ORIGINAL

No. 22-5525

FILED
AUG 05 2022
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Terron Dizzley — PETITIONER
(Your Name)

vs.

Melvin Garrett — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Terron Dizzley, 359480
(Your Name)

4460 Broad River Road
(Address)

Columbia, South Carolina 29210
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Whether The United States Court of Appeals, for the Fourth Circuit, affirmance of the District Court's order that the State law determines the time of accrual for filing a civil action under 42 U. S. C. A. ₴ 1983 is erroneous and contrary to clearly established United States Supreme Court law?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

State v Terron Dizzley, 2009-GS-22-00778

Terron Dizzley v State, 2015-CP-22-00845

Dizzley v Cartledge, 2017 WL 92886979

Terron Dizzley v Warden Stephan, 8:20-CV-00126-SAL

Terron Dizzley v Warden Stephan, No. 21-6329

Terron Dizzley v Scott Hixon, 2:20-CV-02613-SAL

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TABLE OF AUTHORITIES

CASES ..... **PAGE**

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 judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

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

[X] reported at 21-68-73; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[x] reported at 2:19-CV-00530-RVH; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 02-02-2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 05-10-2022, and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U. S. CONST., AMEND IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U. S. CONST., AMEND VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U. S. CONST., AMEND XIII -

Section 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction..

U. S. CONST., AMEND XIV

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.

28 U. S. C. A. ₴ 1651

STATEMENT OF CASE

Plaintiff contends that according to the United States Constitution, Fourth Amendment, the only variable that separates the crime of kidnapping, from a lawful arrest is "probable cause.

Plaintiff contends that the record shows that on December 11, 2008, Investigator Melvin Garrett of the Georgetown, South Carolina Police Department applied for an arrest warrant for Plaintiff Terron Gerhard Dizzley, for murder without probable cause and prepared an affidavit in the arrest warrant that does not provide any information at all that would enable a magistrate judge to determine probable cause. Thus, according to the Fourth Amendment, Petitioner's arrest warrant is constitutionally deficient. After hiring a Private Investigator, Bennie L. Webb, it was also found that Investigator Garrett made "false declarations" to the magistrate to obtain Petitioner's arrest warrant. See: Exhibits.

Plaintiff contends that an evaluation of his arrest warrant, compared to The Fourth Amendment, and clearly established United States Supreme Court law proofs that his arrest warrant is constitutionally deficient. Whereas, Plaintiff arrest warrants only recite no more than elements of the crime charged, and only states that Petitioner allegedly committed the crime charged without any personal knowledge of the complaining officer, Investigator Garrett.

ARREST WARRANT AFFADAVIT IN GIORDENELLO v. U. S.

"The undersigned complainant (Finley) being duly sworn state: That on or about January 26, 1956, at Huston, Texas in the Southern District of Texas, Veto Giordenello did receive, conceal, etc. narcotic drugs, to – wit: heroin, hydrochloride with knowledge of unlawful impartation; in violation of Section 174, Title 21, U. S. Code."

Petitioner contends that The United States Supreme Court in Giordenello has determined that the above arrest warrant affidavit in Giardiello's arrest warrant was constitutionally

deficient. See: Giordenello v. U. S., 357 U. S. 480 (1958) " Under Federal Rules of Criminal Procedure, complaint merely charging the concealment of heroin without knowledge of it's illegal impartation in violation of designated statute and containing no affirmative allegations that the complaining officer spoke with personal knowledge of the matters contained therein and not indicating any sources for the officer's belief and not setting fourth any other sufficient bases upon which a finding of probable cause could be made and did not authorize U. S. Commissioner to issue a warrant for arrest of defendant, and the deficiencies could not be cured by Commissioner's reliance upon a presumption that the complaint was made on personal knowledge of complaining officer. The Commissioner should not accept without question the complainant's mere conclusion that the person whose arrest they sought had committed the crime." See: Arrest Warrant of Terron Dizzley.

ARREST WARRANT AFFIDAVIT OF TERRON GERHARD DIZZLEY

"That on or about December 1, 2008, at approximately 10:30 p.m. at 899 Oakland Road in the County of Georgetown, while at the Paradise Club/First and Ten Sports Barr, one Terron Gerhard Dizzley did, with malice and forethought cause the death of Aundry Evans, Jr. by shooting him about the body multiple times with a handgun. This being against the peace and dignity of The State of South Carolina and a violation of South Carolina Code of Law 16-03-0010.12080088 / Inv. M. Garrett / Inv. D. Morris".

