

No. 18-7108 **ORIGINAL**

Supreme Court, U.S.
FILED

OCT 24 2018

In The Supreme Court Of The United States

Timothy Pryer

—

Petitioner

vs.

Thomas Gardner III

—

Respondent

On Petition For A Writ Of Certiorari To:

The Supreme Court Of Mississippi

Petition For Writ Of Certiorari

Timothy Pryer #115393

Unit 26-A, A-zone, Bed 40

Parchman, Ms 38738

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

Question(s)

Question One: Does the Constitution grant judges jurisdiction to commit criminal acts by way of judicial decisions?

Question Two: Does the Constitution support absolute immunity to judges who commit crimes against citizens of The United States by way of judicial decisions

List Of Parties

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:

Carol Gates; Circuit Court Clerk of Itawamba County

Chris Dickenson; Sheriff of Itawamba County

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IN The
Supreme Court Of The United States
Petition For Writ Of Certiorari

Opinions Below

For State Courts:

The opinion of the highest state court to review appears at Appendix "A" to the petition and has been designated for publication but not yet reported,

The opinion of the Chancery Court of Itawamba County appears at Appendix "B" to the petition and is unpublished

Jurisdiction

This case stems from a decision of the Supreme Court Of State Of Mississippi.

The date on which the Supreme Court Of Mississippi decided my case was May 17, 2018.
A copy of that decision appears at Appendix "B".

A timely petition for rehearing was thereafter denied on the following date: August 2, 2018, and a copy of the order denying rehearing appears at Appendix "C".

The jurisdiction of this Court is invoked under 28 USC § 1257(a)

Constitutional And Statutory Provisions

Amendment XI of the United States Constitution: The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of United States by citizens of another state, or by citizens or subjects of any foreign state.

MCA § 25-61-5 (1)(a): Except as otherwise provided by §§ 25-61-9 and 25-61-11, all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning cost, time, place and method of access, and public notice of the procedures shall be given by the public body, or, if a public body has not adopted written procedures, the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt by the public body of the original request.

MCA § 25-61-15: Any person who shall deny to any person access to any public record which is not exempt from the provision of this chapter shall be liable civilly in a sum not to exceed One Hundred Dollars (\$100.00) per violation, plus all reasonable expenses incurred by such person bringing the proceeding

Statement Of The Case

On December 2, 2004, Petitioner, hereafter known as Pryer was arraigned in the Circuit Court of Itawamba County, State of Miss. on the felony charge of Sexual Battery. A woman presided over the proceeding whom Pryer assumed at the time was a bonified judge. During the proceeding Pryer was appointed a public defender and entered a plea of not guilty. There were several others present that day who were also being arraigned.

On October 4, 2005, Pryer was found guilty at a trial by jury after a two (2) day trial and was sentenced to twenty (20) years with fifteen (15) years to serve and five (5) years suspended. The trial judge was the Hon. Paul S. Funderburk. Pryer's counsel at trial was Hon. Lori Basham.

In May of 2011, nearly six (6) years after his conviction, Pryer was reading an article from a newspaper an inmate had given him that mentioned the Circuit Clerk of Itawamba County; Carol Gates. Pryer recognized the picture of Gates as being the one who presided over his arraignment of 2004. Pryer made inquiries to the Mississippi Bar Assn. that confirmed Gates was not licensed to practice law, nor had she ever been in the State of Mississippi. Since Gates could not have presided legally as a judge at Pryer's arraignment, he (Pryer) assumed that his trial court judge (Funderburk) should have been assigned to his arraignment proceeding.

Pryer made a written request under MCA § 25-61-5 (1)(a) of the Mississippi Public Records Act to Carol Gates requesting a copy of the order appointing her as "judge de facto" to the arraignment proceeding of December 2, 2004 and names of those arraigned that day. At the time, the Circuit Clerk's Office had no written procedures in place concerning cost, time, place and method of access in place.

Statement Of The Case (cont.)

