NO. PD-0067-24
9-29-24

ORIGINAL

IN THE

26-6025

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

Supreme Court, U.S.
FILED
MAY 28 2026
OFFICE OF THE CLERK

SHAWN SANDERS - Petitioner

VS.

TEXAS - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, FOURTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

Shawn L Sanders
1695 S. Buffalo Dr.
Raymondville TX 78580

Question(s) Presented

1. Whether if it is unconstitutional for a State to allow an assistant prosecutor to appeal Magistrate dismissal without appellate court jurisdiction, nor without express statutory authority of law under 18 U.S.C 3731 in violation of the thirty day guideline that is jurisdictional?

2. Whether if it is a fourth amendment protection violation to have an untimely adversary determination of probable cause absence of a timely judicial determination by a neutral magistrate before arrest or 48 hours after arrest?

3. Whether the Due Process Clause of U.S Const. amend. XIV required that a jury on the basis of proof beyond a reason to doubt make the factual determination authorizing an increase in the maximum prison sentence?

4. Whether if an Metro Transit Police officer lack jurisdiction to make arrest outside of the transit facilities that has nothing to do with transit property or facilities?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

Sanders - petitioner, Texas as respondent

RELATED CASES

Sanders v. State, 2026 Tex. App. Lexis

Petition for Discretionary Review to the Court of Criminal Appeals of Texas No. PD-0067-26

TABLE OF CONTENTS

Page

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 17

REASONS FOR GRANTING THE WRIT 18

CONCLUSION 19

INDEX TO APPENDICES

APPENDIX A Petition for Discretionary to the Court of Criminal Appeals of Texas No PD-0067-26

APPENDIX B Sanders v. State, 2026 Tex. App Lexis

TABLE OF AUTORITIES

PAGE NUMBER

CASES

1. Apprendi v. New Jersey
   530 U.S 466 13

2. County of Riverside v. Mclaughlin
   500 U.S 44 14

3. Gerstein v. Pugh
   420 U.S 103 14

4. Jefferson v. State
   633 S.W 3d 758 10

5. Manuel v. City of Joliet
   580 U.S 357 4

6. State v. Boseman
   830 S.W 2d 588 7

7. State v. Muller
   829 S.W 2d 805 9

8. State v. Richardson
   383 S.W 3d 544 8

9. State v. Santillana
   612 S.W 3d 582 7

3. United States v. Alatorre INDEX OF AUTHORITIES Page Number
2019 U.S Dist. Lexis 33361 15

1. United States v. De La Rosa
426 F Supp 3d 722 6

2. United States v. Foster
566 F Supp 1403 16

STATUTES AND RULES

18 U.S.C.S. 3731 (Criminal Appeal Act.) 6, 18
Federal Rules of Appellate Procedure Rule (4) 6, 18
Federal Rule of Criminal Procedure Rule (5.1)(f) 15
Federal Rule of Criminal Procedure Rule (8) 11
Federal Rule of Criminal Procedure Rule (48) 15
Texas code of Criminal Procedure (art. 28.10) 11
Texas code of Criminal Procedure art. 44.01 ..... 7, 8, 9, 18
Texas rule of Appellate Procedure (26.2)(6) 9
Texas rule of Appellate Procedure (26.3) 9

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

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Fourth Court of Appeals Court appears at Appendix B to the petition and is reported at Sanders v. State, 2024 Tex App. Lexis.

JURISDICTION

For cases from state courts:

The date on which the highest state court decided my case was 4-21-26

A copy of that decision has already been sent in the Appendix.

A timely motion for rehearing or motion for reconsideration was thereafter denied on the following date: 6-6-26, and a copy of the order denying rehearing appears at Appendix A has already been sent to the Clerk office of the Supreme Court of the United States.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Under the Fourth Amendment protection, on January 8, 2022 the Magistrate did not agree with the arresting officer that there was probable cause and did not sign a warrant for detention. The assistant prosecutor without authorization from the grand jury, added a new count, due to there was never no capias warrant issued by a neutral and detach magistrate. Under the common law each offense or count should have a cause number. In Sanders v. State, 2026 Tex. App. Lexis 274, the only arrest on record was January 8, 2022 and that day magistrate dismiss this charge without given it a docket number. The record will show there was only one magistrate docket number which was the felon poss firearm that was found in someone else vehicle.

