IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA.

LEO M. FRANK, (
)
against (
)
C. WHEELER MANGUM, SHERIFF OF FULTON COUNTY, GEORGIA. (

TO THE HONORABLE THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE NORTHERN DISTRICT OF GEORGIA.

The petition of Leo M. Frank respectfully shows:

FIRST: I am and ever since my birth have been a citizen of the United States. I am now and for some years past have been a resident of Fulton County, in the State of Georgia. I am unjustly and unlawfully deprived of my liberty, and unlawfully imprisoned, confined and detained in the jail of said County, by C. Wheeler Mangum, the Sheriff of said County and Ex-Officio jailer.

SECOND: My aforesaid imprisonment, confinement and detention are wholly without the authority of and contrary to the law, and in violation of my rights as a citizen of the United States as guaranteed by the Constitution of the United States, and particularly by Section 1 of the Fourteenth Amendment to said Constitution, which provides that no State shall deprive any person of life, liberty or property without due process of law, or deny to him the equal protection of the laws, the protection of which I expressly invoke.

THIRD: The sole claim of authority by virtue of which the said C. Wheeler Mangum, Sheriff and ex-officio jailer as aforesaid, so restrains and detains me is, that on May 24, 1913, I was indicted by the Grand Jury of Fulton County, State of Georgia, on the charge of having murdered Mary Phagan; that thereafter, in

the Superior Court of Fulton County aforesaid, Hon. L. S. Roan, a Judge of said Court, presiding, I was arraigned and tried on said indictment, and on August 25, 1913, the jury empaneled to try the said indictment returned a verdict of guilty against me, upon which verdict the judgment of the Court was thereafter rendered, and I was, on August 26, 1913, sentenced to death. A copy of said judgment and of the subsequent orders extending the time for the execution thereof is hereto annexed, marked Exhibit A. I was thereupon remanded to the custody of said C. Wheeler Mangum, Sheriff and ex-officio jailer aforesaid, which said custody has continued until the present time.

FOURTH: At the time of the rendition of said verdict, the entry of said judgment and the pronouncement of the sentence of death, the said Superior Court of Fulton County, in which I was tried, had lost jurisdiction over me, and over the trial of the said indictment; and all proceedings upon said trial, including the reception of the verdict, the rendition of judgment and the pronouncement of sentence of death, and my comitment to the jail of Fulton County aforesaid and into the custody of the said C. Wheeler Mangum, Sheriff and ex-officio jailer of said County, were without due process of law and in all respects null, void and of no effect, and my imprisonment, confinement and detention as aforesaid, were in all respects illegal and in violation of my aforesaid constitutional rights.

FIFTH: The facts which occasioned such loss of jurisdiction, and by reason of which I was deprived of due process of law and the equal protection of the laws, are as follows:-

My trial in the Superior Court of Fulton County, State of Georgia, before Hon. L. S. Roan and a jury, began on July 28, 1913, in the Court House at Atlanta, Georgia, and continued until August 25, 1913. The court room in which the trial took place was on the ground floor of the Court House. The windows of the court room were open during the progress of the trial, and looked out on Pryor Street, a public street of Atlanta. An open alley ran from Pryor Street along the side of the Court House, and

there were windows looking into this alley from the court room. The noises from the street were thus conveyed to the court room, and the proceedings in the court room could be heard in the street and alley. Considerable public excitement prevailed during the trial, and it was apparent to the Court that public sentiment seemed to be greatly against me. The court room was constantly crowded, and considerable crowds gathered in the street and alley, and the noises which emanated from them could be heard in the court room. These crowds were boisterous. Several times during the trial, the crowd in the court room and outside of the Court House applauded, in a manner audible both to the Court and jury, whenever the State scored a point. The crowds outside cheered, shouted and hurrahed, while the crowd within the court room evidenced its feelings by applause and other demonstrations. Practically all of the seats in the court room were occupied, both within and without the bar. The aisles at each end of the court room were packed with spectators. The jury, in going to and from the court room, in the morning, at noon and in the evening, were dependent upon the passageways made for them by the officers of the court. The bar of the court room itself was so crowded as to leave but a small space for occupancy by the counsel. The jury box, which was occupied by the jury, was enclosed by the crowd sitting and standing in such close proximity to it that the whispers of the crowd could be heard during a part of the trial.

