

24-6552

No. _____

ORIGINAL

FILED

JAN 15 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

In Re Kevin Othell La Ferney — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF HABEAS CORPUS

United States Court of Appeals for the Fifth Circuit
Challenging the 115th District Court, Upshur County, Texas

PETITION FOR WRIT OF HABEAS CORPUS

Kevin Othell La Ferney
(Your Name)

Bill Clements Unit 9601 Spur 591
(Address)

Amarillo, Texas 79107
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) Is a State Courts Subject Matter Jurisdiction REALLY NECESSARY to convict and imprison a defendant?
- 2) Can a State Court arbitrarily deprive a defendant of the State Const, codes and defining case law to get and/or keep a conviction?
- 3) If lack of Subject Matter Jurisdiction on a Trial Court conviction is discovered and challenged years later shouldnt the State Court atleast review the claim?
- 4) Why does the Texas Justice system reward prosecutors and "State Bar" defense Attorneys who hide evidence of a courts lack of Subject Matter Jurisdiction years later by denying to review it or denying the writ for all procedural issues?
- 5) Will the United States Supreme Court allow a State Courts illegal conviction acquired without Subject Matter Jurisdiction to stand?

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:

RELATED CASES

Haines V.Kerner	404 US 519,92 S.ct.595 (1972)
Dluhos V.Strasberg	321 f3d 365,369 (3rd Cir.2003)
Cook V.State	902 SW 2d 471 (Tex.Crim.App.1995)
Sanchez V.State	182 SW 3d 34 (4th Cir.App.2005)
Pointer V.State	380 US 400,85 S.ct.1065
Riney V.State	28 SW 3d 561,565 (Tex.Crim.App.2000)
State V.Hernandez	395 SW 3d 358 (4th Crt.App.2012)
Barbernell	257 SW 3d 251 (Tex.Crim.App.2008)
State V.Zuniga	512 SW 3d 902 (Tex.Crim.App.2017)
Smith V.State	494 SW 3d 243 (6th Crt.App.2017)
Duron V. State	956 SW 2d 547 (Tex.Crim.App.1997)
Jones V.McDonald	2012 US Dist LEXIS 36093
Hicks V.Oklahoma	447 US 343,346,100 S.ct.207 (1980)
Strickland V.Washington	466 US 668,104 S.ct.2052
Davis V.State	956 SW 2d 558 (Tex.Crim.App.1997)
US V.Fallon	992 F2d 212 (5th Cir.Crt.App.1993)
Twin City Fire Ins.V.Adkins	400 F3d 293 (6th Cir.Crt.App.2005)
Intl Longshoremans Assn. V.Davis	476 US 380,392,106 S.ct.1904

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3-4
STATEMENT OF THE CASE	5-13
REASONS FOR GRANTING THE WRIT	14
CONCLUSION.....	15

INDEX TO APPENDICES

APPENDIX A - Clerks letter,115th District Court,Upshur County,Texas	
APPENDIX B - Letter from Holmes,Moore,Waldren & Parish Def.Attny	
APPENDIX C - Indictment Cause # 14309,115th District Court	
APPENDIX D - Affiants Complaint for Grand Jury Indictment # 14309	
APPENDIX E - Affidavit of Probable Cause for Grand Jury Indictment	
APPENDIX F - U.S. Crt.App.for the Fifth Circuit DENIAL	
APPENDIX G - Texas Court of Criminal Appeals DENIAL	
APPENDIX H - 115th District Court,Upshur County,Texas	

