No. 20-582

In The
Supreme Court of the United States

SHADRECK KIFAYATUTHELEZI
A/K/A NORMAN HAYES,

Petitioner,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
AND MICHAEL STOBBE,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

After petitioner pled guilty in 2004 to certain crimes, he received two concurrent five-year sentences. He was given credit for the 240 days of pretrial jail time he served prior to his conviction. The rest of his original sentence was for probation only.

Petitioner's probation was later revoked, and he was sentenced to serve three years of the original five-year sentence. He completed serving his sentence in early 2012. Several years later, the South Carolina Court of Appeals decided a postconviction relief (PCR) case that had been filed by petitioner in 2011. While recognizing that petitioner's postconviction relief claim was mooted by his having completed his sentence, the state appellate court reviewed one issue pertaining to sentence computation, applying the "capable of repetition, yet evading review, exception to mootness doctrine. That court, reversing the PCR judge in petitioner's case and disagreeing with a prior unpublished decision of that court, concluded that the time served credit should be applied differently from the way the Department of Corrections, on the advice of counsel, had been applying it for over thirty years. *Hayes v. State*, 413 S.C. 553, 777 S.E.2d 6 (S.C. Ct. App. 2015). App. D. The state appellate court recognized that petitioner's sentence had long since expired, and accordingly did not discuss the application of its newly-announced rule to petitioner. App. D at 5.

QUESTIONS PRESENTED – Continued

Petitioner filed the present action for damages in 2017. The magistrate judge, district court and court of appeals all concluded that petitioner had not made the showing necessary for an Eighth Amendment or due process claim in the context of alleged detention beyond the term of a sentence.

The Questions Presented are:

1. Whether the court of appeals and the district court correctly dismissed petitioner's Eighth Amendment claim, because he had not shown any evidence of deliberate indifference to any risk to him.

2. Whether the court of appeals and the district court correctly dismissed petitioner's Fourteenth Amendment due process claim, because petitioner had not made a showing of even ordinary negligence, much less the required showing of more than mere negligence, as required by this Court's precedents.

3. Whether, assuming the right asserted by petitioner was ever clearly established at all, it was not so established until the South Carolina Court of Appeals' decision became final in 2016, five years after the complained-of action by Respondent Stobbe.

4. Whether petitioner's Seventh Amendment claim seeks nothing more than to have this Court review issues of fact and reverse the grant of summary judgment to Respondents.

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Factual Background

Petitioner Shadreck Kifayatuthelezi, also known (and referred to herein) as Norman Hayes, pled guilty in 2004 to two offenses, possession of crack cocaine and criminal conspiracy. He was sentenced to five years' imprisonment for each of the two offenses, to run concurrently. The sentences were suspended to time served, which had been 240 days of pretrial detention, plus three years' probation.

While on probation, Hayes was charged with various probation violations, leading to a probation revocation in 2010, following a hearing.[1] His five-year suspended sentences were reinstated at the same time that his probation was revoked. He was incarcerated on August 3, 2010, shortly after the July 30, 2010 order revoking his probation.

Hayes then filed a motion for rehearing, which was heard and decided on February 4, 2011. The probation revocation judge ordered as follows (form language in *italics*, handwritten language in **bold**): "*the suspended sentence be revoked and [Hayes] be required to serve* **3** *years, the remainder of the original sentence,*

[1] The record does not indicate why the revocation occurred in 2010, but it does indicate that Hayes had been dealing with probation issues since 2008 and earlier.

and/or pay **$XX TERMINATE PROBATION**." *Id.* The previous fine and restitution sentences were converted to a civil judgment. *Id.* Finally, the Form 9 order included two other provisions (italicized and bolded as above), which the judge checked as applying in this case. First, "*[t]he defendant is given credit for pre-revocation hearing detention time on current probation violation. . . .*"[2] Second, "*[t]he defendant has previously served* **240** *days on this sentence.*" In parentheses beneath the second sentence, the form reads, "*(split sentence time and/or prior partial revocation time)*." *Id.*[3]

