ORIGINAL

No: 04-5902

Supreme Court, U.S.
FILED
AUG - 9 2004
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

For The HONORABLE JOHN PAUL STEVENS,
Circuit Justice For The SEVENTH CIRCUIT

In re: DUANE R. OLSON

AN EX PARTE PETITION OF EXTRAORDINARY NATURE
FOR WRIT OF HABEAS CORPUS
Pursuant To RULE(S) 20, 22, And 28 U.S.C. § 2241

RECEIVED
AUG 17 2004
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Duane R. Olson (pro-se)
Reg. No: 04931-424
P.O. Box 1032 Unit C-1 (MED)
Federal Correctional Complex
Coleman, Florida 33521-1032

QUESTION PRESENTED

Title 21, United States Code, Section **841(b)**, sets forth the punishment for "...[a]ny person who violates subsection * * * **(a) Except as authorized by...**" Title 21, United States Code, Section **822(b)...**

Is The Petitioner, DUANE R. OLSON;

I. IL-legally and **UN-constitutionally Imprisoned** for the **UN**-punishable **conduct** of; "[t]o knowingly and intentionally * * * distributed approximately 250 grams of a mixture containing cocaine" * * * **as described** in Title 21, United States Code, **Section 841(1) . . .**

O R . . .

Is The Petitioner, DUANE R. OLSON;

II. IL-legally and **UN-constitutionally Imprisoned** for an **Offense**; "[i]n violation of Title 21, United States Code, **Section 841(a)..." "Authorized activities" [21 § 822(b)]** **never** alleged on the face of Olson's indictment, **never** charged by the grand jury, **never** admitted or denied by Olson; nor * * * **ever found** by a jury of Olson's peers?

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Duane R. Olson, (hereafter-Olson or Petitioner) Respectfully Requests the following writ of habeas corpus be reviewed by Seventh Circuit Justice, The Honorable John Paul Stevens for Merit, and if warranted, for The Honorable Justice Stevens to GRANT the Petitioner's Prayer for Relief.

STATEMENT OF JURISDICTION

Title 28 U.S.C. Section 2241 —

> "**(a)** Writs of habeas corpus may be granted by the Supreme Court, [or] any justice thereof. . ."

RULE 20., Petition for an Extraordinary Writ —

> "To justify the granting of any such writ, [this] petition [will] show that the writ will be in aid of the Court's appellate jurisdiction, [and] that exceptional circumstances warrant the exercise of [The Honorable Justice, John Paul Stevens] [**RULE 22**] discretionary powers, and [evidence] that adequate relief cannot be obtained in any other form or from any other court."

For the below listed reasons, the Petitioner, Duane R. Olson, would plead to The Justice Stevens. . .**this is the "Court of last resort"** for the Petitioner!

I. On April 23, 2001, Olson filed a writ of error coram nobis on a 1979 prior conviction of 21 U.S.C. § 841(a)(1) in the U.S. District Court, Southern District of Florida, Miami. **App.[01]**

II. The Honorable Judge Joan A. Lenard, construed Olson's coram nobis as a § 2255 Motion and **DENIED** the writ while simultaneously ISSUING AN ORDER OF CERTIFICATE OF APPEALABILITY, stating in part:

"1. His Fifth Amendment right to due process was violated..."

2. The district court lacked jurisdiction..."

App. [02-03]

III. Olson appealed to the Eleventh Circuit but the Panel "danced around" the Issue **Certified** as **Appealable** and AFFIRMED the district court's **denied. App. [04-05]**

IV. On April 14, 2003, Olson filed a FEDERAL QUESTION in Three Parts raising Questions of **1)** "forged and altered instrument" [21 § 841] **2)** Fifth Amendment "due process", and **3)** Sixth Amendment's **"nature and cause"** and "right to jury trial". **App. [06]**

V. On December 11, 2003, the Court construed the Federal Question as a § 2255 and GRANTED the government's Motion to DISMISS **with prejudice *** HOW ***** with NO JURISDICTION? **App. [07-08-09-10]**

VI. On June 18, 2004, Olson filed a writ of habeas corpus raising the issue(s) of the Fifth and Sixth Amendment raised in this instant Petition, **App. [11]**

VII. On June 25, 2004, the Court DISMISSED Olson's writ as "[a]n improper attempt to circumvent (AEDPA)". **App. [12-13-14-15-16]**

The Declaration of Independence —

13. "He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our Laws; giving his Assent to their Acts of pretended Legislation —

for depriving us, in many cases, of the benefits of Trial by Jury:"

CRIMINAL DOCKET, U.S. District Court

OFFENSE FO ☐ OTHER MAJOR OFFENSE MO ☐ OTHER MISDEMEANOR MIS ☐ FELONY Fel XX

JUDGE/MAGISTRATE Assigned: District 53C | Office 1 | Disp./Sentence 3C16

U.S. vs. OLSON, DUANE ROGER (LAST, FIRST, MIDDLE)

JUVENILE ☐ | No. of Defs * 1

Case Filed Mo. 9 Day 5 Yr. 79 | Docket No. 79-00303-CR-W-1 | Def.

