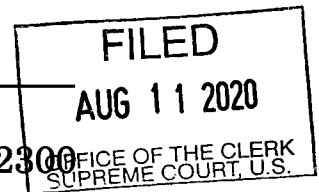


20-5724 ORIGINAL
IN THE UNITED STATES SUPREME COURT

SUPREME COURT CASE No.: _____



Justin Lamar Johnson Sr.
Plaintiff/Petitioner/Appellant

Civil action No.: 1:19 CV 2300

Appeal No.: 20-3280

V.

Judge: _____

Judge Joseph Gibson

Noting Date: _____

Stephen Kandel

Petition for Writ of Certiorari

Lewis Guarnieri

Judge Chryssa Hartnett

Hope Konovsky

John Fererro

Mary Warlop

The Ohio Attorney General

The Attorney General for the United States

On Petition for a Writ of Certiorari to
THE SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI
ORAL ARGUMENT REQUESTED: YES

Questions Presented

I. The trial and appellate court ruled that the plaintiff's court appointed attorneys were not state actors subject to the court's jurisdiction in a 42 USC 1983 claim.

The first question presented is rather court appointed attorneys and public defenders are or should be considered people acting under color of law for purposes of 42 USC 1983 claims and if brought into the courts jurisdiction for fraud or participation in a civil conspiracy rather they should be covered by immunity.

II. The trial and appellate court ruled that the indigent plaintiff's second action is barred by res judicata because dismissal of the first complaint was not appealed and as such is a dismissal on the merits.

The second question presented is rather the court should consider a dismissal not appealed by an indigent litigant, whom was approved to proceed in forma pauperis, a dismissal on the merits if he is unable to pay for the cost.

III. The trial and appellate court ruled that the plaintiff's second action is barred by res judicata because it contains the same subject matter of the first complaint.

The third question presented is rather a second action based on the same subject matter and injuries but containing new evidence and causes of action that were previously concealed by a defendant or interested party is barred by res judicata.

IV. The trial and appellate court ruled that the issues presented in the second complaint should have been litigated in the first action because the plaintiff should have been aware that his court appointed attorney had conspired to injure him because he waited to object instead of doing so immediately when asked by the plaintiff.

The fourth question presented is rather injurious actions taken by an agent on behalf of his principal rather completely unknown, known but the motives unknown, or assumed to be in the principal's best interest should put the principal on notice of a cause of action against the agent.

V. The trial and appellate court ruled that the plaintiff's complaint should've been litigated in the first action because the record filed as evidence in the

complaint shows Judge Gibson and Mr Kandel agreeing to waive his rights in exchange for a bench trial.

The fifth question presented is rather a party who was present for but, did not hear or take part in a conversation between parties conspiring to injure him, is on notice of the cause of action for purposes of the second complaint to not be barred by res judicata in a second action.

VI. The trial and appellate court ruled that the prosecutors and judges in this action were immune from suit for actions taken in the course of their duties.

The sixth question presented is if when a civil conspiracy or fraud upon the court occurs rather the judges and prosecutors who participate in the conspiracy or fraud would lose their immunity like attorneys.

VII. The trial and appellate court ruled that the Ohio Attorney General and United States Attorney General we're immune from suit for the declaratory and injunctive relief the plaintiff seeks.

The seventh question presented is rather attorney generals are immune from suit for injunctive and declaratory relief.

VIII. The trial court held that Judge Gibson was absolutely immune from suit. They said that the plaintiff had failed to show that he acted in a non-judicial capacity or in absence of all jurisdiction.

The eighth question presented is rather everything a judge does while court is in session including acts of fraud are considered judicial acts.

IX. Originally, it was required for a judge to claim or be afforded judicial immunity for acts that injure a litigant in the course of the judge's duties that the actions complained of be inside of his jurisdiction. Precedent from recent cases has changed that to rather the court had subject matter jurisdiction at the time the actions were taken.

The ninth question presented is rather precedent has stretched the scope of the judicial immunity beyond the framers intent by changing the requirement of the act being done within the judicial officers jurisdiction to rather the court had subject matter jurisdiction at the time of the action complained of.

X. In most states, citizens convicted of felony drug possession have certain rights removed or are denied privileges and equal protection of the law.

The tenth question presented is rather states should stop creating and enforcing laws that remove the rights and privileges of nonviolent offenders indefinitely.

XI. The second amendment holds that the right to bear arms by a well regulated militia shall not be infringed. The courts have interpreted this amendment to apply to United States citizens but have ruled that the right is not unlimited in spite of the constitution stating that the right is unable to be infringed.

The eleventh question presented is rather laws that restrict nonviolent offenders from possessing firearms are infringements, unconstitutional, not narrowly tailored, and should restore those rights after a period of good behavior.

XII. The Controlled Substances Act and state laws derived from it are supposed to aid in fighting the “war on drugs”. America is fifty years into the war on drugs.

The twelfth question presented is rather the Controlled Substances Act and state laws that prosecute American citizens for drug possession are arbitrary, capricious, and an abuse of discretion.

XIII. The current test for rather an agency’s decision is arbitrary or capricious is rather the information relied upon at the time of the decision was plausible.

The thirteenth question presented is rather the test used to determine if an agency’s laws or rules are arbitrary or capricious is a reasonable standard and an adequate means for a court to make a decision.

XIV. With the immunity of judicial officers and sovereignty of the state employing them, there is no remedy available to defendants who have

had their constitutional rights violated during trial and wrongfully convicted as a result.

The fourteenth question presented is rather the court should encourage States to adopt laws that would provide remedy to defendants whom were wrongfully convicted through a violation of their due process rights and deter state actors or people acting under color of law from violating due process rights of criminal defendants in order to convict them.

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- (A) In the United States District Court for the Northern District of Ohio, Judge Christopher Boyko dismissed the plaintiff's first complaint for failure to state a claim and judicial immunity. The court dismissed this complaint on August 13th 2018.
- (B) In the United States District Court for the Northern Division of Ohio, Judge Christopher Boyko dismisses the plaintiff's second complaint stating that the complaint is barred by res judicata, court appointed attorneys were not subject to the courts jurisdiction and that judges, prosecutors, and attorney generals were immune from suit. The court dismissed this complaint on February 2nd 2020.
- (C) In the Sixth Circuit Court of Appeals, the appellate court affirms Judge Boyko's dismissal. The court affirmed dismissal of the plaintiff's second complaint on July 22nd 2029.