Carol Gates presented the request to Judge Thomas Gardner who then made an order denying Pryer public records construing the request as a Petition For Post-Conviction Relief and adding that inmates are not entitled to free records. Copy of Request is found at Appendix "D". Copy of Gardner's Order denying Public Records is found at Appendix "E". Pryer filed a motion with the Circuit Court to show cause why he was denied Public Records that had nothing to do with Post-Conviction Relief. After five (5) months Pryer filed a Petition For Writ Of Mandamus to the Supreme Court of Mississippi. After being ordered to respond, Gardner again denied Pryer access to Public Records stating that records requested proving corruption did not exist. Copy of Gardner's Order denying Motion To Show Cause is found at Appendix "F". In Feb, 2012 Pryer filed notice of appeal concerning Gardner's denial of Public Records through court order. Pryer's grounds on appeal were directed to jurisdiction, right to access public records, and are prisoners "Persons" under MCA § 25-61-5. The Court of Appeals affirmed the lower court's decision. See Pryer v. State, 139 So.3d 719 (2013). In July 2013 Pryer filed a suit in Chancery Court of Itawamba County under MCA § 25-61-15 naming Circuit Clerk, Carol Gates and the Sheriff of Itawamba County, Chris Dickens as defendants for denying Pryer access to Public Records, (The Sheriff denied Pryer copies of capias warrants served on December 2, 2004)

In December 2013 Pryer was granted Certiorari in the Mississippi Supreme Court to determine if Gardner had jurisdiction to rule as judicial a request to the Circuit Clerk for Public Records and to determine if prisoners are persons under the law, to have the right to have access to inspect Public Records.

Statement Of The Case (Cont.)

In early 2014 Pryer filed a Petition For Writ Of Mandamus in the Circuit Court of Itawamba County under MCA § 11-41-1 to compel service of summons and complaint to Carol Gates and Chris Dickinson, defendants in the Public Records suit filed in the Chancery Court. Under MCA § 11-41-1 the Circuit Courts have sole jurisdiction to "command any inferior tribunal, corporation, board, officer, or person to do or not to do an act...". After several months, Pryer filed another Petition For Writ Of Mandamus to the Mississippi Supreme Court to compel the Circuit Court to rule on the Petition for Writ of Mandamus filed there. By Order of the Mississippi Supreme Court, the writ filed in Circuit Court was considered. On October 29, 2014 Judge Thomas Gardner III denied the writ stating he had no authority to grant relief from a case in Chancery Court, contrary to MCA § 11-41-1. Copy of Gardner's Order Denying Writ of Mandamus is found at Appendix "G"

On June 5, 2014, the Mississippi Supreme Court rendered its decision on Certiorari. It was a split decision. The majority held that prisoners are not outside the scope of the Public Records Act, but applied MCA § 25-61-13 (2011) and MCA § 25-61-15 to prisoners bringing suit in Chancery Court. However, the Court denied Pryer "access" to the Public Records stating "We have no reason to believe the documents exist." Further, the Court stated "Pryer may take the matter to Chancery Court if he so desires." Since the Writ of Certiorari contested the decision of Judge Gardner, the Court could not have referred to anyone else. See Pryer v. State, 139 So.3d 713 (2014)

On June 23, 2014 Pryer filed a Motion To Amend Complaint under Miss. Rules of Civ. Proc. Rule 15(a) to add Gardner to the Public Records Act suit filed in Chancery Court (Pryer V. Carol Gates and Chris Dickinson et al. case # 2013-0203-29)

Statement Of The Case (cont.)

After another Petition For Writ Of Mandamus to the Supreme Court Of Mississippi, leave was granted to amend the complaint to include Judge Thomas Gardner as defendant in Case# 2013-0203-29 on October 3, 2016, two (2) years and three (3) months after Motion To Amend was filed. Gardner waived service and filed Motion To Dismiss on January 12, 2017. Pryer's response to Gardner's Motion To Dismiss was allegedly lost in transit and was refiled with the Chancery Court on March 6, 2017. On April 21, 2017 Order Dismissing Gardner from the complaint was issued. Gardner was dismissed from the complaint on grounds of Judicial Immunity and Statute Of Limitations. The order dismissing Gardner is found at Appendix "B". Pryer's Motion For Reconsideration was denied on April 24, 2017. Aggrieved, Pryer appealed the lower court decision. Pryer pled two (2) issues to be considered on appeal. (1) The Chancellor erred granting Gardner immunity contrary to MCA § 25-61-13 (2011) and MCA § 25-61-15. (2) The Chancellor erred tolling the Statute of Limitations under MCA § 15-1-49.

