

No. \_\_\_\_\_

**In the  
Supreme Court of the United States**

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HUBERT THOMPSON,

Petitioner,

v.

JAMES C. ROVELLA, Chief of Police, City of  
Hartford, In His Official Capacity, ANTHONY  
KOZIERADZKI, TUYEN BERGENHOLTZ,  
Officer, City of Hartford, In Her Individual and  
Official Capacities,

Respondents.

**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Second Circuit**

**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether the statutory requirement that the petitioner show his criminal case was dismissed based on innocence or grounds consistent with innocence as a condition for compensation for wrongful incarceration equitably tolled the petitioner's civil rights claims against the city and its arresting officers, during the pendency of the wrongful incarceration claim, when state authorities in the compensation claim relied on the same prosecuting authority who presented the officers as witnesses at trial to confirm or deny that the dismissal was based on innocence or a grounds consistent with innocence.

## **PARTIES TO THE PROCEEDING**

Petitioner Hubert Thompson is an adult resident of Connecticut who was the plaintiff in the district court and plaintiff-appellant in the court of appeals.

Respondents are the City of Hartford, James Rovella in his official capacity, Anthony Kozieradzki, and Tuyen Bergholtz, Officer, City of Hartford, in her individual and official capacities. Respondents were defendants in the district court and defendants-appellants in the court of appeals.

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## **PETITION FOR A WRIT OF CERTIORARI**

Mr. Thompson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

## **OPINIONS BELOW**

The decision of the United States Court of Appeals for the Second Circuit is reproduced in the Appendix (App.). App. 1. The underlying decision of the United States Court of Appeals for the Second Circuit is reproduced in the Appendix. App. 15.

## **JURISDICTION**

The appellate court issued a summary order on May 30, 2018, affirming the district court's dismissal of petitioner's complaint for lack of subject matter jurisdiction. Petitioner filed a timely motion for panel rehearing, or, in the alternate, for rehearing *en banc* which the appellate court denied on July 18, 2018. On

October 11, 2018, Justice Ginsberg extended the time for filing this petition to and including December 17, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fourth Amendment and the Fourteenth Amendment to the United States Constitution through 42 U.S.C. § 1983 are involved in this proceeding. The Connecticut Wrongful Incarceration Compensation Statute (Rev. 2017), its implementing public act, and a 2016 amendment are reproduced in the Appendix at App. 48, App. 52, and App. 55, respectively.

### **INTRODUCTION**

Petitioner was convicted of heinous and violent sexual crimes that he did not commit. He was sentenced to twelve-years' incarceration in state

prison, a portion of which he served from December 12, 2007, until March 12, 2012, when he was released. All charges against petitioner were dismissed on July 19, 2012, based on DNA evidence.

Petitioner's post-conviction attorney, William T. Koch, submitted a claim on petitioner's behalf to the Office of the Claims Commissioner ("Claims Commissioner") on August 3, 2012, for compensation pursuant to Connecticut General Statutes § 54-102uu, claiming wrongful incarceration. The Office of the Attorney General provided notice to Attorney Koch on January 2, 2014, that Connecticut would not contest petitioner's innocence. Petitioner was compensated pursuant to § 54-102uu in 2014 for damages arising from his wrongful incarceration.

Petitioner filed a complaint in the district court on November 25, 2015, alleging Fourth Amendment



unreasonable seizure and Fourteenth Amendment due process claims against the City of Hartford and officers of the Hartford Police Department pursuant to 42 U.S.C. § 1983. The district court dismissed the complaint on February 14, 2017, as time-barred absent equitable tolling holding that a § 1983 claim brought after July 19, 2015, exceeded Connecticut's three-year statute of limitations for tort actions.

The complaint fails to plead facts indicating an extraordinary circumstance prevented Plaintiff from timely filing this case, as he was capable of filing another case within the requisite statute of limitations period. The Court recognizes the grave injustice suffered by the Plaintiff; however, two wrongs do not make a right and the injustice does not justify equitable tolling of a statute of limitations. The Court holds that equitable tolling is not applicable in this limited circumstance.

App. 46. The appellate court affirmed.

