

No. 24-100

IN THE
Supreme Court of the United States

DOUG ALAN DYSON,

Petitioner,

v.

TIFFANY DEAKINS,
WHITLEY COUNTY AUDITOR, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF INDIANA

**BRIEF FOR TIFFANY DEAKINS,
WHITLEY COUNTY AUDITOR, ET AL.,
IN OPPOSITION**

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QUESTIONS PRESENTED

1. Whether the trial court violated the organic law and constitutional provisions to supplant its orders superseding my rights to a judicial proceeding according to the course of the common law and a jury of my peers secured by the conditions stated in the 1816 Enabling Act, passed at the First Session of the Fourteenth Congress of the United States, U.S. Statutes at Large III, 289-291.
2. Whether the trial court deprived me of liberty and property, without just compensation and due process of law under the Fifth Amendment resulting in an unlawful taking.
3. Whether the trial court had subject matter jurisdiction absent determining liability under Ind. Code § 6-1.1-2-4 as it relates to U.S. Const. Art. I, § 8, cl. 3 of my fee simple absolute ownership private property held in conventional ownership for my personal use.
4. Whether Whitley County Auditor is bound by oath and law to make proper tax identification under Ind. Code § 36-2-9-18 (App.47a-48a) upon demand with the payment of the stated fee.

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OPINIONS BELOW

The opinion of the Indiana Supreme Court is unreported. The opinion of the Indiana Court of Appeals is unreported. The opinion of the Whitley County Circuit Court is unreported.

JURISDICTION

Petitioner has invoked jurisdiction of this Court under:

1. U.S. Constitution Art. III §2;
2. 28 U.S.C. §1257(a);
3. 28 U.S.C. §1651;
4. United States Supreme Court Rule 20; and
5. U.S. Constitution Art. VI.

STATEMENT

The Petition arises out of the Petitioner's refusal to pay property taxes. On September 18, 2023, the Whitley County Auditor and the Whitley County Treasurer, in their official capacity, filed their Joint Application for Judgment and Order of Sale under Cause No. 92C01-2309-TS-864 for Petitioner's property commonly known as 3630 E. State Road 14, Columbia City, Indiana 46725 ("Petitioner's Property") due to Petitioner's failure to pay property taxes. Pet App. 18a. The Court granted the application on September 18, 2023 ordering Petitioner's Property to be sold and that the proceeds be used to satisfy the amount of delinquent property taxes.

On September 8, 2023, Petitioner filed his “Affidavit of Formal Complaint and Defense” objecting to the tax sale of his property on the basis that Petitioner’s Property is not subject to taxation. Pet. Ap. 27a. On September 26, 2023, the Court held a hearing pursuant to Ind. Code 6-1.1-24-4.7 and issued an Order finding Petitioner’s objection to the tax sale invalid. Pet. Ap. 7a. Following the Court’s September 26, 2023 Order, Petitioner filed an “Affidavit of Fact to Take Judicial Notice” requesting Whitley County Circuit Court Judge, Judge Matthew Rentschler take judicial notice of the U.S. Department of Justice, Civil Rights Division’s website discussing the “Deprivation of Rights Under Color of Law” and arguing the Whitley County Auditor’s attempt to collect property taxes on Petitioner’s Property was unlawful. On September 26, 2023, Petitioner filed a “Motion to Set a Hearing for the Filed Affidavit of Fact to Take Judicial Notice”. On October 24, 2023, Petitioner filed “Motions to Correct the Errors upon the record, to set aside the Judgment for Tax Sale, and to find the facts specially and state its conclusions of law thereon” requesting the Whitley County Circuit Court to set aside the Court’s September 18, 2023 Order ordering the tax sale. On October 27, 2023. The Whitley County Circuit Court denied Petitioner’s “Motions to Correct the Errors upon the record, to set aside the Judgment for Tax Sale, and to find the facts specially and state its conclusions of law thereon”.

