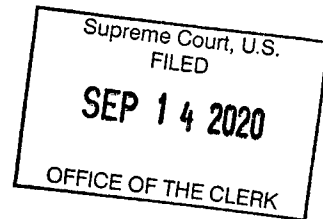


No. 20-5777

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Leroy Banks III — PETITIONER
(Your Name)



Deputy Anthony Terry, vs. The
Bibb Co. Sheriff's Department, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States 11th Cir Court Of Appeals (see Appendix "A")
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

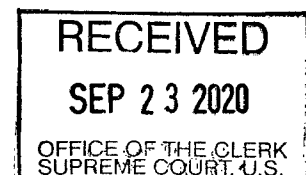
PETITION FOR WRIT OF CERTIORARI

Leroy Banks III
(Your Name)

2029 Lowe Street
(Address)

Macon, Georgia, 31204
(City, State, Zip Code)

478 812-2165
(Phone Number)



A

Questions Presented

1. Whether The Statutory Provisions of 28 U.S.C. § 1915 allowing an indigent individual to proceed in forma Pauper in an action enacted by Congress only applies to ~~one~~ certain Ethical Class of people and as a tool to all a Circuit Court and/or District Court to deny such indigent individual access to the Courts and the right to proceed I.F.P. when the record is clear that the individual (Such as myself) is totally w/o funds
2. Whether The Court of Appeals and The District Court Erred and Prejudiced me in denying and dismissing my claims and case (including indigent relief under 28 U.S.C. §§ 241 and 242 the Criminal counterparts of 42 U.S.C. § 1983 as I sought in my § 1983 complaint) claiming that my suit was filed outside the 2 years Statute of Limitation is in total conflict with this Honorable U.S. Supreme Court holding in the Case of Wallace-v- Kato, 549 U.S. 384 (2007) when the record is clear that ~~even though~~ my false arrest of Oct. 18, 2016 was due to an arrest first on a probation arrest Warrant that did not exist and 2nd on the fabricated Charge of Possession of a firearm I did not commit. I contend that I was booked

B

in The Newton County Jail on the probation revocation on 12-1-16 and my probation was revoked on Jan. 31, 2017 based on the fabricated Criminal Charge for Bibb County Georgia. I contend that I was ~~not~~ sentenced to 3 year on the probation revocation all in connection to my 10-18-16 false arrest claim, false imprisonment claim and my excessive force claim. I contend that I was not released from prison on the probation revocation until Nov. 2018 and therefore any Statute of limitations periods was equally tolled due to the continuing wrong, all caused by the Respondents / Defendants / Appellees.

3. Whether the 11th Cir and the District court decision to Close my case for want of prosecution simply due to the facts that I do not have any money and totally indigent diserns the public to reflect that Congress Enacted § 1915 to be instructions to ~~not~~ allow corrupt public Officials and intities to act with Subjective deliberate indifferances to individuals U.S. Constitutional rights and protection, and Safety as claimed in my § 1983 civil action all in conflict with the Federal Statutory provion of § 1983 also enacted by Congress.

C

I contend that the record of the District Court is clear (The Magistrate's Report and recommendation Rec'doc # 10 at pages 2 - 8) and shows that upon initial review of my 8/1983 Complaint the Magistrate Judge

1. Granted my application to Proceed I. F. P.

~~and~~

2. Shows that I stated valid claims and facts that entitles me to the relief sought

~~and~~

3. That the Defendants/Respondents deliberately violated my U.S. constitutional rights and the Federal law under 18 U.S.C §§ 241 and 242.

and

4. Whether the 11th Cir and the District Court Dismissal of my case the ~~also~~ ^{also} for the U.S. Courts to cause me to become overwhelmed with dept of owed filing fees of actions the Court erroneously Dismissed, which basically indicate that;

D

if I don't have ~~any~~ money to pay
I can't file any claims. I contend that
the District Court record shows that my
Appeal or my §1983 Claims are frivolous under §
1915 (g) as the 11th Cir. stated in its April
27, 2020 order sought to be reviewed on Certiorari.

5. Whether The 11th Circuit Court Of Appeals and
The District Court erred in denying me to proceed
I.F.P. in this captioned case predjudice towards
me; when the records from the District Court
and the U.S. 11th Cir Court Of Appeals is clear that
I was granted to proceed I F P on appeal in
another case related to this one; based on my
same indigent statement to proceed I F P on appeal.
(see Exhibit "C" Attached from the records of
the Northern District Court for the U.S., Atlanta
Div. Habeas Case No[#] _____ U.S. 11th Cir.
Case No[#] _____).

