

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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James R. Reece,

*Petitioner,*

v.

L. Ray Whitley, et al

*Respondent.*

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On Petition For A Writ of Certiorari to  
The United States Court of Appeals  
For The Sixth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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August 13, 2018

## QUESTIONS PRESENTED

1. Whether a post-trial pre-appeal motion for new trial filed by an indigent prisoner is a critical stage of state criminal proceedings protected by right-to-counsel existing under the Sixth amendment, and (2) May a final trial judgment obtained by the denial of that right provide authority for direct review that finds “evidence of guilt beyond a reasonable doubt” based upon a record showing violation of right-to-counsel at bindover, indictment, arraignment, trial and sentencing.

3. Where prior to indictment in the underlying state case the indigent accused requests permission from the Sixth Federal Circuit to appeal the district court's denial of his request for removal alleging want of bindover hearing and violation of right-to-counsel, and where following his imprisonment in that state case, the record shows Chief Justice Martin grants the request to appeal and orders the appointment of counsel, yet the prisoner remains unaware due to circuit clerk's suppression of appointment and subsequent dismissal of the proceedings “for want of prosecution”, THE QUESTIONS PRESENTED ARE: (4) Do rights when granted by court under the Sixth amendment attach beginning from time order is entered or from time counsel appears, and (5) May that right be severed without a hearing whereby the Sixth Circuit may find the previously suppressed appeal which raised the same questions of subject matter within the same state case underlying the appeal at hand, is now unrelated and without affect to the outcome of decision?

6. May the Sixth Circuit ignore the repeated holdings of this Court, and allow the district court under F.R.C.P. Rule 12 court to dismiss independent claims alleging subject-matter fraud in state criminal proceedings which were initiated without legal process and conducted in the complete absence of counsel where shown at trial the arresting officer admitted fabricating all facts material to probable cause, and may those claims to this day remain unjudicated by any court whereby the respondents may continue to evade determination of factors which either toll or trigger state limitations for bringing a false imprisonment claim, as bright-lined by this Court under *Wallace v. Kato*, 549 U.S. 384 (2007) ?

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## LIST OF PARTIES

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**PETITION FOR A WRIT OF CERTIORARI**

Petitioner James Reece respectfully petitions for a writ of certiorari to review the judgment of the United State Court of Appeals for the Sixth Circuit.

**OPINIONS BELOW**

The unreported opinion of the Sixth Federal Circuit is reproduced at App. 1–8. The unreported judgment of the Middle District Court for Tennessee is reproduced at App. 9. The Magistrate's Report and Recommendation for the Middle District Court is reproduced at App. 10–30. The unreported opinions of the Tennessee Court of Criminal Appeals are reported at 167-68, and 169-83.

**JURISDICTION**

The Sixth Federal Court of Appeals issued its opinion on May 14, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL PROVISIONS INVOLVED**

The Fourth Amendment to the U.S. Constitution provides in relevant part: "The right of the people to be secure against unreasonable searches and seizures ... shall not be violated but upon probable cause..."

The Sixth Amendment to the U.S. Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defence."

The Fourteenth Amendment to the U.S. Constitution provides in relevant part: "No State shall make or enforce any law which shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws..."

### STATEMENT OF THE CASE

On April 2, 2015 petitioner filed complaint in the district court alleging an “ongoing” false imprisonment caused by an arrest for which no bindover or “legal process” has yet to occur, and alleged that if provided, would at that time begin a one-year state limitation for bringing claim. The complaint alleged independent grounds of fraud and abuse of process in challenging the validity of an underlying “state judgment” written by the respondents who, in turn, under Federal Rules Of Civil Procedure (“FRCP”) 12(b)(6), brought jurisdictional motions alleging prior identical federal claims, immunity, failure to state a claim, and to which they appended the disputed “state judgment” and various documents from outside of the complaint. Petitioner responded to these motions with verified exhibits and a request for declaratory judgment asking two questions of law<sup>1</sup> as were asserted dispositive to all jurisdictional challenges brought by the respondents.

The magistrate's report withheld consideration of petitioner's evidence and declaratory request, and found the arguments and evidence of respondents alone supported recommendation for dismissal based on the preclusive merits of respondents' “state judgment”, judicial immunity, res judicata, insufficiency, and complaint as time-barred. Petitioner objected to the exclusion of his evidence, the denial of consideration to his declaratory request and to preclusion or merits being reached under FRCP 12(b)(6). The district court adopted the magistrate's report “in entirety”, denied motion for new trial, and the petitioner appealed.