In addition to filing the “Affidavit of Formal Complaint and Defense” under cause number 92C01-2309-TS-864, Petitioner also opened a new matter and filed the “Affidavit of Formal Complaint and Defense” under cause number 92C01-2309-MI-824. On October 25, 2023, Respondents filed a Motion to Dismiss Petitioner’s “Affidavit of Formal

Complaint and Defense” under Ind. Trial Rule 12(B)(6) arguing Petitioner failed to state a claim for which relief can be granted. Ap. 1a. The Whitley County Circuit Court granted Respondent’s Motion to Dismiss on October 26, 2023. Pet. Ap. 5a.

On November 25, 2023, Petitioner filed his Notice of Appeal in the Indiana Court of Appeals seeking review of both 92C01-2309-TS-864 and 92C01-2309-MI-824. On January 9, 2024, Petitioner filed his Brief of Appellant. On February 7, 2024, Respondents filed their Motion to Dismiss on the grounds that Petitioner violated the Indiana Rules of Appellate Procedure and failed to present a cogent argument, which the Indiana Court of Appeals granted on March 4, 2024. Pet. Ap. 3a. On March 6, 2024, Petitioner filed a Motion to Reconsider, which the Indiana Court of Appeals denied on March 19, 2024. Pet. Ap. 9a.

On April 8, 2024, Petitioner filed a Petition to Transfer to the Indiana Supreme Court, which the Indiana Supreme Court denied on June 19, 2024. Pet. Ap. 1a. The Petition for Writ of Certiorari followed on July 25, 2024.

REASONS FOR DENYING THE PETITION

1. The Court Does Not Have Jurisdiction Over the Questions Presented.

The Court lacks jurisdiction over the Petition for Writ of Certiorari. Petitioner has asserted the following five grounds for jurisdiction:

1. U.S. Constitution Art. III §2;

2. 28 U.S.C. §1257(a);
3. 28 U.S.C. §1651;
4. United States Supreme Court Rule 20; and
5. U.S. Constitution Art. VI.

However, none of the stated grounds confer jurisdiction on the Court.

First, Art. III §2 of the United States Constitution provides that the federal courts have jurisdiction over cases arising from federal laws; however, the United States Supreme Court only has appellate jurisdiction as set forth by laws enacted by Congress. Therefore, Art. III §2 of the United States Constitution does not confer appellate jurisdiction on its own. Petitioner fails to identify the specific federal law that confers appellate jurisdiction on this Court over the Questions Presented.

Second, 28 U.S.C. §1257(a) provides the United States Supreme Court has appellate jurisdiction over final judgments or decrees by the highest court of a State if the decision involved the validity of a treaty or statutes of the United States or the validity of a state statute is drawn into question for being repugnant to federal law or involving a title, right or privilege, set up by the constitution. In this matter, the Indiana Supreme Court did not issue a final judgment or decree regarding Petitioner's substantive rights. Rather, the Indiana Supreme Court declined to reconsider the intermediate appellate court's dismissal of Petitioner's appeal for failing to comply with the appellate court's procedural rules. Therefore, there is no

final judgment of the highest Court of Indiana involving a requisite issue, so 28 U.S.C. §1257(a) does not confer appellate jurisdiction on this Court over the Questions Presented.

Third, 28 U.S.C. §1651 provides the United States Supreme Court may issue all writs necessary or appropriate in aid of its respective jurisdiction and agreeable to the usages and principles of law. On its face, the language of 28 U.S.C. §1651 provides the United States Supreme Court authority to issue all writs necessary or appropriate in aid of its respective jurisdiction, but it does not confer additional jurisdiction on the United States Supreme Court. Therefore, without another mechanism actually providing the Court with appellate jurisdiction over the Petition for Writ of Certiorari, 28 U.S.C. §1651 does not confer jurisdiction on this Court over the Questions Presented.

Fourth, Rule 20 of the Rules of the United States Supreme Court sets forth the procedure for issuance by the Court of an extraordinary writ by 28 U.S.C. §1651 stating the issuance should be “*sparingly exercised*.” Sup. Ct. R. 20. However, Rule 20 cannot be reasonably interpreted to confer any jurisdiction on the Court as the rule is entirely procedural.

