

AUG 20 2019

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19-7634

NO. 20-_____

In The
Supreme Court Of The United States

AIMEE HANKINS,

Petitioner - Appellant,
v.

TIM LOWE,
Respondent - Appellee.

On Appeal From The Court of Appeals For the Seventh Circuit
Nos. 17-1879 & 17-2077

PETITION FOR A WRIT OF CERTIORARI

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SUPREME COURT, U.S.

Questions Presented

I. When habeous corpus relief is unavailable to an inmate or parolee who has been held beyond their lawful release or termination date, does this Court's holding in *Heck v. Humphrey* (93-6188), 512 U.S. 477 (1994) barring a lawsuit for money damages under 42 U.S.C. §1983 before a favorable termination of a state or federal habeous corpus proceedings, apply?

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<i>Heck v. Humphrey,</i> 512 U.S. 477 (1994)
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<i>Skinner v. Switzer,</i> 562 U.S. 521 (2011)
<i>Wilkinson v. Dotson,</i> 544 U.S. 74 (2005)

Statutes

28 U.S.C. §1254(2)(a)
28 U.S. Code § 2241
42 U.S. Code § 1983

Other Authority

MPEP § 720.04 (8th ed. Rev. 9, Aug. 2012).....

JURISDICTION

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the May 24, 2019, judgment of the Court of Appeals for the Seventh Circuit, dismissing her case for damages resulting from the Defendants subjecting her to what the Seventh Circuit Court of Appeals termed cruel and unusual punishment in it's previous May 19, 2015, decision in this matter.

OPINIONS BELOW

On May 24, 2019, the Court of Appeals for the Seventh Circuit dismissed Petitioner's appeal of the District Court for the District of Illinois's decision dismissing her civil rights suit for damages resulting from being held under state supervision for a period up to two years beyond the correct termination date of her parole. This decision is not yet published but is attached hereto as Exhibit A. The District Court's decision derives from a previous May 19, 2015, decision of the Court of Appeals for the Seventh Circuit remanding the District Court's earlier

decision, is published as *Hankins v. Lowe*, 786 F.3d 603, (7th Cir. 2015) and is attached as Exhibit B.

JURISDICTION

The Court of Appeals for the Seventh Circuit entered an order dismissing Petitioners' appeal on May 24, 2019. The Court has jurisdiction under 28 U.S.C. §1254(2)(a).

STATUTES AND POLICIES AT ISSUE

28 U.S. Code § 2241. Power to grant writ

- (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
- (b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.
- (c) The writ of habeas corpus shall not extend to a prisoner unless—
 - (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
 - (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
 - (3) He is in custody in violation of the Constitution or laws or treaties of the United States; or
 - (4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or
 - (5) It is necessary to bring him into court to testify or for trial.
- (d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains

two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e)

(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

42 U.S. Code § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. Facts Giving Rise To This Case

Plaintiff Aimee Hankins is a 44 year old mother of three, who became embroiled in domestic violence issues with her then husband, Mike Harland, and was convicted of a class D felony. This history is largely irrelevant to this litigation other than serving as a basis for Aimee being incarcerated in Arkansas between 7 and 10 years ago. After serving her prison term, Aimee was released on supervised probation. Aimee's probation required monthly meetings with her probation officer where each such meeting entailed a probation officer coming to Aimee's residence to check on Aimee and the status of her home. Aimee's freedom of movement, including interstate travel, to, for example, visit with friends and relatives was severely restricted. As a part of her probation Aimee was required to seek and go through counselling. After Aimee's children moved to the State of Illinois, in mid 2009, Aimee transferred her probation to the State of Illinois where she was placed under the

supervision of Probation Officer and Defendant Tim Lowe. Defendant Lowe was under an affirmative duty to act in accordance with State law and maintain complete and accurate copies of Aimee's probation records, including those which mentioned the date on which Aimee's probation was to be terminated. Several times during her probation period under Defendant Lowe and the Mercer County Probation and Court Services, Aimee questioned the date of her ultimate termination of probation. Defendant Lowe responded that that was determined by Arkansas officials, including, Defendant Dennis Burton. When Aimee pressed for a copy of her Arkansas records she was told that Defendant Burton had indicated that if she requested her records, he, Defendant Burton would consider such a request to be a probation violation and use it to "throw" Aimee back in prison. From Early 2010, through February 10, 2011, Aimee remained on probation, even though her probation was supposed to terminate in early 2010.

