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Petition for a Writ of Habeas Corpus

Samuel H. Sheppard
Petitioner

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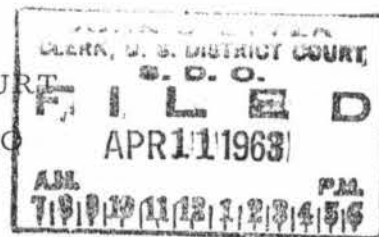
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO



SAMUEL H. SHEPPARD)
Petitioner)
v.) CIVIL ACTION
E. L. MAXWELL, Warden)
Respondent)
No. 6640

PETITION FOR A WRIT OF HABEAS CORPUS

Respectfully represents your petitioner, Samuel H. Sheppard, as follows:

I.

The petitioner resides in the State of Ohio in the City of Columbus, within the judicial district of this Court.

II.

The respondent is the Warden of the Columbus State Penitentiary; he and the said institution are situate within the judicial district of this Court. As Warden, he is responsible for the custody and control of prisoners in said institution and governs and manages them pursuant to their respective sentences until their sentences have been performed, or until they are otherwise discharged in due course of law.

III.

On October 18, 1954, petitioner was put to trial in the Court of Com-

mon Pleas of Cuyahoga County for the murder of his wife; on December 21, 1954, the jury returned a verdict of guilty, and petitioner was sentenced to life imprisonment. He is presently incarcerated pursuant to said sentence, and is unlawfully restrained for the reasons set forth below.

IV.

Petitioner has exhausted his available state remedies as required by Title 28, United States Code, Section 2254. On May 31, 1956, the Supreme Court of Ohio affirmed his conviction, 165 O. S. 293; a petition for rehearing was denied on July 5, 1956. The Supreme Court of the United States denied certiorari, 352 U. S. 910; a petition for rehearing was denied, 352 U. S. 955. A petition for a writ of habeas corpus was dismissed by the Supreme Court of Ohio, 170 O. S. 551 (1958). Petitioner asserts that there are no further avenues of review open to him in the courts of Ohio; and that if there were any proceeding therein would be unavailing, for the Ohio courts generally are so biased and prejudiced against him that he will be denied relief in any event.

V.

Petitioner is unable to produce the transcripts, exhibits, documents, and records arising from his trial and several appeals because he does not have possession of or access to the same; but he asserts that such transcripts, exhibits, documents and records are available, for they are presently within the care, custody and control of the County Prosecutor of Cuyahoga County, Ohio, at Cleveland. Petitioner's attack upon the unlawful nature of his restraint relates to each and every one of the proceedings which have heretofore been held in the several courts of Ohio, and a full consideration

of the issues herein raised requires the examination of substantially all of said records.

VI.

Ohio violated petitioner's federal constitutional right to a fair and impartial trial, and more specifically his federal constitutional right to counsel, in each of the following respects:

A. When petitioner was arraigned on the night of July 30, 1954, for a capital offense, he was arraigned without counsel despite the fact that he had retained counsel, which was known to the officials arraigning him, and despite the further fact that he requested a delay in the arraignment until his counsel could arrive to advise him, which request was summarily refused.

B. On Sunday, August 1, 1954, while petitioner was incarcerated in the Cuyahoga County Jail, and was engaged in conferring with counsel for the first time subsequent to arrest, said counsel was ejected by Ohio authorities, thus depriving petitioner of the professional advice to which he had a right; said ejection of counsel was caused for the purpose of affording police and other prosecuting officials to grill, interrogate, and otherwise unlawfully pressure petitioner, and to have conversation with him which could be subsequently used, and was in fact subsequently used, as evidence at his trial.

VII.

Ohio violated petitioner's federal constitutional right to a fair and impartial trial in each of the following respects:

A. By failing to grant petitioner's repeated motions for a continuance to postpone the trial until the prejudicial effect of massive and sustained hostile publicity, disseminated and sensationalized by news media, had subsided to a point where a fair, impartial and unbiased jury could be obtained.

