

19-5371 ORIGINAL
No. _____

In the
Supreme Court of the United States

**EMERGENCY PETITION FOR WRIT OF
MANDAMUS**

FILED
APR 26 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

The Supreme Court Ruled Against 100% of
Forfeiture of Excessive Fines is Un-Constitutional on the
Behalf of *Tyson Timbs*
"Tyson Timbs VS Indiana"
586 U.S. (more)
139 S. Ct. 682; 203 L. Ed. 2d 11

Supreme Court Over Ruled:
The Eighth Amendment Excessive Fines Clause
Is incorporated Protection Applicable to the
States Pursuant to the Fourth Amendment's
Due Process Clause.

MISCARRIAGE OF JUSTICE
HONORABLE JUDGE ELLIS
REFUSE THE SUPREME COURT ORDER FOR
A "HOMELESS PETITIONER"
AND DENIED HER IN FORMA PAUPERIS

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QUESTION PRESENTED

Under this Court's precedent in *Mary Capri Vs. US Attorney Financial Litigation Unit. The Petitioner was Released from Probation in 4/2016 WITHOUT Violations*, from her Mail Fraud Charges in 2/2005. Still Homeless, Since 4/2013 Living Between The Hased House in Aurora, Il and PADS Homeless Sites Assisted by Churches. Living on the Streets for 4 Years Without Community Ties.

Apartment from 5/2017-7/2018 lease was up and did not have moving funds for another apartment.

Waiting Anxiously for her Tax Refund Prepared by Liberty Tax Services, of Aurora Illinois. 100% of the Refund was forfeited. Leaving Mary Without Enough Funds to Obtain Another Apartment.

Supreme Court Rulings;

The Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States pursuant to the Fourteenth Amendment's Due Process Clause

Was Denied for Mary Capri, as the Judgment States,

"Capri should raise any issues she has with her supervised release before the judges assigned to her criminal case. See Capri v. Zammuto, No. 13 C 8666, Doc. 19 (N.D. Ill. Sept. 16, 2014) (dismissing case brought by Capri raising questions about her criminal conviction and the manner of her supervision, noting that she could not challenge the validity of her convictions in a separate civil suit and should raise issues with her supervision before the judges overseeing her supervision). Because amendment would be futile, the Court

dismisses Capri's complaint with prejudice, denies her motion to proceed IFP, and denies any remaining pending motions as moot.etal

ALSO STATED.....

.... "She cannot now, many years later, raise issues with the restitution order in a civil proceeding against the US Attorney's Financial Litigation Unit. Nor could she pursue a claim under

28 U.S.C. § 2255 to challenge the restitution component of her sentence or use a writ of coram nobis to do so....etal”

Can the District Court Deny to Abide with the Supreme Court rulings on Restitution?

Is this Considered a Miscarriage of Justice?

PARTIES TO THE PROCEEDING

Mary Capri, Pro Se Petitioner

Honorable Judge Ellis, Northern District of Illinois

US Dept. of Financial Litigation

TABLE OF CONTENTS

QUESTION PRESENTED	2
PARTIES TO THE PROCEEDINGS	3
TABLE OF CONTENTS.....	4
TABLE OF AUTHORITIES	5
PRELIMINARY STATEMENT	P7
JUDICIAL ORDER BELOW	P8
JURISDICTION	P8
CONSTITUTIONAL AND STATUTORY PROVISIONS	P8
STATEMENT OF THE CASE	P9
I. THE NORTHERN DISTRICT OF ILLINOIS JUDGEMENT RULING	
II. THE FEDERAL ACTION	P10
A. The Northern District of Illinois Court Refused to Abbey by Supreme Court Ruling.....	P10
STANDARD OF REVIEW	P11
ARGUMENT	P12
I. IF THE PETITIONER WILL 'NOT' BE INDIGENT IN THE 'FUTURE' DISQUALIFY'S HER, EVENIF SHE'S STILL HOMELESS TODAY? FEDERAL QUESTION	
II. THERE ARE NO OTHER ADEQUATE MEANS TO OBTAIN THE RELIEF APPLICANTS SEEK	

- A. The District Court Ruled WITH PREJUDICE and demanded that Mary Capri could Never Appeal Judge Ellis Decision.
- B. The District Court's Refusal Took Months and Left Petitioner Mary Capri, Sleeping in Shelters and/or her Car throughout the Winter' Months

CONCLUSIONP15

APPENDIX:

United States District Court for the Northern
District of Illinois Order, entered
February, 2019 A1

TABLE OF AUTHORITIES

CASE(S)

“Tyson Timbs Vs Indiana” 586 U.S. ____ (*more*) 139 S. Ct. 682; 203 L. Ed. 2d 11

Barron v. Baltimore, 32 U.S. (7 Pet.) 243 (1833)