On February 10, 2011, after maintaining Aimee on probation since the previous year, See, *Hankins v. Lowe*, 786 F.3d 603 (7th Cir. 2015), Defendant Tim Lowe gave Aimee a document indicating that her probation had been actually terminated in early 2010, and released her from supervision. As a result of not being allowed to access her files, Aimee suffered an almost extra year of unauthorized and unwarranted probation.

In the following months, as Aimee made written requests for documents demonstrating the unlawful extension of her probation period, the defendants followed through on their threats and had Aimee arrested on charges which were ultimately dismissed.

B. The 1st Appeal to the Seventh Circuit

On June 22, 2011, Plaintiffs' filed a complaint with the United States District Court for the District of Illinois. Defendant Lowe was served with the complaint on October 28, 2012. On February 21, 2012, Plaintiff filed a motion seeking leave to file an

amended complaint (See, Documents No.: 60 and 61).

The District Court denied this motion the next day on February 22, 2012. On April 11, 2013, the District Court invited Plaintiff to submit a motion for default. Plaintiff filed a motion for default on May 17, 2013 (See, Documents No.: 74 and 75) which was denied by the District Court on June 3, 2013. On May 22, 2013, Defendant filed a motion to dismiss which after opposition by plaintiff on June 18, 2013, was granted by the court on March 12, 2014. Plaintiff filed a timely appeal on or about April 5, 2014. On June 10, 2015, the Court of Appeals for the 7th Circuit reversed the District Court and remanded, finding that if her allegations were true her eighth amendment right to be free of cruel and unusual punishment was violated and should be heard.

C. The 2nd Appeal to the Seventh Circuit

On remand, Defendants filed a contested motion for summary judgment in the District Court on August 1, 2016 and the District Court ruled in the Defendants favor on March 30, 2017, with an

amended judgment being issued on April 28, 2017.

Appellants filed a timely Notices of Appeal in the District Court on or about, April 26, 2017, and May 23, 2017, respectively.

REASONS FOR GRANTING THE PETITION

**I. Habeous Corpus Relief Is Often
Unavailable To An Inmate or Parolee Who
Have Been Held Beyond Their Lawful Release
Or Termination Date. Such Individuals Should
Not Be barred From Seeking Money damages
under 42 U.S.C. §1983 By This Court's Holding
in *Heck v. Humphrey*, 512 U.S. 477 (1994)
Requiring A Favorable Termination Of State or
Federal Habeous Corpus Proceedings As A
Precondition To Tort Litigation**

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Court reasoned that, because habeas corpus is the exclusive remedy for a challenge to the fact or duration of one's confinement, *see Preiser v. Rodriguez*, 411 U.S. 475, 488-90, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973), an inmate must first seek to set

aside his conviction or sentence duration through habeas corpus before initiating a § 1983 action that necessarily calls that conviction or sentence into doubt. *Heck*, 512 U.S. at 487, 114 S.Ct. 2364. In *Nelson v. Campbell*, 541 U.S. 637, 646-47, 124 S.Ct. 2117, 158 L.Ed.2d 924 (2004) the Supreme Court explained this so called “favorable termination” requirement:

Although damages are not an available habeas remedy, ... a § 1983 suit for damages that would necessarily imply the invalidity of the fact of an inmate's conviction, or necessarily imply the invalidity of the length of an inmate's sentence, is not cognizable under § 1983 unless and until the inmate obtains favorable termination of a state, or federal habeas, challenge to his conviction or sentence.

