ORIGINAL

No. 18-8081

In the Supreme Court of the United States

Jared King, *Petitioner/Plaintiff*

v.

Karen Creed, Town of Bethlehem Clerk to the Justice,
(*Official (Off.) & Individual (Ind.) Capacity)*
Craig Sleurs, Town of Bethlehem Police Officer, (*Off. & Ind.)*
Town of Bethlehem
Barbara J. Fiala, Commissioner, NYS DMV (*Ind.*)
Theresa L. Egan, Acting Commissioner, NYS DMV (*Off.*)
Town Justice Ryan Donovan (*Off. & Ind.*)
Albany County Court Judge Thomas Breslin (*Off.*),
Respondents/Defendants

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Second Circuit

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the panel that dismissed pursuant to 28 U.S.C. §1915(e) plaintiff's appeal to the Court of Appeals for the Second Circuit, (Parker, Chin & Livingston, JJ.), violated plaintiff's right to Due Process of Law guaranteed by the Fifth Amendment to the U.S. Constitution by failing to provide notice and an opportunity to be meaningfully heard before the rendering of its decision?

2. Whether the panel that dismissed pursuant to 28 U.S.C. §1915(e) plaintiff's appeal to the Court of Appeals for the Second Circuit, (Parker, Chin & Livingston, JJ.), violated plaintiff's right to Due Process of Law guaranteed by the Fifth Amendment to the U.S. Constitution by providing no rationales for all five of its five motion denials?

3. Whether 28 U.S.C. §1915, entitled "Proceedings in forma pauperis," only applies to appeals permitted to be filed *in forma pauperis* or does it extend to appeals in which the appellant requested permission to file his appeal *in forma pauperis* but in which the U.S. district court and the circuit court panel denied that permission?

4. Whether the panel that dismissed pursuant to 28 U.S.C. §1915(e) plaintiff's appeal to the Court of Appeals for the Second Circuit, (Parker, Chin & Livingston, JJ.) erred in contravening unreversed U.S. Supreme Court precedent in *Coppedge v. United States*, 369

U.S. 438 (1962) (7-0) that determined that Due Process of Law requires a court considering dismissal pursuant to 28 U.S.C. §1915(e) to provide notice and an oral hearing to the plaintiff before taking the drastic action of case dismissal?

5. Whether the panel that dismissed pursuant to 28 U.S.C. §1915(e) plaintiff's appeal to the Court of Appeals for the Second Circuit, (Parker, Chin & Livingston, JJ.) violated plaintiff's right to Due Process of Law guaranteed by the Fifth Amendment to the U.S. Constitution by barring petitioner to file an appeal by right with prepayment of the filing fee after determining that the petitioner was not eligible to file his appeal by right *in forma pauperis*?

6. Whether Due Process of Law as guaranteed by the Fifth Amendment to the U.S. Constitution in a case similar to one in which the U.S. Supreme Court identified it as "quasi-criminal" justifies appointment of *pro bono* counsel?

7. Given that the only evidence entered into the case are plaintiff's multitudinous affidavits and defendants' solitary affidavit of Town of Bethlehem police officer Craig Sleurs in support of defendant Craig Sleurs' motion for summary judgment that does not contradict the material points of plaintiff's affidavits, whether the panel that dismissed pursuant to 28 U.S.C. §1915(e) plaintiff's appeal to the Court of Appeals for the Second Circuit, (Parker, Chin & Livingston, JJ.) violated plaintiff's right to Due Process of

Law guaranteed by the Fifth Amendment to the U.S. Constitution by determining there is no arguable basis in fact for plaintiff's claims, *i.e.* can the appellate panel infer plaintiff perjury without an evidential basis supporting the panel's conclusion?

8. Given that the U.S. district court determined that plaintiff's case had both an arguable basis in law and in fact in at least one of plaintiff's claims. whether the panel that dismissed pursuant to 28 U.S.C. §1915(e) plaintiff's appeal to the Court of Appeals for the Second Circuit, (Parker, Chin & Livingston, JJ.) violated plaintiff's right to Due Process of Law guaranteed by the Fifth Amendment to the U.S. Constitution by refusing to comply with F.R.A.P., especially the briefing and oral arguments requirements on the merits, for all appeals by right not permitted to be filed *in forma pauperis* in order to consider reversal of a U.S. district court's determination, *i.e.* does the appellate panel need to comply with its mandatory responsibilities pursuant to the F.R.A.P. including briefing and oral argument requirements before making a determination reversing the "Law of the Case," the U.S. district court's determination?

LIST OF PARTIES

All parties are the same as the case caption.

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OPINIONS BELOW

The order of the United States Court of Appeals for the Second Circuit, entered on May 24, 2018, denying the motions for permission to file *in forma pauperis*, appointment of *pro bono* counsel and to correct the short case title and dismissing the appeal pursuant to 28 U.S.C. §1915(e) is not reported; a copy is included in the Appendix at p. A-1.

The order of the United States Court of Appeals for the Second Circuit, entered on July 18, 2018, denying reconsideration *en banc* of the case dismissal and motions for permission to file *in forma pauperis*, appointment of *pro bono* counsel and to correct the short case title is not reported; a copy is included in the Appendix at p. A-51.

U.S. District Court Kahn's order, entered on January 11, 2018, acknowledging the entry of the notice of appeal and determining that plaintiff had used a federal court financial affidavit form is not used in the Northern District and providing the plaintiff to renew his application with the correct form is not reported; a copy is included in the Appendix at p. A-2.

