

No. 18-5621

In The Supreme Court of the United States

BISMARCK KWAKU TORKORNOO,

Petitioner,

v.

HELWIG ESQ., ET AL.,

Respondents.

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

ON REHEARING BRIEF FOR A WRIT OF CERTIORARI

BISMARCK KWAKU TORKORNOO

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MAY 2018

Pro se

QUESTIONS PRESENTED

1. Whether the Fourth Circuit Court decision based on unsubstantiated facts provided by the District Court violate the Due Process Clause.
2. Whether petitioner's admissible evidence proofing fraud, collusion, deception and conflict of interest of state court's proceedings preconceived arbitrary, calculated to oppress and repress his rights without due process of law should trigger exceptions to res judicata, estoppel or Rooker-Feldman doctrines in his federal civil suit.
2. Does fraud vitiates every judicial proceedings, if so, did the Fourth Circuit Court's decision affirming the district court's reasons based on preclusion, deprives petitioner of his due process and equal protection rights before the law in light of the numerous admissible evidences on file in support of his independent claim that proofs the state court's proceedings tainted with frauds, collusions, deceptions and conflict of interest constituting inadequate judicial proceedings in preventing him from making his civil case in full?
3. Whether a litigant who had no benefit of a full and fair trial in a state court, and his rights measured by laws made to affect him individually (to break his family and deprive him of his financial interests), not by general provisions of law applicable to all those in like condition deprives him of his rights to freedom, liberty, and property without due process of law is entitled to a supplementary remedy in federal court.
4. Whether the Fourth Circuit Court's affirming district court's new reasons based on res judicata or estoppel without relying on any documentary proof on file showing adequacy of state court's proceedings prejudiced the petitioner in light of numerous admissible evidences on file in support of his independent claims against respondents' frauds, collusions, and conflict of interests violates the Fourteenth Amendment.

PARTIES TO THE PROCEEDINGS

The petitioner is Bismark Kwaku Torkornoo, the plaintiff, respondents are Nina Helwig Esq., Ms. Jacqueline Ngole Esq., Mr. John Monahan Esq. and Mary Torkornoo.

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REHEARING PETITION FOR A WRIT OF CERTIORARI

Petitioner is Bismark Kwaku Torkornoo, a *pro se* with civil lawsuit from Maryland respectfully petitions this Honorable Court for Rehearing of a Writ of Certiorari to review the judgment of the Fourth Circuit Court denying him appeal based on the decision from the United States District Court in Maryland.

OPINIONS BELOW

Unpublished opinion and judgment issued by the United States Fourth Circuit Court App. 1-4 affirming the United States District Court's decision, App. 5-11. The Fourth Circuit Court's previous unpublished opinion and judgment App. 12-14 directly conflict with the same Fourth Circuit Court's recent decision because it split in light of its disagreement of the district court's erroneous standard. There was no written opinion by Montgomery County Circuit Court disposition of petitioner's civil case without the merit App. 46. Other relevant documentary evidences are made available at App. 15-52.

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. 1-11.

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....

STATEMNT

1. On December 3, 2018, the Court denied petitioner's request for a Writ Certiorari despite the supporting evidences presented at Appendixes A, B, and C. The supporting evidences, Appendixes A, B, C were all reformatted in a booklet form in accordance with the rules of this Court. In the best interest of the public, the integrity of the judicial system, rule of law and the Constitution, petitioner is requesting rehearing based on new evidence and compelling interest.

2. The unconstitutional split decisions [App. 1-14] by the Fourth Circuit Court do not only threaten this Court's equity jurisprudence but also threatens the Constitution especially the Fourteenth Amendment in light of petitioner's legal contentions based on the facts and evidence gathered on record, also secured in the federal court system [ECF no. 1-70] available in eyes of the public.

3. The same civil action was appealed twice in the Fourth Circuit Court according to the records App. 1-14. In the first appeal, the district court judgment was vacated and remanded based on the facts and legal contentions after the same lower court painstakingly and independently reviewed the same numerous documentary evidence to render decision in petitioner's in light of *Thana v. Bd. Of License Commissioners for Charles City*, 827 F.3d 314, 320 (4th Cir. 2016) with clear recognition of the Fourteenth Amendment¹ [App. 13].

4. Thereafter, the district court turned around to dismiss the same civil action by solely relying on unsubstantiated facts to discredit petitioner to derail justice.