The Mississippi Supreme Court issued its decision affirming the lower courts order on May 17, 2018. The Mississippi Supreme Court decision is found at Appendix "A". Pryer filed a Motion For Rehearing within the time allotted. In the motion Pryer provided irrefutable evidence that Gardner had kept Pryer from Public Records to cover up his criminal activity concerning Pryer's arraignment December 2, 2004. Pryer presented the Court with orders from that day that were allegedly signed by Gardner. The only problem was, it was not Gardner's signature. It was a signature stamp used by Carol Gates, the Circuit Clerk. Pryer had always believed Paul Funderburk was assigned to preside over the arraignment in question. However, Public Records prove it was Gardner who used judicial power to keep Pryer from finding the truth. On August 2, 2018 the Court denied rehearing. The Order denying rehearing is found at Appendix "C".

Reasons For Granting The Petition

The foundation case for Judiciary Jurisdiction and Absolute Immunity has always rested on Bradley v. Fisher, 13 Wall. 335, 20 L. Ed. 646 (1872) which was rule on one hundred forty-six (146) years ago. This Court identified five (5) reasons for absolute immunity for the judiciary, as stated by the Eleventh Amendment of the U.S. Constitution. The reasons are as follows: (1) A judge must be free to act upon his own convictions, without fear of consequences to himself. (2) The controversiality and importance of the competing interests in contest before the courts make it likely that the inevitable losing party may be overly willing to ascribe malevolent motives to the judge. (3) Judges face with the prospect of damages actions would be driven to wasteful and distracting self-protection devices such as excessive record keeping. (4) Alternative remedies such as Appeal and impeachment reduce the need for private rights of action against a judge. (5) The ease of alleging "bad faith" would make a qualified "good faith" immunity virtually worthless. Further, a judge will not be deprived of immunity because his actions taken were in error, was done maliciously, or was in excess of his authority, but rather he will be subject to liability only when he has acted in clear "absense of all jurisdiction". Jurisdiction is a key component to this case.

The Bradley Court illustrated the distinction between the lack of jurisdiction and excess of jurisdiction which this Honorable Court and the State of Mississippi still adhere to today. The distinctions are: If a probate judge, with jurisdiction over wills and estates only, should try a criminal case, he would be acting in clear absense of jurisdiction and would not be immune from liability. However, if a judge from a criminal court should convict a defendant of a non-existent crime, he would merely be acting in excess of his jurisdiction and would be immune.

Reasons For Granting The Petition (cont.)

The problem with the Bradley Courts' analogy of a criminal court judge convicting a person of a non-existent crime: that the judge being immune because he was "merely" in excess of his jurisdiction, does not accord with the Bill Of Rights of The U.S. Constitution, nor does it accord with statutes on Civil Rights nor Common Law. If a judge was to convict a person of a non-existent crime, he would be in violation of the Due Process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution, not to mention a person incarcerated because of a non-existent crime amounts to kidnapping. The next high profile case concerning the issue at hand happened a century after Bradley. In Stump v. Sparkman, 435 US 349 (1978), a Circuit Judge had signed an order authorizing the sterilization of a fifteen year old girl upon motion of the girl's mother. The girl was never told she was being sterilized, but was told she was having her appendix removed. Two (2) years later, the girl married and after having problems getting pregnant, discovered she had been sterilized. A suit was filed against Stump (The Circuit Judge) and others for violating Sparkman's Civil Rights. The Federal Court dismissed the complaint under "absolute immunity". The Seventh (7th) Circuit reversed judgment holding the "crucial issue" is whether Stump acted within his jurisdiction; concluding he had not. This Court granted Certiorari and on a split decision determined that Stump's order was a judicial act bestowed upon him under state law as a judge. That he was exercising general jurisdiction and immune from civil liability. Citing Bradley: "Despite the unfairness to litigants that sometimes results, the doctrine of judicial immunity is thought to be in the best interests of the proper administration of justice..." The dissent felt that the majority held the jurisdiction doctrine too broadly, that a judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he claims he is acting in his judicial capacity.

Reasons For Granting The Petition (Cont.)