TABLE OF AUTHORITIES CITED

CASES		PAGE NUMBER
Haines V.Kerner	404 US 519,92 S.ct 594 (1972)	5
Dluhos V.Strasberg	321 F3d 365,369 (3rd Cir.2008)	5
Cook V.State	902 SW 2d 471 (Tex.Crim.App.1995)	7
Sanchez V.State	182 SW 3d 34 (4th Cir.App.2005)	7,9
Pointer V.State	380 US 400,85 S.ct.1065	7
Riney V.State	28 SW 3d 561,565 (Tex.Crim.App.2000)	7
State V.Hernandez	395 SW 3d 358 (4th Cir.App.2012)	7
Barbernell	257 SW 3d 251 (Tex.Crim.App.2008)	7
State V.Zuniga	512 SW 3d 902 (Tex.Crim.App.2017)	7,8
Smith V.State	494 SW 3d 243 (6th Cir.App.2017)	8
Duron V.State	956 SW 2d 547 (Tex.Crim.App.1997)	8-9
Jones V.McDonald	2012 US Dist LEXIS 36093	9
Hicks V.Oklahoma	447 US 343,346,100 S.ct.207 (1980)	9
Strickland V.Washington	466 US 668,104 S.ct.2052	9
Davis V.State	956 SW 2d 558 (Tex.Crim.App.1997)	10
US V.Fallon	992 F2d 212 (5th Cir.Crt.App.1993)	10
Twin City Fire Ins.V.Adkins	400 F3d 293 (6th Cir.Cir.App.2005)	11
Int.Lomgshoremans Assn.V.Davis	476 US 380,392,106 S.ct.1904	11

STATUTES AND RULES

OTHER

Texas Code of Criminal Procedure 21.03	7
Texas Code of Crominal Procedure 21.11	7

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix "F" to the petition and is

- ☐ reported at 2024 US App. LEXIS 28367; 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 "G" 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 115th District Court, Upshur County, Texas court appears at Appendix "H" 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 Nov. 7, 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: _____, 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 Sept. 27, 2023. A copy of that decision appears at Appendix "G".

☐ 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

6th Amend. In all criminal prosecutions the accused shall enjoy...and to be informed of the nature and cause of the accusation...and to have the assistance of counsel for his defence

14th Amend. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. 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 law.

Texas Constitution

Art.1 § 10 In all criminal prosecutions the accused shall have...He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof...and shall have the right of being heard by himself or counsel, or both...and no person shall be held to answer for a criminal offense, unless on an indictment of a Grand Jury...

Art.5 § 12 An indictment is a written instrument presented to a Court by a Grand Jury charging a person with the commission of an offense...the practice and

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED CONTINUED

procedure relating to the use of indictments and informations, including their contents, amendments, sufficiency and requisites, are as provided by law. The presentment of an indictment or information to a court invests the court with jurisdiction of the cause.

STATEMENT OF THE CASE

The Petitioner is not an Attorney and pleads with this Honorable Court to liberally construe and employ less stringent standards...Haines V.Kerner 404 US 519, 92 S.Ct. 594 (1972), Dluhos V. Strasberg 321 f3d 365, 369 (3rd Cir. 2003)

HISTORY TO SUPPORT:

NEWLY DISCOVERED EVIDENCE

INEFFECTIVE ASSISTANCE OF COUNSEL

The Petitioner was sentenced to prison in 2008 to serve an Agg, Life Sentence. The Petitioner's Attorney promised to have the case overturned in less than 6 months if the Petitioner would just sign the plea bargain. Clearly out of misguided trust the Petitioner agreed and signed. That was the last time he ever "personally heard from the Attorney (Clifton L. "Scrappy" Holmes).

Once in prison, the Petitioner ignorantly allowed prison writ writers to file three ridiculous Habeas Corpus 11.07. The first was denied due to an outdated 11.07 form that was provided by the prison unit Law Library, but yet is still held against the Petitioner, making all others subsequent writs. The second and third is an embarrassment to the Judicial system.

Petitioner and his father spent years searching for proof to prove innocence. Then by a stroke of luck, the District Clerk for the 115th District Court responded to a request (see Appendix "A") stating she did not have the "Complaint and Affidavit of Probable Cause" for the indictment in her file. A request for the documents was sent to the District Attorneys Office (The ONLY copy is in the Fifth Circuit File # 24-40476, Petitioner is indigent and could not afford their copying fee) They refused to respond to the request. A request was also sent to the Sheriff's office but they denied the Petitioner access to them. (again their denial is also in the Fifth Circuit file 24-40476).

The Petitioner was at a loss, then the Petitioner's father, who was holding all the legal files at his home, passed away and everything was lost. Out of desperation the Petitioner wrote his Attorney, who had never responded since signing the plea bargain, and begged for another set of files. (the original set took the Petitioner's father almost two years to get from the Attorney) The Petitioner expected no response as usual, then in August 2022 the Petitioner received a legal package from the Attorney's office. Inside was a note (see Appendix "B") telling the Petitioner his Attorney had passed away and they graciously gave a new set of copies. On the top of the files, clearly out of order, was the documents the Petitioner had been searching for.

