18-9222

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Owen Harriot — PETITIONER/Pro-Se
(Your Name)

vs.

F.B.I. Robert Waizenhofer — RESPONDENT(S)
(non appealing party)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Owen Harriot / Pro Se
(Your Name)

Federal Correctional Institution,
FCI Estill, P.O. BOX 699
(Address)

Estill, South Carolina, 29918-0699
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

This case presents two issues: Whether the Court of Appeals exceeded its authority, on its own initiative to affirm a judgment as time barred, once the District Court's final decision has sua sponte answered the complaint without adjudicating the statute of limitations defense on the merits. see 28 U.S.C. 1291, Fed.R.Civ. P. 8(c)(1); see, Day v. McDonough, 547 U.S. 198 (2006) ("Of course, before acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their position") see e.g. McMillian v. Jarvis, 332 F.3d 244,250 (4th Cir. 2003). And if so,

What is the appropriate remedy for a McLaughlin violation ?

See Powell v. Nevada, 511 U.S. 79 (1994) (The Court would express no opinion on the issue as to (a) the appropriate remedy for delay in determining proable cause); United States v. Fullerton, 187 F.3d 587,592, (6th Cir. 1999) (Fullerton may follow the lead of numerous other victims of a McLaughlin violation and file a Bivens Claim"); Luck v. Rovenstine, 168 F.3d 323,326 (7th Cir. 1998); Wayland v. City of Springdale, 933 F.3d 668 (8th Cir. 1991); City of Garden City, 991 F.2d 1473,1481 (9th Cir. 1992); Wilson v. Montana, 715 F.3d 847,854 (10th Cir. 2013); United States v. Pabon, 871 f.3d 164,179 (2nd Cir. 2017), and conflicted Harriot v. Waizenhofer, 743 Fed. App. 540 (4th Cir. 2018)(Statute of limitation); Powell v Nevada, 511 U.S. 79 (1994)(McLaughlin is retroactively apply).

LIST OF PARTIES

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

[X] 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:

1, Former, AUSA, Scarlett Wilson

2, Attorney, Herbert Louthian, esq.

3, Attorney, Nathaniel Roberson

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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

[X] reported at 743 Fed. Appx. 540, (4th Cir. 2018); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[X] reported at 2018 U.S. Dist. Lexis 66034 / 65798; 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 _____ 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 appears at Appendix _____ 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 November, 30, 2018.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February, 11, 2019, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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

Fourth Amendment

Federal Rule of Criminal Procedure r.5, initial appearance -

Bail Reform Act and 5(b) (arrest witout warrant)

Fed. R. Crim. P. 5(a) - "Appearance Upon an Arrest".

Fed. R. Crim. P. 5(d) - Requiring that the Magistrate Judge informed a defendant charged with a felony of "the Complaint against him."

STATEMENT OF THE CASE

A. The pertinent of this case presents facts which implicates an " egregious Fourth Amendment " concern, which " shocks the conscious ", and a question of " first impression ", as neither no lower court, nor this Supreme Court had ever considered a situation where an " Administration Steps Fourth Amendment Judicial determination of proable cause following an arrest witout a warrant delay hidden for 19 years and still ongoing without legal process ". However, the flexibility inherent in equitable procedures enable courts like this Court to meet new situations [that] demand equitable intervention, and to accord all the necessary to correct the particular injustices. See, Holland v. Florida, 560 U.S. 631 (2010).

B. This is not a case of a Petitioner who has slept on his rights and for almost two decades later seeks relief from his indolence; instead, this is a case where the " injury Victim " is a Jamaican citizen that did not know, federal law at all to help him self. Yet, the defendants' " carefully plotted a scheme " to not take him before the Magistrate Judge for a judicial determination of proable cause following his arrest " without legal process " but disguised the truth from Petitioner, and as a result defile(s)[1*] the Courts in the mixed.

C. Once imputed with this knowledge, in early February of 2018, Petitioner acted on February 23, 2018, proceeding pro se and in forma pauperis under 28 U.S.C. § 1915, and § 1915 (A), alleged a " single count Bivens v. Six Unknamed Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)...

