

IN The
Supreme Court of the United States

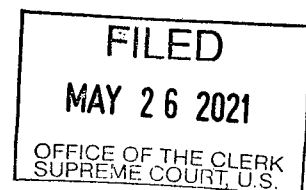
~~No. 20-8260~~

EARTON Smith
Petitioner,

ORIGINAL

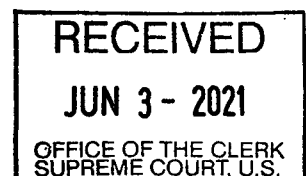
— Against —

John Schuyler MARVIN
Respondent



Petition For A Writ of Certiorari
to The United States Court of Appeals
For The Fifth Circuit

EARTON Smith #305982
LOUISIANA State Penitentiary
ANGOLA, LOUISIANA 70712
pro se Petitioner



Question Presented

Whether there is Federal-Court Subject-Matter Jurisdiction Over Plaintiff-Appellant's Complaint, And Whether the Claim he Presses is Cognizable Under 42 U.S.C. § 1983.

Parties

The Petitioner is Earle Smith, A Prisoner at Louisiana State Penitentiary in Angola Louisiana.

The Respondent is John Schuyler Marvill, District Attorney for Twenty Sixth Judicial District, Parish of Bossier Bertrone Louisiana.

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IN The
Supreme Court OF The United States

NO _____

EARTON Smith
Petitioner,

— Against —

John Schuyler MARVIN
Respondent

Petition FOR A WRIT OF CERTIORARI
TO The United States Court OF Appeals
FOR The Fifth Circuit

DECISIONS Below

The decision OF the United States Court OF Appeals
FOR the Fifth Circuit is UNReported. AND A Copy is Attached
AS Appendix A to this petition (A.1) The ORDER OF the
United States District Court FOR the Western District OF
Louisiana is NOT Reported. A Copy is Attached AS Appendix A
to this petition (A.3).

Jurisdiction

The Judgment OF the United States Court OF Appeals FOR
The Fifth Circuit WAS ENTERED ON April 1, 2021. AN ORDER
DENYING A petition FOR Rehearing WAS ENTERED ON April 27,
2021. AND A Copy OF that ORDER is Attached AS Appendix A to
this petition (A.2). JURISDICTION is CONFERRED ON the Supreme
Court by 28 U.S.C. § 1254(1) AND § 1257(A).

Constitutional and Statutory Provisions Involved

This case involves Amendment XIV 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.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.

The Amendment is enforced by Title 42 Section 1983, United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State, Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a Statute of the District of Columbia.

Statement of the Case.

Before the District Court is a civil action filed in forma pauperis by pro-se petitioner Earlene Smith (petitioner) pursuant to 42 U.S.C. § 1983. This Complaint was received and filed in the district court on August 5, 2019. Petitioner is incarcerated in the Louisiana State Penitentiary in Angola, Louisiana. (See, *State v. Smith*, 7 So.3d 855 (La. App. 2 Cir. 2009) writ denied 25 So.3d 828 (La. 2010); *State v. Smith*, 47 So.3d 553 (La. App. 2 Cir. 2010); writ denied 58 So.3d 474 (La. 2011); (2)

Petitioner Alleges that on November 29, 2007, he was convicted of Aggravated burglary and possession of a Firearm by a convicted Felon. It further Alleges that on November 20, 2008, the State filed a habitual offender Bill, and on July 21, 2009, Petitioner was adjudicated a third Felon offender. Petitioner Alleges that on November 6, 2009, his original sentence was vacated, and Petitioner was sentenced to a mandatory life sentence with hard labor. Petitioner Alleges Respondent MARVIN denied him due process during the State Post Conviction Relief pursuant to C.Cr. Art. 930.8(A)(1); LA. C.Cr. Art. 930.8(B). Petitioner Alleges that on July 26, 2017, he filed an Application for Post Conviction Relief, pursuant to LA. C.Cr. P. Art. 930.8(A)(1); based upon fact not known to him or his attorney at trial, and therefore was an exception to the prescriptive period. *Carlin-V-Caine*, 706 So.2d 968-69 (LA. 1998); Petitioner Alleges that on September 25, 2017, Respondent MARVIN filed procedural objections in response to his Application for (PCR) pursuant to LA. C.Cr. P. Art. 930.4; and LA. C.Cr. P. Art. 930.8(A); It further Alleges that the trial court denied Petitioner's Application as repetitive and untimely, the Louisiana Second Circuit Court of Appeals denied his Application for writ of Review and Louisiana Supreme Court of Louisiana denied his Application for writ of Review.

Petitioner Alleges that he does not challenge the conduct of the prosecutor or the decisions of the Louisiana State Courts, Petitioner Alleges he is challenging Louisiana's Post Conviction exceptions to the time period set forth in LA. C.Cr. P. Art. 930.8(A)(1); LA. C.Cr. P. Art. 930.8(B); as construed by the Louisiana State Courts.

