No. 00-5566

Supreme Court, U.S.
FILED
3 2000
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IN THE

SUPREME COURT OF THE UNITED STATES

In re: "MANUEL SESARIO DEPINEDA", -PETITIONER PRO-SE

VS.

JOHN W. SUTHERS, EXEC.DIR.COLO. D.O.C., -RESPONDENT(S)

KEN SALAZAR, ATTY.GEN.STATE OF COLORADO, -RESPONDENT(S)

ON PETITION FOR A WRIT OF HABEAS CORPUS TO

NULL AND VOID STATE COURT(S)SENTENCE AND

NULL AND VOID STATE COURT(S) JUDGMENT(S)

COLORADO COURT OF APPEALS TO STATE DISTRICT TRIAL COURT

BEFORE JUSTICE, STEPHEN G. BREYER PURSUANT TO 28 U.S.C.§2242

PETITION FOR A WRIT OF HABEAS CORPUS
A STATE PRISONER 28U.S.C.§2254(d)(4)

Manuel Sesario Depineda Pro-Se #59436

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QUESTIONS PRESENTED

Question #1.) Did Manuel S.DePineda have Constitutional,Statutory Unconditional immunity of the Misdemeanor Law applicable at the time of the commission of the offense 1963 C.R.S.§40-1-13 under all facts under all acts and circumstances thereof that governed and controled any prosecution thereon .

The Petitioner states that he had unconditional Constitutional and statutory immunity that prohibited the District Court,and the Appeals Court for the State of Colorado,from imposing and affirming a life sentence to the Colo.State Pen.(D.O.C.)where the verdict of the jury that this case is made for where the Colo.Ct.Apps. Stated on direct appeal that the Instruction that the Jury relied on to reach its Verdict mirrored a Statutory offense of Accessory During the Fact .Manuel S.DePineda because of such verdict was immune to a prosecution of Accessory During the Fact 1963 C.R.S.§40-1-13; S.O.L. 1963 C.R.S.§39-1-2(2)

QUESTION #2.) The only Question for consideration in this Habeas Corpus to obtain unconditional release under/to life sentence for the crime of Accessory During the Fact is whether the petitioner was convicted in a court having juristriction of his person and of the offense that was never charged and whether the judgment and sentence imposed were within Statutory,Legislative and Colorado Constitution Limitations.

To this question the Petitioner answers that he had total and complete Constitutional, and Statutory,as well as the Colorado Statute of Limitations Unconditional Immunity under the Statutory Laws in effect on January 1,1972.

QUESTION #3.) Whether the Jury Verdict convicting the Petitioner of a misdemeanor was void where the conviction of a Accessory During the Fact to the penitentiary where the statute for Accessory During the Fact required a County Jail sentence.

To this question the Petitioner answers that he had Complete and Unconditional Colorado Constitution and Statutory Immunity to a life sentence where the Verdict of the Jury to his prosecution was to a seperate and distinct wholly statutory misdemeanor under the laws of the State of Colorado.

WHEREFORE: The petitioner has been in Colorado State Penitentiary(D.O.C) on a sentence imposed by the Denver District Court to a Jury Verdict which the Colorado Court of Appeals on Direct Appeal ruled and affirmed the Conviction and Sentence and Judgment of the Jury verdict of finding the Petitioner Guilty of Accessory During the Fact and this being the truth of the matter the sentence to the Colo.State.Pen. on a misdemeanor was in violation of the penalty Statute for Accessory During the Fact1963 CRS 40-1-13. It is further in violation of the Colorado Const. that is the fundamental law of the State of Colorado and states under Art.18§4 that only a felony may be served in the Pen. Further 1963 CRS 40-1-13 states that a conviction as Accessory During the Fact may only be served in the County jail,thus Petitioner had unconditional immunity to the sentence

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(THE MERITS TO THIS WRIT OF HABEAS CORPUS)

The Executive Director of the Colorado Department of Corrections,State of Colorado John W, Suthers is/has confined Manuel Sesario Depineda on a null and void Sentence and Judgment as affirmed by the Colorado Court of Appeals to a District Court for the City and County of Denver where the sentence and judgment of the Jury Verdict was to a misdemeanor offense pursuant to the laws in effect on January 1,1972, to a Trial Jury Verdict that was a misdemeanor and could not form the basis for a life sentence in the State Pen., and was in violation of Colorado State Constitution Article 18 §4;which denies the State of Colorado Executive Director juristriction to confine any Prisoner who has been Convicted by a Colorado Jury of a Misdmeanor only 1963 C.R.S.§40-1-13; Colo.Const.Art.18 §4.