On Saturday, August 23, 1913, during the argument of Solicitor General Dorsey to the jury, Reuben R. Arnold, Esq., one of my counsel, made an objection to such argument, and the crowd laughed at him. While Mr. Arnold, my counsel, made a motion for a mistrial, and was engaged in taking evidence in support thereof before the Court, the crowd applauded a witness who testified that he did not believe that the jury heard the applause of the crowd on the previous day, as at that time the jury was in the jury room about twenty feet distant.

On Saturday, August 23, 1913, while the Court was con-

sidering whether or not the trial should proceed on that evening and to what hour the trial should be extended, the excitement in and without the court room was so apparent as to cause apprehension in the mind of the Court as to whether the trial could be safely continued on that day, and before deciding upon an adjournment, the presiding Judge, Hon L. S. Roan, while upon the bench, and in the presence of the jury, conferred with the Chief of Police of Atlanta and the Colonel of the Fifth Georgia Regiment, stationed in Atlanta, who were well known to the jury. The public press of Atlanta, apprehending danger if the trial continued on that day, united in a request to the Court, that the proceedings should not continue on Saturday evening. The trial was thereupon continued until the morning of Monday, August 25, 1913.

It was evident on that morning, that the public excitement had not subsided, and that it was as intense, as it had been on the Saturday previous. Excited crowds were present as before, both within and outside of the court room. When the Solicitor General entered the court room, he was greeted by applause by the large crowd present, who stamped their feet and clapped their hands, the jury being then in its room, about twenty feet distant.

During the entire trial I was in the custody of C. Wheeler Mangum, the Sheriff of Fulton County and ex-officio jailer, and was actually incarcerated in said jail, except on such occasions when I was brought into the court room by the Sheriff or one of his deputies. I was unable to be present at the trial, except when permitted by the Court and conducted there by the said Sheriff or his deputies.

On the morning of Monday, August 25, 1913, shortly before Hon. L. S. Roan, Presiding Judge, began his charge to the jury, he privately conversed with Messrs. L. Z. Rosser and Reuben R. Arnold, two of my counsel, in the jury room of the Court House, and referred to the probable danger of violence

that I would incur if I were present when the verdict was rendered and the verdict should be one of acquittal or of disagreement. After he had thus expressed himself, he requested my counsel to agree that I need not be present at the time when the verdict was rendered and the jury polled. In the same conversation the Judge expressed his opinion to counsel, that even they might be in danger of violence should they be present at the reception of the verdict. Under these circumstances they agreed with the Judge, that neither I nor they should be present at the rendition of the verdict.

I knew nothing of this conversation, nor of any agreement made by my said counsel with the Judge, until after the rendition of the verdict and sentence of death had been pronounced.

Pursuant to this conversation, I was not brought into court at the time of the rendition of the verdict, and I was not present when the verdict was received and the jury was discharged, nor was any of my counsel present when the verdict was received and the jury discharged.

I did not give to my counsel nor to any one else, authority to waive my right to be present at the reception of the verdict, or to agree that I should not be present at that time, nor were they in any way authorized or empowered to waive my right so to be present; nor did I authorize my counsel, or any of them, to be absent from the court room at the reception of the verdict, or to agree that they or any of them might be absent at that time. My counsel were induced to make the aforesaid agreement as to my absence and their absence at the reception of the verdict, solely because of the statement made to them by the Presiding Judge, and their belief that if I were present at the time of the reception of the verdict and it should be one of acquittal or of disagreement, it might subject me and them to serious bodily harm, and even to the loss of life.

Besides Messrs. Rosser and Arnold, I had as counsel Morris Brandon, Esq. and Herbert J. Haas, Esq. Neither of them was present when the verdict was received and the jury discharged.

