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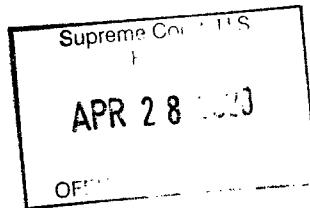
Case No.

CHAPPELL
Richard L.A.

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD LOUIS ARNOLD PHILLIPS

Petitioner



vs.

KEVIN R. CHAPPELL, et. al.

Respondent

*On petition for a writ of certiorari
To the Ninth Circuit Court of Appeals*

PETITION FOR WRIT OF CERTIORARI

RICHARD L.A. PHILLIPS

filings pro se

C-13707

CSP - SATF

P.O. Box 5242

Corcoran, CA 93212

QUESTION PRESENTED

RICHARD LOUIS ARNOLD PHILLIPS (Phillips), filing pro se, raises a 'standing' question heretofore unanswered by this Court.

In Heck v. Humphrey, 512 U.S. 477 at 486-487 (1994) this Court held "[a] §1983 plaintiff must prove that the conviction or sentence has been reversed[.] (Emphasis added.)

I.

Is a plaintiff 'Heck barred' from seeking §1983 relief, when his conviction is partially reversed — thus vacating the only sentence imposed — but part of the conviction remains intact?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

KEVIN R. CHAPPELL, Warden,
San Quentin State Prison (SQ);

B. EBERT,
Litigation Coordinator, SQ;

SAMUEL ROBINSON,
Correctional Lieutenant, SQ;

J. PEREZ,
Transportation Sergeant, SQ;

CONNIE GIPSON, Warden,
State Prison - Corcoran (SPC);

MARY KIMBRELL,
Litigation Coordinator, SPC;

D. OVERLEY,
Associate Warden, SPC;

KATHLEEN DICKINSON, Director,
California Department of Corrections and Rehabilitation (CDCR);

KELLY HARRINGTON,
Associate Director, CDCR;

VIMAL SINGH,
Associate Director, CDCR,

Defendants.

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Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

RICHARD LOUIS ARNOLD PHILLIPS (Phillips), filing pro se, respectfully prays that a writ of certiorari will issue.

I. OPINIONS BELOW:

The Ninth Circuit's unpublished opinion in case No. 18-16790 (Phillips v. Chappell, et al.) is attached as Exhibit A.

The Ninth Circuit's denial of rehearing or suggestion for rehearing en banc is attached as Exhibit B.

The Ninth Circuit reversed the finding of special circumstance, thus vacating the only sentence imposed, in Phillips v. Ornoski, reported at 673 F.3d 1168 (9th Cir. 2012).

II. JURISDICTION:

The Ninth Circuit Court of Appeals denied en banc review on 30 December 2019. This Court returned Phillips' timely filed handwritten petition to correct procedural errors, and allow time to prepare a typewritten petition. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

III. CONSTITUTIONAL PROVISION INVOLVED:

The Fourteenth Amendment of the United States Constitution provides no citizen may be denied life or liberty, by the U.S. Government or a state, without due process.

IV. INTRODUCTION AND STATEMENT OF THE CASE:

In 1980 a Madera County, California jury found Phillips

guilty of all four charged counts.

Count One: The 07 December 1977 first degree murder of Bruce Bartulis (Bartulis). For Count One Phillips received a sentence of death.

Count Two: Robbery of Bartulis. For Count Two Phillips received a sentence of four years.

Count Three: The 07 December 1977 attempted first degree murder of Ronald Rose (Rose). For Count Three the trial court imposed the upper term -- Seven years.

Count Four: Robbery of Rose. For Count Four Phillips received a sentence of four years. The above sentences were pursuant to the California Penal Code at date of offense.¹ The sentences for Counts Two, Three and Four are fully served.

Phillips had no other sentence from any court, state or federal.

In 1985 the California Supreme Court reversed the penalty phase of the original trial.

On retrial Phillips' motion to proceed pro per/co-counsel was granted. The retrial court issued to the Madera County Jail, an Order for pro per provisions.²

In 1992 Phillips was again sentenced to death and returned to California's death row at San Quentin State Prison.

Phillips was subsequently granted his motion to proceed

¹ The trial court initially ordered Counts Two, Three and Four be served consecutively. This is contrary to the applicable California law and was subsequently corrected to run concurrent to Count One.

² Under California law, once issued an order for pro per provisions cannot be revoked, except "for cause."

pro se (with advisory counsel) in his collateral attack of his conviction and sentence by the United States District Court, then the Ninth Circuit. Phillips is the only California death row prisoner granted permission to proceed pro se in his or her capital litigation.

In 2005 the Ninth Circuit, under the All Writs Act, granted Phillips' motion and issued an Order directing the San Quentin Prison Warden to provide Phillips a work area sufficiently large enough for simultaneous access to his 25 boxes of case files. Phillips was the only California death row inmate with such an order. This Order was complied with, but not well received.

In Phillips v. Ornoski, 673 F.3d 1168 (9th Cir. 2012), the court reversed the special circumstance conviction – thus vacating the sentence of death – voiding the only abstract of judgment committing Phillips to the custody of the San Quentin Warden.

