

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES GREGORY ARMISTEAD — PETITIONER
(Your Name)

vs.

JENNIE BOWEN "et al" — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

North Carolina, District Court Eastern District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Gregory Armistead
(Your Name)

Dan Prison Work Farm, 981 Murray Road.
(Address)

Blanch, North Carolina, 27212
(City, State, Zip Code)

(336) 694-1583
(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE TRIAL COURT WITNESS TOBLINK AGENCY, MS. JENNIE BOWEN, DENIED PETITIONER HIS DUE PROCESS OF LAW CONSTITUTIONAL RIGHTS BY REFUSING TO ALLOW HIM AN INFORMAL HEARING, AFTER TERMINATING HIM FROM THE PROGRAM, AND ALLEGING CRIMINAL ACTION FOR AN ISSUED THAT SHOULD HAVE BEEN AN CIVIL MATTER, ALSO MR. TIMOTHY WARE.
2. WHETHER PETITIONER WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW, BY THE NORTH CAROLINA DEPARTMENT OF COMMERCE, FOR REFUSING TO ALLOW PETITIONER AN OPPORTUNITY FOR INFORMAL HEARING AT THE LOCAL LEVEL.
3. WHETHER PETITIONER FOURTH AMENDMENT CONSTITUTIONAL RIGHTS, ALSO CONSTITUTIONAL RIGHTS SUCH AS ART. I § 10. EX POST FACTO LAW IMPAIRING THE OBLIGATIONS OF CONTRACTS, BY LEADING PROSECUTOR ALLOWING PETITIONER TO BE TRY, AND CONVICTED FOR CRIMINAL MATTERS, WHERE ALL EVIDENCE SUCH AS WIA AGREEMENT, AND OTHER DOCUMENTS, SHOWING AND PROVEN PETITIONER ACTIONS AND CONDUCT COULD ONLY BE AN CIVIL MATTER.
4. WHETHER PETITIONER CONSTITUTIONAL RIGHTS, WHERE VIOLATED BY MS. LAURA P. WATSON, WITH U.S. DEPARTMENT OF LABOR, BY NOT ALLOWING PETITIONER AN HEARING ON THE LOCAL LEVEL, AND ALLEGING NO VIOLATIONS OF WIA STATUTE AND REGULATIONS.

LIST OF PARTIES

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

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:

Ms. LAURA P. WATSON, Mr. SETH EDWARDS, MR. MOSE DORSEY,
MR. TIMOTHY WARE, Ms. JENNIE BOWEN, MR. ROGER SHACKLEFORD.

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TABLE OF AUTHORITIES CITED

CASES

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Goldyn v. Hayes, 444 F. 3d 1062, 1070 (9th Cir. 2006). Johnson v. Knorr, 477 F. 3d 75, 85 (3d Cir. 2007).

Dretke v. Haley, 541 U.S. 386, 399-400, 124 S. Ct. 1847, 158 L. ED 2d 659 (2004).

Doe v. Metro. Police Dep't, 445 F. 3d 460, 490 (D.C. 2006).

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Pierce v. County of Orange, 519 F. 3d 985, 1005 (9th Cir.) amended by 526 F. 3d 1190 (9th Cir. 2008).

Loyd v. Ala. Dep't of Corr. 176 F. 3d 1336, 1342 (11th Cir. 1999).

U.S. v. Gravelle, 407 F. 2d 964 (10th Cir. 1964).

Coxsey v. Hallaby, 334 F. 2d 286 (10th Cir. 1964).

Pembaur v. city of Cincinnati, 475 U.S. 469, 481 (1986). Botello v. Gammick, 413 F. 3d 971, 979 (9th Cir.)

STATUTES AND RULES

14-100 Obtaining property by false pretense (b)

14-168.1 Conversion by bailee.

U.S. Department of Labor. 20 CFR 667.610 (a)(2).

OTHER

A receipt issued by a person (bailee) engaged in the business of storing "goods" for hire. U.C.C. § 1-201 (45). A warehouse receipt constitutes a document of title under the Uniform Commercial Code, which evidences that the person in possession of the document is entitled to receive, hold, and dispose of the document and good it covers.

U.C.C. § 1-201 (15); U.S. Department of Labor. 20 CFR 667.610 (a)(2)

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 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 United States district court appears at Appendix B 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 D 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 Court of Appeal court appears at Appendix E 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 4/12/18.

[] 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**:

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

[] A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

7⁴² U.S.C. § 1983, also Tucker Act. 28 U.S.C. § 1346(a)(2). An taking of an individual freedom by the government; by the government contrary to the fifth amendment of the Constitution of the United States or, in the alternative, whether entering into an agreement federal Guid-line agreement, that provided for Petitioner to receive tuitions, books, and supplies by the fulfillment of the agreement, represented, and constituted a contract, express or implied, give rise to a claim under the Tucker Act, which the contract agreement had no provision for an return or refund.

