

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Kevin Abdul Gilbert, — PETITIONER
(Your Name)

vs.
Dr. Jody Becker-Green, And
Margaret Gilbert, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kevin Abdul Gilbert
(Your Name)
Stafford Creek Corr. Center H2-B-123
191 Constantine Way
(Address)

Aberdeen, WA 98520
(City, State, Zip Code)

N/A
(Phone Number)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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<u>Antonelli v. Foster</u> , 104 F.3d 899, at 901 (7 th Cir. 1997), cert. denied, — U.S. —, 139 L.Ed.2d 58, 118 S.Ct. 104 (U.S. 1997) ...	13.
<u>Simpson v. Rowan</u> , 73 F.3d 134, at 136 (7 th Cir. 1995), cert. denied, 136 L.Ed.2d 58, 117 S.Ct. 104 (U.S. 1996) ...	13.
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<u>Gerstein v. Pugh</u> , 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (U.S. 1975) ...	13.
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18-7221 ORIGINAL

Supreme Court, U.S.
FILED

DEC 28 2013

OFFICE OF THE CLERK

IN THE UNITED STATES SUPREME COURT

KEVIN ABDUL GILBERT
PETITIONER,
V.
DOC SECRETARY,
DR. JODY BECKER-GREEN,
AND,
SCCC SUPERINTENDENT,
MARGARET GILBERT,
RESPONDENTS,

No. _____

Petition For Writ Of
Certiorari Pursuant To Rule
10 To Resolve Conflicts In
Rulings Interpreting [This]
Court's Heck Doctrine Bar On
Claims Under 42 U.S.C. § 1983
Erroneously Recharacterized
As To Be Claims Under 28
U.S.C. § 2254 In Violation
Of [This] Court's Castro
Notice.

I. PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Petitioner, Kevin Abdul

Gilbert, Pro Se, without counsel, is currently being
held within the Department of Corrections at Stafford
Creek Corrections Center 191 Constantine Way, in
Aberdeen, Washington, respectfully moving (this)
Court to grant (this) Petition for Writ of Certiorari
Pursuant to Rule 10, to resolve conflicting court
rulings of law under the Heck Doctrine bar on some
claims, that do not encompass the same elements as

1 that do not encompass the same elements as those
2 a Petitioner was convicted (or) sentenced on (and)
3 thus, would not undermine either. See: Heck v.
4 Humphrey, 512 U.S. 477, 114 S.Ct 2364, 129 L.Ed, 2d
5 383 (U.S.1994).

6
7 The Respondent(s) in (this) Condition of
8 Confinement challenge pursuant to 42 U.S.C. §1983
9 Civil Rights Claims are: (1) Dr. Jody Becker-Green,
10 Head of the Department of Corrections, and (2)
11 Margaret Gilbert, Superintendent of Stafford Creek
12 Corr. Center. See: RCW 72.02.230 (Order of
13 Commitment, i.e., Warrant of Commitment. U.S. Const.
14 Amend 4, U.S. Const. Amend 14.

15 QUESTIONS PRESENTED

16 1. Whether the Ninth Circuit of Appeals erred in
17 affirming the Western U.S. District Court's ruling
18 barring the Petitioner's 42 U.S.C. §1983 claims for
19 Unlawful Arrest, Assault and Battery, Unlawful
20 Imprisonment (and) Negligence, pursuant to the Heck
21 Doctrine, in which, conflict with several other
22 circuit court rulings, now warranting review by
23 Certiorari to resolve the conflict on Constitutional
24 grounds in the interest of justice before the ruling
25 becomes clearly ambiguous? Yes, so Certiorari should
26 be granted on Constitutional grounds in the interest
of justice.

1
2 2. Whether the Ninth Circuit Court of Appeals
3 erred in affirming the Western U.S. Court of Appeals
4 erred in affirming the Western ruling barring the
5 Petitioner's 42 U.S.C. §1983 claims for Unlawful
6 Arrest, Assault and Battery, Unlawful Imprisonment
7 (and) Negligence pursuant to the Heck Doctrine, in
8 which, conflict with (this) court's ruling on Valid
9 Conviction, now warranting review by Certiorari to
10 resolve the conflict on Constitutional grounds in the
11 interest of justice, before the ruling becomes
12 clearly ambiguous. Yes, so Certiorari should be
13 granted on Constitutional grounds in the interest of
14 justice.

15
16 3. Whether the Ninth Circuit Court of Appeals
17 erred in affirming the Western U.S. District Court's
18 ruling barring the Petitioner's 42 U.S.C. §1983
19 claims for Unlawful Arrest, Assault and Battery,
20 Unlawful Imprisonment (and) Negligence pursuant to
21 the Heck Doctrine, in which, conflict with (this)
22 Court's ruling on Rubber Stamp Warrants, now
23 warranting review by Certiorari to resolve the
24 conflict on Constitutional grounds in the interest of
25 justice before the ruling becomes clearly ambiguous.
26 Yes, so Certiorari should be granted on
Constitutional grounds in the interest of justice.