THERE IS NO RECORD OF:

Lack of Magistrate docket number.

Never had a bond or a bond hearing.

No signature from a Magistrate Judge for detention or arrest.

Lack of transfer order, show that the district court Judge sitting as magistrate never transfer or impanel a grand jury to indict this offense for allege controlled substance meaning the trial court jurisdiction was never invoke by the District Court.

The prosecution of Petitioner Sanders in the absent of magistrate proceedings were in violation of the Double Jeopardy and Due Process clause of the Texas Constitution and the U.S Constitution the trial was unsupported by probable cause or arrest warrant. The time for instituting an government appeal had passed and there was no jurisdiction and venue. There had been no probable cause determined by a court of law. ADA knew that a decision to request for an trial under these circumstance violated Petitioner fourth, fifth and Fourteenth Amend rights.

In Manuel v. City of Joliet 580 U.S 357 falls under Fundamental Rights, Search and Seizure, Scope of Protection and Commencement of Criminal Proceedings. Preliminary hearing dismissal and discharge would seem to be required, however, the remedy is without prejudice and the government may immediately re-charge the defendant and start over. The State fail to immediately resume a new prosecution with a new arrest this charge has no valid arrest and Petitioner first two indictment filed in 2022 is proof of that the controlled substance case was abandon for 2 years and 4 months. The first indictment with more than one count was presented in May of 2024, for a warrantless arrest in Jan. 8 2022.

Due to the court allowed the assistant prosecutor to make appeals without statutory authority or statutory jurisdiction, the ADA was able to make false alteration of, a government record. In contrast, to prove petitioner sent a copy of the ADA motion to dismiss for re-indictment after trial date: July 30, 2024, to the Court of Criminal Appeals of Texas. The ADA did that so that he may hide the first 2024 indictment showing count three was less than a gram in May of 2024. During this time the two year statutory limitation to prosecute a state jail felony had pass. Petitioner trial attorney did object to the cross-contaminted evidence, but did not have ~~ano~~ time to appoint an investigator / chemist and thereby denied petitioner due process and effective assistance of counsel under the U.S Constitution. Due to the ADA re-indictment after re-indictment in 2024 to increase the amount of controlled substance petitioner was denied the right to inspect the evidence:

If the court will, judicial notice of Sanders pretrial docket the Court will see that 1 more than a gram but 4 less was added to the court docket two weeks before trial was an unfair trial against an indigent petitioner.

The statute also does not expressly permit the Government to appeal a dismissal of a case at a preliminary hearing upon the judges finding that the case is not supported by probable Cause. In United States v. De La Rosa 426 F Supp 3d 722- Order denying Government's appeal of Magistrate Judge Decision. The statute does not expressly permit the Government to appeal a dismissal of a case at a preliminary hearing upon the judges finding that the case is not supported by probable cause or arrest warrant. The Government cannot take an appeal in a criminal case without express statutory authority Omnibus Crime Control Act of 1970. The State void act was obstruction of Administration of Justice by Altering and Amending Accusatory Instrument without Constitution or statutory provision that creates jurisdiction under 18 U.S.C 3731 and Federal Rules of Appellate Procedure rule(4). The government has 30 days in which to appeal from a district dismissal of an information to invoke jurisdiction, furthermore, without Magistrate or Appellate court transfer order 226th district Criminal Court lack subject matter jurisdiction to re-agrue magistrate dismissal the drug charge was nolle prosequi for 2 years and 5 months before count three was presented from warrantless arrest to indictment.

Under article 44.01(i) of the Tex. Code Crim. Proc. (See) State v. Boseman 830 S.W 538. Notice of appeal filed by assistant city attorney on behalf of the State was void because statute provided that only the actual city attorney could file the State's appeal and not his assistant. There is no record of a certification. Because the prosecuting attorney certification is jurisdictional the State's appeal must be dismissed for want of jurisdiction if the proper certification is not filed within twenty days after the trial court enters it order suppressing evidence for cross-contamination. (Also see) State v. Santillana 612 S.W 3d 582 - The prosecuting attorney may not make an appeal under subsection (a) or (b) of article 44.01 (d) later than the 20th day after the date on which the order, ruling or sentence to be appealed. Petitioner send a copy of his 2022-CR-4036 indictment from the January 8, 2022 arrest showing that only the firearm was indicted due to Magistrate terminated the allege controlled substance prosecution in favor of Sanders, Furthermore, the State after the assistant prosecutor appealed indictment 2022-CR-4036 without statutory authority fail to appeal the enhancement allegations were a portion of the 2022-CR-4036 indictment under article 44.01(a)(1), even though the State was not required to plead enhancement allegation in the indictment.

