

IN THE
Supreme Court of the United States

JOHN E. REARDON,

Petitioner,

v.

DANIEL B. ZONIES, ESQUIRE, LAWRENCE
LUONGO, ESQUIRE, OFFICER DANIEL J.
DOUGHERTY AND OFFICER RUSSELL J. SMITH,
FOR CASE 1:15-CV-8597,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

BRIEF IN OPPOSITION

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Esquire, Officer Daniel J. Dougherty
and Officer Russell J. Smith*

QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals abuse its discretion by affirming the order of the District Court, concluding that Petitioner's claims were barred by the applicable statute of limitations as well as Heck v. Humphrey, 512 U.S. 477 (1994), in addition to concluding Petitioner's claims lack merit?

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OPINIONS BELOW

On March 29, 2017, the United States District Court for the District of New Jersey issued an Opinion and Order in Reardon v. Magistrate Zonies, et al., Civil Action No. 15-08597, dismissing the Complaint filed by Mr. Reardon. (See Appendix, p. 9-18).

On November 9, 2017, the United States District Court for the District of New Jersey issued an Opinion and Order in Reardon v. Magistrate Zonies, et al., Civil Action No. 15-08597, denying Mr. Reardon's Motion for Reconsideration.

On April 11, 2018, the United States Court of Appeals for the Third Circuit entered an Opinion and Judgment affirming the District Court's orders dismissing Mr. Reardon's Complaint and denying his motion for reconsideration and leave to amend regarding Reardon v. Magistrate Zonies, et al., Civil Action No. 17-3551. (See Appendix, p. 1-6.)

On May 9, 2018, the United States Court of Appeals for the Third Circuit entered an Opinion and Judgment again affirming the District Court's orders dismissing Mr. Reardon's Complaint and denying his motion for reconsideration and leave to amend regarding Reardon v. Magistrate Zonies, et al., Civil Action No. 17-3551, following Mr. Reardon's Petition for Rehearing. (See Appendix, p. 7-8.)

STATEMENT OF JURISDICTION

The Court has jurisdiction over this issue under 28 U.S.C. §2101.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

The 6th Amendment of the United States Constitution only provides a right to a jury trial if the potential sanction may be more than six months. Persons charged with crimes are constitutionally entitled to trial by jury; those charged with petty offenses are not.

State law governs the applicable statute of limitations for constitutional claims arising under 42 U.S.C. §1983. Section 1983 claims are best characterized as personal injury claims and governed by the applicable state's statute of limitations for personal injury claims. New Jersey applies a two-year statute of limitations period for personal injury torts. See N.J.S.A. 2A:14-2. Thus, a §1983 claim arising in New Jersey has a two-year statute of limitations.

STATEMENT OF THE CASE

On December 14, 2015, John Reardon filed a Complaint pursuant to 42 U.S.C. § 1983 against Daniel B. Zonies, Esquire, a former municipal court judge, Lawrence Luongo, Esquire, a former municipal prosecutor, and former police officers Daniel J. Dougherty; and Russell J. Smith , alleging violations of his right to a jury trial and his First Amendment right to be free from retaliation, as well as the New Jersey statutory and common law analogues of those claims. The claims arise from several motor vehicle stops and corresponding municipal court hearings in the Borough of Runnemede, New Jersey in 1988 and 1989 that led to convictions for lack of registration, lack of insurance, failure to use turn signals, driving with a suspended license, and use of a fictitious license plate.

Mr. Reardon subsequently filed a Motion to Amend the Complaint, followed by seven (7) supplemental submissions to amend or correct various mistakes in both the Complaint and the Proposed Amended Complaint, which the District Court denied without prejudice. In August 2016, Respondents filed a Motion to Dismiss Reardon's Complaint. Mr. Reardon then filed a second Motion to Amend/Correct the Complaint. The second Motion to Amend/Correct was never explicitly ruled upon by the District Court. Rather, the District Court granted Defendants' Motion to Dismiss, concluding that Mr. Reardon's §1983 claims were time-barred, and declined to exercise supplemental jurisdiction over the remaining state law claims.

Thereafter, Mr. Reardon filed a Motion for Reconsideration with another proposed Amended Complaint. By Order dated November 9, 2017, the District Court denied Mr. Reardon's Motion for Reconsideration and leave to amend, concluding that Mr. Reardon did not advance any arguments regarding an intervening change in the law or the availability of new evidence. Rather, he simply recited the arguments in his opposition to the Motion to Dismiss. The District Court further determined the claims were time-barred. It further determined that amendment would be futile.

Following the issuance of these orders and opinions by the United States District Court, District of New Jersey, Mr. Reardon filed an appeal to the United States Court of Appeals for the Third Circuit. By way of its opinion filed April 11, 2018, the Court of Appeals affirmed the District's Courts rulings. In doing so, the Court of Appeals concluded that Mr. Reardon's claims were not only time-barred, but also barred pursuant to Heck v. Humphrey,

512 U.S. 477 (1994). It was also concluded that Reardon's proposed amendments to the Complaint would be futile.

Following this decision a petition for rehearing which was filed by Mr. Reardon, was denied by the Court of Appeals.

