No. 20-1674

ORIGINAL

In The
Supreme Court of the United States

LAWRENCE MILLS,

Petitioner,

v.

ANTHONY HASSAN, ET AL.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

Lawrence Mills
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Petitioner in Proper Person

QUESTION PRESENTED

1. Whether charges must be analyzed separately for the purposes of analyzing a malicious prosecution claim?

2. Whether the District Court erred by failing to take the facts alleged in the complaint as true?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the Fourth Circuit were Petitioner Lawrence Mills, and Respondents Troopers Anthony Hassan, James Lantz, and Matthew Dull, and the State of Maryland.

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The United States Court of Appeals for the Fourth Circuit affirmed the dismissal of Petitioner's complaint "for the reasons stated by the District Court." (App. 7). The District Court's opinions dismissing Petitioner's complaint (App. 20-39) and denying his Federal Rule of Civil Procedure 59(e)(3) and 60(b)(6) motions (App. 8) are unreported.

JURISDICTION

The court of appeals entered judgment on July 6, 2015. (App. 3). The court denied a timely petition for rehearing en banc on December 15, 2020. (App. 1). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

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STATEMENT

Petitioner Lawrence Mills is an adult citizen resident of Silver Spring, Maryland.

Mills was framed by Maryland State Trooper Anthony Hassan for the crime of Driving Under the Influence of Alcohol of which Mills was innocent. On June 30, 2015, entirely based on Hassan's fabricated evidence Mills was convicted and sentence of 2 years and 60 days to the Department of Corrections, with 2 years suspended. Mills was imprisoned until he was eventually released on an appeal bond. (App. 44).

On appeal Mills' defense counsel was able to obtain evidence showing that Hassan had fabricated evidence used to obtain Mills' district court conviction. (App. 44-45). During his *de novo* Howard County Circuit Court jury trial, his defense attorney exposed to the jury that Hassan manufactured evidence and Mills was found "Not Guilty" of both Driving Under the Influence of Alcohol and Driving While Impaired. (App. 43, 45-47).

On February 23, 2018, Mills filed suit asserting claims including *inter alia* constitutional tort claims under 42 U.S.C. § 1983 for violation of his Fourth and Fourteenth Amendment rights and malicious prosecution. Mills' complaint alleged in detail how Hassan's fabricated evidence was the sole basis for Mills' wrongful conviction and imprisonment for DUI following his Howard County District Court conviction. (App. 43-50).

The District Court dismissed Mills' Fourth Amendment claims, finding that because Mills was convicted of other traffic offenses such as negligent driving, Mills could not assert any Malicious Prosecution or Fourth Amendment claim. The District Court held "decisions issued by the Second and Third Circuit are not binding on this Court. Moreover, the Fourth Circuit... ha[s] held that a Fourth Amendment fail where an officer has probable cause for at least one charge for an arrest on multiple charges. *Gantt v. Whitaker*, 57 F.App'x 141, 149 n.7 (4th Cir. 2003)..." (App. 17).

However, every other Circuit has held that courts must "separately analyze the charges claimed to have been maliciously prosecuted." *Posr v. Doherty*, 944 F.2d 91, 100 (2d Cir. 1991); *Jocks v. Tavernier*, 316 F.3d 128, 138 (2d Cir. 2003); *Janetka v. Dabe*, 892 F.2d 187 892 F.2d at 190; *Johnson v. Knorr*, 477 F.3d 75, 83-84 (3d Cir. 2007); *Lieberman v. Dudley*, 199 F.3d 1322 (2d Cir. 1999); *DiBlasio v. City of N.Y.*, 102 F.3d 654, 659 (2d Cir.1996); *Johnson v. Knorr*, 477 F.3d 75, 83-84 (3d Cir. 2007); *Kossler v. Crisanti*, 564 F.3d 181, 192 (3d Cir. 2009); *Barnes v. Wright*, 449 F.3d 709, 713 (6th Cir. 2006); *Holmes v. Vill. of Hoffman Estates*, 511 F.3d 673, 682 (7th Cir. 2007); *Elmore v. Fulton Cnty. Sch.* Dist., 605 F. App'x 906, 915 (11th Cir. 2015); *Uboh v. Reno*, 141 F.3d 1000, 1005 (11th Cir. 1998). *See also Ricciuti v. N.Y.C. Transit Auth.*, 124 F.3d 123, 130 (2d Cir. 1997). The anomalous "single transaction" theory of the Fourth Circuit is a radical departure from the well-reasoned precedent set forth by the sister circuits.

