No. _____

IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

In Re:
ALFRED W. TRENKLER

JUDGMENT FROM
THE DISTRICT COURT OF MASSACHUSETTS

Hon. Rya W. Zobel
District Court Judge

CRIMINAL ACTION NO. 92-10369-Z

ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241(a)

RESPECTFULLY SUBMITTED,

ALFRED W. TRENKLER
Petitioner
#
USP TUCSON
P.O. BOX 24550
TUCSON, ARIZONA 85734

TO THE HONORABLE JUSTICE ANTHONY M. KENNEDY:

THE FOLLOWING IS A WRIT OF HABEAS CORPUS FOR YOUR REVIEW CONCERNING THE DETENTION OF ALFRED W. TRENKLER, WHO IS BEING HELD IN VIOLATION OF THE CONSTITUTION, WITHIN IN THE NINTH CIRCUIT.

REASONS FOR NOT MAKING APPLICATION TO THE DISTRICT COURT OF THE DISTRICT IN WHICH THE APPLICANT IS HELD

Mr. Trenkler does not file this habeas corpus petition in the district in which he is held due to the fact that the issue that he is raising is considered "procedurally defaulted." Mr. Trenkler did not discover the issue, along with the district court, government and defense attorney, until close to ten years after the error had occurred. However, the error resulted in a life sentence that could not have otherwise been imposed.

In order to file in the district Mr. Trenkler is housed in pursuant to 28 U.S.C. § 2241, he must show that 28 U.S.C. § 2255 is "inadequate or ineffective." The issues that Mr. Trenkler is raising are plainly permitted under 28 U.S.C. § 2255, specifically, that the sentence is "in excess of the maximum authorized by law ..." Id.

As a result, the only resort Mr. Trenkler has is this Honorable Court.

QUESTION PRESENTED FOR REVIEW

DOES DUE PROCESS PRECLUDE A COURT FROM PERMITTING A PRISONER TO DIE IN PRISON PURSUANT TO A SENTENCE THAT THE CIRCUIT COURT OF APPEALS, DISTRICT COURT AND GOVERNMENT ALL CONCEDE ARE ILLEGAL?

LIST OF PARTIES

The United States of America is a party to these proceedings, but is not listed on the front page. Warden Craig Apker is the individual whom has custody of Mr. Trenkler currently at USP Tucson in Tucson, Arizona.

TABLE OF CONTENTS

INDEX TO APPENDICES

APPENDIX E: 28 U.S.C. § 2255 RULING - TRENKLER v. UNITED STATES, 268 F.3d 16 (1st Cir. 2001).

APPENDIX F: DISTRICT COURT DECISION - TRENKLER v. UNITED STATES, 2007 U.S. Dist. LEXIS 11802 (D.C. Mass. Feb. 20, 2007).

APPENDIX G: CORAM NOBIS RULING - TRENKLER v. UNITED STATES, 536 F.3d 85 (1st. Cir. 2008).

APPENDIX H: CERTIORARI - ALFRED W. TRENKLER v. UNITED STATES, 175 L.Ed. 2d. 912 (2010).

TABLE OF AUTHORITIES CITED

CASES

United States Supreme Court

Circuit Court of Appeals

STATUTE, RULES and CONSTITUTIONAL AMENDMENTS

JURISDICTION

This Honorable Court has the authority to grant a writ of habeas corpus filed originally before the Court pursuant to 28 U.S.C. § 2241(a). Mr. Trenkler falls within the jurisdiction of this Honorable Court, as he is in custody under the authority of the United States and his custody is in violation of the the Constitution of the United States. See 28 U.S.C. §§ 2241(c)(1) and (c)(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following Constitutional Amendments:

Fourteenth Amendment:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the 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.

This case involves the following statutes:

18 U.S.C. § 844(d):

Whoever transports or receives or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than 10,000 or both; and if personal injury results to any person, including any public safety

officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

18 U.S.C. § 844(i):

Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property use in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprison for not more than twenty years or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment

as provided in section 34 of this title.

18 U.S.C. § 34:

Whoever is convicted of any crime prohibited by this chapter, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life, if the jury shall in its discretion so direct, or in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order.