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List of parties

Plaintiff(s):

Justin Johnson

Vs

Defendant(s):

Stephen Kandel,

Judge Joseph Gibson,

Judge Chryssa Hartnett,

Lewis Guarnierri,

Hope Konovsky,

Mary warlop,

John D. Ferrero,

The Ohio Attorney General,

The United States Attorney General

Opinions Below

1. The decision by the Northern District of Ohio dismissing the plaintiff's first complaint against Judge Joseph Gibson appears at "Appendix A" and is reported as Johnson vs Gibson 1:18CV1152 (N.D. Ohio Aug. 13, 2018).
2. The decision of the Northern District Court of Ohio dismissing the plaintiff's second complaint against Judge Joseph Gibson, Stephen Kandel, Lewis Guarnierri, Hope Konovsky, Chryssa Hartnett, John Ferrero, The Ohio Attorney General, and The Attorney General for the United States appears at "Appendix B" and is reported as Johnson V Gibson 1:19CV2300 (N.D. Feb. 10, 2020)
3. The decision of The Sixth Circuit Court of Appeals affirming dismissal of the plaintiff's second complaint appears at "Appendix C" is reported as Johnson v. Gibson 20-3280 (SI.C. USCA Jul. 22, 2020)

Petition for writ of certiorari

Justin Johnson, pro se litigant, respectfully petitions this court for a writ of certiorari to review the of the judgement of the Sixth Circuit Court of Appeals and the United States District Court for the Northern District of Ohio.

Statement of Jurisdiction

The plaintiff's first complaint in the Northern District Court of Ohio was dismissed on August 13th 2018. The plaintiff's second complaint was dismissed on February 10th 2020. The plaintiff's appeal of the dismissal of his second complaint was affirmed on July 22nd 2020. The plaintiff invoked this court's jurisdiction under 42 USC 1983 and 42 USC 1985, having timely filed this petition for writ of certiorari within 90 days of The Sixth Circuit Court's judgement.

Constitutional Provisions Involved

United States Constitution First Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

United States Constitution Second Amendment: A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

United States Constitution Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be

compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution Sixth amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense

United States Constitution Thirteenth Amendment: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

United States Constitution Fourteenth Amendment: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Facts

Section 42 USC 1983 allows a litigant to bring a civil action against an individual who violates his constitutional rights while acting under the color of state law. However, there exist discrepancies within the litigation process of the federal civil courts that make obtaining remedy from officers of the court who do this nearly impossible. When officers of the court violate a criminal defendant's constitutional rights, the end result is usually the unconstitutional incarceration of the criminal defendant. That does not go to say that all criminal defendants who have their rights violated are innocent but when their rights are violated during trial they are often unable to prove their innocence. Appealing the unconstitutional conviction may obtain the defendant a new trial where he may still assert his innocence and go to trial seeking acquittal but, he may be prohibited from being completely exonerated by the way the state chooses to dismiss the charges. A dismissal with prejudice is similar to proving factual innocence whereas a dismissal without prejudice means that the state presumes the defendant is not innocent but can not adequately prosecute him at the moment. Such a dismissal means that the state may pursue prosecution of the defendant in the future before

the statute of limitations expire. Such a dismissal is up to the prosecutor's discretion and is generally the outcome when factual innocence has not been proven by the defendant even though a defendant is supposed to be presumed innocent until proven guilty.

In reviewing past 1983 claims and doctrines, it appears that private attorneys, court appointed attorneys, and public defenders are the most difficult officers of the court to hold accountable. Section 1983 makes legal malpractice and ineffective assistance of trial counsel by attorneys actionable but, immunities and confusion about jurisdiction over them allow them to avoid being held accountable without even responding to the allegations. When paired with the immunity afforded to judges and prosecutors and sovereignty of the state employing them, there is nobody to hold accountable for constitutional rights violations relating to due process. As such, when it comes to officers of the court, section 1983 gives an illusion of a deterrent, accountability, and remedy. These doctrines and precedents have held that court appointed attorneys and public defenders are not subject to the courts jurisdiction because they are not state actors and in some rulings, not people acting under color of state law. In the event that lack of jurisdiction fails to bar a claim against them, immunity steps in to do so. Such is also the case with judges and prosecutors. So if section 1983 claims exist to hold state actors and people acting under color of state law accountable for constitutional rights violations and more specifically creates avenues to hold somebody accountable for wrongful imprisonment, legal malpractice, ineffective trial counsel, and other due process rights violations then who are the people to which it applies and how?

The lower courts have claimed to have no jurisdiction over court appointed attorneys and public defenders in some rulings but has also granted them immunity in the event that they are brought into the court's jurisdiction. Fortunately, the court also took the time to create an exception to that immunity if the attorney committed a fraud or participated in a conspiracy.

We should not forget as judges what we know as lawyers, and as lawyers we know that exposing court-appointed counsel to liability under § 1983 would deter many qualified, competent lawyers from accepting court appointments in criminal cases. [672 F.2d at 317] B. An exception to absolute immunity of public defenders is for conspiracy or intentional misconduct.

An exception to immunity afforded public defenders or court-appointed counsel was created by the Supreme Court in *Tower v. Glover*, 467 U.S. 914, 104 S. Ct. 2820, 81 L. Ed. 2d 758 (1984). There, the Supreme Court held that public defenders do not enjoy immunity in § 1983 actions where there is an alleged conspiracy or intentional misconduct. In that case, the Court discussed the possible origins of immunity for public defenders, noting that immunities in this country have been borrowed from English precedent and that barristers are close cousins to public defenders. Barristers enjoy broad immunity except for intentional misconduct because, like their counterparts, they are not free to pick their clients, they have no formal contractual relationship and they cannot sue their clients for a fee.

The Pennsylvania Supreme Court in *Lennox v. Clark*, 372 Pa. 355, 372, 93 A.2d 834, 842 (1953), had held that district attorneys are public officials. 406

The Supreme Court created this exception to qualified immunity precisely for situations in which attorneys misrepresent their clients in the manner that Mr. Kandel misrepresented the plaintiff. His actions are that of a conspiracy because the other defendants advanced it with overt acts. The fact that Mr. Kandel asked for the bench trial without the plaintiff's knowledge or consent and against his wishes but, later vaguely objected to the guilty verdict when prompted to do so as not to raise his suspicions, and continued to communicate with the plaintiff while denying or not disclosing his wrongdoings, fraud upon the court is present

To make this exception should also imply the same exception to any of the immunities afforded to other judicial officers including judges themselves. It should be no question that judicial officers cannot conspire to deprive criminal defendants of their rights during trial in order to convict them, especially through fraud

If the lower courts are adamant in their assertion that court appointed attorneys and public defenders are not state actors or people acting under color of law for jurisdictional purposes, more recent decisions have held that private actors who conspire with state actors to deprive a plaintiff of his constitutional rights may be brought into the courts jurisdiction under section 1983 as defendants.

But the Long Arm Statute provides that the acts may be committed "through an agent," and co-conspirators act as agents of each other when they commit acts in furtherance of the conspiracy. See *American Thread Co. v. Rochester*, 82 Ga.App. 873, 884-885, 62 S.E.2d 602 (1950). To establish 1983 liability through a conspiracy theory, a plaintiff must demonstrate that: (1) A state official and private individual(s) reached an understanding to deprive the plaintiff of his constitutional rights; and those (2) those individuals were willful participants with the state or its agents. *Williams v Seniff*, 342 F 3d 774, 785 (7th cir, 2003)

In turn, if a conspirator's conduct in furtherance of the conspiracy subjects him to the jurisdiction of Delaware's courts, then the attribution of that conduct to nonresident co-conspirators will subject all of the conspirators to the jurisdiction of the Delaware courts. *Reid v. Siniscalchi*, C.A. No. 2874-VCS (Del. Ch. Jan. 30, 2018), the Court of Chancery analyzed the "conspiracy theory" of personal jurisdiction.