5. However, the Court's decision in denying petitioner writ of certiorari will create doubts in the eyes of the public based on the facts and legal contention available on the federal court record in direct relationship the misrepresentation put in place by the district court on record not in conformity with the tenet of the Constitution in pursuit of justice.

6. The Fourth Circuit Court and the district court's second decisions [App. 1-11] which are direct conflict with numerous decisions rendered by the Court [Supreme Court] in reference to case laws referenced under the Due Process Clause [App.47-52], gives the petitioner the legal grounds to be heard including Maryland law, Art. 19 of Declaration of Rights as follows:

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

7. The Fourth Circuit Court's erroneous decision threatens rule of law and public interest. The new evidence and contentions reflect that the harm caused to petitioner is being overshadowed by the false claim or assumption by the district court that petitioner's civil case was subjected to res judicata doctrine because it was litigated on the merit when there was no material fact to merit such claim as matter of law [App. 20-29].

8. The district court unable to substantiate with solid proof how petitioner's civil case was actually litigated on the merit in the state court except mere scintilla public records inferences which bears no solid evidence, which this Court effectively can identified as

¹ "if a plaintiff in federal court does not seek review of the state court judgment itself but instead presents an independent claim" that is related to a matter decided by a state court. Id. at 320 (internal quotation marks and emphasis omitted).

accomplished “full legal proceedings” consistent with the Due Process Requirements as shown below [App. 47-52].

9. The public record relied upon by the district court, App. 5-7 below, is available at <http://casesearch.courts.state.md.us/casesearch> on the World Wide Web. In order to access the alleged public record, check the disclaimer agreement box to sign in. Upon signing in input petitioner's last name as Torkornoo and first name as Bismark as required, and then lunch a query into State of Maryland's court online system. This query provides five cases beginning with case no. 10260FL, 378782V, 71419FL, 0601SP025192007 and 99360FL under Bismark Torkornoo and Mary Torkornoo.

10. The Court should take judicial notice of the three [10260FL, 0601SP025192007, and 99360FL] out of the five cases listed here as protective order petitions initiated by Ms. Torkornoo. Ms. Torkornoo continued her aggression to use the children as a “pawn” against petitioner till date to deny him access even after the divorce according to Appendix C pages 42c-78c.

11. The Court should also take judicial notice of the other two cases [378782V and 71419FL] initiated by the petitioner. Case no. 71419FL is the family law case which incorporates the divorce and custody issues out of which the civil case no. 378782V arose in the state court. As a result of the divorce and custody issues, three attorneys namely Ms. Nina Helwig Esq., Mr. John Monahan Esq. and Ms. Jacqueline Ngole Esq. acting as officers of the court connived with Ms. Torkornoo to violate petitioner's constitutional rights Appendix C, pages 42c-56c. The acts triggered the civil lawsuit in the state court in light of case no. 378782V against respondents which was erroneously inferenced by the district court as litigated on the merit.

12. The same public record referenced by the district court has zero evidence in support of the claim that Judge Callahan dismissed the civil case no. 378782V on the merit, App. 9. The filings, which reflect DE #1 through DE #119 reflects no detail in support of the district's extrajudicial fact.

13. The Maryland State Court electronic system do not post contents of its filings including exhibits online as the Federal Court System does. The question to be ask here is, how was the district court able to substantiate the facts to grant respondent Monahan's (white male) motion to dismiss, and verification that Judge Callahan (white female judge) “reviewed the entire evidence before dismissing the State civil case” as the legal basis to deny petitioner equity? This proof if palpable need to be attached to the district court's Memorandum Judgment in the Federal Electronic Filing System for transparency purposes in the name of fairness to withstand the public trust that petitioner as a minority (black) male is not a subject of racial bias? Maryland Declaration of Rights and the United States Constitution prohibit this holding.

14. Any legal proceedings that failed to meet the Due Process Requirements below without showing good cause for preclusion of an error in favor of procedural due process, is unconstitutional and notwithstanding. This was exactly how petitioner's civil case was treated in both the state courts and federal courts to obstruct his documentary evidences without merits.

15. As a matter of law, when petitioner refiled the civil action in federal court with the same admissible evidences on the basis of his independent claim that the state court's proceeding was inadequate to seek federal court supplemental remedy. His first appeal was granted by the Fourth Circuit Court with reasonability [App. 12-14]. However, when the

district court decided to undermine its mandate not to proceed on the merit, it assumed the facts and relied on it to subject the civil case res judicata doctrine.