Austin v. United States, 509 U.S. 602 (1993), was a case in which the Supreme Court of the United States held that the Eighth Amendment to the United States Constitution applies to civil forfeiture cases.¹¹

United States v. Bajakajian, 524 U.S. 321 (1998)

STATUTES

U.S. Const. art. I, § 4.....
28 U.S.C. § 1651
28 U.S.C. § 2284(a)

OTHER AUTHORITIES

SCOTUS Cracks Down on Civil Asset Forfeiture | National Review

<https://www.nationalreview.com/news/scotus-cracks-down-on-civil-asset-forfeiture/>

Feb 20, 2019 - Tyson's property was seized via civil asset forfeiture, which allows the ... Civil-liberties advocates celebrated the ruling as a *reversal* of a trend in ...

Walker, Sheriffs Announce Justice Department Reversal on Asset ...

<https://walker.house.gov/.../walker-sheriffs-announce-justice-department-reversal-asset...>

Mar 28, 2016 - The DOJ's reversal comes after months of questioning from Walker's office. ... "The release of federal *forfeiture* funds back to local law ...

Trump Just Resurrected the Ugly Practice Known as Civil Forfeiture for ...

<https://www.thestreet.com › Personal Finance>

Jul 21, 2017 - Civil *asset* forfeiture is the latest dangerous from the Trump ... even without a criminal charge, *reversing* an Obama administration rule prompted ...

PRELIMINARY STATEMENT

Federal Question: Can The District Court Over Rule the US Supreme Court Rulings in the Same Case Studies, Do they Have an Option to NOT to Abide by and Order of an Indigent Person because the WON'T BE INDIGENT IN THE FUTURE? Judge Ellis Felt that NO One Else has Done Anything about my Situation, So Why should She?.....
Stating,

"Capri should raise any issues she has with her supervised release before the judges assigned to her criminal case. See Capri v. Zammuto, No. 13 C 8666, Doc. 19 (N.D. Ill. Sept. 16, 2014) (dismissing case brought by Capri raising questions about her criminal conviction and the manner of her supervision, noting that she could not challenge the validity of her convictions in a separate civil suit and should raise issues with her supervision before the judges overseeing her supervision). Because amendment would be futile, the Court

dismisses Capri's complaint with prejudice, denies her motion to proceed IFP, and denies any remaining pending motions as moot.etal

ALSO STATED.....

.... "She cannot now, many years later, raise issues with the restitution order in a civil proceeding against the US Attorney's Financial Litigation Unit. Nor could she pursue a claim under 28 U.S.C. § 2255 to challenge the restitution component of her sentence or use a writ of coram nobis to do so....etal"

JUDICIAL ORDER BELOW

The Feb 25 2019 Order—in which the District Court, Honorable Judge Ellis District Judge, denied a Petition feeling that Mary Capri was Not Indigent Enough, and No One Else has Bothered to Do anything so why should she?

dismisses Capri's complaint with prejudice, denies her motion to proceed IFP, and denies any remaining pending motions as moot.etal

ALSO STATED.....

.... "She cannot now, many years later, raise issues with the restitution order in a civil proceeding against the US Attorney's Financial Litigation Unit. Nor could she pursue a claim under 28 U.S.C. § 2255 to challenge the restitution component of her sentence or use a writ of coram nobis to do so....etal"

JURISDICTION

This Court has jurisdiction to grant a writ of Mandamus. *See* 28 U.S.C. § 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

U.S. Const. art. I, § 4.

- a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
- (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.
28 U.S.C. § 1651.

STATEMENT OF THE CASE

I. THE NORTHERN DISTRICT OF ILLINOIS REFUSED TO ABIDE BY US CONSTITUTION RULING.

A. The Commencement of the US Supreme Court Ruling.

On Feb 5th 2005, Mary Capri was Sentenced for Mail Fraud case 03cr300-1 for Mail Fraud, as a Licensed Insurance Agent, mailing a Insurance Binder to the Beneficiary bank, on a suspected LOAN Fraud Case, of an Historical Fraudulent INSURANCE APPLICATION. Mary Capri was Charged with Mail Fraud While on Release, 05cr202 Sentencing her with a 8 year Violation on Top of her 3 Year Mail Fraud Sentencing.

Mary Capri was incarcerated 111months. Case Now being reviewed by the US Court of Federal Claims INJUNCTIONS, and the Pardon of Attorney (pending) Due to NO Grand Jury Members Selected, Creating a False and Fraudulent Indictment, by Dating them 1.5yrs to 2yrs Prior to the Actual Date of Offense, (as a Future Crime Waiting to Happen).

