

JUN 11 2020

OFFICE OF THE CLERK

No. 20-5309

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Owen Harriot — PETITIONER, *Pro Se*
(Your Name)

vs.

DOJ Jeff Sessions, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Owen Harriot
(Your Name)

USP, P.O. BOX 1000
(Address)

Lewisburg, Pennsylvania 17837
(City, State, Zip Code)

NOT APPLICABLE
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

In light of Wallace v Kato, 549 U.S. 384 (2007) the two critical question presented here is:

- C. WHETHER THE LOWER COURTS DECISION THAT RESPONDENTS' DETENTION OF PETITIONER WITHOUT LEGAL PROCESS UNSUPPORTED BY PROBABLE CAUSE IS BARRED BY HECK V HUMPHREY, 512 U.S. 477 (1994) CONFLICTS WITH THIS COURT DECISION IN WALLACE, AND IF SO,
- J. WHEN PETITIONER'S STATUTE OF LIMITATIONS FOR HIS FALSE IMPRISONMENT END IDAT397?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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:

J Rene Josey, Former U.S. Attorney;

Scarlet A. Wilson, Former AUSA;

Stacey D. Haynes, AUSA;

Robert Waizenhofer, FBI Special Agent;

Rodney Pritchard, FBI Special Agent;

Charles Klatz, FBI Special Agent;

Unknown INS Agents, Department of Homeland Security;

Unknown Sheriff Deputies, Richland County Sheriff Department.

TABLE OF AUTHORITIES CITED

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at 788 Fed. Appx 226; No. 19-734A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

Dist. Lexis 227684 (Magistrate's Report)
 reported at Dist. Lexis 155590; CA No. 3:18-3164-JFA-SVH; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 20, 2019.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 16, 2020, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), 28 U.S.C. § 2106

The Fourth Circuit has entered an affirmed decision in conflict with relevant decision in Wallace v Kato, 549 US 384 (2007), so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's Supervisory Power. See Statement of the Case, pages 4-9. The lower courts decisions provides no Guidance, 28 U.S.C. § 2106

For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment (Warrantless arrest lacked probable cause)

Fifth Amendment (Warrantless arrest without hearing and
Without Bail Reform Act of 1966
18 U.S.C. §§ 3141, et seq.)

Sixth Amendment (See Original Complaint)

Eighth Amendment (See Original Complaint)

Fourteenth Amendment (See Original Complaint)

18 U.S.C. §§ 3141 et seq.

STATEMENT OF THE CASE

A. These suits pursuant to 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) comes before this Supreme Court and arises from Respondents' "detention of Petitioner without legal process unsupported by probable cause" which occurred in the District of Columbia, South Carolina, on July 24, 1999¹ and still remain unadjudicated on the merits is unprecedented and unheard of.

B. The lower courts erred in finding that Petitioner was not entitled to "monetary relief" under § 1983 and Bivens, Constitution's Fourth Amendment for False Arrest and False Imprisonment among other things because the lower courts' analysis, however, fails to account for a key distinction between the tort to Malicious Prosecution under Heck and the tort to False Imprisonment under Wallace: the latter "is the proper analogous to the tort False Imprisonment."

C. Whether Lower Courts decision that Respondents' detention of Petitioner without legal process lacked probable cause is barred by Heck, conflicts with this Court decision in Wallace;

1 While in Respondents' custody on July 24, 1999, the record clearly reflects that Respondents "did not have a facially valid warrant" throughout July 24-25, 1999, until Respondents' attempted Complaint filed July 26, 1999, where the record is still silence whether an arrest warrant was ever authorized by Magistrate Judge Bristow Merchant. See Public docket sheet from Petitioner's Criminal Case number 3:99-341-MBS-3 —

ARGUMENT

D. To address that conflict, in Wallace, this Court distinguished Wallace from Heck on the ground that claim in Heck was analogous to the tort to malicious prosecution rather than false imprisonment. Id. Wallace, 549 U.S. at 389, for instance;