As the Court of Appeals correctly understood our cases to hold, to act "under color of" state law for § 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting see [sic] "under color" of law for purposes of § 1983 actions. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152, 90 S.Ct. 1598, 1605, 26 L.Ed.2d 142

See *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999) (noting that § 1983 conspiracy claims require "an agreement between two or more state actors or between a state actor and a private entity

The current lack of accountability caused by these immunities creates situations like that of the plaintiff's where these professionals can conspire to wrongfully convict an unknowing criminal defendant through the violation of his rights with impunity. Rulings like these have placed those with these immunities above the law. Convictions obtained under these circumstances are wrongful, unconstitutional, and become wrongful imprisonments, and involuntary servitude and slavery where the wrongfully convicted individual is forced into prison labor.

In many states, where these cases are reversed, tried to acquittal, dismissed without prejudice, and expunged after the expiration of the statute of limitations, a criminal defendant who was unable to prove his innocence due to a failure to prosecute on behalf of the state is left injured without an avenue for compensation.

Some states allow for the compensation of former defendants through wrongful imprisonment statutes created by state legislators. Utah, Texas, Oklahoma, North Carolina, New Jersey, New Hampshire, Montana, Missouri, Maine, Louisiana, Hawaii, Illinois, Florida, Washington D.C., Connecticut, Alabama, Washington, and California compensate an individual only if he has proven factual innocence. Some of those states require DNA evidence to meet the factual innocence requirement. West Virginia, Vermont, New York, Nebraska, Massachusetts, Mississippi, Minnesota, Michigan, Maryland, Maine, and Iowa imply that remedy may be obtained if the individual proves factual innocence or the case is tried to acquittal. Implying that the claimant may be compensated if the case was tried to acquittal may encompass situations where an individual has had his constitutional rights violated and the charges were dismissed either with or without prejudice but all of these states offer inadequate remedy. Some of them cap the amount of remedy available to an amount that does not come close to compensating an injured party.

Statement of the Case

The plaintiff/appellant in this case has now brought two civil actions in the Northern District Court of Ohio under 42 USC 1983 for the violation of his constitutional rights to due process and wrongful conviction and imprisonment as a result of those violations. These actions stem from a criminal trial in which he appeared as an indigent defendant accused of discharging a firearm, felonious assault, and having weapons while under disability. As an indigent defendant he was represented by court appointed counsel during this trial. The plaintiff in this case contends that on the night of the incident giving rise to his criminal charges and trial that he was in an argument with an intoxicated man who pointed a gun at him and that his cousin whom was armed as well shot the armed man in self defense with his firearm. The plaintiff was prohibited from bearing arms through Ohio's "Having Weapons while under disability" statute and that this law prohibited him from protecting himself by infringing on his right to bear arms. He further contends that laws like this in other states are unconstitutional and affect the rights of protected minority classes of citizens by labeling nonviolent drug offenders as felons. He brings to this court's attention that the classification of drugs as

schedule 1 and felony offenses is arbitrary and capricious and that the penalties for them largely affect protected minority classes by removing their rights and denying them equal privileges.

After a jury acquitted him of the greater offenses of discharging a firearm and having weapons while under disability, the presiding judge made a fraudulent misstatement to the court saying "well Mr. Johnson, the only thing left to do is, you had elected to have count three tried to the bench". He then dismissed the jury and found the plaintiff guilty of the lesser included offense of having weapons while under disability. To the contrary, the plaintiff had not waived his rights for trial by jury but rather had made express demand for jury trial on all three counts.

Judge Gibson sentenced him to two years on the weapons charge. The plaintiff appealed that conviction on the grounds that the state had failed to obtain a valid jury waiver and that the evidence was insufficient and against the manifest weight because the state never presented a weapon. The case was reversed and remanded for a second trial but dismissed without prejudice. The plaintiff later had the conviction expunged.

The plaintiff contends that he did not elect to waive his right to jury trial and asserts that the actions of Judge Gibson and other officers of the court caused his wrongful conviction and imprisonment. He states that if it were not for the actions of the defendant parties, he would have prevailed in proving his innocence during the criminal trial and in the litigation of his civil actions against them.

In both of his civil actions he states that he was deprived of liberty without due process in reference to the conviction and imprisonment he was made subject to through the violation of his rights to jury trial. In both of his civil actions, he was deemed indigent and approved to proceed without paying filing fees.

The plaintiff filed the first action after failing to convince Ohio legislators to amend Ohio's wrongful imprisonment statute to compensate individuals who had their due process rights violated, convicted as a result, and were prevented from having a fair trial. Both of his complaints were assigned to Judge Christopher Boyko and dismissed.

The first complaint named retired Judge, Joseph Gibson as the sole defendant and alleged that during his criminal trial Judge Gibson "deprived

him of liberty without due process by proceeding to a bench trial without the authority to do so". It went on to say that he did this through an abuse of process and fraud upon the court. In the complaint, the plaintiff sought monetary relief for the fraudulent misstatement made by Gibson that, at that time, he believed to be the sole cause of his injuries and unconstitutional confinement. The first complaint was only six pages long utilizing a six page template used to initiate 42 USC 1983 claims.

The elements of a valid cause of action for abuse of process in most common law jurisdictions are as follows: (1) the existence of an ulterior purpose or motive underlying the use of process, and (2) some act in the use of the legal process not proper in the regular prosecution of the proceedings

On Saturday August 11th of 2018 and while the first complaint was pending, the plaintiff reached out to Stephen Kandel, his court appointed attorney for the aforementioned criminal trial, via telephone. He was trying to get an understanding as to how and why his rights to jury were violated during the trial. After his conviction, during his confinement, and even in the early days following filing of his civil action against Judge Gibson he had maintained contact with Mr Kandel regarding his legal options and issues relating to his criminal trial. During their latest conversation, it became apparent to the plaintiff that his attorney was not being completely forthcoming in his responses to his inquiries. These suspicions prompted the plaintiff to acquire his transcripts and begin looking into them and other documents related to his criminal trial. After doing so, he was able to locate documents in which his court appointed attorney and Judge Gibson made an agreement during the opening statements to have a bifurcated trial without his knowledge or consent and against his prior request for a trial by jury on all counts. During the first month of his representation of the plaintiff, Mr Kandel had suggested waiver of his jury trial rights as a strategy to keep his priors out of the ears of the jury. The plaintiff told him that he did not wish to do so and they agreed to abandon this tactic. But in the new evidence, Mr Kandel can be seen asking to bifurcate the charges. The plaintiff began amending his complaint to name Stephen Kandel and prosecuting attorney Lewis Guarnierri as defendants. He spent the entire weekend doing so.

