

ORIGINAL

IN THE
COURT OF APPEALS OF INDIANA



Appellate Cause No. _____

JERMAINE D'SHANN DODD,)	Petitioning for Rehearing from the Court of
)	Appeals of Indiana, Court of Appeals
Petitioner,)	Cause No. 18A-SP-954
)	Chief Honorable Judge, Nancy Harris
v.)	Vaidik
)	
STATE OF INDIANA,)	Lower Cause No. 45G02-9811-CF-211
)	The Honorable
Respondent,)	CLARENCE D. MURRAY, Judge.

PETITION FOR REHEARING

Jermaine D'Shann Dodd #112883
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Michigan City, IN 46360
*A-561,
PETITIONER - PRO SE*

POSTMARKED ON:

SEP 17 2018

GREGORY R. PACHMAYR
CLERK OF COURTS - STATE OF INDIANA

SCANNED

Jermaine D`Shann Dodd`s **Petition For Rehearing**

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PETITIONER'S PETITION FOR REHEARING

Comes now petitioner, Jermaine D'Shann Dodd, ProSe, and pursuant to Indiana Appellate Rule 54(a)(4), Petition's this Court to Grant rehearing of it's June 15, 2018, order declining authorization to file successive petition for Post-Conviction Relief entered in the above-styled petition.

STATEMENT OF THE ISSUES

Is rehearing appropriate when a trial court lack subject matter jurisdiction by disposing the petitioner's Dodd's judgment of conviction and sentence violating the petitioner's Fifth and Fourteenth Amendment's of the United States Constitution and the Constitution of the State of Indiana Article 1., Section 12.

ARGUMENT

- I. A factual component establishes that Dodd has a meritorious claim when trial court lack's subject matter jurisdiction by disposing the Petitioner's judgment of conviction and sentence violating the Petitioner's rights under the fifth and fourteenth Amendments of the United States Constitution and the Constitution of the State of Indiana Article 1., Section 12, the conviction and sentence is unconstitutional, the judgment was rendered without jurisdiction and that sentence imposed was not authorized by law and is otherwise open to collateral attack.

To qualify for a rehearing on a Successive Petition for Post-conviction Relief, a Petitioner must show what he has a meritorious claim that may reasonable entitle him to relief. Indiana Post-conviction relief Rule 1., Section 1., (a)(1.), (2), (4) and (6).

(1) that the conviction or the sentence was in violation of the Constitution of the United States or the constitution or laws of this state;

(2) that the court was without jurisdiction to impose sentence;

(4) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice; and

(6) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under common law, statutory or other Writ, Motion, petition, proceeding, or remedy;

may institute at anytime a proceeding under this Rule to secure relief.

The claim must never have been litigated, otherwise there is no opportunity for a successive petition. *Timberlake v. State*, 858 N.E.2d 625, 630-631 (Ind. 2006). as explained by

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the Indiana Supreme Court in Williams v. State, 808 N.E.2d 652, 659 Ind. 2004:

Post-conviction procedures do not afford a petition with a "Super-appeal". Rather, subsequent collateral challenges must be based on grounds enumerated in P.C. Rule 1. If an issue was known and available on direct appeal, but not raised, it is procedurally defaulted as a basis for relief in subsequent proceedings. If an issue was raised on appeal, but decided adversely, it is Res Judicata. If the issue is not raised on direct appeal, a claim of ineffective assistance of trial counsel is properly presented in post-conviction proceedings, but as a general, most free-standing claims of error are not available in a Post-conviction proceeding because of the doctrines of waiver and Res Judicata. (citations omitted).

Petitioner Dodd explains that Honorable Judge Clarence D. Murray was the Petitioner trial judge of the Superior Court of Lake County of the State of Indiana. Dodd was convicted of Murder on June 15, 2001. (Trial Court's order Dated June 15, 2001, App. P 2). The judgment of conviction and sentence which were entered into the record under cause number 45G02-9811-CF-00021 on July 18, 2001 are void and/or void ab initio. (See; Trial Court's Sentencing Order Dated July 18, 2001, App. p. 3) at the time that the State of Indiana alleged that the petitioner Dodd committed the crimes of Cause number 45G02-9811-CF-00021 on November 7, 1998. (see Trial Court's Probable Cause Order Dated November 7, 1998 App. p. 6). The Indiana Circuit Court had original jurisdiction over such crimes as contained within Cause Number #45G02-9811-CF-00211.

