

In the
Supreme Court of the United States

WILLIAM S. RITTER, JR.,

Petitioner,

v.

JOHN R. TUTTLE;
ATTORNEY GENERAL PENNSYLVANIA,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

WILLIAM S. RITTER, JR.
PETITIONER PRO SE
45 DOVER DRIVE
DELMAR, NY 12054
(518) 928-5025
WSRITTER@AOL.COM

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QUESTION PRESENTED

Does the Full Faith and Credit Clause of the United States Constitution (Article IV, Section 1) attach to an order of a New York Appellate Court that is *res judicata* as it applies to sealed documents bound by that order that were used at trial and sentencing of Appellant in the Commonwealth of Pennsylvania, knowing that *Ford v. Ford*, 371 U.S. 187 (1962) requires the Commonwealth of Pennsylvania to recognize a New York order as binding if a New York court would be bound by it?

LIST OF PROCEEDINGS

FEDERAL COURT

United States District Court,
Middle District of Pennsylvania

No. 3:15cv1235

William S. Ritter, Jr. v. John Tuttle, Et Al.

Decision Date: December 14, 2018

United States Court of Appeals, Third Circuit

C.A. No. 19-1171

William S. Ritter, Jr. v. John Tuttle, Et Al.

Date of Denial of Certificate of Appealability:
May 16, 2019

Date of Denial of Rehearing:
July 10, 2019

PENNSYLVANIA COURTS

Superior Court of Pennsylvania

No. 3333 EDA 2016

Commonwealth of Pennsylvania, v. William Scott
Ritter Jr., *Appellant*.

Decision Date: September 12, 2017

Court of Common Pleas of Monroe County Forty-Third
Judicial District, Commonwealth of Pennsylvania

No. 2238 Crim 2009

Commonwealth of Pennsylvania v. William Scott
Ritter, Jr., *Defendant*

Decision Date: October 8, 2016

Supreme Court of Pennsylvania Middle District

No. 936 MAL 2013

Commonwealth of Pennsylvania, *Respondent*, v.
William Scott Ritter, Jr., *Petitioner*.

Decision Date: May 21, 2014

Superior Court of Pennsylvania

No. 975 EDA 2012

Commonwealth of Pennsylvania, *Appellee*, v.
William Scott Ritter, Jr., *Appellant*.

Decision Date: November 6, 2013

NEW YORK COURT

New York Appellate Division, Third Judicial
Department

No. 511959

In the Matter of Albany County District Attorney's
Office, on Behalf of Barrett Township Police Et Al.,
Respondent, v. William, T., *Respondent*.

Decision Date: October 20, 2011

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PETITION FOR WRIT OF CERTIORARI

William S. Ritter, Jr., pro se, respectfully petitions this court for a writ of certiorari to review the judgment of the United States District Court for the Middle District of Pennsylvania.



OPINIONS BELOW

The Memorandum Opinion of the United States District Court for the Middle District of Pennsylvania denying Mr. Ritter's petition for a writ of habeas corpus is reported as *Ritter v. Tuttle, et al.*, United States District Court for the Middle District of Pennsylvania No. 3:15cv1235 (December 14, 2018), and is provided here (App.3a). The Order of the United States Court of Appeals for the Third District Denying Certificate of Appealability is listed as *William S. Ritter, Jr. v. John R. Tuttle, et al.*, C.A. No. 19-1171 (June 5, 2019) and is provided here (App.1a). The Order of the United States Court of Appeals for the Third District Denying Petition for Rehearing is listed as *William S. Ritter, Jr. v. John R. Tuttle, et al.*, C.A. No. 19-1171 (July 10, 2019) and is provided here (App.35a).

