

24-6034

IN THE

SUPREME COURT OF THE UNITED STATES

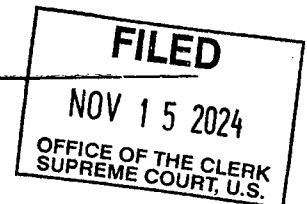
DAVID LEE HERING

PETITIONER

v.

THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

RESPONDENT



ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF IOWA

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1. Does the Fifth and Fourteenth Amendments due process of law guarantee apply to the sentencing of a criminal defendant?
2. Where a district court refuses to impose a judgement upon a criminal defendant that comports with the legislatively mandated punishment, required, to be imposed upon them for the crimes they are being sentenced for committing. Is it a violation of the Fifth and Fourteenth Amendments due process of law guarantee?

List of Parties

The State of Iowa is also a party to this action.

List of Proceedings

The below listed proceedings took place in The Iowa District Court For Muscatine County in State of Iowa v. David Lee Hering Case No. FECR 027417.

- * On August 7, 2003 the State charged Hering with murder in the first degree.
- * On September 11, 2003 the State filed it's trial information charging Hering with Count I murder in the first degree in violation of Iowa Code § 707.1 and 707.2(1) Count II and III attempt to commit murder in violation of Iowa Code § 707.11
- * On September 19, 2003 arraignment took place and Hering pled not guilty to the charges.
- * On May 24, 2004 an unconstitutional, non-adversarial jury trial that was saturated with structural errors began.
- * On June 4, 2004 the jury returned a verdict of guilty to each charge.
- * On July 9, 2004 a judgement was imposed upon Hering that is null and void.
- * On May 23, 2024 Hering filed a motion to vacate void judgement and for imposition of a valid final judgement.
- * On May 30, 2024 the court issued an order denying Hering's motion to vacate void judgement.
- * On June 5, 2024 Hering filed a motion to reconsider, enlarge, or amend the courts May 30, 2024 order.
- * On June 17, 2024 the court issued an order denying Hering's motion to reconsider, enlarge, or amend.

The below listed proceedings took place in the Supreme Court of Iowa in David Lee Hering v. The Iowa District Court For Muscatine County, Case No. 24-1078

- * On June 26,2024 Hering filed a Petition For Writ of Certiorari.
- * On August 27,2024 the Court issued an order denying Hering's Petition For Writ of Certiorari.
- * On September 5,2024 Hering filed a motion for quorum review of the August 27,2024 order.
- * On October 2,2024 a quorum of the Court issued an order confirming the single Judges August 27,2024 order.

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Footnote:

In some instances when referring to a particular point within an authority the specific page no. cannot be cited in this Petition as the LEXIS NEXIS System that is available to Hering, at this prison, does not always provide the page no. within a case.

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 judgement below.

Opinions Below

The opinion of the Supreme Court of Iowa appears at Appendix A to the Petition and is unpublished. The opinion of the Iowa District Court appears at Appendix C to the Petition and is unpublished.

Jurisdiction

The date on which the highest State Court decided my case was August 27, 2024 a copy of that decision appears at Appendix A. A timely motion for quorum review was thereafter denied on October 2, 2024 and a copy of the decision denying quorum review appears at Appendix B.

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

Constitutional Provisions, Statutes, and Rules Involved

Constitutional Amendments

United States Constitution, Amendment 5 The 5th amendment guarantees that no State shall deprive any person of life, liberty, or property, without due process of law.