Neither the conversation with Judge Roan, nor the purport thereof, was communicated to Messrs. Brandon and Haas, nor did they have any knowledge thereof, until after sentence of death had been pronounced against me.

After the jury had been finally charged by the Court and the case had been submitted to it, when Mr. Dorsey, the Solicitor General, left the court room, a large crowd on the outside of the Court House and in the streets, greeted him with loud and boisterous applause, clapping their hands and yelling "Hurrah for Dorsey", placed him upon their shoulders, and carried him across the street into a building where his office was located. The crowd did not wholly disperse during the interval between the submission of the case to the jury and the return of the jury to the court room with its verdict, but during the entire period a large crowd was gathered in the immediate vicinity of the Court House. When it was announced that the jury had agreed upon a verdict, a signal was given from within the court room to the crowd on the outside to that effect, and the crowd outside raised a mighty shout of approval, and cheered while the polling of the jury proceeded. Before more than one juror had been polled, the applause was so loud and the noise was so great, that the further polling of the jury had to be stopped, so that order might be restored, and the noise and cheering from without was such, that it was difficult for the Presiding Judge to hear the responses of the jurors as they were being polled, although he was only ten feet distant from the jury.

All of this occurred during my involuntary absence from the court room, I being at the time in the custody of the Sheriff of Fulton County and incarcerated in the jail of said County, my absence from the court room, and that of my counsel, having been requested by the Court because of the fear of the Court that violence might be done to me and my counsel had I or my said counsel been in court at the time of the rendition of the verdict.

SIXTH: Thereafter, on August 26, 1913, I was sentenced

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SIXTH: Thereafter, on August 26, 1913, I was sentenced

voluntarily absent from court when the verdict against me was received and the jury discharged, in violation of my aforesaid constitutional rights; that I was deprived of a fair and impartial trial, of due process of law, and of the equal protection of the laws; that I did not waive the right to be present at the reception of the verdict, and did not authorize the waiver of such right on my behalf by my counsel, or any other person, nor consent that I should not be present at the rendition of the verdict, or that my counsel should be absent at that time; that any agreement made by my said counsel in my absence, and without my knowledge or consent that I should not be present at the rendition of the verdict, was of no legal force or effect, and that by reason of the premises the verdict rendered against me was a nullity.

TENTH: The State of Georgia, by the Solicitor General, demurred to this petition, and on June 6, 1914, it was dismissed on said demurrer, and judgment was rendered against me thereon.

ELEVENTH: The judgment was then taken by writ of error to the Supreme Court of Georgia, where, on November 14, 1914, a judgment was rendered by said Court which affirmed the judgment of the Superior Court of Fulton County sustaining the State's demurrer to my petition and dismissing my motion to set aside said verdict. The grounds of the judgment of the Supreme Court of Georgia were, in substance, (1) that a person accused of crime has the right to be present at the time of the rendition of the verdict against him, but such right is an incident of the trial; (2) that his absence at the time of the rendition of the verdict is a mere irregularity that can be waived by him; (3) that under the laws of Georgia a motion for a new trial is an available remedy by which to attack a verdict rendered in the absence of one accused of crime, and (4) that after the making of a motion for a new trial and the affirmance of judgment denying the same by the Supreme Court, a motion made thereafter to set aside the verdict on the ground that the accused had been absent from the court room

when the verdict was rendered, is too late. The opinion of the Supreme Court of Georgia is of great length and is, therefore, not hereto attached, but a copy thereof is herewith exhibited to the Court.

TWELFTH: Under previous decisions of the Supreme Court of Georgia, and under the practice which had prevailed throughout the State prior to the aforesaid decision rendered in my case on November 14, 1914, as aforesaid, the proper procedure to attack as a nullity a verdict rendered in the absence of a prisoner, had been held to be a motion to set aside the verdict. A motion for a new trial was treated as not being the proper remedy.

THIRTEENTH: Such former decisions of the Supreme Court of Georgia were unanimous decisions, and under the laws of the State of Georgia had the force of a statute until reversed by a full bench, after argument, on a request for review granted by the Court.

