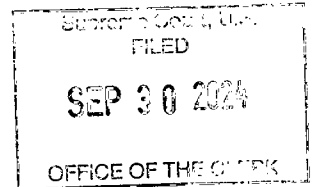


No. 24-5740

IN THE
SUPREME COURT OF THE UNITED STATES



Douglas O'Neal — PETITIONER *Pro Se*
(Your Name)

vs.

Oklahoma, et al. — RESPONDENT(S) *Gentner Drummond*

ON PETITION FOR A WRIT OF CERTIORARI TO

*313 N.E. 2nd St.
Oklahoma City
Oklahoma 73105*

Oklahoma Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Douglas O'Neal
(Your Name)

P.O. Box 260 L.C.C. 73051
(Address)

Lexington Oklahoma
(City, State, Zip Code)

Lexington Oklahoma 73051
(Phone Number) *None*

Question(s) Presented

Whether a state appeals court can turn a blind eye to a pro se petitioner's prima facie showing of District Court's lack of subject matter jurisdiction in order to uphold a state procedural bar "which is predicated" on a sixth amendment violation?

Parties And Related Cases

Bousley Vs. United States (May 18, 1998) 523 U.S. 614
1185 Ct. 1604 L.E. 2d 985 page 2

Carter Vs State of Oklahoma court of Criminal Appeals 292
p. 2d 435-438 (1956) page 1

Claghorn Vs Brown 505 p. 2d 998 (January 17, 1973) page 1

Garza Vs Idaho Supreme Court (February 27, 2019) 586 U.S.
2321395 S. Ct. 738203 L.E. d 2d 77 page 2

Johnson Vs Snow Oklahoma Supreme Court 521 p. 3d 1272
(2022), Ok. 862022 WL 1657615 page 2

Roe Vs Flores Ortega Supreme Court (February 23, 2000) U.S.
4701205, Ct. 1029145 L.E. 2d 985 page 3

Stiron Vs. United States Supreme Court (January 21, 1960)
361 U.S. 2121805, Ct. 27045 L.R.M.A. 2367 page 1
Feaster V. State 593 p. 2d 401

1st Amendment page 3, 1, 2

6th Amendment page 2, 3, 1

14th Amendment page 1, 2, 3

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14th Amend.

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Ok. Const. Art. 2. Statutes 7, 17, 20.

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Also. Statutes 513, 514, 516, of Title 22 Chp. 9

Okla. Court procedures.

Supreme Court Rule 11, The all writs Act. Specifically 28 U.S.C. 1651 (a) Section 1441 (a) of the Judicial Code 28 U.S.C. 1401 (a)

Petitioner requests Complete preemption Doctrine to be applied.

Cases

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Carter V. State (1956).

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/

IN THE
SUPREME COURT OF THE UNITED STATES
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 _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Oklahoma Criminal Appeals court appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

2

☐ 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 July 8, 2024
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. § 1257(a).

Constitutional and Statutory Provisions Involved

3

United States Constitution 1st, 6th, and 14th Amendments.

Oklahoma Constitution Article 2, Statute 7, 17, and 20.

1st Amendment of the U.S. constitution: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

6th Amendment of the U.S. Constitution: In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, to be informed of the nature of the cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

14th Amendment of the U.S. Constitution: ... nor shall any state deprive any person of life, liberty, or property, without due process of law;

Oklahoma constitution Article 2, statute 7: no person shall be deprived of life, liberty, or property without due process of law.

Oklahoma constitution Article 2, statute 17: No person shall be prosecuted criminally in a court of record for a felony or misdemeanor otherwise than by presentment or indictment

or by information. No person shall be prosecuted for a felony if by information without having had a preliminary examination before an examining magistrate or having waived such preliminary examination. Prosecution may be instituted in courts not of record upon a verified complaint.

