

IN THE SUPREME COURT OF THE UNITED STATES

ALICE B. SWEAT, III,

20-7097

Petitioner,

v.

No. S-1-SC-38476

A-1-CV-38130

JAI ME MONTANA, et al.,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS
TO THE SUPREME COURT OF NEW MEXICO

ORIGINAL

FILED

JAN 13 2021

OFFICE OF THE CLERK
SUPREME COURT U.S.

ALICE B. SWEAT III

Pro Se

185 Dr. Michael Jenkins Rd.

Clayton, N.M. 88415

QUESTIONS PRESENTED

(1) Whether the district court in granting summary judgment improperly decided the "Notice of Claim" issue. Which defendants did not dispute during the hearing, (2) Whether the district court in granting summary judgment improperly calculated the "statute of limitations", (3) Whether the district court in granting summary judgment improperly ruled on Res judicata once a United States District court clearly did not rule on the multiple prosecutions leading from one arrest, (4) Whether the district court in granting summary judgment improperly ruled on the addition of racial profiling claim, (5) Whether the district court improperly denied petitioner's "first request for production of documents", (6) Whether the district court improperly denied Appointment of counsel, (7) Whether the district court improperly denied plaintiff's Motion for reconsideration, (8) Whether the district court in granting summary judgment improperly decided disputed factual issues pertaining to the issue of facts that were dismissed by the criminal judge during trial finding the DNA evidence insufficient and dismissing Court 1. Due to the fact that DNA was the only evidence for identity purposes. Does it preclude petitioner's subsequent prosecution that was improperly severed pursuant to M.M.R.A. Rule 5-203(4) that mandates consolidation of related cases, citing *Ashe v. Swenson*, 397 U.S. at 443, 90 S.Ct. 1189.

PARTIES

The petitioner is Alvaro B. Sweet III, a prisoner at N.E.N.M.C.F. in Clayton, New Mexico. The respondents are City of Las Cruces; Jaime Montoya, chief of Police; Detective Mike Richards; and Detective Jeff Ferguson.

TABLE OF CONTENTS

Question Presented	pg. 2
Parties	pg. 3
Table of Authorities	pg. 4
Decision Below	pg. 5-6
Jurisdiction	pg. 6
Constitutional and Statutory Provisions Involved	pg. 6-9
Statement of the Case	pg. 9-11
Basis for Federal Jurisdiction	pg. 11-12
Reasons for granting the Writ	
A. Conflicts with Decisions of Other Courts	pg. 12-13
B. Importance of the Question Presented	pg. 13-19
Conclusion	pg. 19-20
Appendix	
Decisions of the Court of Appeals of the State of New Mexico	(A)
Order of the Supreme Court of the State of New Mexico	(B)
Notice Proposed Summary Disposition	(C)
Plaintiff Memorandum In Opposition to Proposed Summary Aff.	(D)
Petition For Writ of Habeas Corpus To The N.M. Court of Appeals	(E)

TABLE OF AUTHORITIES

Abramson v. Griffin, 693 F.2d 1009, 1011 (10th Cir. 1982)	- pg. 13, 19
Alamo Rent-A-Car, Inc., v. Mancusi, 632 So. 2d 1352, 1356 (Fla. 1994)	- pg. 12
Ashx v. Swenson, 397 U.S. 346, 90 S.Ct. 1189, 25 L.Ed. 2d 469 (1970)	- pg. 2, 14
Carpenter v. Nutter, 127 Cal. 61, 59 P.301 (1899)	- pg. 18
Dutton v. McKinley County Bd. of Comm'rs, 1991-NMCA-130, 113 N.M. 51 (N.M. Ct. App. 1991)	- pg. 12, 13, 14, 15,
Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 293, 125 S.Ct. 1517 (2005)	- pg. 16
Haring v. Prosser, 462 U.S. 306 (1993)	- pg. 16
Heard v. Sheahan, 253 F.3d at 318	- pg. 12
Jaramillo v. Heaton, 2004-NMCA-123, 774, 136 N.M. 498, 100 P.3d 204	- pg. 17
Lopez v. State, 1996-NMSC-071, 122 N.M. 611 (N.M. 1996)	- pg. 12
Markinez v. Clovis, 1980-NMCA-078, 95 N.M. 654 (N.M. Ct. App. 1980)	- pg. 12, 13, 14, 15
Montana v. United States, 440 U.S. 147 99 S.Ct. 970, 59 L.Ed. 2d 210 (1979)	- pg. 16
Piskowski v. Bell, 256 F.3d 687, 694 (7th Cir. 2001)	- pg. 13
Smith v. Massachusetts, 543 U.S. 462, 125 S.Ct. 1129 (2005)	- pg. 17
State ex rel. Bd. of Cty. Comm'rs v. Williams, 2007-NMCA-036, 7725, 141 N.M. 356, 155 P.3d 761	- pg. 15, 16
State v. Burdick, 100 N.M. 197, 668 P.2d 313	- pg. 18
State v. Davis, 1998-NMCA-148, 774, 126 N.M. 297, 968	