2. IMPAIRING THE OBLIGATION OF A CONTRACT:

"to weaken [the contract], or lessen its value, or make it worse in any respect or in any degree.... Any law changes the intention and legal effect of the original parties, giving to one a greater and to the other a less interest or benefit in the contract, impairs its obligation." 115 A. 484, 486. "The extent of the change is immaterial. Any deviation from its terms by hastening or postponing the time of performance which it prescribes, or imposing conditions not included in the contract, or dispensing with the performance of those included... impairs the obligation of contract." Id. Impairment is also said to exist where the right to enforce a contract is eliminated or substantially lessened. See 185 A. 401. state statutes which do so are prohibited by Art. I sec. 10. of the United States Constitution.

3. Indeed, an unforeseeable judicial enlargement of a criminal statute applied retroactively, operates precisely like an ex post facto law, or law impairing the obligation of contracts, such as Art. I § 10. of the Constitution forbids. It is clear the wisdom of the Job Link program decision to enter into the agreement with Petitioner should be no concern to state prosecutor office, If a state legislature is barred by the Ex Post Facto clause or law impairing obligation of contract clause from passing such a law, it must follow that a state supreme court is barred by the Due Process clause from achieving precisely the same result by judicial construction.

STATEMENT OF THE CASE

Petitioner was indicted on 10 May, 2010, for two counts of obtaining property by false pretenses and the status of being a habitual felon. Defendant was tried by a jury at 30 April, 2012, Criminal Session of Beaufort County Superior Court. The jury found defendant guilty of all charges and the status of being a habitual felon. The court sentenced defendant as a habitual felon to 108 months minimum and 139 months maximum imprisonment.

Petitioner enrolled into Beaufort Community College, in Washington North Carolina, on 1/7/2009, and at the same time attempt to enrolled into the local Job Link program in Beaufort County. But was denied the opportunity to enrolled into program; Petitioner appeal that decision by Job Link not allowing Petitioner to enrolled into the program, However several months later Petitioner was allow to enrolled into the program, Petitioner entered into an ("REGION Q. WIA. PARTICIPANT TRAINING / JOB SEARCH AGREEMENT"), on 8/03/09. However the agreement had no provision for an refund or an return of any items, or tuition that was receive by the by the fulfillment of requirement of the agreement by the Petitioner, When such items or tuition was obtain by the Petitioner fulfillment of the WIA. agreement.

Petitioner receive checks to purchase items that was needed for classes, However by the time Petitioner purchase items the classes was at an end for which items was intended for, so Petitioner return items for an refund, and then the service director Ms. Jennie Bowen, terminated Petitioner from the WIA. program, and ask that criminal charges be file against Petitioner, Mr. Timothy Ware, Contact the District Attorney of Beaufort County in regard to petitioner obtaining property by false pretenses, and petitioner was charge and prosecuted for obtaining property by false pretenses, When it is clear that there were no evidences that show and prove that petitioner made an false representation by statement or conduct to obtain property.

REASONS FOR GRANTING THE PETITION

RULE 10.

SUPREME COURT OF UNITED STATES

(a) United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this court supervisory powers, (b)(c).

Petitioner was entered into an binding contract agreement under the federal Guid-line with the local Job Link agency, for tuition, books, supplies, and the agreement had no provision for an refund, or return of any items and the local JobLink agency had nothing implemented for an refund, or return. However where an understanding such as an ("express agreement") has no provision for an refund or an return for anything obtain by the fulfillment of the requirement of agreement, an party can not be permitted to recover, for the law does not convert an intended gratuity into a legal obligation. 150. S. 1951 §§ 131-133 (OKL. st. Ann). Woodruff v. New state ice Co. 197 F. 2d 36 (10th Cir. 1952), See United States v. Gravelle, 407 F. 2d 964 (10th Cir. 1969).

Feb. 22, 2010. Petitioner receive correspondence from Roger Shackleford, With the North Carolina, Department of Commerce, Division of Workforce Development, ("Non-Criminal Program Complaint procedure"), staten that Job Link agency follow proper procedure as outlined in the Department of Commerce, Division of Work-Force Development.

However it is clear that an police report was file on 1/12/2010., and the Job Link agency ask that charges be file against Petitioner, clear violation of due process and equal protection of the law fifth amendment, and fourth amendment, See., Doe v. Metro. Police Dep't, 445 F. 3d 460, 469 (D.C. Cir. 2006) (cognizable § 1983 claim against 4th amendment for arrest for civil offense).