Courts must give effect to the plain meaning of a statute literal text unless such a reading either would lead to absurd, unintended consequences or the plain language is ambiguous. In State v. Richardson, 383 S.W 3d 544 - The court of appeals dismiss the State's appeal due to lack of jurisdiction. In reversing the court of appeals, the court of criminal appeals determined that Tex. Code Crim. Proc. Ann art. 44.01(a)(1) allowed the State to appeal a decision dismissing any portion of an indictment. The quashed enhancement paragraphs in this case were alleged in the indictment. There is no enhancement allegations in the re-indictment of 2023-CR-3165 nor is there a tolling paragraph and adding a new or different offense to an indictment do not toll the statute of limitation to indict from arrest. For purposes of applying the plan language of art. 44.01(a)(1), there is no meaningful distinction between elements of the offense and enhancement allegation contained within an indictment; both constitute portion(s) of the indictment under art 44.01(a)(1) Whenever the quashed provisions are alleged in the indictment and, thus, are a portion of the indictment, art. 44.01 may be invoked to permit the State's appeal. Accusatory Instruments, Complaints Tex. Code Crim. Proc. Ann. art. 44.01 provides that the State is entitled to appeal from a trial court's order in a criminal case if such dismisses an indictment, information, or complaint or any portion of an indictment, information or complaint whether it the controlled substance charge was its own offense or portion of the firearm charge state fail to timely appeal. 8

(Also see) State v. Muller 829 S.W 2d 805 - The Texas Rules of Appellate Procedure 26.2 (b) are generally applicable to appeals by the State. However, the rules are not intended and may not be employed to enlarge the substantive rights of the litigants. Tex. Code Crim Proc. Ann art. 44.01 (d) does more than merely prescribe a procedural guideline for filing the state notice of appeal. Rather it limits the state's substantive authority to appeal. On the 21th day, the following entry of the court's order the state's authority to appeal under the statute ceases to exist, and the appellate court may not revive that right. State may not amend it notice under Tex. R. App. P. 26.3 after the twenty day. Challenges to jurisdiction do not need to be preserved. Jurisdiction is an absolute, systemic requirement that operates independent of preservation of error requirement. Due to the controlled substance charge was nolle prosequi for 2 years and 5 months petitioner was deprived from inspection of the alleged controlled substance, and a trial court that fails to do so has committed reversible error. On April 9 2024 the ADA conspired with an expert witness from Austin TX to establish a false probable cause in a adversary determination for probable cause. In which this was 2 years and 4 months from petitioner warrantless arrest, Then in May of 2024 the Judge in 226th warn me of the less than a gram charge without Magistrate proceedings so that the ADA could do what he wanted with the charge.

Petitioners Sanders ask the Criminal Court of Appeals a Constitutional and statutory question ask to why would it take an ADA 2 years and 5 months to present an indictment for a little amount of drugs if the evidence was good. The ADA went expert witness shopping to find someone who was willingly to help him file a false lab report. San Antonio Tx have plenty of expert witness why Austin. The only evidence that was use was the officer body cam leaving the evidence uncontested in violation of petitioner right to a fair trial. Everything was hearsay. It was a battle against petitioner trial attorney words; and the ADA words. With there being only one black juror, and petitioner being a defendant petitioner lost the word battle. Plus, petitioner lawyer render constitutionally ineffective assistance for not retaining an expert witness for mitigation sentence the ADA allege that the weight was barely over one-gram and may that the weight was barely over one-gram and may could of been wrong or a made up story. While in trial petitioner only saw a empty container. (Also see) Jefferson v. State 633 S.W 3d 758 - In ~~these~~ this case the Jefferson case states: The trial court erred in allowing the State to amend an indictment that originally contained two counts,