Judge Russell also completely ignored the facts alleged in Mills' complaint and instead incorrectly held that Mills' claims were based on an "interlock" charge (perhaps confusing Mills' lawsuit with another case). See App. 37 (incorrectly concluding that "Mills does not allege he served any period of incarceration for any charge other than the Ignition Interlock violation. The only charge to which Mills was sentenced to incarceration and did not successfully appeal was the Ignition Interlock charge.").

First Mills was not sentenced to jail for an "interlock" offense, he was sentenced to jail **only** for the offense of DUI which Mills was innocent. See App. 45 (Petitioner's Complaint alleged that "[o]n June 30 2015, Mills was tried and convicted in the District Court for Howard County for DUI, and the judge imposed a sentence of 2 years and 60 days to the Department of Corrections, with 2 years suspended.") .

Second, Mills did not even mention an interlock offense complaint, thus Judge Russell's contention that Mills only alleged incarceration as a result of interlock offense is a legal impossibility. See App. 38, ("Mills does not even mention the Ignition Interlock charge in the Complaint.").

Petitioner filed Motion under Federal Rule of Civil Procedure 59(e)(3) and 60(b)(6) to argue that dismissal of his Fourteenth Amendment claim was based on a factual error. The Court incorrectly assumed that his Fourteenth Amendment claim was based on an offense not even mentioned in the complaint, and should have been based on the time he was imprisoned following his conviction for DUI in Howard County Circuit Court. (App. 17).

Judge Russell denied Petitioner's motion and stated "Defendants' arguments are not responsive to Mills' contention that he suffered a deprivation of liberty following his DUI conviction. Nonetheless, the Court concludes that Mills is not entitled to relief under Rule 59(e). In his Complaint, Mills wholly failed to advance the factual and legal arguments he now asserts in support of his Fourteenth Amendment claim." (App. 18). To the contrary, Mills' complaint clearly alleged his deprivation of liberty as a result of Hassan's fabrication of evidence for the DUI charge. (App. 43-45).

Accordingly, the District Court's ruling also violates Federal Rule of Civil Procedure 12(b)(6) and contravenes this Court's holding in *Iqbal* that "a court must accept as true all of the allegations contained in a complaint..." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949, 556 U.S. 662, 678 (U.S., 2009).

REASONS TO GRANT WRIT

I: THERE IS A CIRCUIT SPLIT AS TO WHETHER CHARGES CLAIMED TO HAVE BEEN MALICIOUSLY PROSECUTED MUST BE ANALYZED SEPERATELY

The Fourth Circuit is the only United States Court of Appeals to incorrectly hold that a plaintiff is precluded from brining a malicious prosecution claim so long as there is probable cause for one of the charges. *See Gantt v. Whitaker*, 57 F.App'x 141, 149 n.7 (4th Cir. 2003). The District Court below relied on the Fourth Circuit's erroneous opinion in *Gantt* to dismiss Petitioner's Fourth Amendment claims.

It is well established in almost every circuit that probable cause as to one charge will not bar a malicious prosecution claim based on a second, distinct charge as to which probable cause was lacking. *Elmore v. Fulton Cnty. Sch. Dist.*, 605 F. App'x 906, 915 (11th Cir. 2015); *Holmes v. Vill. of Hoffman Estates*, 511 F.3d 673, 682 (7th Cir. 2007); *Johnson v. Knorr*, 477 F.3d 75, 83-84 (3d Cir. 2007); *Posr v. Doherty*, 944 F.2d 91, 100 (2d Cir. 1991).

The United States Court of Appeals for the Third Circuit recently upheld its decision from *Johnson v. Knorr*, 477 F.3d 75, 85 (3d Cir. 2007), "we do not hold that there is never favorable termination unless a plaintiff is acquitted of all charges." *Kossler v. Crisanti*, 564 F.3d 181, 192 (3d Cir. 2009) (emphasis added). In *Kossler*, the Third Circuit described the Fourth Amendment analysis in split verdict cases as a "favorable-termination [...] spectrum[.]" Id. In support of its position that a plaintiff may bring viable Fourth Amendment claims regardless of whether there is probable cause for, or a conviction on other charges, the Third Circuit cited the Eleventh Circuit's well-reasoned opinion in *Uboh*, "the dismissal of some charges of the indictment by the prosecutor -- notwithstanding the plaintiff's earlier conviction on other charges set forth in the indictment -- constituted termination in favor of the

accused[.]" *Kossler*, supra, at 192 (quoting *Uboh v. Reno*, 141 F.3d 1000 (11th Cir. 1998)).