Hayes's sentence expired (i.e., he "maxed out") on February 1, 2012, and he was released on that date. Although he had originally been sentenced to five years' incarceration, his time of actual incarceration, including both pretrial time in jail and post-revocation time at SCDC, totaled approximately two years and one month (787 total days). That time consisted of (a) the 240 days in jail prior to his conviction, and for which he received credit, (b) 186 days in SCDC following his 2010 probation revocation, and (c) another 361 days starting on the day when the amended probation revocation order took effect. (There was no

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[2] Hayes was incarcerated on August 3, 2010, shortly after the July 30, 2010 order revoking his probation. The reference to "credit for pre-revocation hearing detention time on current probation violation," applies to the period of approximately 186 days from August 3, 2010 through February 4, 2011, when the amended revocation order was issued.

[3] This part of the Form 9 order, the original of which is difficult to read, is quoted in the Report and Recommendation, App. C at 2, which in turn quotes *Hayes, supra*, App. D at 3-4.

break between the 186-day period and the 361-day period.)

The person at SCDC who was responsible for interpreting sentencing documents was respondent Michael Stobbe, the branch chief of release and records management for SCDC. In his deposition in this case, Stobbe explained that SCDC's determinations of release dates for prisoners in petitioner's situation were based on training SCDC employees received from the head attorney of the South Carolina Department of Probation, Parole and Pardon services [("SCDPPP")] in 1983 or 1984.[4] That attorney instructed SCDC employees that generally if a defendant receiving an original sentence is entitled to time served, "you subtract [the time served] from the total sentence that he originally received," and the amount remaining is the "total sentence that [is] enter[ed] into the computer" and that same amount also represents the defendant's "incarcerative time." Stobbe further explained that if a defendant has his probation revoked and he is required to serve a portion of the previously suspended sentence, his "total sentence," which would still include the original reduction for the time served, would remain the same. *Id.* However, the portion of the sentence that he was ordered to serve would be his incarcerative time. The defendant would not be entitled to any additional credit for time served since he

[4] That training included the interpretation of the statute now codified as S.C. Code Ann. § 24-13-40, as amended in 1973. That statute provides for how certain aspects of prison sentences are to be computed.

already received the credit when he was originally sentenced. However, the defendant would continue to benefit from the credit for time served because that credit would have a continued effect on his "total sentence," reducing the amount of time until he became eligible for parole. This interpretation had been followed since at least the early 1980s, apparently without ever being challenged until Hayes filed his PCR claim, as discussed in the next paragraph.

On September 27, 2011, several months before his projected maxout date, Hayes filed the already-referenced PCR case.[5] In that case, he asserted that his sentence should have been reduced by another 240 days, i.e., that he should be given double credit for the 240 days of time served. *See* App. E, the January 30, 2012 PCR order, at 5 (noting that the time served had already been credited). Because his remaining time to serve was relatively brief, the hearing on his PCR claim was expedited.

The legal issue presented by Hayes in his PCR case involved the interpretation of the following language in S.C. Code § 24-13-40, as amended in 1973:

> The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the

[5] The PCR case is the case which petitioner misleadingly describes as an "underlying administrative proceeding." Pet. 9, 17.

> service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence.

The next sentence of § 24-13-40 provides in pertinent part that "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing. . . ." There was never any doubt that Hayes would get credit for 240 days of time served. The only question was whether those 240 days would be subtracted from his original five-year sentence, as SCDC had been instructed to do in such instances by the attorney for SCDPPS in 1983 or 1984, and as had been the practice ever since, or whether those 240 days should be subtracted from the three-year sentence imposed at the time of his probation revocation.

The PCR court denied petitioner's Petition, holding that "This Court finds that under § 24-13-40, in the case of a split sentence, time served prior to trial should not be used to calculate the amount of time a probationer must serve on a reinstated sentence, because the pretrial detention time was already awarded to satisfy the time served portion of the split sentence." App. E at 5.

