

21-7402

ORIGINAL

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Supreme Court, U.S.
FILED
FEB-14-2022
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

BRANDON LEON BIBBS,

Petitioner,

Vs.

SANDRA HUTCHENS,

Respondent.

No.

PETITION FOR WRIT OF
CERTIORARI

- On Petition For Writ of Certiorari to
Superior Ct. of Orange County, California -

QUESTIONS PRESENTED

1. Is the rulings of the state and federal courts concerning the arrest of the petitioner consistent with the ruled decisions of the United States Supreme Court cases of *Riverside v. McLaughlin*, 500 U.S. 44 (1991); *Gerstein v. Pugh*, 420 U.S. 103 (1975)

2. Did the United States District Court ignore the petitioner's claims of their being no probable cause determination for the arrest of petitioner. (*In re Walters*, 15 Cal.3d 738 (1975)).

3. Are the executives that are responsible for detaining persons abusing

their authority, in breaching the supreme law of the land (U.S.C., 4th Amend.)

4. Did the opinion of the United States District Court misconstrue the facts of the arrest of petitioner concerning ineffective assistance of counsel, to exercise a motion to suppress evidence, for the non-existent determination to arrest petitioner after not being identified to a crime, in conflict with the opinion in *Devenpeck v. Alford*, 543 U.S. 146 (2004).

5. Was the petitioner deprived effective assistance of counsel due to the decisional circumstances that resulted in his conviction as related to the case of *U.S. v. Gieslowski*, 410 F.3d 353

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APPENDIX B "ORDER RECOMMENDATION"	[No. 2:20-cv-6165]
APPENDIX C "REPORT RECOMMEND. U.S."	[No. 2:20-cv-6165]
APPENDIX D "DECISION OF STATE CT. OF APPEALS"	[G057290]

APPENDIX E DECISION OF STATE TRIAL CT. (M-17708)

APPENDIX F ORDER STATE SUPREME CT. DENYING (S260290)

LIST OF PARTIES

> All parties appear in the caption of the case on the cover page.

RELATED CASES

· In re BRANDON BIBBS, No. M-17708, SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE. Judgement entered Nov. 16, 2018.

· In re BRANDON BIBBS, No. G05290, COURT OF APPEAL OF THE STATE OF CALIFORNIA-FOURTH APPELLATE DISTRICT. Judgement entered Mar. 3, 2019.

· In re BRANDON BIBBS, No. S260290, THE SUPREME COURT OF CALIFORNIA. Judgement entered on Apr. 1, 2020.

· BRANDON BIBBS, No. 2:20-cv-06165-JVS-KK, UNITED STATES DISTRICT COURT - CENTRAL DISTRICT OF CALIFORNIA. Judgement entered Apr. 8, 2021.

· BRANDON BIBBS, No. 21-55457, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. Judgement entered Nov. 17, 2021.

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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 judgement below.

OPTIONS BELOW

For cases from federal courts:

(1)

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix F to the petition and is unpublished.

The opinion of the Appeals court appears at Appendix D to the petition and is unpublished.

JURISDICTION

For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was November 17, 2021.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 USC § 1254(1).

For cases from state courts:

The court of appeals is the United States Court of Appeals for the Fifth Circuit.

The date on which the highest state court decided my case April 1, 2020. A copy of the decision appears at Appendix F.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

• U.S.C. 4th Amendment ["The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,..."]

• U.S.C. 6th Amendment ["In all Criminal Prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense."]

• U.S.C. 14th Amendment ["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."]

• California Penal Code Section 836 ["(a) A peace officer... without a warrant, may arrest a person whenever any of the following circumstances occur: (1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence. (2) The person arrested has committed a felony, although not in the officer's presence. (3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been (3)"]

was committed.

STATEMENT OF CASE

On January 18, 2014, the petitioner was traffic stopped by local law enforcement officials in a car that was unrelated to a crime. Upon this traffic stop, the petitioner was taken out of the car for a field show up identification procedure, which he was not identified by any witness to a crime. Subsequently, one of these officials that performed the identification procedure decided to still detain the petitioner after the fact of their being no reason to do so, and then determines that the petitioner is the culprit of a crime based on his observation of a surveillance video related to a crime.