## STATEMENT OF THE CASE

### A. Factual Background

Petitioner pleaded not guilty to one count of kidnapping in the first degree, one count of sexual assault in the first degree, and one count of attempt to commit sexual assault in the first degree at the commencement of trial on October 1, 1998, in state court. The criminal trial for three felonies having a combined maximum period of incarceration of sixty-five-years lasted two days and consisted of five witnesses and five exhibits offered by the prosecution.

Petitioner filed a state petition for habeas corpus in 2010 after his post-conviction appeals exhausted when the Connecticut supreme court denied his petition for certiorari, *State v. Thompson*, 294 Conn. 932 (2010).

Petitioner's attorney in the habeas matter, Attorney Koch, reviewed a July 28, 1995, state laboratory report related to the examination of "Jane Doe" ("Doe") at Saint Francis Hospital on September 23, 1994. Doe had testified at trial as the victim and sole eye-witness. The state laboratory informed Attorney Koch that the "rape kit" and the items seized, including the purple underwear taken from Doe at the hospital, had been returned to the Hartford Police Department (HPD). Attorney Koch visited the HPD on January 4, 2011, and discovered that the "rape kit" had been stored with the "old evidence" in a trailer parked behind the department's headquarters.

The state court where petitioner was sentenced on November 20, 1998, granted a petition for DNA testing in 2011. The DNA found on the "old evidence" at the HPD confirmed that the DNA matched a known

felon who lived near Doe and had similar build, complexion, and facial features to the petitioner. Petitioner was released from incarceration on March 12, 2012, and a new trial ordered. All charges against petitioner were dismissed on July 19, 2012.

### **B. Procedural Background**

Petitioner filed a claim with the Claims Commissioner for compensation pursuant to § 54-102uu on August 3, 2012, for wrongful incarceration from December 12, 2007, through March 12, 2012. The Office of the Attorney General provided notice to petitioner on January 2, 2014, that Connecticut would not contest petitioner's innocence. Petitioner was compensated for losses awarded under § 54-102uu in 2014. App. 52.

In 2012, when petitioner was exonerated, subsection (a) of § 54-102uu provided:

A person is eligible to receive compensation for wrongful incarceration if: (1) Such person has been convicted by this state of one or more crimes, of which the person was innocent, and has been sentenced to a term of imprisonment for such crime or crimes and has served all or part of such sentence; and (2) Such person's conviction was vacated or reversed and the complaint or information dismissed on grounds of innocence, or the complaint or information dismissed on a ground consistent with innocence.

App. 52. Petitioner pleaded not guilty when he was arraigned in 1995 and until he was convicted after a bench trial, he was presumed innocent. Based on the court's finding of guilt and his conviction petitioner was incarcerated in state prison from December 12, 2007, until March 12, 2012.

In 2012, Connecticut's wrongful incarceration statute required innocence or a ground consistent with innocence as a condition for compensation. App. 52. The statute's sole amendment in No. 16-127, § 29,

of the 2016 Public Acts dispensed with the innocence requirement. Petitioner could not have received compensation in 2014 under the statute but for a finding that his conviction was dismissed on grounds of innocence or a ground consistent with innocence.

When petitioner's case was dismissed on July 19, 2012, the state court did not find him innocent. The State of Connecticut did not withdraw its opposition to petitioner's innocence until January 2, 2014. In a letter dated January 2, 2014, an assistant attorney general for the State of Connecticut provided notice to petitioner's counsel of the prosecution's grounds for the July 19, 2012, dismissal:

As promised at our recent status conference, I have discussed the circumstances of the dismissal of Mr. Thompson's criminal case with the pertinent prosecutors. It is the opinion of the State's Attorneys Office that the dismissal was 'consistent with Mr. Thompson's innocence.' Accordingly,

the State will not be contesting that aspect of this case.