Were Stump decided today, would this Honorable Court rule that a judge has jurisdiction to order the sterilization of a fifteen year old girl? The Supreme Power Of The Land (the people of The United States) would never stand for it. Not in our society today.

Pryer asks this Court to also consider his plight with the judiciary in terms of today's application of freedom and laws that address the concept of freedom. In Pryer's case, Judge Gardner used judicial power to keep Pryer from access and inspection of Public Records contrary to MCA § 25-61-5 (1) (a) by issuing two (2) orders. (See Appendix "E" and "F") Gardner also hindered prosecution of Pryer's Public Records suit by denying a writ of mandamus to compel service of summons and complaint to defendants (see Appendix "G"). Did Gardner have jurisdiction to deny Pryer Public Records? Pryer contends he did not have jurisdiction. The request for Public Records was directed to the Circuit Clerk, Carol Gates, (see Appendix "D") The request was not in the form of a motion and nothing in the request asked for a judge's opinion. Yet Gardner decided to make the request a judicial act. Gardner used proactive power the judiciary does not have to deny Pryer Public Records.

The Framers of the U.S. Constitution originally did not consider a Bill of Rights necessary. (The Federalist No. 84) It was Madison's insistence that the first Congress enacted the Bill of Rights on the idea of freedom of intrusive government acts. The concept of liberty was also used in the principles of Separation of Powers and federalism to secure freedom in the political sense. The Framers brought check and balances through three (3) branches of government; the Executive Branch, the Legislative Branch and the Judiciary Branches of Government. The Judiciary has only reactive power. The Constitution does not empower the Judiciary to render decisions on its own, it can only react to the issues brought to it.

Reasons For Granting Petition (cont.)

Thus, contesting parties must bring issues before the judiciary before it can exercise its power. Some of the Framers so feared a corrupt judiciary, that reactive powers were explained in the Federalist Papers: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be legislator. Were it joined to the executive power, the judge might behave with all violence of an oppressor." (See The Federalist No. 47) Under MCA § 25-61-5 (3), a denial of Public Records by a Public Body shall be in writing and shall contain a statement of the exemption relied upon by the Public Body for the denial. The request Pryer made was to Carol Gates, the Circuit Clerk. Instead of following the Statute, she passed the request to Judge Gardner. Why? Since May, 2011 Pryer has had to pursue two (2) appeals. One (1) in the Mississippi Court of Appeals. One (1) in the Mississippi Supreme Court. Has been granted one (1) Writ of Certiorari. Two (2) Writs of Mandamus have been filed in Circuit Court and two (2) Writs of Mandamus to the Mississippi Supreme Court. All this just to obtain Public Records. The suit filed in Chancery Court under MCA § 25-61-15 against Carol Gates and Chris Dickinson is being hindered because State Actors refuse to do their duty to serve summons and complaint, and the Circuit Courts refuse to order State Actors to do so through Writ of Mandamus. The only two (2) methods of service available to pro se suits in Mississippi is through mail and the Sheriff's Dept. The defendants have refused to answer the mail option and the Sheriff's Department refuses to serve the summons and complaint. The Circuit Court refuses to order service through Writ of Mandamus. The suit was filed in 2013. Pryer has found no other case in Mississippi where State Actors have openly hindered prosecution of a law suit, especially a Public Records suit. What could State Actors possibly want to hide by hindering a legitimate court proceeding for over five (5) years?

Reasons For Granting Petition (Cont.)

On or about April 2, 2018, Pryer finally caught a break. By going through a Court Administrator, he received some of the Public Records he was searching for. By way of Public Records, Pryer discovered at least two (2) things: (1) Funderburk, Pryer's trial judge did not preside over Pryer's arraignment. It was Gardner who was assigned the case. (2) Gardner never signed any arraignment orders that day, Dec. 2, 2004. A signature stamp was used by Carol Gates. Gardner was not present at the proceeding. No judge was. The proceeding was illegal and all pleadings would be invalid.