[1*] Notably, On August, 13,2018, the Petitioner filed in the District Court a petition for fraud upon the court which is still pending. Also Notably, on July, 29, 1999, " within 120 hours " the Clerk of Court entered on the dockett sheet a preliminary hearing based upon Waizenhofer's fabricated complaint for proable cause, and not for a judicial determination of proable cause within 48 hours following Petitioner's arrest without a warrant on July, 24, 1999, which was scheduled at 10:00 A.M. Monday, July, 26, 1999.

Action against the defendants then attorneys[2*], Louthian, Roberson, FBI Waizenhofer, AUSA Wilson, (collectively defendants) in their individual capacity and others unknown conspired to, and did " deliberately concealed the Petitioner's arrest without a warrant from the Magistrate " in deprivation of Petitioner's Fourth Amendment rights and at the time clearly established law in County of Riverside v. McLaughlin, 500 U.S. 44 at 56 (1991):(A jurisdiction must provide a judicial determination of proable cause within 48 hours of warrantless arrest). Petitioner seeks monetary damages and injunctive relief. See appendix B (Magistrate report pg. 2); see, Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555, (2007): see also, Fed.R.Civ.P. rule 8 (a)(2): Bivens, Id.

D. Here Petitioner's pro se complaint simply alleged, the defendant's covered up the Petitioner's arrest without a warrant for an ongoing 19 years from both the Magistrate and courts, to ensure he does not receive a judicial determination of proable cause within 48 hours or years by the Magistrate, to which he had been subjected, violated the statutory provisions of Fed.R.Crim.P. rule 5, along with the Petitioner's Fourth Amendment rights and the mandate in McLaughlin concerning the 48 hour delay rule without casual break and continued throughout July, 26,1999, initial appearance[3*], trial proceedings, the Bivens lawsuit filed on February, 23, 2018, and up until this day here, as a standing of case of controversy for a Writ of Certiorari review. Plainly, Petitioner will suffer " irreparable damages and wrong " if his McLaughlin Fourth Amendment violation continues to go unanswered without being redressed through injunctive relief.

E. Petitioner suffers continuously from personal injury traceable to the defendants' ...

2* Petitioner could not pursue his right diligently because the court appointed attorney acted under the color of federal law, conspired with FBI Waizenhofer and AUSA Wilson. First, Louthian's Sixth Amendment was attached before a criminal complaint filed; second, trial attorney, Roberson abandoned Petitioner's 4th Amend. rights to joined the scheme to in furtherance the conspiracy and , third, the appellate counsel filed a Anders Brief, effectively conceding the appeals lack meritorious claim and that extraod..circumstances prevented Petitioner from filing not only a timely cause of action but also prevented him from filing (1) an arrest without a warrant lacked proable ; (2), suppression of evidence under the 4th Amend.(continued)

McLaughlin Fourth Amendment violation is to be free from " unreasonable delay " and is likely to be redressed by either or both Prayer request injunctive relief. see McLaughlin, 550 U.S. at 51; Allan v. Wright, 468 U.S. 737,751 (1984), or by a favorably [Supreme Court] decision. see Lujan v. Defenders of Wildlife, 504 U.S. 555,560 (1992), (The core component of standing is essential and unchanging part of the case of controversy requirement of Article III).

F. And that Petitioner had suffered a direct and current injury as a result of the [lower courts and] defendants' failure to answer the Mclaughlin 48 hour violation burden now amount to 19 years ongoing. The Petitioner's injury continiues to worsen each ticks of the McLaughlin's clock until he receives a long overdue judicial determination of proable cause to which he was entitled to. See, Gerstein v. Pugh, 420 U.S. 103, 113-114, (1975),(A person arrested without a warrant " must " be brought before a neutral Magistrate promptly).

G. Reviewing the complaint on its face pursuant to 1915 and 1915 (A), screening stage when long standing practice is to construe pro se liberally and factual allegations must be accepted as true, in favor of the plaintiff. The Magistrate Judge entered a report and recommendation (R.& R.) in which she recommends that Petitioner was in fact indigent but recommend that the district Judge dismiss the complaint in this case without prejudice and without issueance and service process, without at the very least, hear and determine the Petitioner's single count Biven's claim on the merits.