U.S. District Court Kahn's order, entered on February 1, 2018, denying the motions for permission to file *in forma pauperis* is not reported; a copy is included in the Appendix at pp. A-3,4.

U.S. District Court Kahn's decision and order granting summary judgment and denying cross-motion for sanctions, entered on December 13, 2018, is reported, *King v. Creed*, 2017 U.S. Dist. LEXIS 204799; a copy is included in the Appendix at pp. A-5-21.

U.S. District Court Kahn's decision and order dismissing all of petitioners claims except for one claim associated with Town of Bethlehem police officer Sleurs, entered on March 2, 2015, is reported, *King v. Creed*, 2015 U.S. Dist. LEXIS 24559; a copy is included in the Appendix at pp. A-22-38

U.S. District Court Kahn's decision and order denying re-consideration of his grant of respondents' motions to dismiss except for one claim associated with Town of Bethlehem police officer Sleurs, entered on January 15, 2016, is reported, *King v. Creed*, 2016 U.S. Dist. LEXIS 5210; a copy is included in the Appendix at pp. A-39-50.

The order of the United States Court of Appeals for the Second Circuit, filed on September 24, 2018, denying the motion to recall mandate is not reported; a copy is included in the Appendix at p. A-52.

JURISDICTION

On February 18, 2014, petitioner brought suit against respondents in the United States District Court for the Northern District of New York pursuant to 42 U.S.C. §1983, seeking declaratory, injunctive and monetary relief, alleging that respondents had violated New York State's speedy trial statutes and other criminal procedure statutes and that Karen Creed, chief court clerk of the Town of Bethlehem, and other respondents had violated his U.S. Fourteenth Amendment and Sixth Amendment Rights and several parallel New York State Constitutional Bill of Rights sections by knowingly misrepresenting the time of the defendant's plea of "not guilty" by misrepresenting to

appellate and other reviewing courts as the original plea the replacement plea the defendant signed to replace the one that the chief court clerk had lost. In addition, Ms. Creed knowingly misrepresented to New York State DMV the validity of the town court judgment in her request for the suspension of petitioner's license and misrepresented the reason for the suspension as, "Failure to Appear," and then, instead of voiding the original erroneous reason for the license suspension, added a second license suspension with the correct reason, "Failure to Pay Fine."

On March 2, 2015, U.S. District Court Judge Kahn granted respondents motions with the exception of one claim against Town of Bethlehem police officer Craig Sleurs.

On December 13, 2017, U.S. District Court Court Judge Kahn granted Town of Bethlehem's attorney's motion for summary judgment in which she argued qualified immunity for the police officer, but U.S. District Court Judge Kahn granted the motion citing an equitable doctrine allowing the seizure of petitioner's automobile without a warrant as an exercise of the police force's "community caretaking function," even though no evidence from either petitioner or Craig Sleurs support this conclusion that public safety was endangered by the parked automobile on the private property of a business owner and friend of the petitioner.

On January 10, 2018, petitioner filed a notice of appeal and a motion with financial affidavit requesting permission to file the appeal *in forma pauperis*.

On January 11, 2018, U.S. District Court Kahn entered an order acknowledging the entry of the notice of appeal and determining that plaintiff had used a federal court financial affidavit form not used in the Northern District of New York and providing the plaintiff leave to renew his application with the correct form.

On February 1, 2018, U.S. District Court Kahn denied the motion for permission to file *in forma pauperis*.

On May 24, 2018, a panel of U.S. circuit court judges, (Parker, Chin & Livingston), denied the previously filed motions to be allowed to file the appeal *in forma pauperis*, for appointment of *pro bono* counsel and to correct the erroneously reported short title, "*King v. Sleurs*." Defendant filed a motion for reconsideration en banc of the three motions and the case dismissal.

On July 18, 2018, the same Second Circuit Court panel denied the motion for reconsideration and reported that the U.S. Court of Appeals for the Second Circuit rejected *en banc* reconsideration.

In an attempt to exhaust all possible remedies at the circuit court panel's procedural ruling before requesting a writ of certiorari from the U.S. Supreme Court as instructed by U.S. Supreme Court clerk Mara Silver, I filed a motion to recall the mandate. The same circuit court panel of judges denied this motion on September 24, 2008.

The jurisdiction of this Court to review the case dismissal of the Second Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the U.S. Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. §1915(e):

(1) The court may request an attorney to represent any person unable to afford counsel.
(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—
(A) the allegation of poverty is untrue; or
(B) the action or appeal—
(i) is frivolous or malicious;
(ii) fails to state a claim on which relief may be granted; or
(iii) seeks monetary relief against a defendant who is immune from such relief.

Section title for 28 U.S.C. §1915:

Proceedings in forma pauperis

New York State Penal Law, PEN §195.00, "Official misconduct":

§ 195.00 Official misconduct. A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit: 1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized: or 2. He knowingly refrains from performing a duty which is imposed upo him by law or is clearly inherent in the nature of his office. Official misconduct is a class A misdemeanor.

New York State Penal Law, PEN §195.05, "Obstructing governmental administration in the second degree":

§ 195.05 Obstructing governmental administration in the second degree. A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or othe telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration. Obstructing governmental administration is a class A misdemeanor.

