

No. 18-5621

In The Supreme Court of the United States

BISMARK KWAKU TORKORNOO,

Petitioner,

v.

HELWIG ESQ., ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
Fourth Circuit Court

SECOND SUPPLEMENTAL BRIEF FOR A WRIT OF CERTIORARI

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SECOND SUPPLEMENTAL PETITION FOR A WRIT OF CERTIORARI

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OPINIONS BELOW

Unpublished opinion and judgment issued by the United States Fourth Circuit Court at App. 1 affirming the United States District Court's decision, App. 2. The Fourth Circuit Court's previous unpublished opinion, judgment and mandate at App. 3 directly conflict with the Fourth Circuit Court's unpublished opinion as well as the District Court opinions at App. 1-2, and 4 on identical persons, same issues and same evidence without merit. There is no written opinion from Montgomery County Circuit Court regarding disposition of petitioner's civil case on the merit besides orders denying the civil lawsuit without prejudice. App. 5 [at "Exhibit 61"]. Other relevant documentary evidences are made available at Appx. 6-30 and Appx. A-L.

JURISDICTION

The Fourth Circuit Court issued its decision on May 16, 2018, affirming District Court's Judgment dated October 27, 2017 dismissing petitioner's civil lawsuit, App. 1-2.

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JURISDICTION

The Fourth Circuit Court issued its decision on May 16, 2018, affirming District Court's Judgment dated October 27, 2017 dismissing petitioner's civil lawsuit, App. 1-2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. V

provides:

“due process” to apply the Bill of Rights to the states

“due process of law”

“the promise of legality and fair procedure”

U.S. Const., amend. XIV

Equal Protection Clause

provides:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

Due Process Clause

provides:

[N]or shall any State deprive any person of life,
liberty, or property, without due process of law. . . .

STATEMENT

1. Petitioner supplements the initial Brief filed on August 14, 2018, and the Supplementary Brief filed on October 2, 2018 with the Second Supplemental Brief. The Second Supplemental Brief disputes the district court's statement below with documentary evidence as to why decision by the Court of Special Appeals and the Court of Appeals of Maryland decisions are not on the merit and unconstitutional App. 2 [at ECF no. 69 page 2]:

“Mr. Torkornoo appealed this decision, but the Court of Special Appeals of Maryland dismissed the appeal on June 9, 2014 after Mr. Torkornoo failed to meet the briefing schedule. Mr. Torkornoo filed a petition for a writ of certiorari with the Court of Appeals of Maryland, but that petition was denied.”

2. According to paragraphs 59 to 62 of the Supplemental Brief, petitioner asserted that he timely appealed the state court's civil case no. 378782V. Furthermore, he also filed a timely motion to supplement the record with documentary evidence from the family law case in support of his brief in good faith. Petitioner also requested for extension of time to file his brief in good faith. These requests are not foreign to procedural due process in light of documentary evidence [App. 24 and App. 24-B] reflecting the Court of Special Appeals previous decisions granting similar requests in the case of *Torkornoo v. Torkornoo* (case no. 14-0497).

3. To petitioner's surprise, the Court of Special Appeals did not rule on his motion to supplement the records and motion for extension of time until the briefing schedule expired before dismissing both the motions and the appeal according to App. 29. As result, petitioner was deprived of due process in that regard because he was not given the opportunity to be heard in the state appellate court. The reason why the Court of Special Appeals suppressed the evidence and denied extension is because Judge Callahan Master Wisor implicated themselves [Suppl Brief ¶¶ 1-62] in compromising the integrity of the court in light of respondents' violations of 18 U.S. Code § 1512 (b) [Tampering with Evidence], 18 U.S. Code § 1509 [Obstruction of Court Orders], and the Fourteenth of the United States Constitution [Suppl Brief Issue I ¶¶ 1-30, Issue II ¶¶ 31-33, Issue III ¶¶ 34-43]. The Court of Special Appeals made it extremely difficult for petitioner to appeal his case in this regard.

