

RKB

NO: 19-5708

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

RELONZO PHILLIPS,
Petitioner

U.S.
11/20/19
CLERK

Vs

OFFICE OF THE DeKALB COUNTY
PUBLIC DEFENDER: ASSISTANT PUBLIC
DEFENDER BETHANY LINDSTROM AND
TIM COOK; DeKALB COUNTY SHERIFF'S
OFFICE: DeKALB COUNTY SHERIFF JEFFREY MANN,
Respondents

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

PETITION FOR REHEARING

Relonzo Phillips, Pro Se
2394 Boulder Chase Dr.
Ellenwood, Ga. 30294
(404)709-2723

Relonzo Phillips

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2. McMILLIAN v MONROE COUNTY, 520 U.S. 781, 117, S.Ct. 1734, 138 L.Ed. 2d 1 (1997)
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8. GRECH v CLAYTON COUNTY, 288 F.3d 1277 (11th Cir. 2002) and ^{Reversal} 2003/07/07 No. 01-13151

INTRODUCTION

For understanding and review of Petitioner Phillips' prior statement of facts (this brief's introduction) and circumstances, the Petitioner requests that this Honorable Court review the appellate brief included in the Index to Appendices, Appendix D.

STATEMENT

1. The continued arrest and/or over-detention of Petitioner Relonzo Phillips after closure of the Petitioner's misdemeanor case is a violation of the Petitioner's fourth amendment rights of the United States Constitution whereas it states "an unreasonable search and/or seizure and no warrant shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized".
2. The continued arrest and/or over-detention of Petitioner Relonzo Phillips for 23 months and the use of a misdemeanor warrant obtained in a previous closed case to acquire a felony indictment is a violation of the Petitioner's fourth and fourteenth Due Process rights of the United States Constitution whereas the fourteenth amendment states that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws.

3. The Ineffective Assistance of Counsel which fell below an objective standard of reasonableness rendered by DeKalb County Assistant Public Defenders Bethany Lindstrom and Tim Cook is a violation of the Petitioner's sixth amendment right and guarantee of the United States Constitution to effective assistance of counsel.
4. Inaccurate fact finding and/or Inadequate consideration by the lower Courts resulting in the shielding of impropriety and United States Constitutional deprivation and discrimination.

PETITION FOR REHEARING

Pursuant to this Court's Rule 44.2, Petitioner Relonzo Phillips respectfully Petitions For Rehearing of the Court's order denying Certiorari in this case, entered on November 4, 2019. Petitioner Phillips requests that this Court **Grant**, **Vacate**, and **Remand** his case due to the substantial grounds not previously presented that militate in favor of granting Rehearing (and Certiorari) in accordance with the decision rendered in *Streit v County of Los Angeles*, (9th Cir.) 2001/01/12, Nos. 99-55897, 99-56041, 99-56310, 99-55898, 99-56042, 99-56766, 99-55899, and 99-56233. This Petition is filed within 25 days of denial of Certiorari in the Petitioner's case.

In addressing the underlining issues not previously presented in this court, the Petitioner turns focus to class action ruling in the United States Court of Appeals, Ninth Circuit, *Streit v County of Los Angeles* ("Streit"). In this case Appellees brought suit against the County, its late Sheriff, and various other officials responsible for the management and operation of the Los Angeles County

jails. The Appellees allege that they were detained in County jails after all legal justification for their seizure and detention ended, in violation of both federal and state law.

Relying on *McMillian v Monroe County*, 520 U.S. 781, 117, S.Ct. 1734, 138 L.Ed. 2d 1 (1997), and the California Court of Appeal decision in *County of Los Angeles v Superior Court (Peters)*, 68 Cal. App. 4th 1166, 80 Cal Rptr. 2d 860 (Ct. App. 1998), the County argued that because the Sheriff of Los Angeles functions as a state-not county-official engaged in a law enforcement function, the County cannot be sued under 42 U.S.C. Section 1983 for the alleged constitutional torts of the Sheriff or his deputies. The Los Angeles Sheriff's Department ("LASD") similarly contended that because it is an "arm of the state", the LASD is not within the section 1983 definition of "person", and therefore it could not be held liable. The district court rejected each of these arguments and denied the LASD's motion to dismiss all claims. The court noted that the law enforcement function involved in *Peters* was "determining whether to release a person who may be subject to arrest on an outstanding warrant". It found that, here, **"the over-detention had**

nothing to do with the sheriff's law enforcement function because, in contrast to Peters, there is no dispute that Plaintiff's were entitled to be released". Rather, "the sheriff's conduct at issue relates to a purely administrative and/or clerical function", ultimately a function of error, and "where the sheriffs acts in a purely administrative and/or clerical manner such action is pursuant to their county, not state, authority". Thus, the district court held that the LASD was subject to 1983 liability for these actions.