As the Seventh Circuit explained... each additional charge imposes additional costs and burdens. *Holmes*, 511 F.3d at 682. Moreover, while the First Circuit has not definitively ruled on the subject, it has acknowledged this trend in other circuits. *See Rivera-Marcano v. Normeat Royal Dane Quality A/S*, 998 F.2d 34, 38 (1st Cir. 1993)."

In *Reid*, the United States District Court for the Southern District of New York dealt with a matter where a plaintiff achieved favorable termination of his murder charge but was convicted of reckless endangerment. *Reid v. City of N.Y.*, 2004 U.S. Dist. LEXIS 5030, at *17 (S.D.N.Y. Mar. 29, 2004). The district court in *Reid* held that "[a] plaintiff charged with crimes of varying degrees of seriousness, and convicted on the lesser charges, may nonetheless sue for malicious prosecution on the more serious claims that were terminated in his favor." Id. (Citing *Posr*, 944 F.2d at 100). Although "the offenses may be joined together in a single proceeding, this does not mean that they are sufficiently related to preclude a finding of favorable termination." Id. at *21.

In *Cortés-Cabán*, "members of the Puerto Rico Police Department's Mayagüez Drugs and Narcotics Division (the 'Division'), were convicted of fabricating criminal cases against citizens through the planting of controlled substances, leading to such citizens' wrongful arrests based on the fabricated evidence." *United States v. Cortés-Cabán*, 691 F.3d 1, 6 (1st Cir. 2012). Their convictions and prison sentences were affirmed by the United States Court of Appeals for the First Circuit. (Id. at 30). Under the Fourth Circuit's decision in *Gantt* the victims of this rogue division would be precluded from bringing charges for malicious prosecution so long as the now imprisoned police officer had probable cause for a minor charge such as driving with a suspended license.

Perhaps the most obvious distinction in Petitioner's case between the traffic charges is that the offenses are distinct in both their elements and level of severity. Here Mills was acquitted of the most serious offense of Driving Under the Influence of Alcohol for which he faced four years in state prison and "[t]o hold that an acquittal does not constitute a favorable termination would be particularly inappropriate in this case, where the charge for which [a plaintiff] was acquitted was more serious than the one for which he was convicted." *Janetka*, supra, at 190; *see Posr*, 944 F.2d at 100 (declining to allow probable cause for a disorderly conduct charge "to foreclose a malicious prosecution cause of action on charges requiring different, and more culpable, behavior[.]" *See also Lieberman v. Dudley*, 199 F.3d 1322 (2d Cir. 1999) cert. denied, 529 U.S. 1099, 120 S. Ct. 1834, 146 L. Ed. 2d 777 (2000) ("A finding of probable cause to arrest does not, however, foreclose a cause of action for malicious prosecution if the plaintiff was prosecuted on a more serious charge for which there was no probable cause [...] If the rule were otherwise, plaintiffs would have no remedy if they were arrested on a minor charge and maliciously prosecuted on a more serious one.").

Given the disparate seriousness of the acquittal and conviction charges, it matters that Mills was acquitted of the most serious charge and convicted of the lesser traffic offenses. This fact satisfies what might be called the "structural-pressure factor of the favorable termination analysis[.]" *Evans v. City of New York*, No. 12-CV-5341 MKB, 2015 WL 1345374, at *23 (E.D.N.Y. Mar. 25, 2015). *See also DiBlasio*, 102 F.3d at 659 (citing to *Posr*, 944 F.2d at 100, which expressed concern that "serious, unfounded charges ... would support a high bail or a lengthy detention"); *Janetka*, 892 F.2d at 190; *Ostroski*, 443 F.Supp.2d at 336, (stating that "barring the malicious prosecution claim [would be] particularly inappropriate where the charge resulting in acquittal was more serious than the crime of conviction").