The Order of the Superior Court of Pennsylvania denying Mr. Ritter's appeal of his conviction is listed as *Commonwealth v. Ritter*, No. 975 EDA 2012 (November 6, 2013), and is provided here (App.37a). The Order of the Supreme Court of Pennsylvania Middle District

Denying Petition for Allowance is listed as *Commonwealth v. Ritter*, No. 936 MAL 2013 (May 21, 2014), and is provided here (App.47a); Mr. Ritter's Motion in Limine Filed in County Court of Albany (November 3, 2014), is not listed, but is provided here (App.184a). The Bench Ruling of the Court of Albany County, New York, Transcript (February 5, 2015), is not listed but is provided here (App.139a). The Order of the Court of Common Pleas of Monroe County 43rd Judicial District on Motion in Limine is not recorded, but is provided here (App.87a). The Notice of the Court of Common Pleas of Monroe County 43rd Judicial District of Intent to Dismiss PCRA Petition (September 15, 2016), is not recorded, but is provided here (App.123a). The Order of the Court of Common Pleas of Monroe County 43rd Judicial District Dismissing PCRA Petition (October 6, 2016), is not recorded, but is provided here (App.45a). The Order of the Superior Court of Pennsylvania denying Mr. Ritter's appeal of the dismissal of his PCRA Petition is listed as *Commonwealth v. Ritter*, No. 3333 EDA 2016 (September 12, 2017), and is provided here (App.37a). The Report and Recommendation of the Magistrate Judge in the United States District Court for the Middle District of Pennsylvania, is listed as *William Ritter v. John Tuttle, et. al.*, Civil No. 3:15-CV-1235 (July 5, 2018), and is provided here (App.17a).

The *ex parte* Order of the Court of Albany County, New York, to unseal records (June 29, 2010), is not recorded, but is provided here (App.182a). The Order of Albany County, New York, Denying Motion to Vacate (December 29, 2010), is not recorded, but is provided here (App.180a). The Memorandum Order of the State of New York, Appellate Division, Third Judicial

Department (October 20, 2011) is listed as *Matter of William T.*, 88 A.D.3d., October 20, 2011, and provided here (App.176a). The Order of the Court of Common Pleas of Monroe County 43rd Judicial District on Defendant's Rule Post-Sentencing 720 Motion for a New Trial or in the Alternative Resentencing (March 20, 2012), is not recorded, but is provided here (App. 60a).



JURISDICTION

Mr. Ritter's petition for a rehearing was denied by the United States Court of Appeals for the Third Circuit on July 10, 2019. Mr. Ritter invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a *writ of certiorari* within 90 days of the order and decision of the United States Court of Appeals for the Third Circuit.



CONSTITUTIONAL PROVISIONS

United States Constitution, Article IV, Section 1:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

**STATEMENT OF THE CASE**

Nearly 57 years ago, this Court held in *Ford v. Ford* that a judgment on the merits barring subsequent action for the same cause and was *res judicata* in the State where rendered was entitled to full faith and credit in another State.

This case presents the question of whether the order and decision of a New York Appellate Court vacating an earlier decision of a lesser New York Court to unseal files must be provided full faith and credit as it applies to documents which were used at trial and sentencing of Mr. Ritter in the Commonwealth of Pennsylvania and were obtained by the Commonwealth as a result of the vacated unsealing order.

A. The Commonwealth's Acquisition of Sealed Documents

At issue is the admissibility at the trial and sentencing of Mr. Ritter in the Commonwealth of two transcripts of online chat activity involving Mr. Ritter. These transcripts related to contact between Mr. Ritter and New York law enforcement in 2001. The matter was dismissed by a New York Court, and all documents and records relating to this police contact sealed in accordance with the New York State sealing statute, CPL 160.50 (in the State of New York, a dismissal represents termination of a case in favor of the defendant.) Included among the materials sealed were the two online chat transcripts in question; these represented the only copies of the transcripts, and the transcripts were unobtainable through any other means.

In 2009 Mr. Ritter became involved in the present matter, pertaining to online activity between Mr. Ritter and a police officer from Monroe County, Pennsylvania. The matter went to trial.