WHEREFORE:Manuel Sesario DePineda,has Complete and Unconditional Constitutional, Statutory,Legislative, Judicial,and Governmental Immunity,where the Statutory Penalty as an Accessory During the Fact 1963C.R.S. §40-1-13 permits at most a sentence of One day to ~~two years~~ to be served in a County where the Criminal Misdemeanor was consummated.

APPENDIX, A , B , C , D , E , F , G , H , I .

The crux of the merits to the jury verdict to this case are three-fold and are stipulated as follows:

1. The Jury Verdict to this case (Colorado Court of Appeals) is governed by the State of Colorado Constitution Art.18§4 which makes it clear that only a "Felony" shall be served in the Colorado State Pennitentiary and "None"other,therefore then the Verdict of the Jury to this Petition For a Writ of Habeas Corpus concerns an exceptional circumstance that warrants this Courts discretionary powers,and because it surmounts to an ugly Human Rights Violation and Cruel and Unusual Punishment strictly proscribed by the Proscription of the United States Constitution Amendment 8,and also is in violation of the proscription against the unlawful servitude of the United States Constitution Amend. Thirteen (13).

2. The Jury Verdict to this case "Accessory During the Fact"1963 C.R.S.§40-1-13 is governed by the statutory and Constitutional laws for misdemeanors penalty in Jan.1,1972 and is inconsequential whether the Verdict of the Jury was not rendered until October 21, 1988 the Law in effect in January 1,1972 is what governs the place of confinement and the maximum sentence and judgment that could be imposed on the Petitioner and is as follows: Appendix H , 1963 CRS § 40-1-13 Accessory During or After the Fact-penalty,- "Any person found guilty of being an(Accessory During or After the Fact,Shall be imprisoned for any term not exceeding two years".....,Miller v.People,(1939) 104 C.622,94P.2d 125,Stated: "A sentence of confinement in the State Pennitentiary of a person convicted under the section of an accessory during the fact reversed,the offense being wholly statutory,and a misdemeanor,such confinement should be in the County jail nothing more be Said other than a life sentence to a jury verdict of DePineda is excessive and Depineda has now served 12 consecutive years on a Two year penal Statute which

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STATEMENT FOR EXTRORDINARY AND EXCEPTIONAL EXCERCISE OF THE U.S. SUPREME COURT 'S DISCRETIONARY AND AID THERETO HUMAN RIGHTS VIOLATION OF CONFINED PRISONER S.CT. RULE 20.1

The petition will show the Court it is the only Court that can correct this serious Miscarriage of Justice and will show the Court that this is the only Court that has the Constitutional Power to review this case.The petition is based on a blatant miscarriage of justice where the Petitioner had Unconditional State Constitutional,Statutory and the Statute of Limitations Imunnity to the Verdict of the Jury to this case and to the place of Confinement which forms the basis to the State Prisoner's Unlawful restraint in COLORADO D.O.C. for which the prisoner is being detained under a sentence and judgment for which he had complete and Unconditional Constitutional and Statutory Immunity to a life sentence.

The verdict of the jury applied to the judgment and sentence was a distinct seperate and distinct wholly statutory misdemeanor only that under the penalty penal statute to it could only be served in a County Jail and not in the Pennitentiary,moreover the statutory presumptive range of accessory during the fact carried a max.period of incarceration of no more than two years in a county jail only and ther are no exceptional cicumstances that warrant sentence to accessory during the fact to a greater sentence than TWO YEARS pursuant to the penalty Statute for such Accessory 1963 CRS 40-1-13 the law of this case.