On May 14, 2018, the Sixth Court of Appeals pretermitted all issues raised in the petitioner's brief by an opinion that affirmed the district court's jurisdictional dismissal of petitioner's complaint “in entirety”. In this opinion the panel did also deny a “motion for restoration of counsel” filed by petitioner showing prior record of counsel was appointed for appeal of same facts and same underlying state case, as was dismissed without appearance of counsel.

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<sup>1</sup> “Has a Final Judgment Been Rendered Within Jurisdiction of the State Court of Tennessee?”

“Has a Bindover Judgment Been Rendered Within Jurisdiction of Sumner County, Tennessee?”

## REASONS FOR GRANTING THE WRIT

**1. A total of seven federal circuits having considered this question hold that a post-trial pre-appeal motion for new trial is a critical stage of state criminal proceedings.**

This question would decide whether the respondents as state actors may continue to use a hearing on motion for new trial as means for shrouding prior bad acts buried anonymously through unchecked authority for issuing facially valid final trial judgment.

The lower courts have silently pretermitted this question within each and every opinion issued to date in petitioner's case. No ruling, answer nor acknowledgement was ever provided by any state court within a minimum dozen state proceedings, *see App 157-67 Appendix of State Exhaustion*. Petitioner has been twice denied relief by federal writ of habeas corpus, yet both of the applications raising this question were cut short under jurisdictional dismissal either, "for want of showing custody" or "mootness" claim resulting from the actions in question, namely, the respondents used a hearing on motion for new trial to continue denying counsel to your petitioner, and for want of counsel at that motion for new trial, the respondents were allowed to write a final trial court judgment which found, (a) your petitioner had "waived counsel by waiver duly filed", (b) had waived his motion for new trial.

**A. In premitting this issue, the Sixth Circuit has let stand the respondents' practice of conducting direct review upon final trial court judgments obtained through denial of counsel.**

"Following the jury's verdict, however, the [petitioner] requested the assistance of counsel during both at the sentencing hearing and the hearing on the motion for new trial. *The trial court denied those requests.* . . The record before this Court reflects that the [plaintiff] did not waive his right to appellate counsel....The [plaintiff], however, appears to have specifically requested the assistance of counsel on appeal without success." [emphasis added]

**App 66. Appellate Order, February 9, 2012**

The respondents next found such acts are vested within their authority, and ordered your petitioner to appeal to their discretionary relief:

“The appellant argues that in order to preserve all legitimate issues the matter must be remanded to permit him to amend his motion for new trial with the assistance of counsel. Whether the trial court *erred* in denying the Appellant's request for the appointment of counsel for the sentencing and motion for new trial hearings is an issue that should be fully briefed by the parties and submitted to a panel of this Court for review on the record on file. Accordingly, *the motion to remand is denied* at this time.”

**App 68** Appellate Order of June 28th, 2012,

“MR. REECE:

One, I can't proceed without an attorney, but you've already summarily denied me that and stated that somewhere in the record, which is sealed, that somehow or another I've waived my right to an attorney. Anunsel. Whether the trial court *erred* in denying the g my right to an attorney without compromise and without fail. I'm still asking for that. And you said, well, you've waived all of that, but, of course, that's in the concealed record and we have no right to examine just where it was the defendant waived his right to an attorney.”

**App 79** Transcript, Hearing on Motion for New Trial, May 17, 2011.

“MR. REECE:

It was not my intention to make any statements, nor even be here in person today before this Court. I still invoke my right to an attorney and still ask for adequate findings in support of this Court stating that I have waived the right to the appointment of an attorney.”

**App 82** Transcript, Hearing on Motion for New Trial, May 17, 2011

"THE COURT:

You've been representing yourself, and today the Court denies your request to appoint you an attorney... Now don't ask me any more questions about your attorney, if I'm denying you an attorney. The answer is yes.[...] You're not being asked to make decisions... You're not giving up any rights which you have. You're not waiving any rights."

App 73 Transcript Sentencing Hearing,  
January 12, 2011

"MR. REECE:

So if you're not going to give me an attorney -and I'm going to keep invoking my right to that.

THE COURT:

Sir, you've already done that many, many times.

GENERAL WYLLIE:

If he continues to bring it up, can we find him in contempt?

THE COURT:

Yes we are.

MR. REECE:

Contempt for invoking the constitution?

THE COURT:

No sir, for violating the Court's order, when you mention certain things to the jury in violation of the Court's order.

DEFENDANT:

You're telling me I can't ask for an attorney in front of the jury?

THE COURT:

It's direct contempt."

