

ORIGINAL

C.B.

24-5517
NO.

IN THE SUPREME COURT OF THE UNITED STATES

*

*

CHARLES BONNER,

PETITIONER, PRO-SE,

VS.

BRYAN COLLIER, TEXAS PAROLE BOARD DIRECTOR,

AND TEXAS DEPARTMENT OF CRIMINAL JUSTICE,

DEFENDANTS, et.al.

Supreme Court, U.S.
FILED

JUL 26 2024

OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR A WRIT OF CERTIORARI

CHARLES BONNER,

PETITIONER PRO-SE

1405 KATHY STREET

ROSHARON, TEXAS 77583

(346) 603-4686.

i

RECEIVED

SEP 10 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED (S. Ct. Rule 14,1 (a))

QUESTION No.1 (Actual Innocence) ?

After the jury found Petitioner guilty of one offense, Did Petitioner's prosecution end without a conviction after the judge affirmately exonerated Petitioner by charging the jury to sentence Petitioner in an offense not charged in the indictment nor before the jury in any capacity. ?.

QUESTION No.2 (Coverup by the Judge) ?

Did the judge effectively waive all immunity from suit by commiting a posttrial/nonjudicial act in the clear absence of all jurisdiction,specifically to coverup the fact that,"prior to the judge dismissing the jury, the jury never made the mandatory sentence in the offense it found the *D/P ↓ C.B.* Petitioner guilty of and , thereafter the judge fabricate a posttrial judgment and sentence that falsely purport that the jury both found Petitioner guilty and sentenced him in the same offense that the jury found him guilty". ?

QUESTION No.3 (Illegal bar).

Can successive lawsuit ,under Heck V.Humphrey, 512 S.Ct, 477 (1994),and 28 U.S.C. Section 1915 (e) , ever be legally and constitutionally applied to bar an actually innocent person from bringing a lawsuit ?

LIST OF PARTIES , (S.Ct. RULE 14,(b) (i))

- (1) CHARLES BONNER,PETITIONER.
- (2) BRYAN COLLIER,TEXAS PAROLE BOARD DIRECTOR.
- (3) TEXAS DEPARTMENT OF CRIMINAL JUSTICE (TDCJID).
- (4) 23rd DISTRICT COURT OF BRAZORIA COUNTY,TEXAS .
- (5) THE 149th DISTRICT COURT OF BRAZORIA COUNTY,TEXAS.
- (6) THE 344th DISTRICT COURT OF CHAMBERS COUNTY,TEXAS.

STATEMEMNT OF THE BASIS FOR JURISDICTION (S.Ct. Rule 14,1 (e))

On March 7,2024 , in an unpublished opinion No.1 : 24-CV-119 , the United States Western District Court of Texas ,Austin Division, adopted the Magistrate's report and recommendation and denied temporary restraining order. id @ Attached Appendix No.1.

On July 15,2024, in an unpublished per curiam opinion No. 24-50229 ,the Fifth Circuit Court of Appeals adopted the Texas Western District Court's opinion.id @ Attached Appendix No.2.

On July 16,2024, Petitioner timely filed his Petition For A Writ Of Certiorari to this Court, which was returned to Petitioner on August 6,2024 for noncompliance with Supreme Court Rule 14 ,and Granted Petitioner a 60 day extension to comply,in which he do by this pleading. id @ Attached Appendix No.3.

This Court's Jurisdiction is invoked under 28 U.S.C. Section 1257.