This is why the Petitioner had Unconditional Constitutional and Statutory Immunity to a life sentence that the Colo.Const.Art.18§4 states that oly a felony can be served in D.O.C and no other,therefore it becomes a human rights violation also because D.O.C. does not feed this Prisoner, D.O.C. will not provide proper medical care for the prisoner who is under an unlawful,wrongful restraint without statutory or constitutional authortity of the prisoner Manuel S, Depineda.SUPREME COURT RULE,Rule 20.1; 20.2; 20.4(a) are now complied.

The Petitioner also shows that the U.S. District Court is biased against the prisoner on a Civil Rights Complaint (93-WM-1137) the D.O.C. State Defendants defaulted on the prisoners civil rights Complaint and the U.S. Magistrate E.O. SCHALLATER,acted contrary to law and refused to enter the Default Judgment that the Prisoner had legaly won by default which under all circumstances admits guilt and liability of the issues in the Civil Rights Complaint where the Magistrate found evidence that there was a plot by a DOC officer to hire an inmate to murder the Inmate Depineda therefore under this alone Depineda will never get a fair ruling on the merits of his case to UNCONDITIONAL TOTAL IMMUNITY the cause herein.

Pursuant to S.Ct.Rule 20.4 the Petitioner states the reasons for not making thePetition/ or application to the U.S.DISTRICT COURT FOR THE DISTRICT OF COLORADO.Manuel S.Depineda was entitled to the judgment for default but the District Court for Colorado is full of ex district Court and appellate judges and ex-prosecutors and further pose a conflict of interest to Colorado state Prisoners.The Tenth Circuit does not Juristriction where the sentence of the Petitioner is without any juristriction therefore constitutional authority lies here in this court only for a human rights violation of MANUEL SES

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS TO A NULL AND VOID STATE COURT SENTENCE AND JUDGMENT.

OPINIONS BELOW

Petitioner respectfully prays that Writ of Habeas Corpus issues to vacate judgment below.

For Case from **state courts:**

The opinion of **HIGHEST** state court to review the merits appears in Appendix D to the Petition and is

[X] is unpublished

[X] The opinion of the **COLORADO COURT OF APPEALS FOR STATE OF COLORADO,** appears Appendix D - 2pgs to the Petition and is final judgment "a misdemeanor offense only.

[X] is unpublished,Petitioner had unconditional Consitutional,and Statutory Immunity to the sentence imposed.

JURISTRICTION

The juristriction of this court is invoked under 28U.S.C.§1651(a);§2242;§2254(d)(4) the Federal Habeas Corpus Statutes in effect in 1988 when the null and void ab-initio sentence and judgment was issued on October 25,1990 by the Colorado Court Of Appeals Case No. 88CA1900 to a Trial Court sentence and judgment that was null and void ab-initio to a District Court Jury Verdict finding the Petitioner Guilty of Accessory During the Fact and was in violation of COLORADO CONSTITUTION ART.18§4 and U.S. Constitution Amends. FOUR;FIVE;SIX;EIGHT;THIRTEEN: AND FOURTEEN AND EQUAL PROTECTION OF THE LAW FOR PERSONS WHO ARE SIMILARILY SITUATED,Pursuant to C.R.S. §40-1-12;§40-1-13(1963 CRS).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was June 6, 1990 Case # 89SA365 by way of State Habeas Corpus. A copy of that decision appears at Appendix D.

[X] A timely petition for habeas corpus relief with leave to proceed in the sentencing court was therafter denied on the following date: June 14, 1990 ,and a copy of the ORDER denying the Writ of Habeas Corpus in the District Court by leave of the SUPREME COURT FOR THE STATE OF COLORADO appears at Appendix E.

Where the Trial Court Judge Stated he was waiting for the Direct Appeal was decided, Thereafter he just did not rule as was required by his ORDER.Appendix E.