Mary Capri was Then Denied "Second Chance law" Whereas Recently released are given Halfway Housing with Jobs, Mary Capri had the Walk the Streets Alone without Family or Community Ties, after so many years had gone by.

Mary Capri Once Owned 17 Rental Units and 3 Personal Homes. Mary Capri was Licensed as a Mortgage Loan Officer, and Manager of Allied Mortgage Branch of Lake Geneva Wisconsin. Back from 1998-2005. Mary Capri was a Licensed Property and Casualty Insurance agent for Wisconsin and Illinois. Mary Got Home and They Refused her OWN Community of Lake Geneva Wisconsin and Threw her onto the Streets of Chicago where there was Zero

Community Ties, Zero Friends, and Zero Family Support.

Released on 4/2013 Mary Capri Successfully Completed her Probation Without Violations or Complications. Although Written a Court Petition for Change of Probation Officer due to NO HOUSING Assistance, or Help was ever attempted. Mary Capri Slept at Train Stations, Hallways, Under Awnings, In the Park, throughout the Pit of Night and the Cold Winters, with Pads Help IF there was BUS FARE Available. Sometimes there was NOT, and Mary Capri would sleep Close by her Job to get to Work on time.

Mary Capri worked on her feet WITHOUT Sleeping Courters, Spending many sleepless nights, and standing from Dusk to Dawn Before and After work, to earn a 9-5 paycheck, FROM THE Temp Agencies and Part Time Housekeeping. Mary Capri found help via PADS Shelter, whereas local churches get together to allow you to sleep on their basement floors with a pad and blanket.

Finally earning enough to get an Apartment in Aurora, IL in 2017, her lease was up, Although Never Late, Never Evicted, there where Many Harassment from her landlord Supervisors, as the Kane County Courts Granted Mary Capri ADDITIONAL 2 Months of Free months to Pay for Stolen and Damaged Personal Property, from the employees of Lakeview Residences of Aurora, IL.

It was Time to move, Just to find that the moving resource was forfeited and she has been waiting for relief since 8/2018 to DATE. HOMESLESS AGAIN. Whereas Judge Ellis feels that Mary Capri is Not indigent Enough to Grant an Informa Pauperis or Some of the 4000+ refund Funds that was forfeited.

Mary Tax Refund, was the Only Resources to Obtain a New Apartment, Then the US Financial Litigation Dept, Forfeited 100% of the Tax Refunds Then Denied the Petition asking them to Abide by the

US Supreme court Ruling on 100% of the Assets Forfeited.

The Judgement Order States,

“....But the Court first screens the complaint pursuant to § 1915(e)(2), which instructs the Court to deny the request to proceed IFP and dismiss the case if (1) the allegation of poverty is untrue, (2) the action is frivolous or malicious, (3) the complaint fails to state a claim on which relief may be granted, or (4) the action seeks monetary relief against an immune defendant. 28 U.S.C. § 1915(e)(2)... “There was a Motion filed on this issue before and no did anything about it...etal”....

dismisses Capri’s complaint with prejudice, denies her motion to proceed IFP, and denies any remaining pending motions as moot.etal

ALSO STATED.....

.... “She cannot now, many years later, raise issues with the restitution order in a civil proceeding against the US Attorney’s Financial Litigation Unit. Nor could she pursue a claim under 28 U.S.C. § 2255 to challenge the restitution component of her sentence or use a writ of coram nobis to do so....etal”

This is NOT a Sufficient reason for a District Judge to Refuse to Abide by the New Supreme Court Rulings.

III. THE FEDERAL ACTION

A. In more recent years, the question of whether the Eighth Amendment’s protection against excessive fees applies to state and local laws has been highlighted by the growing use of asset forfeiture, a tactic used since the start of the war on drugs in the mid-1970s to seize cash and material property used in illegal drug transactions. Cash assets are used to help fund law enforcement departments, but it has been found that seized assets like vehicles and homes are sometimes used for the personal gain by law enforcers. It has been argued that the use of asset forfeiture is imbalanced against poor people, who are more likely to be caught in drug trafficking and have the

fewest assets to lose, and makes it difficult for such people to re-integrate with society without these assets.^{[4][5]}

The Supreme Court has previously ruled in *Austin v. United States* (1993) that the Eighth Amendment applies to federal asset forfeitures, protecting citizens from excessive fines which would include asset forfeiture.^[6] In the Supreme Court's 2017 term, a petition for a case related to state-level asset forfeiture had been submitted but the Court was forced to reject it as the petitioner only brought up the Eighth Amendment argument within the writ of certiorari, making the case ineligible for the Court. However, Justice Clarence Thomas, in his concurrence to the rejection of the petition, established several factors of why state and local asset forfeiture laws should be re-examined under the Eighth Amendment, identifying similar criticism regarding the unbalanced nature towards the poor.^{[7][8]}