18 U.S.C. § 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

SUMMARY OF ARGUMENT

The Circuit Court of Appeals, district court, and government all agree that the illegal sentence impose upon Alfred Trenkler will cause him to die in prison. Even more troubling, the sentence would not have been imposed to begin with, had the law been followed. Several of the jurors from Mr. Trenkler's case have written letters to the district court clearly stating that they would not have recommended a life sentence. One juror even stated that the jury met with the judge following the verdict and stated that Mr. Trenkler should receive a lesser sentence that that of his co-defendant, Thomas A. Shay, Jr.

There are no further avenues of relief for Mr. Trenkler. Mr. Trenkler respectfully contends that while the grant of a habeas corpus directly from this Honorable Court is rare, the situation presently before the Court warrants the exercise of this sparely used authority.

STATEMENT OF THE FACTS

On June 24, 1993, Petitioner Alfred Trenkler was charged in a three-count indictment with Conspiracy under 18 U.S.C. § 371, receipt of explosive materials with knowledge and intent that they would be used to kill, injure and intimidate, and cause damage to real and personal property in violation of 18 U.S. C. § 844(d) and malicious destruction of property by means of explosives in violation of 18 U.S.C. § 844(i). Following a plea of not guilty, he proceeded to trial and was ultimately convicted of all counts on November 29, 1993. Mr. Trenkler appealed his conviction, which was affirmed in all respects. See United States v. Trenkler, 61 F.3d 45 (1st Cir. 1995). See Appendix C.

Thereafter, this case has taken a long and torturous route to the present condition it is in. First, Mr. Trenkler filed a Motion for New Trial based upon newly discovered evidence. Thomas A. Shay, Trenkler's co-defendant also proceeded to trial under the indictment and was convicted. Statements that Shay, Jr. made were used against Mr. Trenkler at his trial. The First Circuit later ruled that the jury, in Shay, Jr's case, was entitled to hear information that he was suffering from a recognized mental disorder known as "pseudologia fantastica," which causes him to make statements that are not true. Despite this fact, the appellate court afforded Mr. Trenkler no relief and permitted the government

unfettered use of the statements against Mr. Trenkler at his trial. See United States v. Trenkler, 1998 U.S. App. LEXIS 217 (1st Cir. 1998). See Appendix D.

While the Motion for New Trial was pending, Mr. Trenkler did not seek post-conviction relief, despite grounds to do so, as he believed the statute of limitations was tolling during the time the Motion for New Trial was pending. The Motion for New Trial was filed December 22, 1995 -- prior to the enactment of the Anti-Effective Death Penalty Act 1996 ('AEDPA').

The First Circuit found that Mr. Trenkler did not timely file the petition pursuant to 28 U.S.C. § 2255 and denied relief. See Trenkler v. United States, 268 F.3d 16 (1st Cir. 2001). See Appendix E.

Thereafter, this case took an interesting turn. The statute that Mr. Trenkler was convicted under had been amended shortly after his conviction. Almost ten years later, Mr. Trenkler learned that the statute he was convicted under would not allow the district court to impose a life sentence, without the express authorization of the jury. The district court actually instructed the jury that, in order to convict Mr. Trenkler, they did not need to prove that death occurred. See Appendix A, pg 22, lines 9-13. However, without that finding, the district court would not be permitted to impose a life sentence. The district court even told the jury to not consider punishment. Appendix A, pg 15, lines 19-23.

The district court, nonetheless, did impose a life sentence upon Mr. Trenkler pursuant to the statute that specifically stated she could not do so. At the time of sentencing, neither the government, defense counsel, the Probation Office, nor the Court, knew that there was no authority to impose a life sentence upon Mr. Trenkler.

Mr. Trenkler wrote a letter to the district court pointing this error out. The district court, sue sponte, appointed Mr. Trenkler counsel to determine what could be done with the illegal sentence. Appointed counsel determined that a writ of error coram nobis would be the logical avenue in which to challenge the conviction. A writ was duly filed and the government failed to respond. Thereafter, the district court granted the writ, vacated Mr. Trenkler's sentence and resentenced him to 37 years imprisonment.