Complaint, MD Tenn No. 3:15-cv-00361, *Reece v. Whitley, et al*, D.E. 1, Pg ID # 91, "Trial Proceedings")

The Sixth Circuit is flat out wrong to ignore allow a motion for new trial to remain an unprotected stage of criminal proceedings which may result in imprisonment. Nor may the district court find a claim insufficient<sup>2</sup> that alleges absence of criminal subject matter and violation of right-to-counsel held by the plaintiff, as an indigent prisoner, at motion for new trial and at sentencing hearing in the state case. These same facts were judicially noted

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<sup>2</sup> *Guzowski v. Hartman*, 849 F.2d 252, 255 (6th Cir.1988)(Insufficiency is judgment on merits)

by the respondents, as state appellate actors, fourteen months *prior* to having asserted authority for conducting a direct review upon petitioner's judgment of imprisonment. Petitioner's district court complaint alleges that, in having admitted these facts prior to direct review, the appellate defendants lost all appellate authority, save duty for immediate remand to the trial court for the issuance of a valid judgment produced through assistance of counsel.

To this day, the respondents maintain that they may review an admittedly void criminal judgment and find "*evidence to support defendant's guilt beyond a reasonable doubt*". **see 183a** Respectfully, this allegation alone rises to the level of "egregious facts" mentioned by the Sixth Circuit, in holding that "To establish a constitutional due process claim, [a relator] must demonstrate that the trial court's denial of his motion for new trial was "so egregious" that it violated his right to a fundamentally fair trial" *Pudelski v. Wilson*, 576 F. 3d 595, 611 (6thCir.2009).<sup>3</sup>

On specific point to respondents' motions to dismiss filed in the district court case, your petitioner provided the unanimous affirmations of seven federal circuits holding that a post-trial, pre-appeal motion for new trial is a critical stage of proceedings protected by right-to-counsel existing under the Sixth amendment, **App 137** (D.E. 79, Pg. ID ## **605-07**).

Petitioner relied on those decisions and the position of the Sixth Circuit in *Pudelski*, Id, for asserting the substance of a "fair trial" to your petitioner amounted to an immediate *remand for valid final trial judgment* provided through assistance of counsel at the hearing on motion for new trial, as would have included exculpatory facts developed at the original "trial proceeding" to support the *dismissal* of plaintiff's criminal charge.<sup>4</sup>

**This case would be a good vehicle for resolving this constitutional question of law.**

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<sup>3</sup> citing *Fleming v. Metrish* 556 F. 3d 520, 535 (6thCir.2009); *Blaze v. Parker*, 371 F.3d 310, 324 (6th.Cir.2004)

<sup>4</sup> e.g.: Complaint, D.E. 1, Pg ID # 103, *Contents of Motion To Substitute*, see D.E. 80-6, Pg ID ## 559-74, *Motion To Dismiss Indictment*

**2. An order granting the assistance of counsel confers an ongoing right to be heard by counsel which cannot be severed without hearing at which counsel must appear; nor may court by suppressing counsel's appearance reach merits or otherwise dispose of docketed proceedings.**

The issues as were presented on appeal to this Sixth Circuit in this case, are based on the same underlying state criminal case, and same issues for which Chief Justice Boyce Martin previously granted to your petitioner permission for leave to appeal in Case No. 10-5368, *Reece v. Sumner County*, **App 197**. However, by the time permission to appeal in that case was granted, your plaintiff, as the indigent accused therein, had now been tried and imprisoned by the same respondents in this case, which the record shows they caused by withholding both plaintiff's right to bindover hearing, and his right to counsel at all stages of prosecution. For the years following, your imprisoned plaintiff was caused to remain completely unaware of his right to appeal the complete absence of bindover hearing, or probable cause for his arrest. Petitioner adamantly alleges that because his right to counsel was caused to attach by order of the appellate Court, and the attachment of that right was made absolute under provisions of Sixth and Fourteenth amendment, and could not be severed absent due process of hearing conducted under same protections of law where, prior to any discharge of that counsel, hearing must be conducted.

**A. In Case No. 10-5368, the Sixth Circuit ordered appointment and granted right to appeal issues of bindover hearing and denial of right to counsel, as formed basis of imprisonment.**



For these reasons, an ongoing right to counsel attached to which cannot be severed by fraud on court occurring within earlier proceedings raising same facts of same case.

Justice Martin in his order at the time of the prior appeal, expressly granted to your plaintiff *right to counsel* which is reflected within record of this Court shows as suppressed by a certain unknown person within the office of Clerk for Sixth Circuit, who though charged with the duty for that order of appointment, nevertheless refused to appoint, and who seven-months later facilitated dismissal of your plaintiff's appeal for "want of prosecution", in an order bearing the forged, fraudulent signature of Clerk, "*Leonard Green*" **App. 198**.

