

No. 24-7469

ORIGINAL

Supreme Court, U.S.
FILED

MAY 28 2025

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

David Simmons — PETITIONER
(Your Name)

vs.

STATE OF ALASKA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the State of Alaska
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Simmons #31806
(Your Name)

Wildwood Corrections Center
(Address)

Bldg #10, 10 Chugach Ave, Kenai, AK.
(City, State, Zip Code) 99611-7028

(Phone Number)

QUESTION(S) PRESENTED

Whether the Appellate Court's Affirmance of the Trial Court's Conviction and Sentence of Violating a non-existing Statute by deferring to the Supreme Court's RETROACTIVE CONSTRUCTION of a jurisdictional Rule, to defeat the preclusive effect of an incurable defective jurisdictional fact - Denied Petitioner his Substantive and Constitutional Rights under the Due Process Clause of the 6th Amendment, given to the States, through the 14th Amendment to the U.S. Constitution and the Alaska Counter-Part.

Whether the State Supreme Court's RETROACTIVE CONSTRUCTION of the 2003 Amendment, as applied, may operate to impose a new obligation or duty of performance where none existed before having declared Petitioner was EXEMPT - is Constitutional.

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

HBE-590-902 CR-
3PA-14-0333 CR.
3KN-21-01529 CR.
No. S-16171

(11)

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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[] is unpublished.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[] is unpublished.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 MO. A-14161; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Petition for Certiorari court appears at Appendix B to the petition and is

[] reported at S-19321; 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 _____.

[] 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 10/23/24. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: CERTIORARI - 2/26/25, and a copy of the order denying rehearing appears at Appendix B.

[] 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

14th Amendment: ... nor shall any state deprive any person of life, liberty, or property, without due process of law. Alaska Com
Ter Part.

6th Amendment: In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial. Alaska Counter part.

Ex post facto: ART. I, § 10 U.S. CONST. "No state shall pass any Bill of Attainder, ex post facto law, or impairing the obligation of Contracts.... Alaska Counter part. ART. I, § 15.

Statement of The Case

On April 5th, 2016, The State dismissed #3PA-14-0333CR. Indictment without prejudice, on jurisdictional grounds. The facts and circumstances of the dismissal - holding petitioner to answer, evidenced bad faith. The dismissal barred a speedy and public trial by the proclusive effect of the jurisdictional defect.

Thereafter the state initiated a successive prosecution for the same conduct violation (refusal to submit to DNA testing) in multiple count indictment, 3KN-21-01529CR. 7 1/2 years later, before a new judge and prosecutor, in a different venue, resulting in the ex post facto conviction and sentence of a non-existing statute.

Previously, the state supreme court, issued its opinion in Simmons v. DOC, 436 P.3d 1110 (Ala. 2018), in which it held that under the 2003 amendment, petitioner was required to submit a DNA sample, after having declared petitioner was not required to do so, under the original enactment, A.S. 44-41-035(b) (eff. date 1/1/96).; On that basis the state initiated its second prosecution, well after the statute of limitations had passed - a time bar claim, which the courts ignored.

(P)

Reasons for Granting The Petition

The Reason why This Case goes beyond Petition
-er, if The States' Supreme Courts' inconsistent decisions
were permitted to stand, because The Administrative
Agency (Parole Board) and The Courts, leeked
Subject matter jurisdiction, The principle of finality
is compromised, if The Judgment remains in
definitely subject to attack for a defect of Juris-
diction, then the principle of finality is Compro-
mised. The effective date notice clause, would have
no meaning, and this Court's instructions that "a
Court does not have the power by judicial fiat to ex-
tend its jurisdiction over matters beyond the scope
of authority granted to it by its creators"

Argument

The State Concedes The fact that The State's Supreme Court declared that petitioner was exempt under A.S. 44.41.035(b)(Eff. date 1/1/96), because his conviction pre-dated the enactment of the original law. However, The State contends that the amendment, effective date of 7/1/03, required those individuals who had been convicted of a qualifying offense and remained incarcerated, before, on, or after its effective date of July 1, 2003, must submit a DNA sample as a condition of parole, mandatory or discretionary. Alaska case law, and this Court's precedents rejects the State's contention. *Huitt v. Powell*, 420 P.2d 468 (A.K. 1966); *Deherdo v. State*, 740 P.2d 453 (A.K. 1987); *State v. Bromley*, 987 P.2d 183 (A.K. 1999); *U.S. v. Cotton*, 535 U.S. 625, 620 (2002); *Arbaugh v. Y + H CORP.*, 546 U.S. 500, 514 (2006); *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015) ("When a court rock subject matter jurisdiction meaning it lacks the statutory

OR Constitutional power to adjudicate a case,

The Court must dismiss the Complaint, even sua sponte if necessary.). The preclusive effect generated by the factual finding of the jurisdictional fatal defect, leaves nothing to consider.

The DNA Law

The DNA law is a Civil non-punitive Regulation and it has Substantive and Remedial provisions (Characteristics). The Remedial provision serves the regulatory purpose of promoting Justice and protecting Public Safety.