Monroe County prosecutors approached prosecutors in New York and requested that records pertaining to Mr. Ritter's 2001 contact with law enforcement be released for use at trial and sentencing. The New York prosecutors did so in clear violation of CPL 160.50. Mr. Ritter's counsel notified the Monroe County prosecutor that they were in receipt of Mr. Ritter's 2001 records in violation of the law (App.219a). The Monroe County prosecutor returned the records to the New York prosecutor, which included the two chat transcripts in question.

The Monroe County prosecutor communicated with the Albany County, New York, District Attorney's Office, and was informed that "all records had been sealed and that they cannot provide any records or evidence unless and until an unsealing order has been obtained" (App.216a). The Monroe County prosecutor was particularly interested in "the online communications between the undercover and William R.," noting that "[t]his evidence, and other physical evidence retained in this matter, cannot be obtained from any other source" (App.217a) (emphasis added).

The Monroe County Prosecutor, through *ex parte* application to the Albany County Court, State of New York, obtained an unsealing order regarding Mr. Ritter's 2001 sealed files (App.182a).

Mr. Ritter sought suppression of these records before the Commonwealth Trial Court. The Monroe County prosecution, responding to Mr. Ritter's *Motion In Limine*, declared that the records obtained through the Albany County Court unsealing order "would be relevant and necessary to rebut Defendant's claims of mistake, lack of criminal intent and lack of motive," adding that the lack of these documents "would also severely handicap the Commonwealth's case by allowing the Defendant to present a defense that the Commonwealth could not rebut or refute" (App.213a) (emphasis added).

The Trial Court, in denying Mr. Ritter's motion to suppress, invoked the Full Faith and Credit clause of the United States Constitution, declaring "[w]e will not usurp the power and authority of a New York Court with respect to the interpretation of a New York statute. As such, we will not overturn a New

York Court's decision with respect to its own law," adding "[t]o the extent [Mr. Ritter] argues that the Albany County and Monroe County DA's offices' request for unsealing the records were improperly granted, he must challenge the propriety of the New York Court's decision in the New York Court system. We will give full faith and credit to the Albany County Court's order" (App.99a) (emphasis added).

Mr. Ritter initiated an appeal of the unsealing order in the New York Court system prior to going to trial in the Commonwealth. On December 29, 2010, the Albany County Court, State of New York, denied Mr. Ritter's appeal (App.180a). Mr. Ritter filed a timely appeal with the New York State Supreme Court, Appellate Division.

At trial the two chat transcripts from the unsealed record of Mr. Ritter's 2001 contact with New York law enforcement were introduced as evidence by the Prosecution under Rule 404(b). Mr. Ritter was found guilty at trial.

Prior to sentencing, the State of New York Supreme Court, Appellate Division, Third Judicial Department, in a unanimous decision, vacated the unsealing order used by the Monroe County prosecutor as improvidently granted, citing an improper application on the part of the Monroe County prosecutor which cited an authority to unseal that was impermissible under New York law, specifically citing CPL 160.50, declaring that Mr. Ritter's motion before the Albany County Court in December 2010 to vacate the June 29, 2010 unsealing order "should have been granted" (App.179a).

Through a post-sentencing motion, Mr. Ritter sought a new trial, citing the New York Appellate Court's decision which made the acquisition and use of Mr. Ritter's sealed records unlawful. The trial judge rejected this claim, declaring that "... at the time we allowed the admission of evidence of [Mr. Ritter's] 2001 records, a valid Albany County Court order existed to which we gave full faith and credit. At that time, we stated that we would not usurp the power and decision of a New York Court with respect to the interpretation of a New York statute. The fact that this order was vacated after [Mr. Ritter's] conviction does not automatically entitle [Mr. Ritter] to a new trial." (App.72a).