The South Carolina Court of Appeals reversed, holding that the 240 days of time served should have

been credited to the portion of the sentence that followed the probation revocation. App. D. The Supreme Court granted certiorari, but after hearing oral argument, denied the writ as improvidently granted. *Hayes v. State*, 418 S.C. 362, 792 S.E.2d 907 (Mem) (2016). That final resolution of the case occurred well over a year after the decision of the Court of Appeals.

In addition to reversing the PCR court, the South Carolina Court of Appeals in *Hayes* also reached a result opposite to that in an unreported case in that appellate court several years earlier. In *Martin v. South Carolina Department of Corrections*, Unpublished Opinion No. 2010-UP-367 (S.C. Ct. App. 7/14/2010) (App. 1 to this Brief in Opposition), the South Carolina Court of Appeals held that time "previously served is not applied to the five-year sentence imposed at the probation revocation hearing. Rather, it applied toward Martin's original sentence of ten years' imprisonment." App. 1 at 4.

Again, by the time *Hayes, supra*, was decided in July 2015, Hayes had long since completed his sentence on February 1, 2012. The South Carolina Court of Appeals was well aware that Hayes was no longer incarcerated at the time of that court's decision. Nevertheless, and as already noted, that court proceeded to review the legal issue presented by Hayes, even though deeming it moot with regard to Hayes himself, citing the "capable of repetition but evading review" exception to mootness doctrine. 413 S.C. at 558, 777 S.E.2d at 9.

In so holding, the South Carolina Court of Appeals cited *Nelson v. Ozmint*, 390 S.C. 432, 702 S.E.2d 369 (2010). *Nelson*, like the decision of the Court of Appeals in *Hayes*, also involved review of a "moot issue of [SCDC's] calculation of the prisoner's sentence" where it "was capable of repetition, yet it would usually evade review." *Hayes*, 413 S.C. at 558, 777 S.E.2d at 9. Under those similar circumstances, the Supreme Court of South Carolina regarded the moot PCR case before it as an action for a declaratory judgment. *Nelson*, 390 S.C. at 435, 702 S.E.2d at 370. Similarly, and consistent with the declaratory nature of *Hayes*, the final paragraph of the opinion is not expressed in terms of Hayes's own sentence, but rather in the form of a declaratory statement of general applicability: "[W]e find the pre-trial detention time should apply against a probation revocation whenever a probationer receives a split sentence." *Hayes*, *supra*, 413 S.C. at 560, 777 S.E.2d at 10.[6]

Proceedings Below

Petitioner filed this action in state court (subsequently removed to the district court) on June 28, 2017, a year after the decision of the South Carolina Court of Appeals became final. Petitioner sought damages

[6] Contrary to petitioner's frequently-repeated claim that "Respondents were required to release petitioner from prison on July 21, 2011," *see., e.g.*, Pet. 4, the South Carolina Court of Appeals never reached the issue of how its decision might affect petitioner himself, because he had been out of prison for over five years by the time that decision became final.

under the Eighth Amendment, the Due Process Clause, and state law. Only federal claims are listed in the present Petition. Petitioner claimed that Respondent Stobbe, an official with the South Carolina Department of Corrections (SCDC) who was responsible for interpreting sentencing documents, and who interpreted the specific state statute in the manner his agency had been applying it for decades, acted in violation of the aforementioned constitutional provisions.[7]

All defendants moved for summary judgment on all claims. On March 4, 2019, the magistrate judge issued a Report and Recommendation that Defendants' motion for summary judgment should be granted. App. C.

In reviewing respondent Stobbe's qualified immunity claim, the Magistrate Judge elected to consider first the issue of whether the deprivation of a constitutional right had been alleged, citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). App. C at 11. That court then recommended that petitioner's constitutional claims be dismissed, because (a) petitioner had not made the showing of deliberate indifference that is necessary under the Eighth Amendment in the context of alleged detention beyond the term of a sentence, and (b) petitioner had likewise not even shown negligence on Stobbe's part, much less the necessary showing of more than mere negligence necessary to prevail on a

[7] Although the Petition for Certiorari lists SCDC as a respondent, the Complaint asserted only state law claims against SCDC.