It is clear that the Lake County Superior Court Criminal division Room (2), the same court which entered the judgments of conviction and sentence in Cause Number 45G02-9811-CF-00211 did not have jurisdiction over the subject matter of Cause Number 45G02-9811-CF-00211. The said judgments of conviction and sentenced in Cause Number 45G02-9811-CF-00211 are void and/or void ab initio and violates the petitioner's rights under the fifth and fourteenth amendments of the United States constitution and it also violates the Constitution of

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the State of Indiana, Article 1., Section (12).

Lack of subject matter jurisdiction renders void any action undertaken by the Court because the defect is not susceptible to waive or cure. When courts lack subject matter jurisdiction, their actions are void ab initio and may be attacked at any time. Kondaori v. Kondaori, 799 N.E.2d 1153, 1156 (Ind. Ct. App. 2003).

Petitioner`s Dodd`s case status does-not state pending files nor decided files; but states that the petitioner`s case has been disposed of. Though, to obtain post-conviction relief or to establish to qualify for a rehearing on a successive petition for Post-conviction Relief, a petitioner must establish his claims by a preponderance of the evidence. Weatherford v. State, 619 N.E.2d 915, 917 (Ind. 1993).

Dodd`s judgments of conviction and sentence is “void”, that which is “void” has no legal effect at any time and can-not be confirmed or ratified by subsequent action or inaction. That which is “voidable” has legal effect until such time as challenged in the appropriate manner and can be ratified or confirmed by subsequent action or inaction. Lafayette Bank and Trust Co. (1991), Ind., 581 N.E.2d 941 Trans. Denied. A judgment (or appealable order) that is voidable may only be attacked through a direct appeal. D.L.M., 438 N.E.2d at 1028, whereas a void judgment is subject to collateral attack. Trook, 581 N.E.2d at 944, “at any time, and that time is now.

Likewise, relying on Dier v. State, 524 N.E.2d 789 (Ind. 1989), Dodd explains that the trial court had no jurisdiction to dispose of his judgment of conviction and sentence and then transferred Jurisdiction to the Indiana Department of Correction.

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In Dier, the trial court originally sentenced Dier to an aggregated term of 154 yeas. Dier entered into an agreement with the State whereby he agreed to testify against Ben Thomas. The trial court upon Motion of the State, re-sentenced Dier to an aggregate term of 30 years based on his cooperation as a witness against Thomas. Dier subsequently recanted his trial testimony in a post-conviction relief action filed by Thomas. On motion by the state, the trial court vacated Dier's re-sentencing of 30 years and then reinstated his 154-year sentence. Our Supreme Court reversed the Trial Court's decision and stated in part as follows:

“with very little exception, a trial judge has not authority over a defendant after he pronounces sentence. The jurisdiction over the defendant goes to the Department of Correction ... there is no authority for a trial court to reopen a sentencing almost five years after it's imposition and at the instance of the State to change that sentence as the trial court did here.”

On September 28, 2017, Petitioner wrote a one page letter to the Indiana Department of Corrections – Miami correctional facility- office of offender records & Division; (See; Petitioner one page letter to I.D.O.C. Dated September 28, 2017, App. p. 7), for such false information to be expunged from the petitioner's prison file and record cause number and Case 45G02-9811-CF-00211. The Indiana Department of Correction of Miami Correctional Facility declined on such a request.