F8D

U.S. MAG. CASE NO.

BAIL + RELEASE

Bail: ☐ Denied ☐ Amt ☐ Set ☐ Fugitive ☐ Pers. Recog ☐ PBA

$ ooo | Conditions

Date ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ Bail Not Made ☐ Status Changed (See Docket) ☐ 3rd Pty Cust ☐ Other

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:841(a)(1)	Did knowingly and intentionally possess with intent to distribute a controlled substance. (COCAINE) II. Ct. 1	1
21:841(a)(1)	Did knowingly and intentionally distribute a controlled substance. (COCAINE) II. Ct. 2	1

SUPERSEDING COUNTS

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT XX	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began 7/18/80	Information ☐	9/7/80	Trial Set For 10/6/80	Disposition or Verdict 10/23/80
Summons Served	☐ Appeared on Writ	Def. Pleas ☒ NG ☐ G ☐ NOL	Trial Began	☐ Convicted ☒ On All Charges
First Appearance	Indict. Waived ☐	Plea Withdrawn	Trial Ended	☐ Acquitted ☐ On Lesser / Offenses
	In Charging District	Final Plea 10/23/80 ☐ NG ☐ G ☐ NOL		☐ Dismissed ☐ On Government's Motion
	Superseding ☐ Indict/Info ☐			Sentence 12/8/80

MAGISTRATE

		DATE	INITIAL/NO.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant Issued			
COMPLAINT ▶			
OFFENSE (In Complaint)			

INITIAL APPEARANCE DATE ▶ INITIAL/NO.

PRELIMINARY EXAMINATION / REMOVAL HEARING On: Date Scheduled ▶ Date Held ▶

☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT

Tape Number

OUTCOME

☐ DISMISSED

☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.: David K. Kelley

ATTORNEYS Defense ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD: Steve Rosen, Esq.

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (a)	(b)	(c)	(d)

APP. [01]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 01-1662-CIV-LENARD/SORRENTINO
USA NO. CI-16421-A

DUANE R. OLSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.
_____/

FILED by ____ D.C.
NOV 19 2001
CLARENCE MADDOX
CLERK, U.S. DIST. CT.
S.D. OF FLA. - MIAMI

ORDER ISSUING CERTIFICATE OF APPEALABILITY

THIS CAUSE is before the Court sua sponte. On October 16, 2001, the Court adopted a Report and Recommendation denying Petitioner Duane Olson's Petition for Writ of Coram Nobis, which had been docketed as a Motion to Vacate pursuant to 28 U.S.C. § 2255. (D.E. 14.) On November 6, 2001, Petitioner filed a Notice of Appeal. The Court must now determine whether a certificate of appealability ("COA") shall issue in this matter. Edwards v. United States, 114 F.3d 1083, 1084-85 (11th Cir. 1997) (citing 28 U.S.C. § 2253(c)(1)(B)).

Generally, "a COA may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2). Additionally, "The COA . . . shall indicate which specific issue or issues satisfy the showing required by [the statute]." 28 U.S.C. § 2253(c)(3). The scope of review on appeal is limited to the issues stated within the COA. See Murray v. United States, 145 F.3d 1249, 1250-51 (11th Cir. 1998).

Rec'd 12-03-01

16/98

APP. [02]

convicted and sentenced is an issue that should have been addressed at the time of trial, on direct review, or in a motion pursuant to 28 U.S.C. § 2255.[3]

Conclusion

For the reasons set forth herein, the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 is **DISMISSED with prejudice**. The Clerk is directed to enter judgment accordingly, terminate any pending motions, and close the file.

IT IS SO ORDERED.

DONE AND ORDERED at Ocala, Florida, this 24th day of June 2004.