Finally, it is entirely unclear how “binding the Justices of their oath’s by U.S. Const. Art. VI to support the Constitution” confers jurisdiction on this Court over the Questions Presented or any other matter.

For the reasons set forth above, the *only* ground for jurisdiction that Petitioner invoked that is even fathomably

applicable is 28 U.S.C. §1651. However, even assuming jurisdiction can be invoked by 28 U.S.C. §1651, Petitioner fails to demonstrate why this is an instance when 28 U.S.C. §1651 should be “sparingly exercised.” Without a demonstration as to why jurisdiction should be granted under 28 U.S.C. §1651, the Court does not have jurisdiction over the Petition for Writ of Certiorari and it should be denied.

2. Petitioner Fails to Present Compelling Reason for Review.

Even if the Court were to find Petitioner set forth a viable basis for jurisdiction, the Petition for Writ of Certiorari should be denied because none of the Questions Presented are certworthy. As explained by Supreme Court Rule 10, “[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion. Sup. Ct. R. 10. A petition for writ of certiorari will be granted only for compelling reasons.” Rule 10 provides examples of compelling reasons which include:

1. When there is a split among circuit courts.

Petitioner has not presented a question for review that demonstrates a split among circuit courts.

2. When there is a difference in decisions by a circuit and the highest court of a state.

Petitioner has not presented a question for review that there are different decisions between a circuit court and the Indiana Supreme Court.

3. When the highest court of a state is deciding an important question of federal law in a way that conflicts with the highest court of another state or with a circuit court.

Petitioner has not presented a question for review involving the Indiana Supreme Court deciding an important question of federal law.

4. When the highest court of a state or a circuit court has decided a federal question, that has not been, but should be settled by the United States Supreme Court, or when the highest court of a state or a circuit court have decided a federal question that conflicts with relevant decisions of the Supreme Court.

Again, Petitioner has not presented a question for review involving the Indiana Supreme Court deciding an important question of federal law.

Instead of presenting a question for review that involves a split in decisions or an important question of federal law, Petitioner's Questions Presented seek the Court to review a state trial court's application of law and a state auditor's application of state law. None of the Questions Presented ask the Court to interpret an important question of federal law. In fact, the Indiana Supreme Court has not even issued a substantive ruling in this matter. Rather, the Indiana Supreme Court denied the Petitioner's Petition to Transfer the Indiana Court of Appeal's Order of Dismissal dismissing his appeal on procedural grounds. The only court that has issued a substantive decision regarding this matter is the Whitley County Circuit Court. Therefore, Petitioner fails to

provide a compelling reason for review, and the Petition for Writ of Certiorari should be denied.

3. Petitioner Fails to Present Points Requiring Reconsideration with Accuracy, Brevity, and Clarity.

The Petition for Writ of Certiorari should be denied because Petitioner failed to present the points requiring reconsideration with accuracy, brevity, or clarity. Supreme Court Rule 15.4 states “[t]he failure of petitioner to present with accuracy, brevity, and clarity whatever is essential to the ready and adequate understanding of the points requiring consideration is a sufficient reason to deny a petition.” Sup. Ct. R. 15.4. The Petition for Writ of Certiorari can hardly be described as accurate, brief, or clear and in contrast, is largely incoherent drawing upon sources such as the Magna Carta and the Northwest Ordinance of 1787. Similar to Supreme Court Rule 15.4, Indiana case law is well established that the failure of an appellant to make a cogent argument is treated as a waiver of the argument. *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016). In fact, one of the reasons the Indiana Court of Appeals dismissed Petitioner’s Appellant’s Brief was due to his failure to make a cogent argument. Pet. Ap. 3a. Like Petitioner’s Appellant’s Brief filed with the Indiana Court of Appeals, the Petition for Writ of Certiorari is largely incoherent. Because Petitioner failed to present the points requiring reconsideration with accuracy, brevity, or clarity, the Petition for Writ of Certiorari should be denied.

