

25-5640
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JASON RUSSELL

— PETITIONER

(Your Name)

vs.

PEOPLE OF THE STATE OF ILLINOIS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF ILLINOIS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason Russell M-25317

(Your Name)

P.O. Box 1000

(Address)

Menard, Illinois 62259

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Whether Section 725 ILLCS 5/109-3.1 violates the 14th Amendment to the United States Constitution.

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:

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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:

OPINION BELOW

The opinion of the Illinois Supreme Court Appears in Appendix
"A" to the petition.

JURISDICTION

On May 28, 2025, the Illinois Supreme Court entered an order DENYING petitioner's Petition For Leave To Appeal.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a) and United States Supreme Court Rule 10(b).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1 Petitioner seeks the declaration of Section 725 ILCS 5/109-3.1, as facially unconstitutional because it violates the 14th Amendment to the United States Constitution.

2 Vacatur of the State of Illinois conviction and sentence because the trial court lacked subject matter jurisdiction where the State of the Illinois relied on Section 725 ILCS 5/109-3.1, to bring the charging instrument.

3 Pursuant to the Supremacy Clause of the United States Constitution, Article VI, section 2; the Constitution is the Supreme law of the land and strikes down or nullifies anything that tries to supersede it.

STATEMENT OF THE CASE

Petitioner, Jason Russell, is currently incarcerated at the Menard Correctional Center, Menard, Illinois, Randolph County, Illinois. Petitioner is serving a sentence of 45 years for felony murder predicated on a robbery.

On September 20, 2023, Petitioner filed a petition for relief from judgment under 735 ICS 5/2-1401(f), challenging the constitutionality of Section 725 ICS 5/109-3.1, and the vacatur of the State of Illinois conviction and sentence for lack of jurisdiction. On February 16, 2024, the trial court denied Petitioner's petition. (See, Appendix C).

A timely notice of appeal was filed. On February 10, 2025, the Appellate Court of Illinois denied Petitioner's appeal. (See, Appendix B).

On May 28, 2025, the Illinois Supreme Court denied Petitioner's Petition For Leave To Appeal. (See, Appendix A).

REASONS FOR GRANTING THE PETITION

Russell contends that the State of Illinois relied on the statutory mandate of 725 ILCS 5/109-3.1, to bring the indictment, commence felony prosecution, and produce his current imprisonment. As a matter of first impression, section 5/109-3.1, is facially unconstitutional and void ab initio, because it contravenes the Constitutional requirements specified in and guaranteed by the Illinois Constitution 1970, art. I § 7. Specifically, pursuant to the plain and ordinary meaning of section 5/109-3.1, persons in custody for the alleged commission of a felony, could remain in custody for 30 days without a preliminary hearing or grand jury indictment, as opposed to, afforded a "prompt" probable cause determination of the validity of the charge, via grand jury indictment or preliminary hearing before being held to answer for a crime, as directed by the Illinois Constitution 1970, art. I § 7.

To support his constitutional voidness challenge, Russell relies on the Illinois Supreme Court's controlling interpretation of the term "prompt" in People v Kent, 51 Ill.2d 161, People v Hendrix, 54 Ill.2d 165, and People v Howell, 60 Ill.2d 117. Additionally, Russell respectfully submits, the Appellate Court's Opinion in People v Roby, 200 Ill.App.3d 1063 (5th Dist. 1990), constitutes a tacit admission that the legislature enacted the statutory mandate with the intent, to override or circumvent the Constitution, and in effect, supports Russell's constitutional voidness contention.

Pursuant to People v One 1993 GMC, 2011 IL 110236, ¶186, 355 Ill. Dec. 900, 960 N.E.2d 1071, "A constitutional violation committed by the legislature,

is inherent in the terms of the statute itself." Pursuant to People v Garcia, 241 Ill. 2d 416, and People v Diggins, 235 Ill. 2d 48, "when construing a statute, a reviewing court's fundamental objective, is to give effect to the legislature's intent. The best indication of the legislative intent, is the plain and ordinary meaning of the statutory language."

In the instant case, the Roby Courts, adjudication of the statutory right to a preliminary hearing or grand jury indictment, clearly signals, the legislature's intent in the statutory language of section 725 ILCS 5/109-3.1. Review of the statutory language of section 5/109-3.1, does not include the term "prompt" and explicitly sets a time limitation of 30 days for the right to a grand jury indictment or preliminary hearing for a person in custody for the alleged commission of a felony.

Accordingly, it is untenable, factually, based on the plain and ordinary meaning of section 725 ILCS 5/109-3.1 language, and legally, based on the Illinois Supreme Court's controlling interpretation of the term "prompt" in Kent, Id.; Hendrix, Id.; and Howell, Id.; that the legislative intent for enacting the statutory scheme, was to override the Constitutional directives, specified in and guaranteed by the Illinois Constitution 1970, art. I §7; as substantiated by the Illinois Appellate Court's Opinion in People v Roby, 200 Ill. App. 3d 1066 (5th Dist. 1990).