P.2d 808

-pg.18

State v. Nagel, 87 N.M. 434, 535 P.2d 641 (kt. app.)

- pg.19

State v. Paybal, 2002 - NMSC - 027, 7133, 132 N.M. 657, 54

P.2d 61

- pg.13

State v. Tijerina, 86 N.M. 31, 519 P.2d 127 (1973)

- pg.13

Thompson v. Harris, 603 So. 2d 1096 (Ala. Ct. Civ. App. 1992)

- pg.12

Tiberi v. Cigna Corp., 89 F.3d 1423, 1430-31 (10th Cir. 1996)

- pg.12

Tarnes v. Capitan, 1978 - NMSC - 065, 92 N.M. 64 (N.M. 1978)

- pg.12

U.S. v. Ford, 371 F.3d 550, 555-56 (9th Cir. 2004)

- pg.13

U.S. v. Hunt, 212 F.3d 539, 543-44 (10th Cir. 2000)

- pg.13

U.S. v. Moser, 266 U.S. 236

- pg.16

U.S. v. Ogles, 440 F.3d 1095 (2006)

- pg.19

U.S. v. Shafer, 987 F.2d 1054 (4th Cir. 1993)

- pg.19

Walker v. Maruffi, 105 N.M. 763 (1987)

- pg.12, 17

Wells v. County of Valencia, 1982 - NMSC - 048, 98 N.M. 3

(N.M. 1982)

- pg.12

Wilkinson, 545 U.S. at 222

- pg.13

DECISION BELOW:

The decision of the Court of Appeals of the State of New Mexico is unreported. A copy is attached as Appendix A to this petition. The order of the Supreme Court of the State of New Mexico. A copy is attached as Appendix B to this petition.

JURISDICTION

The judgement of the Court of Appeals of the State of New Mexico was entered on August 18, 2020. An order denying a petition for writ of certiorari was entered on November 5, 2020, and a copy of that order is attached as Appendix B. to this petition. Jurisdiction is conferred by 28 U.S.C. § 1257 and 28 U.S.C.A. § 2102.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment II to the United States Constitution, which provides:

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 offence 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, or liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This case involves Amendment IV to the United States Constitution which provides:

Section 1. 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.

This case involves Amendment of New Mexico Article II, which provides:

Section 15. Self-incrimination; double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense; and when the indictment, information or affidavit upon which any person is convicted charges different offenses or different degrees of the same offense and a new trial is granted the accused, he may not again be tried for an offense or degree of the offense greater than the one which he was convicted.

Section 18. Due process; equal protection; sex discrimination. No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person.

The Amendment is enforced by Section 41-4-17(A) N.M.S.A. 1978, provides in pertinent part:

A. The Tort Claims Act [41-4-1 to 41-4-25 NMSA 1978] shall be the exclusive remedy against a governmental entity or public employee for any tort for which immunity has been waived under the Tort Claims Act and no other claim, civil action or proceeding for damages, by reason of the same occurrence may be brought against a governmental entity or against the public employee or his estate whose act or omission gave rise to the suit or claim. . . [Emphasis added]

The Amendment is enforced by Section 30-1-10 (B) N.M.S.A. 1978, which provides:

B. SAME EVIDENCE. The test for determining whether two offenses are the same so as to bring into operation the prohibition against double jeopardy is the "same evidence" test which asks whether the facts offered in support of one offense would sustain a conviction of the other.