The maximum sentence for the Class D felony which Aimee was convicted of in 2004 was 6 years¹, requiring that she be released in 2010 at the latest

¹ Aimee was sentenced to three (3) years however Class D felonies, the least serious felonies in Arkansas, are punishable by a maximum of up to six years in prison. (Ark. Code §§ 5-4-201, 5-4-401 (2019)).

barring another conviction. But here, the additional time Aimee was held under state supervision, was not a part of her original sentence, and Aimee, like so many other inmates, was not capable of bringing a petition for habeous corpus. When Respondent Lowe actually told Aimee she was released from supervision in February, 2011 and her sentence was completed, she believed that she was no longer in custody and did not know what her actual termination date was. She had asked for documents regarding this information, but her requests for her correct termination date were denied. The State had released her from custody because the State also believed that she was no longer in custody. The only documents, which mistakenly provided two different termination dates, not including the date she was actually released, were provided in discovery after she was released.

It is uncontested that Aimee sought information regarding her actual release date before she was released from supervision and that the requested information was not forthcoming. Aimee was released from State Supervision by Defendant

Tim Lowe on February 10, 2011, shortly after which she left the State of Illinois. Both Aimee and relevant State authorities believed she had completed her sentence and was released from State supervision. After her release, Aimee was not eligible for habeous corpus relief because she was no longer in State custody, one of the required conditions for habeous corpus relief. See, 28 U.S.C. § 2241 (c)(1). Only after Aimee sued did ICAOS suspiciously prepare documents alleging that Aimee's parole had not ended until when she was released.

As someone who could not have legally, or practically, sought habeous corpus relief, Aimee should not be subject to the blanket holding of Heck that dis-entitles her rights to relief under 42 U.S.C. §1983. Upon her release, Aimee felt that she had been kept beyond her appropriate termination date, sought out an attorney to represent her, and brought suit against the defendants who were responsible. After filing the instant civil rights action in the U.S. District Court for the District of Illinois, several warrants were issued for Aimee's arrest. Aimee,

initially, (and still) believes these warrants were issued to intimidate and harass her. She later learned during discovery in this case, that upon investigating Aimee's claims, State Authorities had produced documents alleging that the termination date of Aimee's parole was significantly later than the date she was actually released.

Under these circumstances Aimee could not have brought an action for Habeous Corpus release because while she was under State supervision, she was unsure of her actual termination date, and, relevant State authorities were unresponsive to her requests for information about her release. Aimee did not have the requisite evidence to support a claim for habeous corpus. It was only after she was released that she obtained confirmation that she was held for approximately one year² beyond what her actual sentence should have been.

² If this Court hears this petition, Petitioner notes that her correct termination date has still not been calculated and may in fact be up to three years before her actual release. She accordingly, reserves the right to argue for whatever the correct termination date is once that date is calculated.

The favorable termination requirement does not bar Aimee's claim for monetary damages because, in this situation, such a judgment would not necessarily call into question the validity of her original conviction or her original sentence. During the period in which was held under state supervision she was the innocent victim of one, or more, correctional officers' error. Only the additional unwarranted and unlawful supervision time would be subject to compensation.

The specific facts of Aimee Hankins' case exposes a class of prison inmate and parolee who, for reasons of law or practicality, are ineligible to bring a habeous corpus action to vindicate there rights to be free of unlawful imprisonment or state supervision, respectively, and whom are unfairly barred from seeking money damages under 42 U.S.C. § 1942 by this Court's holding in *Heck v. Humphrey* (93-6188), 512 U.S. 477 (1994). That class of inmates and parolees who are unable to bring a petition for habeous corpus while in state custody or under state supervision, are unfairly and unconstitutionally

prevented from asserting their statutory right to sue under the Civil Rights Statute by *Heck*.

Inmates who are released after being held beyond their actual sentence termination date for some short period, such as four days, have no realistic remedy to vindicate the damage done to them by late release. Waiting one or two or three days while prison officials sort out a mistake is typically insufficient time to organize appointment of counsel, prepare necessary documents and file a petition for habeous corpus, while the inmate is still in custody, as federal statute requires.

For people falling into this class of inmate or parolee, habeous Corpus relief does not represent a realistic remedy. The cost to society of preparing the petition may well outweigh the settlement value of such cases. Moreover, the release of the inmate or parolee, which is the typical relief sought by a habeous corpus petition, is almost certainly made before the petition can be granted rendering the petition moot, and a strain on an otherwise overburdened legal system. In a legal analysis

similar to that made in *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), where an inmate or parolee is held unlawfully beyond their sentence, and has been released, the only appropriate remedy is typically money damages.