Fourteenth Amendment Due Process Clause. App. C at 12-13.

On September 25, 2019, the district court issued an order accepting the Report and Recommendation, and adding one additional holding to the effect that the applicable principle of state law on which petitioner relied was not clearly established until a state appellate decision that occurred several years after 2011, the time when the complained-of act by Stobbe occurred. App. B. The district court accordingly granted Defendants' motion for summary judgment and dismissed this action.

The court of appeals summarily affirmed the district court's decision on May 20, 2020, "for the reasons stated by the district court." App. A. Rehearing en banc was unanimously denied on June 23, 2020. App. F.

REASONS FOR DENYING THE PETITION

A. Petitioner fails to raise an issue that merits this Court's consideration.

The Petition contains no mention of a circuit split, nor any reference to any other of the considerations that might support a grant of certiorari. The three decisions below all reached the same result with nearly identical reasoning. The district court and court of appeals essentially adopted the Report and Recommendation, which cited well-established precedents regarding the application of the Eighth Amendment and

the Due Process Clause in cases where a person has allegedly been detained beyond the term of a sentence. The Petition seeks only to argue that the courts below misapplied a properly stated rule of law. That is generally insufficient to warrant a grant of certiorari, *see* Supreme Court Rule 10, and petitioner cannot even make that showing in any event.

Petitioner's principal claim before this Court is that "[t]here must be recourse when an inmate is held past his or her release date in violation of applicable law." Pet. 9. In fact, the courts below recognized that such recourse is available, but only upon a showing of deliberate indifference or something more than mere negligence. Petitioner made no showing whatsoever of such conduct.

1. The court of appeals and the district court correctly dismissed petitioner's Eighth Amendment claim, because petitioner had not shown any evidence of deliberate indifference to any risk to petitioner.

A standard principle of this Court's Eighth Amendment jurisprudence is that "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause. . . ." *Wilson v. Seiter*, 501 U.S. 294, 299 (1991) (emphasis in original). This principle applies in cases such as this, involving claims that an inmate was held beyond the term of his or her sentence. *See*, *e.g.*, *Sample v. Diecks*, 885 F.2d

1099 (3d Cir. 1989) (holding that deliberate indifference standard applied to Eighth Amendment delayed release claim). Petitioner admits that deliberate indifference, the standard applied by the courts below, is the governing standard. Pet. 5, 16.

Diecks, supra, explained the application of the standard in cases such as this as follows:

> [A] plaintiff must first demonstrate that a prison official had knowledge of the prisoner's problem and thus of the risk that unwarranted punishment was being, or would be, inflicted. Second, the plaintiff must show that the official either failed to act or took only ineffectual action under circumstances indicating that his or her response to the problem was a product of deliberate indifference to the prisoner's plight.

885 F.2d at 1110. *Diecks* also contained a holding directly applicable to the facts of this case. The Third Circuit pointed out that "A subsequent determination that [the inmate] should not have been detained—was improperly subjected to punishment—does not relate back to the relevant time period, thereby vitiating the state's intent during that time period. *Id.* at 1108 (emphasis added). To the same effect is *Campbell v. Peters*, 256 F.3d 695, 700 (7th Cir. 2001) ("extended incarceration must also be the product of deliberate indifference before a constitutional violation, as opposed to an error of state law, is implicated") (emphasis added).

Numerous other circuits have applied the same standard in cases involving Eighth Amendment claims arising out of extended incarceration. *See*, *e.g.*, *Calhoun v. New York State Div. of Parole Officers*, 999 F.2d 647, 654 (2d Cir. 1993) (showing of knowledge and deliberate indifference is required); *Shorts v. Bartholomew*, 255 F. App'x 46, 55 (6th Cir. 2007) (same); *Thornton v. Hobbs*, 16 F.3d 1228 (8th Cir. 1994) (Table) (showing of deliberate indifference is required).