If the dispositive factor was whether the charge resulting in acquittal arose out of events that occurred on the same occasion as a charge resulting in conviction, then police officers could add unsupported serious charges to legitimate minor charges with impunity. *Janetka v. Dabe*, 892 F.2d 187 892 F.2d at 190; see *DiBlasio v. City of N.Y.*, 102 F.3d 654, 659 (2d Cir.1996) (stating that the Second Circuit has "expressed concern on several occasions about the possibility of a prosecutor securing an indictment for an easily provable minor offense and adding to it more serious charges with the hope that proof of probable cause on the lesser charge would insulate the prosecutor from liability for malicious prosecution on the unproved serious ones"); *Posr*, supra, at 100 (2d Cir.1991) (warning against the manipulation of a charging document that would permit "an officer with probable cause as to a lesser offense [to] tack on more serious, unfounded charges which would support a high bail or a lengthy detention, knowing that the probable cause on the lesser offense would insulate him from liability for malicious prosecution on the other offenses"). *See Johnson v. City of N.Y.*, 551 F. App'x 14, 14–15 (2d Cir. Jan.22, 2014) (finding against favorable termination because, *inter alia*, the split verdict included a conviction of a more serious offense than the acquittal offense); *Manbeck v. Micka*, 640 F.Supp.2d 351, 374 (S.D.N.Y.2009) (noting that *Janetka* highlighted a situation of concern to the Second Circuit, which was "[a]llowing police officers to add unwarranted misdemeanor charges to valid violation charges" in order to "force an accused to go to trial on the misdemeanor when he otherwise would plead to the violation").

The Fourth Circuit's precedent that a plaintiff is precluded from bringing a malicious prosecution claim based on a finding of probable cause for any charge regardless of the difference in severity between the acquittal charge and conviction charge, is wholly unfounded and completely contrary to the well-reasoned precedent set forth by its sister circuits.

II: FABRICATION OF EVIDENCE CLAIM

The District Court contradicts itself, and its opinions present a factual impossibility. The District Court claimed that Petitioner only alleged deprivation of liberty for an interlock offense (App. 36) but also states that such offense was not mentioned in his complaint. (App. 12, 15). Obviously, Mills could not both have based his claims on an "interlock" charge, and also not mentioned such a charge at all in his complaint.

As blatant of error as the District Court made here, it refused it correct it. The Fourth Circuit did not address this or any other issue. Clearly the Fourth Circuit did not give Petitioner's initial appeal the appropriate scrutiny it deserved.

According to the Michigan Law Review, the Fourth Circuit places appeals from self-represented litigants on "discretionary and not mandatory dockets (despite 28 U.S.C. 1291's command to the contrary)." Merritt E. McAlister, "*Downright Indifference*": *Examining Unpublished Decisions in the Federal Courts of Appeals*, 118 MICH. L. REV. 533 (2020). p. 547. Granting certiorari in this case may dissuade the Fourth Circuit from continuing in the future to summarily dispose of appeals, and rubber stamp dismissals of meritorious complaints without even examining the legal arguments of litigants.

In this case, just as the police officers in *Garcia*, Respondent Hassan "fabricated a new reality." *See e.g., Garcia v. Hudak*, 156 F. Supp. 3d 907, 917 (N.D. Ill. 2016). In *Garcia* police officers falsely testified that their victim possessed narcotics, for which the victim was sentenced to eleven years in prison. The Federal Court in Garcia noted that the officers "did not falsely testify about the facts in the criminal matter. Instead, they fabricated a new reality—one in which Plaintiff possessed narcotics with the intent to distribute them—then testified accordingly." Id.

In *Fields*, a plaintiff successfully brought § 1983 claims against police officers that "fabricated evidence and introduce[d] the fabricated evidence at trial. The innocent victim of the fabrication [was] prosecuted and convicted and sent to prison for 17 years." *Fields v. Wharrie*, 740 F.3d 1107, 1113 (7th Cir. 2014). Both in *Fields* and in the present case it would be "an offensive and indeed senseless result" that the defendant officers would escape liability after "having fabricated evidence [and] ma[d]e sure that the evidence is used to convict the innocent victim of the fabrication." Id.

Here, Petitioner properly asserted a Fourteenth Amendment claim for "deliberate framing under color of official sanction." *Halsey v. Pfeiffer*, 750 F.3d 273, 296 (C.A.3 (N.J.),2014); *Whitlock v. Brueggemann*, 682 F.3d 567, 582 (C.A.7 (Ill.), 2012); *Limone v. Condon*, 372 F.3d 39, 44-45 (1st Cir. 2004).

CONCLUSION

For all of these reasons, this Court should grant the Petition.

Respectfully submitted,

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May 5, 2021