19-7592

IN THE

SUPREME COURT OF THE UNITED STATES.

(PRO SE COMPLAINT)

John D. McAllister – **PETITIONER**

VS.

Tim Malfitano J.P.D.

Steven A. Selogy.J.P.D. **RESPONDANT(S)**

ON PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR

THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI REHRARING

SIGNED: John D. McAllister

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PETITION FOR REHEARING

Pursuant to Rule 44.2 of the Rules of the United States of the Supreme Court, John D. McAllister respectfully petitions for rehearing of this Courts April 20, 2020 Order denying his petition for a writ of Certiorari. John D. McAllister has petition this Court to review the United States Court of Appeal for the Fourth Circuit's intractable adherence to a merits based action. Even after this Courts admonishment in a line of cases. Review of John D. McAllister case was short-circuited in this manner, thus the decision below is emblematic of the Fourth Circuit's practice.

REASON FOR GRANTING THE PETITION FOR

Intervening circumstances warrant rehearing of the denial of John D. McAllister's petition for writ of certiorari.

Rule 44.2 of the Rules of the Supreme Court of the United States allows petitioners to file petitions for rehearing of denial of a petition for a writ of certiorari and permits rehearing on basis of "intervening circumstances of substantial or controlling effects or to other substantial grounds not previously presented". Rule 16.3 permits the suspension of a denial of a writ of certiorari on the order of the Court or of a Justice if "there is any reasonable likelihood of the Court's changing it's position and granting certiorari.'' Richmond v. Arizona, 434 U.S. 1323, 1326 (1977).

The intervening circumstance in this case is the filing of McAllister's petition on March 1st, 2019, which demonstrate that McAllister is just one of many of the petitioners who have been denied the right to appeal by the 4th Circuit Court of

Appeals misapplication. McAllister challenges a Fourth Circuit opinion denying the petition after reviewing the petitioner underlying merit and the respondents presented no evidence at all. McAllister challenges the Fourth Circuit Court on the merits on the case because all the evidence he presents come from the Jacksonville Police Department, the Onslow county sheriff Department, the Onslow County Court House and an elected Judge from Hopkinsville Kentucky. After a foot chase of a man named Henry Lee Danley, the Detectives found a .22 caliber on a path . After the arrest and taking Mr. Danley to jail, the gun was determined to be reported stolen from Jones County according to N.C.I.C. (Subject Matter Jurisdiction Held Lacking) Davis v. William, N.C. App 262, 774, S.E. 2d 889, 201,2015 N.C. App Lexis 625 (215). False information was given to the Onslow County Magistrate to obtain illegal warrants for Mr. John D. McAllister when they say they arrested Mr. Henry Lee Danley for possession of a stolen pistol.

On July 12th, 2018 McAllister moved for summary judgment because the Defendants fail to comply and answer a scheduling order. On July 27th, 2018. The Jacksonville Police Department filed for summary judgment pursuant to Roseboro v. Garrison 582 F.2d 309, 310 (4th Cir. 1975)(per curiam). McAllister was notified by the Court about the Defendants motion, the consequences of failing to respond and the response deadlines. McAllister responded in opposition to the Defendants motion. Defendants did not respond to McAllister's' motion and never did and the 4th Circuit Court denied McAllister and Granted Defendants motion for summary judgment.

Summary Judgment is appropriated when, after reviewing the record as a whole, the Court determines that no genuine issue of material facts exist and the moving

party is entitled to judgment as a matter of law. Fed R. Civ. P. 56(a); Anderson v. Libby Lobby. Inc., 477 U.S. 242, 247-48 (1986). The party seeking summary judgment initially must demonstrate the absence of a genuine issue of material fact or the absence of evidence to support the nonmoving party's case. Celotex Corp v. Catrett, 477 U.S. 317, 325 (1986). Once the moving party has met his burden, the nonmoving party may not rest on the allegations or Denials in it's pleading. Anderson, 477 U.S. at 248-49, but "must come forward with specific facts showing there is a genuine issue for trial. In making this determination, the Court must view the evidence and the inference drawn there from in the light most favorable to the nonmoving party. Scott v. Harris, 550 U.S. 372,378 (2007). McAllister responded according to the Federal Rules of Procedure and the defendants denied all the Rules, the Court of Appeal for the Fourth District disregarded the Supreme Court Rules.