Petitioner on Jan. 6, 2010, receive correspondence from Ms. Jennie Bowen, terminating Petitioner from the local JobLink WIA program, and if Petitioner attempt to enter the Center that would be consider as trespassing, and then Ms. ask that charges be file against Petitioner on 1/20/2010, and then Petitioner was arrested, and prosecuted for obtaining property by false pretenses, and was clearly denied his fifth amendment Constitutional rights to an informal hearing once terminated government benefits. It is clear a state court or a United States Court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an import federal question in a way that conflicts with relevant decisions of this court, Petitioner has clearly made an showing that this case is of such imperative public importance as to justify the compelling reason to grant the Petition for a Writ of Certiorari. U.S. Const. IV, V, IVX. Art. I, § 11.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James H. Amisitard

Date: Dec. 4, 2018.

UNITED STATES SUPREME COURT

NO. 18-6449 (5:17-cv-03281-BO)

JAMES GREGORY ARMISTEAD
Plaintiff - Appellant

v.

PETITION FOR WRIT
OF CERTIORARI

JENNIE BOWEN; TIMOTHY WARE; ROGER SHACKLEFORD; MOSE
DORSEY; SETH EDWARDS; LAURA P. WATSON,
Defendants - Appellees

JURISDICTION

1. This Court has jurisdiction under 28 U.S.C. Section 1331 and 1333(a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202. Plaintiff claims for injunctive relief are authorized by 28 U.S.C. Section 2283 & 2284 and Rule 65 of the Federal Rules of Civil Procedure, Also Tucker Act., 28 U.S.C. § 1346(a)(2).

2. Each defendant is sued individually and in his or her official capacity. At all times mentioned in the complaint each defendants acted under the color of state law, and federal laws.

3. It is clear and obvious an material factual or legal matter was overlooked; it seem that Court of appeals base it reason for dismissing his 42 U.S.C. § 1983 (2012) Complaint under 28 U.S.C. § 1915(e)(2)(B)(2012). We have review the record and find no reversible error. See Armistead v. Bowen, No. 5:17-cv-03281-Bo (E.D.N.C. Apr. 13, 2018).

4. Honorable Terrence W. Boyle, District Judge base his reason for dismissal on statute of limitations, for his claims would have accrued, at the latest, on May 1, 2012, when he was convicted. See, e.g., Wiggins v. Montgomery, No. 1:08-cv-13, 2008 WL 161303, at an. 3 (E.D. Va. Jan. 14, 2008). Plaintiff therefore had three years, or until May 1, 2015, which to file his claim against defendants. Plaintiff filed the instant Complaint on December 8, 2017. Because plaintiff filed this action well after the expiration of the three-year statute of limitations, this is time-barred. Also Alternatively, plaintiff's action fails on the merits. As stated, plaintiff claims arise out of his criminal conviction. However the record will clearly review that plaintiff's conviction had been reviewed for; for an writ for habeas corpus on or about 2016.

5. A § 1983 action that would necessarily imply the invalidity of the Plaintiff's past or future conviction or sentence does not accrue until that conviction is called into question or a disposition is reached in the Criminal proceeding. Crowe v. Donald, 528 F. 3d 1290, 1292 (11th Cir. 2008). In particular, equitable tolling could apply

Where a § 1983 plaintiff reasonably claims that the unlawful behavior of which he complains was, or will be, necessary to a conviction it could toll the running of the limitations period (1) from the time charges are brought until the time they are dismissed or the defendant is acquitted or convicted; and (2) thereafter during any period in which the criminal defendant challenges a conviction (on direct appeal or state collateral challenge, or on federal habeas) and reasonably asserts the behavior underlying the § 1983 action as a ground for overturning the conviction.

6. See *Allen v. McCurry*, 449 U.S. 90, 95-96, 101 S.Ct. 411, 666 L.Ed.2d 308 (1980) (federal court gives preclusive effect to constitutional determinations as to issues already litigated in state court).

Moreover, an appropriate equitable tolling principle would apply not only to state criminal proceedings as here; but also to state appellate proceedings, state collateral attacks; and federal habeas proceedings.

7. However the suit on behalf of plaintiff were filed under the U.S.C. § 1983, and amended in the Circuit Court under both U.S.C. § 1983, and the Tucker Act. 28 U.S.C. § 1346(a)(2). 2, on one of two alternative theories either that of a taking (in violation of the Constitution) or a remedy growing out of a contract, express or implied, it is plain that plaintiff entered into a contract with local agency and federal government, REGION Q. WIA PARTICIPANT

TRAINING/JOB SEARCH AGREEMENT¹ U.S. v. Gravelle, 407 F.2d 964 (10th Cir. 1969)

8. Plaintiff filed an Petition Seeking Declaratory And Injunctive Relief, Seeking Compensatory and punitive damages from local agencies that are responsible for plaintiff Continuing Violation of any Constitutional rights, declaratory injunction file in Beaufort County Superior Court on 3/9/17, also Wake County Superior Court on or about March, April, 2017.