## **REASON FOR GRANTING THE PETITION**

### **Petitioner's § 1983 Claims Equitably Tolled Until January 2, 2014, While His Wrongful Incarceration Compensation Claim Was Pending**

In 2014, § 54-102uu(a)(2) conditioned compensation for wrongful incarceration on the occurrence of three events in the criminal proceedings: (1) Conviction reversed or vacated; (2) Criminal complaint or information dismissed; and (3) Grounds for dismissal as innocence or a ground consistent with innocence. App. 52. All three events occurred in petitioner's case on separate dates. Petitioner's convictions were reversed or vacated on March 12, 2012, when he was released from incarceration and a new trial was ordered. The criminal complaint against petitioner was dismissed on July 19, 2012. The

prosecution provided notice of its grounds for the dismissal on January 2, 2014, in a letter sent by the assistant attorney general to petitioner's counsel. The assistant attorney general, who did not prosecute the criminal case, needed the prosecution's opinion of the grounds for the dismissal. If the prosecution had stated the grounds for the dismissal on July 19, 2012, as innocence or a ground consistent with innocence at the same time as the dismissal then the three events in the criminal proceedings required to compensate petitioner for wrongful incarceration would have concluded on July 19, 2012. However, the prosecution left one aspect of the proceeding open and that aspect was a statement of the grounds for the dismissal. This missing aspect required that the assistant attorney general return to the prosecution for an opinion related to the July 19, 2012, proceedings and that



opinion was made known to petitioner in a January 2, 2014, letter.

Petitioner's pursuit of compensation for wrongful incarceration required that the prosecution review his case and render an opinion stating the grounds for dismissal.

In equity, the statute of limitations could not have commenced while petitioner was dependent on an opinion from the prosecution that the dismissal was based on innocence or a ground consistent with innocence. A reasonable person would be chilled from filing a civil rights action against the HPD while waiting for an opinion from the prosecution whose office had tried the criminal case using HPD officers as witnesses when the prosecution's statement regarding the grounds for the dismissal could mean the difference between receiving compensation in a

timely manner upon an agreement or not receiving compensation at all in the absence of meeting the difficult burden of proving that the prosecuting authority acquiesced to dismissal of the case based on innocence or a ground consistent with innocence.

From the dismissal date of July 19, 2012, petitioner had two years until July 19, 2014, to file for wrongful incarceration compensation pursuant to § 54-102uu(f). The July 19, 2012, dismissal could have been granted due to many factors other than innocence or a ground consistent with innocence but when petitioner filed his claim for wrongful incarceration he needed to meet the burden of proving that the criminal action was dismissed based on innocence or a ground consistent with innocence. The prosecution was the direct, reliable means for petitioner to receive compensation in a timely manner

or in any manner at all.

The extraordinary circumstance of wrongful incarceration and the conflict between (1) petitioner's reliance on the prosecution's favorable opinion of innocence in pursuing a wrongful incarceration claim between 2008 and 2016 and (2) commencing the statute of limitations for civil rights claims against officers who conducted the investigation for the prosecution case and testified at trial required equitable tolling of the case from the date petitioner filed his wrongful incarceration claim on August 2, 2012, until January 2, 2014, when petitioner obtained the opinion of the prosecution and the conflict no longer remained.

Petitioner's diligent pursuit of his rights took account of the conflict between (1) and (2) in the foregoing paragraph. Diligence required assurance of

compensation under the wrongful incarceration statute and patience in filing the civil rights action until the role of the prosecution in the wrongful incarceration case concluded. During the period of this conflict between August 3, 2012, when the wrongful incarceration claim was filed and January 2, 2014, when the prosecutor stated the grounds for the dismissal, the statute of limitations equitably tolled. When the conflict resolved the statute of limitations recommenced. Excluding the period of August 2, 2012, through January 2, 2014, Thompson filed his civil rights claims within the 3-year statute of limitations.

### **CONCLUSION**

No individual in petitioner's position between August 2, 2012, and January 4, 2014, would have filed civil rights claims against the city and its arresting officers who testified at trial for the prosecution

during the pendency of a wrongful incarceration compensation claim that relied on the prosecution to render a statement regarding the reason for the dismissal when compensation was only permitted if the dismissal was based on innocence or grounds consistent with innocence. For this reason, the period between August 2, 2012, and January 2, 2014, are subject to equitable tolling for petitioner's civil rights claims.

For all these reasons stated above, the petitioner respectfully requests that this Court grant his writ of certiorari.

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