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* Which includes fingerprints and statements as the fruit of the poisionous tree, that warrants equitable tolling. See Holland, 560 U.S. at 651-52 (2010), Glus, 359 U.S. 231, 232-33 (1959)

3* What should have been an " Initial Appearance Hearing " and Bail Reform Act on July, 26, 1999, at 10:00 A.M. before Magistrate Judge Bristow Merchant pursuant to Fed.R.Crim.P. rul 5, rather, it turns out to be a document admissible with Waizenhofer's filing of a criminal complaint, case no. (3:99-MS-00481-BM-7), under Fed.R.Crim.P. rule 3, see appendix D (complaint document filed 7/26/99). Support Petitioner's factual allegation that, defendant's Waizenhofer had no facially valid arrest warrant on July, 24, 1999, nor proable cause to detain Petitioner. (Correction as to the case number, the actual number is 3:99-MJ-00481-BM-1)

H. In other words, in evaluating whether the delay in this case was [un] reasonable, the Magistrate's suppress to hear and determine" how long the delay was from the arrest without a warrant [Fourth Amendment Rights] until a judicial determination of proable cause [McLaughlin 48 hour delay] ended. see 28 U.S.C. § 636 (b)(1)(B): see appendix B. Nevertheless, the Magistrate accepted Petitioner's factual allegations as true, but recommended that the defendants' (1), Prosecutorial immunity, (Wilson), (2), Summary dismissal, defense attorney's (Louthian and Roberson), and, (3), Heck bars Plaintiff's claim (Waizenhofer) see case no. 3:18-540-JFA-SVH. Based upon the facts in the records, the Magistrate's four-page summary R & R, she did not conclude nor recommend to the district judge that the Petitioner's complaint on its face is time barred by the statute of limitations. see appendix B, (Magistrate's report at pages 1-4)

I. The District Court Judge concluded that " after carefully reviewing the applicable laws, the record in this case, as well as the Magistrate's report, this court finds the Magistrate's recommendation fairly and accurately summarize the facts and applies the correct principles of law. Therefore, the Plaintiff's complaint is dismissed witout prejudice and without issueance and service process. See case no. 3:18-540-JFA-SVA. " After carefully reviewing the applicable laws ", the District Court Judge's five-page summary opinion, he did not apply nor barrows the S.C. Code Ann. § 15-3-530 (5), (2005) applicable three year statute of limitations. see appendix B (District Court Judge's opinion at pg. 1-5)

J. On appeal, because the district court Judge dismissed the Plaintiff's complaint without issueance and service of process, Petitioner was left as the sole party to present matters before the court of appeals. Petitioner in May of 2018, timely filed his informal brief, and presented four below preserved questions passed upon by the district court:(1) Whether Wilson is entitled to absolute immunity when she engaged in acts of being a reviewing witness, then allowed Waizenhofer to initiate fabricated evidence supporting application for arrest warrant only to prevent

Appellant's warrantless arrest procedure from the Magistrate. see appendix D. Whether the district court's de-nova review so lacking to reviewed the fact and exhibits of the attorney's actions, Appellant's outlined in his memorandum of law to support F,G,H, and I; (3), Whether Heck barred Waizenhofer from McLaughlin's progeny ongoing detention where the officers fabricated evidence to cover up or conceal the Appellant a fair and reliable proable cause; and (4), Whether the district court erred for failure to address Appellant's injunctive relief. Here, apparently there was nothing in the district court's order in which he barrows the S.C. Code Ann. § 15-3-530 to make the Petitioner's challenges the complaint on its face for timeliness and equitable tolling. See, Johnson v. Ry. Express Agency, 421 U.S. 454 at 463-64 (1975). (The court held that federal court borrowing state statute of limitations must also barrow state tolling provisions.