Why would the Attorney withhold these documents all those years? Why would the District Attorney ignore to respond to the request? Why did the Sheriff deny access to them? Why didn't the Clerk have them on the public record? With one look at the following evidence it will be obvious.

LEGAL FACTS TO SUPPORT:

ARBITRARY DEPRIVATION

The Indictment (see Appendix "C") for cause # 14309 clearly states as the "ONLY ELEMENT" "by defendant's sexual organ" while the Complaint (see Appendix "D") and the Affidavit of Probable Cause (see Appendix "E") both state as the "ONLY ELEMENT" "by defendant's tongue"

AS THIS IS A CHALLENGE TO A STATE CONVICTION FROM TEXAS, this Court is aware Texas has removed itself from part of the U.S. guidelines for an indictment. The Petitioner has provided an exhaustive presentation of the Texas Constitutional requisites and Appeal Courts opinions as they define the state's application of the Constitution.

"Tex. Const. Art. 5§12(b) defines an indictment as a written instrument presented to a Court by a Grand Jury charging a person with the commission

of an offense" *Cook V. State* 902 SW 2d 471 (Tex.Crim.App.1995)"the 6th Amend. of the U.S.Const. provides in part that'in all criminal prosecutions the accused shall enjoy the right...to be informed of the nature and course of the accusation...'"U.S.Const.Amend.VI this 6th Amend.right is applicable to state prosecutions." *Sanchez V. State* 182 SW 3d 34 (4th Cir.App.2005) citing *Pointer V. Texas* 380 US 400,85 S.ct.1065 (1965)."Art.1§10 of the Texas Const. provides in part'in all criminal prosecutions the accused...shall have the right to demand the nature and cause of the accusation against him...'these Const.guarantees require that notice [of the nature and cause of the accusation] be given with sufficient clarity and detail to enable the defendant to anticipate the States evidence and prepare a proper defense" *Sanchez V. State* 182 SW 3d 34 (4th Cir.App.2005)"Under Art.1§10 of the Texas Const.the requisite notice must come from the face of the Indictment" *Riney V. State* 28 SW 3d 561,565 (Tex. Crim.App.2000)."The Texas Code of Crim.Proc.sets forth the guidelines for a sufficient Indictment.Tex.Code Crim.Proc.21.03,21.11 'to give sufficient notice the face of the indictment must allege in plain and intelligible language all the facts and circumstances required to establish the material elements of the offense charged'" *State V. Hernandez* 395 SW 3d 358 (4th Cir.App.2012)

Generally an indictment need only track the statutory language defining the criminal offense in order to satisfy Const. and statutory requirement of notice." *State V. Hernandez* 395 SW 3d 358 (4th Cir.App.2012)But in some cases a charging instrument that tracks the statutory language may be insufficient to provide a defendant with adequate notice.This is so when the statutory language fails to be completely descriptive." *Barbernell* 257 SW 3d 251 (Tex.Crim.App.2008) The statutory is not completely descriptive when the statute defines a term in such a way to create several means of committing an offense and the definition specifically concerns an act or omission on the part of the defendant." *State V.*

Zuniga 512 SW 3d 902 (Tex.Crim.App.2017). The 6th Circuit of Appeals clarified this by stating "...because the Indictment tracked the language of the Texas Penal Code Ann.22.01 (a)(2)(A)(ii) and provided notice of the exact subsection under which the Indictment was brought, the State, in the Indictment was not required to neither allege the character of the acts or words used by the defendant nor further specify the manner..." Smith V.State 494 SW 3d 243 (6th Crt.App. 2017) That example is the same Penal Code as the Indictment in Question in the case at hand with the exception that the indictment in the case at hand "ONLY" states 22.021 with "NO" exact subsection and that Penal code has more than "20" different possibilities. If the Indictment in the case at hand would have listed the exact section and subsection or the element that was presented by the Affiant in the Complaint and Affidavit of Probable Cause, it would have been sufficient to show the means of the offense and the Indictment would not be void.