"When cross-motions for summary judgment are before a court, the court examines each motion separately, employing the familiar standard under Rule 56 0f the Federal Rules of Civil Procedure." Desmond v. PNGI Charles Town Gaming,LLC, 630 F.3d. 351,354 (4th Cir. 2011). Additionally, "the district court must review the motion, even if unopposed, and determine from what it has before it whether the moving party is entitled to summary judgment as a matter of law." Robinson v. Wix Filtration Corp., 599 F.3d 403, 409 n.8 (4th Cir. 2010) (emphasis and quotation omitted); see Stevenson v. City of Seat Pleasant, 743 F.3d 411, 416 n.3 (4th Cir.2014).

"Allegations made that an arrest made pursuant to a warrant was not supported by

probable cause, or claims seeking damages for t5he period after legal process issued" – e.g., post-indictment or arraignment –are considered a section 1983 malicious prosecution claim. Brooks v. City of Winston Salem, 85 F.3d 178, 182 (4th Cir. 1996) Such a claim " is properly understood as a Fourth Amendment claim for unreasonable seizure which incorporates certain elements of the common law tort." Evans v. Chambers, 703 F.3d 636, 647 (4th Cir. 2012) (quoting Lambert v. Williams, 223 F.3d 257, 261 (4th Cir. 2000). "To succeed, a plaintiff must show that the defendant (1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceeding terminated in the plaintiff's favor." Humbert v. Mayor & City of Balt. City,866 F.3d 546,555 (4th Cir. 2017) (quotations and alterations omitted), cert, denied, 138 S. Ct. 2602 (2018); see Smith v. Munday, 848 F.3d 248, 252, 257 (4th Cir. 2017); Dom v. Town of Prosperity, 375 F. App'x 284,288 (4th. Cir.2010) (unpublished); Porterfield v. Lott, 156F.3d 563, 568 (4th Cir. 1998). McAllister was arrested with nothing to show he had committed this crime, a convicted felon that did not know McAllisters' name made a claim that he received this gun but the Jacksonville Police have no written statements only unsigned warrants that has never appeared on N.C.I.C. until January 5th, 2016. Jacksonville didn't have jurisdiction to make an arrest to hold and prosecute.

Where the alleged malicious prosecution arose from an arrest warrant, a plaintiff must show that the person seeking the warrant "knowingly and intentionally or with reckless disregard for the truth either made false statements in their affidavits [in support

of the warrants] or omitted facts from those affidavits, thus rendering those affidavits misleading." Evans, 703 F.3d at 650 (quotations omitted);see Franks v. Delaware, 438U.S. 154,155-56. (1978);Miller v. Prince Gorge's Cty.,475 F.3d 621,627 (4th Cir. 2007); [D.E. 66] 7-8; [D.E. 69-1] 3-4. Specifically, a plaintiff first must make a substantial preliminary showing of intentional or reckless falsehood in the affidavit. **N.C.I.C.** determined the gun was reported stolen from Jones county. Jacksonville Police Department arrested Mr. McAllister and held for prosecution with a disregard of jurisdiction.

II. The McAllister petition demonstrates the Fourth Circuit's noncompliance with this Court's rulings.

McAllister's judgment was a complete disregard to this courts' ruling. The Respondents presented no supporting evidence to support their claim, failed to present any witness statement and the warrant are completely fabricated. McAllister present factual evidence from the Jacksonville Police Department, the Onslow County Sheriff Department, the Onslow County Court House and a sworn Judge from Hopkinsville Kentucky. Indeed in McAllister's case, the Fourth Circuit merely paid lip service to this court's standard before applying its own standard.

III. Compelling evidence in McAllister's petition shows that the Fourth Circuit noncompliance with this Court's Ruling is systematic.

At the core of McAllister's case applications to this Court is the near impossible of obtaining a just and fair verdict from the Fourth Circuit according to the merits against

the Jacksonville Police Department. While McAllister presented all true facts to support his case, the Jacksonville Police Department presented none and was believed over the factual evidence.

CONCLUSION.

Rehearing is appropriate here, because McAllister has met this Court's requirement for rehearing under Rule 44.2. Rehearing is justified because McAllister filing of the Petition is an intervening event that presents compelling evidence relevant to McAllister's case. Given this evidence, the Court should suspend the rejection of McAllister's petition for writ of certiorari and grant rehearing of McAllister's petition.

Submitted 8-5-2020 Sign: John D McAllister

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CERTIFICATE

I hereby certify that this petition for re3hearing is presented in good faith and not for delay. 8-5-2020

Signed: John D. McAllister

CERTIFCATE OF SERVICE

I John D. McAllister do certify that I have served a copy of the petitioners' rehearing on the Respondents by placing a copy prepaid in the U.S. mail this 8th day of August, 2020. As following:

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