B. By failing to grant petitioner's repeated motions for a continuance to postpone the trial until the prejudicial effect of massive, sustained and inflammatory publicity, stimulated, encouraged and generated by Ohio enforcement officials, had subsided to a point where a fair, impartial and unbiased jury could be obtained.

C. By failing to grant petitioner's repeated motions for a change of venue to a district or locale not saturated by the massive, sustained, prejudicial and inflammatory publicity disseminated and sustained by news media which had penetrated and imbued the populace of Cuyahoga County to the extent that no fair and impartial jury could be impanelled from the citizens thereof.

D. By failing to grant petitioner's repeated motions for a change of venue to a district or locale not saturated by the massive, sustained, prejudicial and inflammatory publicity stimulated, encouraged and generated by Ohio enforcement officials which had penetrated and imbued the populace of Cuyahoga County to the extent that an envenomed atmosphere had been created where no fair and impartial jury could be impanelled from the citizens thereof.

E. By failing to grant petitioner's repeated motions for a continuance and thus causing him to stand trial for his life in what the Supreme Court of Ohio ruled was an "atmosphere of a 'Roman holiday' for news media," through which atmosphere the jurors were influenced, biased and prejudiced against the petitioner.

F. By failing to grant petitioner's repeated motions for a change of venue and thus causing him to stand trial for his life in what the Supreme Court of Ohio ruled was "an atmosphere of a 'Roman holiday' for news media," through which atmosphere the jurors were influenced, biased and prejudiced against petitioner.

G. By failing to grant petitioner's repeated motions for a continuance despite the fact that it had been brought to the attention of the trial judge that a listing of the veniremen from which petitioner's jury was to be drawn had been published thirty days prior to the impanelling, which publication subjected the said veniremen generally and individually to opinions, advice, rumors, alleged information and pressures from extra-judicial sources which tended to prejudice and bias the said veniremen against the petitioner before any evidence had been offered.

H. By failing to grant petitioner's repeated motions for a change of venue despite the fact that it had been brought to the attention of the trial judge that a listing of the veniremen from which petitioner's jury was to be drawn had been published thirty days prior to the impanelling, which publication subjected the said veniremen generally and individually to opinions, advice, rumors, alleged information and pressures from extra-judicial sources which tended to prejudice and bias the said veniremen against the petitioner before any evidence had been offered.

VIII.

Ohio violated petitioner's federal constitutional right to a fair and impartial trial in each of the following respects:

A. By failing to confine, for the duration of the trial, the petit jurors, in order to ensure that they would not be biased, prejudiced or influenced against petitioner by opinions, advice, rumors, alleged information and pressures arising from extra-judicial sources; this failure to sequester the jury during the course of the trial resulted in the jurors' being influenced by the massive, sustained, prejudicial and inflammatory publicity which existed during the trial; and further influenced by opinions, advice, rumors, alleged information and pressures arising from extra-judicial sources even while the trial was in progress.

B. By the failure of the trial judge to adequately caution and instruct the jurors, during the course of the trial, to disregard the opinions, advice, rumors, alleged information and pressures to which the said jurors were continually exposed.

C. By the failure of the trial judge to make diligent and frequent inquiry of the jurors during the course of trial as to whether they had heard or otherwise received opinions, advice, rumors and alleged information arising from extra-judicial sources; and by the further failure of the trial judge to determine from the said jurors the extent to which they, or any of them, were influenced thereby.

D. By the action of the trial judge in contributing to the "atmosphere of a 'Roman holiday' for news media" by making certain special and unprecedented arrangements within the courthouse and the courtroom itself, whereby the facilities thereof were set aside almost exclusively for newsmen, thereby encouraging and approving a massive, sustained, prejudicial and inflammatory wave of publicity to which the jurors were constantly exposed.

IX.

Ohio violated petitioner's federal constitutional right to a fair and impartial trial in the following manner:

A. First, there existed in Ohio at the time of the death of petitioner's wife and thereafter, the following conditions and circumstances:

1. All of the judges of the state of Ohio were elective, including the Common Pleas Judges, the Judges of the several Courts of Appeal, and the Chief Justice and Judges of the Supreme Court.

