

8/21/18

No. 18-693

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IN THE
Supreme Court of the United States

STEVEN CRAIN,
Petitioner

v.

THE STATE OF NEVADA; et. al.,
Respondent

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

STEVEN CRAIN
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PROPER PERSON

QUESTION PRESENTED

Is an individual's Fourth Amendment right to be free from unreasonable seizure continue beyond legal process so as to allow malicious prosecution claim based upon the Fourth Amendment?

PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT

Petitioner is Steven Crain (Pro Se).

Petitioner, neither a company nor a corporate party, certifies that he has no parent corporation and that no publicly held corporation owns 10% or more of its stock

Respondents are the State of Nevada, et. al., represented by the State of Nevada Attorney General.

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1.

PETITION FOR WRIT OF CERTIORARI

Steven Crain respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The May 24, 2018 Opinion of the Court of Appeals is filed and entered, and reprinted at App. 1. On July 24, 2018, rehearing en banc is denied and reprinted at App. 4.

JURISDICTION

The Court of Appeals denied rehearing en banc on July 24, 2018, App. 4. This Court has jurisdiction under 28 U.S.C. 1245(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment – Freedom of Speech

Fourth Amendment

Fifth Amendment

Eighth Amendment

Fourteenth Amendment – Due Process – Liberty

STATEMENT OF THE CASE

In the year 2000, actually innocent Steven Crain was falsely accused of alleged attempt of lewdness. Mr. Crain was falsely charged with that crime. Mr. Crain was maliciously prosecuted. Mr. Crain was wrongfully convicted (Alford Plea). At the time that Mr. Crain took the involuntary Alford Plea, Mr. Crain wasn't told that Clark County, Nevada Deputy District Attorney Mary Kay Sinicki Holthus had secretly granted immunity to and secretly paid thousands of dollars to Regina Hyman (mother of the alleged victim) and LaGina Hyman (alleged victim) in order to get both Regina and LaGina Hyman to knowingly provide perjured testimony against Steven Crain. It wasn't until sometime in July 2015 that Mr. Crain found out about the secret immunity and secret pay deal. Additionally, Mr. Crain was never told by his Public Defender (Robert Amundson), that at around the same time Mr. Amundson was representing Mr. Crain, Mr. Amundson was also representing Regina

Hyman on separate, unrelated to this case, extensive drug charges. As part of her (Regina Hyman) secret deal with Deputy District Holthus, Deputy District Attorney Holthus promised not to prosecute Regina Hyman. Many, many years later an unmarked envelope was addressed to Mr. Crain. The contents were the seven pages of the Regina Hyman's drug charges and arrest report. LVMPD Temporary Custody Record Event # 000-323-2385, Dated 03/22/2000, Time 2130. Arresting Officers Det. T. Raybuck (Badge #4309) and Det. M. McGrath (Badge #4575), Public Defender Amundson is list as Regina Hyman's attorney. Mr. Crain was sentenced to six years in Nevada State Prison and later lifetime supervision was added to innocent Mr. Crain's sentence. Part of lifetime supervision, includes counseling. The counseling section is unconstitutional, since it forces Mr. Crain to admit to a crime he didn't commit (5th Amendment violation). Since actually innocent Mr. Crain didn't admit to the crime he didn't commit, his new appointed Southern Nevada Parole/Probation Officer Michael VanDyke deemed Mr. Crain non-compliant and Mr. Crain was falsely arrested (September 4, 2014) Clark County, Nevada District Court Case No. C-14-301073-1, based on false charges and perjured statements made by Officer VanDyke.

On or about May 29, 2014, Nevada Parole and Probation, Red Rock Psychological Center, and a retired Las Vegas Police detective/polygraph examiner made a deal with Mr. Crain. If Mr. Crain passes the polygraph test, which would show Mr.

Crain didn't commit the alleged crime in the year 2000, Mr. Crain would no longer have to attend counseling. On May 29, 2014, Mr. Crain took the polygraph test. The results of that polygraph test showed that Mr. Crain was non-deceptive. Mr. Crain was telling the truth. Instead of releasing Mr. Crain from counseling, Officer VanDyke, violated the 14th Amendment, by re-arresting Mr. Crain on knowingly false charges of not attending counseling. The re-arrest date was September 4, 2014.

About a year after Officer VanDyke had Mr. Crain falsely arrested, it was discovered that the real reason why Officer VanDyke arrested Mr. Crain. In his (VanDyke) chrono txt notes, VanDyke wrote that during his (VanDyke) visit to Mr. Crain's apartment on July 17, 2014, he (VanDyke) saw two big white boards with writing on it. Mr. Crain would like to say that the writings were for a name-names, tell all book the he (Crain) was in the process of writing, describing the horrific injustices he continues to endure. The writings included potential titles for the books, chapter titles, talk-show and news reporters that Mr. Crain planned on contacting, and names of the people who partook in the injustice against Mr. Crain. Officer VanDyke saw his (VanDyke) name on those boards, and on July 22, 2014 purposely and spitefully filed a false crime report against Mr. Crain, as a way to prevent Mr. Crain from continuing to writing the book (First Amendment violation). Officer VanDyke did not want to be negatively exposed.

