stay will cause irreparable harm, due to no other relief being available because of me filing writs for habeas corpus in all state courts and federal courts. The reason for not making an application to the district court is I already have filed in the district court.

The 1 year time limitation is not a jurisdictional bar, the time limit is subject to equitable tolling.

I lacked notice of the filing deadline initially.

I've been pursuing my rights diligently; the diligence required for equitable tolling purposes in a habeas case is "reasonable diligence" not "maximum feasible diligence."

I'm actually innocent and the interest of justice would be better served by addressing the merits of this particular habeas corpus case.

Equitable jurisdiction is a system of justice designed to supplement the common law by taking action in a reasonable and fair manner which results in a just outcome. It's based on a set of legal principles, namely Equity for achieving natural justice. In English law, natural justice is technical terminology for the rule against bias and the right to a fair hearing "Audi alteram partem" and "Nemo iudex in causa sua".

Natural justice is the "duty to act fairly".

It would be fair to grant this habeas corpus.

In view of the foregoing facts the court should fairly award this writ, in light of the duty to act fairly. Wherefore, I the petitioner respectfully request that the court grant me the relief to which I may be entitled in this proceeding.

CONCLUSION

Habeas Corpus
The petition for a writ of ~~certiorari~~ should be granted. If the court should not grant this writ, I respectfully request this application to be transferred to the District Court of South Dakota.

Respectfully submitted,
Jogak Jogak

Date: June 6 2024

Appendix A