Pryer will show this Hon. Court that Gardner did not sign any arraignment orders. Superimpose Thomas Gardner's signature on each of the Court Orders from Appendix "H" thru Appendix "L". Thomas Gardner's signature is exactly the same! It is impossible for someone to write their name exactly the same dimension for dimension twice in a row, let alone five (5) times. Next, compare the handwriting of Carol Gates from the Capias Warrant of Appendix "M" with the handwriting circled on orders from Appendix "H" thru Appendix "L". It belongs to Carol Gates. The only other signature appears at Appendix "I" and Appendix "K" and is that of Public Defender, Carolyn Benson. Superimpose Appendix "I" and "K". Benson's signature is not exactly the same the way Gardner's is. Apparently Gardner could not sign his name twice in a row on June 9, 2005 at another arraignment. Superimpose Appendix "N" and Appendix "O" and see for a fact that Gardner could not sign his name exactly the same twice in a row. How could he do the impossible on December 2, 2004 and not do it Six (6) months later at another arraignment? It is because he was not present on December 2, 2004. Carol Gates used generic orders to accept pleas and appoint counsel, filled in the blanks and used a signature stamp to sign Gardner's name. Gardner, Gates, and Benson committed fraud.

Reasons For Granting The Petition (cont.)

This why Gardner has used judicial decisions to deny Pryer access to Public Records. This is why Gardner and other State Actors have hindered prosecution of Pryer's Public Records suit in Chancery Court. This is why defendants in Pryer's suit have not been served summons and complaint in the five (5) years since commencement of the suit. All pleas made at that illegal proceeding would be invalid. That being so, a jury or judge for that matter would have no subject matter at all to consider. Anyone incarcerated from a result of that illegal proceeding would be under illegal sentence which amounts to Aggravated Kidnapping by the State. The question is: Did Gardner cause citizens of the United States to be convicted of non-existent crimes in excess of his jurisdiction? Or did he perpetrate fraud as an accessory before and after the fact to deprive citizens of the United States the right to be free from tyrannical government acts. Does the Constitution grant jurisdiction to the judiciary to commit felonies while under robes? How could excess of jurisdiction in this case not be a criminal act? In a civilized society such as in The United States attitudes toward certain acts and lifestyles change. In the Bradley court subjects like abortion and homosexuality would never have been considered. The people would not have had any tolerance for it. By the time Stump was decided, abortion had become legal. Today sterilization of a fifteen (15) year old girl by an order from a judge would be unacceptable and unconstitutional. No judge would have jurisdiction to order it. No judge has jurisdiction to deny homosexual couples the right to marry. So, how would the Constitution allow judges like Gardner to have jurisdiction to oppress the people without civil liability. It would be hard to believe that Congress would draft the Eleventh Amendment just to give the judiciary the option to commit felonies while under robes with no civil liabilities to victims of their crimes.

Reasons For Granting Petition (cont.)

The eleventh Amendment was enacted in 1798, seven (7) years after the Bill of Rights. However, it is hard to fathom that Congress intended the eleventh Amendment to exempt judges from suit while violating the life, liberty, and property the Bill of Rights is supposed to protect. Under Bradley and Stamp, a judge causing the loss of life, liberty, and freedom for conviction of a non-existent crime is "merely" in excess of jurisdiction, even if done maliciously, and immune from suit. What of the victim? Pryer asks this Honorable Court to consider a statement by Thomas Jefferson: "To lose a country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property and all who are enjoying them with us; thus absurdity sacrificing the ends to the means."

Since Pryer revealed the existence of the illegal orders to the Mississippi Supreme Court, Gardner has retired from office with full benefits. He can't be removed from office. The Supreme Court of Miss. has held that Pryer can't initiate a suit against Gardner for a Public Records violation because he is immune. The Mississippi Supreme Court has also held that Pryer is time-barred from Post-Conviction Relief and that the Post-Conviction Petition is successive. Pryer is serving an illegal sentence with no way out because Gardner was "merely" in excess of his jurisdiction, even though it was malicious. Pryer can't initiate suit, Gardner is immune. Pryer can't prosecute the suit against Gates and Dickinson because State Actors refuse to serve the summons and complaint. Where are Pryer's and the others illegally arraigned under Gardner's fraud Bill of Rights guarantees? Where is the redress?

Conclusion

Premises given, the petition for writ of Certiorari should be granted.

Respectfully Submitted,

Timothy Pryer

Timothy Pryer: Pro se Petitioner

This, the 24th day of October, 2018 AD.