

JAN 23 2023

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IN The

Supreme Court of The United States

Calvin K. Wilson,
Petitioner

Vs.

Case No. 22-5957

City of Tampa Police Dept.
Respondent(s)

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SUPREME COURT, U.S.Petition For Rehearing

Petitioner, Calvin K. Wilson, pro se, moves this court for an order granting rehearing pursuant to Supreme Court Rule 44 and states the following in support, to correct pre order:

1. The Honorable court has overlooked or misapprehended the fact that the constitutional provisions and regulation involved in this case, U.S. District courts and the Appeals court did "not" follow the rule that if the relief petitioner requested under section 1983 would undermine his conviction the courts "must" treat his claim as a petition for the Writ of Habeas corpus. see Clark v. G.A. Pardons and Parol Bd., 915 F.2d 636, 639 (11th Cir. 1990), Jurisdiction under section 1983 is displaced by the Habeas corpus remedy.

2. The Honorable court has overlooked or misapprehended the fact that the U.S. District Courts and the U.S. Appeals Circuit Court departed from the accepted and usual course of judicial proceedings. petitioner Wilsons... seeks "only injunctive relief" to compel the city of Tampa Police Department to return his personal property \$108,375 in U.S. currency that was illegally forfeited outside of the Florida Contraband Forfeiture Act Fla. Stat. 932.701-932.707 (2003), without served petitioner Calvin Kelsick Wilson with "notice" in accordance with section 932.703 (2) (a) Fla. Stat., to attend the mandatory adversarial Preliminary hearing or named as a party in the Forfeiture proceeding, specifically, as to the \$108,375⁰⁰ that led to petitioner's prosecution, see preiser, 411 U.S. at 489, 93 S.Ct. at 1836, petitioner Wilsons exhausted his state remedies as required, in his criminal case suit number (03-CF-008814), (see Appendix D to I, instance Petition for a writ of certiorari), the policy reasons underlying the habeas corpus statute support this conclusion, see Clark, 915 F.2d at 639, (quoting Gwin, 870 F.2d at 626, and (see Appendix A and B, instance petition for a writ of certiorari), see Rule 10(e), the courts departed from the accepted and usual course of judicial proceeding,

the constitutional provisions and regulation in this case, U.S. District courts and the U.S. Appeals Circuit courts "must" follow their "rule" that if the relief petitioner requested under Section 1983 would undermine his conviction... the courts "must" treat his claim as a petition for the writ of Habeas Corpus. Id. 1

3. The Honorable court has overlooked or misapprehended the fact that the U.S. District courts and the U.S. Appeals circuit court, in conflicts with the decision in Clark v. Ga. Pardons and Parol Bd., 915 F.2d 636, 639 (11th Cir. 1990), and also this court, what is involved here is the extent to which 1983 is a permissible alternative to the traditional remedy of Habeas Corpus. Preiser, 411 U.S. at 506, 93 S.Ct at 1841.

Petitioner Wilson's sole federal remedy is a writ of Habeas Corpus. See Preiser v. Rodriguez, 411 U.S. 475, 489, 93 S.Ct. 1827, 1836, 36 L.Ed. 2d 439 (1973). The fact that other similarly situated prisoners section 1983 claim had been treated as a petition for the writ of Habeas Corpus, and the fact petitioner's section 1983 claim did not, and the U.S. currency led to his prosecution (see Appendix A and B, instance petition for a writ of certiorari), thus, decision of the courts erroneous. The lower courts erred in finding petitioner's claim frivolous under 28 U.S.C. 1915(e)(2)(B)(i)(ii)

(iii), denies leave to proceed, and dismisses the appeal.

4. The Honorable Court has overlooked or misapprehended the fact, that if the U.S. Appeals Circuit Courts did follow their rule as required and construed petitioner Wilson's complaint as an application for writ habeas corpus, the "claim against" the City of Tampa Police Department cannot be frivolous. (see Appendix D to I, instance petition for a writ of certiorari), and see Wilson v. State, 924 So.2d 969 (Fla.2d DCA 2006), and Wilson v. State, 957 So.2d 1264 (Fla.2d DCA 2007). Petitioner seeks injunctive relief only. Thus, his complaint stated a claim upon which relief could be granted. If true, it suggested a violation of due process and equal protection clause. U.S.C.A. 5, and 14. see Fuente v. Shevin, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972). see Velez v. Miami Dade County Police Department, 934 So.2d 1162, 1164 - 1167 (Fla.2006), on point of law. I.d.

petitioner Calvin Kelsick Wilson was in possession \$108,375⁰⁰ at the time of seizure, he was a person entitled to notice under section 932.701(2)(e), Fla. Stat., and therefore had standing to contest the seizure at an adversarial preliminary hearing under section 932.703(2)(a), Fla. Stat., before forfeiture proceedings were commenced. I.d. Velez, 934 So.2d at 1165-67. Thus, there was nothing in the record to suggest frivolousness. The money represented evidence

in Petitioner's Prosecution. See Appendix F, instance petition, at Paragraph (5) five.

WHEREFORE, petitioner pray that this court grant him this rehearing and sets aside its prior decision denying his petition for writ of certiorari. The money illegally used, obtain a wrongful conviction of petitioner's.

Respectfully Submitted,

Calvin K. Wilson
Calvin K. Wilson, Pro Se

Proof of Service

I, Calvin K. Wilson do swear that on this date 1-23-2023, as required by Supreme Court Rule 29, I have served the enclosed petition for rehearing on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The name and address of those served is as follows: City of Tampa Police Dept., 411 N. Franklin Street 10th floor Tampa, FL 33602.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 1-23-2023, 2023.

Calvin K. Wilson