United States Constitution, Amendment 14 Section 1 of the 14th amendment guarantees that no State shall deprive any person of life, liberty, or property, without due process of law, nor deny

to any person within it's jurisdiction the equal protection of the laws. The prohibitions of the 14th amend. are addressed to the States. Ex Parte Virginia 100 U.S. 339, 346 (1880) Whoever by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law denies or takes away the equal protection of the laws violates the constitutional inhibition. Id. at 347

Statutes

Iowa Code § 901.5(7) (2003)

Iowa Code § 901.6 (2003)

Iowa Code § 902.1 (2003)

Iowa Code § 902.9(2) (2003)

Iowa Code § 902.12 (2003)

Iowa Code § 902.12 (2) (2003)

Iowa Code § 903.A.2 (2003)

Iowa Code § 903A.5 (2003)

Rules

Iowa Rules of Criminal Procedure, Rule 2.23(3)(d) (2003)

Iowa Rules of Appellate Procedure, Rule 6.1002(5)(a) (2024)

Statement of the Case

Nature of the Case: Petitioner David Lee Hering(herein after Hering) is asking this Court to grant this Petition For Writ of Certiorari following his unsucessfull attempts to have the void judgement that was imposed upon him, by the Iowa District Court For Muscatine County, vacated and a "valid final judgement" imposed upon him by the lower courts.

Facts Relevant to the Questions Presented: On July 9, 2004 in the Iowa District Court For Muscatine County the following judgement was imposed upon Hering by District Court Judge Patrick Madden.

For Count I murder in the first degree in violation of Iowa Code § 707.1 and 707.2(1) Hering was committed to the custody of the director of the department of corrections for the rest of his natural life.

For Count II attempt to commit murder in violation of Iowa Code § 707.11 Hering was committed to the custody of the director of the department of corrections for a term not to exceed 25 years. and;

For Count III attempt to commit murder in violation of Iowa Code § 707.11 Hering was committed to the custody of the director of the department of corrections for a term not to exceed 25 years.

The judgements under Counts II and III were run consecutively and concurrent with the judgement in Count I. They were imposed as an interconnected package.(See Written Judgement)(App.E, p. 47)

This judgement does not comport with the legislatively mandated punishment the court was required to impose upon Hering for these crimes.

If "congress has made it's intent" in the statute "clear" we must give effect to that intent. Zadvydas v. Davis 533 U.S. 678, 696 (2001) It is the legislature, not the court, which is to define a crime, and ordain it's punishment. United States v. Wiltberger 5 Wheat 76, 95 (1920)

The Iowa legislature made their intent clear and the district court was not given any discretion. It was legislatively mandated to impose the following punishment upon Hering.

For Count I murder in the first degree in violation of Iowa Code § 707.1 and 707.2(1) Hering was to be committed to the custody of the director of the department of corrections for the rest of his life and he shall not be released on parole unless the governor commutes the sentence to a term of years. See Iowa Code § 902.1 (App.H, p.51)

For Counts II and III attempt to commit murder in violation of Iowa Code § 707.11 Hering was to be committed to the custody of the director of the department of corrections for a term not to exceed 25 years on each count. See Iowa Code § 902.9(2)(App.I , p. 52)

Iowa Statutes at the time required Hering to be sentenced to serve a mandatory minimum of 85% of each 25 year sentence before being parole eligible. See Iowa Code sections 902.12 (App.J, p. 53) 902.12(2) (App.J, p. 53) 903A.2 (App.K, p. 54)

The district court was required to inform Hering of the mandatory minimum sentence. See Iowa Code § 901.5(7)(App.F, p. 49) and to incorporate into the sentence a statement of the days Hering was to be credited pursuant to Iowa Code § 903A.5 (App.L, p. 55) for the days he spent in the county jail awaiting trial. See Iowa Code § 901.6 (App.G, p. 50)

The Court had the option whether or not to run Counts II and III concurrently or consecutively.

A review of the written judgement (App.E, p. 47) and Iowa Statutes and legal precedents reveals that the district court committed multiple errors when imposing judgement upon Hering. They are;

- A. Under Count I the Court failed to articulate that Hering shall not be released on parole unless the governor commutes his sentence to a term of years and the Court failed to cite Iowa Code § 902.1 within it's judgement.
- B. Under Counts II and III the Court imposed one indeterminate 25 year judgement upon Hering for each Count.