WM. TERRELL HODGES
United States District Judge

c: Duane R. Olson
George A. Morris

[3] Moreover, Petitioner Olson has previously attempted to raise these same issues pursuant to a Complaint for Declaratory Relief. See 5:03-cv-128-Oc-10GRJ. In dismissing that case, the Court similarly concluded that Petitioner Olson was improperly attacking his conviction and sentence in an attempt to circumvent the restrictions of AEDPA. In addition, the Court clearly stated that the Petitioner's cl[illegible]n was an attack on the legality of his conviction and sentence that should have been raised at the time tri[illegible], on direct appeal, or pursuant to a motion under 28 U.S.C. § 2255. Accordingly, Petitioner Olson w[illegible] wel aware of the fact that the filing of these claims under § 2241 would not be proper.

QUESTIONS - PRESENTED:

1. Whether there Is A Hearing Entitlement Under the Extraordinary - Writ Seeking Habeas - corpus Relief, For A Prisoner Who Has not Procedurally - Defaulted In the Lower courts?

2. Whether In light of the Changes to Habeas Corpus, Wrought By the "AEDPA" Do Prisoners Have to Exhaust (Lower Court) Remedies, Where Lower Courts, "Lack Subject Matter Jurisdiction"?

3. Whether failure to Address Petitioner's, Claim Would Subject Him to Illegal Confinement, false - Imprisonment, In Violation of the thirteenth (13) Amendment's Prohibition OF Slavery or Involuntary Servitude Without, Due Process - of law?

CLAIM:

Whether the Court's, lacking Subject-Matter Jurisdiction; Because of the Bill of Informations; (for Both of Petitioner's, convictions); Charging No offense, for Want of An; "ENACTING CLAUSE; In Violation of the 13th Amendments, Prohibition of Slavery or Involuntary-servitude, Without, Due Process of Law.

REASONS FOR NOT MAKING APPLICATION IN THE WESTERN OR MIDDLE DISTRICT FEDERAL; COURTS IN LOUISIANA.

Pursuant, to 28 U.S.C. Section-2244(3)(A), As Enacted By the "Antiterrorism And Effective; Death Penalty Act of 1996; "the District-courts; Are constrained From Considering Petitioner's; Application Without Authorization From the Appellate Court. Petitioner, Submits His Petition For Extraordinary-Writ, seeking-Habeas Corpus Relief. With Facts And Evidence Submitted, In the Interests of Justice, Require; Consideration of Claim, In Light of Due Process; of Law.

STATEMENT OF THE CASE:

Petitioner, Was Charged In A Bill of Information; With - one (1) Count Armed Robbery of A Bank's teller; He Was sentenced After Being Convicted In A Jury-trial; to Serve; Ninety (99) Nine years, Without Benefit of Parole, Probation, or Suspension of Sentence; In the: 16th - Judicial District Court, Parish of St. Mary, Franklin, La. on; 11-10-76.

there After, Petitioner, Was Charged In A Bill of- Information; With- one (1) Count Armed Robbery. He Was Sentenced After Being Convicted In A Jury- trial; to Serve; Ninety (99) Nine years, Without Ben- efit; of Parole, Probation, or Suspension of Senten- ce; In the: 15th Judicial District Court, Parish of- Acadia. Crowley, La. on; 9-15-78.

ARGUMENT- PRESENTED:

May It PLEASE THE COURT:

this case Affords the Court With An Opportunity to Address An Issue Which Has Not Previously Been Presented on the one Hand. on the other Hand, Despite the fact that Petitioner, Has Not Procedurally Def- aulted; In state court, or Federal Courts. He Has Not Received Any type of Hearing; In State, or In the Lower Federal Courts.

this Honorable Court, Has Repeatedly Recognized;

"The Purpose of the Constitutional Provision Is to Prevent the Inclusion of Incongruous And Unrelated Matters In the Same Measure And to Guard Against Inadvertence, or Stealth, And Fraud In legislation."

Courts, Strictly Enforce Such Provisions, In Cases that Fall Within the Reasons on Which they Rest. And Hold that, In Order to Warrant the Setting-Aside of Enactments; For Failure to Comply With the Rule the Violation Must Be Substantial And Plain. Posados -v- Warner-B & Co., 279 U.S. 340, 344 (1928). Also: Internat. -v- Shartel, 277, U.S. 429, 434 (1928).

The Purpose of the Constitutional-Provision Requiring A one-Subject title; And the Mischiefs Which It Was Designed to Prevent, Are Defeated By the lack of Such A title on the FACE of A law Which A citizen Is Charged With Violating.

RELIEF:

Petitioner, seeks, Remanding His Case Back to the: 15th Judicial District Courts, Parish-of Acadia, State of Louisiana. Ordering the Petitioner's; Release From His Unlawful-Confinement, Because of Petitioner's;