Intrinsic fraud is an intentionally false representation that goes to the heart of what a given lawsuit is about, in other words, whether fraud was used to procure the transaction.

(If the transaction was fraudulent, it probably does not have the legal status of a contract.) Intrinsic fraud is distinguished from extrinsic fraud (a/k/a collateral fraud) which is a deceptive means of keeping a person from discovering and/or enforcing legal rights. It is possible to have both intrinsic and extrinsic frauds.

The elements necessary to prove a breach of undivided loyalty are: (1) A Fiduciary Duty existed; (2) That the defendant either knowingly acted against the Plaintiff's interest or acted on behalf of a party whose interest was contrary to Plaintiffs; (3) That the Plaintiff did not give informed consent for the accused to behave in such a way; (4) That the Plaintiff suffered harm; and (5) The defendant's conduct was a substantial factor in causing the Plaintiff's harm. (See CACI No. 4102).

In short, a fiduciary "may not undertake or participate in activities adverse to the interests of his principal." (*Sequoia Vacuum Systems v. Stransky*, (1964) 229 Cal.App.2d 281, 287). In fact, to be a fiduciary requires "disclosure of acts undertaken in preparation of entering into competition." (*Id.* at 287).

Two days after speaking to his attorney on Monday August 13th of 2018, the earliest day the new information could be submitted, he filed an amended complaint and documents from the first trial as exhibits. Unfortunately Judge Boyko had dismissed the first complaint that same day and moments before filing of the amended complaint and new exhibits. The first complaint which only named Joseph Gibson as a defendant was dismissed for failure to state a claim and judicial immunity.

In civil rights cases in particular, the doctrine of official immunity should be used sparingly. *Williams V Codd*

Federal tort law: judges cannot invoke judicial immunity for acts that violate litigants civil rights; Robert Craig Waters. *Tort & Insurance Law Journal*, Spr. 1986 21 n3, p509-516"

When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for even though his act involved a

decision made in good faith, that he had jurisdiction. *State use of Little v. U.S. Fidelity & Guaranty Co.*, 217 Miss. 576, 64 So. 2d 697

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. *Rankin v. Howard*, (1980) 633 F.2d 844, cert den. *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.

A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. *Davis v. Burris*, 51 Ariz. 220, 75 P.2d 689 (1938)

Like initiating the civil proceedings, the plaintiff could not afford the cost of initiating appellate procedures for the dismissal of the first complaint so, he instead filed a motion for relief from judgement based on new evidence, new defendants, fraud by the opposing parties, and other reasons justifying relief based on the conversation he had with his court appointed attorney. He also filed motions for the review of Ohio's having weapons while under disability statute, the review of qualified and judicial immunity and, the review of Ohio's statute of limitations for legal malpractice and malicious prosecution. The motion for relief from judgement and other motions were dismissed. The court ruled that the plaintiff's motion for relief did not provide any reason as to why he should be relieved from judgement and because he had not been relieved from judgement that all of his other motions were moot. The court also stated the plaintiff was misusing the judicial system at the tax payers expense by filing frivolous and repetitious documents and deemed him a restricted filer. Because no appeal was taken, dismissal of the first complaint is considered to be on the merits.

On October 2nd of 2019, the plaintiff/appellant filed his second civil action, also based on the new evidence from the conversation with Stephen Kandel, in which he alleges that Judge Gibson is not the sole tortfeasor for his injuries and that his actions were only a small component in a civil conspiracy to wrongfully convict him through violation of his due process rights. That civil action complains of multiple officers of the court committing various yet connected overt acts in furtherance of the civil conspiracy and multiple connected causes of action whose existence and connections to each other and the conspiracy in it's entirety were previously concealed by his very own court appointed attorney.

The elements of crime necessary to label the actions of the defendants participation in the civil conspiracy against the plaintiff are: (1) a common design between two or more persons, (2) to accomplish by concerted action an unlawful purpose, or a lawful purpose by unlawful means, (3) an overt act in furtherance of the conspiracy, and (4) resulting injury.

A civil conspiracy or collusion is an agreement between two or more parties to deprive a third party of legal rights or deceive a third party to obtain an illegal objective. A conspiracy may also refer to a group of people who make an agreement to form a partnership in which each member becomes the agent or partner of every other member and engage in planning or agreeing to commit some act. It is not necessary that the conspirators be involved in all stages of planning or be aware of all details. Any voluntary agreement and some overt act by one conspirator in furtherance of the plan are the main elements necessary to prove a conspiracy. A conspiracy may exist whether legal means are used to accomplish illegal results, or illegal means used to accomplish something legal.

To prove ineffective assistance of counsel, a defendant must show (1) that their trial lawyer's performance fell below an "objective standard of reasonableness" and (2) "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

To succeed in a legal malpractice action in Ohio, the aggrieved party must satisfy three requirements. It must be established that: (1) an attorney-client relationship existed which gave rise to a duty; (2) there occurred a breach of that duty; and (3) damages were proximately caused by the breach.

The elements of negligence are that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty of care, and (3) the breach of duty proximately caused the plaintiff's injury or damages. *Chambers v. St. Mary's School*, 82 Ohio St. 3d 563, 697 N.E.2d 198 (1998). Whether a defendant owes a duty of care to a plaintiff "depends upon the relationship between the parties and the foreseeability of injury to someone in the plaintiff's position." *Simmers v. Bentley Constr. Co.*, 64 Ohio St. 3d 642, 597 N.E.2d 504 (1992). An injury is

foreseeable if a defendant knows or should know that its act was likely result in harm. *Huston v. Konieczny*, 52 Ohio St. 3d 214, 556 N.E.2d 505 (1990).

The second complaint still listed Joseph Gibson as a defendant for the misstatement he made before proceeding to the bench trial about the plaintiff wanting to waive his rights. It listed that statement as administrative and ministerial.

A judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. *Forrester v. White*, 484 U.S., at 227 -229; *Stump v. Sparkman*, 435 U.S., at 360 . [502 U.S. 9, 12] Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Id.*, at 356-357; *Bradley v. Fisher*, 13 Wall., at 351.

A Judge is not immune for tortious acts committed in a purely Administrative, non-judicial capacity. *Forrester v. White*, 484 U.S. at 227-229, 108 S.Ct. at 544-545; *Stump v. Sparkman*, 435 U.S. at 380, 98 S.Ct. at 1106. *Mireles v. Waco*, 112 S.Ct. 286 at 288 (1991).

Administrative-capacity torts by a judge do not involve the "performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights," and therefore do not have the judicial immunity of judicial acts. See: *Forrester v. White*, 484 U.S. 219, 98 L.Ed.2d 555, 108 S.Ct. 538 (1988); *Atkinson-Baker & Assoc. v. Kolts*, 7 F.3d 1452 at 1454, (9th Cir. 1993).