Petitioner Dodd ask this specific question, “Is the judgment void?” a judgment void on it's face can be attacked any time, either collaterally or directly. Brindle v. Anglin, (1973), 156 Ind. App. 219, 295 N.e.2d 860. Petitioner Dodd's entire case was disposed of; there are in general (3) three jurisdictional elements in every valid judgment, namely jurisdiction of the subject matter, jurisdiction of the person, and the power or authority to render the particular judgment, of the (3) three, only judgments for which the trial court lacks subject matter

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jurisdiction are void. (see; Behme v. Behme (1988), ind. App. 519 N.e.2d 578.

The relevant inquiry in a determination of whether a court has subject matter jurisdiction is whether the type of claim advanced falls within the general scope of authority conferred upon the Court by the Constitution, or statute. Behme v. Behme, 519 N.e.2d at 582.

In the fifth Amendment of the Constitution of the united States it's guaranteed that:
“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury.....”, except in cases arising in the land or naval forces or in the Militia, when in actual service in time of war or public danger nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of Law; nor shall private be taken for public use, without just compensation.

To show an abuse of discretion a defendant must demonstrate how he was prejudiced by the courts actions. Darby v. State, 514 N.E.2d 1049, 1054 (Ind. 1987) Petitioner Dodd never was indicted upon indictment of a Grand Jury, though petitioner never waived this right. Under Alexander v. LA., 405 U.S. 625, 633 (1972); Grand jury indictment requirement inapplicable to state prosecutions because not incorporated against States through 14th Amendment.

I.C. § 35-34-2-12; is the indictment requirement validity, petitioner Dodd never waived his rights to a Grand Jury nor has he waived his rights to “Bill of Information”, or charging information, nor is the State of Indiana’s charging information, dated November 7, 1998, bearing the petitioner’s signature. (See; Charging Information filed November 7, 1998, App. p. 8). Clearly, these errors include claims that “the judgment of convictions and sentence was rendered without jurisdiction, that the trial court that t determined and delivered the criminal judgment dated on

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September, 2001, lacked subject matter jurisdiction resulting in a fundamental miscarriage of justice. U.S. v. Cotton, 535 U.S. 625, 630 (2002).

Now that an accused person is guaranteed Due Process, we need to define it. Many of petitioner Dodd's Due Process rights were violated and are laid out in the Bills of Rights, but that's only the beginning.

In, 1884, the Supreme Court defined due Process as:

“Any legal proceedings enforced by public authority, whether sanctioned by age and custom, or maybe devised in the discretion of the Legislative power; in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law.”

Due process is first demanded in the fifth amendment of the United States Constitution and Petitioner Dodd was indeed prejudiced by this violation due to the trial court clear and clear error alone. This petitioner' petition for rehearing in the case of Jermaine D`Shawn Dodd, in a actual innocence case, which is reserved for error's that the conviction was based upon , an very important fat to realize that the Superior court and same Circuit court of Lake County of the State of Indiana; said trial court lacked subject matter jurisdiction which entered into the record under cause number 45g02-9811-cf-00211 a void and/or void ab initio judgment of conviction and sentenced, a mouthful of fundamental miscarriage of justice has occurred. Gomez v. Jaimet, 350 F.3d 673 (7th Cir. 2003), (the Fundamental Miscarriage of Justice exception applies only in the “Extremely rare” and “Extraordinary case” where the petitioner is actually innocent of the crime for which he is imprisoned. To support a colorable claim of actual innocence the petitioner must come forward with new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial.

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Petitioner asks and requests under what standard of review does this not court apply. In Indiana, several cases frame fundamental error as a due process violation:

the fundamental error exception is extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. Matthews v. State, 849 N.E.2d 578, 587 (Ind. 2006).

the Standard of fundamental errors , fortunately, do not require that trial counsel objected and preserved the issue for direct appeal. The fundamental error doctrine provides a vehicle for review of error not properly preserved for appeal. In order to be fundamental, the error must represent a blatant violation of basic principles rendering the trial unfair to the defendant/petitioner and thereby depriving the defendant/petitioner of fundamental due process. The error must be so prejudicial to the defendant/petitioner rights as to make a fair trial impossible.

