STATE OF MAINE

SUPREME JUDICIAL COURT
Docket No. SJC-23-2

STATE OF MAINE, *ex rel.* **ANGELINA DUBE PETERSON**, et al.,

Petitioners,

v.

PETER A. JOHNSON, Aroostook County Sheriff, in his official capacity, et al.

Respondents.

Respondent William L. King's Supplemental Memorandum of Law

NOW COMES Respondent, William L. King, York County Sheriff, as permitted by the Amended Second Procedural Order, and submits this Supplemental Memorandum of Law. As explained earlier, the Court should dismiss the petition as to Respondent King because there is no live controversy. Even more so now, because the amended petition alleges nothing about York County but for one line reading, "Respondent William L. King is the York County Sheriff." (Am. Pet. ¶ 13.) There is simply nothing to adjudicate as to Respondent King and, unless there is a real controversy, the Court has no jurisdiction to act. *In re Richards*, 223 A.2d 827, 829-31 (Me. 1966) (discussing state constitutional limitations on judicial power). And the amended petition suffers from other problems too.[1]

Collateral Attack. Courts have long recognized that the right of habeas corpus does not lie where the restraint arises from a judicial order that is allegedly erroneous, but not void. *See*, *e.g.*, *In re Wilson*, 140 U.S. 575, 584-85 (1891) (holding that an alleged defect in the number of

[1] Respondent King incorporates by reference his earlier arguments, as well as those raised by co-respondent Johnson.

grand jurors did not entitle a petitioner to habeas corpus relief);[2] *Gardner v. Payne*, 639 S.W.3d 336, 339 (Ark. 2022) ("An information filed in the name of a deputy prosecutor is voidable rather than void and therefore is not within the purview of a habeas proceeding"); *Edwards v. State*, 269 S.W.3d 915, 920 (Tenn. 2008) ("It is well-settled that a petition for writ of habeas corpus may not be used to review or correct errors of law or fact committed by a court in the exercise of its jurisdiction." (internal quotation omitted)); *Parham v. State*, 285 Ala. 334, 336, 231 So. 2d 899, 901 (1970) ("The writ is against void but not irregular or voidable judgments."); *Riley v. Garrett*, 219 Ga. 345, 351, 133 S.E.2d 367, 372 (1963) ("Thus, the rule that habeas corpus is not a substitute for writ of error means that habeas corpus will not lie to correct voidable judgments, that is, judgments which are merely erroneous, while habeas corpus will lie to secure a release from detention under a judgment which is utterly void."); *Oswald v. Martin*, 222 P.2d 632, 635 (Ariz. 1950) ("Habeas corpus cannot be used as means of reviewing errors and irregularities which do not effect the jurisdiction of the court."); *Ex parte Long*, 223 P. 710, 711 (Okla. Crim. 1924) ("It is undoubtedly the law that upon habeas corpus cognizance can be taken only of defects of a jurisdictional character, which render the proceeding under which the petitioner is imprisoned not merely erroneous, but absolutely void."). Petitioners here do not challenge the jurisdiction of the underlying trial courts; they only challenge the alleged practice of failing to release indigent defendants from custody while the court secures counsel. Even if

[2] In *Brown v. Davenport*, ___US___, 142 S. Ct. 1510, 1520 (2022), the Supreme Court reviewed the evolution of federal habeas corpus practice. Although the federal standard shifted over time, balancing a federal court's independent duty to protect federal rights of state prisoners against the boom of habeas petitions filed by state prisoners, *id.* at 1521-22, this case is far simpler: one Maine court is being asked to doubt the ability of another Maine court to correctly apply the law, outside the context of an appeal. To that end, the approach taken in earlier cases like *In re Wilson* are more instructive than more recently decided federal habeas cases.

petitioners are correct in their analysis (Respondent King takes no position on that issue), the alleged error at best renders the commitment orders voidable. It does not affect the trial courts' jurisdiction. There is thus no relief available in habeas corpus.

Failure to Join Indispensable Parties. Maine's habeas corpus laws provide, "[i]f imprisoned on any criminal accusation, [petitioner] shall not be discharged until sufficient notice has been given to the Attorney General or other attorney for the State that he may appear and object, if he thinks fit." 14 M.R.S. § 5522; *see also* M.R. Civ. P. 19(a) (requiring joinder of persons with an interest in the proceeding whose absence may as a practical matter impair or impede the person's ability to protect that interest). As previously noted, Sheriff King is merely a custodian who is following bail orders entered by the Maine Unified Criminal Docket. He takes no position on petitioners' Sixth Amendment argument. Before the Court considers taking any action with respect to a specific defendant, the appropriate attorneys for the State must be given "sufficient notice" so that they may appear and object. 14 M.R.S. § 5522. Knowledge of a petition for a writ of habeas corpus for the benefit of "unknown" persons is unlikely to meet this standard.