Plaintiff contends that a comparison of his affidavit in his arrest warrant with the affidavit in the arrest warrant in Giordenello shows that they are identical and provide no sufficient basis for which a finding of probable cause could be made. Therefore, The United States Supreme Court has determined that such affidavit as in Petitioner's arrest warrant is constitutionally deficient under The Fourth Amendment, which results in an unlawful seizure, false

imprisonment and unlawful pre-trial detainment. See: Illinois v. Gates, 462 U. S. 239 (1983), " Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his actions cannot be a mere ratification of the bare conclusions of others." Whiteley v. Warden, Wyo. State Pen., 401 U. S. 560 (1971), " Complaint signed by county sheriff which recited that defendant, and another

did and there unlawfully break and enter particular locked and sealed building was not sufficient to support independent judgment of disinterested magistrate and was not sufficient showing of probable cause for issuance of arrest warrant. Before warrant for either arrest or search warrant can be issued, judicial officer must be supplied with sufficient information to support independent judgment that probable cause exists for the warrant." Malley v. Briggs, 475 U. S. 335 (1986); Beck v. Ohio, 379 U. S. 89 (1964); Wong Sun v. U. S., 371 U. S. 471 (1963); Franks v. Delaware, 438 U. S. 154 (1978).

FALSE DECLARATIONS TO THE MAGISTRATE

Petitioner contends that the truth, which was also omitted from the affidavit is that the entire investigation of his case rested solely on an alleged hearsay statement by victim that " D" or "Little D" was the person who shot him. Witnesses who alleged that the victim made this statement indicated that he never stated to them who this "D" or "Litttle D" was, no description, or whether this individual is white, black, Hispanic, male , female, etc ., and the witnesses indicated that the individual had on a mask and could not be identified.

Petitioner contends that he hired a Private Investigator, Bennie L. Webb, to investigate his arrest warrant. According to Bennie L. Webb's Investigative report, on April 26, 2018, he spoke to Investigator Garrett and Investigator Garrett informed Investigator Webb that he told the Magistrate that he had statements from Naomi Alston and Aundry Evans, Sr. that victim told

them that "Terron Dizzley" shot him. However, such statements do not exist, and Investigator Garrett admitted this, in Petitioner's second trial of 2014. Therefore, Investigator Garrett intentionally made "false declarations" to the magistrate , which was used to obtain Petitioner's arrest warrant, without providing any information in the arrest warrant's affidavit which would establish probable cause. See: exhibits

See: Exhibit 1. Aundry Evans, Sr.; Investigative Report of Investigator Nelson on December 1, 2008 at 11:20 p.m. at the hospital in Georgetown, S. C. . "When asked who shot him , the victim responded he was speaking with his father and did not wish to speak with me. When asked again, victim stated someone just came in and shot him and asked me to leave .... Victim's father then exited the room. I inquired if his son had disclosed any information to him, to which Mr. Evans, Sr. stated " he had not" ...

See: Exhibit 3. However, the next day, December 2, 2008, 0500, "Aundry, Sr. stated that his son had informed him in The Georgetown Hospital that "Little D" was the individual who shot him. Mr. Evans, Sr. did not know who "Little D" was".

The totality of the circumstances of Aundry Evans, Sr.'s statements: proves that; (1) None of them stated that his son told him that Terron Dizzley shot him . (2) Evans, Sr. gave two statements that are inconsistent as to the material point; (3) Aundry Evans, Sr.'s statements clearly reveal that if his son (victim) did make the statement "Little D" shot him, he never indicated who this "Little D" was." Whereas, the incident report states that: "Mr. Evans, Sr. did not know who "Little D" was."

See: Exhibit 2. Naomi Alston: Investigator Nelson's Incident Report, 12 - 1 – 2008, 11:20 p.m., second Page, "I responded to the ER where I attempted to speak to the victim, and he would not cooperate and would not provide any information.....". "I then went to the *waiting*

room where the victim's fiancé', Naomi Alston, provided me with the victim's information and also stated the victim told her that the male that shot him was called "Little D". Alston stated that "she believed" the suspect's name was Tyron Dibsly, but "she knew" he was called "Little D."

See also: Trial, 2012, Tr. P. 98, L25 – P. 99, L1 – 2.