CONSTITUTIONAL PROVISIONS ; (S.Ct. Rule 14 ,1 (f))

TABLE OF AUTHORITIES / FEDERAL CASES

Apprendi V.New Jersey,120 S.Ct. 2348 (2000) Page 6 and 7

Burkes V.United states, 437 U.S. 1 (1978)Page 4

Dennis V.Sparks,449 U.S. 24 (1980).... Page 7

French V.Estelle,692 F2d 1021 (5th Cir 1982)....Page 4

Heck V. Humphrey,512 S.Ct. 477 (1994)....Page ii ; 3

Mireless V.Waco, 502 U.S.9 (1991)....Page 7

Stirone V. United states, 80 S.Ct. 270 (1960)...Page 6 ; 7

Thompson V.Clark,569 U.S._____ (2022) Page 5

FEDERAL STATUTES

28 U.S.C. Section 1915 (e) Page 4 ; 5

28 U.S.C. Section 1257 Page V

CONSTITUTIONAL AMENDMENTS

5th Amendment ...Page 3 ; 7

6th AmendmentPage 3 ; 7

8th Amendment Page 3 ; 7

14th Amendment....Page 3 ;7

TEXAS CONSTITUTION

Article 1,Section 19, Texas ConstitutionPage 3 ; 7

TEXAS STATUTES

Texas Penal Code ,Section 3.02 (a) and (b) Page 5 ; 6

Texas Penal Code ,Section 12.42 (d)Page 4

Texas Code Of criminal Procedure ,Article 37.07Page 5.

TEXAS CASELAW

Brown V. State ,617 SW2d,234 (Tex App 1981)Page 6

Castro V.State,42 SW2d 779 (Tex App 1931) ...Page 7

Chapin V.State , 671 SW2d 608 (Tex App 1984)Page 4 ; 6

ExParte McGiver,586 SW2d 854 (Tex App)Page 7

Hickmann V.State , 548 SW2d 736 (Tex App 1977)Page 4

Scott V.State,461 SW2d 619 (Tex App)Page 6

White V.State , 353 SW2d 229 (Tex App) Page 6

STATEMENT OF THE CASE (S.Ct. Rule 14,1 (g))

On February 27,1980,Petitioner had 2 seperate /single count indictments in the jurisdiction of two different Courts,namely,(1) indictment No.12245 for burglary of Bill D.Cook's building in the jurisdiction of the 23rd District Court of Brazoria County,Texas and (2) indictment No.12246 for burglary of Lucy Wisnoski's building in the jurisdiction of the 149th District Court of Brazoria County,Texas. id @ ROA page 11 and 15 -16. The 23rd District Court Prosecutor, Kim Farwell ,elected to prosecute Petitioner in indictment No.12245,thereafter,at the guilt innocence phase,the judge charged the jury to find the Petitioner guilty or not guilty in the following manner ,and in relevant part ;emphases mine.

... "Now if you find from the evidence beyond a reasonable doubt that in Brazoria County,Texas, on or about the 7th day of July,1979,the defendant,CHARLES BONNER,did intentionally and knowingly enter a building not then open to the public without the effective consent of Bill D.Cook,the owner, and therein attempted to commit and committed theft, then you will find the defendant guilty as charged. Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof,you will find the defendant not guilty"... id @ ROA, page 10 indictment No.12245 ,and the Court charge at page-11 .

Neither the Court's charge nor indictment No.12245 mention or refer to a July 6,1979 offense against Petitioner for burglary of Lucy Wisnoski's building.id. However, after the jury found Petitioner guilty of the Bill Cook burglary alleged in indictment No.12245 @ page 12 ROA,at punishment phase of trial No.12245,the record clearly show the following facts,to wit ;

... That the Caption of the Court's Charge on Punishment , "BEAR THE CAUSE / INDICTMENT NO.12246,WHICH WAS THE LUCY WISNOSKI BURGLARY,NOT THE BILL COOK BURGLARY IN INDICTMENT NO.12245 WHCH THE JURY HAD FOUND PETITIONER GUILTY" ... id @ page 10-11.