2. There was published in Cleveland, the seat of Cuyahoga County, a widely-circulated and influential newspaper called the Cleveland Press; the Editor-in-Chief of said paper was one Louis B. Seltzer.

3. The petitioner was an osteopathic neuro-surgeon practicing in Bay Village, a Cleveland suburb.

4. For twenty-six days following the murder of petitioner's wife no person was arrested therefor, because authorities had no evidence sufficient to warrant such arrest.

5. During the same twenty-six days the said Louis B. Seltzer caused to be printed in the said Cleveland Press, deliberately and with malice toward petitioner, articles and editorials implicating petitioner as the murderer and criticising enforcement officials for failing to arrest him; and creating in the public mind the thought that petitioner had murdered his wife.

6. As a result of the influence and pressures brought to bear upon them by the said Seltzer through the said Cleveland Press enforcement officials were coerced into fraudulently and maliciously,

and without any legal or factual justification therefor, taking the following steps to the prejudice of petitioner:

(a) Calling and holding an inquest in a large gymnasium, the primary purpose and principal result of which was to ridicule and degrade petitioner and his family in the public eye.

(b) Arrest petitioner for the murder of his wife, despite the utter lack of any substantial evidence that he was responsible for her death, thus requiring said officials to indict and prosecute petitioner in order to justify the said arrest.

7. The malicious and deliberate generation by the said Seltzer and the said Cleveland Press of mass hysteria and mass hostility directed against your petitioner was continued and intensified from the day of its inception until petitioner's conviction, and was intended to and did cause enforcement officials, prosecutors and judges by whom petitioner's case was handled to act with prejudice and malice against petitioner, seeking only to convict and with a total disregard for the ends of justice.

B. Second, there existed in Ohio at the time of petitioner's trial the following conditions and circumstances:

1. The aforesaid Seltzer and the aforesaid Cleveland Press had a substantial pecuniary interest in causing petitioner to be convicted, in order to preclude or diminish the possibility of a civil action by petitioner for substantial damages for defamation of petitioner's character.

2. The trial judge, one Blythin, was a candidate for reelection to a six-year term as a Common Pleas Judge of Cuyahoga County, to be determined in a general election scheduled for and actually held while petitioner was on trial, and as such candidate the said Blythin

was influenced by and overtly attentive to the wishes of those news media which might commend or criticise him, particularly those news media circulating among his electorate of which the aforesaid Cleveland Press was one of the most powerful and influential.

3. The Chief Prosecutor, one Mahon, was a candidate for election to a six-year term as a Common Pleas Judge of Cuyahoga County, to be determined in a general election scheduled for and actually held while petitioner was on trial, and as such candidate the said Mahon was influenced by and overtly attentive to the wishes of news media which might commend or criticise him, particularly those news media circulating among his electorate, of which the aforesaid Cleveland Press was one of the most powerful and influential.

4. In order to satisfy those news media anxious for conviction, and specifically in order to protect the Cleveland Press from the damage suit above-described, Judge Blythin assigned the trial of petitioner to himself, allowed the trial to degenerate into a "Roman holiday," refused to grant continuances or changes of venue to petitioner in order to ensure that he, the said Blythin, would benefit from publicity attendant upon said trial, and continually and repeatedly abused his judicial discretion in denying to petitioner those requests, prayers and motions which could have afforded petitioner a fair trial.

5. In order to satisfy those news media anxious for conviction, and specifically in order to protect the Cleveland Press from the damage suit above-described, Chief Prosecutor Mahon pursued the conviction of petitioner by means and methods which he knew to be unjust and unfair, and wholly disregarded his duty to see that justice was done in petitioner's case.