9. Plaintiff clearly stated local agencies Violated plaintiff Constitutional rights to an informal hearing on the local level, by staten if plaintiff attempt to enter Center that would be consider trespassing on Jan. 6, 2010. and then on Jan. 12, 2010. file an police report, and then prusue Criminal charges against plaintiff, also plaintiff clearly stated that North Carolina, Department of Commerce denied Constitutional rights to an informal hearing, by staten that plaintiff final determination action on appeal, that WIA agencies did not violate any rules or regulation.

10. However documents shows and prove Violations of civil rights, by pursuing Criminal action for an Civil matter, Plaintiff clearly challenged the local agency Job Link denying an informal hearing, and the N. C. Department of Commerce denying appeal, and the U. S. Department of Labor final

determination that regulations was not violated by the local agency, there are clear violation of the fifth amendment due process rights to an informal hearing at the local level, once terminating government benefits.

11. Plaintiff amend his claim to also be consider on appeal under the Tucker Act. 28 U.S.C. § 1341(a)(2). The trial Court reason that Coravelle, *supra*, had not held that recovery under the Tort Claims Act. Was exclusive, and proceeded to determine that the plaintiff had effective remedies under the Tucker Act. on one of two alternative theories: either that of a taking (in Violation of Constitution, ("Plaintiff freedom") or a remedy growing out of a Contract, express or implied.

12. Indeed an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, or law impairing the obligation of Contract, Such as Art. I § 10. of the Constitution forbids. It is clear the Wisdom of the Job Link program decision to enter into the agreement with Plaintiff should be of no concern to the state prosecut or's office or the Criminal Courts.

13. Therefore Job Link program to involve the Criminal Courts, and allege and ask that Mr. Armistead, be prosecuted

because of an alleged false representation was wrong, and is wrong which all documents, such as evidence at trial, the testimony of the Job Link employee prove that Plaintiff had not committed any crime, these actions clearly violates Plaintiff Constitutional Civil rights

14. Effective: March 7, 2013. 28 U.S.C.A. § 1346, United States as defendant Currentness, 451 F.2d 690. See Cases, Doe v. Metro. Police Dept, 445 F.3d 460, 469 (D.C. Cir. 2006). Moore v. City of Ashville, 396 F.3d 385, 395 (4th Cir. 2005), Hanks v. Prachar, 457 F.3d 774, 776 (8th Cir. 2006), Muhammad v. Close, 540 U.S. 749, 751-52 (2004), De'Lonta v. Angelone, 330 F.3d 630, 633 (4th Cir. 2003), Taylor v. Johnson, 527 F.3d 470, 474 (5th Cir. 2001), Pierce v. County of Orange, 519 F.3d 985, 1005 (9th Cir.), Davis v. Rennie, 264 F.3d 86, 115 (1st Cir. 2001) (§ 1997e(e).), Kalina v. Fletcher, 522 U.S. 118 (1997).

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment granting Plaintiff's Petition:

15. An Petition for an Writ of Certiorari, U.S.C. § 1983 Apr. 13, 2018. And Tucker Act, 28 U.S.C. § 1346(a)(2). 2

16. A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution

and Laws of the United states.

17. A preliminary injunction ordering defendants, Jennie Bowen, Timothy Ware, Roger Shackleford, Mose Dorsey, Seth Edwards, Laura P. Watson, liable for Plaintiff past, present, and future incarceration, and liable to Plaintiff for compensation.

18. Compensatory damages in the amount of \$ 50,000.00 dollars, according to the N. C. Gen. stat. for every year of incarcerations in the past, and the ongoing violation of Plaintiff Constitution Civil Rights, in Plaintiff future (incarceration).

19. Punitive damages in the amount of \$ 50,000.00 for every year of incarceration for an criminal action that's clearly an civil action, past and future punitive claim of actions against each defendant.

20. A jury trial on all issues triable by jury

21. Any additional relief this Court deems just, proper, any equitable.

Dated: Sept. 10, 2018

Respectfully Submitted,

James G. Armistead #0010094

James G. Armistead

Dan River Prison Work Farm

981 Murray Road

Blanch, N.C. 27212

VERIFICATION

I have read the foregoing petition and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Signature:

James G. Armistead #0010094

James G. Armistead

Dan River Prison Work Farm

981 Murray Road

Blanch, N.C. 27212