Because of the retaliatory, viscous actions, committed by Officer VanDyke upon Steven Crain, Mr. Crain spent from September 4, 2014 through July 1, 2015 (301 days) in Clark County, Nevada Detention Center, and subsequently from July 1, 2015 through November 6, 2015 (128 days) on house arrest/ankle monitor, pending the trial. After spending a total of 429 days in-custody, on the morning of November 6, 2015, at the request of Clark County Deputy District Attorney Palal, Clark County District Court Chief Judge David Barker dismissed with prejudice the criminal charges against innocent Steven Crain.

Additionally, because of Officer VanDyke's vendetta against Mr. Crain, Mr. Crain lost his job, Mr. Crain had to borrow several tens of thousands of dollars to cover attorney's fees, rent (so he and his early 20's daughter wouldn't lose their apartment), money that was put on Mr. Crain detention center commissary card, money that was put on Mr. Crain's detention center phone card, insurance and registration for Mr. Crain's jeep, etc. And let's not forget about the birthdays, holidays, and/or just regular days, Mr. Crain lost out on spending with his daughter because of Officer VanDyke. Because of being wrongfully incarcerated, Mr. Crain's life was in jeopardy every day. There were times, he was threatened, assaulted, etc. In the beginning, innocent, Mr. Crain had to sleep on the floor, no mattress, no blanket, a dog has better sleeping conditions. And the food, well, a scoop of rice, a

scoop of bland beans, a small tortilla for breakfast, lunch and dinner.

In April of 2016, Fox5Vegas TV did a news story about StevenCrain. Details = <https://www.youtube.com/watch?v=2rBUt9RvrBk>

REASONS FOR GRANTING THE PETITION

Is an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment?

When Pro Se Elijah Manuel asked that similar question to the United States Supreme Court, *Manuel v. Joliet, IL*, 137 S. Ct 911 (2017), U. S. Supreme Court Docket No. 14-9496, the U. S. Supreme Court granted Mr. Manuel's Petition For A Writ Of Certiorari on January 15, 2016.

The question presented is whether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment. This question was raised, but left unanswered, by the Court in *Albright v. Oliver*, 510 U.S. 266 (1994). Since then, the First, Second, Third, Fourth, Fifth, Sixth, Ninth, Tenth, Eleventh, and D.C. Circuits have all held that a

Fourth Amendment malicious prosecution claim is cognizable through 42 U.S.C. § 1983.

Steven Crain may challenge his pretrial detention (301 days in Clark County Detention Center and 128 days on house arrest/ankle monitor = 429 days in-custody) on Fourth Amendment grounds. This conclusion follows from the Court's settled precedent. In *Gerstein v. Pugh*, 420 U. S. 103 (1975), the Court decided that a pretrial detention challenge was governed by the Fourth Amendment, noting that the Fourth Amendment establishes the minimum constitutional "standards and procedures" not just for arrest but also for "detention," and "always has been thought to define" the appropriate process "for seizures of person[s]... in criminal cases, including the detention of suspects pending trial." And in *Albright v. Oliver*, 510 U. S. 266, a majority of the Court again looked to the Fourth Amendment to assess pretrial restraints on liberty. Relying on *Gerstein*, the plurality reiterated that the Fourth Amendment is the "relevant" constitutional provision to assess the "deprivations of liberty that go hand in hand with criminal prosecutions." "Rules of recovery for such harms have naturally coalesced under the Fourth Amendment". That the pretrial restraints in *Albright* arose pursuant to legal process made no difference, given that they were allegedly unsupported by probable cause. As reflected in those cases, pretrial detention can violate the Fourth Amendment not only when it precedes, but also when it follows, the start of legal process. The

Fourth Amendment prohibits government officials from detaining a person absent probable cause. And where legal process has gone forward, but has done nothing to satisfy the probable-cause requirement, it cannot extinguish a detainee's Fourth Amendment claim. *Brendlin v. California*, 551 U. S. 249, 254 (2007), "A person is seized" whenever officials "restrain his freedom of movement" such that he is "not free to leave". And that detention was "unreason-able," the complaint continues, because it was based solely on false evidence. That was the case here: Because the judge's determination of probable cause was based solely on Officer VanDyke's fabricated evidence, it did not expunge Mr. Crain's Fourth Amendment claim. For that reason, Mr. Crain stated a Fourth Amendment claim when he sought relief not merely for his arrest, but also for his pretrial detention (429 days).