25. Q. Did he talk about the identity of the shooter at all
1. in the hospital to you?
2. A. He didn't.

Investigator Garrett, Trial of 2014, P. 550, L6 – 15

6. Q. And in terms of why, you were, you were trying to find
7. Terron Dizzley. You had, you had already heard, at least,
8. that Naomi Alston claimed that Terron Dizzley, that he
9. identified Terron Dizzley as the person that shot him? You
10. knew that; right?
11. A. No. What I heard was that he identified a person by the
12. name of "Little D" that shot him.
13. Q. Well, "Little D" , but then you said "Little D" you
14. wanted someone to confirm that "Little D" was Terron Dizzley?
15. A. That's correct.

See also: Trial of 2014, Tr.P. 544, L1 – 21 specially P. 545, L19 – 21.

19. A "After identifying who
20. "we thought", was Little D. of course, we went to try to track
21. him down and speak with him.

Investigator Nelson, (2014, Tr. P. 482, L6 – P. 483, L1 – 4); Investigator Nelson testified in Plaintiff s trial that he asked Aundry Evans, Jr., several times at the hospital on the night of December 1, 2008, did he know who shot him and Aundry would not provide any information.

Officer Jarred Bardon, (2014, Tr. P. 463, L18 – 20)

18. Q. Yeah. Did the victim make any statements to you
19. regarding who he thought shot him?
20. A "He did not."

Plaintiff contends that had Investigator, Melvin Garrett, provided the truth to the magistrate, that his entire investigation rested solely on a vague nickname (s), "D" and "Little D", which did not identify anyone, pursuant to an alleged "hearsay statement", then such an arrest warrant would have been considered as a "John Doe" warrant, therefore, would be constitutionally deficient. U. S. v Doe, 703 F. 2d. 745 (1983, 3rd Cir.), "Describing its subject as "John Doe, a/k/a Ed" was constitutionally insufficient and that insufficiency was not cured by fact that law enforcement agency who executed warrant had independent knowledge that defendant was person for whom warrant was intended. The "John Doe Warrant" in this case does not reduce to a tolerable level the number of potential subjects: anyone with the first name, "Ed" – and, therefore, must be thousands of "Ed" in the Pittsburg area – is fair game." See: West v. Cabell, 153 U. S. 78 (1894), 'A warrant for the arrest of James West without other description of the person intended, give no authority to arrest a person whose name is V. M. West or Vandy West, and who have never been known as James West; and it is immaterial that such person was the one the commissioner had in mind he issued the warrant."

The omission of this truth was misleading and its inclusion and circumstances surrounding these witnesses' statements would have defeated probable cause. Whereas, Plaintiff

has never gone by the names "D" nor "Little D", and there must be thousands of individuals with the nickname "D". Because the arrest warrant's affidavit does not state any probable cause, at all , there is nothing for the court to consider as any remaining content of the affidavit to determine if it is still sufficient to establish probable cause. See: Franks v. Delaware, 438 U. S. 154 (1978).

Plaintiff contends that on March 4, 2019, he filed this civil action on Investigator Melvin Garrett for violation of his civil rights under The Fourth Amendment of The United States Constitution for kidnapping, unlawful seizure, false imprisonment, unlawful pre-trial detainment, and fraud upon the court. Plaintiff contends that although this civil action was filed within the three years of when he had knowledge of the fact of his injury and when he had a complete and present cause of action, which meets the requirements of clearly established federal law as to the time when a civil rights action accrues, The United States District Court abused its discretion by misapplying the law by using state laws to determine when Plaintiff's civil action accrues. As a result of The District Court's misapplication of the law, Plaintiff's civil rights action was dismissed as barred by statute of limitations. Plaintiff appealed The District Court's judgment to The United States Court of Appeals for the Fourth Circuit and The Court of Appeals affirmed The District Court's judgment without ruling on the merits of Plaintiff's case.

REASONS FOR GRANTING THE WRIT

ARGUMENT 1

Plaintiff contends that The United States Court of Appeals, for the Fourth Circuit, affirmance of the District Court's order that the State law determines the time of accrual for filing a civil action under 42 U. S. C. A. § 1983 is erroneous and contrary to clearly established United States Supreme Court law.