to add two more sexual-assault counts, thus allowing the State to obtain four convictions under the amended indictment, because Tex. Code Crim. Proc. Ann art 28.10 prohibited amendments over objection that charged an additional or different offense, which necessarily was the result of amending an indictment to add counts, the statutory method of alleging separate offenses in an indictment; The court of appeals improperly rejected a claim that counsel was ineffective for failing to object to the amendment or otherwise preserve because the court of appeals merely suggested that error had been preserved without analyzing the related trial court error claim and without addressing whether counsel had failed to memorialize an objection on the record. Petitioner filed a Petition for discretionary review from the fourth Court of Appeal Bexar County asserted these same violation to the Court of Criminal Appeals of Texas and they refuse it. Even though the Court of Criminal Appeals granted Jefferson relief. An indictment cannot authorize more convictions than there are counts. This is because a count is the statutory method of alleging a separate offense in an indictment. So when the state amends an indictment to add counts, it is adding allegation of separate offenses to the indictment. Which also violates the Federal Rule of Criminal Procedure Rule (8).

Petitioner original indictment 2022-CR-4036 shows one count with one magistrate court docket number. The next amended indictment 2023-CR-3165 shows one magistrate court docket number with two different offenses. Which is double jeopardy. Furthermore, because the A.D.A filed a motion to dismiss for re-indictment petitioner did not see the new indictment until after a year from trial. Petitioner saw that count one and count two was the same exact cases showing double count in the indictment. And before the ADA file a motion to dismiss for re-indictment after trial in 2024 to appeal the 2023-CR-3165 indictment the original 2022-CR-3165 indictment was a single count indictment. Show that a judgment was void is one way to show that error need not be preserved, but is not the only way. It is enough on direct appeal to show that the right in question was waivable only and was not waived. A right that is waivable only is not forfeitable by a party's inaction. Texas case law imposes an additional, independent burden on the appealing party to make a record demonstrating that error occurred in the trial court. There is no record of petitioner waiving his right to be indicted by an new count without authorization from the grand jury or trial without a preliminary hearing for probable cause. 12

In Apprendi v. New Jersey, 530 U.S 466 - On Writ of Certiorari to the Supreme Court of New Jersey, the court reversed the judgment because the procedure was an unacceptable departure from the jury tradition. The Due Process Clause of U.S Const Amend XIV required that a jury on the basis of proof beyond a reasonable doubt make the factual determination authorizing an increase in the maximum prison sentence. After the one day trial from July 29, 2024 to July 30, 2024 the ~~unfair~~ unfair minded jury said petitioner was guilty of more than one gram by an empty container. After that petitioner did not trust the jury and ask for a sentence plea and ask for an appeal. The ADA refuse to go by the 3rd degree felony sentence guideline so that petitioner could not get a appeal bond. Furthermore, petitioner trial attorney fail to do a presentence ~~investigation~~ investgation. The Agg. Assult case was already use in an 2014 indictment to enhance the family violence 2nd case to an 3rd degree felony showing double jeopardy. While it is the rule in Texas that prior convictions may not be used more than once to enhance punishment, a prior conviction must be successfully use before it can no longer be use for enhancement. Furthermore, Under the Due Process Clause of U.S Const amend V and the notice and jury trial guarantees of U.S Const amend VI any fact (other than prior conviction) that increases the maximum penalty for a crime

must be charge in an indictment, submitted to a jury, and proven beyond a reason doubt.

Petitioner has the same issue also as Gerstein v. Pugh, 420 U.S 103 - Petitioner state attorney had sought review of a judgment of the United States Court of Appeal for the Fifth Circuit, affirming a ruling that held that the practice of hold a person for trial on an information without a judicial determination of probable cause for detention was unconstitutional by the circuit court. The district court ordered an adversary determination of probable cause. The court held that U.S Const. amend IV required a judicial determination of probable cause as a prerequisite to extended restraint of liberty following an arrest, however, the Constitution did not require an adversary determination of probable cause. The ADA had a separate determination of probable cause 850 days after magistrate dismiss the drug charge from a warrantless arrest. To implement the U.S Const amend IV protection against unfounded invasion of liberty and privacy, the Supreme Court requires that the existence of probable cause be decided by a neutral and detached magistrate whenever possible. (Also see) County of Riverside v. Mclaughlin 500 U.S 44 - The Court granted certiorari review of a judgment of the United States Court of Appeal for the Ninth Circuit, which ordered petitioner county to provide probable cause determination within 36 hours of an individual arrest except in exigent circumstances.