**B. In that appeal, the same respondents entered appearance, yet petitioner remained in prison unaware until after his release upon discovering an attorney's letter in clerk's file.**

After being released from prison your petitioner discovered certain documents in the clerk's file of his state case **App. 195-96** showing that a certain law firm knew where to find where your petitioner was imprisoned, and this counsel could at that time have appealed the facts of probable cause to plaintiff's arrest as directly control the facts of his claim for false imprisonment, at hand.

**C. In 2017, the Disciplinary Counsel for the Ohio Bar disclosed that a law firm had in fact been appointed to represent the prisoner.**

Your petitioner submits as further evidence of his right to counsel, the correspondence written to the Office of Disciplinary Counsel for the Ohio Supreme Court, **App. 191-94**. On June 9, 2017, it was confirmed by that office that the lawfirm of Densmore & Shohl, in fact had been appointed to represent your petitioner before the Sixth Circuit, yet never entered an appearance in the case, **App. 190**. This firm has since refused to return phone calls or respond to petitioner's emails.

**D. In the appeal at hand, the Sixth Circuit found the record of the prior appointment and appeal “unrelated” to the same underlying case.**

However, the Sixth Circuit has found that,

"Finally, Reece challenges this court's previous order denying him counsel and dismissing his appeal for want of prosecution in *Reece v. Sumner County*, No. 10-5368 (6th Cir. Oct. 14, 2011) (order). However, his arguments are not properly before us because the cases are not related." **App.8**

As a matter of law, your petitioner asserts holding right to counsel for defending against the above findings, which in your petitioner's untrained opinion, merely confirm the takings and fraud at hand, for which only "the guiding hand of counsel" is capable of providing. This right was given to your petitioner, and by well established law, it can only be severed by due-process of hearing provided upon the issue, and such hearing may not be conducted in the absence of petitioner's right to counsel held at said hearing.

*E. Reversal and remand for appeal of former case by assistance of counsel upon issues dispositive to outcome of this case, is appropriate remedy.*

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**3. The Sixth Circuit may not affirm the district court's jurisdictional grounds for dismissal of complaint based on “public records” showing previous identical complaints which were barred from receiving outcome under *Heck v. Humphrey* 512 U.S. 477 (1994).**

An excellent narrative to *all of controlling questions of law* dispositive to petitioner's district court complaint, as were pretermitted within the opinion issued by the Sixth Circuit, may be easily read in the petitioner's Brief :

**TIMING and ACCRUAL**

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**D. For want of legal process triggering accrual of false imprisonment claim, state limitations in this case remain tolled under holdings of *Wallace v. Kato*, 549 U.S. 384 (2007).**

“MR. REECE:

I want to know why the preliminary hearing for all of this, preliminary examination for this was heard over in Wilson County. I want to know why the judge deliberately allowed my attorney to show up on the very day of my preliminary examination and then discharged him and forced me to undergo the preliminary examination pro se and forced — refused to allow me to subpoena any witnesses in my defense, refused to give me continuance . . . ”

Complaint, *Reece v. Whitley, et al*, MDTenn. 3:15-cv-00361, D.E. 1, Pg ID # 88 Transcript Oct 13, 2010)

“Plaintiff’s argument that his claim has never accrued because the preliminary hearing and subsequent indictment were jurisdictionally flawed and, thus, he has never been legally “bound over” is meritless and unpersuasive. Plaintiff was clearly detained pursuant to the legal process at the time of these proceedings regardless of his arguments as to why the proceedings were legally flawed.” **App. 27**

Magistrate's Report, *Reece v. Whitley, et al*, MDTenn. 3:15-cv-00361, D.E. 93, Pg. ID # 740

“TIMING and PLAINTIFF'S OBJECTIONS APPLYING FEDERAL LAW TO FACTS OF CASE WHICH ABATE OR TOLL ONE-YEAR LIMITATIONS: Plaintiff incorporates this objection by reference into the main body of factual allegations, as if set out and copied therein. TIMING: This suit is filed within one-year following the date of an absolutely void criminal court trial judgment of “acquittal” as was caused to occur by the defendants within a complete absence of jurisdiction.”

Complaint, *Reece v. Whitley, et al*, MDTenn. 3:15-cv-00361, D.E. 1 D.E. 1, Pg ID ## 59-63)

*E. Fourth amendment hearing is the appropriate remedy.*

**CONCLUSION**

Your petitioner request leave to supplement this petition under rules provided by this Court, and for these and supplemental reasons provided, this Court should grant the petition for certiorari.

Respectfully submitted,

A handwritten signature in black ink that reads "James Reece". The signature is written in a cursive, flowing style.

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*August 13, 2018*