The Amendment is enforced by SCR 1986 5-203, revised Rule 5-203

(A) N.M.R.A. 1978, which provides:

A. Two or more offenses shall be joined in one complaint, indictment or information with ~~each~~ ^{each} offense stated in a separate count, if the offenses, whether felonies or misdemeanors or both:
(1) are of the same or similar character, even if not part of a single scheme or plan; or

(2) are based on the same conduct or on a series of acts either connected together or constituting parts of a single scheme or plan.

As a result of a supreme court order, the committee prepared amendments to Paragraph 4 of this rule in 1979 which changed Paragraph 4 of this rule from a permissive to a mandatory rule.

The 1979 supreme court order provided as follows:

When a person is charged with more than one crime and the crimes can be incorporated in one information or indictment in separate counts, this practice shall be followed.

STATEMENT OF THE CASE

The petitioner's complaint alleges that he was charged for a misdemeanor crime and prosecuted in the wrong county. The misdemeanor charge incorporated felony charges that were presented to a district attorney and three Grand Jury's that never issued a true-bill. The charges pending from the misdemeanor arrest ~~and they~~ were dismissed in Magistrate court and District court.

Then the defendants refilled the felony charges in Magistrate court in three different complaints on October 25, 2013. On February 5, 2015, petitioner filed a motion to consolidate the three indictments. Third Judicial District Court judge denied in part and granted in part by severing CR-2013-01164 and consolidating CR-2013-01165 with CR-2013-01166, contrary to established procedural law in violation ^{of} the United States Constitution or New Mexico

constitution ~~under~~ ^{under} U.S. Fifth and Fourteenth Amendment or N.M. Const. Article II sections 15 and 18. Petitioner was tried by a jury on February 10-11, 2015, on case # CR-2013-01164 and the judge found the identity evidence insufficient and dismissed count 1 but allowed the jury to make a decision on Count 2 of the indictment based on the same identity evidence. Which the jury ruled in petitioner's favor 8-4. The judge ruled a mistrial to allow the prosecution to get their facts right contrary to his own prior ruling. The case was ultimately dismissed with prejudice on April 8, 2015.

Petitioner was then tried on related charges on March 27, 2015, based on the "same evidence" that a district court judge had already acquitted him on. Petitioner's complaint alleges he was maliciously prosecuted, falsely accused of a misdemeanor and charged for the misdemeanor in the wrong county as stipulated by state law in violation of New Mexico Const. Art. II, Sect. 15 and 18. It further alleges he was continuously prosecuted on insufficient evidence contrary to procedural law N.M.R.A. 1978, Rule 5-203(a) and he is a subject of violation of the Double Jeopardy clause under New Mexico Const. Article II, section 15. And he is asking to be released on the related charges he is being held on.

The district court would not allow the petitioner to obtain critical discovery evidence and made a ruling on three issues (1) Notice of claim, (2) Res judicata, and (3) Statute of limitations. The district court judge ruled that I failed to give Notice to the City and he never made a ruling as to the city employee.

And the ruling by the United States District Court precluded petitioner's state claims when the ruling was only based on the investigative arrest and not the subsequent separated prosecutions. This is a claim for continued wrongs and not based on just one incident. Then he ruled that petitioner's complaint exceeded the 2 years and that the lawful proceeding did not count in computing the period of limitations as read pursuant to §1367(d). The district court granted summary judgement in defendants favor also declining to make a ruling on petitioner's related charges, he is serving time for.

Petitioner appealed and the Appeal Court was not persuaded and denied the Appeal. Petitioner filed a writ of certiorari and the Supreme Court denied the writ. The Appeal Court did acknowledge that petitioner's claim was related to his criminal conviction and failed to submit the appeal to the Supreme Court pursuant to §16-7-14(c)(2), N.M.S.A. 1953 Comp. so that substantial public interest could be determined on related case. Since they have jurisdiction over all civil and criminal issues.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Due Process clause of the Fourteenth Amendment to the United States Const. or section 18 of the New Mexico Constitution.