Plaintiff contends that, although the time limitation for civil action under section 1983 is borrowed ~~barred~~ from state law, The District Court incorrectly applied it. Plaintiff contends that The District Court also applied state law to decide when his cause of action accrued. According to clearly established United States Supreme Court law, this was error. The time of accrual of a civil rights action is a question of federal law, which accrues when plaintiff knows or has reasons to know of the injury which is the basis of the action, or when he/she is put on notice to make reasonable inquiry and inquiries which would reveal existence of a colorable claim such when plaintiff has facts of the injury and who caused it. U. S. v Kubrick, 444 U. S. 111, 122 – 224 (1979); Bay Area Laundry and Dry Cleaning Pension Trust Fund v Ferbar Corp. of Cal., 522 U. S. 192 (1997); Rawlings v Ray, 312 U. S. 96 (1941); Wallace v Kato, 549 U. S. 384 (2007), "While we never stated so expressly, the accrual date of a Section 1983 cause of action is a question of federal law that is not resolved by reference of state law."

Therefore, The District Court's judgment which was affirmed by the United States Court of Appeals that Plaintiff's civil action against Investigator Melvin Garrett of the Georgetown County Sherriff's Department of South Carolina for kidnapping unlawful seizure, unlawful pre-trial detainment, and false imprisonment is barred by the statute of limitation on the grounds that: "regardless" of Plaintiff's "underlying allegations of the Section 1983 claim, " that "South Carolina allows thee years for a plaintiff to bring a personal injury action. S. C. Code Ann. § 15-3-530 (5),"is erroneous and contrary to U.S. Supreme Court laws.

Plaintiff also contends that The United States Court of Appeals, for the Fourth Circuit, affirmance of the District Court's order that the State law determines the time of accrual for filing a civil action under 42 U. S. C. A. § 1983 is erroneous and contrary its own Fourth Circuit and other circuits court laws. Cox v Stanton, 529 F. 2d 47 (1975 4th Cir.), "the district court held

that the relevant statute of limitations for a suit under a Federal Statute, such as section 1983, which has no provision limiting the time in which an action must be brought must be borrowed from the analogous state statutes of limitations. Neither party disputes The District Court's selection of the state's three-year limitations applicable to actions upon a liability created by statute. The district court, however, also applied state law to decide when the plaintiff's cause of action accrued. The court determined that under North Carolina law, her cause of action accrued at the time sterilization operation and consequently the three-year limitation period had run before the suit was filed. This was error. The time of accrual of a civil rights action is a question of federal law. Federal law holds that the time of accrual occurs when the plaintiff knows or has a reason to know of the injury which is the basis of the action." Nasim v Warden, Md. House of Corr., 64 F. 3d 951, 955 (1995 4th Cir.) Ryals v Montgomery Co., 515 Fed. Appx. 75 (2013 3r. Cir.), "State prisoner filed suit under ₴ 1983 against county, county attorney, his criminal attorney, and others for false arrest and false imprisonment, based on assertions that magistrate signature on criminal complaint was forged by detective. The Court of Appeals held that: (1) two-year limitations under Pennsylvania law governing prisoner's claims for false arrest and false imprisonment began to run to run from the date he discovered alleged forgery, and; (2) Two-year limitations period was not tolled until hand writing examiner agreed that magistrate's signature on criminal complaint did not appear to be authentic. Ryals' false arrest and false imprisonments claims are governed by the two-year limitations period filed in 42 Pa. Cons. Stat. ₴ 5524 (2). However, under federal law, ₴ 1983 claims accrue "when the plaintiff has a complete and present cause of action."

Plaintiff contends that The District Court's order stating that: "Plaintiff had failed to allege any misconduct by defendant to conceal the cause of action or cause plaintiff to mis the filing deadline", which would support Plaintiff's argument of fraud, and concealment which would toll the time limitation for filing his civil action suit until he discovered the fraud is an erroneous assessment of the evidence and clearly established Federal law.

When ruling on a civil action, "a judge must accept as true all of the factual allegations enclosed in the complaint." Erickson v Pardus, 551 U. S. 89, 94 (2007); Bell Atlantic Corp. v Twombly, 550 U. S. 544 (2007); El. Du Pontde Nemours and Co. v Kolon Indus., Inc., 637 F. 3d 535, 440 (2011 4th Cir.).