The district court did not question the illegality of the life sentence. See Trenkler v. United States, 2007 U.S. Dist. LEXIS 11802 (D.C. Mass. 2007)("Trenkler D.C."). See Appendix f. The district court found "cause" for Mr. Trinkler's failure to raise the issue earlier, finding that since "even the government seems confused as to the basis for sentencing, we can hardly fault the appellant for not raising the issue earlier." Trenkler D.C. (citing Hardy v. United States, 691 F.2d 39, 41-42 (1st Cir. 1982).

The Circuit Court of Appeals, despite conceding that the district court "desire[d] to correct an apparent error

attributable to the lawyers' shared misconception," Trenkler, 536 F.3d at 100, ultimately found that "hard cases have a propensity to make bad law." Id. They vacated the district court's grant of the writ of error coram nobis, vacated the 37 year sentence imposed upon Mr. Trenkler and ordered that the original life sentence be imposed upon him. See Appendix G. This Honorable Court denied certiorari on whether coram nobis was proper in the circumstances faced by Mr. Trenkler. see Appendix H.

Mr. Trenkler's entire life was taken from him because of what the Circuit Court of appeals deems a "procedural error." The district court concedes, the Circuit Court of Appeals concedes and the Government concedes, life sentences could not be imposed upon Alfred Trenkler. However, because the Circuit Court deemed the error "procedural," Mr. Trenkler is going to die in prison, absent intervention form this Honorable Court.

REASONS FOR GRANTING THE WRIT

THE WRIT OF HABEAS CORPUS HAS HISTORICALLY BEEN AVAILABLE TO INDIVIDUALS SENTENCED BEYOND THE JURISDICTION OF A COURT AND SHOULD BE AVAILABLE TO AN INDIVIDUAL WHO WAS SENTENCED TO NATURAL LIFE, WHEN THE SENTENCE IS PLAINLY ILLEGAL.

The "Writ of Habeas Corpus," otherwise known as the "Great Writ" has its origins in English law. In fact, it is the only "writ" mentioned by the Constitution itself. See U.S. Const. art. I § 9, Clause 2. (The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.) The history of the Writ has a rich past used in a variety of situations to test the legality of an individuals confinement, whether by way of civil or criminal law. See INS v. St. Cyr, 533 U.S. 289, 302 (2001). The historical challenges available under the writ were not limited to just jurisdiction of the custodian, "but ... includ[ed] the erroneous application or interpretation of statutes." Id.

The "Great Writ" in its original, Constitutional form, is not the writ of habeas corpus available pursuant to 28 U.S.C. § 2255. Rather, the writ available at § 2255 is the statutory writ, which allows many more challenges beyond the face of the record. See generally Crater v. Galaza, 491 F.3d 1119 (9th Cir. 2007). The "Great Writ" has been codified at

28 U.S.C. § 2241 in what is close to its original form. In a § 2241 proceeding, however, there are many limitations as to what can and cannot be raised. In determining whether the writ can be used to test the legality of a given restraint on liberty, courts have generally looked to the common-law usages and history of the habeas corpus both in England and in the United States of America. See Jones v. Cunningham, 371 U.S. 236, 238 (1963).

At common-law, the fact that a court had jurisdiction over a case did not end the inquiry in a habeas corpus context. See Ex Parte Lange, 85 U.S. 163 (1874). Even if a court has jurisdiction over the case itself, if the court did not have the authority to enter the judgment that was entered, then if the error is "apparent on the face of the record" it could be corrected, even after the term of the court. Id. at 194.

The term on the "face of the record" has its roots in common-law, much like the writ itself. See United States v. Sisson, 399 U.S. 267, 281 (1970). In a criminal case today, the face of the record includes "no more than the indictment, the plea, the verdict ... and the sentence." See United States v. Bradford, 194 F.2d 197, 201 (2nd Cir. 1952). In United States v. Zisblatt, 172 F.2d 740 (1949), Chief Circuit Judge Learned Hand examined the historical context of the "face of the record" determination, concluding that the matters must be an error on the "judgment roll." Id. at 741. Such a

distinction is in line with the decision in Lange and readily applies to the case at bar.

Lange marked the return to the common-law principle that "restraints contrary to fundamental law, by whatever authority imposed, could be redressed by writ of habeas corpus." Fay v. Noia, 372 U.S. 391, 408 (1963).