FOURTEENTH: No previous decision of the Supreme Court of Georgia, nor of the Court of Appeals of said State, said courts being its only appellate courts and its highest courts, had ever declared that a motion to set aside as a nullity a verdict rendered in a prisoner's absence, was not an available remedy to attack such verdict. The decision of the Supreme Court of Georgia in my case, which determined that a motion for a new trial was an available remedy in such a case and denied my right to move to set aside the verdict on the aforesaid grounds, was the first decision of its kind ever rendered by said Court or by the Court of Appeals of Georgia.

FIFTEENTH: The said decision had the effect of depriving me of a substantial right given to me by the law in force at the time to which my alleged guilt related, and at the time of the reception of the verdict against me and of the presentation

and decision of the motion for a new trial, and took from me a right which at all of said times was vital to the protection of my life and liberty, and constituted the passing of an ex post facto law, in violation of the prohibition contained in Article 1, Section 10, of the Constitution of the United States, and was illegal and void.

SIXTEENTH: The said judgment of the Supreme Court of Georgia, rendered on November 14, 1914, likewise deprived me of due process of law, and of the equal protection of the laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States, because the Court thereby, in effect, declared that, in order to avail myself of my aforesaid constitutional rights, to wit, the assertion of my right to due process of law and to the equal protection of the laws, I would be compelled to subject myself to a second jeopardy, thus depriving me of my aforesaid constitutional rights, except on the illegal condition of the surrender by me of the right secured to all persons charged with criminal offenses in the State of Georgia, by paragraph 8, Section 1, Article I, of the Constitution of said State, that no person shall be put in jeopardy of life or liberty more than once for the same offense; save on his or her own motion for a new trial after conviction or in case of mistrial.

SEVENTEENTH: On November 18, 1914, I applied to the Supreme Court of Georgia for a writ of error to the Supreme Court of the United States, for a review of the aforesaid judgment denying my motion to set aside the verdict rendered against me, and said application was, on November 18, 1914, denied.

EIGHTEENTH: On November 21, 1914, I made an application to Mr. Justice Lamar, the Justice of the Supreme Court of the United States assigned to the Fifth Circuit, which includes the State of Georgia, for a writ of error to review said judgment. This application was denied on November 23, 1914. A similar application was made to Mr. Justice Holmes of the Supreme Court

of the United States, who denied the same on November 25, 1914, and an application having thereafter been made to Mr. Chief Justice White of said Court, the same was referred to the full bench of the Court, which, on December 7, 1914, denied the same, without opinion.

NINETEENTH: The denial by Mr. Justice Lamar and Mr. Justice Holmes of said application for a writ of error, proceeded on the ground that, inasmuch as the decision of the Supreme Court of Georgia, that under the laws of that State, where a motion for a new trial has been made and denied, a defendant cannot make a motion to set aside the verdict on a ground known to him when his motion for new trial was made, that he was not present when it was returned, involves a matter of State practice, the case was not presented in such form as permitted it to be reviewed on writ of error by the Supreme Court of the United States. The memoranda by Mr. Justice Lamar and Mr. Justice Holmes denying the application for writ of error are hereto attached marked Exhibit "B".

TWENTIETH: Having thus exhausted all of my remedies in the courts of the State of Georgia, and by applications for writ of error to the Supreme Court of the United States, to review the judgment denying my motion to set aside the verdict rendered against me as aforesaid, and having been afforded, as above appears, no adequate and efficient means for asserting and obtaining my rights under the Constitution of the United States, I now ask this Honorable Court to discharge me from custody, because of the nullity of said verdict and of the judgment rendered thereon and my commitment thereunder, for the reasons hereinbefore set forth, and in substantiation thereof, and of my contention that the Superior Court of Fulton County, State of Georgia, wherein I was convicted of the crime of murder, lost jurisdiction over me, as hereinbefore set forth, I aver:

(1) The reception, in my absence, of the verdict convicting me of the crime of murder, tended to deprive me of my life and liberty without due process of law, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

the protection of which I expressly invoke.

