

ORIGINAL

Supreme Court, U.S.
FILED

NOV 27 2018

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No. 18-5886

IN THE
Supreme Court of the United States

DWIGHT MITCHELL

Petitioner

v.

WILSON TAYLOR ET. AL.

Respondents

PETITION FOR A WRIT OF CERTIORI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING

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Petition For Rehearing

Pursuant to Supreme Court Rule 44, petitioner respectfully petitions this Court for rehearing of its order denying the writ of certiorari in this case. This Court granted petitioner's pro se petition to proceed in forma pauperis, but ultimately denied the petition for writ of certiori. Petitioner recently discovered new evidence that casts significant doubt on the Sixth Circuit Court ruling that he appealed, namely that one of the panel judges, Jane Branstetter Stranch, had significant connections with one or more defendants and counsel that has worked on this case and/or other filings related to this case and should have recused herself. Judge Stranch was in law school with Defendant Tommy P. Thompson. Judge Stranch's is also the mother of Gerard Stranch, attorney for the Tennessee Democratic Party, and attorney Stranch has represented the Tennessee Democratic Party in cases before the Sixth Circuit Court. Tommy P. Thompson was at the all times relevant to these proceedings an elected official from the Tennessee Democratic Party. Other Democratic Party Officials involved in this case include, but are not limited to, Susan Cooper, Mary Holder, Betty Lou Taylor and Robert Cooper. Petitioner believes these connections represent an ethical breach and are the only logical explanation for the Sixth Circuit departed so far from established precedent in this case.

Factual And Procedural Background

A. Proceedings Below

Petitioner initially filed this case the U.S. District Court for the Middle District of Tennessee in 2013. Petitioner's attorney, without petitioner's knowledge or consent, voluntarily non-suited the case. Petitioner refiled within the one year "savings statute" time. Petitioner was allowed to proceed in forma pauperis because District Court Judge Sharpe declared that he saw "colorable claims of law" with regards to defendant's case.

Magistrate Judge Barbara Holmes recommended on that the case be dismissed largely on statute of limitations grounds, but stated that Petitioner did have a state law cause of action for fraudulent concealment against Defendant Citizens Bank. Petitioner timely objected to the recommendations pointing out, among other issues, that the statute of limitations should be tolled for fraudulent concealment, continuing violation, fraud on the court and other reasons. Petitioner also pointed out that some of the alleged illegal acts occurred in 2013, which is significant because they were within the statute of limitations directly.

Judge Sharpe entered an order upholding the Magistrate's Report and Recommendations. In his ruling, Judge Sharpe acknowledged that illegal acts Petitioner alleged in 2013 were "convenient dates because they fall within the statute of limitations", but without ever addressing those acts directly, went on to say these were "discrete events" and thus the continuing violation doctrine should not apply. But he gave no

justification as to why the events from 2013 should not be allowed to go forward as they were within the statute of limitations.

Petitioner filed an appeal with the Sixth Circuit Court of Appeals noting, among other issues, that the District Court failed to properly consider the fact that there were allegations of illegal acts that occurred within 1 year of Petitioner filing his 2013 complaint. According to the Sixth Circuit's own precedent, the court must deem timely any cause of action that happened within the one year statute of limitations. *Roberson v. Tennessee*, 399 F. 3d 792, 794 (6th Circuit 2005). Ultimately the Sixth Circuit Ruled against Petitioner. In its ruling, the Sixth Circuit cited *Tolbert v Ohio Department Of Transportation* holding that all of the post 2007 actions were "ill effects" and not "illegal acts" and upheld the District Court dismissal. In doing so the Sixth Circuit went against its own precedent in *Tolbert*, which reversed the district court dismissal and allowed actions to go forward that were within the 1 year statute of limitations, as well as its own precedent in *Roberson* and in *Ashcroft v Iqbal* which holds that in reviewing a motion to dismiss, When there are well pleaded allegations, a court should assume they are true and then determine whether they give rise to an entitlement of relief. *Ashcroft v. Iqbal*, 556 US 662, 1940 (2009). Petitioner filed a Rule 35 petition for hearing en banc addressing these and other issues, but the petition was denied and no reason for the denial was given.

B. Proceedings Before This Court

Petitioner filed a petition for writ of certiori with this Court. The Court requested a response to the petition, but all respondents either formally waived filing a reply brief, or in the case of Citizens Bank declined to respond at all. Petitioner also file a petition to proceed in forma pauperis which was granted. This Court filed an order denying the writ of certiori and no formal reason for the denial was given.

Reasons For Granting Petition

Petitioner at the time of filing his petition did not know about the relationship between one of the Sixth Circuit Court panel judges who ruled on his case to a party and/or parties involved in the case. According to 28 USC § 455, a judge must disqualify herself "in any proceeding in which his impartiality might reasonably be questioned". 28 USC § 455(a). Recusal is also required Where she "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." *Id.* § 455(b)(1). Recusal is required if the judge, her spouse, "or a person within the third degree of relationship to either of them" is either "a party to the proceeding, or an officer, director, or trustee of a party" or "is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding." *Id.* § 455(b)(1)(i) and (iii). Waiver of recusal is allowed for 28 USC § 455(a), but not 28 USC § 455(b). *Id.* § 455(e)

In the present case, it is a matter of record that one of the Sixth Circuit panel judges is an alumnus of Vanderbilt University as is one of the defendants and mother to a

lawyer who represents that same defendant's organization, the Tennessee Democratic Party. That raises reasons for recusal under 28 USC § 455(a) and 28 USC § 455(b)(1)(i) and (iii). Only waiver of recusal arising under 28 USC 455(a) is allowed and regardless, Petitioner never waived recusal for any circumstances.

Conclusion

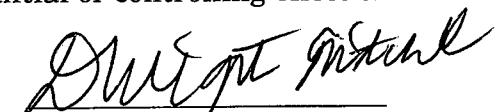
For the above reasons, the petition for writ of certiori should be reconsidered so that all appearances of impropriety can be dealt with and so that Petitioner can have a just and fair opportunity for the important legal issues he has raised to be heard on the merits.

Respectfully Submitted,


Dwight Mitchell
November 21, 2018

Certificate of Good Faith

I hereby certify that this Rule 44 petition for rehearing is submitted in good faith, for grounds limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.


Dwight Mitchell
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