Oklahoma Constitution Article 2, Statute 20: In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed, or where provided that the venue may be changed uncertainty exists as to the county in which the crime was committed the accused may be tried in any county in which evidence indicates the crime may have been committed, provided that the venue may be changed to some other county of the state on the application of the accused in such manner as may be prescribed by law. He shall be informed of the nature and cause of the accusation against him and have a copy thereof and be confronted with the witness against him and have compulsory process for obtaining witnesses in his behalf. He shall have right to be heard by himself and counsel and in capital cases at least two days before case is called for trial he shall be furnished with a list of witnesses that will be called in chief to prove the allegations of the indictment or information together with their Post Office address.

STATEMENT OF THE CASE

On April 8th 2024 petitioner filed a writ of habeas Corpus ⁵ in the Delaware County Court contesting the validity of the summary of facts sheet submitted by the court which has never been filled out in its entirety and signed by the Judge, nor was the altered form filed on day of proceedings as mandated under Feaster V. state 593 p. 2d 401.

Petitioner presented a *prima facie* showing that the District Court had no subject matter jurisdiction due to petitioner never having a preliminary hearing on charges included in information. Okla. Constitution Art. 2 statute 17 states that no person shall be prosecuted for a felony by information without having had a preliminary examination before an examining magistrate. This was not done, as the records will reflect. See motion to strike, App. C pg. 8

In Claghorn V. Brown 505 p. 2d 998 (January 17, 1973) the Oklahoma Court of Criminal Appeals ruled that a District Court as trial court does not obtain jurisdiction over a felony case until after preliminary examination when the examining magistrate enters his commitment order. In *Stirone Vs The United States* Supreme Court (January 21, 1960). 361 U. S. 212 805 Ct 270 45 L.R.M. BNA 2367, court held a fundamental precept of Federal constitutional law is that a court cannot permit a defendant to be tried on charges that are not in the indictment. In *Carter V. State of Oklahoma* Court of Criminal Appeals 292 p. 2d 435-438 (1956) the court held where preliminary complaint charged only burglary as did order directing that defendant be held for

trial and no proof of former felony conviction was offered at preliminary hearing but information charged additional former felony conviction, conviction based on combined charge would be set aside, as is the case at the bar. See motion to strike. The District Court ruled the habeas petition to be a post conviction so as to procedurally bar the jurisdictional issues presented. Under Johnson v. Snow Oklahoma Supreme Court 521 p. 3d 1272 Appellate Court has a duty to inquire into its own jurisdiction and jurisdiction of Court below. This was not done even after the prima facie showing by the petitioner. See Motion to Strike App. A.

A judgement entered by a court without subject matter jurisdiction is void. Bousley vs. United States 523 U.S. 614 622 (1998). Because subject matter jurisdiction involves the court's power to hear a case it can never be waived or forfeited. A void judgement cannot constitute res adjudicata.

The O.C.C.A. turned a blind eye to petitioner's prima facie showing of the District Court's lack of subject matter jurisdiction in order to uphold the lower court's erroneous procedural bar. The lower court ruled that these issues should have been raised on direct appeal, and petitioner agrees, but petitioner was denied a direct appeal because his court appointed council failed to file it after being instructed to file it on several occasions, first was face to face after a plea colloquy, and by phone. Garza v. Idaho Supreme Court of the United States (February 27, 2019) 586 U.S. 232 139 S. Ct. 738 203 L. Ed. 2d 77 court held that defendant's trial council rendered deficient performance by not filing notice of appeal in light of defendant's clear requests and attorney's constitutionally

deficient failure to file notice of appeal was presumptively prejudicial despite appeal waiver. No appeal waiver was 7
filed by petitioner in this case. Trial council told petitioner at conclusion of plea hearing that he could appeal because they had just given him an illegal sentence. Petitioner asked if it was the A.F.C.F. enhancement and council replied, "that and other things." Petitioner said to file the appeal. Four or five days later petitioner called his attorney from jail and reaffirmed his desire to appeal. Petitioner has been trying for thirty-two years to get a review of this case but has been consistently barred due to trial council's failure to file my direct appeal as I told him to. Attorney James T. Rowan has never filed to be removed from my case. The pleadings presented to this court still have him as my attorney. Since that day in court I have not seen a lawyer. My case has never been reviewed in accordance with due process. *Roe v. Flores-Ortega* Supreme Court of the United States (February 23, 2000) 528 U.S.