The judge then charged the jury,verbatim,in relevant part as follows ... " Having found the defendant herein guilty of the offense of burglary of a building,now it becomes your duty to assess the punishment in this cause "... "This Cause,"given by the judge to the jury, "charged the jury to sentence Petitioner under indictment /Cause No.12246 for the pending Wisnoski burglary @ ROA page 13 WHICH WAS ASSIGNED TO THE JURISDICTION OF THE 149TH DISTRICT COURT (ID @ roa PAGES 15-16),NOT THE 23 DISTRICT COURT HOLDING THE TRIAL AT THAT TIME. Thereafter, on the same date of March 27,1980, Judge Gayle and Jury foreman E. Crow acted in the clear absent of all jurisdiction by signing and sanctioning a 10 year sentence against Petitioner under indictment No.12246 in trial No.12245.The judge then dismissed the jury without recalling the jury to reform the illegal No.12246 judgment to No.12245 to conform with the jury's guilty verdict. Thus Petitioner's prosecution ended without a conviction because the Judge's charge caused the jury to "affirmately exonerated Petitioner in No.12245 because the jury never sentenced Petitioner in No.12245 to complete a conviction prior to the jury's dismissal". Petitioner's facts are very clear in this matter ,as well as demonstrated and supported , @ ROA pages 15-16 , where the 149th District Court of Brazoria County,Texas Prosecutor Jim Maple filed a motion with judge Paul Ferguson who in fact had sole jurisdiction of the offense,to dismiss the Lucy Wisnoski Burglary indictment No.12246 against Petitioner,whereby,the judge dismissed the No.12246 indictment against Petitioner on May 4,1982 @ ROA page 16 ,which was in fact the sole offense in which Petitioner was unconstitutionally sentenced in trial No.12245. Thus,the recorded facts makes it impossible for

the Courts below to show that Petitioner was ever convicted in indictment No.12245.,and thus the lower court's CLAIMS, "THAT PETITIONER'S SUCCESSIVE LAWSUITS CHALLENGES A CONVICTION", IS INVALID SIMPLY BECAUSE PETITIONER'S SUITS CHALLENGE "THE LACK OF A CONVICTION,NOT AN ACTUAL CONVICTION".

REASONS FOR GRANTING THE WRIT,(S.Ct.Rule 14,1) (Judge'S COVERUP)

The provisions of the 5th,6th,8th, and 14th Amendments ,as well as Article 1,Section 19 of the Texas constitution protects innocent persons such , as this Petitioner ,who was..."found guilty on record No.12245 for burglary of Bill Cook's burglary,then sentenced in indictment No.12246 for burglary of Lucy Wisnoski's building ,without the judge affording Petitioner mandatory Constitutional provisions of opportunity to defend,right to confront accusers, right to counsel, right to present witnesses,as well as these due process and equal protections od the laws relevant to this matter,as required to the supracited Constitutional Precedents, however ;

For over 45 Calender years,the Texas State courts and 5TH Circuit Court of appeals" has illegally upheld the trial judge's nonjudicial acts taken in the clear absence of all jurisdiction, by applying the successive lawsuit bars of Heck V. Humphrey and 28 U.S.C. Section 1915 (e) (2) in the face of the fact that "A jury's guilty verdict standing alone, **absent a matching jury sentence, do not equal a conviction under Texas law**"... id@ Chapin V.State,671 SW2D,608 (Tex APP 1984). The posttrial ROA show that yet again,in a nonjudicial capacity and in clear absence of all jurisdiction,the judge unsuccessfully tried to coverup the fact that the record do not and cannot reflect that,prior to the dismissing the jury, the jury never rendered a No.12245 sentence by ..."Changing the Jury's bogus No.12246 judgement and Sentence to No.1245 in a Fabricated No.12245 judgment and sentence,(falsely purporting @ ROA pages 17-19 .id) that

the jury both found Petitioner guilty and sentenced Petitioner in Cause No.12245,which is simply untrue "**ACCORING TO THE SOLE JURY SENTENCE NO.12246 ASSOCIATED TO THIS CASE , FOUND @ ROA, PAGES 13-14 DEMONSTRATING THAT THE JURY SENTENCE WAS MADE IN NO.12246 , NOT NO.12245". ID.** Also, the Court Clerk's office has affirmed since 1980 until this very date, that the Bogus No.12246 jury sentence is not now in record RECORD No.12245 anywhere, yet Petitioner's court appointed attorney Ben Harden, who is now a Matagorda County, Texas judge , provided Petitioner a copy of the now secreted No.12246 sentence .