[X] A Motion to amend the mittimus was filed with the Court Chief Judge Connie L. Peterson to amend the mittimus to comply with the Final Judgment of the Direct Appeal Case No.88CA1900 ,The Petitioners conviction as an accessory during the

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STATEMENT OF THE CASE

Petitioner,to whom shall be referred to as Depineda,is now confined in the Colorado State Pennitentiary (D.O.C.) since December 11,1988 to a sentence and judgment that was proscribed because Depineda was constitutionally immune to,under the Constitution of the state of Colorado Article 18§4.On March 25,1988 the Denver District Attorney filed a Complaint/Information to a Capital Criminal Felony that carried a mandatory sentence of life or death pursuant to the Colorado felony statute for First Degree premeditated murder commited on or before **JULY 1,1972** C.R.S 1963 §40-2-3(1).The Denver prosecution charged the Petitioner and Two other persons with Count One,under the Laws in effect on January 1,1972 when the alleged Capital felony was alleged to have occured.

The prosecution charged Depineda and Two Co-defendants with (Two Counts).Count One was for a violation of C.R.S. §40-2-1 et.seq.,as amended 40-2-3(1) Premeditated First Degree Murder and Count Two C.R.S. 40-7-35 Conspiracy to Commit First Degree Murder.

Count Two was a seperate and distinct statutory felony that did not merge with Count One,and therefore was barred to the prosecution by the Three Year Statute of Limitations in effect when the alleged violation of Conspiracy was charged on DePineda and the Co-defendants. The Prosecutions reliance on a Statute of Conspiracy to obtain Venue in the City & County of Denver was barred by 1963 CRS 39-1-3(1) S.O.L. in effect on **January 1, 1972.** Nevertheless the Prosecution before trial but after the impaneling of the Jury dismissed Count One of the Information on the Co-defendants and nolle prosequi dismissed Count Two Conspiracy on the Petitioner Depineda, 1963 CRS 40-7-35.

Before trial the case was severed because the Co-defendants had agreed to testify for the prosecution against DePineda in exchange for dismissal of the First Degree murder Charge against them and were given Plea Bargins to Count Two Conspiracy a Colorado Statute that was barred to the prosecution to offer at the time of trial OCTOBER 17-21, 1988 to a Crime alleged to have been commited on **January 1,1972 or 16 years before the felony's of count One and Two were ever filed for the first time on the person for which the case was made for.** Therefore the testimony was illegally obtained by the Prosecution by the inducement with a statutory offense or felony that was barred by the S.O.L. in effect when the alleged Conspiracy was alleged to have been carried out.The Statutory Crime being barred by 1963 C.R.S. 39-1-3(1),not being a lesser included offense of the underlying crime of First Degree Murder was barred for any consideration to the Prosecution on March 25,1988 when first charged upon the parties to the alleged criminal felony and was a plea bargin that was the fruit of the poisonious tree.The prosecution being barred since January 1,1975 to the felony Conspiracy illegaly obtained testimony against the Petitioner DePineda by a plea bargin that was strictly proscribed by the bar of the S.O.L. to the Crime of Conspiracy under C.R.S. §40-7-35 by 1963 C.R.S. 39-1-3(2).

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Mr. DePineda was charged with the felony single charge of violation of 1963 CRS 40-2-3(1) and was tried only to that particular statutory Capital Crime. The trial Court after trying DePineda on the single charge of the specific crime of premeditated first degree murder,and the jury should have brought back only a verdict of guilty or not guilty of murder in the first.Instead the Jury brought back a verdict of murder in the first degree as an Accessory During the Fact .No such crime has ever existed under the statutory laws of the State of Colorado. On direct appeal the Appellate Panel of Div.II TURSI,HUME,ROTHENBERG, determined that the specific instruction relied on by the jury to reach its verdict mirrored the statutory language of the misdemenaor Statute of an Accessory During the Fact in effect on January 1,1972 for which the charge and trial were held on Mr. DePineda. This shows beyond a reasonable doubt that DePineda was duly convicted by a jury verdict of the criminal misdemeanor,1963 C.R.S. 40-1-13 which was wholly statutory and seperate crime and which penalty was regulated by 1963 CRS §40-1-13 for crimes"(misdemeanors)"committed prior to July 1,1972 even though it was not tried.