The decision of the trial Court did, in fact usurp the power and decision of the New York Court system with respect to the interpretation of a New York statute. The New York Appellate Court's decision was *res judicata* in the State of New York, and had it been issued prior to Mr. Ritter's trial, the trial Court would have had no choice but to suppress all evidence derived from Mr. Ritter's sealed file, including the two chat transcripts used extensively at trial. In making its decision, the trial Court instead granted full faith and credit to a New York Court order that was not *res judicata* in the State of New York, and therefore subject to appeal¹, something the Full Faith and Credit

¹ The trial Court overlooked its own instruction to Mr. Ritter, issued on December 16, 2010, to "challenge the propriety of the New York Court's decision in the New York Court system," which Mr. Ritter successfully did (App.99a). The trial Court also wrongly declared that the documents used at trial could have been obtained elsewhere (App.72a), contradicting the affidavit of the Monroe County Prosecutor to the Albany County Court

Clause does not permit. This is an affront to the decision of this Court under *Ford v. Ford*.

B. Direct Appeal

Mr. Ritter appealed this decision to the Pennsylvania Superior Court, which, in denying the appeal, reinforced the ruling of the trial court by declaring “ . . . the trial court did not err in allowing admission of [Mr. Ritter’s] New York records into evidence. The New York records were unsealed at the time of their production to the Commonwealth by the Albany County Court and at the time of [Mr. Ritter’s] jury trial.” (App.54a).

Through its actions, the Pennsylvania Superior Court continued the constitutional error perpetrated by its trial Court in providing full faith and credit to a New York Court decision regarding the unsealing of Appellant’s sealed files that was not *res judicata*, while ignoring the final decision and order of the

(App.217a), and declared that even if the documents in question were obtained illegally, it was “harmless error” as the evidence presented at trial was sufficient for a jury to find Mr. Ritter guilty “beyond a reasonable doubt” (App.72a), contradicting the position taken by the Monroe County prosecutor in arguing for the admissibility of the documents that they were “relevant and necessary to rebut Defendant’s claims of mistake, lack of criminal intent and lack of motive,” and that the lack of these documents “would also severely handicap the Commonwealth’s case by allowing the Defendant to present a defense that the Commonwealth could not rebut or refute” (App.213a). The assertions of the trial Court regarding the sourcing of the documents and the assured outcome of Mr. Ritter’s trial are repeated by every Court involved in the appeals process, despite clear evidence, based upon the Monroe County prosecution’s own words, that show these assertions to be wrong.

New York Appellate Court, which was *res judicata*, that vacated the unsealing order in question as improvidently granted.

Mr. Ritter appealed the Superior Court decision to the Pennsylvania Supreme Court, which denied his petition on May 21, 2014) (App.47a).

Mr. Ritter was paroled to New York in September 2014. As part of a Risk Assessment hearing regarding Mr. Ritter's convictions in the Commonwealth of Pennsylvania, the Albany County Prosecutor sought to admit as evidence information derived from Mr. Ritter's sealed 2001 records, including transcripts from Mr. Ritter's trial in Pennsylvania where this material had been introduced. In response, Mr. Ritter submitted a *Motion In Limine* "seeking to exclude as evidence . . . any reference to prior contact with New York law enforcement officials that took place back in April and June 2001 that can be traced, directly or indirectly, to information contained in sealed files pertaining to these incidents that were improvidently unsealed by an order of this court which was subsequently vacated by a unanimous decision of the New York Supreme Court, Appellate Division, Third Judicial Department" (App.185a).

After a hearing, the Albany County Court issued a decision and order which determined that any evidence used by the Commonwealth at Mr. Ritter's trial that was sourced, directly or indirectly, to Mr. Ritter's unlawfully unsealed file, was illegally obtained and as such inadmissible. In doing so, the Albany County Court recognized "the precedent of the Appellate Division's decision in the matter of *Albany County versus William T.* specifically finding that the [sealed

documents] was [sic] not lawfully unsealed" (App.150a), noting that Mr. Ritter's *Motion in Limine* was, "in all respects granted" and that "any document proffered in evidence, any reference to the 2001 Colonie case or cases as the situation occurs is precluded" (App.151a). This decision was not appealed, and as such became *res judicata* in New York.

C. PCRA Application

Mr. Ritter submitted a timely PCRA in the Commonwealth, based upon newly discovered evidence in the form of the Albany County Court's decision regarding the preclusion of evidence, and Mr. Ritter's Constitutional claims of violations of the Full Faith and Credit clause and related Due Process violations pertaining to the use of illegally obtained evidence at trial and sentencing.