C. As a result of the facts and circumstances above set forth, petitioner was denied a fair and impartial trial, and was further denied the equal protection of the laws of the state of Ohio; petitioner's trial was not a trial at all, but a sham proceeding conducted and controlled by persons of official responsibility whose primary purpose was to satisfy the populace which had been convinced by irresponsible news media that petitioner was guilty despite the marked lack of evidence tending to prove such guilt; petitioner was subjected to trial by newspaper, and was subjected specifically to the perverted power of the Cleveland Press, which sought to and did cause petitioner to be convicted in violation of his constitutional rights.

X.

Ohio violated petitioner's federal constitutional right to a fair and impartial trial in each of the following respects:

A. By the ruling of the trial judge which deprived petitioner of the right to exercise his last peremptory challenge during the impanelling of the jury.

B. By the action of the two court officers, one Steenstra and one Francis, who were placed in charge of the jury after the case had been submitted to it, and who thereafter, while said jury was still in the process of deliberating their verdict, and sequestered for that purpose, permitted said jurors to make certain telephone calls to private persons; these telephone calls were made under circumstances whereby the officers in question could not hear the words and statements of the parties being called, but only the words and statements of the jurors placing such calls. These officers, in permitting these telephone calls to be made during deliberations, acted in violation of their oaths administered to them under Section

2945.32, Ohio Revised Code, thus rendering such officers criminally liable for perjury and subject to punishment of "not less than one nor more than ten years." The purpose of Section 2945.32 is to ensure that deliberations of jurors are absolutely free of extrinsic influence in order to safeguard the rights of the parties on trial, and petitioner's rights were thus wrongfully and seriously violated in this case; because the interest of enforcement of officials lay only in convicting petitioner at any cost, the said Steenstra and Francis were not prosecuted for the felony committed, but instead were in fact commended by the Supreme Court of Ohio for their misconduct, to wit: "There is, on the contrary, every reason to believe that assurances of the health and welfare of their loved ones would tend to ease the jurors' minds as to personal matters and would tend to make them better, more conscientious jurors." (Majority opinion)

C. The telephone calls made by the jurors was also a direct violation of Section 2945.33, Ohio Revised Code, a statute specifically enacted to assure litigants of jury deliberations unhampered and uninfluenced by any person or persons outside the jury room; the violation of this statute in petitioner's case specifically deprived him of the benefits thereof to which he is entitled under Ohio law, thus depriving him of the equal protection of the laws.

XI.

Ohio violated petitioner's federal constitutional right to a fair and impartial trial in each of the following respects:

A. By the action of the police and prosecuting authorities in seizing possession of petitioner's home, where the murder occurred, immediately after said murder, and retaining possession thereof until after petitioner

had been tried and convicted, thus effectively preventing petitioner from discovering and presenting evidence at trial which would have tended to prove that the murder was committed by another or others; the seizure and retention of petitioner's premises was done for the sole purpose of preventing the discovery by him or his representatives of the said evidence, in order that a conviction might be obtained in any event and notwithstanding the innocence of petitioner.

B. By refusing to grant petitioner a new trial when he produced evidence after trial, which evidence was not available to him during trial for reasons set forth above, tending strongly to show that a third person or persons had been present in the decedent's bedroom at the time of the murder, as petitioner testified and has always maintained.

XII.

Ohio violated petitioner's federal constitutional right to a fair and impartial trial in each of the following respects:

A. By the suppression by prosecuting authorities of relevant, material and substantial evidence which, if produced, would have tended to corroborate petitioner's testimony and demonstrate his innocence.

B. By the use by prosecuting authorities of tactics and testimony which were unjust, unfair, and were calculated to prejudice the jury against petitioner despite the lack of evidence tending to show that he had committed the crime with which he was charged.

XIII.

Ohio violated petitioner's federal constitutional right to a fair and im-

partial trial in each of the following respects:

A. By the action of the trial judge in permitting two police officers to testify that petitioner had refused a "lie-detector" test, despite the fact that such evidence has been ruled incompetent and prejudicial by every jurisdiction in the United States in which it has been offered, including Ohio; the receipt of this testimony was most damaging to petitioner, and tended to convince the jury that he was guilty despite the lack of any substantial evidence against him.

