

No. 18-7486

IN THE
Supreme Court of the United States

FRANK MONTE,

Petitioner,

v.

CYRUS R. VANCE, *et al.*,

Respondents.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit*

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
ON BEHALF OF RESPONDENT
LARRY SPOLLEN**

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February 19, 2019

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this court, respondent Larry Spollen states that he is not a corporation but an individual. He has no parent corporations or subsidiaries and he has never issued stock.

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STATUTES INVOLVED IN THE CASES

Rule 10 of this Court, provides that whether to grant Writ of Certiorari is a matter of Court discretion. Among the factors to be considered in making a determination of whether to grant Writ of Certiorari are: (a) whether the underlying Court of Appeals decision is in conflict with other circuit court of appeals on an important matter; (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; (c) 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 important federal question in a way that conflicts with relevant decisions of this Court.

Here, the Petition for Writ of Certiorari has not demonstrated that any of these factors are met here in favor of an order granting Writ. There is no conflict between the underlying decision of the District Court and other circuit courts of appeals, and in fact, the order appealed has not been reviewed by the Second Circuit Court of Appeals, as the appeal before that Court is pending and has not yet been briefed. The within action also does not involve an important federal question that has been reviewed or determined by a state court of last resort, and thus, no state court order herein is in conflict with other state court decisions or of a decision of a United States Court of Appeals.

Likewise, the issues herein do not involve a matter related to an important federal question which requires to be settled by this Court.

There is simply no basis upon which this Court should grant Writ of Certiorari in the within matter.

STATEMENT OF CASE

Defendant Larry Spollen hereby submits this brief in opposition to the Petition for Writ of Certiorari made by Petitioner, Frank M. Monte, III. The within action was commenced in the Southern District of New York on or about October 2018, Docket No. 9595, pursuant to 42 U.S.C. §§1983, 1985, and 1988. It appears from the Complaint that the Petitioner seeks monetary compensation for alleged violation of his due process rights relative to criminal charges and resulting criminal court proceedings on or about 2014.

The matter was dismissed by the District Court for lack of jurisdiction and based upon judicial and prosecutorial immunity. The Petitioner has taken an appeal from the District Court's dismissal order and said appeal is currently pending before the Court of Appeals for the Second Circuit. For this reason alone, the application for Writ of Certiorari should be denied as premature. Moreover, the action has no merit in law or fact, and has been dismissed with an express certification by the District Court as lacking good faith, pursuant to 28 U.S.C. §1915(a)(3).

In any event, the District Court's decision is not in conflict with other courts, either with the different circuits of the Court of Appeals, nor of any precedent of this Court. Likewise, no aspect of the claims asserted rise to the level of public importance required for a grant of Writ of Certiorari. Thus, this Court should deny the application as lacking merit.

QUESTION PRESENTED

1. Whether the Petitioner has set forth a single basis for a grant of Writ of Certiorari, where the entire action has no merit in law or fact, and no showing has been made to establish that the issues raised are of public importance sufficient to warrant review of this Court.

BACKGROUND

This action was commenced by the *pro se* Petitioner on or about October 2018. This action is one of multiple actions commenced by the Petitioner seeking the same relief, based upon the same facts, as well as a number of actions based upon the underlying arrests. Prior actions were commenced in the District Court Southern District of New York, as well as the District Court for the District of New Jersey (*Monte v. Kessler*, No. 18-CV11363). This is also the third matter in which the Petitioner seeks Writ of Certiorari to this Court, with two prior petitions having been denied by this Court.

Specifically, the Petitioner has an application for Writ of Certiorari currently pending before this Court on other matters asserting similar claims in *Monte v. Joe Kessler, et.al.*, Docket No. 18-7211 (Third Circuit Docket No. 18-2834). This Court denied a petition for Writ of Certiorari in the matter of *Frank Monte v. Maxsolaine Mingo, Warden, et.al.*, Docket No. 16-8110, by decision dated May 1, 2017. This Court also denied a petition for Writ of Certiorari in *In Re Frank Monte*, Docket No. 16-8663, on May 1, 2017 (rehearing denied June 26, 2017).

The claims asserted in the Civil Complaint in the within action appear to be based on the theory that the Petitioner was “subjected” to meeting and speaking with a mental health professional to assess his competency relative to the proceedings for criminal charges initiated against him in New York State Supreme Court, New York County, Criminal Term.

It is alleged that defendant/respondent Larry Spollen acted in his capacity as attorney for the New York County Defender Services. In addition to defendant Spollen, the complaint asserts claims against multiple State Court justices presiding over his criminal case, as well as against Governor Andrew Cuomo, the State Attorney General, the New York County District Attorney, Assistant District Attorneys and defense attorneys appointed to him, pursuant to Article 18B of the New York State County Law.