16. Petitioner provides court transcript dated 10/14/2013, a documentary proof [see App. 20-29] showing the content of initial scheduling hearing.

17. At the hearing, respondents actually persuaded Judge Callahan to rescind specific procedure orders [App. 33-36] including settlement and pretrial incorporated in the scheduling order signed by the administrative Judge John W. Debelius III [App. 27-30].

18. It appears that Judge Callahan yielded to respondents' request to undermine all the procedural orders signed by Judge John W. Debelius III. As a result, impeded discoveries and the trial at detriment of petitioner's constitutional right contrary to the Due Process Requirements. It appears Judge Callahan assumed and wanted the court to believe that settlement was unlikely was the basis to schedule dispositive motion hearing [App. 28] according to the transcript:

"Well, that's where I was headed I mean, because, well, let's say this. The reason I posed the question the way I did was because having some familiarity with the case and the issues, I'm not sure that settlement is very likely."

19. At that hearing, petitioner submitted on record that Judge Cynthia Callahan will be called to testify as a witness by her own self-admitting of direct knowledge and a subject of potential conflict of interest in the ongoing civil matter when "extreme facts" implicating the judge in the primary family law case triggered the civil case. Absolutely, early of scheduling dispositive motion by Judge Callahan require a formal written request from respondents. The state Judge taking it upon herself to schedule early dispositive hearing practically rescinded the procedure orders. As set forth, Judge Callahan was expressive when she admitted that she was familiar with the case. Petitioner will submit that Judge Callahan was not just familiar with the case but her direct interferences according to Appendix C pages 41c-66c.

20. The extreme facts at Appendix C page 45c-66c create "probability of bias". As a result, the assignment office initially assigned the case to Judge Sharon Burrell according to the original scheduling order App. 53-56. This was the reason why petitioner requested Judge Callahan's recusal. As matter of law, it was relevant that the state judge recuse herself in recognition of precepts under *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009) as a matter law to prevent deliberate miscarriage of justice at akin with pattern miscarriages of justice showing at Appendix C pages 45c-66c.

21. Even when petitioner requested for continuance App. 38-40 due to his health condition with evidence showing at App. 41-43 to enable him recover from his hoarse voice, Judge Callahan deliberately denied it. Instead, scheduled dispositive motion in respondents' favor to undermine Administrative Judge John W. Debelius III procedure orders App. 44 to undercut discovery and pretrial process without good cause.

22. As set forth, it is factually relevant for the Court [Supreme Court] to take judicial notice that discoveries were not completed from the same state court public records² under case no. 378782V referenced by the district which bring to bear the question, the integrity and credibility of the lower court's Memorandum Judgment and determination that Judge Callahan reviewed the entire evidence when discovery was not completed according to procedural orders showing at App. 34-36 ordered as guide to the state court.

² *Torkornoo v. Torkornoo* Case no. 378782V <http://casesearch.courts.state.md.us/casesearch>

REASONS FOR GRANTING THE PETITION

23. A competent judge should adjudicate with fairness to balance between equity and uniformity without any confusion in light of Art. 20 of Maryland Declaration of Rights which declares "*That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People.*" The state court violated the tenet enshrined in its constitution as direct result of deliberately scheduling dispositive motion by Judge Callahan otherwise requires a formal written request from respondents. Judge Callahan took it upon herself to schedule early dispositive motion hearing to undermine or rescind the procedure orders by default before discovery deadline *supra* ¶¶ 16-22 in violation of the Due Process Clause direct violation of numerous percepts established by this Court to preempt the Fourteenth Amendment by Honorable Court below App. 47-52.

24. The duty of a judge must be utterly transparent. This wisdom of transparency is the guiding principle of both previous and current Justices of this Honorable Court believed to protect and defend the Constitution in a civil society was echoed during *Chief Justice John Roberts (Chief Justice of the Supreme)* confirmation process before becoming the Chief Justice of this Court [Supreme Court] as follows:

"Judges are like umpires. Umpires don't make the rule; they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went a ball game to see the umpire."

25. However, the Fourth Circuit Court decision if not correct timely will disregard this understanding of rule of law to deny petitioner his freedom, liberty and property upon filings of his federal lawsuit *supra* ¶¶ 9-15 to undermine "the neutrality requirement" recognized by this Court under *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."