E. Unreasonable seizures imposed without legal process precipitate Fourth Amendment false imprisonment claims Id. Wallace, 549 U.S. at 389, "Concluding that false imprisonment was the proper analogy where defendants did not have a warrant for the plaintiff's arrest and thus detention occurred without legal process," While unreasonable seizures imposed with legal process precipitate Fourth Amendment malicious prosecution claims Heck, 512 U.S. at 484, where detention occurs with legal process the common-law cause of action for malicious prosecution provide the closest analogy;

F. Moreover, at common-law false imprisonment arose from a "detention without legal process," whereas malicious prosecution was marked "by wrongful institution of legal process" See Wallace, 549 U.S. at 389-90; Nieves v Bartlett, 139 S.Ct. 1715, 1726 (2018); See also Brooks v City of Winston-Salem N.C., 85 F.3d 178, 181 (1996) ("At common-law, allegations that a warrantless arrest or imprisonment was not supported by probable cause advanced a claim of false arrest or false imprisonment"). As a result, a false imprisonment claim must proceed where it is made pursuant to a warrantless arrest or without legal process Id. at 181.

G. Here, the basic facts, which are not in dispute as a matter

of law, the Respondents' restraint of Petitioner occurred on July 24, 1999, without legal process because the Respondents "did not have a warrant for his arrest," therefore, Wallace is controlling and not Heck. Accordingly, Heck's barred does not apply and Petitioner's false imprisonment claims under Wallace, must proceed where it is made here pursuant to a warrantless arrest or arrest without legal process, see Brooks, 85 Fed at 181.

H. Furthermore, in South Carolina, a cause of action for false imprisonment requires a showing that "(1) the Respondent(s) restrained the Petitioner (2) the restraint was intentionally, and (3) the restrained was unlawful" See Roberts v City of Forest Acres, 902 F.Supp. 622, 671 (D.S.C. 1995) (quoting Caldwell v K-Mart Corp, 306 S.C. 27, 410 S.E. 2d 21, 23 (S.C. App. 1991)). Petitioner contends that South Carolina's false imprisonment permits recovery for an unlawful seizure without legal process and which does not impose "the Heck's favorable termination element" requirement. Id Caldwell, 410 S.E. 2d 21, 23; Wallace, 549 U.S. 389.

I. Background: On July 24, 1999, the Unknown Sheriff's deputies² (Respondent) taking direct order from FBI Robert Waizenhofer (Respondent) restraint Petitioner without legal process lacked probable cause and where they held Petitioner for hours until FBI Agents Rodney Pritchard (Respondent) and Charles Klatz (Respondent) arrived on the scene

2 Petitioner was never charge nor convicted by the Unknown Sheriff's deputies, therefore, the district Court's erred because Heck's barred does not apply to the State officials under § 1983.

and transferred Petitioner to the Richland County jail "without authority of the law," "without probable cause" and "no crimes committed." This is what happened here and the Respondents' outrageously concealed it from the Court(s) and Petitioner for more than 18 years until discovered by Petitioner in February 2018. For the foregoing reasons, Petitioner presented this second question:

J. When Petitioner's Statute of Limitations for His July 24, 1999, False Imprisonment End?

K. This Supreme Court decision in Wallace, is instructive on this point. Wallace addressed a statute of limitations question: What is the accrual rule for a fourth Amendment claim for arrest without probable cause? 549 US at 386-87, (See Q for more detail).

L. However, the statute of limitations to bring a claim under § 1983 and Bivens is determined by state law, See Wallace Id at 387. Under South Carolina law, a plaintiff has three years to bring a § 1983 and Bivens false imprisonment claims. The date of action accrues, however, is determined by federal law.

M. In Wallace, 549 US at 389-92, this Court held that "false imprisonment consist of detention without legal process, and a false imprisonment ends once the victim becomes held pursuant to such process." - When, for examples, he is bound over by a Magistrate or arraigned on charges, Id. The timeliness of Petitioner's false imprisonment claim therefore depends on when he began to be held pursuant to legal process.