Grant of collateral relief left Phillips with a partial conviction only, but no sentence – and therefore no judgment as defined by this Court.³ When the Ninth's mandate issued, the state superior court signed orders directing the San Quentin Warden release Phillips to representatives of Madera County Department of Corrections, for housing in Madera jail pending possible retrial of the special circumstance allegation.⁴

³ "Final judgment in a criminal case means sentence. The sentence is the judgment." (Berman v. United States, 301 U.S. 211 at 212 (1937).)

⁴ Pursuant to California law applicable to Phillips' case, had the prosecution elected not to retry the special circumstance allegation – or if the jury found Phillips not guilty – the trial court was vested with authority to find, in the interest of justice, Phillips should be given credit for the years served and placed on probation instead of returned to prison.

To prevent Phillips from regaining at the Madera County jail, access to his computer and other tools previously found necessary for pro per preparation of a defense (see fn. 2 above) the Warden of San Quentin Prison transferred Phillips to another California state prison, as a "condemned" inmate. Pursuant to California regulations the San Quentin Warden must obtain from the Director of California Department of Corrections authorization to rehouse a condemned inmate, prior to the move. Here, the San Quentin Warden submitted paperwork to the Director requesting authorization to rehouse Phillips, asserting Phillips was still "condemned" despite the sentence of death being vacated; no judgment for any other sentence, two days after the transfer.

Following exhaustion of administrative review, Phillips filed for monetary damages under 42 U.S.C. §1983, alleging He is a partially convicted pre-trial detainee with no sentence and thus no judgment (and therefore no abstract of judgment from a trial court committing Phillips to state prison), asserting:

"Defendants, in concert, retaliated against Phillips for having previously exercised his First Amendment right to seek redress from the courts pro se, by, under false label (condemned) clandestinely transferring Phillips to more restrictive housing, with the proximate objective of circumventing California case law based upon U.S. Supreme Court law for due process, and with deliberate intent to restrict Phillips' right to self-representation on retrial."

The federal district court dismissed Phillips' §1983 complaint as Heck⁵ barred, holding:

"Plaintiff was found guilty of first

⁵ Heck v. Humphrey, 512 U.S. 477 (1994).

degree murder, among other crimes and is serving a life sentence ... He is not a pre-trial detainee, as he asserts, but a California prisoner who has been lawfully convicted and sentenced to life in state prison."
(15 August 2018 Order -- Emphasis added.)

Phillips filed a Rule 59 Motion for Reconsideration based on the fact the 15 August 2018 Order above is factually incorrect because no court, state or federal, had ever sentenced Phillips to "life in prison." At the date of Phillips' filing for relief under §1983, he had no prison sentence from any court.

Phillips' Rule 59 motion was denied by the district court, who held Rule 59 does not lie to correct factual errors.

The Ninth Circuit denied Phillips' appeal and then motion for reconsideration en banc, upon a finding:

"The district court properly dismissed Phillips's claim premised on his allegedly illegal confinement in state prison as barred by Heck v. Humphrey, 512 U.S. 477 (1994), because success on this claim would necessarily demonstrate the invalidity of the duration of his confinement." See Wilkinson v. Dotson, 544 U.S. 74, 78 (2005) ("[A] prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement."[]) (See Exhibit "A" p. 2, herein.)

V. REASONS FOR GRANTING THE WRIT:

In Heck this Court distinguished between "conviction" and "sentence." The implied nexus is this Court's law that without a sentence there can be no judgement -- thus no prison sentence to challenge. The unanswered question raised herein is potentially applicable to every person receiving partial collateral relief.

This Court held in Berman v. United States, 302 U.S. 211 at 212 (1937): "Final judgement in a criminal case means sentence. The sentence is the judgement." This Court made it clear in

Magwood v. Patterson, 561 U.S. 320 at 322 (2010) that in a case such as Phillips,' where a new trial before a new jury is required, "a "new judgment (through a new trial...)" will exist. (Emphasis in original.)

Rule 52(a)(6) of Federal Rules of Civil Procedure vested the Ninth Circuit with authority to overturn a clearly erroneous finding by the lower court of the "ultimate facts." (See Bose Corp. v. Consumer's Union of U.S., Inc., 466 U.S. 485 at 501 (1983): "Rule 52(a) applies to findings of fact, including those described as "ultimate facts," because they may determine the outcome of litigation.") The Ninth sidestepped this obligation with an incorrect interpretation of Heck.

As a partially convicted pre-(re)trial detainee, with no existing judgment for any crime, Phillips does not dispute the State has a right to detain Phillips, even without bail if it so chooses. Phillips seeks relief of the administrative decision — to falsely maintain Phillips is a condemned⁶ inmate with the objective of interfering with Phillips' access to the court and the court ordered provisions. This challenge is analogous to the administrative decision(s) previously before this Court in Wolff v. McDonnell, 418 U.S. 539 (1974) wherein this Court held §1983 was the proper forum.

///

⁶ California Department of Corrections Operations Manual defines "condemned" as a male or female prisoner under sentence of death.

VI. CONCLUSION:

This Court should answer the Question Presented with a finding that without the existence of a judgment, as defined by this Court in Berman, there is no sentence to invalidate or shorten and therefore Heck cannot apply.

Phillips so prays.

Dated: 10 September 2020


RICHARD LOUIS ARNOLD PHILLIPS
filing pro se