On September 15, 2017, the trial Court notified Mr. Ritter of its intent to dismiss his PCRA application. The trial Court, ignoring its earlier admonition to Mr. Ritter to appeal the New York unsealing order used to acquire the documents utilized at Mr. Ritter's trial, instead cited as *res judicata* the decision to unseal Mr. Ritter's documents, declaring that "we will not retroactively apply the New York Appellate Court order in this matter where the action has reached its final conclusion" (App.131a). The trial Court's decision to apply *res judicata* to the June 29, 2010 unsealing order of the Albany County Court, which was not a final decision, and not recognize as *res judicata* the decision of the New York Appellate Court which vacated the unsealing order, is in clear conflict with the Full Faith and Credit Clause of the U.S. Consti-

tution, and the precedent of the Supreme Court set forth in *Ford v. Ford*.

On October 6, 2017, the trial Court dismissed Mr. Ritter's PCRA Petition (App.137a). Mr. Ritter filed a timely appeal to the Pennsylvania Superior Court. However, while the Superior Court considered his appeal, Mr. Ritter's sentence expired. Mr. Ritter's appeal was subsequently denied on the grounds that Mr. Ritter was "no longer serving a sentence for the convictions that are the subject of this PCRA petition," declaring that "he is not entitled to PCRA relief" (App.44a).

D. Petition for a Writ of Habeas Corpus

Mr. Ritter submitted a timely petition for a *writ of habeas corpus* to the United States District Court for the Middle District of Pennsylvania. On July 5, 2018, the Chief Magistrate issued a Report and Recommendation recommending that Mr. Ritter's petition be denied, and that no certificate of appealability be issued (App.33a). On December 14, 2018, the United States District Court for the Middle District of Pennsylvania issued a decision and order denying Mr. Ritter's petition for a *writ of habeas corpus*. A certificate of appealability was not issued (App.14a).

Mr. Ritter petitioned the United States Court of Appeals for the Third Circuit for certificate of appealability. This petition was denied (App.1a); Mr. Ritter submitted a petition for a rehearing and rehearing *en banc* to the United States Court of Appeals for the Third District. This petition was denied (App.35a).



REASONS FOR GRANTING THE WRIT

I. TO AVOID UNCONSTITUTIONAL DEPRIVATIONS OF DUE PROCESS, THIS COURT SHOULD CLARIFY THE *RES JUDICATA* STANDARD UNDER *FORD* AS IT APPLIES TO TIMING ISSUES REGARDING THE USE AT TRIAL OF EVIDENCE ACQUIRED BY ONE STATE BASED UPON A COURT ORDER OF ANOTHER STATE THAT LACKED *RES JUDICATA* WHICH WAS SUBSEQUENTLY OVERTURNED, PRIOR TO THE CONVICTION BECOMING FINAL, ON APPEAL IN THE STATE OF ORIGINAL JURISDICTION BY AN ORDER AND DECISION THAT POSSESSED *RES JUDICATA*.

In *Ford v. Ford*, 371 U.S. 187 (1962) this Court determined that the Full Faith and Credit Clause of the United States Constitution (Article IV, Section 1) requires that the Courts of one State recognize the Court order of another State as binding if those Courts would be bound by it. There is a clear Constitutional obligation of each State to recognize and accept the judicial proceedings, public records, and legislative acts of every other State.

The determination of the District Court that the Full Faith and Credit Clause did not apply to Mr. Ritter is based upon flawed legal reasoning that, if left standing, effectively nullifies the Full Faith and Credit Clause of the U.S. Constitution by legitimizing the Commonwealth of Pennsylvania's use of illegally acquired evidence. The District Court states that "at the time of trial, the records were unsealed. Thus, the state trial court did provide full faith and credit

to New York's judicial determination at the time. It was only after the trial and verdict, when the Pennsylvania record already contained information on the New York arrests, that New York state court resealed the records" (App.11a).