This case raises a question of interpretation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution or Section 15 of the New Mexico Constitution. As

predicated in State-created liberty interest N.M.R.A. 1978, Rule 5-203(4). The district court had jurisdiction under the Federal question conferred by 28 U.S.C. 1331 and this Supreme Court has jurisdiction conferred by 28 U.S.C.A. § 2102 on related conviction, and 28 U.S.C. § 1257 on the civil case.

REASONS FOR GRANTING THE WRIT

As Conflicts with Decisions of Other Courts

- The holding of the Courts below that written notice requirements to sue a public employee is directly contrary to the holding of three precedent cases. See *Martinez v. Clouis*, 1989-NMCA-078, 95 N.M. 654 (N.M. Ct. App. 1980); *Dutton v. McKinley County Bd. of Commrs*, 1991-NMCA-130, 113 N.M. 51 (N.M. Ct. App. 1991); *Lopez v. State*, 1996-NMSC-071, 122 N.M. 611 (N.M. 1996).
- The holding of the Courts below that *Res Judicata* applies is directly contrary to the holding of two precedent cases. See *Torres v. Capitan*, 1978-NMSC-065, 92 N.M. 64 (N.M. 1978); *Wells v. County of Valencia*, 1982-NMSC-048, 98 N.M. 3 (N.M. 1982).
- The holding of the Courts below that the statute of limitation was exceeded is directly contrary to the holding of ~~three~~ ^{five} precedent cases. See *Tiberi v. Cigna Corp.*, 89 F.3d 1423, 1430-31 (10th Cir. 1996); *Heard v. Sheahan*, 253 F.3d at 318; *Alamo Rent-A-Car, Inc. v. Minnecusi*, 632 So. 2d 1352, 1356 (Fla. 1994); *Thompson v. Harris*, 603 So. 2d 1086 (Ala. Ct. Civ. App. 1992); *Walker v. Minnecusi*, 105 N.M. 763 (1987).
- The holding of the Courts below that the related criminal

conviction ^{was} ~~did~~ not precluded by the dismissal of this related case for insufficient evidence subjecting ~~the~~ ^{Petit} lower to a violation of the Double Jeopardy Clause is directly contrary to five precedent cases. See *U.S. v. Ford*, 371 F.3d 550, 555-56 (9th Cir. 2004); *Abramson v. Griffen*, 693 F.2d 1009, 1011 (10th Cir. 1982); *Piastkowski v. Bett*, 256 F.3d 687, 694 (7th Cir. 2001); *U.S. v. Hunt*, 212 F.3d 539, 543-44 (10th Cir. 2000); *Wilkinson*, 545 U.S. at 222. In addition, the Supreme Court of New Mexico has held that "The doctrine of cumulative error applies when multiple errors, which by themselves do not constitute reversible error, are so serious in the aggregate that they cumulatively deprive the petitioner of a fair trial." *State v. Raybal*, 2002-NM5C-027, ¶133, 132 N.M. 657, 54 P.3d 61. In addition, N.M.R.A. 1978, Rule 12-216(B)(2), provides appellate court discretion, as an exception to the preservation rule, to review questions involving fundamental error or submit the case to the N.M. Supreme Court to take jurisdiction pursuant to N.M.S.A. 1953 Comp. §16-7-14(4)(2). See *State v. Tijerina*, 86 N.M. 31, 519 P.2d 127 (1973).

B. Importance of the Questions Presented

- This case presents a fundamental question of the interpretation of the State Courts decision in *Martinez v. City of Clovis*, 95 N.M. 654, 625 P.2d 583 and *Dutton v. McKinley County Bd. of Comm'rs*, 1991-NMCA-130, 113 N.M. 51, 822 P.2d 1134, 1991 N.M. App. LEXIS 221 (N.M. Ct. App. 1991). The question presented is of great importance

because it affects the operations of the Notice given directly to, or received personally by, a party. In view of the litigation proceedings, guidance on the question is also of great importance to prisoners, because it affects their ability to receive fair decisions in proceedings.

The issue's importance is enhanced by the fact that the lower courts in this case never made a ruling on the "public employee defense and indemnification" provision section 41-4-4 (D) merely because it does not convert a public employee into a local public body, a governmental entity, or the state agency [for purposes of the notice provision], interpreted in *Martinez v. City of Clouis* and *Dutton v. McKinley County Bd. of Comm's*, held by the same lower court.