U.S. Constitution, Article III, Section 2, first paragraph:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which

the United States shall be a Party;--to Controversies between tow or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT OF THE CASE

On February 18, 2014, petitioner brought suit against respondents in the United States District Court for the Northern District of New York pursuant to 42 U.S.C. §1983, seeking declaratory, injunctive and monetary relief, (depending on the respondent), alleging that respondents had violated New York State's speedy trial statutes and other criminal procedure statutes and that Karen Creed, chief court clerk of the Town of Bethlehem, and other respondents had violated his U.S. Fourteenth Amendment and Sixth Amendment Rights and several parallel New York State Constitutional Bill of Rights sections by knowingly misrepresenting the time of the defendant's plea of "not guilty" by misrepresenting to higher state courts as the original plea the replacement plea the defendant signed to replace the one that the chief court clerk had lost. In addition, Ms. Creed knowingly misrepresented to New York State DMV the validity of the town court judgment, since she was the one who accepted both the original and replacement pleas, in her request for the suspension of petitioner's license and misrepresented the reason for the suspension as, "Failure to Appear," and then, instead of voiding the original erroneous reason for the license suspension, added a second license suspension with the correct reason,

"Failure to Pay Fine." Ms. Creed's failure to expunge the previous erroneous suspension matters, because New York State does have a statute that deems it a Class A misdemeanor to accumulate a certain number of license suspensions even if the reasons for the license suspensions are subsequently resolved was not harmless and most likely, according to Ida Trashin, the lawyer at DMV who reviewed the case, calculated.

I would subsequently learn of New York State Penal Laws, PEN §195.00, "Official misconduct, and PEN §195.05, "Obstructing governmental administration in the 2nd Degree," both Class A misdemeanors, although I would learn of the statutes after the statute of limitations had run out. I believe both Ms. Creed and Town Justice Donovan violated these statutes in their dishonest misrepresentation of the case record they fabricated and misrepresented to any reviewing state or federal courts and, in the case of Ms. Creed, misrepresented also to New York State DMV. Both were well aware that the replacement plea is not on the standard electronic form the Town of Bethlehem used and still uses, and I presented the receipt Ms. Creed gave me at the time of my original plea to Town Justice Donovan. When given the choice of fulfilling his mandatory obligation under CPL §30.30 to dismiss the solitary speeding infraction charge because the trial was not held within the one-year constitutional speedy trial deadline, let alone the state statutory deadline of 60 days (Traffic infractions are treated

as misdemeanors for speedy trial purposes.), Town Justice Donovan chose Class A misdemeanor conduct.

I will now copy verbatim U.S. District Court Judge Kahn's statement of the case and point out the factual misrepresentations. It is these constant factual misrepresentations to accommodate the misapplication of hackneyed equitable doctrines in 42 U.S.C. §1983 cases to obtain the judge's desired result, whether it be at first, case settlement at a fraction of the amount of similar cases in the Second Circuit or, after the unsuccessful mediation, the grant of summary judgment on the remaining claim without an evidential basis to support Judge Kahn's inference that my car was seized without a warrant because of the police's community caretaking function to insure public safety, that I have found throughout this case to be so disheartening.

From Judge Kahn's statement of facts associated with his granting of respondent's motions to dismiss except for one claim against Town of Bethlehem police officer Craig Sleurs:

> Pro se Plaintiff Jared King ("Plaintiff") commenced this actionallegingvarious civil rights violations arising from the suspension of his driver's license. Dkt. Nos. 1; 6 ("Amended Complaint"). **[Actually, the civil rights violations include the license suspension but also include previous violations including the fabricated case record making a fair resolution from the perfection of the state appeal difficult; hence, the 42 U.S.C. §1983 case that would also allow declaratory and injunctive relief to keep the state judges honest in their jurisprudence.]** Presently before the Court are a pair of Motions to dismiss for failure to state a claim by Defendants Town of Bethlehem

Clerk to the Justice Karen Creed ("Creed"), Officer Craig Sleurs ("Sleurs"), the Town of Bethlehem, and Town of Bethlehem Justice Ryan Donovan ("Judge Donovan") (together, the "Town Defendants"); and Barbara Fiala ("Fiala") and Albany County Judge Thomas Breslin ("Judge Breslin") (together, the "State Defendants") (collectively, "Defendants"). Dkt. Nos. 25 ("Town Motion"); 25-3 ("Town Memorandum"); 36 ("State Motion"); 36-1 ("State Memorandum"). For the following reasons, the Town Motion is granted in part and denied in part, and the State Motion is granted.

In September 2008, Plaintiff received a speeding ticket from the Town of Bethlehem Police Department asserting a single violation of New York Vehicle and Traffic Law § 1180(d). Am. Compl. ¶ 4. Within two business days, Plaintiff answered the summons in person and entered a plea of not guilty. Id. ¶ 5. In April 2009, Plaintiff received a notice from the New York Department of Motor Vehicles ("DMV") stating that his license would be suspended on May 9, 2009, for "failure to answer summons." Id. ¶ 6. Judge Donovan subsequently advised Plaintiff that his mail-in plea **[Important point that I appeared in person, not by mail, not only for calculation of speedy trial but also my personal appearance limits subsequent appearances to arraignment and trial; unlimited judicial conferences are not allowed. Law has since been changed but I have the statute governing at the time]** could not be processed and that Plaintiff needed to contact the court within ten days to avoid suspension of his license. Id. ¶ 7. Plaintiff then [*3]appeared in person at the court clerk's office, where he was informed that he must complete a new plea because the clerk's office could not find the previous one. Id. ¶ 8.

