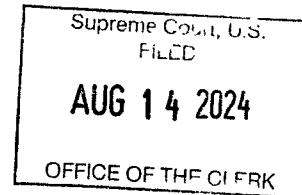


No. 24-5357

24-5357

IN THE

SUPREME COURT OF THE UNITED STATES



PETER MULE' - PETITIONER

vs.

TIM HOOPER, WARDEN, LSP-- RESPONDENT(S)

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT, No. 24-30140: FRCVP 60(b)(4);

PETER MULE' 73082

MAG -1 LOUISIANA STATE PENITENTIARY

ANGOLA, LA 70712

QUESTION(S) PRESENTED

When a Court lacks jurisdiction of the cause and action, or exercises improper jurisdiction, is the judgment void FRCVP 60(b)(4)?

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:

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OPINIONS BELOW

For cases from federal courts:

United States Court of Appeal, Fifth Circuit, June 3, 2024, ORDER, Judge Irma Carrillo Ramirez; No. 24-30140:

June 12, 2024, UNPUBLISHED ORDER, Before CLEMENT, ENGELHART, and RAMIREZ, Circuit Judges. Rehearing/Reconsideration Denied;

February 28, 2024, Order, U.S.W.D., La. # 6:98-cv-01924

March 11, 2024, Order, U.S. W.D., La. # 6:98-cv-01924

August 3, 2000, Opinion, PER CURIAM, U.S. 5th Cir., No. 99-31064:

April 26, 2002, Opinion, Affirmed, U.S. 5th Cir., No. 01-31425:

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 _____; 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 is unpublished.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 is unpublished.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 June 3, 2024.

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: June 12, 2024, and a copy of the order denying rehearing appears at Appendix D.

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); and Supreme Court Rule 10(C).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. 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 Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment Five, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury'...!...nor be deprived of life, liberty or property, without due process of law..."

United States Constitution Amendment Fourteen, "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Federal Rule of Civil Procedure Rule 60 (b)(4), "the judgment is void":

La. Const. Article 1 section 2, (1921), "...Prosecution shall be by indictment or information."; Cf. La. Const. Article 1 § 15 (1974); See La. Const. Article 1 § 10 (1921), "... in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation against him..."; Cf. La. Const. Article 1 § 13 (1974); U.S. Const. Amendments 5, 6, and 14. Cf. La. C.Cr.P. Articles 381-483; La. Const. Article 1 § 2 "Due Process" (1921,1974); La. Const. Article 1 § 3 "Right to Individual Dignity" (1974).

STATEMENT OF THE CASE

Petitioner Peter Frank Mule' and three co-defendants were indicted by a Louisiana, Orleans Parish grand jury on April 28, 1971 to the charge of murder. LSA R.S. 14:30. A mistrial occurred in Orleans Parish, thereafter venue transferred to the Fifteenth Judicial District Court, Parish of Lafayette, Louisiana: Guilty was the verdict and the 1st judgment was rendered on March 21, 1972, and a second judgment that is questionable was rendered on January 7, 1974. Petitioners raised objections to the grand jury procedure before trial and throughout all State and Federal appeals.

Petitioner, Peter Frank Mule', began another round of Judicial pleadings in the struggle to obtain his liberty. On February 15, 2024 Petitioner filed a Federal Rule 60(b)(4) Motion contesting the subject-matter jurisdiction of the cause and action, and the person. Accordingly, State v. Dilosa, 848 So.2d 546, ("grand jury procedures for Orleans Parish were unconstitutional local laws.") (La. 6/27/03). The U.S.W.D. of Louisiana, February 28, 2024, denied the 60(b)4) motion as a FRCVP 59(e) motion. Petitioner filed a FRCVP (60(b)(1) motion for changing the context of the 60(b)(4) motion. On March 11, 2024, the District Judge denied the 60(b)(1) and 60(b)(4) motions as frivolous and without merit. On March 8, 2024 the District Court denied COA. June 3, 2024 the United States Court of Appeals, Fifth Circuit, denied COA as an unauthorized successive § 2254 claim, and June 12, 2024 denied Petitioner Rehearing/Reconsideration, No. 24-30140:

REASONS FOR GRANTING THE PETITION

Petitioner's case presents the occasion to engage in such an inquiry or to define the precise circumstance in which a jurisdictional error will render a judgment void; C.f. United Student Aid Funds v. Espinosa, 130 S.Ct. 1367 (2010) at (16); In a criminal case, Rule 60(b)(4).

In U.S. v. Cotton, 122 S.Ct. 1781 (2002), overruling Bain, at (3)(4), "Bain's elastic concept of jurisdiction is not what the term "jurisdiction" means today, i.e. "the courts statutory or constitutional power to adjudicate the case." Steel Co. v. Citizens for better Environment, 523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998). This latter concept of subject-matter jurisdiction, because it involves a Court's power to hear a case can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in the district court.