In Mr. Crain's case, Southern Nevada Parole/Probation Officer VanDyke vindictively and knowingly filed false criminal charges against Mr. Crain as well as knowingly committed perjury by providing false information against Mr. Crain in order to obtain an arrest warrant against Mr. Crain. The Las Vegas, Nevada Justice Court Judges and the Clark County District Court Judges relied exclusively on the perjury/false information provided by Officer VanDyke. This lead to Mr. Crain being maliciously prosecuted and held in Clark County, Nevada Detention Center from September 4, 2014 (date of false arrest) until July 1, 2015, and subsequently placed on house arrest/ankle monitor

from July 1, 2015 to November 6, 2015. On the morning of November 6, 2015, when the jury was to be selected, the Clark County, Nevada Deputy District Attorney Palal requested that the false criminal charges against Steven Crain be dismissed with prejudice, since it was discovered that Officer VanDyke had lied. On the morning of November 6, 2015, Clark County, Nevada District Court Chief Judge David Barker dismissed with prejudice the criminal case against innocent Steven Crain.

Because of Officer VanDyke's lies/perjured affidavit, Steven Crain spent 301 days in the Clark County Detention Center and 128 days on house arrest/ankle monitor. So while awaiting trial and being maliciously prosecuted, Mr. Crain spent 429 days in-custody.

Additionally, while Mr. Crain was falsely incarcerated, Mr. Crain's friend created blogsites about the horrific injustice Mr. Crain continues to endure at the hands of Officer VanDyke and prosecutors. In early April of 2015, despite the fact that Mr. Crain's friend's name and picture are shown as the friend wrote the blogs, Officer VanDyke and the Clark County district attorney's office filed additional felony charges against Mr. Crain, based on the blogs, which Mr. Crain didn't have anything to do with. Again, Officer VanDyke and the prosecutors didn't want to be exposed. To show this court what extent Officer VanDyke, Clark County District Attorney Steven Wolfson, and the Las Vegas Police Department went to try to put

additional pressure on Mr. Crain to admit to a crime he didn't commit, District Attorney Wolfson sent 3 Las Vegas Police Officers (2 of whom were identified as Ryan L. Smith and Justin Terry) to Mr. Crain's friend's apartment to bully/intimidate/threaten Mr. Crain's friend into deleting his (friend) blogsites. Again, another violation of the First Amendment – Freedom of Speech – Whistleblowing Clause. At a court hearing, in mid-April, 2015, those additional felony charges, against Mr. Crain, was dropped.

It must be noted that prior to Officer VanDyke intentionally filing false criminal charges against Mr. Crain, Officer VanDyke, during a visit to Mr. Crain's apartment, told Mr. Crain, in front of a witness, that he (VanDyke) and other Southern Nevada Parole/Probation officers will continue to whenever they (officers) want, to re-arrest Mr. Crain for whatever reason, even if false, since Mr. Crain will not admit to a crime he (Crain) did not commit. Mr. Crain continues, even to this day, to take Officer VanDyke's threats serious, since he was re-arrested in 2006, 2008, and in 2014 for not wanting to admit to a crime he (Crain) did not commit. Clearly Officer VanDyke is violating 18 U.S.C. 242, NRS 197.200 and NRS 197.220 (Color of law violations). The State of Nevada Attorney General's office, the Clark County District Attorney's office, the Nevada Department of Parole and Probation's office all have allowed Southern Nevada Parole and Probation Officer Michael VanDyke to do this, since none of them have fired Officer VanDyke, nor have they criminally charged Officer VanDyke, in fact they

have promoted him to teach other Nevada Parole and Probation Officers. Mr. Crain also wishes to add that prior to Officer VanDyke being assigned as Mr. Crain's parole officer, none of the other prior officers made an issue of counseling.

When Mr. Crain politely explained that no counselor wants him (Crain) as a client, Officer VanDyke, in front of a witness, told Mr. Crain, then you don't have to go to counseling. Since counseling was not the reason for Mr. Crain being falsely arrested, maliciously prosecuted, and in-custody for 429 days, the only logical reason why Officer VanDyke committed these horrific injustices and retaliated against Mr. Crain, is because Mr. Crain was in the process of writing a tell-all, name-names book, which amongst other people negatively exposes Officer VanDyke.

CONCLUSION

Petitioner hereby respectfully requests the Honorable U. S. Supreme Court to accept this Writ of Certiorari and direct the Appellate and the lower Courts reverse their dismissals of Pro Se Petitioner's ,Steven Crain, case and find in favor of Petitioner, Steven Crain.

12.

Petitioner: Presented by

STEVEN CRAIN