4. Petitioner's Arguments are Substantively Without Merit.

It is well settled that states have the right to tax real property. *See, e.g., Nashville C. & St. L. Ry. v. Browning*, 310 U.S. 362, 368 (1940). Yet at the heart of all four of Petitioner's Questions Presented is one issue – whether Whitley County can lawfully tax Petitioner's Property. It is Petitioner's position that Petitioner's Property is tax exempt. Therefore, Petitioner argues that Whitley County subjecting his property to a tax sale is an unlawful taking in violation of his Fifth Amendment Rights.

However, Plaintiff's argument is without merit because Plaintiff's property is not tax exempt. Under Indiana law, it is clear that tangible property located within Indiana is subject to taxation unless otherwise provided by law. Ind. Code. § 6-1.1-2-2. Further, Indiana law explicitly defines tangible property to include real property. Ind. Code. § 6-1.1-1-19. Therefore, unless otherwise provided by law, the Property is subject to taxation.

Petitioner argues Petitioner's Property is tax exempt for two reasons. First Petitioner argues Petitioner's Property is tax exempt because the Property is not encumbered by a mortgage, is not the subject of a lease, and is not the subject of an installment contract. However, whether property is encumbered by a mortgage, is the subject of a lease, or is the subject of an installment contract has no bearing on its tax status.

Second, Petitioner argues that the Property is "zip exempt," so it lacks tax-situs as it is outside the jurisdiction

of the state and it cannot be taxed. However, this argument has no legal basis. Therefore, Petitioner failed to state any facts to support his claim that Petitioner's Property is tax exempt.

Finally, the Court has previously considered Petitioner's argument that taxation violates the due process clause of the Fifth Amendment and held "it is . . . well settled that [the Fifth Amendment] is not a limitation upon the taxing power conferred upon Congress by the Constitution . . ." *Brushaber v. Union Pac. R. Co.*, 240 U.S. 1, 24 (1916).

Therefore, Petitioner's Property is clearly subject to taxation in Indiana. For these reasons, further review is not warranted.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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**APPENDIX — MOTION OF THE WHITLEY
CIRCUIT COURT, WHITLEY COUNTY, INDIANA,
FILED OCTOBER 24, 2023**

IN THE WHITLEY CIRCUIT COURT,
STATE OF INDIANA, COUNTY OF WHITLEY

CAUSE NO.: 92C01-2309-MI-824

DOUGLAS ALAN DYSON,

Plaintiff,

vs.

WHITLEY COUNTY AUDITOR,
TIFFANY DEAKINS,

Defendant.

Filed October 24, 2023

MOTION TO DISMISS

Comes now Defendant, Whitley County Auditor, Tiffany Deakins (“Deakins”), by counsel, pursuant to Rule 12(b)(6) of the Indiana Rules of Trial Procedure, and respectfully requests the Court dismiss Plaintiff’s Complaint, and in support thereof, alleges and states as follows:

1. Under Indiana law, all real property within the jurisdiction of Indiana is subject to taxation unless otherwise exempt. Ind. Code § 6-1.1-2-1.

Appendix

2. Plaintiff claims the property he owns at 3630 East State Road, Columbia City, Indiana 46725 (the “Property”) is tax exempt; however, Plaintiff fails to plead any facts to support his claim the Property is tax exempt.

3. Therefore, the Court should dismiss of Plaintiff’s Complaint pursuant to Rule 12(b)(6) of the Indiana Rules of Trial Procedure.

4. Additionally, in Plaintiff’s Complaint, Plaintiff names Deakins individually.

5. It is well established under Indiana law that government employees are immune from liability for the performance of discretionary functions. Ind. Code § 34-23-3-3(a)(7).

6. Deakins’ initiation of the tax sale on the Property is clearly within Deakins’ discretion as the Whitley County Auditor.

7. Therefore, Deakins is immune for her decision to initiate the tax sale on the Property.

8. As Plaintiff fails to assert Deakins violated his rights in any other way, Plaintiff fails to state a claim for which relief can be granted against Deakins, and the Court should dismiss Plaintiff’s Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

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Appendix

WHEREFORE, Defendant, Whitley County Auditor, Tiffany Deakins, by counsel, respectfully requests that the Court dismiss Plaintiff's Complaint and for all other just and proper relief in the premises.

Respectfully submitted,

/s/ Amanda C. Delekta

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