In Ex Parte Nielsen, 131 U.S. 176 (1889), the Court noted a specific application, allowing the writ to issue in a case where the court renders a judgment that it does not have jurisdiction to render. In such a case, an aggrieved party may be discharged from custody on habeas corpus. Id. at 179. The Court has been plain, since then, that "restraints contrary to our fundamental law, the Constitution, may be challenged on federal habeas corpus even though imposed pursuant to the conviction of a federal court of competent jurisdiction." Noia, 372 U.S. at 409.

Notably, however, mere errors of law -- at common-law -- were not available for review under the "Great Writ." See Ex Parte Yarbrough, 110 U.S. 651 (1884). In Yarbrough, the Court reiterated the duty of a court to discharge a prisoner when a sentence given by a court of the United States is wholly beyond their jurisdiction. Id. at 653. Such sentences were not mere "errors of law" but were fundamentally against the "bedrock law" in our country.

In later years, the Court has consistently held that a "defendant may not receive a greater sentence than the

legislature has authorized." See United States v. DiFrancesco, 449 U.S. 117, 139 (1980)(relying on Ex Parte Lange, supra). See also United States v. Martin, 363 F.3d 25, 35 (1st Cir. 2004). This is consistent with the Sentencing Guidelines, as well. See U.S.S.G. § 5G1.1(c)(1).

Therefore, if a sentence imposed on a criminal defendant exceeds that which has been authorized by legislature, then the court is without jurisdiction to enter the judgment and the judgment can be challenged pursuant to 28 U.S.C. § 2241. See Ex Parte Lange, supra, DiFrancesco, supra. The judgement in the instant case does just that.

Interestingly, the First Circuit Court of Appeals did not rule on whether the sentence was illegal, in fact, they conceded that it was an "apparent error" in sentencing, Trenkler 536 F.3d at 100, instead the court focused on whether the district court lacked the authority to issue a writ of error coram nobis. Id. at 91. Which it ultimately found that it did not and this Honorable Court denied certiorari. See Trenkler v. United States, 130 S.Ct. 1093 (2010).

a. MR. TRENKLER'S LIFE SENTENCES ARE ILLEGAL ON THE "FACE OF THE RECORD."

At the time Mr. Trenkler was sentenced in this matter, 18 U.S.C. § 34 authorized a life sentence only "if the jury shall in its discretion so direct." § 34 was directly

referenced to from 18 U.S.C. § 844(d) and (i) -- the statute Mr. Trenkler was convicted under. Every court that has interpreted the pre-1994 version of § 34 have all held that it was error to impose a life sentence, absent a jury recommendation. See United States v. Prevatte, 16 F.3d 767 (7th Cir. 1994); United States v. Hansen, 75 F.2d 629, 631 (8th Cir. 1985); United States v. Gullett, 75 F.3d 941, 950 (4th Cir. 1996); United States v. Williams, 755 F.3d 1295, 1299 (5th Cir. 1985).

In Prevatte, the defendants were convicted of utilizing pipe bombs as a diversion for burglaries. They were convicted on 15 counts of explosives and firearms violations, including a violation of 18 U.S.C. § 841(i), for which a life sentence was imposed upon them. Id. 16 F.3d at 770-771. The defendants were sentenced to life imprisonment, without the recommendation by the jury. The Court found that the sentence constituted "plain error" as it created an "actual miscarriage of justice." Id. at 783, f.n. 16.

The district court, in Mr. Trenkler's case, relied upon the same inquiry and found that Mr. Trenkler's life sentences created an "actual miscarriage of justice." See Trenkler v. United States, 2007 U.S. Dist. LEXIS 11802 (D. Mass. 2007). The Circuit Court of Appeals, however, found that it was not a "miscarriage of justice," contending that Mr. Trenkler did not "suggest that it was likely that a jury would

have reached a different result." Trenkler, 536 F.3d at 99.

Mr. Trenkler did and does contend that the jury would have reached a different result, had the issue been submitted to them.

One juror has provided a letter stating that had she been asked to impose a life sentence, she would not have done so and, in fact, states that the jury recommended to the judge that Mr. Trenkler receive a lesser sentence than that of Shay, Jr. See Appendix B-1. With that being the case, the question turns to whether the letter is proper evidence before this Honorable Court.

b. THE JURY STATEMENTS ARE ADMISSIBLE IN THIS MATTER.