1 4. Whether the Ninth Circuit Court of Appeals
2 erred in affirming the Western U.S. District Courts
3 ruling on barring the Petitioner's 42 U.S.C. §1983
4 claims for Unlawful Arrest, Assault and battery,
5 Unlawful Imprisonment (and) Negligence pursuant to
6 the Heck Doctrine? In which conflict with (this)
7 Court's ruling under the Castro Notice Requirement,
8 now warranting review by certiorari to resolve the
9 conflict on Constitutional grounds in the interest of
10 justice before the ruling becomes clearly ambiguous?
11 Yes, so Certiorari should be granted on
12 Constitutional grounds in the interest of justice.

13
14 5. Whether the Petitioner unsigned (limited)
15 Felony of Transfer to the Department of Corrections
16 pending his Direct Appeal, is Constitutionally valid
17 under U.S. Amend. 4th and U.S. Constitutional Amend.
18 14, for the Respondents to have lawful jurisdiction
19 over the Petitioner (and) his person? No, so
20 Certiorari should be granted on Constitutional
21 grounds in the interest of justice.

22
23 6. Whether the Respondents should be held liable
24 to the Petitioner for unlawfully arresting him and
25 his person, by taking him into their custody
26 unlawfully on 2-3-2006 without Authority of Law,

1 i.e., Valid Warrant over the jurisdiction of his
2 person, now warranting the requested relief in
3 damages? Yes, so Certiorari should be granted on
4 Constitutional grounds in the interest of justice.
5

6 7. Should the Respondent be held liable to the
7 petitioner for Assault and Battery caused by the
8 Unlawful Arrest, now warranting the requested relief
9 in damages? Yes, so Certiorari should be granted on
10 Constitutional grounds in the interest of justice.
11

12 8. Should the Respondents be held liable to the
13 Petitioner for Unlawfully imprisoning him without
14 lawful authority, in which the Respondent's acts were
15 not enacted pursuant to a Valid Legal Process i.e.,
16 Valid Warrant of Commitment and/or Valid of
17 Commitment pursuant to RCW 72.02.230), now warranting
18 the requested relief in damages? Yes, Certiorari
19 should be granted on Constitutional grounds in the
20 interest of justice.
21

22 9. Should the Respondent's be held liable to the
23 Petitioner for Negligence in failing to follow
24 Mandatory Statutory requirements under RCW 72.02.230,
25 before taking the Petitioner person inot their
26 custody without lawful authority (and) jurisdiction
over him and/or his person. Now warranting the

requested relief in damages? Yes, so Certiorari should be granted.

JURISDICTION

A Washington State Prisoner, appeals Pro se, the District Court's dismissal without prejudice (and) the Ninth Circuit affirming the dismissal his 42 U.S.C. §1983 claims which conflicts with several other Circuit Courts on the same types of claims (and) the ruling being challenged now all so conflicts with three of (this) Court's rulings. See: Exhibits A-D.

[This] action is now timely being sought to be reviewed by (this) Court and that Counsel be appointed for the Pro se Petitioner because this action and clear conflicts are so ripe for review warranting only (this) jurisdiction pursuant to 28 U.S.C. §1291.

CONSTITUTIONAL AND STATUTORY INVOLVED

CR 58 provides the effective time of a judgment as:

Judgments shall be deemed entered for all procedural purposes from the time of delivery to the Clerk for filing, unless the judge earlier permits the judgment to be filed directly with the judge as authorized by Rule 5(e).

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§U.S. Const. Amend 4 (Constitutional Seizures)
in relevant part provides:
The right of the people to be secure in their
persons,...[And] effects, against
unreasonable...[And] seizures, shall not be violated,
and no warrants shall issue, but upon...[or]
affirmation, and particularly...person [or] things to
be seized.

U.S. Const. Amend 14 (Procedural Due Process of
Law) provides that:

The requirements of procedural due process
encompasses by the Fourteenth Amendent apply only to
State's deprivation of life, liberty (or) property.

Fed.R.Crim.P.4(b)(1) it explicitly states that:
Warrants must be signed by a judge.

RCW 7.36.130 provides that:

State Habeas Corpus Statute that does not lie to
inquiry into the sufficiency of warrant.

RCW 72.02.230 provides that:

The Division of Prisons shall receive all
person's convicted of a felony by the Superior Court
and committed by the Superior Court to the reception
units for classification and placement in such

facility as the secretary shall designate.