The common sense understanding of Section 41-4-16 (b) is plaintiff did not have to provide the city with written notice of his claims against Det. Mike Richards and Det. Jeff Ferguson pursuant to 41-4-16 (b) because plaintiff's claims were against the officers in their official and individual capacity.

The lower court's reasoning that Petitioner's Notice of Claim provided the date of October 11, 2013, was ^{de} deficient under the TCA. Petitioner's 42 U.S.C. § 1983, later was more specifically asserted as acknowledged by the lower court. However, *Farmer, Inc. v. Dal Mach. & Fabricating, Inc.*, based review on the correctness of the trial court's action. The Dutton court made this distinction crystal clear, describing its holding as that "Written

Notice requirements of section 41-4-16(a) do not apply to claims against public employees." *Dutton v. McKinley County Bd. of Comm'rs*, 1991-NMCA-130 (N.M. Ct. App. 1991). The court in *Martinez* had also held that Notice requirements do not apply to claims against public employees. In this case, it is not disputed that petitioner and the City attorney had exchanged written communications about the injuries sustained and specific dates. The lower court made the ruling as the Notice requirements directly applying to the local public body. This case and the notice given to the mayor on December 23, 2013, only implicates the officers and not the City. Ignoring petitioner's claims against the officers.

- This case presents a fundamental question of state ex rel. Bd. of Cty. Comm'rs v. Williams, 2007-NMCA-036, 7125, 141 N.M. 356, 155 P. 3d 761. The question presented is of great importance because it affects the utilization of the courts and its contrary rulings in all 50 states. In view of the litigation over malicious prosecutions, guidance on the question is also of great importance to prisoners, because it affects their ability to receive fair decisions in proceedings.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted state ex rel. Bd. of Cty. Comm'rs. The lower court held in state ex rel. Bd. of Cty. Comm'rs that "the claimant must have had a full and fair opportunity to litigate the claim in the original action and there must have been a final decision on the merits. This court

reiterated this point in *Harine v. Prosis*, 462 U.S. 306 (1983), and added if an issue was presented in an earlier case but not actually decided, you generally will not be collaterally estopped.

The common sense understanding of "ultimate issue" is deciding the case on all the facts based in the complaint not just one issue, and nothing in state ex rel. Bd. of Cty. Comm'rs suggest otherwise. The case acknowledges that "res judicata precludes a subsequent action involving the same claim or cause of action."

However, those concerns are accommodated by permitting any issue on which petitioner must prevail in order to establish his TCA, the only question determined by the Federal Court was the arrest on August 9, 2013 that was confused with the Holbe prosecution issued April 8, 2015, on the felony prosecution complained about. Likewise the "cause of action" in each suit is different because each seek review of the three different malicious prosecutions that are in violation of the State Constitution. *U.S. v. Moser*, 266 U.S. 236.

The lower court's reasoning that an ultimate issue of fact had already been determined is unconvincing. It relied on a case that does not contain that holding. *See Montana v. United States*, 440 U.S. 147, 99 S.Ct. 970, 59 ~~Supr. Ct. 147, 99 S.Ct. 970~~ L.Ed. 2d 210 (1979). However, there exists "established precedent" demonstrating that interpretation of the New Mexico Constitution departs from federal constitutional law. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293, 125 S.Ct. 1517 (2005).

This case presents a fundamental question of the interpretation of *Walker v. Maruffi*, 105 N.M. 763 (1987). The question presented is of great public interest because it affects how the statute of limitations are calculated. For New Mexico, the Court identified Section 37-1-8 as the relevant limitation statute. The New Mexico court specifically rejected the TCA statute of limitations applicable for wrongs committed by public officials. See § 41-4-15. The New Mexico Court stated that "it was the very ineffectiveness of state remedies that led Congress to enact the Civil Rights Act in the first place. 471 U.S. at 279, 105 S.Ct at 1949. The question is important because it affects the ability to receive a fair decision in proceedings.

The issue's importance is enhanced by the fact that the lower court in this case has held NMCSA 1978, Section 41-4-15 (1977), unconstitutional on other grounds as recognized by *Jaramillo v. Hentow*, 2004 - NMCA-123, 974, 136 N.M. 498, 100 P.3d 204.