The Court failed to cite Iowa Code § 902.9(2) within it's judgement and the Court was required by Iowa Code sections 902.9(2) (App.I, p. 52) 902.12 (App.J. p. 53) 902.12(2) (App.K, p. 53) and 901.5(7) (App.F, p. 49) to impose one 25 year judgement upon Hering for each Count with a mandatory minimum of 85% to be served before being parole eligible.

Where a statute requires a sentence to a term of years and an indeterminate sentence is given it is to indefinite to be valid.

State v. Wiese 201 N.W.2d 734,738 (Iowa 1972)

C. The Court failed to state why it imposed consecutive 25 year judgements upon Hering.

A trial court must give reasons for it's decision to impose consecutive sentences. State v. Underwood 845 N.W.2d 719, (Iowa 2014)

D. The Court failed to inform Hering that Counts II and III carry a mandatory minimum judgement.

Iowa Code § 901.5(7)(App.F, p. 49) required the court to inform Hering that Counts II and III carried a mandatory minimum sentence.

E. Under Counts I, II, and III the Court failed to cite within the judgement entry the number of the particular sections of the Code under which the judgement imposed upon Hering is based.

Iowa R.Crim.P. 2.23(3)(d)(App.M, p. 56) requires that in every case in which judgement is entered. The Court shall include in the judgement entry the number of the particular section of the Code under which the defendant is sentenced. State v. Fagan 2011 Iowa App. LEXIS 189

F. The Court failed to grant Hering credit for the days he was held captive in the County Jail awaiting trial on these charges.

Iowa Code § 901.6 (App.G, p. 50) requires the Court to incorporate into the sentence a statement of the days Hering was to be credited for the days he spent in the County Jail awaiting trial on these charges pursuant to Iowa Code § 903A.5 (App.L, p. 55)

The judgements under Counts I, II, and III departed from the legislatively mandated punishment that the district court was required to impose upon Hering for the crimes he was being sentenced for allegedly committing and the judgement as a whole is misleading as it suggests that he is parole eligible.

The judgement was rendered in violation of the Fifth and Fourteenth Amendments due process of law guarantee so it is void and, to date, a "valid final judgement" has not been imposed upon Hering by any Court, (Emphasis Added)

Pursuant to the laws of the State of Iowa a void judgement, like we have here, may be attacked at any-time and at any-place directly or collaterally. See State v. McCright 569 N.W.2d 605,608 (Iowa 1997)

So in an attempt to get the district court to impose a "valid final judgement" upon him. Hering filed a motion to vacate void judgement and for imposition of a valid final judgement in the district court arguing that the judgement that was imposed upon him on July 9,2004 violated substantive rules of law and was rendered in violation of due process of law, it is therefore void.(App.E, p.41-46)

The State did not resist or respond to Hering's motion and on May 30, 2024 the district court issued an order denying Hering's motion based on a finding that; "He was sentenced pursuant to statute". (App.C, p. 19)

The courts order utterly fails to articulate just what Iowa statutes, Hering was sentenced pursuant to, that, authorize the judgement that was imposed upon him.

Hering asked the Court to reconsider, enlarge, or amend it's order. On June 17, 2024 the Court issued an order denying his request. (App.D, p. 21)

The proper avenue to use when a district court refuses to correct an erroneous judgement is a Petition For Writ of Certiorari. See State v. Propps 897 N.W.2d 91, 96-97 (Iowa 2017) A writ of certiorari lies when a district court exceeds it's jurisdiction or otherwise acts illegally. See State v. Iowa Dist. Ct. For Woodbury Ctny. 989 N.W.2d 652, 654 (Iowa 2023) Illegallity exists when the courts findings lack evidentiary support or when the court has not properly applied the law. *Id.*

The district court refused to vacate the void judgement it has imposed upon Hering and the Court refused to properly apply the law and impose a judgement upon Hering that comports with the legislatively mandated punishment that it was required to impose upon him for the crimes he was sentenced for allegedly committing.