The District Court's argument fails in the face of this Court's determination in *Ford* that full faith and credit cannot be granted by one State to Court orders from another State lacking *res judicata*. There can be no doubt that the Albany County Court order unsealing Mr. Ritter's files did not possess *res judicata*—the fact that it was overturned by the New York Appellate Court proves this.

The District Court further avers that a new trial was not required "once the appellate court in New York ruled that the records should be sealed. We conclude that a new trial was unnecessary. [Mr. Ritter] points to no relevant case law which supports his position" (App.11a).

This case appears to be one of first impression for this Court, and as such there appears to be no relevant case law available that addresses the specifics found herein. Mr. Ritter did, in fact, provide analogous legal citation, in the form of the transcript of his SORA hearing of February 5, 2015, which was submitted as newly discovered evidence in support of his PCRA motion (App.139a). *Ford* requires that the Courts of one State recognize the Court order of another State as binding if those Courts would be bound by it. The SORA hearing decision, which specifically draws upon the precedent set by *Matter of William T.*, 88 A.D.3d., that "any reference to [material sourced from the illegally unsealed files] as the situation occurs is

precluded. So to the extent that any document is including reference to [material sourced from the illegally unsealed files], that information is precluded and will be struck from the document and will not be considered by the court" (App.152a).

The New York Appellate Court has determined that Mr. Ritter's records were unlawfully unsealed; this conclusion was shared by the Albany County Court in deciding that any information derived, directly or indirectly, from these unlawfully unsealed records were precluded from being considered by the Court. Seen in this light, the admission by the Commonwealth of Pennsylvania of illegally acquired evidence in violation of the Full Faith and Credit Clause constitutes a clear violation of Appellant's Due Process rights under the 14th Amendment of the United States Constitution as decided by this Court in *Weeks v. United States*, 232 U.S. 383 and *Mapp v. Ohio*, 367 U.S. 643.

The District Court seeks to obviate the importance attached to Mr. Ritter's "full faith and credit" claims by repeating the assertions made by the Pennsylvania Superior Court that the documents in question could be obtained by other means, and that Mr. Ritter would have been convicted even if the documents in question were not admitted into evidence. These assertions fly in the face of the position taken by the Monroe County Prosecutor in arguing for the admissibility of the documents, who declared that "the online communications between the undercover and William R." which constituted the totality of the information used at trial that was sourced to the unsealed documents "cannot be obtained from any other source" (App.217a) (emphasis added) and that these documents were "relevant

and necessary to rebut Defendant's claims of mistake, lack of criminal intent and lack of motive" (App.217a), and that the lack of these documents "would also severely handicap the Commonwealth's case by allowing the Defendant to present a defense that the Commonwealth could not rebut or refute" (App.213a) (emphasis added). In short, the documents used by the Commonwealth at Mr. Ritter's trial could not be obtained by any other means than unsealing Mr. Ritter's 2001 records. Without these documents, as the Prosecution itself declared, Mr. Ritter would have been able to present a defense which could not be rebutted or refuted by the Prosecution. To state that a conviction was guaranteed regardless flies in the face of this evidence.

The District Court's findings cannot be reconciled with existing Supreme Court precedent, and directly contradicts the legal precedent regarding the Full Faith and Credit Clause as established by this Court in *Ford*. The District Court's decision, if left standing, effectively nullifies the Full Faith and Credit Clause of the US Constitution by legitimizing the Commonwealth of Pennsylvania's unlawful use of evidence acquired in violation of New York law, and in contravention of orders and decisions of the New York Court system that were *res judicata* in New York.

This case presents this Court with an opportunity to solidify its holding under *Ford* by addressing the issue of *res judicata* and timing when it comes to applying Full Faith and Credit to the orders and decisions of one State by another.

CONCLUSION

For the foregoing reasons, Mr. Ritter respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

WILLIAM S. RITTER, JR.
PETITIONER PRO SE
45 DOVER DRIVE
DELMAR, NY 12054
(518) 928-5025
WSRITTER@AOL.COM

DECEMBER 6, 2019