

1 of 3

FROM: 22712424

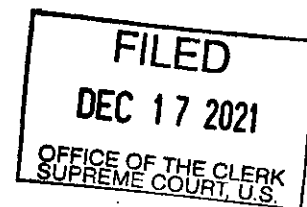
TO: [REDACTED]

SUBJECT: Petition For Writ of Certiorari

DATE: 12/17/2021 02:24:39 PM

21-7286

ORIGINAL



IN THE SUPREME COURT OF THE UNITED STATES

No. (Clerk To Supply)

ANDREW JAMES JOHNSTON,

Plaintiff-Appellant,

v.

FRANCES WARD & REBECCA PALLMEYER,

Defendants-Appellees.

Originating Case Information: Johnston v. Ward & Pallmeyer, USCA 7, Appeal No. 21-1221

PETITION FOR WRIT OF CERTIORARI

Executed on: December 17, 2021

x

Andrew Johnston

Mr. Andrew James Johnston
Prisoner ID No. 22712424
U.S. Penitentiary
P.O. Box 24550
Tucson, Arizona 85734

QUESTION PRESENTED

1. Does a claim ~~against a~~ court reporter and district judge brought under the Bivens Act alleging precise material omissions from the transcript of a federal criminal trial in violation of the Fifth Amendment's due process clause qualify as Heck barred and/or a new Bivens context?

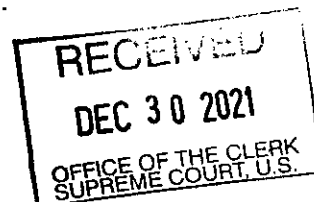
JURISDICTION

The jurisdiction of the district court was founded upon the Bivens Act, 28 U.S.C. Section 1331, as the complaint alleged a due process claim under the Fifth Amendment for material alterations of a trial transcript, requested mandatory initial discovery, and injunctive relief. The jurisdiction of the court of appeals was founded upon 28 U.S.C. Section 1291 as the appeal was of the district court's final judgment dismissing the complaint for failure to state a claim upon which relief could be granted. The jurisdiction of this Court is founded upon 28 U.S.C. Section 1254(1) and the following particulars:

Date of Judgment Sought To Be Reviewed: October 20, 2021;
Date of Denial of Rehearing En Banc: December 6, 2021.

TABLE OF AUTHORITIES

Organic



Amendment V, Due Process Clause

Statutes

28 U.S.C. Section 1331

Cases

Griffin v. Illinois, 351 U.S. 12, 19 (1956)
Heck v. Humphrey, 512 U.S. 477, 490 (1994)
Hernandez v. Mesa, 206 LED2D 29, 43 (2020)
Ziglar v. Abassi, 137 S. Ct. 1843 (2017)

Other

Sta're Deci'sis

STATEMENT OF THE FACTS

In December 2020, I filed the action below while my petition for writ of certiorari in this Court, No. 20-6487, was pending. I noticed in March 2020 during the briefing of my direct appeal, No. 19-1624, when I received access to my trial transcripts for the first time, that material omissions from the transcript were evident. Having proceeded pro se in trial, I know what questions I asked the bank tellers across the substantive elements. The missing questions from the January 9, 2019 transcript, Dkt. 330, Page 47, are:

Johnston: Did the suspect use force?

Byrne: No.

Johnston: Did the suspect attempt to use force?

Byrne: No.

Johnston: Did the suspect threaten to use force?

Byrne: No.

Johnston: Did the suspect imply a threat of force?

Byrne: No.

Johnston: Did the suspect state 'if you don't do this then he would do that' or anything along those lines?

Byrne: No.

As such, the complaint requested a mandatory initial discovery order requiring immediate production of the audio from the courtroom microphones on January 9, 2019, \$14,000.00 monetary damages under the Bivens act, a corrected transcript from an independent transcriber paid for by the court reporter Frances Ward, and an order requiring Judge Pallmeyer to recuse herself from all of my cases pending in the district court. Please see, Appendix A, Appellant's Opening Brief. The court of appeals did not even include defendants in the briefing schedule in the appeal below. On October 20, 2021, the court of appeals dismissed the appeal, concluded it was frivolous, and ordered me to show cause why I should not be sanctioned \$1000.00, and have a filing bar in all federal courts in the Seventh Circuit. I sought rehearing en banc, and filed my response to the show cause order in early November 2021. See Appendix B, Petition For Rehearing En Banc and Response To Show Cause Order.

On December 15, 2021, I received a December 7, 2021 order sanctioning me \$1000.00 and imposing the filing bar. In response, on December 16, 2021, I immediately filed a Petition For Rehearing En Banc on that order, and a Petition For Writ of Prohibition with this Court, having not received any order denying rehearing en banc on the October 20, 2021 judgment. On December 17, 2021, I called the court of appeals to clarify whether I had from December 15, 2021 or from December 7, 2021 to pay the \$1,000, and informed them that I mailed my Reply Brief for Appeal No. 21-2679, and the Petition For Rehearing En Banc on the December 7, 2021 order on December 16, 2021. The clerk stated that the court of appeals denied rehearing en banc on December 6, 2021, and I clarified I had not received that order and the December 16, 2021 Petition For Rehearing En Banc was against the December 7, 2021 sanction. This petition follows.

REASONS WHY ISSUANCE OF THE WRIT SHOULD BE GRANTED AND THE JUDGMENT REVERSED

I alleged in the district court, and the court of appeals, that I had a due process right to an accurate trial transcript under Griffin v. Illinois, 351 U.S. 12, 19 (1956). I alleged that I had no other remedy at law besides the Bivens Act to enforce that right. The

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district court concluded that although I alleged a due process claim, it was not a gender discrimination claim, and was a new Bivens context. The district court also concluded the claim was barred under Heck, despite not asking for any relief from the criminal judgment. In response, I filed a Motion To Alter/Amend Judgment showing that the district court did not follow the prongs of Ziglar v. Abassi 137 S. Ct. 1843, 1860 (2017) in drawing its conclusion, and that I never asked for any relief pertaining to the criminal judgment showing the claim was not subject to Heck. On appeal, I made the same arguments, and cited Hernandez v. Mesa, 206 LED2D 29, 43 (2020) in support.

The court of appeals concluded that my claim was Heck barred because I claimed bias against the district judge. It went on to state that if in fact the district judge was biased, my conviction was invalid, and thus I was alleging a claim that was Heck barred. The complaint never stated that I wanted to invalidate my conviction. It stated that due to the precision of the omissions from the trial transcript (precision a court reporter typically would not have) that the district judge should be barred from sitting on any of my pending cases from time the complaint was filed and forward. On appeal, I showed how the case was initially assigned to a male republican appointee, Judge Lindberg, and how Pallmeyer (while being named as a defendant in the action) used her authority as the chief judge to reassign the case from Lindberg to a female democrat appointee (like herself) Judge Wood. Once again, I asked that the court of appeals reverse the judgment, reassign the lawsuit to a different judge, take Pallmeyer off my cases, and hold that I stated a viable due process claim. I did not ask for any relief related to my criminal case whatsoever. As the court of appeals refuses to hold the district court accountable, and because I have no remedy at law, this Court should hear this case, or alternatively, grant certiorari, vacate the judgment below, and remand for further consideration in light of Hernandez v. Mesa, 206 LED2D 29, 43 (2020).

CONCLUSION

Wherefore petitioner prays that the Court grants this petition and the relief requested for the foregoing reasons.

Respectfully Submitted,

x 

Date: 12/17/21

Mr. Andrew James Johnston