The Petition contains no suggestion that any circuit has held otherwise. Moreover, petitioner does not come close to showing that Stobbe, who was simply applying a longstanding interpretation of § 24-13-40, had a state of mind that even remotely approached deliberate indifference. The undisputed facts in the record show only that Stobbe consciously and conscientiously followed a longstanding and generally-accepted interpretation of the statute. He did not ignore a clear rule to the contrary, for no such rule existed in 2011 Nor was there any suggestion that Stobbe harbored any intent for petitioner to remain incarcerated longer than he should have been.

Far from showing why the above conclusions of the courts below were incorrect, petitioner barely addresses the applicable Eighth Amendment standard at all, Pet. 16, and that minimal reference does little more than merely recite the deliberate indifference standard. *Id.* Petitioner's only effort at showing deliberate indifference is a brief claim that respondent Stobbe "failed to even read the applicable statute even after petitioner requested a recalculation and brought

the error to the Respondents' attention." *Id.* at 17. However, it was held below that

> to the extent that Stobbe indicated that he did not go back and actually re-read the statute in regard to Plaintiff's case, it was because he had been working with the statute for many years and was very familiar with it and with the construction he had learned about during training.

App. C at 13 n. 6. The assertion that petitioner "requested a recalculation and brought the error [sic] to the Respondents' attention," Pet. 17, is also erroneous and misstates what occurred. The court below noted that

> As Defendants point out, Plaintiff "has not alleged or proven that he requested a review of his sentence by Stobbe, much less that Stobbe responded inappropriately to such a request. Instead, it appears that the issue of Plaintiff's sentence computation arose in the context of his PCR case, in which the PCR trial court held . . . that Plaintiff was being lawfully held in custody."

App. C at 13 n. 6. Accordingly, while the Petition only asserts factual claims specific to the present case, those assertions about the supposed dispositive facts are simply incorrect.

2. The court of appeals and the district court also correctly dismissed petitioner's Fourteenth Amendment due process claim, because petitioner had not even shown ordinary negligence, much less made the required showing of more than mere negligence, as required by this Court's precedents.

The court below also dismissed petitioner's due process claim. The Report and Recommendation, App. C at 13, quoted *Golson v. Dep't of Corr.*, Nos. 80-7344, 90-7345, 1990 WL 141470, at *1 (4th Cir. Oct. 2, 1990), which relied on such authorities as *Daniels v. Williams*, 474 U.S. 327, 334 (1986) (negligent injury to prisoner by prison officials not actionable under section 1983 as violation of either Eighth or Fourteenth Amendment); *Davidson v. Cannon*, 474 U.S. 344, 347-48 (1986) ("In *Daniels*, we held that the Due Process Clause of the Fourteenth Amendment is not implicated by the lack of due care of an official causing unintended injury to life, liberty or property. In other words, where a government official is merely negligent in causing the injury, no procedure for compensation is constitutionally required"). *See also*, *e.g.*, *Patten v. Nichols*, 274 F.3d 829, 843 (4th Cir. 2001) ("liability under the Due Process Clause cannot be imposed for mere negligence").

It was also held below that

> Here, no evidence indicates that Stobbe or any SCDC employee <u>even acted unreasonably</u> in following the training they had received from SCDPPP's counsel regarding what the law

> required. [Footnote omitted.] In fact, given the murkiness of the legal landscape at the time SCDC made its decision, there is no basis for a conclusion that the legal principles they were instructed to apply were an unreasonable interpretation of the applicable statute.

App. C at 13 (emphasis added). The Petition does not even mention the "more than mere negligence" standard, which is enough in itself to show that petitioner's due process claim is utterly unmeritorious.

3. If the right asserted by petitioner was ever clearly established at all, it was not so established until the South Carolina Court of Appeals' decision became final in 2016, five years after the complained-of action by respondent Stobbe.