Accordingly, Petitioner's EARTON SMITH (Plaintiff) seeking an Injunctive Relief Ordering Respondent (Defendant) State to conduct evidentiary hearings pursuant to LA. C.Cr. P. Art. 930.8(A)(1); LA. C.Cr. P. Art. 930.8(B), which authorize the dismissal of any timely-filed Application or one filed under any of the statutory exceptions to the time bar when the State shows that delay has prejudiced its ability to respond to the Application as the result of events not within its control. To determine if the two Affidavits dated July 29, 06, State ex rel. WALKER-V-STATE, 920 So.2d 213 (LA. 2006) (per curiam)

the Bossier City Police Department's case file rest on facts not known to him and his Attorney at Trial,

The district court dismissed complaint suit for lack of jurisdiction on the ground, that this court, Assume Petitioner (Plaintiff) seek a writ of mandamus to order Respondent (defendant) to conduct evidentiary hearings regarding his Application for (PCR). citing 28 U.S.C. § 1361. See Davis - v - Lansing, 851 F.2d 72, 74 (2d Cir. 1988); And The Fifth circuit Affirmed, for the reasons stated by the district court. citing Moye - v - Clark, DeKalb County Superior Ct, 474 F.2d 1275, 1276 (5th Cir. 1973) (per curiam).

Basis For Federal Jurisdiction

This case raises a question of interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. § 1331.

Argument In Support of Granting Certiorari

A. Conflicts with an earlier Supreme Court decision or, other federal courts of appeals or state and federal courts.

B. Importance of Question Presented

This case presents a fundamental question of the interpretation of this Supreme Court's decision in *Skinner - v - Switzer* 562 U.S. 521 (2011). The question presented cases involves important and unsettled issue of federal constitutional or statutory law. In addition, the issue's importance is enhanced by the fact that the lower courts this case have seriously misapply *Skinner*. This Supreme Court held in *Skinner* that there is federal - court subject-matter jurisdiction over *Skinner*'s complaint, and the claim he presses is cognizable under 42 U.S.C. § 1983. This Supreme Court reiterated the relevant case law most recently, pointing in *Wilkins - v - Dotson*, 544 U.S. 74, 125, S.Ct. 1242, 161, L.Ed.2d 253 (2005).

And added that CASE involved prisoners who challenged the constitutionality of administrative decisions denying them parole eligibility. They could proceed under §1983; the court held, for they sought no injunction ordering ... immediate or speedier release into the community, *id.*, at 82, 125 S.Ct. 1242. A favorable judgment would not necessarily imply invalidity of [their] convictions or sentences, (quoting *Heck*, 512 U.S. at 487, 114 S.Ct. 2364; First Alteration Added)

measured against our prior holdings, *Skinner* has properly invoked §1983. Success in his suit for DNA testing would not "necessarily imply" the invalidity of his conviction. While test results might prove exculpatory, that outcome is hardly inevitable; as earlier observed ~~SEE~~, *Supra*, at 1293-1294, results might prove inconclusive or they might further incriminate *Skinner*. See *Nelson v. Campbell*, 541 U.S. 637, 647, 124 S.Ct. 2117, 158 L.Ed.2d 924 (2004) (we were careful in *Heck* to stress the importance of the term "necessarily.")

The district court and Fifth circuit court of Appeals in this case have seriously misapply *Skinner*. It relied on case law from the Second circuit see, *Davis v. Lansing* 851 F.2d 72, 74 (2d Cir. 1988); and see also, *Moye v. Clerk, DeKalb Cnty. Superior Ct.* 474 F.2d 1275, 1276 (5th Cir. 1973) (per curiam) (citing *Thole v. Hamlin*, 747 F.App'x 242, 242 (5th Cir. 2019) (per curiam) (applying *Moye*). However, *Davis* nor *Moye*, *Thole* does not apply in this case.

The district court seriously misinterpreted *Skinner* by failing to distinguish between when a state prisoner, complaining of unconstitutional state action, may pursue a civil rights claim under §1983, and when habeas corpus is the prisoner's sole remedy. The pathmarking decision, *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). A state court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action. see, *Withinsone v. Dotson*, *Supra*. see also, *McKithen v. Brown*, 481 F.3d 89, 99, (C.A.2 2007); *Savory v. Lyons* 469 F.3d 667, 669 (C.A.7 2006);

This Supreme Court should correct that misinterpretation and again make it clear that *SKINNER - V - Switer*, 363 Fed. Appx 302 (2010) (AFFIRMED) but (CERT. WAS GRANTED) 560 U.S. 924, 130 S. Ct. 3323, 176 L. Ed. 2d 1219, (2010). AND NOW should REVERSE this Fifth Circuit Court of Appeals Judgment in this case, that Plaintiff - Appellant's Action be dismissed without prejudice for lack of Jurisdiction, CERTIORARI should be GRANTED in this case.

CONCLUSION

Based on the foregoing, this Supreme Court should REVERSE the district court and Fifth Circuit Court of Appeals Ruling and Judgment which dismissed Plaintiff - Appellant's Action be dismissed without prejudice for lack of Jurisdiction. SEE 28 U.S.C. § 1361.

date: MAY 25th 2021

Respectfully Submitted

Carlon Smith #325982
LOUISIANA STATE PENITENTIARY
ANGOLA, LOUISIANA 70712

Note: The Appendix to the petition is Attached.