Because of the fact that Petitioner was never convicted, Petitioner's enhanced convictions from the 344th District Court of Chambers Chambers County, Texas in Offense No.6799 and No.6895 are nullified because it cite the "non conviction No.12245 offense, which is the basis of this lawsuit, as its leading offense to unconstitutionally enhancement Petitioner's punishment in perfectly clear violation of Section 12.42 (d) of the Texas Penal Code, French V. Estelle, 692 F.2d 1021 (5th Cir 1982) ; Burks V. United States, 437 U.S.1 (1978); and Hickman V. State, 548 SW2d 736 (Tex App 1977), which Mandate that the second enhancement charge ' must be committed ' after the first enhancement became a final conviction' ". id @ ROA, pages 24-29. Finally, all the courts below readily cites Heck V. Humphrey and 28 U.S.C. Section 1915 (e) (2) , claiming that Petitioner's lawsuit "**CHALLENGE A CONVICTION WHEN IN FACT, THERE SIMPLY IS NO CONVICTION IN OFFENSE NO.12245 TO CHALLENGE**". As a result of the judge's acts, the Petitioner was falsely placed in Defendant's Texas prison , put on illegal parole and remain on parole by Defendant Collier UNTIL 2049. Petitioner sought to have Defendant Collier present Petitioner's request for a full pardon to the appropriate panel panel for review and action or inaction, based on the facts in this writ, but until this date , Defendant Collier has totally

ignored the Petition.

CONCISE ARGUMENT /AUTHORITIES (S.Ct. Rule 14, 1 (h))

In Thompson V.Clark,569 U.S._____ (2022),this Court held that... The Petitioner was not required to show that he had been affirmately exonerated of commiting the crime, instead,need only to show that his prosecution ended wihout a conviction.After analyzing the historical precedent,the majority opinion concluded that the general rule is that if a criminal proceeding was terminated prior to securing a conviction,the termination could be treated as favorable to the accused...id.

Texas law mandate that 2 seperate single count indictment cases may be prosecuted in a single trial when the 2 cases are committed in the same criminal episode and the State give 30 day notice prior to trial.Chapter 3.02 (a) and (d) Texas Penal Code (1980).id. Also,Article 37.07 Section 2 (b) and (c) Texas Code Of Criminal Procedure mandate that ...when the jury is elected to sentence the defendant,UNLESS THE DEFENDANT ,WITH THE CONSENT OF THE STATE , CHANGE HIS ELECTION TO BE PUNISHED BY THE JUDGE. id. Because INDICTMENT NO.12245 (dated July 7,1979)AND NO.12246 (dated July 6,1979) was not committed in the same criminal episode or consolidated for trial purposed under Chapter 3,Texas Penal Code, and because Petitioner never consented for the judge to sentence him in No.12246 ,the two cases could not constitutionally be consolidated by the judge for trial purposes,"which is exactly what the judge herein did by introducing the No.12246 offense in trial No. 12245 to the jury at punishment phase @ pages 13-14 ROA" . These facts alone demonstrate the trial judge clearly committed nonjudicial acts in the clear absence of all jurisdiction,which waives the immunity defenses made by all the Courts below because,under Texas law ...A defendant may elect by pretrial

written request to be sentenced by the jury, instead of the judge, should he be found guilty.