In McMillian, Alabama's Monroe County, like the County here, was sued for allegedly unconstitutional actions undertaken by the Monroe County Sheriff. A county is subject to section 1983 liability for such suits if its policies, whether set by the government's lawmakers "or by those whose edicts or acts that may fairly be said to represent official policy", caused the particular constitutional violation at issue. *Monell v New York City Dept. of Social Svcs.*, 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed. 2d 611 (1978). Here, as in McMillian, the parties agree that the Sheriff is the policy maker whose actions are to be examined; they "sharply disagree" about whether the Sheriff is a policymaker on behalf of the State, in

which case no section 1983 action lies because the Sheriff would not be a “person” within the meaning of the statute, or on behalf of the county. The Supreme Court in *McMillian* offered two principles which guide in resolving this question. First, it cautioned against employing a “categorical, all or nothing” approach. *Id.* @ 785, 117 S.Ct. 1734. Rather, the Courts are to inquire “whether governmental officials are final policymakers for the local government in a particular area or on a particular issue”. *Id.* Second, although the questions of municipal liability under section 1983 is one of federal law, “the courts inquiry is dependent on analysis of state law”. *Id.* @ 786. 117 S.Ct. 1734. That is, “the courts’ understanding of the actual function of a governmental official, in a particular area, will necessarily be dependent on the definition of the official’s functions under relevant state law”. *Id.* @ 786, 117 S.Ct. 1734. Recognizing the appropriate deference to state law in the context of section 1983, the *McMillian* Court closely examined the Alabama Constitution, Code and case law, finding critical to its decision that the Alabama Supreme Court had interpreted various of the relevant provisions and their historical background as evidence of the “farmer’s intent to ensure that Sheriffs be considered executive officials of the

state". Id. @ 789, 117 S.Ct. 1734. After detailed analysis of Alabama's governmental structure and allocation of powers and duties among its institutions, the Court concluded that "Alabama sheriffs, when executing their law enforcement duties, represent the State of Alabama, not their counties". Id. @ 795, 117 S.Ct. 1734. The Court, however, rejected a "uniform, national characterization of all sheriffs" because "such a blunderbuss approach would ignore a crucial axiom of what stands as the government: States have wide authority to set up their state and local governments as they wish". Id. @ 795, 117 S.Ct. 1734.

Unlike the Alabama Constitution, the California and Georgia Constitutions does not list sheriffs as part of "the state executive department". McMillian, 520 U.S. @ 787, 117 S.Ct. 1734 (finding this designation "especially important" for determining liability). Instead, Article XI, section 1(b) of the California Constitution designates sheriffs as county officers. Cal Const. Art. XI, Sec. 1(b) ("The Legislature shall provide for . . . elected county sheriff"); see also *DeGenova v Sheriff of Dupage County*, 209 F.3d 973, 976 (7th Cir. 2000)(noting that the Illinois Constitution's

designation of sheriffs as county officers “strongly indicates that the Sheriff is an agent for the county, and not the State”). Indeed, “not only does the California Constitution lack the provisions most important to the Supreme Court’s decision in McMillian. Its provisions read much like those of the Alabama Constitution prior to that State’s determined effort to clarify that sheriffs were acting for the State when exercising their law enforcement functions”. *Roe v County of Lake*, 107 F.Supp.2d 1146, 1149(N.D.Cal. 2000); see *McMillian*, 520 U.S.@ 788, 117 S.Ct. 1734. Thus, under the California Constitution, the LASD is generally a county, not state, agency. Even more critical to the court’s analysis, there is no provision in the California or Georgia Constitutions that states the LASD/DKSD acts for the state when managing the local jails.

This presents an egregious difference in the precedent previously set forth by the Supreme Court of Georgia in prior decided Georgia cases such as *Grech v Clayton County*, 288 F.3d. 1277(11th Cir. 2002) and reversal 2003/07/07, No. 01-13151 which warrants a review by this Court pursuant to Supreme Court Rule 10(b) . In *Grech*, a bench warrant was not cleared from the Criminal Justice Information System (“CJIS”), which is an in- house computer database

shared by County Sheriff's Departments and Courts, which allowed for Grech to be rearrested when he should not have been. Again, an administrative and/or clerical error where thirteen years elapsed and potentially a double jeopardy situation could have arisen. Petitioner Phillips raises alarm to the similarities in his case to that of Streit, whereas Article IX, Section I, Par. III of the Georgia Constitution specifically states that Georgia Sheriffs are County officers, and not a part of Georgia's executive branch after review of Article V of the Georgia Constitution, and that of Grech, where a warrant remained in the Criminal Justice Information System when it should have been removed. Petitioner Phillips further argues that any potential duties of law enforcement (any system by which some members of society act in an organized manner to enforce the law by discovering, deterring, rehabilitating, or punishing people who violate the rules and norms governing that society) by either Sheriffs mentioned here ended when Constitutional deprivation arose and arrest (seize (someone) by legal authority and take into custody) became illegal. In the Opinion of the Petitioner, a new precedent should be set where in any suit against a named Sheriff, which is a suit against the designated county, the County should be held liable where applicable

law and/or standards apply to sheriffs and counties.

CONCLUSION

In summary, Petitioner Phillips went before the Court of Appeals of Georgia and raised underlining Constitutional issues/grounds of importance and the Court of Appeals of Georgia created a smoke screen, figuratively speaking, which shielded Constitutional deprivations by making a frivolous and irrelevant ruling pertaining to issues of the Prison Litigation Reform Act of 1996 and its requirement of a “prisoner” to apply for discretionary review, which would strip that court of jurisdiction, entirely erroneous considering the Petitioner’s amendments of his civil complaints after the completion of his incarceration. Summarily, Petitioner Phillips requests that upon complete review of this case, the Supreme Court of the United States **Grant, Vacate, and Remand.**

CERTIFICATE OF COUNSEL

As counsel for the Petitioner, Pro Se, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Respectfully submitted,

Relonzo Phillips, Pro Se
2394 Boulder Chase Dr.
Ellenwood, Ga. 30294
(404)709-2723

Relonzo Phillips

November 26, 2019