Over the next six months, Judge Donovan compelled Plaintiff's attendance at several court dates **[Four to be exact and at these court dates I was one of the first or the first defendant in the room and was always the last defendant called. Town Prosecutor and Employee Tom Newman refused to meet with me, yelling at me from his conference room with an open door that I should wait in the courtroom for my case to be called. The town had no interest in conferences to negotiate a plea, contrary to what Town Justice Donovan has represented]**, .Id. ¶ 9. During this period, Plaintiff filed a motion to dismiss, which was denied by Judge Donovan. Id. ¶¶ 10-11. Plaintiff filed a second motion to dismiss with a request that the court correct "misrepresent[ed] facts on the record." Id. ¶¶ 11, 13. Judge Donovan denied this second motion orally before trial and subsequently in writing in March 2010. Id. ¶ 13. Plaintiff was convicted of the speeding

charge by Judge Donovan in October, 2009. Id. ¶¶ 12-14. Plaintiff filed a motion to vacate the conviction, which Judge Donovan denied. Id. ¶ 15. Plaintiff appealed the conviction. Id. ¶ 16. Judge Breslin denied Plaintiff's appeal for failure to properly serve the opposition. Id. ¶ 17. **[No, no, no. This is very important, since it relates to *Rooker-Feldman*. My appeal is still pending without final judgment, awaiting Judge Kahn or the Second Circuit to re-instate Judge Breslin as a defendant, who was sued only in his official capacity, so that I can obtain the appropriate injunctions before I proceed with my state case. I applied for a four-month stay to perfect my appeal. In New York State, an appellate court judge is to grant a stay automatically unless the judge deems the appeal to be wholly without merit. Judge Breslin denied the stay because he claimed I served the wrong party, the County DA instead of the town prosecutor, and even if I did serve the correct party, the one-year constitutional statute of limitations applies but CPL §30.30 does not apply to traffic infractions, such that, apparently, in Judge Breslin's opinion, my appeal is wholly without merit. I did serve the correct party, the County DA, and CPL §30.30 does apply to traffic infractions. Judge Breslin was correct that the constitutional one-year statute of limitations applies, but even though I referenced the record that showed the trial was more than a year after the plea, Judge Breslin determined that my appeal was wholly without merit and thus he refused to grant a stay to perfect my appeal. Not only is Judge Breslin confused as to who is the proper prosecutor when the case goes to county court, the County DA, but he also, as I would later learn, never requested the record from the town court! Judge Breslin's shocking ignorance of criminal court procedure and his conscious choice not to review the case file to see that the trial occurred after one year from the original plea, does constitute violations of New York State's Code of**

Judicial Conduct. I have been holding off on all judicial misconduct complaints because I suspected they would interfere with case settlement – and assigned attorney for the mediation Jim Hacker agreed with my disciplined, patient approach to the case – but if the Second Circuit won't do its job .... I am grateful to Judge Breslin for choosing to become the administrative judge of the Third Judicial District, getting out of the courtroom where he is ill-suited. It was the responsible thing for him to do.]

Plaintiff received a letter signed by Creed and dated November 8, 2010, detailing the fine Plaintiff owed. Id. ¶18. Sometime in 2011, Plaintiff received another letter from Creed stating that his driver's license was suspended. Id. Plaintiff had not received [*4] a notice of suspension from the DMV. Id. **[Not only did I not receive a notice from DMV, I would later learn that my license had not been suspended. Ms. Creed's several-year delay in requesting a license suspension and this ruse of hers are evidence of scienter; she knew what she and Town Justice Donovan did was wrong, but she was hoping that the threat of license suspension would be enough for me to pay their fine, and they could bury the facts of the case. As they learned, I don't play that game.]**

Sometime in March or April 2012, Plaintiff received a notice of driver's license suspension from the DMV for failure to answer the summons. Id. ¶ 19. Plaintiff responded to this notice by "re-notic[ing]" his application for a stay pending appeal in Albany County Court, and by bringing his case files to the DMV. Id. Plaintiff left his documents with the DMV, and an attorney for the DMV said she would look over his paperwork. Id.

Plaintiff assumed that, because he had in fact answered the summons for the 2008 speeding ticket, the DMV would not go through with the proposed suspension. Id.

On September 25, 2013, Plaintiff was issued two ticket for operating a motor vehicle without a license and aggravated unlicensed operation of a motor vehicle in the third degree. Id. ¶ 22. The ticketing officer, Sleurs confiscated Plaintiff's driver's license. Id. ¶ 23. **[Police officers in New York State have no authority to seize drivers licenses; in New York State only judges do, upon conviction of DWI or, for higher levels of the charge, mere**

accusation of DWI, or judicial determination after notice and hearing that someone cannot drive safely based on past tickets or accidents.]

On November 26, 2013, Sleurs arrested Plaintiff for driving without a license and aggravated driving without a license. Id. ¶ 24. Sleurs showed Plaintiff that his police computer indicated that Plaintiff's license was suspended, "now for the correct reason, 'failure to pay fine.'" Id. Following the arrest, [*5] Sleurs impounded Plaintiff's vehicle. Id.

Plaintiff later received a notice signed by Fiala, the DMV Commissioner, and dated November 18, 2013, indicating that Plaintiff's driver's license would be suspended indefinitely if he did not pay a Driver Responsibility Assessment ("Assessment") pursuant to New York Vehicle and Traffic Law §§ 503(4), and 1199 . Id. ¶ 33.

Plaintiff commenced this action on February 18, 2014, asserting various civil rights claims against Defendants pursuant to 42 U.S.C. § 1983 , and seeking monetary, injunctive and declaratory relief. Dkt. No. 1. Plaintiff also previously moved for a preliminary injunction ordering Fiala to reinstate his driver's license pending the outcome of this action, which was denied in the Court's Order dated September 18, 2014. Dkt. Nos. 7; 45.