The second complaint added Stephen Kandel as a defendant for making the first comments about bifurcation during his conversation with Judge Gibson. This fraudulent misstatement entered the plaintiff into a verbal contractual agreement in which his rights were waived in exchange for the unrequested bench trial and led to his unlawful conviction and wrongful imprisonment. It was an act of constructive fraud and a breach of he and Mr. Kandel's fiduciary duties.

Avalos v. Baca, 596 F.3d 583, 592 (9th Cir. 2010) (quoting district court and noting that § 1983 conspiracy claim required "(1) the existence of an express or implied agreement among the

defendant officers to deprive him of his constitutional rights, and (2) an actual deprivation of those rights resulting from that agreement.”).

The second complaint also listed Mr. Kandels omissions and concealments of his involvement as fraudulent concealment. In addition to concealment of his actions, Mr Kandel had advised the plaintiff that he might as well not appeal his conviction because “two years wasn’t that bad”. This was an attempt to hinder litigation because of the plaintiff had not appealed the conviction, it would’ve been deemed lawful and the plaintiff would certainly have been precluded from bringing action against the parties involved. While denying and omitting liability, Mr Kandel also told the plaintiff that there would be no remedy available because Judge Gibson was entitled to judicial immunity and that the state of Ohio only compensated wrongfully convicted individuals who had proven factual innocence. These statements and omissions were extrinsic frauds.

Extrinsic fraud occurs where a party is deprived of the opportunity to present her claim or defense to the court, or in some manner fraudulently prevented from fully participating in the proceeding. (In re Marriage of Varner (1997) 55 Cal.App.4th 128, 140, 63 Cal.Rptr.2d 894.)

Fraudulent concealment is simply another form of common law fraud. It is sometimes referred to as “fraud by silence,” or “silent fraud.”¹⁰³ To establish fraudulent concealment, a plaintiff must prove that: (1) the defendant owed the plaintiff a duty to disclose a material fact; (2) the defendant failed to do so; (3) the defendant intended to defraud or deceive the plaintiff; (4) the plaintiff acted in justifiable reliance on the concealment; and (5) the plaintiff was damaged as a result.

Extrinsic fraud is fraud that induces one not to present a case in court or deprives one of the opportunity to be heard or is not involved in the actual issues.^[1] More broadly, it is defined as: fraudulent acts which keep a person from obtaining information about his/her rights to enforce a contract or getting evidence to defend against a lawsuit. This could include destroying evidence or misleading an ignorant person about the right to sue.

Extrinsic fraud is distinguished from “intrinsic fraud,” which is the fraud that is the subject of a lawsuit.^[2]

The second complaint added Judge Hartnett, and prosecutors Lewis Guarnierri and John D. Ferrero for signing a judgement entry that fraudulently claimed that the plaintiff had waived his rights to jury trial. Signing this document was an act of fraud that did nothing to interrupt the plaintiff's conviction but instead continued it. As such it was an overt act taken in furtherance of the civil conspiracy against the plaintiff. It should also be noted that the Lewis Guarnierri was present at the trial where no jury waiver was obtained or presented. The second complaint also accused Lewis Guarnierri of failing to intervene during the unconstitutional bench trial and proceedings leading up to it.

"A misrepresentation need not be oral; it may be implied by conduct." Thrifty-Tel, Inc. v. Bezenek (1996) 46 Cal.App.4th 1559, 1567. Moreover, false representations made recklessly and without regard for their truth in order to induce action by another are the equivalent of misrepresentations knowingly and intentionally uttered. Yellow Creek Logging Corp. v. Dare (1963) 216 Cal.App.2d 50, 55.

The second complaint also alleged that Judge Hartnett had put him in double jeopardy by continuing the proceedings against him beyond the first pretrial where the plaintiff tried to enter a plea of former acquittal based on the greater offenses that he had been previously acquitted of in the first trial. It alleged that she maliciously prosecuted him by continuing the proceedings in spite of the double jeopardy warning, by denying his motion for limine which was intended to keep the charges he was previously acquitted of from being mentioned during the trial and for dismissing the charges involving weapons possession against him without prejudice in spite of the state's failure to ever present a weapon as evidence in the court room or any evidence that the plaintiff was ever in possession of a weapon.

To state a claim for malicious prosecution, a plaintiff must show (1) prosecution for a criminal offense; (2) instigated without probable cause; (3) with malice; (4) under a valid warrant, accusation or summons; (5) which has terminated favorably to the plaintiff; and (6) has damaged the plaintiff. Malice may be inferred from a lack of probable cause.

The second complaint added his court appointed attorney for the remanded jury trial proceedings, Mary Warlop to it for depriving him of effective trial counsel and committing legal malpractice. These allegations were based on her actions to try and convince the plaintiff to plead guilty

instead of going to trial and that if he did not that the prosecutor would see that more time be added to his sentence if he was found guilty and not objecting to the charges being dismissed without prejudice or even suggesting that they be dismissed with prejudice.

Lastly the second complaint added the Ohio Attorney General and United States Attorney General for the injunctive relief the plaintiff seeks and to address or be on notice of the constitutional questions raised to existing statutes and doctrines.

The plaintiff stated in his second complaint that none of the parties should be entitled to immunity because the initial fraudulent statement between Mr. Kandel and Judge Gibson amounted to fraud upon the court, was the groundwork for creating the civil conspiracy mentioned, and because the defendant parties took steps to continue the wrongful conviction and erroneous procedures against him thus continuing the civil conspiracy against him. He went on to state that the second complaint should not be barred by res judicata because of the steps his court appointed attorney took to conceal his involvement, his actions to persuade him not to file a civil complaint, and other causes of action long enough to prevent him from filing an adequate amended complaint in time to move for trial. He asserted that because an agency relationship of trust existed between he and Mr. Kandel that he did not have to exercise due diligence in uncovering Mr Kandel's actions until it became

Fraud upon the court voids the orders and judgments of that court. It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *The People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions.");

As mentioned earlier, the second complaint was also assigned to Judge Boyko and again dismissed. This time Judge Boyko held that the second complaint was barred by res judicata, that the prosecutors were entitled to absolute immunity, that Judges Boyko and Hartnett were entitled to judicial immunity, that both of the plaintiff's court appointed attorneys were not subject to the courts jurisdiction under section 1983 because they weren't state actors even though the plaintiff cited that as attorneys appointed to represent him, that they were people acting under color of law, and that the Ohio Attorney General and Attorney General of the United States were not subject

to suit even though the plaintiff sought injunctive relief from them on behalf of Ohio and the United States.

The plaintiff appealed the dismissal in the Sixth Circuit Court Of Appeals. He again cited the new evidence contained in his motion for relief and second civil action. He cited that as people acting under color of state law that his court appointed attorneys were in fact subject to the court's jurisdiction, that the complaint was not barred by res judicata because of fraudulent concealment by Mr. Kandel, that the attorney generals were not immune for suits seeking injunctive and declaratory relief, and that because of the frauds and other actions taken in further of the civil conspiracy by the parties that none of them should be immune from suit.