Mr. Reardon now brings an application before the Court for a Writ of Certiorari. In doing so he brings the same arguments which were previously ineffective. There are no compelling reasons which exist to grant his petition. Accordingly, his petition should be denied.

ARGUMENT

THIS COURT SHOULD DENY CERTIORARI BECAUSE COMPELLING REASONS DO NOT EXIST. PETITIONER SIMPLY DISAGREES WITH THE FACTUAL FINDINGS AND CORRECTLY STATED RULES OF LAW OF THE DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, WHICH PROPERLY DISMISSED PETITIONER'S CLAIMS.

A writ of certiorari is only granted for "compelling reasons" and is "rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Supreme Court Rule 10. In this matter, Petitioner requests certiorari due to his mere disagreement with the proper application of federal and state statutory provisions and rules by the District Court to dismiss his claims.

A. The Court of Appeals properly concluded the applicable statute of limitations was a bar to the claims being advanced.

State law governs the applicable statute of limitations for constitutional claims arising under 42 U.S.C. §1983. Section 1983 claims are best characterized as personal injury claims and governed by the applicable state's statute of limitations for personal injury claims. New Jersey applies a two-year statute of limitations period for personal injury torts. See N.J.S.A. 2A:14-2. Thus, a §1983 claim arising in New Jersey has a two-year statute of limitations.

The Court of Appeals correctly held in its April 11, 2018 Memorandum Opinion and Order that Mr. Reardon's claims were time-barred. In New Jersey, the statute of limitations for a §1983 claim is two years. Dique v. N.J. State Police, 603 F.3d 181, 185 (3d Cir. 2010). As the Supreme Court explained in Wallace v. Kato, 549 U.S. 384 (2007), "the tort cause of action accrues, and that statute of limitations commences to run, when the wrongful act or omission results in damages." Id at 391. Accrual of §1983 claims is a question of federal law. Such accrual occurs "when the plaintiff has a complete and present cause of action, that is, when the plaintiff can file suit and obtain relief." Id at 388.

Mr. Reardon's claims accrued in 1989, when he alleges he was ticketed, prosecuted and convicted without a jury trial. Indeed, there is no dispute about this. Notwithstanding, he mistakenly contends that his Complaint was timely filed because he did not know of his Common Law right to a jury trial, and that the defendants

allegedly withheld this information from him. He alleged that he did not learn of this right until 2014. This argument is fundamentally flawed.

A claim accrues upon awareness of actual injury, not upon awareness that the injury constitutes a legal wrong". New Castle v. Halliburton NUS Corp, 111 F.3d 1116, 1125 (3d Cir. 1997). See also, Freeman v. State, 788 A.2d 867, 880 (N.J. Super. Ct. App. Div. 2002), holding that in §1983 cases, equitable tolling does not apply because "Plaintiffs were aware of their injury and the principal actors involved at the time of the [traffic] stop." As such, the District Court correctly applied the two year statute of limitations to Mr. Reardon's constitutional claims and determined that they accrued, at the latest, in 1989, when Plaintiff knew or should have known of the facts that gave rise to his claims, and not 2014, when he allegedly became aware of his potential causes of action.

B. The Court of Appeals properly concluded that Heck v. Humphrey, 512 U.S. 477 (1994) barred the claims being advanced.

The Court of Appeals correctly concluded in its April 11, 2018 Memorandum Opinion and Order that Heck v. Humphrey, 512 U.S. 477 (1994) bars the claims advanced by Mr. Reardon. In Heck, the Supreme Court held that a Plaintiff "cannot use §1983 to obtain damages where success would necessarily imply the unlawfulness of a conviction or sentence". Wilkinson v. Dotson, 544 U.S. 74, 81 (2005). Mr. Reardon argues that all of his still-valid convictions should be set aside because he was improperly deprived of the right to have the charges decided by a jury. However, the Heck bar applies to claims brought when

the underlying criminal proceedings did not constitute a ‘favorable termination’ to the Defendant. Fuchs v. Mercer County, 260 Fed. App. 472, 474 (3d Cir. 2008).

C. The Court of Appeals correctly concluded that Petitioner’s claims lack merit.

Though Mr. Reardon perceives the right to trial by jury to be automatic and universal, the U.S. Constitution does not grant such an absolute right. Pursuant to the terms of the 6th Amendment, a Defendant only has a right to a jury trial if the potential sanction may be more than six months. District of Columbia v. Clawans, 57 S.Ct. 660 (1937). Persons charged with crimes are constitutionally entitled to trial by jury; those charged with petty offenses are not. Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

The New Jersey Supreme Court has held that the only reliable test for distinction is the severity of the authorized punishment, and that a jury trial is not required unless the maximum penalty to which the defendant is exposed exceeds six months incarceration and a fine of \$1,000. State v. Owens, 54 N.J. 153, 254 A.2d 97 (1969).

CONCLUSION

For the foregoing reasons, the Petitioner's application must be denied.

DATED: August 24, 2018

Respectfully submitted,

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