STANDARD OF REVIEW

The Supreme Court has the power to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). To obtain a writ of mandamus, the applicant must demonstrate that he has "no other adequate means to attain the relief he desires." *Cheney v. United States Dist. Court*, 542 U.S. 367, 380 (2004). The applicant must then demonstrate that the applicant's right to the writ is "clear and indisputable." *Id.* at 381. Finally, the applicant must demonstrate that the writ is otherwise appropriate under the circumstances. *See id.*

A writ is appropriate in matters where the applicant can demonstrate a "judicial usurpation of power" or a clear abuse of discretion. *See id.* at 380 (citations and quotations omitted); *see also Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943) ("The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.").

This Court has issued writs to restrain federal district courts from intruding into areas involving delicate federal-state relations. *Id.* at 381; *see also Maryland v. Soper*, 270 U.S. 9 (1926).

ARGUMENT

I. If the District Courts Do Not have Authority to Over Rule Supreme Court Ruling, this is Truly a Miscarriage of Justice.

- A. You are NOT Indigent, Enough Although Living on the Streets for Four Years, even in the Cold Winter Months, Obtaining an Apartment for 1 Year, tried to using her hard earned refund, as 100% was forfeited.**
- B. Forfeiting 100% of the funds DOES NOT ALLOW FOR A Released Felon to Successfully get back into society, and continue to stabilize and grow as a productive citizen.**
- C. A 14,000.00+- Yearly Income from Temp Agencies For the Past 5 Years.**
- D. Instead of Following the Supreme Court Rulings, she Followed the Prior district Judge that Refused the Assistance with the Restitution Amount. As Judge Ellis feels that Mary Capri Filed for Relief Prior no one else had did anything about it, So she does NOT have to Honor the Supreme Court Ruling.**

II. THERE ARE NO OTHER ADEQUATE MEANS TO OBTAIN THE RELIEF APPLICANTS SEEK

Applicants do not have any adequate alternative means to obtain the relief they seek because denials of stays or abstention motions are not appealable as a final judgment. *See Catlin v. United States*, 324 U.S. 229, 233 (1945) (“A ‘final decision’ generally is one which ends the litigation , Judge Ellis Order Stated, WITH PREJUDICE and I am NOT Allowed to Appeal this issue, STATING,....

” She cannot now, many years later, raise issues with the restitution order in a civil proceeding against the US Attorney’s Financial Litigation Unit. Nor could she pursue a claim under 28 U.S.C. § 2255 to challenge the restitution component of her sentence or use a writ of coram nobis to do so, ”...ETAL

....”Capri should raise any issues she has with her supervised release before the judges assigned to her criminal case. *See Capri v. Zammuto*, No. 13 C 8666, Doc. 19 (N.D. Ill. Sept. 16, 2014) (dismissing case brought by Capri raising questions about her criminal conviction and the manner of her supervision, noting that she could not challenge the validity of her convictions in a separate civil suit and should raise issues with her supervision before the judges overseeing her supervision). Because amendment would be futile, the Court dismisses Capri’s complaint with prejudice, denies her motion to proceed IFP, and denies any remaining pending motions as moot.

CONCLUSION

Applicants Respectfully request that the Supreme Court of the United States please make a Lawful Decision on this Writ. And Please Do Not Remand Back to the Northern District of Illinois, as The Northern District Repeatedly Denied Mar Capri's In Forma Pauperis, Several Times While Incarcerated and Homeless, See: Cases: 07cv02429; 08cv06294; 08cv07175

Mary Capri Spent the Entire Winter Waiting for a Response Via Pads and Sleeping in her Car though out the Cold Winter Months.

Question:

Due to Extreme Cruelty an unfairness; Could the Supreme Court Directly order the Financial Litigation Dept. to Release the Tax Refund?

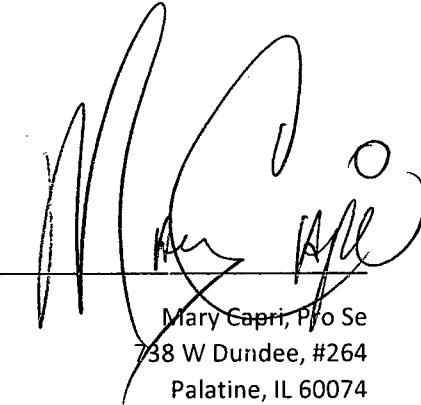
Respectfully Re-Submitted on this _____ Day in May, 2019.



06/13/19

Peter Panikolaou

PETER PAPANIKOLAOU
Official Seal
Notary Public - State of Illinois
My Commission Expires Sep 4, 2019



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