Rule 606(b), Fed. R. Evid. generally prohibits the use of information from a jury concerning the validity of a verdict or indictment. However, three exemptions apply:

1) whether extraneous prejudicial information was improperly brought to the jury's attention, 2) whether any outside influence was improperly brought to bear upon any juror and 3) whether there was a mistake in entering the verdict onto the verdict from. Id.

It is the third exception upon which Mr. Trenkler basis the admissibility of the jurors statements in this matter. Under this exception, Mr. Trenkler would contend that the statement from the juror that she would not have imposed

a life sentence, if requested, is admissible for the purpose of demonstrating that there was not a mistake in entering the verdict that the jury did.

The jury did not find that Mr. Trenkler should be sentenced to life, that was not a mistake. That was intentional. The imposition of the life sentence upon him was in direct contravention to the verdict from the jury and contrary to the laws in place at the time he was convicted. Therefore, Mr, Trenkler's sentence creates a "miscarriage of justice" under even the most exacting standards.

In fact, the particular juror letter to Mr. Trenkler relies most heavily upon is that of Theresa Spinelli. Ms. Spinelli, in her October 3, 2008 letter, stated very clearly that:

"After the verdict was given we met with you and specified that though found guilty we did not believe Mr. Trenkler was the main perpetrator and he should not receive a heavier sentence than Mr. Shay. The jury's recommendation was obviously not take into consideration. Had I been aware of the intended sentence I would not have voted as I did."

See Appendix B-1.

Thus, had the jury been asked, as the law requires, Mr. Trenkler would not have been given a life sentence. Even more troubling, however, is that the jury specifically stated that Mr. Trenkler should receive a lesser sentence than that

of Mr. Shay, Jr. That was the jury's recommendation, according to Ms. Spinelli.

This Honorable Court has considered inquiry into jury deliberations and determined that if an inquiry should be made, the "evidence should be confined to the points in controversy on the former trial ... and to the questions submitted to the jury for their consideration." Yeager v. United States, 129 S.Ct. 2360, 2368 (2009)(quoting Packet Co. v. Sickles, 5 Wall. 580 (1866). The statements made by the juror that Mr. Trenkler relies upon are limited to the "questions submitted to the jury for their consideration" and show that Mr. Trenkler would not have received a life sentence, had the law been followed.

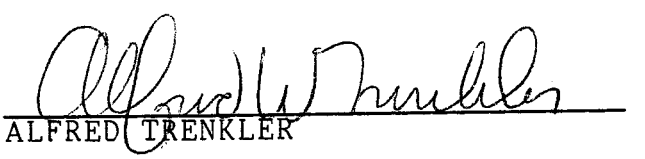
Simply to say "hard cases have a propensity to make bad law" Trenkler, 536 F.3d at 100, is a very callous response to an "apparent error" that resulted in the lose of a man's freedom for the rest of his natural life.

CONCLUSION

Mr. Trenkler would respectfully submit that this case is an exceptional case that warrants the exercise of this Honorable Court's discretionary powers. Adequate relief cannot be obtained in any other form or from any other court and this error is a matter of law, not of fact.

RESPECTFULLY SUBMITTED,

ALFRED TRENKLER
#19377-038
USP TUCSON
P.O. BOX 24550
TUCSON, ARIZONA 85734



ALFRED TRENKLER

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

In Re:
ALFRED W. TRENKLER

JUDGMENT FROM
THE DISTRICT COURT OF MASSACHUSETTS

Hon. Rya W. Zobel
District Court Judge

CRIMINAL ACTION NO. 92-10369-Z

CERTIFICATE OF SERVICE

NOW COMES the Petitioner, Alfred W. Trenkler, and would hereby certify, pursuant to Rule 29, Sup. Ct. R., that he has served this petition upon the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania, Ave., N.W., Washington, DC 20530-0001 by placing same in the USPS, postage pre-paid on this 27TH day of May, 2011.

Respectfully Submitted,

ALFRED W. TRENKLER
Petitioner
19377-038
USP TUCSON
P.O. BOX 24550
TUCSON, ARIZONA 85734

Alfred W. Trenkler
ALFRED W. TRENKLER