In considering whether a claim of issue is appropriate is a rehearing appropriate when a trial court lacked subject matter jurisdiction by disposing the petitioner' Dodd's judgment of conviction and sentence violating the Petitioner's rights under the fifth and fourteenth Amendments of the United States Constitution and the Constitution of the State of Indiana Article 1., sec. 12., making the Conviction and sentence void, void ad initio, and unconstitutional, that the judgment was rendered without jurisdiction and that the sentenced imposed was not authorized by law and is otherwise open to collateral attack:

The 14th Amendment of the United states Constitution states:

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“all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge they privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...

The Constitution of the State of Indiana Article 1., Section 12., States: all courts shall be open; and ever person, for injury done to him in his person, property or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

In determining whether the resulting harm or potential for harm is substantial. Harm is not shown by the fact that the petitioner was ultimately convicted. Rather harm is determined by whether the petitioner rights to a fair trial was detrimentally affected by the denial of procedural opportunities for the ascertainment of truth of which he would have been entitled. Baker v. State, 948 N.e.2d 1169, 1178-1179 (Ind. App. 2011, Reh. Denied.

Such review of such a standard of an error is a defect affecting the (frame work) within which the trial proceeds, affecting and prejudicing petitioner Dodd’s rights, rather than simply an error in the trial process itself. Arizona v. Fulminate, 499 U.S. 279, 310, 113 L.Ed.2d 302, 111 S.Ct. 1246 (1991).

Petitioner Dodd was very much so prejudiced by the Court’s framework of the Lake County superior Court within which the Trial Proceeds in cause 45G02-9811-CF-00211 of void and/ or void ab initio, “Bill of information”, or “rather charging information”, Petitioner Dodd

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petitioning that Petitioner never signed the State of Indiana's charging information, Dated November 7, 1998, nor has the Petitioner signed a waiver waving petitioners rights. (See; Charging Information filed November 7, 1998, App. p. 8).

Standard of Review, as outlined in *Hopper v. State*, 957 N.E.2d 613 (ind. 2011), Rehearing is a procedure through which an appellate Court can recognize and correct error's in a proceeding ruling. *Griffin v. State*, 763 N.E.2d 450 (Ind. 2002).

In to consider to qualify for a rehearing on a Successive Petition for Post-Conviction Relief, a petitioner must show what he has a meritorious claim that may reasonable entitle petitioner Dodd to relief. Petitioner Dodd now object's to the Indiana Court of Appeals order entered and dated on June 15, 2018, declining authorization to file a successive petition for Post Conviction relief, in Mr. Dodd's declining of authorization, the Indiana court of Appeals stated that the petitioner has failed to establish a reasonable possibility that the petitioner is entitled to post-conviction relief, and the court declines to authorize the filing of the petition. Petitioner Dodd objection should be consider and recognized. Now at this, the, the petitioner request's a hearing considering thereafter the petitioner's petition for rehearing get's granted.

Wherefore, the petitioner asks this honorable Court of Appeals for a fair proceeding to be recognized, or at least reviewed under a "preponderance standard". Post-Conviction Rule 1 § 5 provides that: the petitioner has the burden of establishing his grounds for relief by a preponderance of the evidence. Which the petitioner states that the evidence is on the record," the face of the record." whereas a "void" judgment is subject to collateral attack. Trook, 581 N.E.2d at 944.

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CONCLUSION


For the reasons stated herein petitioner requests the court to grant rehearing and to vacate and set-aside it`s [decision/order] of June 15, 2018, and for all other just and proper relief

WORD COUNT CERTIFICATE

I verify that this Petition For Rehearing contains no more than 4,200 applicable words," and "I verify that this Petition For Rehearing contains 2,815 (actual number) words.

Executed on this 13th day of September, 2018.

Respectfully Submitted,



Jermaine D`Shann Dodd, *pro se*

CERTIFICATE OF SERVICE

I hereby certify that I have, this 13th day of September, 2018, served a copy of the above and foregoing PETITION FOR REHEARING on the individual indicated below, pursuant to Ind. Appellate Rule 24(C)(2), by deposit in the United States mail, first class postage affixed, addressed as indicated:

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