On July 22nd of 2020, the appellate court gave it's opinion on the matter affirming the district courts decision. The court reaffirmed that the prosecutors and judges were absolutely immune, the attorney generals weren't subject to suit for the declaratory and injunctive relief the plaintiff seeks, and that the court had no jurisdiction over the court appointed attorneys from the case. They held that the dismissal of the first complaint was on the merits because the plaintiff took no appeal. The court also applied additional aspects of res judicata barring the claim citing that they were based on the same operative facts, that identity was present between the two claims, and that issues presented in the second action "**should**" have been litigated in the first action. They said that the plaintiff's assertion that the fraudulent concealment by Mr. Kandel was an exception to the bar of res judicata was not affirmative because even though the plaintiff did not take place in the conversation about waiver of his rights, hear it or know that it took place that he was or should have been aware of the initial fraud because the record filed as evidence reflected that the conversation took place. They also concluded this was the case because Mr. Kandel did not immediately object to the bifurcated trial when the plaintiff asked him to but instead waited to do so when the judge found him guilty during the bench trial.

The Michigan courts have concluded that "where a judgement on the merits is rendered in favor of a defendant, the plaintiff is precluded from maintaining the same cause of action on a new ground for relief except where the defendant's fraud or misrepresentation prevented the plaintiff from presenting the new ground for relief in the prior action. *Cramer v. Metropolitan Savings Assoc.*, 125 Mich. App. 310, 314 (1995) (stating that Michigan's fraud exception to res judicata applies to fraud that actually prevents the losing party from having an adversary trial on a

significant issue) Michigan courts refer to this type of fraud as extrinsic or is collateral to issues actually tried in the former action. See Sprague, 213 Mich App at 313. This type of fraud is to be distinguished from intrinsic fraud which does not avoid the application of res judicata. See I.d. At 314. Examples of intrinsic fraud include perjury, fraud in inducing a settlement, or discovery fraud. I.d. The reason that intrinsic fraud does not provide grounds for a collateral attack on a former judgement is that the trial procedures in the prior action and the adversarial process itself adequately protect the parties in a just result. The danger of extrinsic fraud, on the other hand, cannot be avoided by relying on the adversarial process because, by its nature, extrinsic fraud prevents that process from actually occurring. Santos v. Farmers insurance exchange. USDC MICH. S. DIV 07-11229

The court finds that the fraud alleged in this case is extrinsic fraud and that it prevented plaintiffs' from bringing umbrella policy claim in the prior lawsuit. As such, Farmers cannot be allowed to invoke the doctrine of res judicata in order to avoid it's obligation to plaintiff that it deliberately failed to disclose. Santos v. Farmers insurance exchange. USDC MICH. S. DIV 07-11229 see also Courtney v. Feldstein, 147 Mich. App 70, 74 (1985).

("The principals of res judicata may not be invoked to sustain fraud.") Accordingly the court holds that the fraud exception to res judicata applies, and that plaintiff's claim is not barred. Santos v. Farmers insurance exchange. USDC MICH. S. DIV 07-11229

Under Ohio law, the doctrine of res judicata applies where there has been a final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, conclusive of rights, questions and facts in issue as to the parties and their privies. Quality Ready Mix, Inc. v. Mamone, 35 Ohio St.3d 224, 227, 520 N.E.2d 193 (1988). For res judicata to apply: (1) the judgment in the prior suit must be final; (2) the prior judgment must be rendered on the merits; and (3) both lawsuits must be based on the same "claim" or "cause of action." Norwood v. McDonald, 142 Ohio St. 299, 305, 52 N.E.2d 67 (1943); In re Hoff, 187 B.R. 190, 194 (S.D.Ohio 1995).

The equitable doctrine of fraudulent concealment, when properly invoked, estops a defendant from relying on limitations as an affirmative defense. Patrick v. Howard, 904 S.W.2d 941, 945 (Tex. App.-Austin 1995, no writ). The doctrine is limited, however, to those

situations in which the defendant has a duty of disclosure. *Id.* The existence of a duty of disclosure is a question of law for the court. *Id.* Cases where the doctrine is applied are rare, such as those involving doctor-patient, attorney-client, or fiduciary relationships. *Id.* Defendants rely heavily on *Kesler v. The Curators of the University of Missouri*, 516 S.W.3d 884, 891 (Mo.App.W.D. 2017), where the Court of Appeals said that, “To constitute ‘new’ ultimate facts [so as to be a separate cause of action], those facts that form the basis of a new claim for relief must be unknown to plaintiff or yet-to-occur at the time of the first action.”

To be “inherently undiscoverable,” an injury need not be absolutely impossible to discover, else suit would never be filed and the question whether to apply the discovery rule would never arise. *W. Id.; S.V. v. R.V.*, 933 S.W.2d 1, 7 (Tex. 1996).

Nor does “inherently undiscoverable” mean merely that a particular plaintiff did not discover his injury within the prescribed period of limitations; discovery of a particular injury is dependent not solely on the nature of the injury but on the circumstances in which it occurred and the plaintiff’s diligence as well. *Murphy*, 964 S.W.2d at 270; *S.V.*, 933 S.W.2d at 7.

Even if this were not the case, the claims at stake are not the result of “a single wrongful act.” Each of the three claims is based on separate wrongful acts, each of which could have occurred without the other. *TYSON v. VIACOM INC.* No. 4D01-4554.

Tyson’s claims for breach of contract and fraud in the inducement are not barred by *res judicata*, because they are not based on identical facts. The claims also are not barred by the rule against splitting causes of action because that rule is only an aspect of *res judicata* and the claims in this case do not result from a “single wrongful act.” *TYSON v. VIACOM INC.* No. 4D01-4554.

Both Quinn and Cole support the majority's conclusion that for there to be identity of causes of action under res judicata, the facts required to maintain both causes of action must be identical. TYSON v. VIACOM INC. No. 4D01-4554.

Huff Groves Trust v. Caulkins Indiantown Citrus Co., 810 So.2d 1049, 1050 (Fla. 4th DCA 2002)(quoting Kimbrell v. Paige, 448 So.2d 1009, 1012 (Fla.1984)). Four identities are required for res judicata to be applicable to a case: “(1) identity in the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the actions; and (4) identity of the quality or capacity of the persons for or against whom the claim is made.’” Freehling v. MGIC Fin. Corp., 437 So.2d 191, 193 (Fla. 4th DCA 1983)(quoting Seaboard Coast Line R.R. Co. v. Indus. Contracting Co., 260 So.2d 860, 862 (Fla. 4th DCA 1972)).