(2) I had the right to be present at every stage of my trial, including the reception of the verdict, the polling of the jury and the discharge of the jury, this right being a fundamental right essential to due process of law.

(3) My involuntary absence at the time of the reception of the verdict and the polling of the jury, deprived me of the opportunity to be heard which constitutes an essential prerequisite to due process of law.

(4) This opportunity to be heard, included the right to be brought face to face with the jury at the time of the rendition of the verdict and of the polling of the jury.

(5) My right to be present during the entire trial, including the time of the rendition of the verdict, was one which neither I nor my counsel could waive or abjure.

(6) My counsel having had no express or implied authority from me to waive my presence at the time of the rendition of the verdict, and it being in any event beyond my constitutional power to give them such authority, their consent to the reception of the verdict in my absence was a nullity.

(7) Since neither I nor my counsel could expressly waive my right to be present at the rendition of the verdict, that right could not be waived by implication or in consequence of any pretended ratification by me or acquiescence on my part in any action taken by my counsel.

(8) My involuntary absence at the reception of the verdict, constituting as it did an infraction of due process of law, incapable of being waived, directly or indirectly, expressly or impliedly, before or after the rendition of the verdict, the failure to raise the jurisdictional question on my motion for a new trial, did not deprive me of my constitutional right to attack as a nullity the verdict rendered against me and the judgment based thereon.

(9) My trial did not proceed in accordance with the

 orderly processes of the law essential to a fair and impartial

trial, because dominated by a mob which was hostile to me, and whose conduct intimidated the Court and jury and unduly influenced them, and neutralized and overpowered their judicial functions, and for that reason also, I was deprived of due process of law and of the equal protection of the law, within the meaning of the Fourteenth Amendment to the Constitution of the United States, the protection of which I expressly invoke.

TWENTY-FIRST: No previous application for a writ of habeas corpus has been made by me.

WHEREFORE, I pray that a writ of habeas corpus may issue, directed to C. Wheeler Mangum, Sheriff of Fulton County, Georgia, ex-officio jailer, and to each and all of his deputies, requiring him and them to bring and have me before this Court, at a time to be by this Court determined, together with the true cause of my detention, to the end that due inquiry may be had in the premises, and that I may be relieved from my said unlawful imprisonment and detention. And thus I will ever pray.

Dated, at Atlanta, Georgia, December 17th, 1914.

Leo M. Frank

Petitioner.

Tye Peeples and Jordan,
Henry A. Alexander.

Attorneys for Petitioner.

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UNITED STATES OF AMERICA)
Northern District of Georgia : SS
County of Fulton.)

LEO M. FRANK, being duly sworn, deposes and says, that he is the Petitioner named in the foregoing petition subscribed by him, that he has read the same and knows the contents thereof, and that the statements made therein by him are true, as he verily believes.

Leo M. Frank

Subscribed and sworn to before me this 17th day of December, 1914.

Montefiore Selig
Notary Public Fulton County
Georgia

UNITED STATES OF AMERICA)
: SS
Northern District of Georgia)

To C. WHEELER MANGUM, Sheriff of Fulton County, Georgia,

GREETING:

WE COMMAND YOU, that the body of LEO M. FRANK, in your custody detained, as it is said, together with the time and cause of his imprisonment and detention, you safely have before the District Court of the United States in and for the Northern District of Georgia, at the court room of said Court, at a Stated Term thereof, to be held on the day of December, 1914, at o'clock in the morning of that day, or as soon thereafter as counsel can be heard, to do and receive what shall then and there be considered concerning the said Leo M. Frank; and have you then and there this writ.

WITNESS, Honorable William T. Newman, Judge of the District Court of the United States for the Northern District of Georgia, this day of December, Nineteen hundred and fourteen.

A t t e s t :

Clerk of the District Court of the United States for the Northern District of Georgia.

The foregoing writ is hereby allowed.

Dated, Atlanta, Ga., December , 1914.

United States District Judge.

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