4. The Court of Special Appeals denied petitioner's request on May 29th, 2014 before the briefing schedule was due on June 5th, 2014. However, the Court of Special Appeals failed to explain any reason to justify why petitioner's request was denied even though his request for extension and to supplement the record was filed timely and was in good faith. The Court of Special Appeals deliberately failed to allow petitioner to supplement the records with transcripts and exhibits consistent with Rule 41(b) of the Federal Rules of Civil Procedure ¶ 77. Rule 201 of the Federal Rules of Evidence allows courts to take judicial notice of adjudicative facts for example, documentary evidences request by the petitioner according to App. 29. To be judicially noticed, Rule 201(b) provides that an adjudicative fact must either be (1) generally known within the trial court's

territorial jurisdiction, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned [see Exhibits 1-74 at ECF nos. 1-2, 5, 21, 35-36].

5. Petitioner produced App. 29 reflects the Fourth Circuit Court's "App. A" and App. B articulating the Court of Special Appeals order denying petitioner's request for extension of time, request to supplement the record and dismissing the appeal without due process. The suspicion here is the standard applied by the Court of Special Appeals reflects tactical manipulations purposefully to deprive petitioner equity at respondents' advantage.

6. On one hand, the Court of Special Appeals granted petitioner's request to supplement the records and extensions of time to also benefit Mr. Monahan Esq. according to App. 24, App. 24-B and App. 24-C. On the other hand, the same Court of Special Appeals decided to apply a different standard when it denied petitioner the same relief without due process of law at respondents' advantage over petitioner's interest according to Appendix 29. As it appears now, Judge Cynthia Callahan from the state circuit court, had previously prevented petitioner from making this civil case in full when he was denied request for continuance [App. 13, App. J Exhibit 60-A, App. J Exhibit 60-B] and also tainted with tactical maneuvering and manipulating scheduling orders scheduling orders [App. J Exhibit 60-C, App. J Exhibit 60-D] purposefully to deprive petitioner equity at respondents' advantage.

REASONS FOR GRANTING THE PETITION

7. The Fourth Circuit Court's decision App. 1 is erroneous based the district court's decision App. 2 [at ECF no. 69 page 2] "*Mr. Torkornoo appealed this decision, but the Court of Special Appeals...dismissed the appeal on June 9..*" *supra* ¶¶ 1-6 in light of *Marshall v. Jerrico Inc.*, 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980):

"The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."

8. The Fourth Circuit Court's decision App. 1 is also erroneous based on the district court's findings App. 2 as follows: "*The State Case, however, was dismissed after consideration of 'the entire record' and after Judge Callahan granted seven Motions to Dismiss. These Motions' collectively....including a lack of a legal or factual basis for Mr. Torkornoo's claims and a failure to state a claim upon which....relief can be granted.*" That holding lacks substance in light of documentary evidences showing at App. 29, Appendixes 24-A, 24-B, 24-C; App. 13; and App. J Exhibit 60-A, App. J Exhibit 60-B was tainted with tactical maneuvering and manipulating scheduling orders showing at App. J Exhibit 60-C, and App. J Exhibit 60-D *supra* ¶¶ 1-6.

9. The reason to grant the petition is because the adverse judgments by the lower courts Appendixes 1-2 selectively relied on nontransparent and partial decision-making process shown above *supra* ¶¶ 1-8 violate the Fourteenth Amendment. That holding deeply prejudiced the petitioner. It is therefore crucial to verify whether petitioner was given the benefit of full and fair opportunity litigate the state civil case no. 378782V in the state court consistent with the Due Process Clause and the Equal Protection Clause in light of

Marshall v. Jerrico, 446 U.S. 238, 242 (1980), and *Schweiker v. McClure*, 456 U.S. 188, 195 (1982):

“an impartial decision maker is an essential right in civil proceedings as well. “The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law... At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.”