“ ‘Identity of the causes of action is established where the facts which are required to maintain both actions are identical.’ ” Cole v. First Dev. Corp. of Am., 339 So.2d 1130, 1131 (Fla. 2d DCA 1976)

Argument

Some courts have held that court appointed attorneys and public defenders are not subject to their jurisdiction under 42 USC 1983 claims because they are not state actors. Some courts have held that even though they are appointed to represent indigents that they are not acting under color of law while doing so. At the same time, these attorneys have been given immunity to civil action in the event that they should be brought into the courts jurisdiction. An exception was made to that immunity for fraud or participation in a grander scheme of civil conspiracy. The court should use the case at hand to examine these doctrines and precedents to determine rather public defenders and court appointed attorneys are people acting under color of state law when their fraudulent actions progress to participation in a civil conspiracy against their clients.

Mr Kandel committed intrinsic fraud during the plaintiff's criminal trial by fraudulently waiving his rights. Because he suggested waiver of the plaintiff's rights, was told that this was not an option, and still did so without the plaintiff's consent, his fraud is intentional. He then committed extrinsic fraud by maintaining a relationship of trust with the plaintiff while failing to disclose his wrongdoings when questioned. He failed to disclose that he took

part in causing the plaintiff's injuries when asked and thus concealed material evidence crucial for the plaintiff to state a claim. As they continued to communicate he further misled him and discouraged his the civil action against his coconspirators in order to prevent him from successfully litigating his complaint. If the court's do not consider court appointed attorneys and public defenders state actors or "people acting under color of law" then they should be brought into the court's jurisdiction as private actors once they have deviated from providing adequate counsel through acts of fraud or conspiracy against their clients.

Because Mr Kandel was an officer of the court making a material misrepresentation that disrupted the judicial machinery his actions become fraud upon the court. Fraud upon the court voids all judgements. Voided judgements would also include his criminal conviction that was dismissed without prejudice. Most if not all defendant parties named are guilty of fraud upon the court. That fraud would void his immunity if he was brought to court in a 1983 claim. The same should apply to judges and prosecutors who participate in frauds against the court and civil conspiracies during judicial proceedings.

Mr Kandels concealment during the litigation of the first complaint is fraudulent concealment. It is extrinsic fraud and as such should be an exception to the bar of res judicata because it prevented the plaintiff from adequately stating his claim and means the first complaint was not dismissed on the merits.

With the existence of the attorney-client relationship between them, the plaintiff was under no duty to mistrust or investigate Mr Kandel. To the contrary, Mr Kandel had a duty to disclose his wrongdoings especially when questioned about them. The plaintiff was confident that his attorneys actions were in his best interest until it became obvious that he was not being completely forthcoming. Until then, his injuries were inherently undiscoverable.

Judge Gibson was sued in the original and second complaint for his misstatement about the plaintiff wanting to waive his rights to jury trial. For this misstatement the plaintiff sought monetary relief. The plaintiff asserts that this misstatement was not a judicial act but was either administrative or ministerial. At any rate it was fraudulent because it was based on the fraudulent transaction between he and Mr Kandel and should not be considered a judicial act.

The plaintiff's request for injunctive relief in both complaints was based on the actions of the judge that could be considered judicial. This includes proceeding to the bench trial and the finding of guilt that led to his wrongful conviction and imprisonment. To answer to these requests, the plaintiff added the Ohio Attorney General and The Attorney General for the United States. These officials are not immune to request for declaratory and injunctive relief.

In the second complaint, the plaintiff added Judge Hartnett Lewis Guarnierri, and John Ferrero for signing a judgement entry after the trial. This document fraudulently claimed that the plaintiff waived his rights to jury trial. The signing of this document was an act of fraud that did not disrupt his conviction but instead continued it and becomes fraud upon the court and an overt act taken in furtherance of the civil conspiracy. He also cited that Judge Hartnett and prosecutor Hope Konovsky maliciously prosecuted him by continuing these proceedings with a lack of probable cause. Separately he alleged that Judge Hartnett also maliciously prosecuted him by denying his motion in limine relating to acquittal of the greater offenses and Hope Konovsky did so by threatening to seek more time if he opted for a second criminal trial. He alleged that his court appointed attorney for the remanded proceedings, Mary warlop, denied him effective trial counsel and committed legal malpractice by trying to convince him to plead guilty in order to avoid the vindictive threats of Hope Konovsky and not pleading double jeopardy or asking the case regarding weapons possession be dismissed with prejudice for lack of a weapon and former acquittal.

Fraud and other tortious actions by the other defendants/coconspirators aimed at continuing the plaintiff's injuries and preventing him from stating a claim are overt acts taken in the civil conspiracy against him and should open them up to liability like the exception to the immunity of an attorney brought into the jurisdiction of the court.

The plaintiff alleges in his second complaint and appeal that the actions of the defendant parties amount to a civil conspiracy to deprive him of liberty without due process and that they took actions to continue that conviction and while concealing the intricacies of the conspiracy and causes of action for the plaintiff's complaint.

"[t]o establish liability on the basis of conspiracy, a plaintiff must show by clear and convincing evidence that the defendant and at least one other person agreed to accomplish an unlawful

purpose or a lawful purpose by unlawful means, and accomplish[ed] the underlying tort, which in turn caused damages.” Dawson v. Withycombe, 216 Ariz. 84, 103, 163 P.3d 1034, 1053 (Ct. App. 2007).

“For a claim under 42 U.S.C. § 1983, a conspiracy is not a vital element. Nevertheless, a conspiracy may be used as the legal mechanism through which to impose liability on each and all the defendants without regard to the person doing the particular act. Mizell v. North Broward Hosp. Dist., 427 F.2d 468, 472-473 (5th Cir. 1970); Nesmith v. Alford, 318 F.2d 110, 126 (5th Cir. 1963) (Cert. denied, 375 U.S. 975, 84 S.Ct. 489, 11 L Ed. 2d 420 (1964))

As a further deterrent, “a conspirator is liable for any tortious act, even unknown, committed in furtherance of the conspiracy, including acts not personally committed.” Baker, 197 Ariz. at 542, 5 P.3d at 256 (citations omitted).

Furthermore the plaintiff requested injunctive and declaratory relief from the Ohio Attorney General and United States Attorney General. These officials are immune from actions requesting monetary damages but not from those requesting injunctions.

Reasons to Grant Writ of Certiorari

To this date, victories in cases brought against judicial officers for due process rights violations are between old, rare, and nonexistent. The broadness of their immunities has made them untouchable even in cases of clear and intentional misconduct. The broadness of these immunities is so vast that when paired with sovereignty of the state employing them, that when a situation such as the one the plaintiff complains of or worse, there is nobody to hold accountable. These immunities have made 1983 claims against officers of the court useless in regard to deterring violations of constitutional rights through abuses of authority or trust. When these abuses of trust and authority occur, remedy is unavailable or inadequate when sought through state statutes. In Ohio, a litigant seeking wrongful imprisonment remedy may only be compensated if he proves his innocence. This means that there is no remedy available to those whom have had charges against them tried to acquittal but were unable to prove their innocence after being wrongfully convicted through violation of their rights. This unavailability of remedy conflicts with the first amendment right to petition the court for redress of grievances. The plaintiff has spoken to senators and representatives of Ohio to resolve this but to no avail.