Next Friend Status. In their traverse, petitioners suggest that they may also sue as "next friend" of pretrial defendants in custody. (Traverse at *6 (citing Curtis A. Bradley, et al., *Unpacking Third-Party Standing*, 131 YALE L.J. 1, 63 (Oct. 2021)).) But they are mistaken. Title 14, not common law, controls under what circumstances a third party may bring a habeas petition. But more to the point, although the cited article discusses the use of next friend status in habeas proceedings, it went on to explain the onerous requirements a person must meet to qualify as a next friend:

> First, a "next friend" must provide an adequate explanation--such as inaccessibility, mental incompetence, or other disability--why the real party in

> interest cannot appear on his own behalf to prosecute the action. Second, the "next friend" must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate, and . . . a "next friend" must have some significant relationship with the real party in interest.

Bradley, *supra* at 64 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990)). These requirements, the article explains, are evaluated even more rigorously than in the already-demanding third-party standing context. *Id.* As *Whitmore* explains, this is for good reason:

> These limitations on the "next friend" doctrine are driven by the recognition that "[i]t was not intended that the writ of habeas corpus should be availed of, as matter of course, by intruders or uninvited meddlers, styling themselves next friends." *United States ex rel. Bryant v. Houston*, 273 F. 915, 916 (CA2 1921); *see also Rosenberg v. United States*, 346 U.S. 273, 291-292 (1953) (Jackson, J., concurring with five other Justices) (discountenancing practice of granting "next friend" standing to one who was a stranger to the detained persons and their case and whose intervention was unauthorized by the prisoners' counsel). Indeed, if there were no restriction on "next friend" standing in federal courts, the litigant asserting only a generalized interest in constitutional governance could circumvent the jurisdictional limits of Art. III simply by assuming the mantle of "next friend."

495 U.S. at 164.

Petitioners here fail to meet these criteria. As explained in Respondent King's opening memorandum, petitioners have not shown that the individuals whose interests they are representing cannot bring their own petitions. Contrary to the Traverse, the circumstances here are not comparable to enemy combatants facing military tribunals nor the private-custody circumstances in *The Case of the Hottentot Venus*. This case involves alleged pretrial defendants in custody upon jurisdictionally appropriate orders from the Maine Unified Criminal Docket. Nor have petitioners shown any "significant relationship" to the real parties in interest. *Whitmore*, 495 U.S. at 164. Rather, petitioners are litigants asserting "only a generalized interest in constitutional governance[.]" *Id.* Even if well-intentioned, a general interest in Sixth Amendment

jurisprudence is not enough to confer standing to petitioners. So, even assuming *arguendo* that the next friend doctrine is viable in Maine, it still would not benefit petitioners here.

Discovery. There is no right to discovery in habeas corpus proceedings. *Harris v. Nelson*, 394 U.S. 286, 294, 300-01 (1969) (applying Fed. R. Civ. P. 81 to hold that the rules of discovery do not automatically apply to habeas corpus proceedings, but that courts may authorize discovery under the All Writs Act).[3] Under the same logic as in *Harris*, petitioners cannot conduct discovery here as a matter of right. M.R. Civ. P. 81(b)(1). Instead, they may only serve interrogatories or conduct depositions "by order of the court on motion for cause shown." M.R. Civ. P. 81(b)(1).

Although the Court *may* have authority to authorize discovery in habeas corpus proceedings generally, there is no reason to do so here. Petitioners have not filed a motion requesting discovery. M.R. Civ. P. 81(b)(1) (requiring a motion showing cause). Nor have petitioners specifically identified what discovery they will conduct, beyond vague assertions of requiring the judicial branch to provide them with information. But in any event, the purpose of discovery in a habeas corpus proceeding is to ensure a fair and meaningful hearing. *Harris*, 394 U.S. at 300. There is no need to conduct a hearing as to the claim against Respondent King because the amended petition does not state a justiciable controversy upon which relief can be granted. Put simply, there is nothing in the amended petition to have a hearing about. Instead, the request for discovery is an effort to use this Court's jurisdiction as a tool to locate aggrieved parties and discern if a potential claim exists. Even if the Court were to accommodate

[3] Congress later promulgated Rules Governing Section 2254 Cases, which authorizes discovery in federal habeas proceedings for good cause. Rules Governing § 2254 Cases R. 6(a).

petitioners' effort, there is no need for Respondent King to be a part of it as a party to the proceedings.

WHEREFORE, Respondent Sheriff King requests that the amended petition be dismissed as to him, and that the Court award such other relief as it deems appropriate.

Dated: October 27, 2023

/s/ Tyler Smith

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CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, I caused to be served the foregoing pleading via e-mail upon the following counsel or parties:

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