Among the allegations set forth in the Complaint, it is claimed that Larry Spollen, and co-defendant Dr. Arkadiy Chernyak “admonished Mr. Monte that ‘any attempt to act in the capacity as his own lawyer would only result in a competency exam,’” thus “subjecting him” to speak with Dr. Chernyak “twice”. (Complaint at par. 27-28). It is further alleged that multiple New York State Supreme Court Justices conspired to submit him to the “so-called independent exam.”

By Order of Dismissal and Civil Judgment dated November 7, 2018, entered in the Southern District of New York (Louis L. Stanton, U.S.D.J.), the within action was dismissed based on immunity from suit, and for lack of jurisdiction over the remaining state law claims.

The November 7, 2018 Dismissal Order of Judge Stanton found that the claims asserted in the within action are meritless. The Court further concluded that they were frivolous, that the Petitioner has commenced a prior action in the District Court of New Jersey for the exact same claims, and that action was dismissed, in part, based on judicial and prosecutorial immunity.

The Petitioner appealed from the November 7, 2018 Dismissal Order to the Second Circuit Court of Appeals. On November 19, 2018, the Petitioner moved for leave to proceed *in forma pauperis*. Said application is still pending before the Court of Appeals. No brief has been filed relative to the pending appeal. Nor has the Court of Appeals issued a determination or judgment relative to said appeal.

Petitioner now seeks Writ of Certiorari before this Court, but utterly failed to articulate a single basis for said relief. No aspect of the Complaint, or the Petition, has set forth an issue of public importance that warrants this Court's review. Nor is there any decision or judgment of the District Court or the Court of Appeals that is in conflict with other decisions of other courts, of the Court of Appeals, or the precedent of this Court. Thus, there is no basis upon which Writ of Certiorari should be granted herein.

ARGUMENT

A. There Is No Basis upon Which to Grant Writ of Certiorari

Pursuant to Rule 10 of this Court, whether to grant Writ of Certiorari is a matter of Court discretion. Among the factors to be considered in making a determination of whether to grant Writ of Certiorari are: (a) whether the underlying Court of Appeals decision is in conflict with other circuit court of appeals on an important matter; (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; (c) 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 important federal question in a way that conflicts with relevant decisions of this Court.

In fact, this Court has held that a principal purpose for which certiorari jurisdiction is used by this Court is to resolve conflicts among the United States Courts of Appeals, and that of state courts. Braxton v. United States, 500 U.S. 344 (1991). Moreover, Certiorari is not granted unless the matter involves principles that are of public importance. Rice v. Sioux City Memorial Park Cemetery, 75 S. Ct. 614 (1954).

Here, the issues raised by the Petitioner involve claims against public officials who were acting in their official capacity in prosecuting criminal claims against the Petitioner. As the District Court found, these officials are immune from private actions under the Eleventh Amendment. Likewise, the claims against the judges

presiding over the criminal proceedings against the Petitioner are also improper, as judges have judicial immunity for claims relative to cases coming before them. Bliven v. Hunt, 579 F.3d 201 (2d Cir. 2009).

Similarly, the claims against the defense attorneys who represented the Petitioner, including the Respondent Larry Spollen, were also properly dismissed, as defense counsel's representation of a private individual in a criminal proceeding does not constitute the degree of state involvement or interference contemplated by §1983. Polk County v. Dodson, 454 U.S. 312 (1981).

The claims asserted, therefore, were dismissed upon application of the law. Yet, there is no basis upon which it can be found that the District Court's dismissal of the entire action is in conflict with any other Court, whether a Court of Appeals or this Court.

Nor are the claims asserted involve a matter of public importance. As this Court held in Powell v. Nevada, 511 U.S. 79 (1994), a matter does not warrant granting Writ of Certiorari where the principles are important solely to the parties involved, and not the public. This Court found that it would be a "poor use of judicial resources" if the court were to "take a case merely to reaffirm (without revisiting) settled law". Id. at 86.

Clearly, the criteria for a grant of Writ of Certiorari is not met here.

Moreover, the Petitioner has initiated an appeal before the Second Circuit Court of Appeals, but that appeal has not yet been briefed, much less reached a determination. Therefore, not only does the Petition lack any merit, but it is

premature. At the very least, this Court should deny Writ of Certiorari to allow the matter be determined by the Court of Appeals.

CONCLUSION

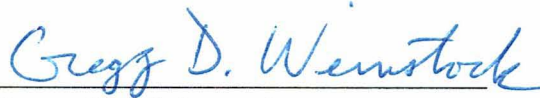
Respondent Larry Spollen hereby respectfully requests that this Court deny the Petition for Writ of Certiorari in its entirety.

Dated: Garden City, New York
February 19, 2019

Respectfully submitted,

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