Therefore the sentence as imposed did not warrant a life sentence and therefore violated DePineda's Constitutional Immunity rights to not be sentenced to the Colo. State Pen.(D.O.C.).The Colorado Constitution Article 18§4 forbade the imposition of a life sentence where the verdict of the jury was to a misdemeanor that was never properly charged,nor was DePineda ever given a trial to the seperate and distinct statutory crime of Accessory During the fact, a Colorado statute no longer law as abolished July 1,1972.

(MISCARRIAGE OF JUSTICE EXCEPTION)

DePineda contends that he was immune to a life sentence in Colo.State Pen(D.O.C.) to the JURY VERDICT of Accessory During the Fact Instruction relied on by the Jury and the Panel of the Colorado Court of Appeals to sustain a Capital Felony was proscribed to the Courts and the Jury by Constitution of Colorado Art.18§4. Smalley v.People,304P.2d 902(Colo.S.Ct.1956) Stated,a misdemeanor was not a"felony"within the meaning of section of the Constitution providing that term"Felony"wherever it may occur in the Constitution,or the laws of the state,shall be construed to mean any criminal offense punishable by death or imprisonment in the Pennitentiary,and none other,and such conviction(Accessory During the Fact being a misdemeanor and not a lesser included offense of the Capital Felony charged on DePineda such jury verdict to sustain a conviction of Capital Felony could not be used to sustain the criminal felony or to impose a life sentence on DePineda under a First Degree Murder Felony Statute. 1963 CRS 40-2-3(1);40-1-12;40-1-13;Const.Art.18§4.

In order to warrant impostion of a life sentence the Accessory During the Fact must have been a felony and a lesser included offense of first degree murder,it was not,the conviction of the Petitioner Depineda was not a"felony"as defined(expressly) by the Colo. Const. Art. 18 §4;C.R.S. 1963 § 40-1-13. Under the Statute of Accessory During the Fact, providing Depineda may be punished by imprisonment for not more than Two Years to be served only in a county jail.DePineda could not be imprisoned in the(Colo.D.O.C.).The imprisonment in D.O.C. of DePineda is unlawful unless expressly provide

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First.The constitution is the fundamental law.No statute can change it(40-1-13)or destroy the protection which it affords. Colorado Constitution Art.18 §4.

Second. Any statute purporting to subject an accused person to an increased penalty for a violation thereof because of the fact that the underlying crime was a felony but where the jury verdict of the DePineda case was to a misdemeanor violation a crime that at the time the Information was filed 16 years had lapsed from the time of the alleged commission of the alleged homicide had occured **January 1,1972, and the information was filed on March 25,1988 and trial to the information was held on October 17-21,1988** the S.O.L. had tolled the misdemeanor statute to the case where the trial court passed sentence of life and was constitutionally collaterally estopped to proceed on any Accessory during the Fact charge 1963 CRS 40-1-12 or pass a life sentence on 1963 CRS 40-1-13 in effect when the alleged Accessory During the Fact as alleged to have occured,since the verdict for the conviction was to another offense a misdemeanor,its to be construed against the State to demand an increased punishment. The law of the State in 1972 prohibited the imposition of a life sentence to the pennitentiary for a conviction of an accessory during the fact.

The imposition of the life sentence to a misdemeanor the criminal statute and jury verdict in question the Constitutional requirements have not been met.COLO.CONST.ART.18§4.

The criminal offense being a misdemeanor cannot be classified a felony unless the Petitioner herein DePineda convicted of a felony thereof (he was not) could he have been sentenced to life to the pennitentiary.Such sentence in the matter involved in this cause was forbidden under the law. The law does not punish"offenses" It punishes individuals who commit offenses. No offense is"punishable" until a person stands before the court to receive sentence,and if the person is convicted on a misdemeanor only His imprisonment is not punishable by a life sentence in the State Pen (COLO.D.O.C.).There cannot be "any" criminal"offense" punishable in any manner whatever until a person has committed the act and that person must be punished only as provided by law applicable ~~by~~ 63'CRS§40-1-13 only.