6. And Finally, Whether the Court of Appeals and
the District Court decisions in this case totally
diserns the Public, that both of these U.S.
Courts allow Public Officials to in a corrupt
design, deliberately violate individuals' (such as myself)
U.S. and State Constitutional Protected Rights

as claimed in my §1983 Civil Action and Federal Criminal laws and Statutes all in conflict with Congress intent as provided and prescribed in the Statutory provisions enacted under 42 USC §1983, when the records of the District Court and Magistrates R.F.B (Append "B" rec. Doc. #10) clearly shows that the Magistrate acknowledged that my U.S. constitutional rights to Probable Cause and excessive force were violated by the Respondents/Defendants here in this petition. I contend this also applies to my claims for relief (injunctions) under 18 USC §§ 241 and 242. The District Court failed to address, and was never mentioned by the Court of Appeals.

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:

RELATED CASES

1. Wallace-v- Kato, 549 U.S. 384 (2007)
2. Board Of Regents, University Of New York, -v- Tomanio,
3. Bell Atlanta Corp. -v- Twombly, 550 U.S. 544 (2007)
4. Hardin-v- Straub, 490 U.S. 536 (1989)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	United States Court Of Appeals Case Records Appeal# (Opinion Below)
APPENDIX B	United States District Court Middle Dist. Of Georgia Malone Div. Case Records Civil Action No#
APPENDIX C	U.S. 11th Cir Court Of Appeal I F P ruling only (as exhibit only) show I was recently Granted I F P on Appeal
APPENDIX D	Case No#
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

Cases (Supporting My Petition)

- | | | <u>"Page NO."</u> |
|---|---|-------------------|
| ① | Wallace-v-Kato, 549 U.S. 384 (2007) ————— | "p. 9" |
| ② | Board of Regents, University of New York - v - Tomanio, 446 U.S. 478 (1980) ————— | "p. 12" |
| ③ | Bell Atlanta Corp. - v - Twombly, 550 U.S. 544 (2007) ————— | "p. 4" |
| ④ | Hardin - v - Straub, 490 U.S. 536 (1989) ————— | "p. 13" |

Statutes and Rules

- | | | |
|---|--------------------------------|-----------|
| ① | 18 U.S.C. §§ 241 and 242 ————— | "p. 9" |
| ② | 28 U.S.C. § 1915 ————— | p. 1704 |
| ③ | 42 U.S.C. § 1983 ————— | p. 7 to 9 |

State Statute

- | | | |
|----|--------------------------|--------|
| 1. | D.C.G.A. § 9-2-61 ————— | "p. 6" |
| 2. | D.C.G.A. § 9-11-41 ————— | "p. 5" |

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 _____; 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

☐ reported at _____; 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 4-27-2020.

☐ 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: 7-14-2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

☐ 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).

I contend that the following U.S. Constitutional rights
and Federal and State Statutory provisions provide s;
(See next pages printouts)

(Note; See Highlighted parts that applies)

Statement Of Case and Background

This case now come before this Honorable U.S. Supreme Court, so that this Honorable Court can address the public importance that are discussed in this petition for certiorari. I contend that first ~~I~~ respectfully ask that this Court resolve the conflict that has been demonstrate by the U.S. 11th Cir in this case where the 11th Cir has stated that I am not intitled to proceed on appeal inform Paupers. (See Appendix "A" attached as background of this case) (also see Exhibit for another case Granting IFP)

- (A) I contend that 28 U.S.C § 1915 Congress did not intend this Federal Statute and regulation to only apply to a certain class of indigent people. I contend that 28 U.S.C § 1915 applies to both individuals incarcerated and who are at liberty from incarceration who are indigent and who provides an affidavit to that effect, to be allowed to proceed inform Paupers in both the District Court and the U.S. Circuit Court. I contend that § 1915 Congress provides

§1915(a)

Subject to Subsection (b) any court including the (11th Cir) of the United States may authorize the commencement, prosecution, or defense of any suit, action, ~~civil~~ or criminal or appeal therein, without prepayment of fees or security therefor (see my application for I f P in both the 11th Cir and District court on certiorari), by a person who submits an affidavit that includes a statement of all assets such (person) prisoner possesses that the person is unable pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and Affiant's belief that the person is entitled to redress.

I contend that when Congress enacted §1915 it also provided clearly in §1915(b)(1)(b)(4) that

"In no event shall a prisoner (or person at liberty) be prohibited from bringing a civil action (or appeal) or appealing a judgement for the reason that the prisoner (or person at liberty and free from incarceration) has ~~no~~ (funds) assets, to pay the initial partial filing fees."

therefore making it totally clear that the 11th Cir dismissal of my appeal and action for want of prosecution simply because I do not have funds to pay the filing fees is inconsistent with the Statutory provisions of § 1915 stated above.