So Hering filed a Petition For Writ of Certiorari in the Supreme Court of Iowa arguing that the district court acted illegally because it is required to impose a judgement upon him that complies with Iowa Statutes and Legal Precedents and that the Courts refusal to correct the sentencing errors has created a miscarriage of justice that calls for an exercise of the Iowa Supreme Courts supervisory power. (App.E, p. 28-34)

Within the Petition Hering also argued that the due process guarantee of the Fifth and Fourteenth Amendments provide that no person shall be deprived of life, liberty, or property without due

process of law and that he is being deprived of his liberty without due process of law because the judgement that has been imposed upon him is not permitted by any Iowa Statutes it is therefore void.(App. E, p. 33)

The State did not resist or respond to Hering's Petition and on August 27, 2024 a single senior Judge issued an order denying the Petition.(App.A, p. 15)

This order utterly fails to articulate just what Iowa Statutes authorize the judgement that has been imposed upon Hering and pursuant to Iowa R.App.P. 6.1002(5)(a) a senior Judge of the Supreme Court may not dismiss, affirm, or reverse, or otherwise resolve an appeal or original proceeding.

Hering filed a motion for quorum review and argued that it was error for a single senior Judge to dispose of his Petition and that the Petition contained law and facts that established that the district court acted illegally by refusing to vacate the void judgement and then imposing a valid final judgement upon him.

On October 2, 2024 a quorum of the Supreme court of Iowa issued an order confirming the single senior Judges August 27, 2024 order. (App.B, p. 17)

Fact is neither of the lower Courts nor the State of Iowa can or have articulated, just, what Iowa Statutes and Legal Precedents authorize the judgement that has been imposed upon Hering for the crimes he was sentenced for allegedly committing.

This is because there are not any.(Emphasis Added)

Reasons For Granting The Petition

Hering asserts that the Fifth and Fourteenth Amendments due process of law guarantee grants him the right to have a judgement imposed upon him that comports with the legislatively mandated punishment that the district court was required to impose upon him for the crimes he was being sentenced for allegedly committing.

The touchstone of due process is protection of the individual against arbitrary action of the government. County of Sacramento v. Lewis 523 U.S. 833, 845 (1998) Due process is flexible. Jennings v. Rodriguez 200 L.Ed.2d 122, 149 (2018) and it calls for such procedural protections as the particular situation demands. *Id.* citing Morrissey v. Brewer 408 U.S. 471, 481 (1972)

Hering is currently being held captive by the State of Iowa pursuant to a judgement that does not comport with any Iowa Statutes or Legal Precedents and without ever having a "valid final judgement" imposed upon him by the district court.

The afore mentioned arbitrary actions of the district court rendered the judgement that was imposed upon Hering to be null, void, and invalid and he was entitled to move the lower courts to vacate the void judgement and to have a "valid final judgement" imposed upon him.

After conviction, a defendants due process rights to liberty, while diminished, is still present. He retains an interest in a sentencing proceeding that is fundamentally fair. Betterman v. Montana 194 L.ED. 723,734 (2016) It is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded.

Marbury v. Madison 5 U.S. 137, 163 (1803) Every right, when withheld, must have a remedy and every injury it's proper redress. Id.

Hering asserts that he has a right under the due process guarantee of the Constitution to have a "valid final judgement" imposed upon him through a sentencing proceeding that is fundamentally fair and that this right is being withheld as the lower courts are denying him of a remedy and a proper redress for this due process (sentencing) violation.