N. As described in paragraph B above, "the lower courts' analysis failed to account for a key distinction between

Heck and Wallace "accrual analysis begins with identifying "the specific Constitutional right" alleged to have been infringed, See Manuel v City of Joliet, 197 L. Ed. 2d 312, 324 (2017), here, detention without legal process, as a result, the district Court and the Fourth Circuit! unpublished decisions clearly erred in finding that the South Carolina three years applicable statute of limitations barred the Petitioner's false imprisonment claims without addressing Wallace's accrual rule that false imprisonment ends once the victim becomes held pursuant to [probable cause] process" Id. at 389-92;

O. Guided by Wallace precedent, Petitioner turns to the threshold question of whether the Respondents' had probable cause to arrest Petitioner on July 24, 1999? the district Court did not service of process upon the Respondents to answer the Petitioner's Cognizable Fourth Amendment's § 1983 and Bivens warrantless arrest lacked probable cause claims. In a warrantless arrest situation, the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest, Gerstein v Pugh, 420 U.S. 103, 113-114 (1975), and no later than within 48 hours See County of Riverside v McLaughlin, 500 U.S. 44, 57 (1991) ("Where an arrested individual does not received a probable cause determination within 48 hours, the calculus changes and the arrested individual [like Petitioner] does not bear the burden of proven an unreasonable delay (or otherwise the statute of limitations)).

P. Petitioner strongly argues that he never received legal process justifying his July 24, 1999, detention without legal process or warrantless

arrest because Respondents then filed an unrelated Complaint on July 26, 1999 instead, therefore, Petitioner has a claim under the Fourth Amendment for his entire time in [Respondents] custody in light of Wallace's "a false imprisonment ends once the victim [like Petitioner] becomes held pursuant to such [probable cause] process" 549 U.S. at 389-92. Such process never happened because Respondents' replaced Fed. R. Crim. P. Rule 5(b) "Arrest Without a Warrant" with Fed. R. Crim. P. Rule 3 Criminal Complaint;

Q. In fact, nowhere in the public docket sheet from Petitioner: Fed. R. Crim. P. Rule 5, 'Initial or First Appearance' transaction entered on July 26, 1999, Case number 3:99-481-BM-1 or 3:99-341-MBS-3, varified a "true certify": Judicial Determination of Probable Cause Following Petitioner's Warrantless Arrest" occurred on July 24, 1999,

R. Finally, because Respondents' concealment of Petitioner's detention without legal process lacked probable cause on July 24, 1999, from the Court(s) (including this Court) and Petitioner himself, in the alternative of Wallace, the statute of limitations is subject to the doctrine of equitable tolling based on Respondents' fraudulent concealment, See Holmberg v. Armbrrecht, 327 U.S. 392, 397 (1946);

WHEREFORE, the lower Courts' clearly erred to invoked Heck and the statute of limitations affirmative defenses and Claims-processing rules under Fed. R. Crim. P. 12(b)(1) to conflicts with this Court decision and mandate in Wallace, therefore, the writ of Certiorari for review should be granted and the lower Courts' decision making a mockery of the Constitution and the Law in Wallace decision should be reversed.

REASONS FOR GRANTING THE PETITION

Given the present state of the "mysterious arrest record" and the unconscionable twenty (20) years that Petitioner have already "unjustly" endured by Respondents not securing his Constitution "detention without legal process lacked probable cause" Fourth Amendment rights, the Court should grant review of the writ and reverse the lower courts' decision to "prevent conflicts with Wallace's Mandate and a grave miscarriage³ of justice result."

3 Under the PLRA, Petitioner consented to prepaid \$505.00 for his issues to be heard, however, the Fourth Circuit's unpublished opinion noted: "We have reviewed the record and find no reversible error" 788 Fed. Appx 226 (4th Cir. 2019), but still, Respondents' "detention of Petitioner without legal process lacked probable" occurred on July 24, 1999, remain adjudicated on the merits is "disobeying Congress."
- 100

CONCLUSION

For the reasons set forth above,
it is respectfully submitted that:
The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Owen Harriot

Date: June 10th 2020