I further contend that in the original Order and recommendation of the magistrate Judge in the district court which would have been presented to the appeals court that I am ~~entitled~~ entitled to redress, where the magistrate stated clearly in part (see District court record Doc # 10 appendix # (B) attached and on cert. or a!) that; page 2-

Having considered Plaintiff's filings, as discussed below, Plaintiff's (I the petitioner) motion for leave to proceed in forma pauperis is Granted

Additionally, because Plaintiff is proceeding pro se and because his claims arise under 42 USC § 1983 and relates to his "incarceration" (equitable tolling should apply) - the complaint is subject to a preliminary review under § 1915 (e).

upon initial review Plaintiff's false arrest and false imprisonment claims will be allowed to proceed against Defendants Officer Anthony Terry and Officer Stephen Fields

Additionally, Plaintiff's excessive force claim against Officer Terry will be allowed to proceed with regard to whether Officer Terry used excessive force by placing and holding Plaintiff in a hot, unventilated patrol car ("I am George Floyd")

I contend that this Honorable U.S. Supreme Court has made it well established that,
' see Trombly, 550 U.S. at 555;

The factual allegations in a complaint "must be enough" to raise a right relief above the speculative level and cannot create a suspicion of a legal cognizable right of action.

In other words and as the magistrate stated in appendix # "B" at page 4, the complaint must allege enough "Facts" to raise a reasonable expectation that the discovery will "reveal evidence" supporting a claim (my claims).

Therefore shows that the 11th Cir is incorrect stating that I did not state grounds (or as stated in my motion for reconsideration in the 11th Cir court of appeal) to proceed in forma pauperis on appeal, and the record is clear that I am totally indigent without funds.

"Tolling of Statute of limitation"

I the petitioner now turn this Honorable to the contents I made in the District and 11th Cir Court of appeals. I contend that the order and recommendations of the Magistrate Judge stated above makes it clear that my § 1983 claims relates to my

"incarceration" therefore it is clear that the rule in regards to equitable tolling applies and that the statutory provision of Georgia

~~renew~~ renewed filing Statute applies, (see O.C.G.A § 9-11-41) provides me the right to refile my civil action, even though the Statute of limitations was equitable tolled, under Georgia law. I

contend that even though it states that the petitioner must pay the cost of previously dismissed action,

I contend that it never provides that if the petitioner is indigent he/she cannot

(also see; O.C.G.A. § 9-2-61 Renewal Statute)
proceed in forma Pauperis. I contend
that the conflict, confusion and uncertainty
to be resolve by this Honorable court is
if I am totally indigent w/out funds to
pay cost and fees, is the U.S. 11th Cir
and the District Court by dismissing my
civil action w/o prejudice is these courts,
my defendants and the U.S. Dept of Justice
including congress who enacted § 1915, is causing
me to be overwhelmed with dept of filing
fees to avoid adjudicating my § 1983 claims
to prosecute the defendants who violated
my U.S. Constitutional rights. I contend
that it has been well established by this Honorable
U.S. Supreme Court that the statute of
limitation is equitably tolled. I contend
that the U.S. District Court only mentioned
one of the incidents connected to my claims,
they only addressed the criminal charge in
Bibb County Ga booking and illegal court proceeding
they failed to address my claim in regards to
the Dec. 1, 2017 booking in Newton County
that all began on Oct 18, 2016 where I
was sent to prison on an illegal probation
revocation for over 2 yrs. which that sentence
on probation revocation equitably tolled
any statute of limitation period to file my

(See Wallace-v-Kato, 549 U.S. 384 (2007))

Civil action as explained to the U.S.

11th Cir in my motion for reconsideration.

I contend that this Honorable court has made it clear long ago that; Statute of limitation periods is equitably tolled if the § 1983 claims are connected to and related to incarceration and or condition of confinement (false imprisonment torts)

(see Appendix "A" orders from the U.S. 11th Court records on certiorari). (see The record of the 11th Cir on my motion for reconsideration and my exhibits attached to that motion).

I the petitioner contend that I am not an attorney of the Bar and I do not have funds for filing fees as most attorneys possess.

I contend that the U.S. 11th Cir. court of appeals and the District court in this case holdings are in conflict with the provisions of § 1983 when it is clear from the facts and records of my claims that the defendants et al acted with deliberate indifference to my U.S. constitutional rights and deliberately intended to cause me physical bodily harm. I contend that the U.S.

11th Cir order dismissing my appeal and § 1983 action makes it clear that I am being prejudiced totally simply because I am indigent and have no funds for filing fees. For the past year or so

the only support I have recieved is \$192⁰⁰ Food Stamps, with all respect if the court want the food stamps then they can have them.

I contend that in the words of Justice The Honorable Oliver Wendell Holmes Jr. who was of this Honorable United States Supreme Court stated in a ruling That:

"Even a Dog Distinguishes Between Being Stumbled Over and Being Kicked"

I contend that Justice Holmes while on the bench of this Honorable Court Observation about a dog as stated above helps to clarify a very important distinction in human relationships such as those as I stated in this petition, which clearly proves that my rights were violated by my respondents and now the U.S. 11th Cir and District court in connection to this Petition for Certiorari.