10. The lower courts decisions are erroneous and should be vacated in light of the evidence *supra* ¶¶ 1-9 citing *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) with the recognition that “we hold—consistent with the *Restatement (Second) of Judgments*. We therefore hold, consistent with decisions by the Sixth and Seventh Circuits, **that res judicata does not apply to a judgment that rests on both a lack of jurisdiction and a merits determination.**” See *Remus Joint Venture v. McAnally*, 116 F.3d 180, 184 n.5 (6th Cir. 1997). This right is a ‘basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment ...” *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972). See *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170-71 (1951) (Justice Frankfurter concurring).

11. In like manner “where state substantive law was facially unconstitutional, where state procedural law was (*Allen v. McCurry*, 449 U.S. 101), inadequate to allow full litigation of a constitutional claim, and where state procedural law, though adequate in theory, was inadequate in practice. 365 U.S. at 365 U. S. 173-174.” “In short, the federal courts could step in where the state courts were unable or unwilling to protect federal rights. *Id.* at 365 U. S. 176.”

I. THE QUESTIONS PRESENTED ARE OF SIGNIFICANT IMPORTANCE.

12. Almost 32 years ago, citing *Monroe v. Pape*, 365 U. S. 183, this Honorable Court recognized extent and intent of the federal courts’ limited jurisdiction enacted by Congress as: “The federal remedy is supplementary to the state remedy...” Also see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). However, the Fourth Circuit Court and the district decisions below deprives petitioner of the “federal supplementary remedy” without fairness:

“With respect to the third prong, identity of parties, Defendants in the present case were all named as defendants in the State Case, Torkornoo 1, and Torkornoo 11. Of these cases, Torkornoo 1 and Torkornoo 11 were dismissed without prejudice and therefore do not satisfy the first prong, that the prior case be finally decided on the

merits. See, e.g., *Mann v. Haigh*, 120 F.3d 34, 36 (4th Cir. 1997). The State Case, however, was dismissed after consideration of “the entire record” and after Judge Callahan granted seven Motions to Dismiss. These Motions’ collectively asserted grounds including a lack of a legal or factual basis for Mr. Torkornoo’s claims and a failure to state a claim upon which relief can be granted. In particular, Monahan’s Motion to Dismiss Plaintiffs Fourth Amended Bill of Complaint, which was granted, asserted failure to state a claim as its only basis for dismissal...” App. 2 page 5.

13. As set forth, documentary evidences showing at App. 29, Appendixes 24-A, 24-B, 24-C; App. 13; and App. J Exhibit 60-A, App. J Exhibit 60-B with tactical manipulations of scheduling orders showing at App. J Exhibit 60-C, and App. J Exhibit 60-C reflects inadequate judicial proceedings in dispute of the lower courts decisions Appendixes 1-2.

14. The petition warrants a review in light of *In re Davidovich*, 901 F.2d 1533, 1536 (10th Cir. 1990): “*finding of fact is clearly erroneous if it is without factual support in the record or if, after a review of all the evidence, we are left with the definite and firm conviction that a mistake has been made.*” The Fourth Circuit Court and the district court decisions [Appendixes 1-2] clearly failed to justify any risk of procedural errors petitioner’s independent claims may have presented before dismissing his federal civil action now under review in this Court citing *Carey v. Piphus*, 435 U.S. 247, 259 (1978): “[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.”

15. The Fourth Circuit Court’s decision is erroneous standard and should be Vacated on factual and legal basis in light of *Monroe v. Pape*, 365 U. S. 183, *In re Davidovich*, 901 F.2d 1533, 1536 (10th Cir. 1990), *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002), *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980) and *Schweiker v. McClure*, 456 U.S. 188, 195 (1982).

CONCLUSION

For all the above reasons, the petition for Writ for Certiorari should be Granted.

Respectfully Submitted,

Bismark Kwaku Torkornoo, *petitioner*