Brown V. State ,617 SW2d 234 (Tex App 1981). When the defendant elects to be sentenced by the jury, and the jury never render a sentence, no conviction, final or otherwise, has resulted from such trial. Chapin V. State, 671 SW2d 608 (Tex App 1984). In a felony case, the sentence is the final judgment of conviction, without which, there is no final conviction. We know of no other way to show a final conviction than to also show a sentence. White V. State, 353 SW2d 229 (Tex App). Though a judgment and sentence are two distinct and separate things, the sentence must be based on a judgment, and without a judgment, the Court is unauthorized to sentence the defendant. The one stands upon the other, the absence of a judgment invalidates a sentence, and without a sentence, no conviction has resulted from such trial. Scott V. State 461 SW2d 619 (Tex App). A Texas trial judge does not have the authority to change a jury verdict or to enter a different judgment than that rendered by the jury, unless it is with the jury's consent and before their discharge. *id.* This Court held that ... A court cannot impose a sentence for a crime over which it does not even have jurisdiction to try a defendant. The indictment "must" contain an allegation of every which is legally essential to the punishment to be inflicted. The judge's role in sentencing is constrained at its outer limits by facts alleged in the indictment and found by the grand jury. Thus, because indictment setting forth all essential elements of an offense is both mandatory and jurisdictional, and a defendant cannot be held to answer for an offense not charged in an indictment returned by a grand jury, a court is without jurisdiction to impose a sentence for an offense not charged in the indictment... *id.* @ Apprendi V. New Jersey, 120 S.Ct. > 2348 (2000); Stirone V. United States, 80 S.Ct. 270 (1960).

The Precedent in Mirelles V. Waco, 502 U.S. 9 (1991), held, ... Judicial immunity is an immunity

from suit,not just from ultimate assessment of damages, and it can be overcome only if the judge's actions are nonjudicial or taken in the clear absence of all jurisdiction... citing Dennis V. Sparks, 449 U.S. 24 (1980). The Petitioner's lawsuit do in fact overcome the immunity claims by the courts below simply because (1) the 23rd District Court's jurisdiction was restricted to the facts in indictment No.12245 and,(2) the 149th District Court had the sole jurisdiction over the facts alleged in indictment No.12246,which is shown crystal clear by the fact that @ ROA page 16-17 , the 149th District Court dismissed indictment No.12246. id. Moreover,Texas laws mandate that "a trial judge does not have authority to change a jury verdict ,or to enter a different judgment than that rendered by the jury ,unless it is with the jury's consent and before their discharge": ExParte McGiver,586 SW2d 854 (Tex App),and Castro V.State,42 SW2d 779 (Tex App 1931).id. In sum,the judge herein simply broke the law and unsuccessfully tried to cover it up by falsifying a posttrial judgment and sentence No.12245 on record,whereas,**AS A MATTER OF LAW AND FACT, IT MUST BE DEEMED "CRUEL AND UNUSUAL PUNISHMENT, IN PERFECTLY CLEAR VIOLATION OF THE 8TH AMENDMENT,AS WELL AS THE DUE PROCESS AND EQUAL PROTECTION OF THE LAW CLAUSES OF THE 5TH,6TH,AND 14 AMENDMENTS, FOR ANY JUDGE TO FALSIFY A POSTTRIAL RECORD TO IMPRISON A CRIMINAL WHOSE TRIAL ENDED WITHOUT A CONVICTION".**

PRAYER FOR THE RELIEF SOUGHT

Petitioner Respectfully pray that the Court Grant this Writ Of Certiorari ,REMAND THE CASE TO THE LOWER COURTS ,and require that the Relief Sought be GRANTED.

Respectfully Submitted

Charles Bonner

Charles Bonner, (346) 603-4686
1405 Kathy Street
rosharon, Texas 77583

CERTIFICATE OF SERVICE

Petitioner certify that a true and correct copy of this pleading was served by certified mail ,on
Attorney General Ken Paxon,@ P.O. Box 12548,Austin,Texas 78711 ; the 5th Circuit Court of
Appeals @ 600 South Maestri Place,New Orleans,La.,70130 ;and the Western District Court Of
Texas @ 501 West 5th Street,Ste 1100,Austin,Texas 78701, on this 3 Rd ,Day of
SEPTEMBER ,2024.

Charles Beemer

Charles Bonner

1405 Kathy Street

Rosharon, Texas 77583

cc::file