Moreover, and to the relevant question presented to this Court, because the Illinois Constitution 1970, art. I §7 created a liberty interest, the fundamental right to due process pursuant to the 14th Amendment to the United States

is attached. Thus, the legislature enacted section 725 ILCS 5/109-3.1, with the intent to circumvent the Constitution, and thereby, systematically deprive Russell of the fundamental right, not to be deprived of liberty without due process. Furthermore, because section 725 ILCS 5/109-3.1 contravenes the Illinois Constitution and the United States Constitution, there is no circumstances by which, section 725 ILCS 5/109-3.1, could be validly applied. Napleton v Village of Hillside, 229 Ill.2d at 306; Lucien v Briley, 213 Ill.2d at 344.

Essentially, the time limitation by which, the State of Illinois is required to bring a charge against an accused in custody, is intrinsic to the Constitution, and in effect, vitiates section 725 ILCS 5/109-3.1, mandate of 30 days. Accordingly, perpetuating the statutory notion of a "prompt preliminary hearing or grand jury indictment within 30 days for a person in custody for the alleged commission of a felony," can not be reconciled with due process, and therefore, the necessity to abrogate section 725 ILCS 5/109-3.1, is warranted.

Pursuant to the Supremacy Clause of the United States Constitution, Article VI, section 2, the Constitution is the Supreme law of the land and strikes down or nullifies anything that tries to supersede. Ultimately, it is in the best interest of justice that this Court nullify section 725 ILCS 5/109-3.1, and to ensure, the Constitution is not impugned.

Accordingly, in light of the Illinois Constitution 1970, art. I §7, created liberty interest, this Court has a legal basis to now declare section 725 ILCS 5/109-3.1, does not comport with the 14th Amendment to the United States Constitution, and

declare, said statute facially unconstitutional, and void ab initio. A liberty interest may arise from the Due Process Clause itself or it may be created by state law. See Meachum v Fano, 427 U.S. 215, 224-25; Wolff v McDonnell, 418 U.S. 539, 556-57.

In addition, pursuant to County Court v Allen, 442 U.S. 140, 99 S.Ct. 2213, this Court held, "A party has standing to challenge the constitutionality of a statute when it has an adverse impact on their rights." In the instance case, Russell's substantive right to due process pursuant to the 14th Amendment to the United States Constitution was adversely impacted by the state of Illinois enforcement of section 725 ILCS 5/109-3.1, to bring an indictment, commence felony prosecution; and subject Russell to a term of imprisonment.

Specifically, on November 5, 2007, Russell was arrested by law enforcement without the insurance of an arrest warrant, for the felony offense of first degree murder. Russell was seized for well over 48hrs before he talked to ASA Phyllis Warren. Brendlin v California, 551 U.S. 249, 254, 127 S.Ct. 2400, 168 L.Ed. 2d 132 (2007). On December 13, 2007, 38 days after Russell was taken into custody, the state of Illinois convened a grand jury which returned an indictment charging JASON RUSSELL with first degree murder. Russell was subsequently tried, and convicted of first degree murder. On November 30, 2011, Russell was sentenced to a term of 45 years.

Essentially, based on the specific facts and circumstances, i.e. Russell was arrested without an arrest warrant; Russell remained in custody for 38 days until the state of Illinois filed an indictment, and the convictions

and sentence resulting from the charges, patently demonstrates: the State of Illinois enforced section 725 ILCS 5/109-3.1, to bring the indictment; commence felony prosecution; and Russell's current imprisonment. Accordingly, because the enforcement of section 725 ILCS 5/109-3.1, resulted in, felony convictions and the imprisonment of Russell, Russell has standing, to challenge the constitutionality of the statute. People v Mayberry, 63 Ill. 2d 1.

Ultimately, with this Court declaring section 725 ILCS 5/109-3.1, facially unconstitutional and void ab initio, constitutes, the State of Illinois relied on a unconstitutional statute to bring Indictment No. 07 CR 25129. As a result, Russell respectfully submits, said indictment is void, and such fact created a jurisdictional impediment to the trial court's authority over the prosecution. Consequently, the State of Illinois convictions and sentence imposed on the void indictment, are void, for want of jurisdiction of the subject matter. Ex parte Siebold, 100 U.S. 371 1d., at 376-77, 25 L.Ed. 717, "if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the cause".

Accordingly, Russell has set forth a legal basis for this Court to grant the Writ and (1) Declare section 725 ILCS 5/109-3.1, facially unconstitutional and void ab initio, because the statutory scheme was enacted in contravention to the 14th Amendment to the United States Constitution; and (2) Vacate the State of Illinois convictions and sentence in People v Russell, Cook County No. 07 CR 25129; dismiss Indictment No. 07 CR 25129, with prejudice; and discharge Russell from imprisonment; to protect the constitutional integrity of the

judicial process that produced Russell's imprisonment. Rose v Clark, 478 U.S. 570, 579. In the alternative, Russell respectfully request that this Court exercise its supervisory authority and direct the Illinois Supreme Court to declare section 725 ILCS 5/109-3.1, facially unconstitutional and void ab initio; and vacate the State of Illinois convictions and sentence in People v Russell, Cook County No. 02 CR 25129; dismiss Indictment No. 07 CR 25129, with prejudice, and discharge Russell from imprisonment.

CONCLUSION

In accordance with the above stated authority, arguments, and reasons to grant the Writ, Russell respectfully, implore this Honorable Court to grant the Writ in the best interest of justice.

Respectfully submitted,
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