1 The Superintendent of these institutions shall
2 only receive prisoners for classification and study
3 in the institution upon presentation of certified
4 copy of a judgment, sentence, and order of commitment
5 of the Superior Court and the statement of the
6 Prosecuting Attorney, along with other reports as may
7 have been made in reference to each individual
8 prisoner.

9
10 RCW 36.63.255 which provides:

11 For transfer of persons convicted of felonies
12 from a county jail to a state institution (if) the
13 person fails to post bond within 30 days of the
14 judgment, is operative to permit transfer of persons
15 convicted of crimes committed prior to enactment of
16 the statute.

17
18 RCW 9.95.060 it provides for:

19 When a sentence begins to run. Thus, judgment of
20 convict is self-executing in that no (warrant of
21 commitment) (or) further action by trial court is
22 necessary to implement execution of sentence imposed
23 in final judgment.

24
25 STATEMENT OF CASE

26 On 7-4-2015, the Petitioner discovered that his

1 (limited) felony warrant of transfer, i.e.,
2 authorizing temporary custody of him and his person
3 into the care (and) custody of the Respondents
4 pending his direct appeal was Constitutionally
5 insufficient under U.S. Const. Amend 4, U.S. Const.
6 Amend 14 (and) in violation of RCW 72.02.230.
7

8 It must be noted that the felony warrant of
9 transfer is only limited because it was reportedly
10 issued during the pending Direct Appeal in his
11 criminal case, in which became final 9-12-2008.
12

13 The Petitioner does not challenge the transfer
14 from the County Jail to the Department of
15 Corrections, but does only challenge the following:

16 (1) The sufficiency of the warrant in question
17 on Constitutional grounds, (and)

18 (2) Whether the Respondents should be ordered to
19 obtain a Valid Order of Commitment against the
20 Petitioner just like all other State Prisons under
21 their custody required by State Statute (and)

22 (3) Whether the Respondents should be held
23 liable to the Petitioner for not obtaining a Valid
24 Signed and Filed Order of Commitment (or) Warrant of
25 Commitment before taking the Petitioner and his
26 person into custody unlawfully, i.e., constituting
the claimed clear Civil Rights Violations of Unlawful

Arrest, Assault and Battery, Unlawful
Imprisonment (and) Negligence Without Lawful
Authority of Law.

The Petitioner calls the felony warrant into
question as unconstitutional beyond a reasonable
doubt because it is, in fact, unsigned by the judge
that reportedly issued it (and) it was also unfiled
in the Superior Court Clerk evident by the Court
docket. Thus, it lacked the Constitutional Authority
of Law that our Country has always required.

Because the Felony Warrant in question is
Constitutionally invalid, the Respondents are, in
fact, Without the Authority of Law that is
Constitutionally required to have the petitioner in
their custody (and) they are clearly not following
their own mandatory statute pursuant to RCW
72.02.230.

So the Petitioner seeks that, the Respondents be
held for their Unlawful Arrest, Assault and Battery,
Unlawfull Imprisonment and Negligence Without Lawful
Authority of Law, i.e., warrant to have the
petitioner under their jurisdiction. See: U.S. Const.
Amend.4, U.S. Const. Amend. 14 (and) RCW 72.02.230.

1 The petitioner, files (this) claim pursuant to
2 42 U.S.C. §1983 alleging that the Respondents are
3 violating his Fourth (and) Fourteenth Amendment
4 Rights without the Constitutional Due Process of Law,
5 i.e., Valid Warrant.

6
7 The Petitioner clearly shows (this) Court the
8 distinct difference between a valid (and) invalid
9 warrant. See: Exhibit E (a signed and filed felony
10 warrant) (and) compare Exhibit F (an unsigned and
11 unfiled invalid warrant), see also Exhibit G (a copy
12 of the Court docket showing, in fact, that the felony
13 warrant in question was not filed), Exhibit H (a King
14 County Superior Clerk letter showing the unsigned
15 warrant will not be filed [unless] it is a signed
16 order from a Judge. See: CR 58).

17
18 Thus based on the unlawful Felony Warrant the
19 Petitioner claims against the Respondents by records
20 under 42 U.S.C. §1983 are: Unlawful Arrest, Assault
21 and Battery, Unlawful Imprisonment (and) Negligence.
22 See Exhibits E-H.