B. By the action of the trial judge in permitting a prosecution witness, one Houk, whose testimony contradicted that of defendant, to testify that he "had taken a lie-detector test" in response to a question by the prosecutor, thus giving rise to an inference, through the use of inadmissible evidence that said Houk was telling the truth and petitioner was not.

XIV.

Ohio violated petitioner's federal constitutional right to a fair and impartial trial in each of the following respects:

A. The Supreme Court of Ohio which considered and ruled adversely upon petitioner's appeal was illegally constituted because:

1. One Carl Victor Weygant, who was then Chief Justice of the Su Supreme Court of Ohio, was disqualified from sitting on petitioner's appeal because of bias arising from the fact that his son had been a member of the prosecution team in the initial stages of petitioner's case.

2. The Constitution of the State of Ohio provides for the replacement of disqualified members of the Supreme Court in the following manner (Article IV, Section 2):

"If any of said Judges shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the Chief Justice, or in case of the absence or disability of the Chief Justice, the the Judge having the longest period of service upon that Court, may direct any Judge of any Court of Appeals to sit with the Judges of the Supreme Court in the place and stead of the absent Judge (Emphasis supplied).

3. In direct violation of this provision, Chief Justice Weygandt personally appointed a Court of Appeals Judge (Middleton, J.) to sit in his place and stead; and thereafter, for reasons not disclosed by the record, removed that Judge and in his place personally appointed another Court of Appeals Judge (Montgomery, J.) to sit in his place and stead; both of said appointments being contrary to law, and in frustration of the harm which the said constitutional provision was intended to prevent, to wit: the influence of a biased Judge.

4. The said Montgomery, J., did sit on petitioner's appeal, and voted with the majority in a sharply divided court to affirm petitioner's conviction.

B. The Supreme Court of Ohio, in affirming petitioner's conviction, approved a constitutionally impermissible standard in affirming the action of the trial judge who ruled that the fairness and impartiality of petit jurors would be determined absolutely and conclusively upon the assertion by said jurors that they were impartial.

C. The Supreme Court of Ohio, in affirming petitioner's conviction, applied a constitutionally impermissible standard in ruling that there had been presented to the jury sufficient evidence to warrant petitioner's conviction.

D. The Supreme Court of Ohio violated Section 2505.21, Ohio Revised

Code, in reviewing petitioner's case; for whereas that statute provides that "All errors assigned shall be passed upon by the court," petitioner assigned some twenty-nine errors of law in his brief in said Court and was accorded review of only three, depriving him of the honest, conscientious, diligent and thorough review to which he was entitled.

XV.

Ohio violated petitioner's federal constitutional right to a fair and impartial trial in each of the following respects:

A. Whereas the standard corrective processes designed to correct errors of law were procedurally available to petitioner, the substantive value thereof to petitioner was seriously diluted because of the extent to which the impact of the highly prejudicial proselytizing news propaganda influenced elected officials charged with petitioner's claims, thus preventing those same elected officials from giving to petitioner's contentions that fair and impartial consideration which they merited.

B. By the action of the trial judge who, in his anxiety for conviction, refused to recognize that the jury had some serious doubt about petitioner's guilt, and forced them to continue deliberating for more than four days until they had been coerced into reaching a verdict.

WHEREFORE, petitioner prays as follows:

1. That an order of notice be issued directing respondent to show cause why the writ should not be granted.

2. That a writ be granted directing respondent to produce petitioner at all hearings held by this Court.

3. That after a hearing on the merits, a writ be issued directing that petitioner be discharged from further custody.

4. For such further relief as law and justice may require.

Samuel H. Sheppard
SAMUEL H. SHEPPARD
Petitioner

State of Ohio)
-ss:
Franklin County)

Before me, a Notary Public in and for the above county and state, personally appeared the above Samuel H. Sheppard, who, being by me first duly sworn, says that the facts and allegations in the above petition are true as he verily believes.

Samuel H. Sheppard

Sworn to before me and subscribed in my presence this 10th day of April, 1963.

Carl R. Headlee
My Commission Expires: 7-14-67

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