Plaintiff's Complaint contains fourteen causes of action. See generally Am. Compl. Liberally construed, Plaintiff alleges the following claims: (1) Creed unlawfully suspended Plaintiff's driver's license, and attempted to enforce a court judgement imposing the suspension **[No, Count 1 is Ms. Creed's enforcement of a court judgment she has personal knowledge of its invalidity because she knows that the replacement plea is not the original plea and I thus was denied a speedy trial. New York State's Legislature gives no leeway to judges; it is a matter of mandamus, not judicial discretion. The court "shall dismiss." Also, the judgment does not involve license suspension; Creed's request of DMV to suspend my license is because of failure to pay the fine associated with the invalid judgment, since no evidence was submitted to controvert the evidence I submitted of my original plea.]** (2) Creed misrepresented to the DMV that Plaintiff failed to answer [*6] the summons, knowing it to be false, in violation of Plaintiff's due process and equal protection rights; **[Multiple misrepresentations, and, yes, the lawyer at DMV, Ida Trashin, said that the codes are used all the time by the court clerks and anyone who has been a court clerk as long as Karen Creed, 30 years?, knew the correct codes.]** (3) Sleurs arrested Plaintiff without probable cause and seized his driver's license and automobile in violation of Plaintiff's Fourth Amendment rights

[Actually, Counts 4 and 5; Count 3 deals with Ms. Creed's fraudulent letter she sent me]; (4) general liability against the Town of Bethlehem pursuant to § 1983 **[Not Count 4 but Count 6. Town of Bethlehem's attorney Nan Kelleher fought me like crazy on discovery, claiming that my five-item request was overly burdensome, vague, *etc.*, but it was evident, with the motion for summary judgment and the Town of Bethlehem's production of its impoundment policies that these policies violate the state's criminal code. Although Ms. Peck appears to be unfamiliar with *Monell*, so she spent a lot of time tailoring Officer Sleurs' affidavit to support qualified immunity, Judge Kahn knows of *Monell*, and that qualified immunity does not apply in this case, so he got the result for which he was looking by claiming the parked car was seized without a warrant as necessary for public safety, although Officer Sleurs claimed in his affidavit that he seized the automobile in order to prevent liability to the town if the car was stolen or items in the car stolen in the hour or two I was in police custody.]**; (5) Fiala improperly suspended Plaintiff's driver's license for failure to answer the summons in violation of Plaintiff's due process rights; **{Actually, Count 7. DMV Commissioner Fiala had evidence in her possession indicating dispositively that I had answered the summons; she suspended my license anyway.}** (6) Fiala lacked authority to require Plaintiff to pay the Assessment in violation of Plaintiff's due process and equal protection rights; **[Actually, Count 8.]**(7) Judge Donovan misrepresented the case record pertaining to Plaintiff's trial for his speeding violation, improperly denied Plaintiff's motions, and therefore engaged injudicial misconduct, in violation of Plaintiff's due process and equal protection rights; **[Actually, Count 9. Count 10 involves Town Justice Donovan's failure to comply with his ministerial duty to dismiss the case because of a lack of speedy trial. Count 11 involved my discovery of a judicial conduct commission ruling that a town justice requiring a defendant to appear at more than two appearances is judicial misconduct. I informed Town Justice Donovan of this fact before my trial; he ignored the judicial misconduct ruling and conducted the trial anyway.]** and (8) Judge Breslin improperly denied Plaintiff's motions, and therefore violated New York's rules governing judicial conduct, in violation of

> Plaintiff's due process rights. **[Count 12 involved Judge Breslin's refusal to consider my stay application even though I did serve the correct party, the County DA. Count 13 involved his gross misrepresentation of the legal standard associated with speedy trial, which, in New York State requires a judge to dismiss, if the conditions for a claim of denial of speedy trial are met. Count 14 involved being subject to the criminal legal proceedings with a judge who, in my opinion, had violated the Code of Judicial Misconduct repeatedly even with the application for a stay.]** See generally id.
>
> In their respective Motions, Defendants move to dismiss all claims against them for failure to state a claim upon which relief can be granted pursuant to [*7] Federal Rule of Civil Procedure (12)(b)(6) . Town Mot.; State Mot.

As the questions presented for review, my interaction with the U.S. Court of Appeals was brief: Without notice or hearing, a panel of circuit court judges, Parker, Chin & Livingston, JJ. deemed my case to have "no basis in law or fact.," and dismissed it pursuant to 28 U.S.C. §1915(e).

This decision violates both my procedural and substantive right to Due Process as guaranteed by the Fifth Amendment to the U.S. Constitution.

Although I had applied to be allowed to file my appeal *in forma pauperis*, the Second Circuit court panel denied this permission, in addition to denying my motion for appointment of *pro bono* counsel and even a motion to correct the case title erroneously reported by either U.S. District Court Kahn or the District Court Clerk of the Northern District of New York. 28 U.S.C. §1915 is entitled, "Proceedings in forma pauperis," and the text clearly supports the inference that the provisions of 28 U.S.C. §1915 apply to appeals allowed to be filed *in forma pauperis* only, where the court system has not collected a filing fee and the lack of filing fee might encourage the filing of frivolous appeals..