23
24 Claims under 42 U.S.C. §1983, is subject to
25 exhaustion of administrative remedies as required by
26 the Prison Litigation Reform Act (PLRA). See: Porter
v. Nussle, 534 U.S. 516, at 524, 122 S.Ct. 983, 152

1 L.Ed.12 (U.S. 2002).

2
3 Under the PLRA, a Prisoner bringing an action
4 with respect to prison conditions under 42 U.S.C.
5 §1983 must first exhaust all available administrative
6 remedies. See: 42 U.S.C. §1997e.
7

8 Exhaustion as provided in 42 U.S.C. §1997e(a)
9 cases is now mandatory. See: Booth v. Churner, 532
10 U.S. 731, at 741, 121 S.Ct. 19819, 149 L.Ed.2d 958
11 (U.S. 2001).
12

13 The petitioner shows that he has met his
14 required standard of proof by record of his
15 exhaustion before seeking a (timely) review of the
16 claims by (this) Court:
17

18 (1) State tort, Exhibit I (Attachment #1 Is Ex. F).

19 (2) A tort claim civil complaint in Superior
20 Court and exhausted the proceedings civilly in State
21 Courts. See: Exhibit J, and
22

23 (3) A 42 U.S.C. §1983 Civil Rights Lawsuit in
24 Federal Courts. See: Exhibit K.
25

26 Is action is now, so timely and ripe for review
in (this) court to resolve the clear conflicts
identified herein.

1
2 REASONS FOR GRANTING THE PETITION

3 This Court should grant (this) petition for Writ
4 of Certiorari pursuant to 42 U.S.C. §1983 Conditions
5 of Confinement Civil Rights Claims, (concerning):

6
7 The applicability of (this) Court's well-
8 settled ruling in Heck v. Humphrey, 512 U.S. 477,
9 114, S.Ct. 2364, 129 L.Ed.2d 383 (U.S. 1994)
10 as to which claims of Unlawful Arrest, Assault and
11 Battery, Unlawful Imprisonment (and) Negligence, can
12 be barred as the Western U.S. District Court's
13 ruling, in which the Ninth Circuit Courts of Appeals
14 rulings. See: Exhibit A, (and) compare the following
15 other Circuit's rulings Simpson v. Rown, 73 F.3d 134,
16 at 136 (7th Cir. 1995), cert. denied, 136L.Ed.2d 58,
17 117 S.Ct. 104 (U.S. 1996), Antonelli v. Foster, 104
18 F.3d 899, at 901 (7th Cir. 1997), cert, denied,
19 _U.S.-, 139 L.Ed2d 58, 118 S.Ct. (U.S. 1997), Hughes
20 v. Lott, 350 F.3d 1157, at 1160 (11th Cir. 2003),
21 Cohen v. Longshore, 621 F.3d 1311, at 1317 (10th Cir.
22 2010).

23
24 Moreover, the ruling in Exhibit A directly
25 conflicts with the U.S. Supreme Court rulings in
26 Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43
L.Ed.2d 54 (U.S. 1975), Aguilar v. Texas, 378 U.S.

1 108, at 111, 84 S.Ct. 1509 (U.S. 1964), Johnson v.
2 United States, 333 U.S. 10, at 13-14. 68 S.Ct. 367,
3 92 L.Ed 436 (U.S. 1948), and Castro v. United States,
4 540 U.S. 370, 124 S.Ct. 786, 157 L.Ed.2d 778 (U.S.
5 2003) (Castro Notice is required before
6 recharacterize Pro se Litigant's pleading), in which,
7 all of the above rulings must now be overruled by
8 (this) Court if allowed to stand and not corrected.
9

10 The national importance of this case cuts across
11 the lines of Valid Warrants, what constitutes a
12 Rubber Stamp Warrant, if a Court can recharacterize
13 Pro se Litigant's pleading from a 42 U.S.C. §1983 to
14 a 28 U.S.C. §2254 without a Castro Notice (and) in
15 the face of the State and Federal one-year procedural
16 bar, valid convictions, and if the Heck Doctrine can
17 bar challenged claims that did not have (any) of the
18 same elements relating to a Petitioner's convictions
19 and/or sentences. See: Exhibit A.

20 So it is needed for (this) Court to decide the
21 questions involved based on the records and conflicts
22 in this case. See: Exhibits A-H.
23

24 It should go without saying that, it is
25 important for (this) Court to resolve the clear
26 conflicts between Circuits and (this) Court's rulings
noted herein warranting review pursuant to Rule 10

1 (this) Court should find that there is
2 compelling reasons on the substantial issues
3 presented that exist for the exercise of (this)
4 Court's discretionary jurisdiction.

5
6 CONCLUSION

7 The Petitioner, Kevin Abdul Gilbert, asks that,
8 (this) court to grant Certiorari to resolve all
9 conflicts and legal issues presented, in which, the
10 Petitioner prays for review and relief, in the
11 interest of justice.

12
13 Respectfully sent by,

14
15 Kevin Abdul Gilbert

16 Kevin Abdul Gilbert, #890221

17 Pro Se, Petitioner
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