Therefore I contend that it was not amistake when the 11th Cir and the District court dismissed my \$1983 case and my request to appeal I.F.R. to avoid exposer to the public that the police deliberately violated me and my U.S. constitutional rights, but also I will expose that these

inferior United States courts are protecting my defendants from prosecution (both civil and criminal) for their deliberate and intentional violations of Federal Statutes enacted by the United States Congress under 42 U.S.C § 1983, and 18 U.S.C § 241 and 242 the criminal parts of § 1983 civil rights Statute.

I contend that it is well established by the Magistrate in the District court that my rights as stated in my complaint (§ 1983) have been violated by my defendants. I contend as stated to the U.S. 11th Cir in my motion for reconsideration that was denied on 7-14-2020 (Appendix NO# "A" attached) that my arrest and booking in the Newton County Ga. Jail on the probation revocation warrant the defendants/Respondants arrested me on in Bibb Co. on 10/18/16 (a warrant that did not exist) equitably tolled the 2 year Statute of limitation period to file my § 1983 complaint until I was released from prison on the probation revocation sentence due to the continuing violations I suffered by virtue and because of my illegal and unconstitutional arrest on 10/18/16 when the record is clear that I called 911 for help from the police. I contend that The accrual of my claims for limitation purposes the date I was released from prison on the illegal probation arrest warrant

I further contend that the Court of appeals and the District Court failed to apply the principle of the U.S. Supreme Court holding as long established in the case of Board of Regents -v- Tomanio, 446 U.S. 478 (1980) where this Honorable court held (in rel. part) that,

" The federal Courts were obligated not only to apply the analogous New York statute of limitations (in re; Georgia Statute of limitations) to respondent's ~~in re~~ (in re I the petitioner) federal Constitutional claims, but also to apply the New York (in re; Georgia) rule for tolling that Statute of limitations "

Therefore I contend that the Court of appeals and The District Court rulings to the contrary conflicts with ~~the~~ the holdings of courts in both Hardin and the Board of Regents as cited above and therefore the Court of appeals and the District Court did not adjudicate my claims or Appeal properly on the merits as established in the above cited cases in support of this petition for Certiorari, and Therefore, The Court of Appeals and District Courts ~~are~~

Orders should be reversed and I should be allowed to proceed on my Claims under §1983 and I F P.

I contend that it has been long established by this Honorable U.S. Supreme Court in the case of *Hardin-v-Straub*, 490 U.S. 536 (1989) that;

"A federal Court applying a State's Statute Of Limitations" to an inmate's federal civil rights action should give efforts to State's provision tolling the limitation period for prisoners.

I contend as the *Hardin* court due to the fact as here The Court of appeals in my case ruling to the ~~State~~ Contrary Conflicts with the Board of Regents, University of New York-v-Tomanio, which held that;

Limitations periods in §1983 Suits are to be determined by reference to the appropriate state Statute of Limitations and coordinate tolling rules, as long as the state law would not defeat the goals the federal law at issue. (See also the remaining of the *Hardin* Court my fair opportunity to establish the validity of my §1983 Plus Claims).

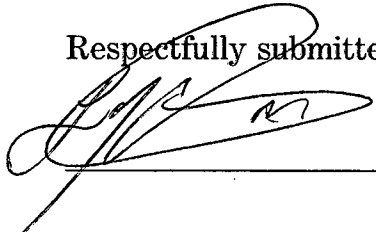
Reason for Granting This Writ/Petition

I the Petitioner contend as stated in my Statement of case in this petition and the holdings of this Honorable U.S. Supreme Court that I relied on in support of this petition shows reasons why this writ should be granted. Most importantly it is a great public importance involved in this case as stated above, due to the conflicts involved including the fact that the ruling of both the Court of Appeals and the District court rulings are in total conflict with the enactments of Congress and what Congress provided in § 1915 I.F.P., when the facts of a claimed rights shows that that right(s) were deliberately violated and that I stated (facts) claims to which relief can be granted under § 1983. Therefore this Honorable Court must grant this writ to resolve these conflicts and issues involved, and the fact that the Court of Appeals and District court both are denying me access to the court, my right to due process and equal protection under the 14th amend., and are being totally bias and Prejudice toward me because of my indigent status and pro se status.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 Leroy Banks III, Proise petitioner

Date: Sept. 9, 2020

Note To The Court, Due to Covid 19 I am limited with Material and resources to prepare this petition, not to mention I am totally indigent. I contend that I prepared this petition to the best of my ability. Therefore I ask this Court to liberally Construe this petition in view of Estelle v- Gamble, and to please give an opinion to this petition.