470120 S. Ct. 1029145 L.E.D. 2d 985 council's failure to file notice of appeal without defendant's consent is not per se deficient. The court went on to say that if council's alleged failure to file notice deprived defendant of appellate proceedings altogether it was presumably prejudicial. U.S. C. A. const. amend. 6. Petitioner's council failed to file appeal as instructed. This has prejudiced the petitioner in that he has been denied his appellate review for thirty-two years due to procedural bar due to the appeal not being filed as instructed.

The issues presented are fundamental. Petitioner was denied a fair evaluation of his appeal. The total disregard of the

fact that the petitioner has been denied his basic right to petition the court on redress and to be heard. First Ammend. 8

The motion to strike for lack of jurisdiction and motion to compel disclosure of plea deal with government and state sole eyewitness which has never been heard in violation of App. CP 9.8 defendant's due process rights. The O.C.C.A. has consistently upheld a procedural bar and turned a blind eye to legal court documented proofs. It is alarming that the O.C.C.A. consistently uses procedural bars rather than seek out the truth of the matter.

Date of judgement under review July 8, 2024.

This writ is filed under this Court's Rule 11.

Thank you for your time and consideration in this matter.

App Writ 5 Act. 28 USC 1651(6) Section 1441(a) of the Judicial Code
28 USC 1441 (6) Section 1404(a) Section 1404(9) of Judicial Code
28 USC 1404(6) and under complete preemption doctrine.

Reason For Granting Writ

Due to the withholding of sole eye witness' statement given 9 on night of incident which proves there was no intent by defendant and withholding plea deal made with government by sole eye witness was a perversion of the truth seeking process of law. See officer Robert Rowley's report and motion to compel disclosure filed by defense before trial. Motion was never heard. Motion to strike due to no preliminary or indictment on enhancement charge was also not heard or ruled on - see App.C. page 10. the motion to strike is a prima facie showing of the Court's lack of jurisdiction which was never addressed by District Judge or Appeal Court Judge who is too readily willing to uphold a procedural bar. This should not be allowed in this case. The court records will prove out petitioner's innocence. Council failed to file appeal as instructed. Even when you present court documents to prove your issue, petitioner has never had a review of his Brady claims, lack of subject matter jurisdiction claim, and 6th and 1st amendment claims. I know this court sits above all others and rightfully so because this court is more concerned with the whole spirit of the law when it is rightfully applied. This was not done in this case. Petitioner was stripped of his defense when state withheld statement given to Officer Bill Stout by sole eyewitness on night of incident. See Officer Robert Rowley's police report. Sole witness was arrested four days later in neighboring county for sales of meth and crack cocaine to under cover officers and made a plea deal with the government. This was also withheld by the state. Petitioner was never given a preliminary hearing or indicted on prior conviction. See, J. 3 App.C page 11, and 12. 1.

enhancement used in both charges. Trial judge never asked
defendant to enter a plea and none is on record as mandated 10
under Fed. rule. Trial judge changed a misdemeanor to a
felony for enhancement purposes at conclusion of hearing
upon state's request. Trial judge refused to hear pretrial
motions by defense on issues of the court's lack of subject
matter jurisdiction and motion for state to disclose plea deal
made with sole eyewitness and the government. Trial judge
has never ruled on them. See letter from court clerk. Plea contract
is void and incomplete due to judge's failure to sign summary
of facts sheet as mandated by state court cases, *Feaster v. State*,
593 p. 2d 401.

Petitioner was stripped of his appellate rights due
to his counsel's error. I pray this court to restore these
rights. Petitioner is not educated in law but these
issues are fundamental and should be addressed.
The rush to closure on this case has left several major
violations.

Petitioner would ask this court to review
these issues and to dispense justice accordingly.
Thank you for your service and consideration in
this matter.

Humbly submitted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Douglas O'Neal

Date: 10-2-2024