K. Notably, on November, 29, 2018, the same Magistrate Judge in case no. 3:18-3164-JFA-SVH, sets the table straight with the statute of limitations defense and apparently, this is how it look like in the record. See appendix B, and E, (Magistrate's R. & R, pg.5-6). Next day on November, 30, 2018, on appeal, the United States Court of Appeals for the Fourth Circuit, in affirm the judgment on its own initiative relied on the applicable three year statute of limitations . S.C. Code Ann. § 15-3-530 (5),(2005), See 4th Cir. R. 34 (b), see appendix A (743 Fed.Appx. 540, 4th Cir. 2018). As discussed above and the district court's opinion submit, clearly refute the court of appeals invoked statute of limitation defense. Therefore, this supreme Court should vacate and reverse the unfounded Court of Appeals affirmed judgment and bring this ongoing McLaughlin's egregious Fourth Amendment wrong to be resolute.

4* The Magistrate and the District Court Judge inadvertantly erred applying 42 U.S.C. § 1983 standard, rather than the correct applicable Bivens standard. See appendix B, and A, see Fed.R.Civ. P. 72 (b)(3).

Thus to determine the beginning of the limitation period in this case, the Court of Appeals must determine when Petitioner's McLaughlin's violation or 48 hours delay came to an end. See , Wallace v. Kato, 549 U.S. 384, 389 (2007). Both lower Courts failed to do so.

L. Further, under the " party presentation principle an appellate court may not alter a judgment to benefit nonappealing party ". see Greenlaw v. United States, 554 U.S. 237, 243-247, (2008), (holding that in the absence of a government, in this case defendants cross appeal, an appeal court may not sua sponte correct a district court error if the correction would be to the [defendants] in this case Petitioner's detriments. Here nothing in the distric courts final decision clearly reflects the Court of Appeals correctly affirm the district court's judgment. See appendix B. Because the Court of Appeals on its own initiative invoked the statute of limitations defense, which is refuted by the district court's order and in conflict with Greenlaw, ID. " An appellate may not alter a judgment to benefit nonappealing party. Wherefore, this Court must vacate and reverse the Court of Appeals judgment for exceeded it authority. 28 U.S.C. § 1291.

Finally, the Court's of Appeals offered no reason for the defendant's ongoing 19 years delay other than the statute of limitation without barrowing the state equitable tolling provision, or discovery rule. See Espstain v. Brown, 363 S.C. 372,376, 610 S.Ed. 2d 816, 818 (2005) (South Carolina applies the discovery rule.)

5* On April,1,2018, the indigent Petitioner completed a pre-paid 20% payment cost of $505.00, not for a perfect review but at least for a fair one. Because the Court of Appeals on its own initiative, invoked the statute of limitations, the panels reviewed as a result were significantly prejudicial and a grave miscarriage of justice by exceeded its own authority and ignored the authority 28 U.S.C. § 1291 statute granted by Congress, only district court's final decision for review.

REASONS FOR GRANTING THE PETITION

Historically, in Gerstein v. Pugh, 420 U.S. 103,114, (1975), this Supreme Court held that the Fourth Amendment requires a prompt judicial determination of proable cause following a arrest made without a warrant and ensuing detention. County of Riverside v. McLaughlin, 500 U.S. 44, (1991), establishes that " prompt " generally means within 48 hours of warrantless arrest, absent extraordinary circumstances, a longer delay violates the Fourth Amendment. See, Powell v. Nevada, 511 U.S. 79,80(1994): see also; United States v. Van Metre, 150 F.3d 339,347 (4th Cir. 1998), (Fourth Circuit then held that a detention of more than 48 hours without a judicial determination of proable cause is presumed unconstitutional, unless the state can demonstrate the existence of a bonafide emergency or other extraordinary circumstances, 500 U.S. at 56-57). In this case now before the Court, the Defendant's had not met their burdens of proof to justify the delay of 19 years ongoing as a result the defendant's violates clearly established historical laws and the Fourth Amendment rights - redressable under Bivens. Accordingly, reasons for granting the petition is satisfied.

Another reasons for granting the petition, the Supreme Court need look no further than the maxim that "no man may take advantage of his own wrong." Glus, 359 U.S. 231, 232-33 (1959).

CONCLUSION

Because Petitioner was never provided with an initial determination of proable cause which continues for 19 years, any more longer delay will be a grave miscarriage of justice.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Owen Harriot

Date: April 29, 2019