The common sense understanding of "statute of limitations," is that the limitations don't begin until the favorable termination of the felony case ^{ends} complained about. In this case, the end of the chain of events and felony prosecution ended on April 8, 2015, and nothing in *Jaramillo* or *Bruce H.* suggest otherwise.

The lower court's reasoning that the incident occurred on August 9, 2013 and ended on August 9, 2013, is directly

contrary to what the whole complaint was about from the opening to the closing at the hearing is unconvincing. It did not rely on a case that contradicts the continuing-violation doctrine. See *Carpenter v. Nutter*, 127 Cal. 61, 59 P. 301 (1899). The ~~the~~ *Carpenter* Court made this distinction crystal clear, describing one element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused.

• This case presents a fundamental question of the interpretation of N.M.S.A. 1963, Section 30-1-10 (B) of the lower court's decision in *State v. Davis*, 1998-NMCA-148, 9714, 126 N.M. 297, 968 P.2d 808. The question is of great importance because it affects the court's administration of justice in all 50 states.

The issue's importance is enhanced by the fact that the lower courts case have misinterpreted SCR A (1988), Rule 5-203 revised N.M.R.A. 1978, Rule 5-203(A). The N.M. court reiterated this point in *State v. Burdick*, 100 N.M. 197, 668 P.2d 313, and added the facts and issues suggested the commission of offenses of similar character, even if not part of a single scheme or plan.

The common sense understanding of "ultimate fact" has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future case, and nothing in the lower courts Memorandum Opinion suggest otherwise. The Memorandum Opinion did not explain why they would not submit the issue of the

related criminal prosecution CR-2013-01165 to the Supreme Court of New Mexico and just stated it was out of their jurisdiction. However, those concerns have been made clear in this Court in *Ashe v. Swenson*, 397 U.S. 346, 90 S.Ct. 1189, 25 L.Ed. 2d 469 (1970), where the Court looked to all the relevant matters of the trial, and the lower court made the same ruling in *State v. Magel*, 97 N.M. 434, 535 P.2d 641 (Ct. App.).

The lower court's reasoning that the judgment of acquittal represented a ruling that the evidence was "legally insufficient to sustain a conviction" is contrary to *Smith v. Massachusetts*, 543 U.S. 462, 125 S.Ct. 1129 (2005) as to Count 1, however, identity was the essential issue in the case as to Count 2 of the case as well, and essential in the subsequent related prosecution CR-2013-01165. I ask this Court was it wrong for the lower court to grant a mistrial as to Count 2 in case CR-2013-01164 in order to allow the prosecution to correct the wrongs made. Then allow the prosecution to use the same parties and same evidence after the judge orders entry of judgment of acquittal on his own after the close of the prosecution's case in a separate trial. *Cf. U.S. v. Ogles*, 440 F.3d 1095 (2006); *Abramson v. Griffen*, 693 F.2d 1009, 1011 (10th Cir. 1982); *U.S. v. Shafer*, 997 F.2d 1054 (4th Cir. 1993).

Thus the lower court failed in distinguishing between the City and public employer liability among other things stated above.

CONCLUSION

For the foregoing reasons, petitioner ask certiorari be granted
in this case.

Date: JANUARY 7, 2021

Respectfully submitted,

Alfred B. Sweat III

ALFEE B. SWEAT III

N.E.N.M.C.F.

135 Dr. Michael Jenkins Rd.

Clayton, NM 88415

CERTIFICATE OF SERVICE

I hereby certify on this 7th day of JANUARY, 2021
a true and correct copy of the foregoing was placed into
the institutional mailbox at N.E.N.M.C.F. in a properly
addressed and stamped envelope to:

United States Supreme Court

1 First Street, N.E.

Washington, DC 20543

Robert A. Cabella

Senior Assistant City Attorney

P.O. Box 20000

Las Cruces, NM 88004

Alfred B. Sweet II
ALFRED B. SWEET II #39850

I declare under penalty of perjury that the foregoing is
true and correct.

Executed on: January 7th, 2021

Alfred B. Sweet II
Signature