The question of probable cause also arises to the surface as the actual document titled "Affidavit of Probable Cause" does support the Indictment. "Under Art.1§10, a defendant has a right to have a Grand Jury pass upon the question of whether there is probable cause to believe he committed a particular offense, and a defendant also has a right under 5§12 to a presentment of an Indictment from the Grand Jury. while we have never stated that the Indictment must reflect the Grand Jurys assessment that there is probable cause to believe a defendant committed a particular offense, this becomes apparent when the two rights are juxtaposed. If we allow a written instrument to stand as an Indictment even when it does not contain enough information to point the offense charged then we seriously undermine a defendants Art.1§10 rights to a Grand Jury screening reflected in the Indictment and in so doing a defendant also loses his assurance that the appropriate screening has taken place." Duron V.State

956 SW 2d 547 (Tex.Crim.App.1997) "Tex.Const.Art.1§10 and the U.S.Const.6th Amend.go hand in hand with the Duron opinion of probable cause."Sanchez V.State 182 SW 3d 34 (4th Crt.App.2004)

The State Trial Court ruled under "Operation Of Law" in which the Clerk stated "...it appears that the Trial Courts failure to act within the time limits as proscribed by statute constitutes a finding that there are no previously unresolved facts material to the legality of the applicants confinement,and therefore,it would appear that the Application for Writ of Habeas Corpus has been overruled by operation of law" (see Appendix "H")Then the Texas Court of Criminal Appeals "dismissed without written order"(seeAppendix)"G") So the Trial Court (the fact finder) didnt even look at the Habeas "covering up an illegal sentence" and the Texas Court of Criminal Appeals just co-signed the cover-up!

ARBITRARY DEPRIVATION

"A State violates a Criminal Defendants Due Process rights to Fundamental Fairness if it Arbitrarily Deprives the Defendant of a State law entitlement." Jones V.McDonald 2012 US Dist LEXIS 36093 citing Hicks V.Oklahoma 447 US 343,346 100S.ct.2227 (1980)

INEFFECTIVE ASSISTANCE OF COUNSEL

Strickland has two components;"...the defendant must show that the Counsels performance was deficient,this requires showing that Counsel made errors so serious that the Counsel was not functioning as the Counsel guaranteed the defendant by the 6th Amend.,...that Counsels errors were so serious as to deprive the defendant of a fair trial."Strickland V.Washington 466 US 668,104 S.ct.2052

Trial defense Attorney was obviously aware of the void Indictment and chose to suppress the evidence with it only becoming available after the Attorneys death.If not,then he was clearly incompetent as Jurisdiction is crucial to the

Court having authority to act. Surely this would come to the attention of any Attorney as it falls under the Tex. Rules of Prof. Conduct 1.01 (competent and diligent Representation) Secondly, for any Attorney to allow his client to be convicted on a Void Indictment in a Court that had no Jurisdiction, does not even begin to resemble a FAIR TRIAL.

CHALLENGE TO A COURTS JURISDICTION

According to all Courts in Texas, nothing will prevent a defendant from having a Court review "de novo" a challenge to a courts jurisdiction. "The question of Jurisdiction of the convicting court may be raised at anytime because Judicial action without Jurisdiction is void" Davis V. State 956 SW 2d 558 (Tex. Crim. App. 1997)

ABUSE OF WRIT

"The Court held that a successive petition must be dismissed as an abuse of writ unless the petitioner can show external cause and prejudice or a Fundamental of Justice" U.S. V. Fallon 992 F2d 212 (8th Cir. Cr. App. 1993)

External Cause: The Petitioner was unable to acquire the evidence to show a Void ab initio Indictment which deprived the Trial Court of Subject Matter Jurisdiction, The evidence was hidden by the Prosecutor from the Petitioner, The Sheriff denied the Petitioner access to the evidence, the District Clerk did not have the evidence on the record and the Defense Attorney in collusion with the State withheld the evidence with it only becoming available after his death.

Miscarriage of Justice: A State Court and its actors will be rewarded for hiding the evidence that they acquired a conviction without any Jurisdiction and an innocent man who has already spent 18 years deprived of his liberty will continue to sit in prison on a illegal conviction.

The Petitioner has presented exhaustive proof from Texas' own Judicial system showing the indictment # 14309 (see APPENDIX "C") was Void ab initio and deprived the Texas Trial Court of Subject Matter Jurisdiction. Certain actors in the Texas Judicial system has gone to great lengths to keep this hidden, as no one is still willing to produce the Complaint or Affidavit Of Probable Cause or even discuss it openly. The Trial Court ruled on the 11:07 a.m. habeas corpus with "OPERATION OF LAW" and the Texas Court of Criminal Appeals co-signed it. This cover-up and the illegal conviction stands leaving an innocent man sitting in prison deprived of his liberty for the last 18 years.