Final judgement in a criminal case means sentence. State v. T.J.W. 2 N.W.3d 853, (Iowa 2023) and a sentence imposed without statutory authorization are illegal and void. State v. Iowa District Court For Woodbury Cnty. 989 N.W.2d 652,656 (Iowa 2023) Imposition of a sentence that is not permitted by statute is an illegal sentence, and such a sentence is void and "must" be vacated. State v. Wiles 2 N.W.3d 59, (Iowa 2023) Remand for resentencing is appropriate when the district court considered the sentence to be interconnected in imposing them. Id. citing State v. Keutla 798 N.W.2d 731, 735 (Iowa 2011)

A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and as a result void. Montgomery v. Louisiana 136 S.Ct. 718, 731 (2016) A judgement is void where it is rendered in violation of due process of law. Johnson v. Mithcell 489 N.W.2d 411, 414 (Iowa App. 1989) citing Felhaber v. Felhaber 681 F.2d 1015, 1027 (5th Cir. 1982)

A void judgement is no judgement at all, and no rights are acquired by virtue of it's entry of record. Johnson at 414 Where judgements are void as was the judgement originally rendered by the trial court here, any subsequent proceedings based upon the void judgement are themselves void. Valley Vista Development Corp. v. City of Broken Arrow 766 P.2d 344, 348 (Okla. 1998) American Jurisprudence, Second Edition 46 Am. Jur.2d Judgements § 29.

The Attorney General had both the authority and the duty to move the district court for correction of defendant's (Hering's) sentence. State v. Ohnmacht 342 N.W.2d 838, 841 (Iowa 1983) Because when a sentencing judge departed from the legislatively mandated sentence, the pronouncement became a nullity. Id. at 842 When a sentencing court departs upward or downward from the legislatively authorized sentence for a given offense, the pronounced sentence is a nullity. State v. Cowan 808 N.W.2d 756, (Iowa 2011) A nullity is nothing; an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect. Kilgore v. Lumbard 838 N.W.2d 681, (Iowa 2013) A trial court does not exhaust it's jurisdiction until a valid judgement is entered. Wiese 201 N.W.2d at 737.

The judgement that has been imposed upon Hering violates substantive rules of law as it is not permitted by any Iowa Statute or Legal Precedent. Consequently it is null, void, and invalid.

Conviction and sentence are one package and it is not possible to appeal a conviction until sentence has been pronounced. That is true. Sahinovic v. State 940 N.W.2d 357, 359 (Iowa 2020)

Due to the fact that a "valid final judgement" has never been imposed upon Hering all direct and collateral attacks he has lodged against his conviction are nullities that have no legally binding force of effect.

Until a "valid final judgement" is imposed upon Hering he is being prevented by the lower courts from lodging any "legally binding" direct or collateral attacks upon his conviction. The lower courts are depriving him of his liberty without due process of law, A valid final judgement must be imposed so he can "legally" lodge direct and collateral attacks upon his conviction.

It is hard to fathom that the architects of the Constitution did not intend for the Fifth and Fourteenth Amendments due process guarantee to apply to the sentencing of a criminal defendant or that the due process guarantee would allow a Federal or State district court Judge to disregard the legislatively mandated punishment they were required to impose on a criminal defendant and just impose whatever punishment they see fit on any given day.

A judge cannot legislate from the bench and impose whatever punishment they see fit for the crimes a criminal defendant is being sentenced for. As is the situation in the case in hand.

The Constitutions due process guarantee demands that a valid final judgement, that comports with Statutes and Legal Precedents, must be imposed upon a criminal defendant, for the crimes they are being sentenced for, by a district court judge.

Hering asserts that the Constitutions Fifth and Fourteenth Amendments due process of law guarantee applies to the sentencing of a criminal defendant and requires a district court judge to

impose the legislatively mandated punishment, upon a criminal defendant, for the crimes they are being sentenced for allegedly committing.

Conclusion

The Petition For Writ of Certiorari should be granted. In the Interest of Justice.

Respectfully Submitted

David Hering

Date: November 14, 2024

Subscribed and sworn before me
this 14 day of November, 2024
Todd Werling
Notary Public