26. Undisputedly 50 years ago, the Fourth Circuit Court recognized the threshold for the "exceptions" to trigger res judicata doctrine as fraud, deception, accident, or mistake in light of *Resolute Insurance Co. v. North Carolina*, 18.397 F.2d 586 (4th Cir. 1968). Petitioner's case is no exception considering the factual evidence and operative facts established according to Appendix C pages 41c-70c. However, the first prong of res judicata doctrine does not apply to this federal civil lawsuit in light of the articulable facts *supra* ¶¶ 3-25 in conformity with Due Process Requirements [App. 47-52] contrary to the decision below App. 1-11.

27. The Fourth Circuit Court's decision App. 1-5 which is based on the district court's reasons below is absent from the Due Process Requirements [App. 47-52] and unconstitutional in light of *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) under which this Court held that:

"[T]he decision maker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing... To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on . . . though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law."

28. Petitioner will submit that the outcome of the federal civil lawsuit would have been in petitioner's favor had Judge Burrell was not primarily removed and replaced with Judge Callahan or had the district court comply with the Fourth Circuit Court orders at App. 12-14. It is relevant to submit that the outcome of the federal civil lawsuit would have been in petitioner's favor had the Fourth Circuit Court not accepted misrepresentation and distortion incorporated by the district court to in its reasoning to derail justice *supra* ¶¶ 3-15, App. 1-4.

29. The evidences were unmentionable, ignored or buried by the lower courts. The admissible evidences gathered and produced on record in support of the federal civil suit are of substance and legal consistent with FRCP Rule 401. A material fact is one which might affect the outcome of the case under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If evidence is in the form of witness testimony, the party that introduces the evidence must lay the groundwork for the witness's credibility and knowledge³. In this case, the groundwork is incorporated in the Second Amended Complaint on the district court's docket incorporated in petitioner's brief on the 4th Cir docket. FRCP Rule 401. Test for Relevant Evidence⁴

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Rule 613. Witness

- (a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

THE QUESTIONS PRESENTED ARE OF SIGNIFICANT IMPORTANCE.

30. "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication". *Kenner v. C.I.R.* (7th Cir. 1963), 318 F.2d 632 "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." All the facts articulated in Appendix C pages 42c-70c are unquestionable fraudulent and defiled the court itself.

31. Petitioner's rehearing is relevant because the district court fact finding was not palpable and insufficient. The lower court was biased towards petitioner because it sidelined numerous undisputable facts and documentary evidences produced by him because it issued management order in light of public record at ECF no. 51 then suddenly deviated from the tenet of the Fourteenth Amendment without any good cause *supra* ¶¶ 3-30.

32. The Fourth Circuit Court and district court's holdings unequivocally did not conform with the Due Process Requirements [App. 47-52] to suggest that the state court reviewed the **entire evidence** [App. 9] when discovery deadline was not even completed. It

³ Richard Glover, *Murphy on Evidence* (2015), p. 29.

⁴ See Appendix C pages 42c through 78c.

is impracticable to assume that the entire evidence was reviewed when discovering was not available. Dispositive motions were granted on 11/27/2013 before of discovery deadline was due 3/31/2014 in violation of Judge Debelius procedure orders App. 30-36, precepts under *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) and the Due Process Clause.

33. The petition should be granted in light of *Monroe v. Pape*, 365 U. S. 183 where this Honorable Court recognized the extent and intent of the federal courts' limited jurisdiction granted by Congress as: "*The federal remedy is supplementary to the state remedy...*"⁵ There was no procedural error to trigger res judicata doctrine as suggested by the district court based on its inferences to public records of the state court's dismissal in light of precepts under *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."

CONCLUSION

For the above captioned reasons *supra* ¶¶ 1-33, the rehearing for a writ of certiorari should be granted because the district court's facts and reasons below are not articulable based on unsubstantiated public records relied upon that the state civil case was dismissed on the merit *supra* ¶¶ 3-15 in light of *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). The Fourth Circuit Court judgment should be vacated and remanded for reconsideration.

Respectfully submitted,

s/ Bismark Kwaku Torkornoo

January 11, 2019

Petitioner

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⁵ Also see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

**Additional material
from this filing is
available in the
Clerk's Office.**