The Petition expends a number of pages under various headings arguing that the right claimed by petitioner was clearly established by 2011, when Stobbe determined how petitioner's sentence should be interpreted. It should first be noted that the decision below would stand regardless of the outcome of this issue, because the courts below all agreed that there had not been a violation of any constitutional right,

Even if the issue were to be reached, however, the short answer is the one given by the district court and approved by the court of appeals:

> [A] state post-conviction relief court made a decision adverse to the Plaintiff which was

> reversed by the South Carolina Court of Appeals.[8] Until the Court of Appeals ruled, only then would an alleged violation be clearly established. As the Magistrate Judge notes, "given the murkiness of the legal landscape at the time [2011] SCDC made its decision," it would not be appropriate to conclude that defendants violated any constitutional or statutory right that was clearly established at the time of the alleged violation.

App. B at 2. In determining whether a right was "clearly established" for purposes of qualified immunity, the courts look to "the time of defendant's alleged misconduct." *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). The state appellate court's decision on the issue of state statutory interpretation did not become final until 2016, five years after Stobbe's action in 2011. As a result, that decision cannot serve to show that the principle on which petitioner relies was "clearly established" several years before the decision was issued. In addition, the South Carolina Court of Appeals in an unpublished 2010 decision had confirmed SCDC's longstanding interpretation of § 24-13-40. *Martin v. SCDC, supra*. While the same court later reached the opposite conclusion five years later in *Hayes, supra*,

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[8] That decision was issued by the South Carolina Court of Appeals in 2015, but did not become final until the Supreme Court of South Carolina, having initially granted certiorari to review it, then dismissed the Petition for certiorari in 2016 after hearing argument. *Hayes v. State*, 418 S.C. 362, 792 S.E.2d 907 (Mem) (2016).

Stobbe's interpretation was in accord with *Martin*, as well as with his training and the long-established practice.

Petitioner argues that a number of very general principles were "clearly established" in 2011, but none of them involved the state statutory construction issue on which petitioner bases his claim. To cite one example, he refers to a "clearly established constitutional right to be released at the conclusion of his sentence." Pet. 7. However, such assertions contravene this Court's repeated directions "not to define clearly established law at a high level of generality." *Ashcroft v. al-Kidd*, 563 U.S. 731, 742, (2011). The principles cited at pp. 7 and 13 of the Petition are not instructive on the specific issue of how to apply § 24-13-40 in the present context, and accordingly do not advance petitioner's claim to have a "clearly established" right.[9]

Finally, petitioner also argues that "[t]he constitutionality of qualified immunity should be evaluated." Pet. 19-20. However, there is obviously no need to reach this issue under the facts of this case.

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[9] Petitioner misleadingly asserts that Stobbe "admitted in his deposition that all of the rights at issue were clearly established at the relevant times." Pet. 7. Similarly-misleading statements appear on pp. 11 and 24 of the Petition. While Stobbe may have agreed with some of the very general principles mentioned by petitioner's counsel (in questions whose form was objected to), he never agreed that his sentence computation was in error based on state law as it was interpreted at the time by his agency and indeed by the South Carolina Court of Appeals in *Martin v. SCDC, supra.*

4. Petitioner's Seventh Amendment claim seeks nothing more than to have this Court review issues of fact and reverse the grant of summary judgment to Respondents.

Petitioner argues that he was entitled to a jury trial on both his state and federal law claims. Pet. 14-17 (federal claims); 21-26 (state law claims). These questions involve only the issue of whether the courts below correctly dismissed this action on summary judgment because there were no triable issues of fact. While this is not an issue that would normally lead to review by this Court in any event, petitioner has failed even to show that there was a triable issue of fact on any claim. Nor has he shown why this Court should conduct any review at all of the issues involving only state law claims, i.e., those raised at pp. 21-26 of the Petition. Petitioner makes passing reference to the Seventh Amendment, Pet. 4, 26, but does not make any argument citing Seventh Amendment cases.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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December 2020