Associate Justice Thurgood Marshall's opinion for a unanimous Supreme Court in *Neitzke v. Williams* 490 U.S. 319 (1989) addresses this point directly. The U.S. Supreme Court determined that only appeals *in forma pauperis* are to be subject to premature dismissal before brief and oral hearing and that the fact that that claims that had been dismissed by lower courts as lacking a basis in law – does not mean that they lack a basis in fact, and that the standard for premature dismissal pursuant to 28 U.S.C. §1915(e) is "no arguable basis in law or fact." *Coppedge v. United States*, 369 U.S. 438 (1962), a unanimous U.S. Supreme Court, 7-0, determined that Due Process of Law required the panel considering dismissal pursuant to 28 U.S.C. §1915(e) to provide notice and an oral hearing *before* taking the drastic action of case dismissal. Instead of setting a deadline for payment of the filing fee or appeal dismissal in the alternative., Parker, Chin & Livingston, JJ., expanded 28 U.S.C. §1915(e) to all cases it deems frivolous without allowing the appellant to produce evidence to establish that there is a factual basis. That is not what the statute says. That is not what the U.S. Supreme Court decided unanimously in *Neitzke v. Williams*, *supra*, and *Coppedge v. United States*, *ibid.* Although I made this argument and provided case citations to this circuit court panel, Parker, Chin & Livingston, JJ., in my motion for reconsideration – the first time I was heard on this matter – they would not be deterred from their contumacious action, and they denied my motion for reconsideration.

The U.S. Supreme Court has repeatedly found that substantive Due Process requires "notice and the opportunity for meaningful hearing." That includes being heard before a court takes action, not afterwards, when the hearing is moot. *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U. S. 306 (1950) at

313, *Fuentes v. Shevin*, 407 U.S. 67 (1972) at 80, citing *Armstrong v. Manzo,* 380 U. S. 545, at 552.

The Second Circuit Court of Appeals panel did not provide rationales for its denials of my motions for permission to file an appeal *in forma pauperis* [54], for appointment of *pro bono* counsel [70] and to correct the case caption [76]. Second Circuit Court Judge Henry Friendly set forth, based on his review of U.S. Supreme Court cases, the factors, in order of importance, that a court should consider in determining the existence or lack of Due Process of Law[1]:

1. unbiased tribunal
2. notice of proposed action and grounds asserted for it
3. opportunity to present reasons why action should not occur
4. right to call witnesses
5. right to know opposing evidence
6. right to have decision based exclusively on evidence presented
7. right to counsel
8. making of a record
9. making of a statement of reasons
10. public attendance
11. judicial review

Obviously, this court panel violated, "9," regarding its failure to articulate reasons for the denial of these three motions before then finding that the case should be dismissed. The lack of stated rationales is important, not just because an astute observer

[1] Henry J. Friendly, "Some Kind of Hearing," *University of Pennsylvania Law Review*, Vol. 123, pp. 1267-1317, (1975)

might question whether the decisions were "capricious," but because, as a *pro se* appellant just learning the F.R.A.P., I had just realized that I violated F.R.A.P. 27(a)(B)(i) by failing to provide a copy of Judge Kahn's statement of reasons for [54] and [76] and F.R.A.P. 24(a)(5) requires that motions for permission to file an appeal in *forma pauperis* [54] include the statement of reasons. Moreover, L.R. 24.1 demands a statement of relevant facts and a showing of likely merit for each issue, which I believe violates the Equal Protection of the Laws Clause (see *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). I am not sure whether the court panel's denials are for these procedural reasons or for substantive reasons and, if so, what they are. In *Wolff v. McDonnell*, 418 U.S. 539 (1974) at 565, the U.S. Supreme Court found that the factfinders of a parole hearing had to provide a statement of reasons for their findings. I would argue, *a fortiori*, a panel of U.S. Second Circuit Court of Appeals judges.

The only evidence submiteed in the case are my many sworn affidavits, one affidavit of Craig Sleurs that included copies of what he asserts were the governing town policies regarding automobile impoundment, although as submitted they do not meet the pubic records exception to the hearsay rule. Officer Sleurs' affidavit emphasized facts that his lawyer, Ms. Peck, hoped would establish qualified immunity, but his affidavit where we mention the same facts, confirm each other. A finding of "no basis in fact," means that the court panel of Parker, Chin & Livingston, JJ., found that the facts I asserted were "fanciful" or "imaginary.." Justice Sotomayor made an excellent point when she took the rare action of dissenting from a *per curiam* decision of this court in *Pitre v. Cain*, 09-9515 (2010) in which she argued, in my opinion correctly, "The Fifth Circuit's error in requiring Pitre to produce "evidence" in support of his allegations before

a responsive pleading was filed, in and of itself, is sufficient reason to reverse the judgment below." If I had been allowed to produce evidence to support my complaint as nonfrivoulous – whether it be the amendment of my complaint (which U.S. District Court Judge Kahn refused and determined that any future attempt to amend my complaint would be futile) or with notice to the U.S. Circuit Court of Appeals, I would have done so, even if respondents have not answered the complaint. Parker, Chin and Livingston, JJ., never provided me that opportunity.

Given my affidavits were sworn under penalty of perjury, they have also accused me of perjury. Of course, I don't expect the FBI to break down my door, since the allegation is outrageous, made to dismiss my case as soon as possible. This development is a logical consequence of the abuse of 28 U.S.C. §1915(e) by judges who feel themselves unconstrained by statute, the Bill of Rights to the U.S. Constitution and U.S. Supreme Court precedent.

Pro judicial tip: If the attorneys for the respondents are doing everything in their power not to put their clients, especially the judges, in the position of choosing to confirm my sworn affidavits or make sworn affidavits of their own that would subject them to perjury prosecution, it is a safe bet that the plaintiff making the sworn statements is truthful.

Moreover, U.S. District Court Kahn had already found a basis in law and fact associated with one of the claims. Given JJ. Parker, Chin & Livingston's abuse of 28 U.S.C. §1915(e), plaintiff was denied the level of review that would be required pursuant to the F.R.A.P. (brief and oral hearing) before any Court of Appeals' panel reverses a finding of the U.S. district court judge, the "Law of the Case."