Press reports indicate that it is relatively common for inmates to be incarcerated or held under supervision beyond their release or termination dates respectively. The Seventh Circuit Court of Appeals terms this type of unwarranted punishment "cruel and unusual" in violation of the 8th Amendment³. See, *Hankins v. Lowe*, 786 F.3d 603, (7th Cir. 2015). Giving the Seventh Circuit's characterization the credence it deserves, this Court's *Heck* decision bars any kind of monetary damage award to a prisoner who was subjected to cruel and unusual through no fault of the prisoner. While observing that the judiciary has a particular

³ Aimee's original claims were for violation of her rights to interstate travel and violation of her right to privacy. Petitioner's first appeal to the Seventh Circuit was on these causes for which the 7th Circuit substituted its own judgement that a cruel and unusual cause was the appropriate course. It is within this Court's purview to hold Aimee's original causes just and viable.

responsibility to assure the vindication of constitutional interests such as those embraced by the Eighth Amendment, in cases where habeous corpus is realistically unavailable, *Heck* denies those damaged any practical remedy in violation of a core legal principle defining the legal system in the United States – that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 1 Cranch 137, 5 U. S. 163 (1803). For

inmates or parolees who cannot bring a habeous corpus petition while in custody, there is no remedy for the harm.

In previous cases, *Wilkinson v. Dotson*, 544 U.S. 74, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005), and in *Skinner v. Switzer*, 562 U.S. 521, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011), this Court held that the favorable termination requirement of *Heck* was not implicated because, should the plaintiff obtain the relief requested, the validity of his underlying conviction or confinement would not be put in

question. Here, Aimee is not asking for any alteration in her confinement or supervision status for any time under her original sentence, only that, she not be required to serve gratuitously added supervision for which she was undeserving and for has been characterized as cruel and unusual punishment. In essence Aimee is requesting that any adjudication of that status be conducted in a manner that comport with those federal constitutional standards exclusive of this Court's holding in *Heck*.

Many people may feel that such a denial of basic civil rights may be acceptable for a mass murder or a serial rapist but not for someone who is incarcerated for far more common offenses such as unpaid parking tickets, trespassing or disorderly conduct. The blanket scope of *Heck* invites abuse because Correctional Officials know they have a cascading set of legal mechanisms which ultimately protect them from responsibility for their actions. For example, someone kept beyond there term is limited to habeous corpus relief under *Heck*. If a Plaintiff can overcome that hurdle, government officials are

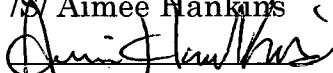
generally entitled to qualified immunity. Where a plaintiff ultimately prevails in Court State laws often limit the amount of a judgement that can be attached from a law enforcement salary or pension, and, bankruptcy is a common method of destroying a successful plaintiff's ability to collect from a losing law enforcement officer. Where qualified immunity does not apply, political considerations where approximately ½ of American judges are former prosecutor's having a previous close relationship to law enforcement, will often decide contested facts instead of allowing same to go to a jury.

To find otherwise would imply that someone sentenced to any jail time, could be held for an unlimited time beyond their sentence period, in isolation to prevent that person from filing a petition for habeous corpus while "in custody", and upon release such an individual would have no rights to compensation for a unlawful incarceration under 42 U.S.C. §1983! Such a result would moot the constitutional requirement contained in Article I, Section 9, Clause 2, stating that: " [t]he Privilege of

the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it" because this Court's holding in Heck in fact suspends the writ of Habeous Corpus by judicial fiat.

CONCLUSION

This Court should handle cases for the common folk more often and elect to rule on this case. The petition for a writ of certiorari should be granted.

Respectfully submitted,
Electronically signed,
/S/ Aimee Hankins

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APPENDIX A

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APPENDIX B

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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Petition for a Writ of Certiorari in the above-referenced case contains 3,583 words, excluding the parts of the petition exempted by Supreme Court Rule 33.1(d).

Electronically signed,

Electronically signed,

/S/ Aimee Hankins



Aimee Hankins