The petitioner was somehow subsequently identified by the same witness that previously did not identify petitioner. The arresting official decided to arrest petitioner and two other individuals that he believes were involved in the crime. Moments later, one of the other individuals made an interrogation statement implicating the petitioner to the crime related to the arrest. Furthermore, the arresting official made a declaration of probable cause stating that the stopped car was a get away vehicle and the petitioner was positively identified by a witness, omitting the initial misidentification by the same witness before the detention that had no reason, related to the crime he was investigating. Also, these statements for the arrest of petitioner were never determined to have probable cause by a judicial officer.

On April 19, 2016, the petitioner pleaded guilty to two counts of robbery related to the previous events with private counsel and was convicted. The next day, petitioner was sentenced.

On November 16, 2018, the superior court denied the petitioner's habeas corpus related to the arrest and ineffective assistance of counsel, for the opinion of the claims being conclusory of deficient performance by counsel and the plea of guilty being a bar for relief.

On March 1, 2019, the court of appeals summarily denied the petitioner's habeas corpus.

On April 1, 2020, the supreme court denied the petitioner's habeas corpus for not being in custody of the authorities jurisdiction of the conviction.

On April 8, 2021, the United States District Court denied the petitioner's federal habeas corpus based on the magistrate report and recommendation that in fact misconstrued the events that took place involving the arrest previously mentioned of the unreasonable traffic stop and misidentification before the officer's determination for arrest, also the magistrate did not consider and/or mention the undetermined probable cause for the petitioner's arrest by a judicial officer.

On November 11, 2021, the United States Court of Appeals denied the petitioner's certificate of appealability based on the petitioner not making a substantial showing of a denial of a constitutional right.

REASONS FOR GRANTING THE PETITION

This court should respectfully grant this petition in order to secure the law of the land and decisions that take precedent in a person's right to be free from unreasonable searches and seizures. To prevent the denial of due process and equal protection from the laws that are consistent by the United States Constitution and Supreme Court concerning a person's search and seizure rights that conflict with any and all relevant circumstances related to the petitioner. In furtherance, there shall be a level of playing field to an adverse party, to have an independent arbitrator that is in the position of being fair, uniform, and free from disparity to determine what is reasonable to deprive a person's liberty.

The decisions that follow these circumstances from the lower courts are in extreme conflict with the decisions made within the United States

Supreme Court that should be considered with extreme caution and prudence to rely on the United States Constitutional law standards.

In the cases of *Riverside v. McLaughlin*, supra, and *Gerstein v. Pugh*, supra, speaks clearly to the issues related to the petitioner that was clearly established in this court, that undoubtedly concerns his arrest. And more certainly, the lower federal district court used a United States Supreme Court case (*Devenpeck v. Alford*, supra) as a reason to demonstrate the reason for the detention of the petitioner, by an officer that clearly did not have a reason to detain the petitioner (*In re Dennis*, 46 Cal.App.3d 50 (1975)).

In addition, to even consider their being an incorporated argument of their being a fair probable cause determination by a neutral magistrate, the misleading contentions of the arresting official to conclusively speculate a get away vehicle and to omit a material fact of the victim's misidentification of the perpetrator is egregiously in conflict of the cases involving *Illinois v. Gates*, 462 U.S. 213 (1983) and *U.S. v. Giordenello*, 357 U.S. 480 (1958).

Accordingly, because of these issues that were ignored by counsel, amounted to a deficient performance as related to the decisions in *U.S. v. Cieslowski*, 410 F.3d 353 and *Coch v. Booker*, 632 F.3d 241 (2011).

To sum it up, these would be the following issues that clearly take precedent in the decisions of this court, and is being respectfully conveyed to protect the constitutional rights of the petitioner and law of the land.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted by BRANDON LEON BIBBS; 1/7/22

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