In Ex parte Royall, 6 S.Ct. 734 (1886) it was said: "... it is clear that if the local statute under which Royall was indicted be repugnant to the constitution, the prosecution against him has nothing upon which to rest, and the entire proceeding against him is a complete nullity." As was said in Ex parte Siebold, 100 U.S. 376, "An unconstitutional law is void and is as no law. An offense created by it is no crime. A conviction under it is not merely erroneous, but is illegal and void and cannot be a legal cause of imprisonment." "The trial court "acquired no jurisdiction of the causes.

In this case, Petitioner objected to the jurisdictional defect before trial, also the State and Federal appeal process. June 27, 2003, the Louisiana Supreme Court, Traylor, J., held that current and former provisions on grand jury procedures for Orleans Parish were unconstitutional local laws. State v. Dilosa, 848 So.2d 546 (2003). Louisiana Revised Statutes Sections 15:1 to

15:end, 10 to 12 Criminal Procedure, copyright 1967, 10-12 LSA R.S 1st Reprint – 1972; Code Title XI. Qualifications and Selection of Grand and Petit Jurors, R.S. 15:111 through 15:121, See “History and Source of Law, and Notes of Decisions.” United States Constitution Amendment Five, “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment, or indictment of a grand jury...nor be deprived of life, liberty or property, without due process of law...”

Louisiana Constitution controlling Petitioner's 1971 Indictment, Article 1 Section 9, (1921), “Prosecution shall be by indictment or information.” C.f. Louisiana Constitution Article 1 Section 15 (1974); Louisiana Constitution Article 1 Section 10 (1921) “... in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation against him...”; C.f. Louisiana Constitution Article 1 Section 13 (1974), and Articles 1 Section 2 “Due Process” of (1921, 1974), and Article 1 Section 3, “Right to Individual Dignity” (1974) Equal Protection. United States Constitution 5, 6 and 14.

“When a state has chosen to afford its citizens the protection of the grand jury indictment procedure, the equal protection clause must be satisfied.” 16B C.J.S. § 752, 16B C.J.S. “Constitutional Laws” § 700.

Personal jurisdiction, or authority to judge a person, is primarily one of venue or procedure. 16B C.J.S. 748, “Jurisdiction and Venue,” “A change of venue for a criminal trial complies with equal protection when the same laws and procedure are applied in the county to which the venue is transferred.”

Petitioner was indicted by an Orleans Parish Grand Jury and tried by an Orleans Parish petit jury, following a mis-trial venue was changed to the Parish of Lafayette for trial, and

convicted. The Lafayette Parish venue did not comply with the Fourteenth Amendment. See Louisiana Revised Statutes Sections 15:1 to 15:end, *supra*.

The Federal Appeals Court abused its discretion not voiding the indictment, verdict, and judgment based upon unconstitutional indictment statutes, local laws, Dilosa, *supra*. The indictment procedure is the “adjudicatory capacity” of the formal charges to be brought that determines whether Petitioner’s life, liberty, or property will be subjected to loss. “Objections to subject-matter jurisdiction, however, may be raised at any time.”...We have urged that a rule should not be referred to as jurisdictional unless it governs a court’s “adjudicatory capacity,” that is, its subject-matter or personal “jurisdiction.” Henderson ex rel Henderson v. Shinseki, 131 S.Ct. 1197 (2011).

The indictment or complaint can be invalid if it is not constructed in the particular mode or form prescribed by constitution or statute. 42 C.J.S., “Indictment and Information.” § 1, p. 833.

Jurisdiction is a fundamental prerequisite to a valid prosecution and conviction, and a usurpation thereof is a nullity. 22 C.J.S. Criminal Law § 150, p. 183.

Where judicial tribunals have no jurisdiction of subject-matter the proceedings are void 21 C.J.S. “Courts” § 18, p. 25.

The Court of Appeals, Fifth Circuit, United States, abused its discretion dismissing Petitioner’s Rule 60(b)(4) motion as a successive 2254 Habeas petition. The Court had original jurisdiction as Rule 60(b) is a continuation of that jurisdiction. U.S. v. Beggerly, 118 S.Ct. 1862 (1998), but acted in a manner inconsistent with due process of law. C.f. United Student Aid Funds, Inc. v. Espinosa, 130 S.Ct. 1367 (2010). C.f. Yick Wo v. Hopkins, 18 U.S. 356 (1886)

(Unconstitutional local ordinances violating the Field of Section 1 of the Fourteenth Amendment).

The want of a sufficient affidavit, complaint, or information goes to the jurisdiction of the Court *** and renders all proceedings prior to the filing of a proper instrument void ab initio. 22 C.J.S. "Criminal Law" § 324, p. 390. "An unconstitutional statute is void ab initio having no effect, as though it had never been passed." Alexander v. Cockrell, 294 F.3d 626 (U.S. 5th Cir. 2002).

CONCLUSION

Petitioner prays Certiorari be Granted because the lower Federal Courts acted in a manner inconsistent with due process of law, and Petitioner prays for any other relief within the Court's powers.

Respectfully submitted,

Peter Mule

Date: 8/13/24