

No. 18-6966

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

NOV 26 2018

OFFICE OF THE CLERK

In re Tina Lynne Wagoner

(Your Name) — PETITIONER

vs.

State of New York Court of Appeals
Cattaraugus County Court: _____ — RESPONDENT(S)
Lori Pettit-Rieman, Ronald D. Ploetz

ON PETITION FOR A WRIT OF CERTIORARI TO

State of New York Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tina Lynne Wagoner 16G0694
(Your Name) NYSDOCCS 120-009-17, Prose
Bedford Hills Correctional Facility
247 Harris Road, P.O.Box 1000

(Address)

Bedford Hills, New York 10507-2499
(City, State, Zip Code)

914-241-3100
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Pauperis exclusion from both State and Federal Constitutional rights is of extreme importance to the estimated ninety percent of this nation's active-discriminated-public; and justification for granting this writ, herein, based upon the scheme to defraud the American public, by a State, wherein its agents or actors knowingly abuse this position to: in its extreme, falsely imprison, in this case, both mother and child, by abuse of State law or legislative procedure; and by committing penal law crimes, such as, tampering with physical evidence [§215.40], to procure conviction; aided by a public-defenders acting in concert, due to conflict: personal and financial intersts; when a State actor's conduct is, knowingly so, immune, protected, and completely unchecked, and accepted, without question.

Where can the pauperis public find justice, relief from oppression, when this class of persons: who have and are laying down their very lives for this nation-every day, and are the backbone of this country, do not have either the Courts nor the Constitution to protect them from corrupt State actors who abuse the protection of the State and its Constitutional guarantees?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

i) Cattaraugus County Family Court; Docket No. NN-1344-12, No. B-00815-14, File No.8257, and Case No. 25359896

ii)New Directions Youth and Family Services

iii) Salamanca Police Department

iv) Cattaraugus County Sheriffs Department

v) Jones Hill Psychiatric Hospital

vi) Stephen Ciocca-private actor

vii)Christopher Terhune-private actor

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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Insular Cases: See, e.g., Downes v. Bidwell, 182 US 244-	
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Buchanan v. Warley, 245 U.S. 60 (1917)-----	
Clyatt v. United States, 197 U.S. 207, 215 (1905)----	
Slaughter-House Case, 83 U.S. (16 Wall.) 36, 70-72(1873)	
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New York v. Miln, 36 U.S. (11 Pet.) 102, 142-43(1837)-	
Henderson v. Mayor of New York, 92 U.S.259, 275(1876)-	
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United States v. Nojay, 224 F.Supp.3d 208 (WDNY-2016)-	
STATUTES AND RULES	
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Cattaraugus County Court court appears at Appendix B-G-H to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts: September 26, 2018 decision**

The date on which the highest state court decided my case was 9-26-2018.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VII. Pursuant to the Fifth Article of the Original Constitution, e.g., Amendment XIV, where Article V, valid to all intents and purposes, as part of this Constitution...Provide that no Amendment which may be made prior to the year 1808 shall in no manner affect the fourth Clauses in the ninth Section of the first Article..."

Amendment XIV. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside..."

Articles of Confederation, Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States of this Union, the free inhabitants of each State, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States."

IV Article of the Constitution "is manifestly copied from the fourth of the Articles of Confederation, with only slight changes in phraseology, which renders its meaning more precise, and dropping the clause which excluded paupers..., probably because these cases, could be dealt with under the police powers of the State, and a special provision therefore was not necessary... It is not conceivable that the State should have agreed to extend the privileges of citizenship to persons not entitled to enjoy... The practical effect which it was designed to have and did have, under the former Government, it was designed to have, and should have, under the new Government." (Dread Scott, p.110,111). Thus,

deceiving and extorting the American public's lives and rights,
and tax dollars, under the guise of informa pauperis relief
from violations of alleged State and Federal Constitutional
rights.

STATEMENT OF THE CASE

I have not been arrested for the crime I am currently serving 35 years at Bedford Correctional Facility for; Nor have I been arrested for any crime connected to the crime I am convicted of. Salamanca Police Officers came to my residence and told me that they had a warrant for my arrest. I did not see the warrant. I went with the officers to SPD. They detained me, without miranda, photographing, fingerprinting, etc., and turned me over to Cattaraugus County Sheriffs Department. They did not perform an arrest either. I was committed to Cattaraugus County Jail, and escorted to arraignment in County Court, before Judge Ploetz. The ADA, Keirling, conceded that there had been no warrant; but the court did not question as to why I was there in prison attire, or escorted by a Co. This is a violation of my IV Amendment Right, unreasonable seizure: no warrant, no arrest, just merely toss me into County Jail.

The Sealed Indictment: was not authorized; and the hearing material, read upon arraignment, was resealed, and suppressed, [Index No. 84330], the Government did not even bother to state cause and the Supreme Court Judge, Jeremiah J. Moriarty III, refused to open the minutes for defense's inspection: violating Fed. Rule Crim. Proc. 16(e)(4), 18USCA; and

When Defendant filed a motion to compel disclosure of other material Cattaraugus County District Attorney Rieman, she ignored the discovery demand and Judge Ploetz denied my 440.10 without an Answer from the prosecutor.

The material withheld, was created pursuant to New York State Criminal Procedure Law §§1.20.16(b), "criminal action," 10.10(7), "regardless of the court in which they occurred or were made," 1.20.18 "criminal proceeding," 1.20.17, "commencement of criminal action," pursuant to §100.05.5, "A felony complaint" filed pursuant to §80 10.7 in the Cattaraugus County Family Court. See November 10, 2018 letter to attorney.

Cattaraugus County District Attorney Rieman pulled pieces from this case file, selectively presented them, by "direct presentment" before a grand jury: "Knowingly creation of false or misleading evidence" to procure her "sealed" instrument

and the judge, who was involved in the family court matter, "trial part II" which did not happen, is actively aiding Rieman to suppress this material-exculpatory-evidence.

The fact that I and my child were drawn into family court action in August of 2012, on false accusations. Accusations which a rational officer would have arrested me and others on, if they had been true. The fact that when my daughter made a disclosure and medical evidence gave probable cause for arrest of the private actor, whose false statement drew me into court, and the felony-rape was suppressed by the D.A., who was special prosecutor, joint jurisdiction §10.10.7.

The fact that the case in family court was terminated, and evidence obtained by the D.A. then, during that investigation, was suppressed; but then happen to come to light under indictment 15-48, after I spent 9 months in jail and refused to plead: 1) because I am innocent; 2) the information in the indictment was defective: "A crime may be charged in separate counts to have been committed in a different manner, where each count refers to the same transaction" People v. Taylor, Infield, NY Crim.Rep.146; and "The courts have uniformly refused to extend a penal act beyond its strict letter of statute in order to bring a case within its meaning which was clearly not embraced in its letter" Wallace v. Walsh, 1891, 125 NY 26, 25 NE 1067; and "Persons indicted together should be tried together. United by overlapping facts and participants and common plan" U.S. v. Feyrer, 333 F 3d 10, 114 (2cr.2003) and U.S. v. Solis, 229 F3d 440 (5cr.2002).

Not one alleged codefendant accused me of a crime; and my daughter did not accuse me. My child was also denied counsel at the criminal trial.

REASONS FOR GRANTING THE PETITION

This petition must be granted because I am actually innocent and State records show this to be a fact; and State records also show that State actors and private actors have committed crimes to falsely imprison both me and my child; she for the past six years and me for the past four; while the State actors let the guilty remain free.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tina Lynne Wagoner, Pro se

Date: November 18, 2018