Plaintiff contends that the record shows that he has provided The U. S. District and The United States Court of Appeals for the Fourth Circuit with evidence which proves that: (1) Investigator Garrett's unlawful actions of obtaining Plaintiff's arrest amounted to fraud "upon the court", fabricating evidence, by making "false declarations" to the magistrate to obtain Plaintiff's arrest warrant; (2) Investigator Melvin Garrett concealed the fabricated information and "false declarations" made to the magistrate and omitted this information, along with the exculpatory evidence, from Plaintiff's affidavit in his arrest warrant, which was discovered by Private Investigator, Bennie L. Webb. Therefore, according to clearly established Federal law, as to the time as to when a civil right accrues when Plaintiff has been injured by fraud and concealment, the statute of limitations does not begin to run until the fraud is discovered. See Ryals, supra, 515 Fed. Appx. 75 (2013 3rd Cir.); Homberg v Armbrict, 327 U. S. 392 (1946), "where a Plaintiff has been injured by fraud and remained in ignorance of it without any thought or want of diligence or care on his part, the bar of statute of limitations did not begin to run until the fraud is discovered, though there may be no special circumstances or efforts or part of party

committing fraud to conceal it from other party." Exploration Co. v U. S., 247 U. S. 435 (1918), "where patents to public land obtained through fraud, and fraud was concealed until more than six years after issuance, suit may be maintained thereafter, not withstanding Act March 3, 1891, 26 Stat. 1099, declaring that suits by the United States to conceal patents hereafter issued shall only be brought within six years after date of issuance [46 U. S. C. A. ⁋ 1166], as limitations do not begin, until discover of the fraud." Credit Suisse Securities (USF) LLC v Simmonds, 566 U. S. 221 (2012); Nerck and Co., Inc., v Reynolds, 559 U. S. 633 (2010).

Plaintiff contends that the record shows that he provided The United States District Court and The United States Courts for the Fourth Circuit, with information which proves that on February 10, 2017, at his first PCR hearing, Plaintiff and his court-appointed lawyer, James K. Faulk, addressed to The Honorable Judge Nettles that Plaintiff had never received a complete discovery, despite diligently requesting through attorneys and through pro se motions. The Honorable Judge Nettles granted a continuance, and funds to obtain Plaintiff's discovery. After obtaining a portion of his discovery from Attorney James K. Faulk, of which contained Plaintiff's arrest warrant, an inmate, who was experienced in knowledge of Fourth Amendment claims, informed Plaintiff that his arrest warrant lacked probable cause. After reasonable in researching this matter, Plaintiff became aware of his injury.

Plaintiff then hire Private Investigator, Bennie L. Webb, to further investigate this matter. After receiving Private Investigator Webb's Investigative Report, which revealed that Investigator Melvin Garrett made "false declarations" to the magistrate to obtain Plaintiff's arrest warrant, Plaintiff's became that he had a complete and present cause of action against Investigator Melvin Garrett of The Georgetown County Sheriff's Department of South Carolina for kidnapping, unlawful seizure, unlawful pre-trial detainment, false imprisonment, and fraud

upon the court. On March 4, 2019, Plaintiffs filed this civil action. Therefore, Plaintiff's civil action was filed within the three years of when he had knowledge of the fact of his injury, who caused it, and when he had a complete and present cause of action.

Therefore, according to clearly established United States Supreme Court law, as to the time of when a civil rights actions accrues, Plaintiff's civil rights action is not barred by statute of limitations.

Plaintiff contends The United States of Court of Appeals for the Fourth Circuit affirmance of The District Court's order that his civil against Investigator Melvin Garrett for kidnapping, unlawful seizure, unlawful pre-trial detainment, false imprisonment, and fraud upon the court is barred by the statute of limitations without ruling on the merits of Plaintiff's case was contrary to Bell v Hood, 327 U. S. 678 (1946), "Action against FBI officers for damages for illegal arrest, false imprisonment, and unlawful searches and seizures of property...calls for a judgment on the "merits" and not for a dismissal for want of jurisdiction. Where federally protected right has been invaded, courts will be alert to adjust their remedies so as to grant the necessary relief, and federal courts may use "any" available remedy to make good the wrong done". Canter v American and Ocean Inst. Cos. of New York, 327 U. S. 554 (1929), " Where the record shows that an appeal was regularly taken, the case "must" be heard on its merits."

CONCLUSION

For the forgoing reasons, a Writ of Certiorari should be issued to review the judgment and opinion of The Fourth Circuit Court of Appeals.

Date: August 5, 2022

Respectfully submitted,

Terron Dizzley

Terron Dizzley, 359480

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