The decisions of the lower courts regarding the effects of Mr Kandel's concealment on the bar of res judicata conflict with the courts in Patrick v. Howard, Santos v. Farmers insurance, Cramer v. Metropolitan Savings Association, and Courtney v. Feldstein,

The decisions of the lower court to grant the defendant parties immunity for their frauds and other aforementioned overt acts conflict with the decisions of the courts in Zeller v. Rankin, Bradley v. Fisher, Davis v. Burris, The People of the State of Illinois v. Fred E. Sterling, Forrester v. White, Rankin v. Howard, Little v. U.S. Fidelity & Guaranty Co.

The decisions of the lower courts holding that the plaintiff's second complaint has the same identity as the original and that all of the facts should have been presented in the first complaint conflict with the court's decisions in Tyson v. Viacom, Kesler v. The Curators of the University of Missouri, Cramer v. Metropolitan Savings Assoc., and Quality Ready Mix, Inc. v. Mamone

The lower courts seem to also have misconstrued the plaintiff's claims against some of the defendants. The appellate court said that the plaintiff alleged that the prosecutors violated his rights by trying him to the bench; this however is incorrect. The plaintiff actually alleges that the prosecutor from the original trial, Lewis Guarnierri, failed to intervene to stop the bench trial and that he, prosecutor John Ferrero, and Judge Hartnett signed a judgement entry bearing fraudulent information about the plaintiff actually waiving his rights to jury trial. He alleges that prosecutor Hope Konovsky's threats to sentence him to additional time for demanding a new and fair trial were acts of malicious prosecution and that the decision to dismiss the charges by her and Judge Hartnett were also acts of malicious prosecution as well. He cites that these acts were overt acts taken in the civil conspiracy.

The lower courts state also mistakenly say the plaintiff alleges that judicial immunity improperly resulted in his dismal when in fact he states that the over-application of it has done so. Judicial immunity used to require that a judge be acting within his jurisdiction but precedent has changed it to rather the court had subject matter jurisdiction. The court should use this complaint to decide rather judicial officers are subject to the courts jurisdiction and loss of immunity for defrauding criminal defendant of due process rights to convict them.

The lower courts dismissed the plaintiff's complaint against the attorney generals citing that they were not involved with the fraudulent bench trial and were not subject to suits requesting monetary relief. The plaintiff however did not ask for monetary relief from the attorney generals. He added them to the complaint for the injunctive and declaratory relief he sought. These injunctions requested that the states in this country create wrongful imprisonment statutes that compensate individuals who had their due process rights violated, wrongfully convicted, and were unable to prove their innocence due to a failure to prosecute. The plaintiff also asked for injunctive relief that would ask state legislators to stop enforcing and passing laws that deny nonviolent offender equal rights and privileges.

In the appellate court's affirmation of the dismissal of the second complaint they state that the complaint contains nothing more than conclusory allegations that his attorneys conspired with Judge Gibson to deny him his due process rights. The plaintiff has actually plead that all of the defendant parties participated in a civil conspiracy to violate his due process rights through fraud and other tortious actions in order to falsely and wrongfully imprison him. The initial conversation between Mr. Kandel and Gibson alone is evidence of the civil conspiracy because it was an agreement to do an unlawful act through lawful and unlawful means. The fact that Mr. Kandel suggested waiver as a tactic initially, was told no by the plaintiff, secretly made an agreement for a bench trial, and concealed his actions really strengthens the allegations. The fact that Judge Gibson did not The fact that Judge Gibson avoided asking the plaintiff if he desired a bench trial or understood the proceedings was the next overt act but there were many more afterwards.

Lastly the lower courts state that the first complaint alleges a violation of the right to jury trial and that the second complaint alleges a violation of due process rights. This is also incorrect. In the first complaint, the plaintiff alleges that he was deprived of his right to jury and his right to liberty without due process. In the second complaint he alleges that he was deprived of his rights to due process, his right to liberty and to be free from slavery without being afforded due process, and that the defendant parties conspired to do so, took actions to hold up the resulting conviction, took actions to conceal each other's actions, and took actions to deter him from appealing that conviction and obtaining remedy.

The court should grant the plaintiff's petition for writ of certiorari and extraordinary writ of certiorari because it would aid in the appellate courts

jurisdiction over public defenders and court appointed attorneys, as well as judges and prosecutors who commit frauds or participate in civil conspiracies. The fact that allowing the lower court's dismissal to stand would allow the defendants and other officers of the court to act in the way that the plaintiff alleged the defendants did is an exceptional circumstance warranting the exercise of the courts discretionary powers. The fact that adequate remedy for convictions obtained through due process rights violations by officers of the court is unavailable is reason to grant this writ of certiorari. The plaintiff's complaint draws into question the constitutionality of the controlled substances act, statutes that infringe upon the right to bear arms, and how immunity for judicial officers has made redress for injuries caused by them difficult to obtain.

Some of the defendants in this complaint violated the plaintiff's right to jury trial.

The sixth amendment to the United States Constitution holds that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Some of the defendants put him in double jeopardy by continuing to prosecute him for lesser included offenses that he was acquitted of.

The fifth amendment to the United States Constitution holds that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Some of the defendants deprived him of liberty without due process and some states create laws that deny felons equal protection of the laws and privileges.

The fourteenth amendment to the United States Constitution holds that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The work the plaintiff performed while incarcerated after being convicted without due process was slavery and involuntary servitude.

The thirteenth amendment to the United States Constitution holds that “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

The decisions of the court dismissing the plaintiff’s complaints sua sponte in light of all of the facts and evidence deny him access to the courts for redress of grievances.

The first amendment to the United States Constitution holds that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Conclusion

Wherefore the plaintiff ask that the court grant his writ of certiorari and extraordinary writ of certiorari. The plaintiff’s criminal trial and civil action were ruined by the extrinsic and intrinsic frauds of the defendant parties. Mr Kandel’s concealment, attempts to discourage appeal of the conviction and litigation, were extrinsic frauds that prevented him from adequately presenting his case. The trial court’s dismissal and affirmation of it by the appellate court set a dangerous precedent and will allow judicial officers acting as the defendants did to continue to violate due process rights with no accountability. This judgement would be inequitable and would leave the plaintiff open to liability in civil actions brought by the defendants even though it is clear that they committed frauds to injure him and covered for each other by maliciously prosecuting him and committing additional frauds. The plaintiff alleges that the defendants, with the exception of the attorney generals participated in a civil conspiracy to deprive him of liberty without due process, the right to it and substantive due process rights including the right to jury trial, the right not to be put twice in jeopardy, effective trial counsel, and the right to be free from slavery and involuntary and that these and other mentioned tortious acts were overt acts taken in furtherance of it.

Respectfully Submitted,

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8/14/2020

I, Justin Johnson, affirm, to the best of my recollection, under penalties of perjury that the foregoing statements are true