As stated in my affidavit in support of recalling the mandate, approximately [105] on the circuit court of appeals docket, Mara Silver told me the U.S. Supreme Court hates it when the circuit court does not resolve their own procedural problems and that I would be required to exhaust all possible remedies at the Second Circuit Court of Appeals before submitting a petition for a *writ of certiorari*. My motion to recall the mandate was denied by Parker, Chin & Livingston, JJ. on September 24, 2018, and according to my case manager at the U.S. Court of Appeals for the Second Circuit, the very competent Yenni Liu, I have exhausted all remedies at the Second Circuit and now come to the U.S. Supreme Court, with cap in hand, requesting assistance.

REASONS FOR GRANTING THE PETITION

It is important to note that this case was not heard at the Court of Appeals for the Second Circuit. It was cryptically deemed to have "no basis in law or fact." As the U.S. Supreme Court pointed out in *Neitzke v. Williams*, *supra*, just because lower courts have dismissed claims for not stating a claim upon which relief can be granted, *i.e.* no basis in law, does not mean that the U.S. Supreme Court agrees, citing examples, even unanimous reversals, of lower court findings. In this case, the U.S. district court judge already found a basis in fact and law for one of the claims of the complaint before abusing the summary judgment procedure by claiming that Officer Sleurs' impoundment of my automobile on private property of a business owner and friend without a warrant was in exercise of the police officer's "community caretaking function," to insure public safety. No evidence, especially from Officer Sleurs, supports this inference. U.S. District Court Judge Kahn just made it up because it allowed him to avoid considering my motion for interlocutory appeal – which is procedurally more lengthy – than dismissing the claim in its entirety

and allowing me to appeal by right instead of by his and the circuit court's permission.

It is premature to address U.S. District Court Kahn's multitudinous misrepresentations of my affidavits made to support his application of preferred equitable doctrines, *e.g. Rooker-Feldman*, while ignoring Justice Ginsburg's well-reasoned, unanimous decision in *Exxon Mobil v. Saudi Basic Industries*, 544 U.S. 288 (2005), just as it is premature to discuss the applicability of abstention, if U.S. District Court Judge Kahn feels uncomfortable allowing a jury to determine the validity of the judgment, if the Court of Appeals has not expressed its opinion.[2] Regarding abstention, I made U.S. District Court Judge Kahn aware of *Sprint Communicatoins v. Jacobs*, 12-815 (2013). Regarding fabrication of evidence, I made the court aware of *Manuel v. City of Joliet*, 14-9496 (2017). Regarding when the statute of limitations starts to accrues, I made the district court aware of *Heck v. Humphrey*, 512 U.S. 477 (1994). Instead, Judge Kahn insists on citing Eastern District of New York and Rochester City Court cases, as if they have precedential value and constitute *stare decisis* in his district court. Sad but predictable if we put the outcome before the process. I think that is apparent with JJ. Parker., Chin & Livingston's abuse of 28 U.S.C. §1915(e), and I think it is obvious with Judge Kahn's references in his decision and order regarding summary judgment where he placed two notes to his law clerks to find cases, Appendix p. A-17, "collecting cases."

Courts are supposed to be based on inductive not deductive reasoning, *i.e.* going

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[2] Although opposing counsels never addressed the Full Faith and Credit Clause of the U.S. Constitution in this case, I will not "sweep my opponents' chess pieces off the board," to use Justice Ginsburg's expression. The Full Faith and Credit Clause simply requires that federal courts afford the same respect to a judgment that a state court would. Given the evidence of the invalidity of Town Justice Donovan's judgment, I am not sure the Court of Appeals would afford it much weight, assuming I would be allowed to appear before the New York State Court of Appeals. Appeals to the New York Sttae Court of Appeals in cases originating in town court are heard by permission only. By right, my only recourse is to appear before Albany County Court Judge Breslin; nothing just will come from doing so without having relevant federal injunctions in place to insure that he complies with the law in his decision-making. That did not happen with my application for a stay.

from the specific, evidence, to a general conclusion, not where we start with the desired end result – dismissal – and then try to find the cases to support the end result. The fact that U.S. District Court Kahn is citing Rochester City Court cases while I cite U.S. Supreme Court cases, speaks volumes.

If courts are not the way I just described, then the famous quotation of Lavrenti Pavlovich Beria, Stalin's secret police chief, is true, "Show me the man and I'll show you the crime." God help us if that is where we are heading as a society, and we *are* heading this way as a society if the supposed protectors of the citizens' rights associated with the U.S. Constitution, members of our federal judiciary, won't step up and do their job.

Court decisions are also supposed to be based on evidence. I would point out that there is more evidence supporting the allegations against Justice Kavanaugh – sworn statements – than exist against the uncontroverted evidence that the original traffic infraction plea was made two days after receipt of the ticket or to support U.S. District Court Judge Kahn's summary judgment that Town of Bethlehem police officer Craig Sleurs could impound my vehicle because of the police's "community caretaking function" to insure public safety. No evidence, sworn statement or otherwise, supports this conclusion, let alone that the Judge Kahn's conclusion is one of fact that should be determined by a jury, not by the summary judgment of a judge. With summary judgment, Judge Kahn is saying that there is no possible way a reasonable jury would conclude that the automobile impoundment was for any reason other than the police's "community caretaking function" to insure public safety. These shenanigans are what I have had to tolerate over the last four years. Please help.