Applying this procedural statute to a condition of existing litigation, even litigation involving an underlying dispute that arose from conduct occurring before the effective date of the new statute, involves no improper retrospective application because the statute addresses conduct in the future. Such statutes are not made retrospective simply because they draw from facts existing prior to their enactment, such

Statutes are strictly prospective in nature since they relate to procedures to be followed in the future." *Aetna Casualty + Surety Co. v. Indus. Acc. Comm.*, 182 P.2d 159 (1947); *Hood v. State*, 574 P.2d 873-874; *Metamucra Maid Inc. v. State*, 620 P.2d 182, 183 (Ala. 1980); *Pan Alaska Trucking v. Crouch*, 773 P.2d 947 (Ala. 1989); *Ego Park Collett*, 337 U.S. 55 (1949) ("Remedial Statutes presumptively apply to pending cases").

Upon conviction of an underlying qualifying offense, it imposes a collateral legal disability, a separate and distinct consequence from the original prosecution adverse to the defendant beyond the expected sentence for his current offense, by operation of law. The Act is always prospective, by applying the procedural or Remedial law in effect at the time of the legal proceedings. *Zandgraf v. USI Film Prod.*, 511 U.S. 244 (1994).

The doctrine of impermanence will not give an amendment a retrospective effect to apply to and operate upon pre-enactment conduct, if it effects a substantive change in the law.

Thus, an unconstitutional law can not serve as

AS THE FOUNDATION OF A COURT'S AUTHORITY TO TRY AND IMPRISON AN INDIVIDUAL FOR VIOLATING A NON EXISTING STATUTE. EX. PARTE SIEBOLD, 100 U.S. AT 376-77; FISKE V. WHITE, 531 U.S. 223, 228-229 (2001) (PER CURIAM). SUCH A CONSTRUCTION MAY NOT OUT OF WHOLE CLOTH CREATE JURISDICTION WHERE NONE EXISTED PREVIOUSLY. HIGH AIRCRAFT V. EX. REL SCHUMER, 520 U.S. 939 (1997).

"BECAUSE AN UNCONSTITUTIONAL LAW IS VOID, IT IS AS NO LAW AND AN OFFENSE CREATED BY IT IS NOT A CRIME. AND A CONVICTION UNDER IT IS NOT ONLY OR MERELY ERRONEOUS, BUT ILLEGAL AND VOID, AB INDETERMINABILITATE AND CAN NOT BE A LEGAL CAUSE OF IMPRISONMENT." EX. PARTE SIEBOLD, 100 U.S. AT 376-77 (1879).

Conclusion

THE REGULATION MUST HAVE EXISTED AT THE TIME OF PETITIONER'S UNDERLYING CONVICTION, CASE, 4BF-590-902 CR, OR SUBSEQUENTLY, TO ANY PENDING PROCEEDING WHICH HAD NOT GONE BEYOND THE PROCEDURAL STAGE TO WHICH THE STATUTE PERTAINS. IF THERE IS NO OPERATION OF

law, There can be no Obligation of law; OR, "that quality by which the law becomes binding on a subject as a rule of his conduct." *Hammond v. United States*, 26 F. Cases, 96 (1801). Also, See, *Simmons v. DOC*, S-16171 (3PA-14-01187CI) at p. 7299-7300 - Post Sentence - and foot-note 58, at p. 7299 ("Simmons was criminally charged for his refusal to provide a DNA sample, but the state later dropped the charges. *State v. Simmons*, No. 3PA-14-0353322. [Alaska Super., dismissed April 5, 2016].")

"the legal effect of conduct is ordinarily assessed under the law existing at the time the conduct takes place. and, an effective date is a part of an agency's statement of general or particular applicability and of future effect." without an effective date, the rule is a nullity.

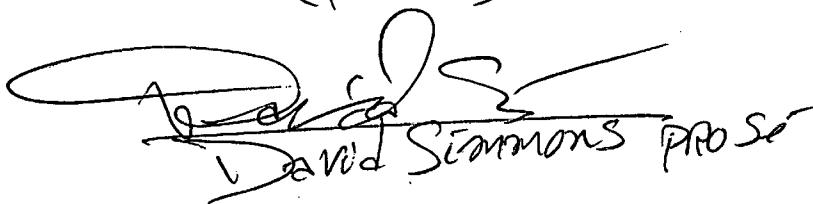
for these reasons, the court of appeals have a constitutional duty to make a finding of fact, OR, to have confirmed the fact, declared by the supreme court. ■ STATE DECISIONS ADDRESS LAW, NOT FACTS - and the supreme court was constrained from exceeding its scope of authority, vested by statute, the due process, speedy trial and ex post facto

Chances.

Prayer

Petitioner prays that this Court
Grants his petition.

Respectfully,



David Simmons pro se

Dated this, May 27th, 2025
Pet. for Certiorari, U.S. Supreme
Court

(11)