durisdiction that provide judicial determination of probable cause within 48 hours of a warrantless arrest will, as a general matter, comply with the promptness requirement of the Federal Constitution Fourth Amendment, and such jurisdiction will be immune from systemic challenges ~~of~~ to probable cause determination procedure. Substantive due process. The essence of substantive due process is protection from arbitrary and unreasonable action. To ignore magistrate proceedings violates Federal Rule of Criminal Procedure Rule 5.1(f) (See) United States v. Alatorre 2019 U.S Dist. Lexis 33361 - Memorandum opinion and order denying the United States Emergency Motion. Defendant object on the grounds that the Court does not have the authority to hear an appeal of magistrate judge dismissal and discharge under Federal Rule of Criminal Procedure Rule 5.1(f). Because the Court can find no basis for its authority to consider such an appeal the Court will deny the United States emergency motion. In petitioner Sanders situation there was no timely motion or notice to appeal magistrate dismissal the ADA untimely appeal this charge under NO constitutional or statutory provision making this conviction void. Which is grounds for dismissal, delay in ~~fil~~ filing If there is unnecessary delay in presenting a charge to a grand jury or in filing any information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information, or complaint under Federal Rules of Criminal Procedure Rule(48) The applicable statute of limitation is the primary guarantee against bringing overly stale criminal charges.

Also, the Transit Police official Lacked jurisdiction and probable cause to arrest a passenger in someone else vehicle who committed no crime in his veiw or against the transit faclities. In United States v. Foster, 566 F Supp 1403. The court granted defendant's motion and vacated and set aside his conviction and sentence, holding that (1) defendant was illegally detained by a police official employed by the Washington Metropolitan Area Transit Authority insomuch as the police official was acting outside the geographic limits of his jurisdiction at the time of his detention of defendant (2) the evidence seized on the night of defendant's arrest, a saw-off shotgun, was a fruit of that illegal detention, which in Sanders case the Magistrate did suppress the evidence and Magistrate ruling became final on Jan. 28 2022 when state fail to file an notice of appeal for appellate court jurisdiction. The concept of reasonableness embodied in the [Fourth] Amendment logically presupposes an exercise of lawful authority by a police officer. When a law enforcement official acts beyond his or her jurisdiction the resulting deprivation of liberty is just as unreasonable as an arrest without probable cause.

STATEMENT OF THE CASE

On January 8, 2022 Bexar County magistrate dismiss the controlled substance charge for lack of probable cause and insufficient evidence. Anthony A. Arnold and Brandon Tamayo, knowingly obtain a false lab report after the evidence was destoryed for the purpose of establish a false probable cause to prosecute without express authority of law in a form of an unconstitutional Adversary hearing, in a separate judicial determination of probable cause without a probable cause determination from a detach and neutral Magistrate. The trial court had no evidence at trial to contest and no jurisdiction The re-prosecution without re-arrest shows petitioner is falsely Imprisoned. The ADA was able to fabricate evidence by depriving petitioner of a judicial determination from a neutral magistrate to examine the evidence. The ADA made a false lab report and fabricated evidence before probable cause had been established.

REASONS FOR GRANTING THE PETITION

The conviction is void for want of jurisdiction and indictment for failure to comply with statutory terms that are jurisdictional deadlines.

1. The Texas and federal statute on false imprisonment requires that the wilful detention be without express authority of law; that is, a party who justifies against a charge of false imprisonment must be able to show that his act was with express authority of law.

2. An officer is presumed to know his jurisdiction and act within it.

3. A new trial was necessary because the jury verdict was influenced by irrelevant false lab report and prejudicial evidence, but that petitioner were not disqualified from seeking damages under the statute for State Void Acts.

(4) State fail to prove probable cause within 48 hours rule 5.1 from warrantless arrest.

(5) State fail to timely appeal magistrate dismissal within 20 days mandate under article 44.01(d) or 30 days under 18 U.S.C 3731 and Fed. R. App. P.(4.)

(6) The State abandon the charge for over two years without pending prosecution or jurisdiction. after the warrantless arrest.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shaun Sanders # 02519879

Date: 9-29-26