"Where a federal Court finds that a State-Court decision was rendered in the absence of Subject Matter Jurisdiction or tainted by due process violations, it may declare the State-Courts judgement Void ab initio" *Twin City Fire Ins. V. Adkins* 400F3d 293 (6th Cir.App.2005) citing *Intl. longshoremans Assn. V. Davis* 476 US 380, 392, 106S.ct.1904 (holding where a State Court...has no Subject Matter Jurisdiction to adjudicate the issue...any judgement issued by the State Court will be void ab initio)

RULE 20.4 (A)

JUDGEMENT SOUGHT FROM A STATE COURT

HABEAS CORPUS 11.07 (1) was filed with the 115th District Court, Upshur County Cause # 14309

Texas on July 11, 2023 and was overruled by "OPERATION OF LAW" on Aug. 31, 2023. (see Appendix "H")

(2) The Texas Court Of Criminal Appeals then dismissed without written order claiming Tex. code Crim. Proc. Art. 11.07 sec. 4(a)-(c) (see Appendix "G")

NOTE: Please notice the trial Court did not even look at this 11.07 (see Appendix "H") This looks very suspicious as the trial courts know that the Court of Criminal Appeals will normally Co-sign their decisions allowing the trial court to continue to hide this illegal conviction.

FEDERAL HABEAS CORPUS # 24-40476

was filed in the U.S. Court of Appeals in the Fifth Circuit July 16, 2024 with the Court demanding a "proper Motion" under 2244, the Petitioner wrote an exhaustive Motion and placed it in the unit mailbox on time. The Court dismissed the petition on Sept. 5, 2024 for failure to comply. Petitioner a motion to reopen/reinstate on Oct. 7, 2024. During this time the Petitioner sent several requests, Motions and Judicial Notices asking that the 5th Circuit would honor Supreme Court Judge Sotomayor's opinion (Fed. Habeas Corpus Prac. and Proc., part IV Proc. def. Ch28 Succ. Pet. §29.3) covering the issue of successive writs being viewed as first-in-time petitions due to

the evidence being hidden (newly discovered)eliminating
the need for the 2244.

On Oct.24,2024 Petitioner Motion to reopen/reinstate
was granted.

On Nov.7,2024 Motion for order authorizing the US Dist.
Court for the Eastern District to consider successive
28 USC § 2254 Application was DENIED (see Appendix "F")
The 5th Circuit used the interpretation of 2244 to deny
2254

Petitioner then chose to file this Extraordinary Writ after Judge Sotomayor
stated "though the 5th Circuit has already interpretated §2244 to deny Halprins
Authorization to file a 2254...Nor does it preclude Halprin from seeking an
original writ of habeas corpus under Rule 20" Halprin V.Davis 140 S.ct.1200 (2
(2020)

REASONS FOR GRANTING THE PETITION

The Indictment was Void ab initio depriving the State Court Subject Matter Jurisdiction. Every Court in America has stated at some point that a void indictment does not invoke Subject Matter Jurisdiction-Judicial action without Jurisdiction is void and a void judgement is a nullity.

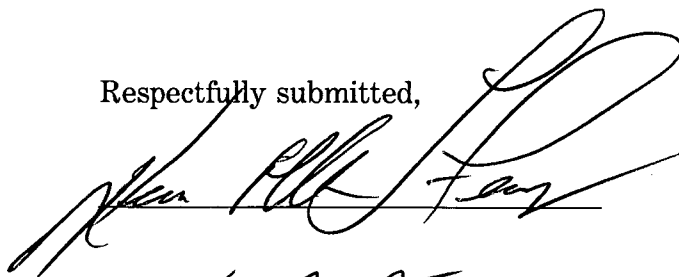
The petitioner has been illegally deprived of his LIBERTY for 18 years because the State actors kept it hidden, and even today not a single Court has or will look at the evidence presented.

REASONS FOR GRANTING THIS PETITION.....TO PROMOTE THE ENDS OF JUSTICE!!!!

CONCLUSION

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John R. Lee", is written over a horizontal line.

Date: 1-2-25