See the attached Appendix H attached to show the penalty of an Accessory During the fact as it applied to crimes and misdemeanor alleged committed prior to July 1,1972 which is the applicable law to this case only.

It may be argued that those who cried out for the last"pound of flesh"of Depineda that could convict him of any crime they dreamed up,as is the cause of action herein to this Petition that another crime no matter if was a misdemeanor,no longer Statutory law at the time of trial nor a lesser included offense of the underlying Capital Felony would now suffice to sustain a life sentence, Depineda reminds the court that it can not close its eyes to the fact that sentence and judgment to jury verdict to sustain a life sentence is drastically in derogation of the Doctrine of Coram Non Judice and are the very issue that was decided in Burnham v.Superior Court of California,110 S.Ct.2105,2109(1990)is a case relied on to by the Petitioner"A court that acts without satutory authority is not a judicial act,and under such circumstaces it is a judgment of a person not a judge.See also:

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DePineda contends that at most the District Court could only have (sentenced him to the Denver County Jail to a Statutory Maximum sentence not to exceed a mandatory Two years to which is expressly provided by the Accessory During the Fact Misdemeanor State Statute for which Penalty is found in C.R.S. §40-1-13,Appendix(H)Const.Art.18§4.

Further Depineda contends that the Court of Appeals acted in bad faith and in clear absence of any constitutional or legislative authority. The Appeals Court was strictly restricted and forbidden to affirm a Felony with the use of a seperate and distinct wholly statutory criminal misdemeanor and was in violation of Colo.Const.Art.18§4 and therefore it is contrary to law and the life sentence was in excess of the penalty statute for the following reasons, pursuant to **C.R.S. 1963 §40-1-13** (Appendix H).

(ACCESSORY DURING THE FACT)

The issues germane,Intrinsic,invincible,and invigorative to this Petitioner's petition are as follows: Since the year 1861 Accessory During the fact has**"never"** been a felony, and where any person was found guilty of violating this particular Accessory statute, under the Colorado Penalty for such accessory,the Colorado District Courts have always imposed only a max.sentence to the County Jail of the proper County. The Colorado Supreme Court,the Colorado Court of Appeals,and the Colorado legislature have always held that the Accessory During the Fact was never to be more than a misdemeanor, therefore based on **"Facts of Law" under the Colorado Constitution the Appeals Court did what was expressly forbidden by"Colo. Const.Art.18§4"** Every companion case to Accessory During or After the Fact have never imposed a life sentence for a violation of 1963 CRS§§40-1-2;40-1-13.

There is no authority in Colorado or Federal law that permits a life sentence that is in violation of a misdemeanor to a life sentence to be served in a Pennitentiary.

> **The Writ of Habeas Corpus is the proper remedy to Vacate a null and void ab-initio sentence and judgment in any Court be it State or Federal,because any Court has the needed Juristriction Under U.S. Const.Art.1 §9,cl.2 Further the U.S. Supreme Court can invoke its Juristriction pursuant to U.S. CONST.Amends.8 and 13, because a life sentence is in excess of the penalty and is Cruel and Unusual Punishment,and being in the Pen. working for$2.00 a day where the sentence as imposed is constitutionally forbidden it also violates U.S. Const.Amend 13,Unlawful Servitude.**

DePineda Further contends that the Executive Director John W. Suthers lacks,statutory and constitutional authority to restrain the Petitioner DePineda,pursuant to the Colorado Constitution Article 18§4.Under the Colorado Constitution Article Eighteen Section Four Colorado Dept.Corrections is deprived,prohibited,and denied statutory,constitutional authority and custody under C.R.S. 1963 CRS 40-1-13;Colo.Const.Art.18§4.

DePineda further contends that he had immunity to the instruction which was admitted in violation of the Bar of the Statute of Limitations Section for Accessory During the Fac which barred any consideration of that particular statute,which had tolled the 18 month bar of 1963 CRS 39-1-3 (2),since the alleged uncharged and untried 1963 CRS 40-1-12 and §40-1-13 was alleged committed on January 1,1972 it had tolled the S.O. and therefore also violates the Ex-Post-Fact Clause of U.S. Const.Art.

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