Given what Mara Silver told me, I think that the proper focus of the U.S. Supreme Court should be on the malfeasances of the Court of Appeals for the Second Circuit panel, Parker, Chin & Livingston, JJ. The circuit court is the court that should address U.S. District Court Kahn's errors, assuming we don't settle the case before then, which, with legal representation and a commitment to addressing all the injuries associated with the case and doing so at a level associated with similar cases as reported in damages reporters, this case will settle quickly.

Attached are Lexis Nexis printouts showing the number of case citations for *Neitzke v Williams*, *supra*, *Coppedge v. U.S.*, *supra*, *Exxon Mobil v. Saudi Basic Industries, supra*, and *Sprint Communications v. Jacobs*, *supra*. Certainly, citations to *Neitzke v. Williams*, 58,014, and *Coppedge v. U.S.*, 16,715, far outstrip citations to *Exxon Mobil v. Saudi Basic Industries*, 6873, and *Sprint Communicatoins v. Jacobs*, 667, (U.S. District Court error). At 58,014 citations, *Nietzke v. Williams*, *supra*, is one of the more cited cases in the federal courts and it is cited regarding application of 28 U.S.C. §1915(e). Dismissing cases for being "frivolous" – many of them prisoner civil rights claims – is not rare in federal practice. What is of interest and of concern is the bloated number of cases citing *Coppedge v. U.S.* in the Second Circuit, 9,480, more than half of all citations of *Coppedge v. U.S.*, *supra*, and well above other circuits including the busier Ninth Circuit, 702. *Coppedge v. United States*, *supra*, would only be cited for one reason, denial of notice and oral hearing in front of the panel of judges considering case dismissal before case dismissal pursuant to 28 U.S.C. §1915(e). I am obviously not the first civil rights plaintiff to experience "Justice: Second Circuit Court Style," and Parker, Chin & Livingston are probably not the only circuit court judges engaging in violating

plaintiffs' Fifth Amendment rights to Due Process by not providing notice and oral hearing in front of the panel before making its decision regarding case dismissal. Also, as you can see from reviewing the attached Lexis Nexis printouts, the fact that over half of the citations of *Coppedge v. United States*, *supra*, are in the Second Circuit is an indication that the Second Circuit is in conflict with other circuits who are not engaging in similar unconstitutional behavior.

I had hoped to do more research into this subject, because at a distance, it disturbs me and would really disturb me if I were Chief Justice Roberts. I called the clerk's office at the Albany courthouse of the U.S. District Court for the Northern District about who maintains the administrative data and if I could get access. The assistant clerk did not know. F.O.I.L: only works for documents and, if you don't know what documents for which to look, you are at a loss.

I also would like to use 2018 technology to develop a crowdfunding campaign to show the court how seriously rank-and-file citizens view the violation of the Fifth Amendment's Due Process Clause through the abuse of 28 U.S.C. §1915, but I have been trying to make a living and would like to build my "tribe" on Facebook so that I would not ask for donations without a warm relationship. Obviously, we could use the funds to pay for the legal representation the court would assign if it accepts this case to be heard.

I would remind the U.S. Supreme Court that regardless of the Judiciary Act of 1988 that permitted the U.S. Supreme Court to hear cases by *certiorari* for the first time in its history, Article III of the U.S. Constitution is still binding; and that section grants plenary jurisdiction for determining matters before the federal courts in law and equity. That is, the U.S. Supreme Court is the court of plenary, default jurisdiction in the federal

courts. It is your responsibility to see that justice in law and equity results from federal court proceedings, regardless of the Judiciary Act of 1988. The lower courts exist to help resolve disputes for you before they end up in the U.S. Supreme Court.

For this reason I want the court to know that if it chooses to hear this case with oral argument and decision, fine. Appoint counsel and I will help where I can, such as getting the crowdfunding campaign going and discussing this problem in our federal courts with ordinary citizens. It is a reasonable and fully acceptable decision to make a *per curiam* decision sending this case back to the circuit for further proceedings where I hope, with the assistance of counsel, we can work out any procedural issues and reverse U.S. District Court Kahn's legal findings that controvert current extant U.S. Supreme Court precedent. What I – and most of my fellow Americans – would not find acceptable is a figurative middle finger from this court, given its responsibilities pursuant to Article III of the U.S. Constitution. As Ms. Silver told me in our phone conversation to try to allay my concern that the U.S. Supreme Court hears only 1% of cases requesting certiorari, the U.S. Supreme Court is a functioning court; whatever relief you can provide with the U.S. Supreme Court's limited resources given the demand for its services, would be most appreciated.

Thank you for your thoughtful consideration to this troubling matter.

CONCLUSION

Based on the foregoing, petitioner respectfully submits that this Petition for Writ of Certiorari should be granted. The Court may wish to consider summary reversal of the decision of the Second Circuit

Court of Appeals to dismiss the case pursuant to 28 U.S.C. §1915(e) to provide for this appeal by right to be heard by the U.S. Court of Appeals of the Second Circuit.

Respectfully submitted,

Dated: 10/16/18

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28 U.S.C. §1746 CERTIFICATION

I mailed first class, postage prepaid, a copy of *Petition for Writ of Certiorari* to both Crystal Peck, Attorney at Law, Bailey, Johnson & Peck, P.C., 5 Pine West PLZ STE 507, Washington AVE Ext, Albany, NY 12205-3107 and Jonathan Hitsous, Assistant Attorney General, State of New York, Office of the Attorney General, State Capitol, Albany, NY 12224-0341 on 10/16/18.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on: 10/16/18

/s/

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